

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
BETWEEN

1. Claimant
2. Brenda Boardman
3. Second
4. 11 September 2008
5. Exhibit BB1

THE QUEEN
on the application of

FRIENDS OF THE EARTH
and
HELP THE AGED

Claimants

and

SECRETARY OF STATE FOR BUSINESS, ENTERPRISE AND REGULATORY REFORM

First Defendant

and

SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Second Defendant

and

FUEL POVERTY ADVISORY GROUP

Interested Party

SECOND WITNESS STATEMENT OF BRENDA BOARDMAN

I, BRENDA BOARDMAN of South Parks Road, Oxford, OX1 3QY say as follows:

1. I am the same Dr Brenda Boardman who made a statement dated 9 April 2008 in these proceedings. I make this statement in response to the evidence of the Defendants as set out in the statements of Pamela Wynne and Charles Phillips.
2. I note that, other than in one specific point (to which I return below) the Defendant's evidence does not take issue with the facts set out in my first statement. Rather, the Government's evidence strengthens the concerns set out in my first statement regarding the Government's failure to deal meaningfully with the issues.
3. The purpose of this statement is not to deal with all of the facts and matters set out in those statements but to deal with a small number of issues, in particular issues arising from (1) documents which I had not seen before and which, so far as I am aware, had not been published; (2) a decision of which I was not aware and which, so far as I know, had not previously been made public; and (3) the Government's approach to cost-effectiveness in its evidence.

4. The fact that I do not address a particular issue should not be taken as an indication that I accept its accuracy. In this statement I assume the knowledge of the facts set out in my first statement and seek to avoid repetition.

The new documents

5. Below in this statement I comment on various aspects of the newly disclosed documents on which the Government now relies to support its case (in particular those at PW1, Tabs 5 (three different documents), 6 and 10).
6. As a general point though I note that whilst these documents are clearly relevant it is difficult to make sense of them because of the lack of detail given about their nature and function. For example,
 - Two of the documents are undated (Tabs 6 and 10).
 - With the exception of one document (the third within Tab 5/121) it is not said who authored the documents or to whom the documents were addressed.
 - No information is given as to who considered those documents and how they were considered.
 - No other information is given as to the decision-making context into which those documents were fed.
 - It is also not said whether these were isolated documents or whether these are documents forming part of a series of internal policy papers.

Costings and costed plans

7. In my first statement I expressed concern at the lack of any costed plan to meet the Government's fuel poverty targets [Boardman para. 116ff, **B1/2/95**]. The Government has responded to that by stating that it has in fact "*regularly prepared papers considering (a) the measures that would have to be taken to eradicate fuel poverty; and (b) the costs of taking such measures. Papers were produced in 2003, 2005, 2006 and 2007...Therefore it can be seen that at regular intervals the Government has carefully considered (a) the measures required to eradicate fuel poverty for vulnerable households by 2010; and (b) the costs of taking such measures*" (Wynne, para. 128) (references removed for clarity).
8. By way of general overview it is my view that this response fails to address the concern raised in my first statement. Even if it were the case that the Government had done what is claimed above (as to which I say more below) that would not mean that the Government has produced a costed plan (see para. 116 of my first statement, **B1/2/95**). A costed plan would describe the measures necessary to achieve the aim (i.e., the eradication of fuel poverty amongst vulnerable households by 2010) by reference to the costs of those measures and any obstacles to implementing them and on the basis of an options assessment of possible measures. Such a plan would also, and importantly, explain how the measures were to be financed and implemented i.e., what policies would be put in place to ensure that the measures actually happened.
9. The documents and exercises relied are of the following types.
 - 9.1. Some are modelling documents which model the measures necessary to the reduction or ending of fuel poverty amongst vulnerable households by 2010

- and, usually, provided estimated costs of measures considered (measures only) (e.g., **B1/1/20; B1/17/608; B1/18/626; B1/637A**);
- 9.2. Some are policy recommendation documents (e.g., **B3/5/111-120; B3/6/125**);
- 9.3. Some are general resource update documents (e.g., **B3/5/121**)
- 9.4. Some seek to provide further details of precisely what it would cost to implement certain models (e.g., **B3/10/206**).
10. However, what they do not do is provide a costed, coherent plan that sets out the policies and the outcomes necessary to achieve the targets and shows how they will be achieved. They are theoretical, background papers and do not provide a programme of action. There is no route map identifying which of the identified and costed measures should be followed, or (having rejected some of those ways) what alternative paths there may be. I comment more specifically on the documents in the following paragraphs.

The 2003 assessments

11. I note first that the 2003 report [**B1/9/320**] does not contain an expression of Government thinking. Rather, it is explicitly stated to have been *“prepared by the Secretariat [to the Fuel Poverty Advisory Group] at the request of the Fuel Poverty Advisory Group. The views expressed do not necessarily represent those of the Government or any individual Department”*. At FPAG’s request, the document helpfully sets out the views of the Secretariat as to the measures necessary to meet the 2010 target and gives estimates of the costs (measures only¹) of each of the measures [**B1/9/324**].
12. The document is not, and does not claim to be, a plan, whether by Government or anyone else, (i.e., does not say what is to be done). As the first paragraph states, **“It is a preliminary paper to inform debate. It covers the costs of energy efficiency measures installed by any means, and is not an estimate of the need for public sector expenditure”** (bold emphasis in original, [**B1/9/321**]). The document does not contain any consideration of which of the costed options are to be taken forward or an assessment as to which of the options are reasonably practicable.
13. What the document does usefully do is set out the ‘indicative maximum total costs’ (measures only) of various measures designed to remove vulnerable fuel poor households from fuel poverty. Those measures include boiler replacement, gas central heating, gas network extension, solid wall insulation, Combined Heat and Power (CHP) community heating and other measures.
14. Immediately following the summary of the 2003 Report in Ms Wynne’s statement, evidence is then given as to the Government’s Plan of Action published in 2004 [**Wynne, paras. 65ff**]. The Plan of Action is therefore the response to the evidence and analysis gathering in the 2003 Report. The Ministerial Foreword to that report states that the document *“sets out how we intend to meet the first of our fuel poverty targets in England – eradicating fuel poverty in vulnerable households by 2010”*

¹ At various points in this statement I describe some costs as being ‘measures only’ costs. That is intended to refer to the fact that such costs only cover the actual costs of the particular measures and do not cover the costs of administration or the fact that actual costs will usually be higher as a result of the need to install more measures as a result of imperfect targeting.

[B1/14/491]. I note in passing that the same foreword states that ‘*We will be monitoring progress and updating the plan as appropriate*’ but that the Plan for Action has not been updated.

15. As noted in my first statement FPAG comment on that Plan of Action in its next annual Report as follows:

“This is, however, not a plan. There is no estimate of the resources required, no timeline to meet the 2010 and 2016 statutory fuel poverty targets, no consideration of the major obstacles and no assessment of the options available for overcoming them.”

[B1/15/546]

16. I agree with that criticism.
17. More specifically though, neither that Plan of Action nor DEFRA’s evidence in these proceedings explained the very large gap between the funding provided (para. 5.2.3, [B1/14/511] and the funding said by the civil service FPAG Secretariat to be necessary in the 2003 Report [B1/9/344] and how that gap would be filled over the coming years (2004-2010) so as to ensure that the aim would be achieved. In addition, there is no indication as to what analysis (if any) the costed measures outlined in the 2003 report had been subjected to, or why the measures were rejected. It is simply said, either explicitly or implicitly, that they were expensive or not cost-effective (see e.g., para. B9.10-9.12, B1/14/536). In the case of at least one measure contained in the 2003 costings report (Gas Network Extension) it is said that the “*Government will seek ways in which to replicate [pathfinder projects] on a larger scale, and is investigating the range of funding sources that would allow it to do so in the longer term. In the short term it is seeking to expand the pilots.*” [B1/14/506]. As BERR have stated, “*It was decided not to proceed with this programme, as the funding was not available within DTI’s budget*” (B4, Phillips, para 37).

The 2005 assessments

18. In respect of 2005 DEFRA relies on three documents: two in the Claim Bundle [B1/17/608; B1/18/626] and a newly disclosed document [B3/5/111]. The first two documents were again prepared “*for the Fuel Poverty Advisory Group to set out progress on a project to estimate the costs and effectiveness of energy efficiency and other measures in tackling fuel poverty in England*” [B1/17/608]. In other words there is no question of such documents being any sort of ‘plan’ – rather they were part of an ongoing methodological cost assessment project for FPAG. That comment is not intended to minimise the importance of such work but to make clear the nature of the documents.
19. The first paper is helpful in that it sets out the then estimated costs (means only) of providing ‘mainstream’ insulation measures and gas central heating (for those on the network). The second paper updates the first (“*outlining the continuing development of a methodology for estimating the costs and efficacy of energy efficiency and other measures in tackling fuel poverty in England.*” [B1/18/627]).
20. The third paper (B3/5/111-121) is an internal policy paper (consisting of two linked papers) which I had not previously seen and which does not appear previously to have been made public. It consists of a summary paper and a ‘detailed analysis’ paper and

appears to build on the evidence base in the two FPAG papers above (though it does not state explicitly that it is doing so).

21. The paper recognises that even with the mainstream measures installed, 800,000 vulnerable households (in the base case, between 400,000 and 1.4m in other scenarios) would remain in fuel poverty in 2010 (**B3/5/117, para. 12/**). It then sets out costed measures for dealing with those 800,000 households including extending the gas network, solid wall insulation and bill reduction/income measures.
22. The paper concludes that with additional policy interventions (costing £1.9 billion²) of:
“a new income related benefit at £200, a further suite of heating systems and further insulation package..., fuel poverty might be brought down to around 500,000 vulnerable households by 2010, but the target would still not be met, and therefore further work is needed...” (para. 23, p.120). (emphasis added)
23. Although a number of ‘pilot projects’³ have taken place over the years, the overall set of measures and these ‘possible new policies’ have not been taken forward. For instance, in 2006, the extension of the gas network is still being discussed as a future option [**B3, Wynne, para 101(6)**]. The result is that the anticipated levels of fuel poverty are much higher than was considered achievable in that paper.
24. Once again, the above documents themselves are not, and do not claim to be, a ‘plan’ but a combination of FPAG modelling documents and an internal options paper (with estimated base costs). Again, no analysis is given as to which options will be taken forward, which ones will not (and why) and, if certain measures are not pursued then what measures will replace them so as to meet the target.
25. Paragraph 91 of Ms Wynne’s statement addresses the findings of the October 2005 paper. The evidence then moves to summarise the measures taken in 2005 (presumably in light of those reports). However, once again there is no indication of what treatment was given to the ‘possible new policies’ described. In particular, it is not said in the evidence and no document has been provided stating that those ‘possible new policies’ proposed were either implemented or were assessed and deemed to be not reasonably practicable (and if so on what grounds).
26. Crucially, as the evidence makes clear the measures taken in 2005 [**B3, Wynne para. 9**] did not include the additional options considered in the internal Government paper as being necessary to reduce fuel poverty to 500,000 by 2010 (i.e., the lowest base case level to which thinking had by then reached).
27. DEFRA’s evidence states [**B3, Wynne, para. 94**] that the Secretary of State took the view that the steps taken were all that it was reasonably practicable to take at that

² The figure of £2.95 bn in DEFRA’s statement (B3, Wynne, para. 91(5)) includes the already funded ‘mainstream insulation’ programmes.

³ One of the recurring frustrations (and areas of confusion) in the fuel poverty area relates to pilot projects. In the years since the Strategy was started a range of pilot projects have come and gone without it being clear what role (if any) their conclusions have played in the Government’s statutory decision making. It is often unclear whether promised pilot projects have even happened. For example, the Government’s Microgeneration and Fuel Poverty Advisory Group noted in May 2006 that a large scale pilot scheme involving 6,000 micro-CHP installations was promised in the 2001 Strategy to start in 2002. *“this was seen as evidence of a commitment to seeking solutions for fuel poverty in properties where more conventional energy efficiency improvements were insufficient, impracticable or impossible. But this commitment ha not featured in progress reports on the Fuel Poverty Strategy, nor in the 2004 action plan..”* [**B4/20/427**]

time and that all three of the proposed measures “*were not cost-effective and the additional resources required to implement such measures on a large scale were not available within DEFRA/BERR’s budget.*” I comment below on the issue of cost-effectiveness and the relevance of departmental budgets. However, at this stage I note merely the absence of any contemporaneous documentation to explain how and on what basis those decisions were taken.

The 2006 assessments

28. In respect of 2006 Ms Wynne states that
- “extensive work was undertaken within DEFRA and DTI to estimate the costs and effectiveness of energy efficiency and other measures in tackling fuel poverty in England as part of the Energy Review” [B3, Wynne, para. 96] (my emphasis).*
29. Reference is made to two documents. The first is in the Claim Bundle [B1/19/637A] and is an update of the two previous documents prepared by civil servants within DTI⁴/DEFRA for FPAG in 2005 “*to set out further progress on the project to estimate the levels of resources and types of measures that might be used to meet the 2010 target.*” The second is a newly disclosed document [B3/5/121] and is an internal update by DTI to the Fuel Poverty PSA Management Board (February 2006). The first document sets out the costs and the effectiveness in fuel poverty terms of a variety of additional measures including extending the gas network, solid wall insulation, installing renewable energy solutions, replacing old boiler systems and benefit changes. In other words, the solutions modelled in 2005 (but not pursued) are modelled again as well as a number of further solutions. The paper concludes that “*This leaves a final 230,000 households in fuel poverty.*” [B1/19/637H, para. 27] (i.e., itself an improvement on the 2005 solutions).
30. However, the paper goes further than that stating:
- “[The 230,000] households might be entitled to benefits they are not currently claiming or be paying through a very expensive pay method. Around 70,000 of those households will still remain in fuel poverty even if £1,500 were added to their income or £150 subtracted from their bills. Given the improvements that have been modelled as being undertaken, such households should be treated as special cases that go beyond the reasonably practicable. The remaining 160,000 might be helped through benefit entitlement checks or tariff changes, but require major assistance on both the income and energy costs side of the fuel poverty equation. To lower energy bills of all households remaining fuel poor by £150 would cost around £35 million.” [B1/19/637H, para. 27]. (emphasis added)*
31. The report concluded that the cost of reducing fuel poverty by 2010 to 70,000 (i.e., all other than those considered by DEFRA/DTI civil servants to be “*beyond reasonably practicable*”) would be approximately £5.5 billion (measures only) [B1/19/637H].
32. In the DEFRA statement this report is summarised [B3, Wynne, para. 97]. At this stage therefore the Government had been presented with measures that could be taken that would have the effect of reducing the number of vulnerable fuel poor households to 70,000 by 2010. (I note in passing that, the Energy Minister (DTI/BERR)

⁴ DTI (Department for Trade and Industry) has since 2007 been known as BERR (Department for Business Enterprise and Regulatory Reform). In this statement I use both terms interchangeably depending on the date of the matters at issue.

had, at about the same time, been presented with a report saying that micro-generation could make a significant contribution to the problem and making recommendations how to take this forward [B4/20/429]).

33. Once again, this begs the obvious question as what happened? Why were the measures that were costed and modelled as being effective in terms of taking people out of fuel poverty not implemented?
34. DEFRA's statement refers to the Energy Review and states that "*the pros and cons of each potential measure were carefully evaluated, and the conclusions reached by the Government are set out below at para. 114*" [B3, Wynne, para. 98]. I address those conclusions below (para. 49). However, those conclusions were reached in September 2007. Bearing in mind the fact that the 2010 target was rapidly approaching it is also important to ask what happened in the shorter term in light of the conclusions reached in January 2006 and the advice given to the DTI (BERR) in May 2006. The apparent answer to that is set out at para. 99 of Ms Wynne's statement in the context of the publication of the Energy Review and then further as 'Steps taken in 2006' at para. 101 of Ms Wynne's statement: there were some relatively minor adjustments to existing policies.
35. As can be seen, the measures costed and identified as necessary (or at least effective) to reach the target were (again) not implemented. No explanation is given in the statement as to why, in light of the reports available to Government, the measures, options and recommendations were not taken. However, the answer partially emerges from a newly disclosed document which is an internal update by DTI to the Fuel Poverty PSA Management Board (February 2006) [B3/5/121] entitled '*Update on resources required*'. I note that the four *recommendations* [B3/5/121] contained in the update do not include a recommendation to implement the measures nor any assessment of the reasonable practicability of those measures. Rather, the measures are simply summarised before noting merely that "*it would be very expensive to install all of the measures outlined..., costing £5.5 billion in terms of measures alone.*" [B3/5/123] (my emphasis). No indication is given in the evidence as to what consideration was given to this paper (and the more detailed papers it summarises) or of decisions taken by reference to those papers.
36. Reference is also made to a document [B3/6/125] headed 'Options for Fuel Poverty'. Ms Wynne refers to this document as evidence of consideration by the DEFRA/DTI team of '*a wide variety of radical options to tackle fuel poverty*' in the course of the Energy Review. [B3 Wynne, para. 98]. It is said that the pros and cons of each potential measure were carefully evaluated and the conclusions reached (in September 2007) are set out at para. 114 of Ms Wynne's statement (to which I refer below). Although this document appears to be significant much about it is currently unknown (including its date, its function and the identity of the author). The paper appears to be an internal (Government) 'options paper'. Unlike previous such papers this document goes beyond merely setting out costings and possible measures and sets out and considers a number of options in the context of the Government's "*interim target to eradicate fuel poverty in vulnerable households in England by 2010*" (B3/6/125). Importantly, it also makes specific Recommendations:

"1.1 Recommendations

Policies we recommend that should be undertaken

Most of the changes described below will need additional funding. Without some additional funding, we are unlikely to be able to take forward any of the major changes proposed below.

(bold formatting in original – B3/6/125)

37. The paper then sets out (albeit in brief form) a series of recommendations and other options for consideration. It is my view that many of the recommendations made are sound and, had they been implemented, could have made a very significant contribution to ending the blight of fuel poverty, particularly if extended to micro-generation technologies more widely in accordance with the recommendations of the Microtechnology and Fuel Poverty Advisory Group (B4/20/427).
38. However, and importantly, no information is provided in the submitted documentation (or in the Energy Review) as to the assessment that was then given to those options or what happened to this paper. In particular, there is no documentation provided to indicate how, when, by whom and against what criteria each of those recommendations and options were assessed. There is also no documentation provided to indicate whether any of those options were considered to be not reasonably practicable (and if that was the case why they were so considered). All we know is that few of those recommendations and options were pursued.
39. It is then stated in DEFRA's evidence that *'at this stage, no final decisions had been taken on what further measures, particularly with regard to energy efficiency, it was reasonably practicable to implement. Further work was to be undertaken in the lead up to the Energy White Paper and final decisions taken after that had been published.'* (Wynne, para. 100).
40. I therefore turn to the "final decisions" that were ultimately made and to the assessments leading to them.

The 2007 assessments and the September 2007 Decision

41. The first point I should note is that the existence or nature of those 'final decisions' was not, to the best of my knowledge, previously available. That is particularly surprising as (a) the June 2007 White Paper had made reference to being mid-way through a full-policy review; and (b) the December 2007 Annual Progress Report (to the extent that it made any reference to such a process) gave the impression that such decisions had not been made and that the review was ongoing as it stated that *"we have outlined a series of measures and actions in the Energy White Paper to progress us towards our fuel poverty targets. As part of the review of our policy framework, we are considering how each policy option can contribute to our targets and their cost implications."* (emphasis added, [B1/24/782])
42. The background to the decision is said to be that *"a wide variety of radical options to tackle fuel poverty were considered by the DEFRA/DTI team in the course of the Energy Review. The pros and cons of each potential measure were carefully evaluated, and the conclusions reached by the Government are set out below at para. 114."* (Wynne, para. 98) [reference omitted for clarity].
43. In terms of further evidence gathering or assessment specifically carried out at that time DEFRA's evidence only refers to one (newly disclosed) document [B3/10/206].

That undated document consists simply of a copy of the previously published costings table produced in January 2006 [B1/19/637H] followed by a one and a half page set of calculations which seeks to model the full costs of the measures previously identified. It does so by uplifting those figures by various factors (as described at Wynne, para. 107(1)) to produce a full estimated cost figure of implementing the measures identified in the 2006 report. (Although the DEFRA statement notes that the report found that the 'uplifted' cost would be £11.5 billion (Wynne, para. 107(2)) that is slightly misleading as the paper in fact concludes that relatively simple measures would bring that figure down to 'just under £9 billion' though I recognise that these figures are subject to a degree of uncertainty in any event) [B3/10/207].)

44. Therefore, at this stage of a "full examination" of the Government's policy framework the Government was able to consider a large number of options either in the form of internal 'recommendations' and/or measures which its own civil servants had concluded were capable of reducing fuel poverty by 2010 to 70,000⁵ at a cost of £5.5 bn (or just under £9 bn including uplifts).
45. By contrast the Energy White Paper (May 2007) found that current policies were likely to leave 1.3 million vulnerable households in fuel poverty by the 2010 target date. The important question therefore was, particularly in the context of such an important decision making stage, what steps were going to be taken to reduce the very large gap between those two prognoses.
46. The somewhat remarkable answer set out in DEFRA's evidence is that:

"ultimately it was concluded, in September 2007, that the Government was already taking all measures which were reasonably practicable in order to meet its fuel poverty targets, both for 2010 and 2016. It was considered that there were no further reasonably practicable measures that could be taken to seek to end fuel poverty amongst vulnerable households by 2010 or to ensure the elimination of fuel poverty by 2016." (Wynne para. 114).

47. The effect of that conclusion (now described by DEFRA as a 'final decision') is important to understand. There was now an enormous discrepancy (by a factor of nearly 20⁶) between the level to which the number of (vulnerable) fuel poor households could be reduced by 2010 through measures identified by DEFRA/DTI civil servants in 2006 (which explicitly excluded a measure considered to be not reasonably practicable) and what the Government were now saying was all that could be achieved.
48. None of the documents themselves provide an explanation for this discrepancy and there is no documentary evidence which demonstrates the carrying out of any exercise to resolve it. In particular, I have not seen any documents that either set out the terms of the Government's review of its evidence/recommendations or which provide details of its thinking so as to explain what happened to those

⁵ See e.g., the Table at PW1, Tab.5, p.124 and elsewhere. However, I note that the undated options paper [PW1, Tab 6, p.127] stated that its recommendations could only get fuel poverty levels down to 300,000 (presumably slightly less for vulnerable households only).

⁶ i.e., the difference between the 70,000 set out in the 2005 report and the 1.3million anticipated in the Energy White Paper (June 2007). I recognise that a higher estimate of 300,000 is referred to in a 2006 options paper though even if that were used the difference of a factor of more than 4 remains.

recommendations and options, in particular how they were assessed both independently and as against each other.

49. The only evidence now provided as to that review is Ms Wynne's own statement at para. 114. As that is the only explanation for this important decision I wish to comment briefly on the conclusions at para. 114 in respect of each of the recommendations (and other measures) which are now said to be not reasonably practicable (in some cases this is stated explicitly, in others it is implicit). I do so by reference to the sub-paragraph numbers in Ms Wynne's statement. My comments are necessarily brief as the information provided as to the reasons for certain decisions is so limited.

(1) **Para. (1) – Disability allowance.** No comment.

(2) **Para. (2) – Warm Front Targetting.** It is said that *"for the reasons set out above at paragraphs 73-76 it was not reasonably practicable to target Warm Front measures only at the fuel poor"*.

a. First, the reasons set out at paragraphs 73-76 relate to analysis in 2003/04. However, in the intervening 3-4 years (a) the situation had become much more urgent as a result of both increasing fuel prices and the lack of time until 2010; and (b) the Government now had much more information about costs and alternative measures as well as recommendations for change.

b. Second, even if it is not reasonably practicable to target Warm Front measures *"only at the fuel poor"* that does not answer the question of whether it is reasonably practicable to target such measures more closely at the fuel poor. As the Government's 2006 internal recommendation document noted *"around 80 per cent of the households that can receive substantive help from Warm Front are not fuel poor."* (B3/6/129 final para). There was therefore clearly much that could be done to target the spending better even if it is never targeted exclusively at the fuel poor.

c. Third, it is said that *"targeting in such a way would have significant administrative costs"*. I note that this is principally an argument about 'cost effectiveness' on which I comment below. However, I particularly note that it is not said what the 'significant administrative costs' would be (i.e., how much would it actually cost).

(3) **Para. (3) – benefit entitlement** - Even when a recommendation from the 2006 recommendations paper was taken forward (such as this appears to have been) it seems to have been taken forward in a considerably weaker form without explanation as to why. For instance, in relation to Benefit Entitlement Checks the internal recommendation had been to *'support households throughout the process to maximise take-up'* [B3/6/130]. This then appears to have become *'to offer more benefit entitlement checks'* in the Energy White Paper 2007 (**B3, Wynne, para 110(3)**). The difference is significant in policy terms as it is important not merely to identify with the household that there is an entitlement to a particular benefit (i.e., an entitlement check) but, even more importantly, to support them through the process of applying for that benefit, completing the paperwork and ensuring the benefit is obtained.

(4) **Para. 4 - large scale roll out of alternative measures for hard to treat homes.** It is now said that “*it was not reasonably practicable to start a large scale roll out of alternative measures for ‘hard to treat’ homes*”. Such measures are of fundamental importance as identified previously and were considered by DEFRA/DTI’s Civil Servants to be capable of removing 370,000 vulnerable households from fuel poverty⁷

- a. In respect of extending the gas central heating network (capable of removing up to 160,000 from fuel poverty) Ms Wynne merely says that it was not ‘presently cost effective’: as to which see below). However, the more detailed DTI statement (Phillips, para. 37) states that the gas network extension and renewable energy programme was considered but that “*The programme would cost £95m. It was decided not to proceed with this programme, as the funding was not available within DTI’s budget...there were no additional funds available to fund the Gas Network Programme*” (DTI/BERR’s budget for fuel poverty being less than £300,000⁸). I note in passing that this programme, which was considered capable of assisting 70,000 fuel poor households, was itself much more modest than that which had been considered to be necessary by DEFRA/DTI’s civil servants in their modelling the previous year [B3/5/124, Table 1].
- b. In respect of solid wall insulation it is said merely that “*there were difficult issues...in terms of cost and aesthetic consequences.*” However, there is no assessment in either case of whether the measures were ‘reasonably practicable’. In addition, it appears to have been concluded in the context of CERT that solid wall insulation is an appropriate measure to take: it forms part of the CERT package [Exhibit BB2 generally, but specifically at Table 7 B2/6/1151] so the government’s thinking here requires some explanation.
- c. Although some comments are provided in respect of a variety of alternative energy options (with which I do not necessarily agree⁹) the main reason for dismissing ‘use of further alternative technologies’ is that they ‘had not yet been proven to be cost effective...’ (discussed below).

(5) **Para. (5) – Income benefits and inefficient boilers.** It is not clear why these two measures are treated in the same paragraph. Additional income related benefit for the 270,000 who could not be taken out of fuel poverty by energy efficiency measures was apparently rejected because it would “*require substantial additional resources that were not currently available.*” Once again, the level of those resources is not stated. Replacing inefficient boilers (which would remove 140,000 people from fuel poverty) was also rejected as being too expensive (£1.1 bn) and ‘*such resources were not currently available*’. In other words, for these

⁷ E.g., PW1, Tab.10, p.206, Table 1 – Extending gas central heating would reduce fuel poverty by 160,000, solid wall insulation could reduce by 170,000 and solar water heating could reduce by 40,000, to give a total of 370,000 vulnerable households brought out of fuel poverty. The replacement of old boilers could reduce vulnerable fuel poverty by an additional 140,000 households, as discussed below.

⁸ DTI’s budget is said to have been £3.72 billion at that time of which its fuel poverty budget was £267,154 (i.e., 0.007%).

⁹ The fact that I do not comment in detail in respect of these paragraphs should not be taken as acceptance of anything contained within them. Several of the summaries of the position in respect of renewable technologies is extremely partial indeed.

two measures that might have removed a further 410,000 people from fuel poverty the only reason now given for not pursuing the measures is that the “resources were not currently available” (presumably within departmental fuel poverty budgets; cf. the rejection of extensions to the gas central heating network, above at subpara. 114(4)(a)). Once again, no evidence is given as to any assessment as to the reasonable practicability of the measures either in and of themselves, or as against alternative measures.

- (6) **Para. (6) fuel price subsidies** - It is said that “it was not reasonably practicable to implement the proposal to reduce energy bills by a set amount as this would constitute an interference with the energy markets, contrary to the Government’s policy on free competition (see witness statement of Charles Phillips)”.
- a. First, I do not understand how the mere fact that a measure is at odds with a generic ‘free competition’ policy could make such a measure ‘not reasonably practicable’ – though I believe that to be a matter for the Court.
 - b. Second, the witness statement of Charles Phillips deals with this issue at para. 10. Although that paragraph states that “interfering with energy prices by the reintroduction of price controls or caps on retail prices is not appropriate” it does not address other methods of reducing energy bills including those considered (briefly) at Section 5 of the internal Government recommendations paper (B3/6/138) i.e., subsidising energy bills in certain homes. As such it is not clear how the DTI evidence supports that conclusion.
 - c. Third, the decision (again unsupported by documentary evidence) is particularly surprising as the Government’s internal ‘Options Paper’ [B3/6/138-139] indicated a relatively low cost of such a measure (£150 million p/a falling to £100 m p/a) and noted that the market would only be distorted for a “small proportion of customers (i.e., around 5% of the market)”.
- (7) **Paragraph (7)** broadly summarises the paragraphs above (on which I have commented already). However, it is notable that it is also stated here that “to introduce all of the measures above to seek to end fuel poverty for vulnerable households by 2010 was likely to cost an additional £11.5 billion¹⁰ over and above existing funding commitments for fuel poverty.” However, what that paragraph fails to do (and no other evidence of such an exercise has been provided) is consider the extent to which parts of the package could be implemented.
- (8) **Paragraph (9) – Winter Fuel Payment:** It is said that changes to the Winter Fuel Payment scheme were not ‘reasonably practicable’ because, broadly, (1) it would be contrary to government policy on financial inclusion; (2) the Government had given a commitment that WFP could continue at their current rate for the lifetime of the parliament; and (3) there would be cost problems with targeting.

¹⁰ As noted above at para. 43 the figure of £11.5 billion is slightly misleading as the Government paper in question concludes that the relevant cost could be made to be ‘just under £9 billion’ (over the three years to 2010).

- a. First, it is not clear to me why the first two concerns support a conclusion that such changes would be not reasonably practicable – though again I understand that to be a matter for the Court. In particular, I do not understand why a political ‘commitment’ not to reduce WFP should somehow override a statutory obligation in respect of fuel poverty.
 - b. Second, the option proposed in the Option Paper was *“using money currently spent on Winter Fuel Payments to bulk buy fuel for the poor or to convert the Winter Fuel Payment to a voucher to ensure that it is spent on fuel. Such options run counter to the financial inclusion agenda, but are likely to enable more energy to be purchased at the same cost to Government and have a greater impact on tackling fuel poverty”* (emphasis added). In other words, whilst that options paper recognised that there may be challenges with such a change (not the only option) there was no suggestion that such a change was not practicable or not reasonably practicable.
50. Overall, in relation to the outcome of the so called ‘final decision’ it appears that the actions that the Government decided to take are merely those at the cheaper end of the menu (with the obvious exception of continuing Winter Fuel Payments), and those that the Government was taking already. In other words, they cost relatively little compared to the programme of measures recommended and considered possible, and required little in the way of increased funding. Perhaps unsurprisingly therefore they will only have a comparatively modest effect on levels of fuel poverty and will take the Government nowhere close to achieving its 2010 target.

Cost Effectiveness

51. It is repeatedly said that the reasons why certain measures have not been adopted is that they are not considered to be “cost-effective”. That is said to be the case in the context of aspects of the September 2007 decision. It is also given, more generally, as the overarching reason why ‘*additional measures that could be taken to improve the energy efficiency of households*’ are not taken [B3, Wynne, para. 32(1); and para. 138; also B4 Phillips, para.71].
52. I accept that cost is a factor in deciding which options to pursue (and how and how far to pursue them). However, the Government’s assertions as to cost effectiveness raise a number of serious questions as to the Government’s approach. The term ‘cost effectiveness’ is used in various different ways in the UK policy making context and it is important that it is well-defined to avoid misinterpretation and inconsistency. The problem is that the term ‘cost effective’ appears to be used in the Government’s evidence in a loose, inconsistent and inappropriate way.
53. First, it is very important to be clear what the exercise may be measuring:
- 53.1. The Government’s policy objective in this case is to take households out of fuel poverty by a particular date. This will require a number of measures, many of which have been identified by civil servants, which in combination would achieve the objective. Therefore, the question of the cost effectiveness of a particular measure ought to be concerned with the cost of taking certain numbers of households out of fuel poverty by a certain time. In other words, how much will a particular measure or programme cost to take a thousand

(vulnerable) households out of fuel poverty by the target date. The answer would be expressed as '*£ per '000 households taken out of fuel poverty*'.

- 53.2. A different cost-effectiveness exercise would be to ask whether a particular measure is cost effective for a household in terms of, say, fuel cost savings over a certain period (perhaps the lifetime of the measure). For example is it cost effective (in energy cost terms) to install solid wall insulation. That is a very different question and could obviously result in a quite different answer for the same measure. Moreover, in that case 'cost-effectiveness' is being measured from the perspective of either (a) the householder purchasing the product; or (b) the supplier (public or private) of the measure if supplied within a programme such as CERT or Warm Front. In such a case, if the cost-effectiveness of a measure for a household is low, but a reasonable Government subsidy would increase the cost-effectiveness for the household to the extent that many would take action then for Government the subsidy (and subsidised measure) could be highly cost-effective.
54. One problem in the Government's evidence is that it is often unclear which types of cost effectiveness assessment they are referring to at any time.
55. Secondly, it is important to be clear what a "cost effectiveness" analysis does not involve: it does not itself involve a judgment as to which measures ought actually to be taken. That requires a separate exercise, and a decision as to whether it is worth taking a measure in light of (among other things) its cost effectiveness, however that may be calculated.
56. Thirdly, the concept of cost effectiveness can be employed in answering different types of questions and it is important to know what type question is being asked. For example, the following two types of question can result in very different answers.
- 56.1. Is an individual measure cost-effective (or cost effective enough) to be implemented? This would imply/require a cost effectiveness analysis in the context of a clearly defined threshold which must be met (i.e., in order for a measure to be considered for inclusion in the strategy it would need to demonstrate a certain level of cost-effectiveness).
- 56.2. Is one measure more cost-effective than another? Cost effectiveness analysis is most often used to rank a series of measures according to their *relative* cost effectiveness in order to allow policy decisions to be made. This question does not automatically answer the question of which measures ought to be taken (though presumably the Government would accept that other things being equal the more cost effective measures should be taken first).
57. It is never stated what question is being asked by the Government so that it is impossible to meaningfully evaluate the answers (i.e., their cost-effectiveness assertions). But in any case, the cost effectiveness analysis does not dictate a particular policy outcome; so one needs to know in addition how and on what basis the Government used the results of its cost effectiveness analysis to decide whether or not to adopt a measure.
58. Fourth, it needs to be remembered that cost-effectiveness analysis is a technical exercise subject though the precise rules and principles applied may vary depending

on the context. It is important that those carrying out the exercise, and those using the exercise as a basis for decision making, know what principles have been applied. Consistency and transparency are important. In particular, it is very important that all relevant assumptions (including for example anticipated fuel prices) are set out clearly in advance as such assumptions can obviously play a key role in determining cost effectiveness.

59. Fifth, it is important to be clear what the starting point is. The starting point in this context is the Government's duty to achieve its fuel poverty targets. It therefore needs to start with the questions: What measures can be taken to end fuel poverty amongst vulnerable households by 2010? And then, what is the most cost-effective set of available measures for doing so? This is very different from the context of a pre-determined budget such as Warm Front in which case those administering the fund will be considering a 'value for money' question in the context of a pre-determined budget (i.e., how can we most effectively spend our £200m this year? Does this proposed measure offer us value for money?).
60. Sixth, it is important to be clear from whose perspective cost-effectiveness is being determined. For example, in the context of CERT, cost effectiveness is considered from the perspective of the supplier and ranked accordingly [see B3/11/23; see also annexed result of that consultation paper **Exhibit BB1, B2/6/1151**]. However, that cost effectiveness and that ranking will not be the same as cost-effectiveness for the Government.
61. Seventh, it is important to be aware of the differences in using cost-effectiveness exercises carried out in a different policy context. For example, CERT is a carbon abatement measure and its cost effectiveness is considered in terms of tonnes of carbon per annum ('tC/yr') i.e., how much does a measure cost in order to save xtC/yr. That answer may not tell one whether a particular measure is cost effective in fuel poverty terms¹¹.
62. Eighth, the need for consistency and clarity (above) is particularly great when Government is considering cost-effectiveness in respect of measures that cut across different policy areas (for example carbon abatement measures, general poverty measures, fuel poverty measures, alternative energy installations). For example, when a decision is made that extension of the gas network is not cost effective is that decision being made exclusively in the context of fuel poverty cost effectiveness or is it also taking into account other important benefits such as carbon abatement. That is important in a context in which the Government is (a) seeking to rely on measures taken across other parts of Government in different policy contexts; and (b) in which it explicitly claims that part of its fuel poverty agenda is intended to address the problem of climate change through greater energy efficiency. The Government does provide any clarity on this point in its evidence.
63. In that context a cost effectiveness analysis for measures considered for inclusion in the fuel poverty strategy would need to decide how to factor in the 'cost of carbon' (sometimes called the 'social cost of carbon'). This a value which aims to quantify the damage to health, environment and the economy caused by each tonne of carbon

¹¹ However, having said that the cost effectiveness estimates carried out in respect of CERT raise very serious questions as to why the Government has not pursued other measures such as Solid Wall Insulation. It is clear from CERT that there are very considerable energy efficiency gains at a cost that, in 'fuel saving terms' is very cost-effective.

emitted in monetary terms. There is uncertainty over costing carbon with the Stern Review¹², the most recent and comprehensive review, suggesting a cost between £60 and £200 per tonne and the Government currently retaining its £70 per tonne figure, although it is reviewing this at present. Despite the uncertainty the Government does now use this figure in its cost benefit (or cost effectiveness) analysis more broadly. For example the Government has used the figure in its recent decision to introduce CERT. That analysis demonstrates the significant difference to the outcome of cost-effectiveness calculation that results from including the shadow price of carbon (£7.5bn without including the cost of carbon and £10.7bn if the cost of carbon is included [Exhibit BB1, **B2/6/1126**]. The Government does not make it clear when it has included this cost in deciding on the cost effectiveness of its potential fuel poverty policies and which cost it has used.

64. Ninth, and related to the above point, it is important that if the Government uses 'cost effectiveness' as a factor in determining whether to adopt a particular measure/policy then it must ensure that all of the measures which are being considered as part of the fuel poverty package of measures to deal with fuel poverty are considered on a like basis or are at least considered in a way that allows their 'cost effectiveness' to be compared to the 'cost effectiveness' of the other measures (particularly those rejected as not being 'cost effective').
65. In that regard I am particularly concerned that the Government appears not to have made all its potential or actual policies the subject of a cost-effectiveness assessment. Rather, it appears that the government sometimes uses 'cost effectiveness' as its benchmark for deciding whether to implement a particular policy or measure but that in other cases it does not appear to have done so. This means that whilst certain insulation projects are said not to be cost-effective, it is never actually said that the Government has concluded that other projects it is to adopt or continue with are in fact 'cost effective'.
66. For example, the Government states that the Winter Fuel Payment represents an important part of its strategy for dealing with fuel poverty. As a result, some 75% of the money claimed to have been spent on fuel poverty in recent years seems to have been spent on the Winter Fuel Payment (approximately £15 billion of the claimed £20 billion or £2 billion per annum for Great Britain, slightly less for England alone)¹³.
67. However, in Fuel Poverty terms it is extremely difficult to see how the Winter Fuel Payment could be cost-effective (whether relative to a benchmark or to other measures) as only 10%¹⁴ of such payments are made to those in fuel poverty. The actual effect of the Winter Fuel Payment on Fuel Poverty is very modest whilst the cost is massive. In that context, one must ask what is the basis on which the Government decides that one measure is, and another is not, 'cost-effective'? Did the Government make such a decision? If not, why not? The same questions would need to be answered with respect to other measures.

¹² In that context it would at least have been relevant to consider the conclusions of the Stern Review on the economics of climate change in which it was stated (one example only) that *"taking strong action to reduce emissions must be viewed as an investment, a cost incurred now and in the coming few decades to avoid the risks of very severe consequences in the future."*

¹³ In saying so I do not wish to imply that I accept the Government's figure of £20 billion spend.

¹⁴ In my first statement I explained that only about 15% of that payment goes to the Fuel Poor. The new Government papers released indicate that Government consider the level to be even lower, i.e., 10% [**B3/ 6/142**; and **B3/5/119**, para. 22].

What the Government actually means by cost effective

68. No documentation has yet been provided to show that meaningful comparative cost-effectiveness exercises were carried out in respect of the various measures (or package of measures) proposed for consideration. There are a number of indications in the Government's statements that no such exercises were carried out. The Government also on several occasions appears to use the term cost-effectiveness incorrectly in two ways.
- 68.1. First, at a number of points it seems that the term 'cost effective' is used synonymously with 'inexpensive'. For example, in October 2005 there was internal Government recommendation (newly disclosed) to consider income based benefit measures [B3/5/119]. It was said that such benefits might reduce fuel poverty by between 100,000-150,000 households and that "*such action would be much more cost effective than increasing Winter Fuel Payments...*". However, in DEFRA's evidence that suggestion is now simply said (and without any contemporaneous documentation) to have been dismissed because it "*was potentially very costly and the additional resources were not available.*" [Wynne para. 94].
- 68.2. Second, at a number of points it seems that the term 'cost effective' is simply used synonymously with '*affordable within current budgets*'. In effect, it often seems that because money for a particular measure is not said to be available within a current departmental budgets the measure is not 'cost effective'. For example, DEFRA says [Wynne, para. 114(4)(a)] that a roll out of a gas network extension was '*not presently cost effective*'. However, the more detailed evidence of the DTI on the same conclusion states that the project which would have assisted 70,000 fuel poor households¹⁵ (and 130,000 other households) but which would have cost £95 million was not carried out purely because "*the funding was not available within DTI's budget*". That is not surprising as DTI/BERR had an entirely negligible fuel poverty budget of £267,154 in 2005 [B4, Phillips, para. 37].
69. There are a number of important points to be made about this:
- 69.1. as mentioned above (para 11) the starting point for cost-effectiveness analysis in this context is the Government's duty to achieve its fuel poverty targets and not existing budgets for fuel poverty;
- 69.2. there are a number of budgets involved in the fuel poverty strategy including ones administered by Treasury, DEFRA and BERR and in addition there are other budgets not directly aimed at fuel poverty policy, but that have an impact on achieving the target, for example, climate change budgets on energy efficiency in the domestic sector and benefits budgets;
- 69.3. it is never said how the setting of such budgets took into account the Government's fuel poverty obligations; and

¹⁵ In fact the document relied upon by BERR recognises that the number is likely to be higher [CP1, Tab 6] stating that '*our estimate of the number of fuel poor households helped by the programme is conservative. We would deliver the programme in communities with a Multiple Index of Deprivation score of over 25. There is a very close correlation between fuel poverty and deprivation. We would, therefore, expect greater numbers of fuel poor households...*'

- 69.4. in any event, such budgets are themselves not set in stone in the sense that they can always be changed through annual budgets and pre-budget report measures.
70. At other points, it seems as if a measure is deemed to be cost-effective simply because 'someone else is paying'. For example, *'the Government felt that the modifications to the CERT scheme ... were a more cost effective way of achieving certain results which might otherwise be pursued through the Warm Front Scheme.'* It will be remembered that whilst Warm Front is funded by central Government, the CERT scheme is funded by the energy suppliers (and by customers, including of course the fuel poor, through their bills).
71. For example in the Government's 'Explanatory Memorandum to the CERT Order (signed by a Minister in November 2007) [attached as Exhibit BB1¹⁶] it is found that measures such as solid wall insulation are considered clearly cost-effective in the context of the CERT programme¹⁷. However, the Government does not apparently consider such measures to be cost effective in the context of programmes where it is paying for the measures (such as Warm Front) and no explanation is given as to why that is the case. (I recognise of course that cost effectiveness in that case was measured by reference to carbon abatement rather than impact on fuel poverty).
72. Finally, I also have a concern about the details of the cost-effectiveness exercises said to have been carried out. For example, on one of the only occasions when a benefit is actually set out in the Government's witness statements in cost terms it is incorrect (by a factor of at least ten)¹⁸.
73. I am also concerned about our ignorance of the way in which fuel prices (and future fuel prices) have been taken into account in such exercises as may have been carried out. Obviously, fuel price predictions are fundamental to any such cost-effectiveness exercise as they will directly affect the number of households in fuel poverty and the cost effectiveness of particular measures (or packages or measures). Virtually no evidence is given of the actual fuel prices being used, except in relative terms e.g., high, base, low. Considering the rate at which fuel prices are rising any fuel price assumptions are at risk of becoming quickly obsolete such that reassessment may be needed. It is therefore particularly important that any cost effectiveness exercise includes a sensitivity exercise to take account of different fuel price scenarios because such changes could make a very considerable difference to the cost-effectiveness of a measure.

¹⁶ Exhibit BB1 to this statement is an update to the document included in the Government's Evidence at **B3/10/209** which was a consultation on CERT Order.

¹⁷ Internal Solid Wall Insulation is ranked as the 11th most cost effective measure (for suppliers) out of 35 available under the CERT programme (Table 8, p.48). That it is considered cost effective is not surprising when one considers the Government's figures. Such a measure is considered to cost approximately £3,000 to install (Table 5, p.40), to have a lifetime of 30 years (Table 2, p.34) and to result in annual fuel cost savings of £301 per annum (Table 1). In addition, the measure saves 2.5 tonnes of carbon dioxide per year (also Table 1) which results in a further £64 benefit on the basis that the shadow price of carbon used for that exercise is £25.50 per tonne per annum (rising from 2007) (p.15, para. 20).

¹⁸ At Wynne, para. 103(4), it is said that the energy savings of installing Internal Solid Wall Insulation were *"small (£30 per year) compared to the high costs of installation,"*. However, the energy saving of Internal Solid Wall insulation is generally recognised to be at least £300 per annum and would, of course, be much higher if fuel prices continue to rise. For example, the Government-funded Energy Savings Trust puts the figure at £360-380 per annum and the figure used within CERT (approved by OFGEM for regulatory purposes) is £301-£320.

Cost effectiveness conclusion

74. In conclusion, if the Government is going to use cost-effectiveness as a way of deciding fuel poverty policy then it would need to carry out consistent cost-effectiveness exercises in which it would need to be clear what the term 'cost effective' is intended to measure, have determined in advance what would or would not be deemed to be cost-effective, and ensure that those measures can then be meaningfully compared against each other in terms of cost-effectiveness. No evidence has been provided as to how these assessments were carried out and the basis on which it was decided that certain programmes or measures were not 'cost-effective'; nor is there an explanation of how and on what basis 'cost effectiveness' featured as a factor in the final determination of whether to adopt particular measures. The Government's evidence does not confirm that this has occurred. Instead, several of the references to cost-effectiveness appear to relate to a lack of departmental budget or an undefined calculation about costs and benefits, at a single point in time.

Other matters

PSAs

75. At para. 163 of my first statement I expressed my concerns about the downgrading of Fuel Poverty in terms of Government Priorities by reference to the removal of the Fuel Poverty Public Service Agreement (PSA). DEFRA respond to this criticism at Wynne para. 139ff. The response only serves to support FPAG's concern (which I endorse). The Government say that Fuel Poverty remains a vital Government Priority and seek to rely on three other PSAs and DEFRA's Departmental Strategic Objective.

76. The starting point is that the Public Service Agreement that existed from 2005-2008 was in clear and strong terms namely to "*eliminate fuel poverty in vulnerable households in England by 2010 in line with the Government's Fuel Poverty Strategy Objectives.*" [B1/14/498]. That Agreement, which evinces a very clear statement of the Government's understanding of its obligations and of its intentions is a very long way from the oblique and generalised references to fuel poverty in the new PSAs:

76.1. First, none of the three PSA's referred to includes a reference to the 2010 Fuel Poverty target (see by contrast the PSA target to halve the number of children in poverty by 2010 and eradicate child poverty by 2020) (though I note a mention at least of the 2016 target). [B3/14/329]

76.2. Second, the reference to 'fuel poverty' in the 'later life' PSA [B3/15] merely states that "*the Pension Service will develop further initiatives to join up winter warmth and fuel poverty communications, and review national partnership working arrangements to optimise the opportunities to join up more with private/utility sectors.*"¹⁹

76.3. Third, the only reference 'fuel poverty' in the Promoting Better Health PSA (B3/16) is within a list headed 'Role of other government departments (para. 3.12) and simply notes DEFRA taking "*action to reduce fuel poverty among vulnerable groups, for example...*"

¹⁹ A footnote refers to other actions being led by other departments and contained within PSA9 on Child Poverty

- 76.4. Fourth, Fuel Poverty is not even one of DEFRA's eight Departmental Strategic Objectives [B3/13/307]. Moreover, although it is listed as one of the seven indicators for one of DEFRA's 'strategic objectives' (climate change) (on which DEFRA rely) that indicator does not even make reference to the Government's fuel poverty targets or to any other objective in respect of fuel poverty. As such there is nothing in the PSAs or the departmental objectives that pushes DEFRA in the direction of achieving the targets. Bearing in mind that DEFRA is one of the two lead departments (and the only one with a non-negligible budget for fuel poverty) that is particularly surprising.
77. I have already commented on the inclusion of a local authority indicator at paras. 163-164 of my first statement. The comments of Ms Wynne [B3, Wynne, para. 141] do not address those concerns.
78. Although the BERR statement does not address the PSA issue, I note that whilst BERR states that "*tackling fuel poverty is considered to be a very important priority within BERR*" (B4, Phillips, para. 69) they only allocate 0.01% of their budget to dealing with the issue (B4, Phillips, para. 71).

Warm Front

79. DEFRA say that the figure given in my statement of "*£350m per annum is slightly misleading, as it includes the additional £250m 'one off' sum added in the pre-Budget report*" (B3, Wynne, para. 117(2)). However, I do not think that criticism is fair. In 2007 Warm Front received £350m. That sum consisted of the amount agreed as part of the three year spending review in 2004 as uplifted in the 2005 pre-budget report. From 2008 onwards Warm Front is allocated £267m per annum over three years (i.e., a cut of about £80m). If instead the figures are looked at over three years it can be seen that in 2005-07 Warm Front was allocated £860m (from both sources) whilst in the next three years (2008-10) it has been allocated £800m. In whatever way the numbers are looked at there has been a cut.
80. DEFRA also say that my criticism "*fails to take into account the huge increase in funding for energy efficiency measures through the supplier's obligation in the new CERT scheme (...) which covers much of the same area as Warm Front.*" [B3, Wynne para. 117(2)]. I dealt with this overlap and the effectiveness of CERT at paras. 80-82 of my first statement. I noted that in December 2007 the Government estimated that over ten years (from 2002-2011) CERT (and its EEC predecessor) had/has the potential to remove approximately 80-85,000 English households from fuel poverty (100,000 in GB). Bearing in mind the timescale and size of the problem that is a relatively modest result. I also noted that FPAG concluded (in April 2008) that "*The changes in CERT can in no way be regarded as compensating for the cut in Warm Front*" [B1/26/837] (their reasons, with which I agree, are summarised in their report).
81. It is also worth making the, perhaps obvious, point that the mere fact that one programme increases its funding does not mean that it is appropriate for funding in another programme to decrease in a situation where there is a very serious overall lack of total funding (especially where the two programmes have different sources of funds: Warm Front from government, and CERT from energy supplies and hence consumers). That would be the case even if CERT were a fuel poverty programme – as discussed it is a carbon abatement programme which is capable of having some fuel poverty impact.

82. Once again, DEFRA seem to rely on an argument that confuses outputs and outcomes. In the fifth Annual Progress Report the Government say (as DEFRA now say) that the changes to CERT *'mean that spending on energy efficiency and other measures in low-income, elderly and disabled households is expected to rise by £680 million to around £2.3 billion compared to the previous spending period.'* [B1/24/781]. However, as so often that focus is on outputs and not on the fuel poverty outcome.

Unexplained departure from FPAG advice

83. I do not understand DEFRA's response to my criticism in this regard (B3, Wynne para. 136). I have not criticised DEFRA's failure to answer FPAG's criticisms as set out in its 6th report (2008) but its failure to explain its departure from FPAG's advice in its 5th report (2007) in respect of the need to (at least) maintain the level of funding for Warm Front (I refer to my first statement at paragraph 104).

BERR - Microgeneration

84. Whilst I understand that it is not appropriate to engage in this statement in a debate on the Government's renewables/micro-generation policies, I note that BERR relies on these matters in its evidence (in particular Part F of Mr Phillips statement). As such I wish to comment very briefly.
85. I agree strongly that microgeneration has a potentially important part to play in eliminating fuel poverty. However, as illustrated by the documents disclosed, the Government's current approach to micro-generation (in this context and generally) is insufficient to the challenge faced. The statutory Micro-Generation Strategy [B4/19] was published in March 2006. Although reference is made to fuel poverty [B4/19/382] this is in vague and general terms and is plainly not in the form of a 'plan'.
86. The newly disclosed documents demonstrate that two months later, in May 2006, the BERR Energy Minister (Malcolm Wicks) received 'an internal restricted report' from the Fuel Poverty Advisory Group [B4/20/427]. That report concluded (para. 1.1) that *"there is a real potential for microgeneration technologies to contribute significantly to the fuel poverty strategy from 2008"*, and that *"we therefore estimate that at least half a million households in fuel poverty have the potential to benefit from microgeneration"* (para. 1.1, p.429 and 2.7, p.432, bold emphasis in original). The authors set out a series of recommendations about steps to be taken. This document has not (so far as I am aware) been published.
87. Mr Phillips then refers to the June 2008 Microgeneration Strategy Progress Report (B4/21) and notes that *"24 of the 25 actions set out in the Microgeneration Strategy have either been completed or closed, and that many barriers ...have been addressed."* However, that says nothing about the role of micro-generation in dealing with fuel poverty: it is notable that only one of the 25 actions even mentions fuel poverty (Action 11 on publication of an 'energy measures report' for local authorities)).
88. What is notable about the 'progress report' is that it entirely fails to respond to the information and advice given to government in the 2006 report [B4/20/427]. Perhaps more significantly, the 2007 Energy White Paper, failed to either endorse or reject the findings and recommendations in that paper and none of the 'measures' listed in that

White Paper arise from the internal microgeneration report to the minister
[B1/23/7350]

I believe that the facts stated in this Witness Statement are true

.....

Brenda Boardman

Dated:.....