



## **Public Accounts Committee**

### **Public Hearing**

# **Procurement by the Government of Jersey Review on Joint Ferry Tender Process**

## **Witnesses: Chief Officers of Infrastructure and Environment, and Economy**

Wednesday, 12th March 2025

#### **Panel:**

Deputy I. Gardiner of St. Helier North (Chair)

Deputy R.S. Kovacs of St. Saviour

Deputy D.J. Warr of St. Helier South

Mr. V. Khakhira, lay member

Mr. G. Kehoe, lay member

Mr. P. Taylor, lay member

Ms. L. Pamment, Comptroller and Auditor General

#### **Witnesses:**

Mr. R. Corrigan, Chief Officer, Department for the Economy

Mr. A. Scate, Chief Officer, Infrastructure and Environment Department

[15:30]

#### **Deputy I. Gardiner of St. Helier North (Chair):**

Good afternoon and welcome to the public hearing of the Public Accounts Committee. Today is Wednesday, 12th March, and this is a public hearing with the Chief Officer for the Economy and the Chief Officer for Infrastructure and Environment to discuss and to explore the joint tender process

for ferry services and the outcomes. We undertake this hearing as a part of our ongoing review on procurement. I welcome also members of the public. Just to remind you that members of the public cannot comment during the public hearing, and when the hearing finishes please leave the room itself. I also would like to remind you that mobile phones should be put on silent, including mine. The hearing will take one hour and we will start with the introductions. Deputy Inna Gardiner, Chair of the Public Accounts Committee.

**Deputy R.S. Kovacs of St. Saviour:**

I am Deputy Raluca Kovacs, a member of the committee.

**Deputy D.J. Warr of St. Helier South:**

Deputy David Warr, member of the committee.

**Mr. V. Khakhira:**

Vijay Khakhira. I am a lay member of the P.A.C. (Public Accounts Committee).

**Comptroller and Auditor General:**

I am Lynn Pamment. I am the Comptroller and Auditor General in attendance to the committee.

**Mr. G. Kehoe:**

Glen Kehoe, lay member.

**Mr. P. Taylor:**

Philip Taylor, lay member.

**Deputy I. Gardiner:**

Thank you. I will start with a general ... sorry, apologies, please introduce yourselves.

**Chief Officer, Department for the Economy:**

Richard Corrigan, Chief Officer, Department for the Economy.

**Chief Officer, Infrastructure and Environment Department:**

Andy Scate, Chief Officer for the Department of Infrastructure and Environment.

**Deputy I. Gardiner:**

Yes. As we scheduled the hearing only for an hour, there are a number of questions that we are going through, so please keep your answers succinct. Before we start with full questioning, can you

please explain for the public and for ourselves your roles in the tender process? What was the difference?

**Chief Officer, Department for the Economy:**

Yes. So my role was the senior responsible officer for the joint Channel Islands tender process because ferry connectivity sits within the overall responsibilities of the Department for the Economy.

**Chief Officer, Infrastructure and Environment Department:**

I was the senior responsible officer from 24th October 2024 until just after 6th January 2025 for the latter part of phase 1 but certainly for phase 2 of the procurement for a Jersey-only service.

**Chief Officer, Department for the Economy:**

The rationale, as has probably been quite well covered in the media, is that I had recused myself from the process as at, I think from memory, 21st October and Andy was appointed a few days later.

**Deputy I. Gardiner:**

Thank you. If we start with the first part of our questions, it is around the background preparation for the tender and the processes. Would you please share with the Public Accounts Committee how you prepared for the joint tender process?

**Chief Officer, Department for the Economy:**

Yes. So the origins go right back until February 2021 and an approach from the incumbent operator, Condor, seeking financial support from the Government of Jersey and the States of Guernsey for losses that they were incurring during COVID, so lost revenues. Because during the COVID period they were not seeing the passenger traffic, albeit freight volumes remained constant. So at the time they first approached looking for financial support, there was an analysis of Condor's P. and L. (profit and loss), Condor's balance sheet, and that work was primarily conducted at the time by Ports of Jersey. My involvement came a little bit later as we started to then look at options for future sea connectivity, recognising in Government size at least some of the problems that Condor appeared to have financially. We did a number of elements of due diligence with KPMG and their specialist transport team from the U.K. (United Kingdom) with a company called MDST, who specialise in different forms of transport - so they are modal freight consultants - and also another company called Blair Reid, who are ship brokers. Ultimately, they were the brokers, I think, on the sale of the MV Straitsman to Condor, which is now Condor Islander. There was a comprehensive analysis undertaken in January 2022 of the various options that would be open to the Governments of the Islands in terms of delivering future services, and there was a very clear letter set out by the then chief exec ... sorry, the then Chief Ministers of the States of Jersey and the Government of Guernsey

to Condor on the basis on which the Governments may consider Condor directly negotiating a new contract with the Islands. That set out very clear political priorities from both Islands' standpoints.

**Deputy I. Gardiner:**

So just a minute. Just to clarify, in January 2022 you did not consider a tender, you considered an extension of the services, or would a tender have been considered?

**Chief Officer, Department for the Economy:**

So the political consideration at the time from the 2 Islands was to look at Condor's current financial issues and to consider whether the best method going forward was a direct negotiation of a new contract with Condor. Condor tendered 2 offers, one in late 2021, one in autumn 2022, both of which fell a long way short of those political priorities that had been established. Officers then went into a phase of analysing other options. So if we were not going to be able to appoint an owner/operator to deliver these services going forwards, what other models were there? So would you have a public sector provider? Should the public own the assets and appoint an operator of those assets? So we went through 5 or 6 different operating models before deciding that we would go to market testing to identify interest in an owner/operator relationship. That market testing commenced in January of 2024.

**Deputy I. Gardiner:**

What happened between October 2022 and January 2024?

**Chief Officer, Department for the Economy:**

So there was options analysis that was worked out. There was resilience planning with emergency planning colleagues across the States of Jersey and the Government of Guernsey. May 2023 there was the modelling of a 5-vessel fleet to serve both the Islands. There were ongoing discussions between Jersey and Guernsey political leads as to the best option going forwards. In June 2023 there was a valuation of the Condor business conducted for us by KPMG. Joint workshops with Guernsey in August 2023. October 2023, correspondence to Deputy Morel from Deputy Inder indicating a wish to continue trying to get a third direct negotiation of a deal out of Condor. But by that point we were then on notice shortly thereafter of Condor's very acute financial problems when they approached the Governments looking for a significant injection of equity totalling £40 million between the 2 Channel Islands. That then was a case of scrambling to sort out contingency vessels for the 2 Islands, which we did with DFDS as the lead contingency provider. In January 2024 we went into market testing and that was the commencement of the new Channel Islands tender process.

**Deputy I. Gardiner:**

So the tender process documents for procurement strategy, drafting started in January 2024?

**Chief Officer, Department for the Economy:**

The procurement strategy was developed in quarter 4 of 2023, so we started market testing in January of 2024. So that market testing was indicating that we were interested in a new owner/operator. We wanted to see if the market had sufficient depth to it. Clearly, if it did not have depth, we would be going back to try and negotiate with the incumbent, but we had 7 expressions of interest at that time from market testing. So that gave us the confidence to proceed into a full tender process in 2024.

**Deputy I. Gardiner:**

So basically in 2023 you had clarity that the financial position of Condor is not reliable and they cannot continue to operate, if I have it right from your ...?

**Chief Officer, Department for the Economy:**

It is fair to say there was a great deal of smoke and mirrors in Condor not being honest and transparent about the state of their financial position. So we suspected there were deep-rooted problems there with the capital structure of the company. We know that normal times the routes are cash generative. They should generate an E.B.I.T.D.A. (earnings before interest, taxes, depreciation and amortisation) of £20 million to £25 million a year, but the acute capital structure that Condor faced from having been through the hands of private equity infrastructure ownership on several different terms left a company that was very heavily indebted and would struggle with any sort of financial sensitivity analysis. So we modelled all of that with KPMG through 2023. We looked at alternative models for delivering the services. We identified what other vessels there are in the marketplace, given that the very nature of the harbours in Jersey and Guernsey are quite goldilocks, I suppose is the best description, in terms of the size and the draught of the vessels and also the speed the vessels need to keep up over the course of a week to maintain the resilience of freight services. But we did a lot of work with the external advisers and also emergency planning work because we were concerned even in early 2023 of a possible collapse of Condor. It was not until we got to the back end of 2023 that Condor then presented very acutely and honestly with the depth of the financial problems that they were confronting.

**Deputy I. Gardiner:**

I understand.

**Mr. V. Khakhira:**

Thank you. So we get to the end of 2023 and it is clear that Condor is on the ropes financially. You have explained clearly the reasons why. So you made a decision for a joint procurement tender process with Guernsey, is that correct?

**Chief Officer, Department for the Economy:**

Yes. We have been in dialogue with the States of Guernsey throughout this period. So the first stage analysis on the back of COVID was primarily led by Ports of Jersey, but as we went through later 2022 and 2023 we were open book with Guernsey about the depth of our concerns, sharing our professional analysis. It is fair to say that Guernsey were quite cynical at a political level around the state of Condor's issues. There is a correspondence trail between the Ministers over that period where Guernsey just wanted to negotiate a new deal directly with Condor. Even as late as October 2023 Guernsey ...

**Deputy D.J. Warr:**

Sorry, can I just interrupt? What do you mean by the word "cynical"?

**Chief Officer, Department for the Economy:**

Guernsey believed that Jersey was trying to bring in a new operator almost at all costs and their stated preference was just to hammer out a new deal with the incumbent. As I say, the correspondence trail demonstrates that Guernsey were repeatedly challenging, questioning professional due diligence that had been prepared by KPMG. That is their right to do so. In terms of the evidence, it was only pointing us in one direction. Jersey's position was proven to be robust with Condor's approach to us at the end of 2023 looking for significant public sector support.

**Mr. P. Taylor:**

If there were doubts about Guernsey's position, you would have had doubts about them as a joint procurement partner, so I could ask: why did you go with them if you had doubts about them as a reliable partner?

**Chief Officer, Department for the Economy:**

I think there was still a desire to try and work wherever we can as a Channel Islands buying power, buying entity, and also the routes are optimised if you have both Islands in the loop for both the freight and the passenger services. So the 5-vessel option covering 2 Islands is generally a more efficient option than splitting operators as we have ended up being forced to do.

**Mr. P. Taylor:**

So you knew there was a risk in going with Guernsey?

**Chief Officer, Department for the Economy:**

We knew there was a risk and, therefore, when we developed the tender documentation we ensured that there were sufficient exits within that in the event that Jersey and Guernsey could not reach the same conclusion.

**Mr. V. Khakhira:**

Okay. So we have a complicated procurement process because you have a joint procurement process. Who was advising officers on the procurement strategy in a pretty unusual set of circumstances, which I am sure Jersey will not have faced in the past?

**Chief Officer, Department for the Economy:**

Yes. So we had in-house support from our own Commercial Services function, but we leaned very heavily on the acquired knowledge that KPMG had built up over time in the last several years working on this particular project and on the options analysis, so in terms of some professional services support, and in making sure that a tender for this type of service, when it landed with ferry operators it was speaking in the right language to them, as opposed to being a public procurement for widgets or some other service that may be more commonplace from the Government. This was a contract ultimately that has a revenue value of around £2 billion over its duration so it was quite a high tariff procurement. So we used KPMG and we also used DWF professionally on the legal side, again to ensure that from a procurement standpoint, while we do not have the P.C.R. (Public Contracts Regulations) obligations here that you would have in the U.K., that we did run a compliant procurement process throughout.

**Mr. V. Khakhira:**

I guess my questions are not as closely related to the ferry side of the thing but the joint procurement side of the thing. So there are clear risks when you have different parties trying to procure something together who have different interests. In this case you have an extra set of risks, which are political risks, above commercial risks. So what input was there that KPMG was able to supply in relation to a joint procurement strategy? Can you name any of the particular case studies for the things ... joint procurements that have gone badly wrong in the past, in the recent past, that could have informed this strategy, please?

**Chief Officer, Department for the Economy:**

I think there would be very few genuine joint Channel Island procurements, but there was a stated wish politically to try and work together to achieve the best deal for the Channel Islands.

**Mr. V. Khakhira:**

Okay, but there have been European joint procurements, multiple, between individual lender or individual countries. This is a reasonably well trodden path. So did KPMG bring any specific expertise in a joint procurement process?

[15:45]

**Chief Officer, Department for the Economy:**

No, the key for KPMG was facilitating the workshops in terms of the specification of needs that both Islands had for the future services, making sure that those could be tendered in a consistent manner so that we were tendering with one document and one consolidated set of needs for both Islands, as opposed to both Islands having specific needs of their own and trying to adapt them into a single process.

**Mr. V. Khakhira:**

I completely understand in terms of the specification. I am looking one level up at the process. So just a simple example would be creating an S.P.V. (special purpose vehicle) to run the procurement process so that you have a commonality of interests, at least at that level. Was that something that was considered and rejected?

**Chief Officer, Department for the Economy:**

So, as I said, there was earlier options analysis on different ways that the ferry services could be delivered in the future.

**Mr. V. Khakhira:**

Procured, I am talking about procurement only, not delivery.

**Chief Officer, Department for the Economy:**

Yes. We do not have a joint Channel Islands procurement vehicle so that was not considered at the time. Indeed, our own Commercial Services function was going through some quite significant change, so there was no consideration for a joint Channel Islands procurement vehicle. However, we used the documents and the framework to ensure that we were procuring a joint set of needs to the marketplace. That was demonstrated in market testing with 7 expressions of interest that there was interest in coming to meet a joint Channel Islands set of needs.

**Mr. V. Khakhira:**

Yes, I totally get that. I know that you have explained very clearly and very thoroughly that there were plenty of other companies out there who were interested in tendering for the work. My question is about the process. How did you organise, what consideration was given to ... we have differing

interests between these. We have a common set of interests, but what happens if one of the risks crystallises, whether that is a financial risk within Condor or a political risk such as happened with Guernsey not finalising their budget, for example? How were these accounted for? I did not see any reference in the procurement strategy.

**Chief Officer, Department for the Economy:**

So they were accounted for in the I.T.T. (invitation to tender) documentation. The Islands were not forced to achieve a consensus decision. If the view of the Island evaluators reached a different conclusion on a particular point, we reserved the right to go our separate ways. So there was an exit route, there was an off-ramp, so to speak, for each Island should their needs not have been met.

**Mr. V. Khakhira:**

Okay.

**Chief Officer, Department for the Economy:**

I do not see how a joint S.P.V. would have been any different in resolving that same off-ramp issue.

**Mr. V. Khakhira:**

For the simple reason that it would already have established what the acceptable criteria would have been for a joint procurement.

**Chief Officer, Department for the Economy:**

Well, we had established the acceptable criteria in the tender documents.

**Mr. V. Khakhira:**

Okay. But, for example, we had Guernsey fail to finalise their budget at the point at which they had committed to finalise their budget. Was the idea that the entire procurement would be collapsed as a result of that? What about other types of risk?

**Chief Officer, Department for the Economy:**

No, the intention at all times was that the procurement costs would be jointly shared between the 2 Islands and, indeed, they were jointly shared between the 2 Islands. That was honoured.

**Mr. V. Khakhira:**

Okay, and what about the other ... we are going to come on later to the other consequential costs, but what I am trying to get at is what external input was there into running a joint procurement strategy at the level of the joint procurement strategy. All the other things downstream I totally

understand, but what consideration was given to how do we ... we have a complicated procurement strategy that we do not typically do within our department. We are not used to ... we do not have the expertise. KPMG are not supplying the expertise. You have explained that they were not mandated to consider the joint procurement aspects. At what point did the actual mechanics of how a joint procurement works and the risks of that, at what point were they considered? What support were officers given in making those decisions?

**Chief Officer, Department for the Economy:**

So Jersey had prepared in the background the criteria for a procurement of Jersey-only services because we had recognised there was a cynicism from Guernsey's side towards doing a full request for proposal. As I say, that was set out in political correspondence of October 2023. Ultimately, we indicated to Guernsey that we were prepared to go ahead and market test for Jersey-only services if Guernsey were not prepared to partner with us. We then shared ... when Guernsey came back and said: "Okay, we are going to commit with you", they had initially put some very unrealistic criteria down; for example, insisting that the incumbent made it to the final stage of analysis. Well, that is no basis for an objective procurement process. But only when Guernsey hitched their trailer up and said: "Okay, we are now committed to a proper, objective procurement process" did we then share our procurement strategy with them and then go through the process of developing the documentation together for market testing and then ultimately for a tender process. So Jersey had been doing this in the background and I think it has been noted by the States of Guernsey in their own scrutiny hearing that Jersey were much further down the tracks in terms of a process to move towards procurement than Guernsey were. So they were coming in at a later stage of consideration to make it a joint process.

**Mr. V. Khakhira:**

Okay. We need to move on, but I will just simply state this in that case. My question is: this was a joint procurement strategy ...

**Chief Officer, Department for the Economy:**

Eventually.

**Mr. V. Khakhira:**

This was intended to be a joint procurement strategy from the outset.

**Chief Officer, Department for the Economy:**

No. From the very outset the political indications from both Jersey and Guernsey was to try and negotiate a new deal directly with Condor. Because Jersey believed that Condor was not a viable counterparty long term, Jersey had started the process of preparing for an open market

procurement. It took some time before Guernsey realised that that indeed was the right direction to travel down, as late as October 2023. Very shortly thereafter, we had all of the financial resilience issues at Condor. There was not the opportunity basically to go into reverse and look at other vehicles for doing a joint procurement in terms of an S.P.V. or any other vehicle you speak of, so that is why we went down the route of using the documentation to enter into a joint process together with a single set of criteria being specified for both Islands.

**Mr. V. Khakhira:**

Would it be fair to say that you were in a sense flushing Guernsey out in that case, that the joint procurement process was set up to fail?

**Chief Officer, Department for the Economy:**

I do not think so, no. I think what we were committed to do was to try and find a route for Channel Island connectivity. We still believe the best option for the Channel Islands is for both Islands to be served by one operator. Unfortunately, that did not prove to be possible because of the actions that Guernsey took much later in tender process 1.

**Mr. V. Khakhira:**

I think we need to move on. Thank you.

**Mr. P. Taylor:**

So you had a number of options is what you are saying?

**Chief Officer, Department for the Economy:**

Yes.

**Mr. P. Taylor:**

One of which was a joint strategy with Guernsey, otherwise Jersey could have gone separately, Guernsey could have gone separately, you could have negotiated 2 separate contracts with Condor. But at some stage you went with the joint strategy.

**Chief Officer, Department for the Economy:**

Yes.

**Mr. P. Taylor:**

Now, I am a simple person, I am afraid.

**Chief Officer, Department for the Economy:**

As am I, so that works.

**Mr. P. Taylor:**

If I have never done something before, I ask somebody who has done it before and knows the pitfalls. Okay? Someone who has done a ... put in place a joint strategy, say: "Okay, how do we do it?" They do it all over the world, commercial organisations; the European Union even does it. So I think Vijay's point is this. Who did we speak to who had done it before, whose advice we could use? Is that right?

**Mr. V. Khakhira:**

Very good.

**Mr. P. Taylor:**

Now, if you did not do it, that is fine, I understand that and that is the answer. But that I think is where we are trying to get to. So at some point you said: "Okay, we are going to go down the joint process" and presumably, having gone through saying: "Okay, we are going to try a joint process. It may or may not work", where was plan B?

**Chief Officer, Department for the Economy:**

Well, plan B if a joint process did not work was having those off-ramps in the procurement process that allowed for the Islands to go and basically go their separate ways.

**Mr. P. Taylor:**

Do it separately.

**Chief Officer, Department for the Economy:**

Which indeed is what happened in the end.

**Mr. P. Taylor:**

Now I have another question. I think we have probably exhausted that question, so thank you for being so effusive on the subject. One thing I have a slight problem with is that the sea transport policy was updated in June 2024, which is after the joint process had already started. So already we are in a situation where we had changed our policy but we have a tender out there, if you like. So how do I reconcile those 2 points?

**Chief Officer, Department for the Economy:**

So what we were clear with in the market testing phase is that we were looking ... if the right investment case came forwards from operators in the tender process, that we would grant exclusivity

as opposed to just granting a very high bar to competitive entry into the marketplace. You are probably aware in the current operating agreement expiring later this month with Condor there is a high bar to entry. If someone comes in and offers the same minimum service requirements, they can enter on to the routes. They cannot come in and just cherry pick, for example, the peak traffic in the summer. To secure the right level of investment, we wished to have the option available to us of granting exclusivity so that the operator had the confidence to be able to go and raise the capital that was required to invest in retonnaging, which was badly needed on the services. So that change in the sea transport policy, which was a fairly modest change in the overall scheme of things, was on track and that was published in June 2024, as you say.

**Mr. P. Taylor:**

So that was just reinforcing if there was a plan B in place.

**Chief Officer, Department for the Economy:**

We were clear ...

**Mr. P. Taylor:**

To be clear about who could come in and who could bid.

**Chief Officer, Department for the Economy:**

We were clear with bidders that we were looking if necessary and if it helped to unlock the right investment that we would grant exclusivity under the contract for the Channel Islands, not just for Jersey, but Jersey had to have an enabling policy for that, which the sea transport policy did not have. Guernsey separately were developing their ro-ro regulations or some legislative stance because they did not have any capacity to grant licences or grant permits hitherto, which is why in the outgoing arrangements Guernsey was in a much looser form of contract with Condor as an M.O.U. (memorandum of understanding) versus Jersey's operating agreement, which was more robust but certainly a long way short of the new agreement that we have just entered into with DFDS.

**Mr. P. Taylor:**

Probably time we moved on a bit because we have taken up a good amount of your ...

**Deputy I. Gardiner:**

Very quickly picking up before we move to difference, who was in charge of this process?

**Chief Officer, Department for the Economy:**

Well, ultimately politicians are in charge so ...

**Deputy I. Gardiner:**

Let us not go to the politicians because when the process started there needs to be a lot of officers' work, and if officers are not happy with politicians' decisions they need to ask the Minister to sign a letter of instruction. That was not requested. So leave politicians alone. Who was in charge of putting this process and leading this process to present to the Minister what the Minister needs to decide?

**Chief Officer, Department for the Economy:**

I will not go back from my previous answer. I was the senior responsible officer, as I said.

**Deputy I. Gardiner:**

No, between 2 Islands.

**Chief Officer, Department for the Economy:**

There was a senior responsible officer in each Island and then ...

**Deputy I. Gardiner:**

But it was nobody connecting, so basically there are 2 officers and they have 50:50? So it is nobody who is ...?

**Chief Officer, Department for the Economy:**

It is a joint process.

**Deputy I. Gardiner:**

But who is overseeing the process? Is anyone independent overseeing the process?

**Chief Officer, Department for the Economy:**

It is a joint process that was then ... we had external professional advisers, but it was a joint process. It was 50:50. It was not two-thirds, one-third in Jersey's favour because of the size of the population or the size of the freight market.

**Deputy I. Gardiner:**

What was the process in place, the procedure in place, if the bidder has a problem or has a question? Would they go separate for 2 jurisdictions and receive 2 different answers or would it come together? Would you have meetings together to ask jointly the same questions?

**Chief Officer, Department for the Economy:**

It depends what the question was. If it was a question ...

**Deputy I. Gardiner:**

No, no, no, what was the process put in the procedure when you plan, before we go into the ...

**Chief Officer, Department for the Economy:**

It is very clear in the tender documents that they would submit a clarification question request on the procurement portal. That was the States of Jersey procurement portal. That would then be shared with the procurement leads in both Islands, so a member of the Jersey procurement team in Commercial Services, a member of the Guernsey procurement team, and then that would go out through the S.R.O.s (senior responsible officers) and, if it was relating to the evaluation, to the individual evaluators for comment. The question would then be posted back through the States of Jersey portal and in the interests of all bidders, provided it was not a commercially sensitive point that was unique to one bidder, it would be published to the benefit of all bidders.

**Deputy D.J. Warr:**

Just a small question. You talked about the cynical approach of some of the political characters. What do you feel was your relationship like with your counterpart in Guernsey? Did you have a good working relationship? Did you feel there was total trust there?

**Chief Officer, Department for the Economy:**

I would say we did. I would not say that is the process at the end, given where the process ended up and how it ended up there. But I think at every step of the way up to that point there were weekly S.R.O. conversations. I think it was a healthy dialogue. We had helped Guernsey significantly on the contingency side as well. Despite the fact they had acquired what was supposed to be a contingency vessel in the Islander they recognised that that was not a contingency at all and entered into the new contingency arrangements that we had gone about sorting for Jersey first and foremost.

**Deputy D.J. Warr:**

So you felt there was good trust between the 2 Islands and the officers?

**Chief Officer, Department for the Economy:**

Yes.

**Deputy I. Gardiner:**

Were any legislative shortfalls identified ahead of the tender process for either Island?

**Chief Officer, Department for the Economy:**

For Guernsey they were working through their ro-ro ... I cannot remember the name of the legislation off the top of my head, but there was something that was passing through Guernsey's Assembly.

**Deputy I. Gardiner:**

When was it adopted?

**Chief Officer, Department for the Economy:**

I think it was adopted in September of last year.

**Deputy I. Gardiner:**

So basically when the tender needed to come to the conclusion the legislation was still not in place?

**Chief Officer, Department for the Economy:**

Yes.

**Deputy I. Gardiner:**

There was no concerns around it?

**Chief Officer, Department for the Economy:**

I was concerned. We did not need any legislative basis here. Guernsey needed to have a legislative basis to grant ramp permits. That was a Guernsey challenge, but equally it was a risk in the process itself if that was not legislated for in time.

**Deputy I. Gardiner:**

How was this risk mitigated in the preparation?

**Chief Officer, Department for the Economy:**

We were just given assurances both politically and through officers that that was working its way through their normal political process in terms of lodging and debate and ultimate approval.

[16:00]

**Deputy I. Gardiner:**

When did the draft concession template issue and was it in line with what was originally planned? Because it was originally planned for 31st May.

**Chief Officer, Department for the Economy:**

The draft concession agreement was broadly in line with what was planned, but it was put out to the bidders then for them to give derogations to that draft concession agreement in terms of what was in the draft contract that they may have issues with that they wished to then be part of a follow-on negotiation.

**Deputy I. Gardiner:**

So did the bidders receive the draft concession agreement on 31st May as was planned in the documents?

**Chief Officer, Department for the Economy:**

No, it was a little bit later than that. I think it was about 2 or 3 weeks, from memory, later than that when they got the concession agreement.

**Deputy I. Gardiner:**

Have they got an extension, because they needed to respond by 1st July?

**Chief Officer, Department for the Economy:**

That was accommodated for later in the process. After the tenders had closed, there was then a significant period of clarification questions, which we morphed into what we called an invitation to negotiate stage between the Islands and the 2 bidders that had passed at initial evaluation. Then we went into more detailed discussion around the concession agreement and the derogations that they were proposing.

**Deputy I. Gardiner:**

What were the reasons for the delay to produce draft concession agreement on 31st May as intended?

**Chief Officer, Department for the Economy:**

A mixture of Jersey law officers, Guernsey law officers, and then you had external counsel, so it was the process of ensuring that everything that we wanted to have covered went into that first draft for discussion and then into a draft that we were happy to share with the bidders. But the bidders were kept informed through the process. They were satisfied with the process and, in any event, we had the right within the tender process to move the timetable and we did that by consent with each of the bidders as we went through the process.

**Deputy I. Gardiner:**

What went wrong and why?

**Chief Officer, Department for the Economy:**

So what went wrong ultimately was ... well, 2 things. First of all, from a Jersey standpoint, tender process 1 was successful. The reason I state that is we set out criteria ...

**Deputy I. Gardiner:**

We cannot say from Jersey it was successful, from Guernsey unsuccessful, when you have a joint tender. If the joint tender failed, it has failed. You cannot put it as successful from our side and not from their side. I think it is a bit ... maybe it is a difference of opinion, but what went wrong with this joint tender? Looking back, what lessons have you learned? What would you do differently?

**Chief Officer, Department for the Economy:**

Okay, if I can explain. So the tender process was scoring in each Island. So Jersey would score against criteria from our evaluators, Guernsey would score against their criteria. Jersey identified that in the Brittany Ferries bid there were 2 areas that Jersey assessed Brittany Ferries to have failed. When I say Brittany Ferries, what it actually translated to later in the process is we identified all along that it was Condor that was bidding, not Brittany Ferries. That is quite a fundamental point. Had Condor bid at the outset, they almost certainly would not have met the early stage financial standing test and they would have been disqualified from the process. So nevertheless, we identified 2 fail ratings on what was titled as a Brittany Ferries bid.

**Deputy I. Gardiner:**

It is not about this. What I am asking is what has gone wrong with the joint process, not about specifics.

**Chief Officer, Department for the Economy:**

I am getting to that point. So the DFDS bid failed on one aspect. Jersey had to disqualify both bidders in tender process 1 because in our assessment neither bidder had met the required criteria. Guernsey had a different view in that they had assessed that DFDS had failed on one element of the criteria but their scoring of the Brittany Ferries bid had moved up quite considerably from initial evaluation to final evaluation, inexplicably in our view and not something that we could support. Guernsey then wrote to Deputy Morel 24 hours after the scoring closed saying: "We have made a decision. Brittany Ferries have passed all the criteria as far as we are concerned. We are going ahead to appoint." From a Jersey standpoint we could not concur with that outcome because from a Jersey standpoint both bidders had failed in the process.

**Deputy I. Gardiner:**

I understand. My question is less about the specifics. I would like to go back to preparation of the joint tender. When you are preparing the joint tender, what mechanisms were put in place that it will

be joint decision-making? Or alternatively, you called it a joint tender but decision-making was not joint, everyone makes their own decision. So it is like almost having 2 different tenders.

**Chief Officer, Department for the Economy:**

Well, exactly, because Jersey's evaluators had decided that both bidders had failed. Guernsey's decided that one had passed and Guernsey's politicians concurred with that view. Ultimately, Jersey is not going to be bound to recruiting into a 20-year contract for a ferry operator against criteria that we have assessed to have failed and that Guernsey have assessed to have passed. So the decision was that from Guernsey's standpoint they wished to make an appointment out of tender process 1 and there were rights to make a partial award of contract which they chose to exercise.

**Deputy I. Gardiner:**

I understand. So at the outset of this joint tender there was no mechanism involved in joint decision-making, that each Island make their own decision.

**Chief Officer, Department for the Economy:**

Yes, there was. No, there was. There was an evaluator's toolkit where both Islands would make a decision. Ideally, those ...

**Deputy I. Gardiner:**

But it was not that you sat together in one room and gone together through the evaluation. It was each party doing their decisions and hopefully they will come together.

**Mr. P. Taylor:**

Let me try a different track. Based on what you know now, what would you do differently next time to prevent such a situation occurring again?

**Chief Officer, Department for the Economy:**

Quite honestly, I would not enter a joint tender process because I think the writing was on the wall from an early stage in terms of the politics of the situation in Guernsey about wishing to do another deal with Condor. I think what we have seen post-event in some of the actions again reinforces a perception that Guernsey were always out to do a deal with the incumbent operator rather than to consider something new.

**Mr. G. Kehoe:**

So if that was the case, why did you follow through? If your gut feeling as the lead on this, why would you continue to do that and then advise the Minister: "Let us go with that"?

**Chief Officer, Department for the Economy:**

Well, first of all, that is with hindsight. Secondly, there was a strong political appetite to try and work together as the Channel Islands. That is a lofty ambition. It is one that is much more difficult to realise, I am afraid.

**Mr. P. Taylor:**

Was your advice that maybe this is risky, advice to the Minister this is risky going through this ...

**Chief Officer, Department for the Economy:**

Yes.

**Mr. P. Taylor:**

... because we do not believe that Guernsey is a reliable partner?

**Chief Officer, Department for the Economy:**

But the Minister and I both believed it was a worthwhile endeavour to try to do a Channel Islands deal because that was in the best interests ultimately of the users of the services because it optimised the capacity with the demand.

**Mr. P. Taylor:**

Okay.

**Mr. V. Khakhira:**

So are you saying ... you would prefer not to go through a joint procurement process in the future. Are you saying that there are no available economies of scale from having a joint inter-Island ferry service or that they would be outweighed by the political risk? I am not clear.

**Chief Officer, Department for the Economy:**

Well, no, I think it was quite clear. I think I have already said I would prefer the services to be joint Channel Islands services because I believe that optimises the vessels, the demand and the capacity in the right way. I was asked about lessons learned. I think the lessons learned are, first of all, quite raw. We are only talking a few months on from the process. Jersey has been subject to litigation that we have fought off successfully. That leaves quite a mark in terms of a desire to work in such a major joint procurement with Guernsey at any near point in the future. That is not my decision ultimately; others will decide.

**Deputy D.J. Warr:**

What is worrying me here is you started out in a position whereby both colleagues seemed to have a good deal of trust and the trust has clearly evaporated extraordinarily rapidly. I am just going to quote here Deputy Morel's commentary here. He said in the marking there was shown to be ... in the failed status Guernsey had very, very different scoring on that. So the question really is: were there any material differences between Jersey and Guernsey's scoring system and when did that become very apparent that those 2 were very, very ... they had very different outlooks? Was it early on? Was it later on? At what point did you realise you had been taken for one here?

**Chief Officer, Department for the Economy:**

So it was only at the stage of the final evaluation. So there was an evaluator toolkit that was shared between the 2 Islands. It prescribed the basis on which evaluations would take place. So you would have each strand of the tender, financial, commercial, technical and legal. You would have an evaluator for each of those in Jersey and an evaluator for each in Guernsey. They would independently score their sections. They would then have a facilitated discussion with the procurement leaders from both Islands, KPMG, and they would talk about their respective assessment of that strand of the bid. They were not forced to reach a consensus score and, indeed, if someone was scoring a 4 and somebody an 8, that is quite a big difference out of an overall mark of 10. So forcing a consensus score of 6 is not necessarily the appropriate thing to do. In mandatory areas one may pass, one may fail. Again, not necessarily appropriate to try and force a consensus in that scenario. So that is why we got to a point in the final adding up of the scores where Jersey's scoring was pretty consistent in the 2 bids from the initial to the final evaluation. Guernsey significantly upscored the Brittany Ferries bid over the course and I think the DFDS bid marginally moved down the way.

**Deputy D.J. Warr:**

So when the Minister says "we discovered that" the scoring systems were quite different, you are saying that is not the case? You are saying the scoring systems were the same, it is just that they came up with different results. So it is not quite as accurate a statement being made by the Minister in that case.

**Chief Officer, Department for the Economy:**

Well, the Minister may well have been thinking on his feet. I do not know what the setting was. But there was a toolkit. There were clear criteria within the tender document around what constituted different levels of scoring and then you had the view of the evaluator, and they may come at it from different standpoints. I would 100 per cent back the quality and the insight of the evaluation team that Jersey had on this in each of the strands of the bid, but just to give you an indication, the Guernsey bid between the initial evaluation and final, they moved the Condor bid up in 7 categories, and by contrast Jersey increased the Condor bid in 2 categories. We had the same discussions,

the same joint responses to questions and so on, but they took a very different view. On the DFDS bid, Guernsey increased the DFDS bid by one and decreased it in 3. Jersey increased it in 3 and then all the others remained the same. So the significant move was in how Guernsey scored the Brittany Ferries bid from initial evaluation to final evaluation.

**Mr. P. Taylor:**

Are you trying to understand what the difference was?

**Chief Officer, Department for the Economy:**

That was not necessarily my job as the S.R.O., other than to the point when the ...

**Deputy I. Gardiner:**

Whose job was it?

**Chief Officer, Department for the Economy:**

If I can finish, up until the final point when the scores came together to then look at what that meant for a joint process.

**Mr. P. Taylor:**

I suppose, going back to Vijay's original point about having someone who has done this before, someone who has done it before who was advising the joint team would have said: "Okay, I need to understand what the differences are and explain them to the 2 tenderers because they may have a different viewpoint that the other side has not picked up."

**Chief Officer, Department for the Economy:**

No. Those were talked through. As I say, if you take the financial aspects of it, you had a Jersey evaluator, a Guernsey evaluator. They scored independently, then they had a moderated discussion, and in that moderated discussion KPMG were part of that. But it was not to force a blended score from the 2.

**Mr. P. Taylor:**

No, I was not trying to get ...

**Chief Officer, Department for the Economy:**

If they could reach a consensus by just saying: "I thought this" and by explanation it brought somebody up or down, that was fine, but it did not force the issue that they had to reach a consensus.

**Mr. P. Taylor:**

I was not trying to get to a moderated position. I was trying to get to an understanding from our point of view as to why Guernsey's had changed. That is what I was trying to understand. Because there may be reasons there that were valid ...

**Chief Officer, Department for the Economy:**

Yes, that is a Guernsey scrutiny question.

**Mr. P. Taylor:**

... or invalid. The same view about yours. It is not about getting to a blended solution, it is about understanding ...

**Chief Officer, Infrastructure and Environment Department:**

I think it is fair to say, and this is where my involvement started, there was no joint S.R.O. interactions to have that discussion as to: "We clearly have differences here. How are we going to try and resolve these differences to try and get to a common procurement outcome?"

**Mr. P. Taylor:**

Or just understand them.

**Chief Officer, Infrastructure and Environment Department:**

What I can say is Richard, prior to myself taking the reins, attempted that in terms of: "We clearly have differences here. What are we going to do about it?" Certainly, I had the same conversation with the Guernsey S.R.O. My first interaction was firstly: "Hello, welcome." Secondly: "We clearly have differences in our procurement here. How are we going to go about trying to resolve the position and bring our parties together?" At that point it was very clear that Guernsey were taking a: "We will mathematically average this out. The scoring is closed. We are not having a conversation." We took the view that we still think there are some significant differences here which we are unhappy with as a jurisdiction. We want to talk about these before we go ahead. That never took place.

**Mr. P. Taylor:**

Thank you.

**Deputy R.S. Kovacs:**

This is a question for both of you. How then would you improve communication between the 2 Islands in any future joint process?

**Chief Officer, Department for the Economy:**

There were weekly S.R.O. conversations. In reality, we spoke a lot more often than weekly throughout the process. But when we got to that point of the scoring closing, the scores being added up across each of the categories for each bidder between the Islands, we had quite a difference in scoring of the 2 bids. As I say, from Jersey's perspective, both bids had registered fails so we were having to disqualify both bidders. We did have one stronger bid. The DFDS bid was stronger. If Jersey wished to take a level of risk, we could have gone on to try and ignore that fail and negotiate in the legal phase. That was not, on balance, felt to be the safest option in terms of being open to judicial review. In any event, we had judicial review anyway. But Guernsey, as Andy has said, were not prepared to enter into a discussion around what the scoring differential meant for what was supposed to be a joint process and were completely intransigent about it, both politically and at officer level.

**Chief Officer, Infrastructure and Environment Department:**

If anything, I was certainly informed that this is not a matter for officers to resolve; this can only be resolved politically. That was the very strong message I got from the Guernsey S.R.O. in writing.

[16:15]

**Chief Officer, Department for the Economy:**

Even the Court of Appeal in Jersey recognised after the judicial review, to the court's words, Jersey was placed in an invidious position.

**Deputy D.J. Warr:**

Okay. Next section?

**Deputy I. Gardiner:**

Yes, we will continue. Glen.

**Mr. G. Kehoe:**

I think you have just covered a lot of those that I was going to bring up there about who were communicating ...

**Deputy I. Gardiner:**

Okay. Before we move to the next section, I want to ask: it was no joint S.R.O. Is it something that you would consider that would help to make sure that the processes are working jointly if you have joint S.R.O. and not 2 S.R.O.s working in their own ways? In hindsight, not now.

**Chief Officer, Department for the Economy:**

The principle is perfectly commendable, but how you appoint that joint S.R.O. and where they come from is another level of challenge altogether. As I say ...

**Deputy I. Gardiner:**

You probably did not have time, because the joint process started in January and we needed to make a decision quickly.

**Chief Officer, Department for the Economy:**

As I say, there was a view from Guernsey that was expressed that they felt they were being led at times by Jersey. As I say, Deputy Inder's correspondence of October 2023 was if we are doing a joint process, we want to be here, we want to be there. It is 50:50, 50:50, 50:50, otherwise we are not playing. It was felt unbalanced. In the interest of Channel Islands working - which we are often criticised for not endeavouring to do - on procurement, that it was worth trying to secure a joint Channel Islands procurement process.

**Mr. V. Khakhira:**

So getting into a slightly more technical question, a more detailed question, can you tell us please about the fuel price adjustor clause? I noticed in the request for clarification after the original tender documents went out that was one of the first questions that came back, as one might have expected. It was not included in the original I.T.T. as far as I can see. Can you tell me about Jersey's position in relation to the fuel price adjust clause and how it developed over time up until the final award, please?

**Chief Officer, Department for the Economy:**

Was that in tender process 1 or 2?

**Mr. V. Khakhira:**

Let us go through both.

**Chief Officer, Department for the Economy:**

It would have been raised as a clarification question in one or the other.

**Mr. V. Khakhira:**

I cannot remember which one it was.

**Chief Officer, Department for the Economy:**

Nor can I because I was not part of it.

**Mr. V. Khakhira:**

I think it must have been the second one. I am pretty sure it was the second one.

**Chief Officer, Department for the Economy:**

That would be Andy, the second one, then.

**Chief Officer, Infrastructure and Environment Department:**

Certainly, in terms of the second process, we wanted clarification from both companies as to what any fuel surcharges would be. It is fair to say that one company had a lot better information, because they were the incumbent operator, than the new entrant. My appreciation was that the first set of information we had was from the new entrant company. It is not based on full data, because they did not have full data, in terms of how the routes would work and the market would work. Certainly, that was clarified by the company that both bidding companies clarified their position on fuel surcharges throughout. As they got more information they gave us a more accurate figure, certainly the new entrant did.

**Mr. V. Khakhira:**

Am I reading words that the fuel price adjustor mechanism was not included in either of the I.T.T.s, and the spreadsheets you shared with us listing the clarification questions, which were responded to by July of 2024 so maybe that is the first tender process, requested further information on whether there would be a fuel price adjustor mechanism, to which our response was no, there would not be one? I was wondering where that reply came from and what was driving that policy.

**Chief Officer, Department for the Economy:**

I would need to go back and look in the context of the tender process as to how they answered it and who answered it. It is commonplace in the industry for there to be a charge for freight and then what is called a bunker adjustment factor layered on top of that, which reflects the rise and fall of marine fuel. With the DFDS, their bunker adjustment factors by route are published on their website on a monthly basis. With Brittany Ferries, theirs, I believe, are in the public domain. Condor's have not been a matter of publication. What was essential is to try and understand: there is the freight cost, but is it cheaper a freight cost being recovered and a higher bunker adjustment factor somewhere else? I would have to go back and look at the precise interchange on the questions.

**Mr. V. Khakhira:**

Could you, because that was not my reading of the document. I may have got that completely wrong, but my understanding was that we refused to allow them a fuel price adjustor, but we ended up with one in the end, according to a newspaper report in February.

**Chief Officer, Department for the Economy:**

It would be commonplace for there to be a bunker adjustment factor.

**Mr. V. Khakhira:**

Should be commonplace?

**Chief Officer, Department for the Economy:**

Yes.

**Mr. V. Khakhira:**

Thank you.

**Deputy I. Gardiner:**

I have a question, Andy, to yourself: what were the key changes between joint and the single-Island tender that was run?

**Chief Officer, Infrastructure and Environment Department:**

Yes. We went from a service requirement for both islands to one only, so there was a clear requirement for Jersey to be clear what its minimum service requirement was.

**Deputy I. Gardiner:**

What has changed in the minimum service requirement?

**Chief Officer, Infrastructure and Environment Department:**

Effectively, what did Jersey want. The bidding companies in round 1 were bidding as to what both Islands wanted.

**Deputy I. Gardiner:**

I understand. Can you specify what was the change to the minimum requirement? What was minimum requirement in joint tender and what was taken out or added in for tender for one Island?

**Chief Officer, Infrastructure and Environment Department:**

I would have to do the assessment between the 2. Certainly, in the second procurement we were very clear with the companies as to what we were asking them to bid on. I would have to do an exercise of checking ...

**Deputy I. Gardiner:**

One of the things that I picked up when I looked through the joint tender ... and it was published so it is a public document. It is page 28 in the public document. It was a very clear requirement for 7-weekly during the high season and 4-weekly, which is 14 single legs inter-Island. Have these been deducted from the single Island and why?

**Chief Officer, Department for the Economy:**

So ...

**Deputy I. Gardiner:**

No, it is to Andy because he was responsible for the single-Island tender.

**Chief Officer, Department for the Economy:**

Okay, yes.

**Chief Officer, Infrastructure and Environment Department:**

Yes, what I do not have an answer to is what is the mathematical difference between tender round 1 and tender round 2. We were very clear in tender round 2 what we wanted to see as part of an Island-only service. Clearly, the freight volumes for Jersey only are less than both Islands combined. That would have impacted on the minimum service requirement we needed to service Jersey-only freight and Jersey-only passengers. The numbers would have been different. I do not have off the top of my head the actual difference ...

**Deputy I. Gardiner:**

The inter-island was taken out from the tender?

**Chief Officer, Infrastructure and Environment Department:**

Yes. We would not expect the Jersey-only service to service Guernsey freight, for instance, as an example, or Jersey passengers, because the route would operate differently directly to Jersey that would give the bidding company a different operational requirement, effectively.

**Deputy I. Gardiner:**

Were there any other changes or key changes done between joint tender and ...?

**Chief Officer, Infrastructure and Environment Department:**

We were also clear that we want to see a minimum vessel requirement. We wanted to be clear what the number of vessels that were going to service Jersey on Jersey-only. We made that clear to both bidding companies. As part of the second process, we had clarification days with both companies where they were able to ask us questions. They had had to give us an initial submission, in terms

of their initial response. We then had 2 sessions, a day each, with each company where they could ask us further clarifications on exactly what we were asking and, effectively, whether we were really sure or whether ... it gave them an opportunity to challenge what we were asking. Both companies asked us company-specific questions. Out of that conversation we were very clear that we wanted to see a minimum vessel requirement, so that both companies were clear what vessels they were needing to put on the route or the routes, especially in terms of their investment on those vessels. That was an absolute bit of clarity. Again, both companies had that as part of those clarification days. They were then able to take that information and give us their final submissions.

**Deputy I. Gardiner:**

No, no, it was specifically what has changed. I think that taking out complete ...

**Chief Officer, Infrastructure and Environment Department:**

We also had a fairly good conversation with both companies on the off-peak requirements, which are weather dependent and winter requirements. We were able to put a bit more flexibility in what that off-peak service requirement was, as opposed to on-peak, because of the vagaries of weather and other things.

**Chief Officer, Department for the Economy:**

Chair, if I might add, for example, inter-island services, it was exactly those elements that we wanted to talk about with the Guernsey S.R.O. at the end of scoring, because that failure to enter into discussion between the Islands at that point in time was going to create the grounds for a divergence of approach. We had to look at what that meant, not just for the joint procurement, but also for inter-island sailings as well. There was no desire to enter into that dialogue.

**Deputy R.S. Kovacs:**

Okay. Going into looking back on how the process went, what abortive costs, if any, have been incurred by the Government of Jersey through the joint tender process and if you have any specific examples of such costs?

**Chief Officer, Department for the Economy:**

There were no abortive costs as such in tender process 1. The professional advice that was used by enlarging tender process 1 was carried over into tender process 2. For example, the draft concession agreement was carried forward substantively into tender process 2. Clearly, because we did not make an award of contract to one particular bidder, they chose to take legal action and to try and seek leave for a judicial review. Costs have been incurred in defending. The Government's position on that, that position was defended successfully with all matters raised by

Brittany Ferries comprehensively thrown out by the Court of Appeal ultimately. We are in the process of taxation of costs, should we not be able to agree mutually the coverage of our costs.

**Deputy R.S. Kovacs:**

What evaluation has been undertaken of the joint process? What have been the outcomes of this work? Including, what were the warning signs that you could have seen from onset maybe to oversee such result?

**Chief Officer, Department for the Economy:**

We indicated where we thought there were warning signs around a general desire from Guernsey to try and do a new deal with Condor at repeated intervals. Condor had opportunities in late 2021 and late 2022 to table an incredible offer and in both instances had failed. Even in October 2023, when we were preparing to go to the market for tender, Guernsey still wanted to try and strike a negotiation with Condor alone, rather than go to the market. Those, to me, certainly were all warning signs that we were not necessarily dealing with somebody that was as committed as we would like. Nonetheless, in the interest of joint Channel Island working, we were trying to go ahead with a joint process as best that we could.

**Deputy D.J. Warr:**

Could I just ask one question? Was there not a degree of inevitability about what was going on here, Guernsey were in for £23 million on a Condor boat?

**Chief Officer, Department for the Economy:**

£26 million, yes.

**Deputy D.J. Warr:**

£26 million. That is a challenge to walk away from and go: "We will give up on that boat." That is a serious alarm bell, is it not, when it comes to decision-making? Is that not front and centre of saying: "What happens if that boat is removed from ...?"

**Chief Officer, Department for the Economy:**

You make a very good point, Deputy. I wholeheartedly agree. At the time we were doing the work on potential alternative models, because we were worried about Condor, and we shared openly with Guernsey the fact that we were doing this work. We were talking to shipbrokers. One of the vessels identified, should we need to go down the route of the Islands buying a vessel, was the Straitsman. We found out, in the media, that Guernsey had entered into a deal to buy the Straitsman with Condor. We believe initially the reference to buy it through the Guernsey Investment Fund, as an independent buyer, albeit with some States money we believe in there, that floundered for some

reason. We suspect because of failure of due diligence, because Condor was not a credible financial counterparty. That is a presumption. Nevertheless, States of Guernsey got in. They used their own emergency powers to prepare a loan and an equity investment to go in with Condor to buy that vessel. The fact there had been no prior discussion with Jersey was a point of significant disappointment, to say the least, that that had not been talked about as a potential joint endeavour. The fact there was not even a 24-hour advance notification that they were coming out with this announcement created quite an erosion of trust as well. I believe that vessel is now being acquired by Brittany Ferries from Vessel Co., which was the ownership vehicle between the States of Guernsey and Condor. I do not know if that was a factor in Guernsey's eventual decision-making, because it suddenly saw that loan extinguished. That is a question for Guernsey.

**Deputy I. Gardiner:**

You have not asked during the preparation of the process: "You own the vessel. How open are you to work with another operator?" Was this question asked?

**Chief Officer, Department for the Economy:**

We know from DFDS that DFDS made an inquiry of the directors of Vessel Co, which was the ownership vehicle for the Condor Islander, about the potential for chartering that in the event that Condor ...

**Deputy I. Gardiner:**

No, no, you, as a Jersey representative, did not ask the Guernsey representative on a political level: "You own the vessel. You definitely have some interest. How would you manage this conflict of interest as a co-owner of Condor and how open would you be to give to somebody else to run the service when you are the owner of the vehicle?"

**Chief Officer, Department for the Economy:**

Conflicts of interest had to be declared.

**Deputy I. Gardiner:**

Have you discussed how they will manage it? Did you ask the simple question?

**Chief Officer, Department for the Economy:**

Yes.

**Deputy I. Gardiner:**

Did they say they were open?

**Chief Officer, Department for the Economy:**

They were directors of ... the S.R.O. from Guernsey was a director of Vessel Co. The treasurer, I believe, of the States of Guernsey was also a director of Vessel Co. Then there were other directors of Vessel Co, which we believe were from either Condor or Brittany Ferries ...

**Mr. G. Kehoe:**

At what point did you tell the Minister or how did the Minister find out about this? As the alarm bells must have been ringing, somebody must have put this towards a political theatre rather than a back office thought.

[16:30]

**Chief Officer, Department for the Economy:**

What stage are you referencing?

**Mr. G. Kehoe:**

Even with having that vessel that was partially owned then by Guernsey or would have been, how is that directed then to our Ministers in charge ...?

**Chief Officer, Department for the Economy:**

The Ministers became aware the moment I became aware, which was reading it in the media. It is fair to say the Ministers did not react particularly well to being surprised in that way, neither did officers.

**Mr. G. Kehoe:**

We did not have our finger on the pulse at the time to do our due diligence then on checking out those vessels? It is ...

**Chief Officer, Department for the Economy:**

We were already checking out the vessel. We knew that it was going through a sales process. We knew that Condor were a bidder, from our market intelligence. Bearing in mind, N.D.A.s (non-disclosure agreements) are being signed for the advance acquisition of a vessel, we knew that Condor had made it into the final 2 of that process, but we understood it was Condor. We were completely surprised that the States of Guernsey were getting involved to the extent that they were.

**Deputy I. Gardiner:**

Okay.

**Chief Officer, Infrastructure and Environment Department:**

In terms of lessons learned, certainly from my perspective, a positive lesson to be learned in terms of procurement processes, things can happen very speedily if shoulders are put to the wheel in an aligned way. That was a very positive lesson that we certainly were able to show in phase 2. The other key lesson is that we have been dealing with here a potential ... we were open to removing or looking for a different way of operating the ferry service, potentially moving away from an incumbent operator with decades of experience. To be able to do that you have to have a position of bravery to make that decision and you have to have a process in place where you are able to make that brave decision. I would certainly contend that the contingency arrangements that were entered into prior to round 2, procurement, very much gave the Government of Jersey a sound basis on which to make a brave decision if they wanted to move to a new operator, so they would not be held over a barrel by the incumbent. Because these are lifeline services, we had to have that position of assurance that we could move to a new operator without our lifeline falling.

**Deputy R.S. Kovacs:**

Still on the findings, how would you apply the lessons to do any future tenders?

**Chief Officer, Department for the Economy:**

Speaking frankly, the incumbent's behaviour for a significant part of the last several years has been nothing short of reprehensible, in terms of their attitude towards the Government and to Islanders' interests in ferry services. For me, we have to ensure that should be a barrier to be able to enter into a procurement process, quite frankly, if you have played hard and fast in that way. The fact that they were given a fair and objective crack of the whip through a tender process is testament to a desire to try and secure a better deal all round for the Island, wherever that came from, with some confidence attempting to be placed on the fact that Brittany Ferries were coming more to the fore in the financial arrangements and the day-to-day operations of Condor. But Condor's behaviour, as you will see in today's media the output of a freedom of information request, there is comprehensive correspondence between the Minister and Condor which underscores that reprehensible behaviour on the part of the executives there.

**Deputy D.J. Warr:**

You obviously feel strongly about how this has been handled. I wonder if there is a lesson, maybe, politicians can learn. In a press release you said: "The delay of this past 2 weeks has clearly been down to political decision-making in Jersey and differential positions between the Channel Islands." What is your advice to politicians, basically, when they get involved in these kinds of things?

**Chief Officer, Department for the Economy:**

Ultimately, in a procurement process, officers can only decide objectively on the basis of what has been tendered and how that stacks against the criteria. We cannot make a recommendation on other factors outside of that. Politicians can.

**Deputy R.S. Kovacs:**

Generally, to summarise what David said, how can future agreements between the 2 Islands be structured in a different way to avoid such disagreements?

**Chief Officer, Department for the Economy:**

It is difficult to say. Whether it is an overarching M.O.U. or something else that describes how you are going to act in specific circumstances. The evaluators' toolkit went a long way to doing that. Some of the clauses within the tender documentation, again, clearly allowed for those off-ramps that I spoke of earlier on. You have to be committed from the start. I never really had the sense that politically Guernsey was ever really committed to openly entering into a process that may result in a change of the operator. Indeed, we have ended up in a position where they have appointed Condor as the operator. Not Brittany Ferries. Brittany Ferries are the guarantor of their new arrangement, but they have appointed Condor as the operator.

**Deputy R.S. Kovacs:**

To more or less conclude the hearing, can I hear from each of you one point of change or improvement that you see could be done to this process to make it successful in the future?

**Chief Officer, Infrastructure and Environment Department:**

One point, magic wand. Going back, if you are getting into a procurement arrangement with a partner, you need absolute clarity that partner has the same mind and outcome desires as you have. It is what Richard has said. Our process in both round 1 and round 2 was followed. I cannot see anything wrong with the process. Certainly, round 2 was more speedily done than round 1. If it is only one point, you have to be clear who you are doing business with and their motives.

**Chief Officer, Department for the Economy:**

That goes to my earlier point as well, some overarching M.O.U. that describes how you are going to act. I do not think you can necessarily guarantee that you are binding together indefinitely through thick and thin. You make marriage vows, but people may split up over time. Unless there is some real legal heft and a significant penalty for bad behaviour or walking off in a different direction, it is difficult if you get a point that interests turn out not to be as well aligned as you may have thought. Our intentions were sincere when we went into a joint process. We have come out of that with regret. It is fair to say from a Jersey standpoint that we do not believe that it has been entered into with the same honour and intent on the other side.

**Chief Officer, Infrastructure and Environment Department:**

If I am allowed a second answer, I also think you do need consistency of decision-making and resilience in keeping that decision going. This was one of the highest profile decisions we have made as a Government. There was a lot of external pressure. It is worth an awful lot of money to whatever operator. We did have consistent political leadership with the Minister, keeping going on this. It would have been tempting not to do that. It would have been tempting for us to throw our hand in early to go with Guernsey. While that was discussed, we needed to be clear what we were trying to achieve for the Island in the longer term. Sticking to your guns is something that is important. We cannot avoid that issue. We have to be clear what we are trying to achieve in the outset. If you are trying to achieve it, you have to keep going, despite the slings and arrows that come your way.

**Deputy I. Gardiner:**

Two very quick questions and very short answers, please: where in this process, after all warnings that you had, you needed to stop the process before end of October?

**Chief Officer, Infrastructure and Environment Department:**

In my first week.

**Deputy I. Gardiner:**

Which part was it when you felt is going wrong direction, with all warnings that you had?

**Chief Officer, Department for the Economy:**

I would say there were some inklings that I got from the Gatwick meetings, which took place round about mid-September, which was 4 days of seeing Brittany Ferries in the mornings and DFDS in the afternoons; some inkling that we were not all on the same page. That was also the point that was confirming for me that the Brittany Ferries bid was a Condor bid in disguise. Ultimately, it was not until 1st November that Condor's acting C.E.O. (Chief Executive Officer) confirmed to the Chief Minister in Jersey that it was indeed a Condor bid. Had that been ...

**Deputy I. Gardiner:**

You already, in September, knew it is going the wrong way and we could prevent delay for industry and for the Islanders that everything would come ... now we still do not ...

**Chief Officer, Infrastructure and Environment Department:**

Certainly, the first week of my involvement in this it was clear that we had differences. There were attempts to try and resolve those differences, both from an officer level and also politically. Indeed,

the Minister wrote to his counterpart in Guernsey and said: "Before you absolutely make this decision, are you sure about all of these issues?" Again, we were as clear as we could have been in terms of where the differences between the parties were and why we held our strongly held concerns over the financial health, et cetera. There was a lot of stuff in that first week ...

**Deputy I. Gardiner:**

The question was when you could stop it before ... everything that you have told us today, it felt like this warning sign, this warning sign, and it was much earlier through the process than the end of October, beginning of November. The question is: are you confident that the right ferry operator was chosen for Jersey?

**Chief Officer, Department for the Economy:**

One hundred per cent.

**Chief Officer, Infrastructure and Environment Department:**

Yes, I am.

**Deputy I. Gardiner:**

So we will finish this public hearing on this note ...

**Mr. P. Taylor:**

My only other comment was when you have these situations it is not the tender process. It is if you make the wrong decision and you go with a partner who you were upset about during the tender process, what is going to happen afterwards when the thing is operating? Are they still going to be able to deliver?

**Chief Officer, Department for the Economy:**

Yes.

**Deputy I. Gardiner:**

Thank you very much for your time and thank you for your answers.

**Chief Officer, Infrastructure and Environment Department:**

Thank you.

**Chief Officer, Department for the Economy:**

Thank you.

**Deputy I. Gardiner:**

The public hearing is closed.

[16:41]