

STATES OF JERSEY

Public Accounts Committee Energy from Waste Plant - Management of Foreign Currency Exchange Risks

MONDAY, 11th MAY 2009

Panel:

Senator B.E. Shenton (Chairman)
Connétable J.M. Refault of St. Peter (Vice-Chairman)
Connétable A.S. Crowcroft of St. Helier
Deputy T.A. Vallois of St. Saviour
Mr. A. Fearn
Mr. K. Keen
Mr. M.P. Magee

Witness:

Mr. J. Richardson (Deputy Chief Executive)

Senator B.E. Shenton (Chairman):

A little bit of housekeeping before we start. Thank you for turning up. The procedures of the panel are covered by parliamentary privilege through Article 34 of the States of Jersey Law 2005 and the States of Jersey (Powers, Privileges and Immunities) (Scrutiny Panels, P.A.C. and P.P.C.) (Jersey) Regulations 2006 and witnesses are protected from being sued or prosecuted by anything said during the hearing unless they say something that they know to be untrue. This protection is given to witnesses to ensure that they can speak freely and openly to the panel when giving evidence without fear of legal action although the immunity should obviously not be abused by making unsubstantiated statements about third parties who have no right of reply. The panel would like you to bear this in mind when answering questions. Thank you, John, for coming along today. As you know, the P.A.C. (Public Accounts Committee) is looking specifically into the hedging aspect of the incinerator Energy from Waste contract. Specifically the fact that the contract has not been hedged and was not hedged on the date that the contract was signed. We are going to sort of jump around a little bit with regard to this review but one of the reasons we asked you here today was following the hearing of Ian Black, the Treasurer of the States, who made a number of comments. If I may just quote from Mr. Black at the hearing. He stated: "I think if you look though, there was a lack of clarity about who was responsible for what and all things being equal, and if you read it it is under the law, the Accounting Officer is responsible for the revenue and capital spend of their department. So the Accounting Officer for this project was clearly the chief officer of Transport and Technical Services and that is his responsibility for all risks to do with the project. Now I accept that currency risk is an important issue and may or may not be within the expertise of the chief officer of that department so what you do in those circumstances as Accounting Officer is to bring in expertise to deal with those issues." Now clearly what the Treasurer of the States is saying or was saying is that you were responsible for all the risks to do with the Energy from Waste procurement and therefore you ultimately were responsible for ensuring that the currency was hedged. Would you like to comment on that?

Mr. J. Richardson:

Yes, I disagree with that statement that was made. I think, as I can explain this morning, there are a number of instances where that does not happen where risks are specifically transferred to other departments, other chief officers. In this particular case the whole issue about managing the funding of this project, and I use the term initially quite loosely “funding of the project” was passed to the Treasury and Resources Department. It was actually passed to the Policy and Resources Committee and if you look at P.95/2005 you will see, and I will quote for you exactly what it said, P.95/2005 which was the solid waste strategy and the then Policy and Resources Committee were charged with: “To propose the inclusion of a funding strategy for the capital projects identified in (v) which refers to the proposition above in the States Business Plan 2006/2010 by, if necessary, reprioritising or deleting existing projects or identifying additional sources of funds.” So there is a very clear statement approved by the States in P.95/2005 that vested the responsibility for funding this project with the then Policy and Resource Committee who were in charge of capital programme which was then transferred to the Treasury and Resources Minister. So from that point on there was clear identification of responsibility. Then when the project moved forward, and as I can explain as we go through, the Treasury were involved throughout the waste strategy preparation and the waste strategy approvals at various States approval stages. When we set up the funding working group there is very clear reference as to where the divide and responsibility was. Now, I am absolutely clear that the responsibility for funding this project rested with the Treasurer, the responsibility for managing the contract, all aspects of it, including managing the expenditure on the contract, rest clearly with the Chief Officer for Transport and Technical Services. Now, in my opinion, that is absolute clarity. There is no question about it. I can give you plenty of examples as to where in the past there has been that divide of responsibility.

Senator B.E. Shenton:

Mr. Black did say ... he did not say it just once, he said it a number of times that you were responsible for the project and to quote him again: “Well, there was, I think, the Accounting Officer for the Energy from Waste was the Chief Officer of Transport and Technical Services and, yes, you are quite right, he appointed a project manager that was ultimately responsible for co-ordinating all aspects of the project. One of the aspects of the project was the financing aspects and that was a group set up to deal with that.” So, again, what he is saying is that it was not his remit to be involved in the financing, and in fact he said earlier in the hearing that it was not within his Business Plan or his remit to have anything to do with the financing of the project.

Mr. J. Richardson:

If that was the case then he should have made that very clear when his officers took responsibility for it on 21st August 2007. He did not.

Connétable J.M. Refault of St. Peter:

Just coming back, John, if I may, to your comments earlier on P.95/2005. You mentioned there that Treasury and Resources were given the responsibility for the funding. The thing that came out within the proposition which was accepted by the States was the additional element of hedging the euro element of the contract. You did not see that as part of the requirement? They have identified the funding but there is now a management issue within that funding that is the responsibility of somebody. Now clearly the Treasurer of the States believed that passed to you as the Accounting Officer for the project. Do you have a comment to make on that?

Mr. J. Richardson:

I can only repeat what I said. The Treasury accepted responsibility for the funding of it. When the original funding proposals were set up you will recall, I am sure from the correspondence that you have seen, that it was going to be via an internal loan, and under the Public Finances Law it is only the

Treasurer of the States and the Minister for Treasury and Resources who can enter into any form of private funding arrangement, which is why there was a clear division. It is absolutely clear that Treasury accepted responsibility for the funding arrangements. Absolutely clear, in my opinion, in my mind. I accept responsibility as Accounting Officer for the management of this project. I had a team from Treasury who were part of the team who were advising us on various elements of this project. I had, as I am sure you have seen, technical advisers, I have got legal advisers, financial advisers, insurance advisers. In this particular case the Treasury were responsible for the funding and the hedging and the euro elements.

The Connétable of St. Peter:

I come back at you to the ... I think it was the decision of the States in October 2008 where the instruction was, yes, to go ahead with E.f.W. (Energy from Waste) plant and that the euro element then would be hedged. Now that was not mentioned before that time, certainly not in P.95/2005 nor after that, that was something which came out within the projet, was brought before the House in October last year, so that was a new element. Did you not see it as part of your role to pick up the hedging element?

Mr. J. Richardson:

Sorry, there was nothing brought to the House in October last year.

The Connétable of St. Peter:

Sorry, November.

Mr. J. Richardson:

No, nothing brought to the House in November. The report that went to the States was July 2008 which approved the ...

Connétable A.S. Crowcroft of St. Helier:

It was on signature of the contract.

The Connétable of St. Peter:

The contract, sorry. That is when it was supposed to have been hedged?

Mr. J. Richardson:

Yes, the proposition does not actually say that. The proposition that went to the States does not say that it will be hedged on signing the contract. The report makes reference to it, and I have got a copy of it here, and I am sure you have got it, but I think it is important we review that. The report under section 3.2 says: "This exchange risk will be eliminated upon signing of the contract with a preferred bidder." This was in the Treasury and Resources one that went to the States in July 2008.

The Connétable of St. Peter:

Certainly you have acknowledged the fact it was in that report.

Mr. J. Richardson:

It is in the report.

The Connétable of St. Peter:

That was due to be signed and hedged in November.

Mr. J. Richardson:

I mean all the correspondence and all of the records will show that the bids came in, we asked for the tender to be in sterling, both the main bidders plus the third, who did not see the process all the way

through, provided prices in euros and sterling. All the way through the evaluation process we had that bid in euros and sterling. The Treasury were party to that all the way through and when it certainly came to managing the euro element of it, the Treasury had responsibility for it.

The Connétable of St. Peter:

Was that identified, and obviously as we have just been reminded by the Constable of St. Helier, the hedging should have been done on the signing of the contract, and the contract was signed by the Minister for Transport and Technical Services. So at that time who gave the instruction to do the hedging or who should have given the instruction to do the hedging at the time the contract was signed?

Mr. J. Richardson:

The Treasurer through his officers had provided a report and recommendation as to how they were going to manage that euro element of it. Now, I as Accounting Officer for the project took advice from that team, and that was the Treasury team.

The Connétable of St. Peter:

Was there a report done? Did you say they produced a report about how they were going to manage the hedging?

Mr. J. Richardson:

Yes, you have seen that report. It was in the Comptroller and Auditor General's report.

The Connétable of St. Peter:

Yes, sorry. I know the one you are referring to now.

Mr. J. Richardson:

I think it is appendix 5.

The Connétable of St. Peter:

Thank you. From your point of view as the Accounting Officer at the time of the signature, were you aware of what was going on regarding the hedging element then or did you assume that was being dealt with by other parties?

Mr. J. Richardson:

We were aware of it because we were copied into that. It is very clear, it was the ... this note was prepared by H.O.D.S.T.&R. (Head of Decision Support Treasury and Resources) and submitted to the Treasurer of Treasury and Resources and to the project manager in my department. We knew it was being recommended. That was the recommendation of the professionals who were managing that element of it. If I draw a line as to exactly where responsibilities rest here, if I have a technical consultant, they advise me on technical matters. If I had a financial consultant, Deloitte, they advise me on financial matters that were very clearly defined. If I have a legal adviser they advise my legal matters. They are all under contract and they are all under very strict terms and conditions of contract and liability. In exactly the same way I would see the Treasury under those same terms and conditions although they were not formally engaged as consultants. So if I was sitting here in a different forum today where the Treasury had said they could not for whatever reason manage the funding element we in T.T.S. (Transport and Technical Services) would have appointed an investment adviser or extended a brief for one of the other advisers. Now if I was sitting here today in a different format, because we are still talking about the same subject, but it was very different, I would be looking at the P.I. (public indemnity) insurance of that adviser because clearly they had given me the wrong advice. I see no difference between how I classify the Treasurer and the Treasury giving me that advice as I would of employing a separate investment adviser.

Mr. K. Keen:

Except that they were not formally engaged in that way, Mr. Richardson.

Mr. J. Richardson:

Correct, they were not formally engaged, there is not a formal engagement, but there is a very clear division of responsibility which is clearly laid out in this document.

Senator B.E. Shenton:

Can I ask you when you first became aware that there may be a euro currency risk in the provision of the tendering of the contract?

Mr. J. Richardson:

When the tenders came in ... the first tenders came in in April 2008.

Senator B.E. Shenton:

So there was a potential currency risk ...

Mr. J. Richardson:

As soon as the tenders came in, it was very apparent that the 2 main tenderers who were providing a compliant tender were providing a figure in euros and sterling. From that point on if you look at the evaluation reports that were concluded for us by our financial advisers, one of the comparisons that were made ... because the ratio of euro to sterling was different in both tenders there was clearly an issue of some form of sensitivity analysis that had to be done which it was, it is referred to in the C.A.G.'s (Comptroller and Auditor General) report, as to if the euro rate changed to a certain amount would it change the financial element of the appraisal? I think that is clearly referred to. So we were aware of it there and we were following that and monitoring it all the way through, but I still come back to the point that the responsibility for managing the funding of this project rested with the Treasury and the responsibility for managing the euro side of it rested with the Treasury.

Senator B.E. Shenton:

The Treasurer of the States indicated that the funding, how it was going to be funded, lay more with the steering group than it did with the Treasury itself because at one point they were thinking of issuing a bond to cover the funding and I think he says it in his review: "I do not know why they changed their mind."

Mr. J. Richardson:

I have got to refer you to the minutes of the funding ... the first meeting of the funding working group which took place on 21st August 2007 and the minutes which the Comptroller and Auditor General has referred to are absolutely clear in terms of roles and responsibilities, and there is no doubt from those minutes that the Treasury were taking responsibility for that funding, because at that stage there was still a view that the funding was going to be through some form of borrowing and ...

Mr. K. Keen:

Can you help us with that, and just show us where that ... we are on page 18.

Mr. J. Richardson:

Page 18 and 19, page 19 contains the C.A.G.'s lift and it is the third paragraph, A.D.F.I.T.&R. (Assistant Director Finance and Investment, Treasury and Resources) - so that is a Treasury and Resources officer - noted that the funding source risk then fell to Treasury and Resources. Then there is another reference, paragraph 71, second paragraph of quotes: "Indicated that the E.f.W. project financial

adviser role would then be reduced to develop.” So it was very clear that the Treasury officers, and these are all Treasury officers who are making these quotes, accepted the risk was with the Treasury. As such we were reducing the role of our financial adviser not to include that advice.

Senator B.E. Shenton:

But to quote Ian Black again, he said: “If you look in the Treasury’s Business Plan for 2008, which is all my major projects, you will not see anything in there about Energy from Waste and currency issues, and that is not surprising because when we wrote that Business Plan [which one assumes was written towards the end of 2007] there was not supposed to be a currency risk in the Energy from Waste project.”

Mr. J. Richardson:

That is correct, but the Treasury accepted that responsibility. If they decided to take that responsibility, amend their Business Plan, change their Business Plan, to provide the resource required to deliver that guidance and that advice then that was for them, it is not for me. You will have to go back to the Treasury on that one.

The Connétable of St. Helier:

Can I come in with a couple of questions? John, you sit on the Corporate Management Board, is that right?

Mr. J. Richardson:

Yes.

The Connétable of St. Helier:

You were at the time we are talking about?

Mr. J. Richardson:

Yes.

The Connétable of St. Helier:

Could you indicate how much discussion was given at the Corporate Management Board to the whole issue of the E.f.W., the contract, particularly as the signing of the contract drew near?

Mr. J. Richardson:

At Corporate Management Board, very little discussion other than I was updating them on progress, it is clearly a very big project, and we were obviously very concerned because the costs of this project, which is the biggest capital project the States were undertaking, but it certainly was not ... this project and all of the issues relating to it was not referred to the Corporate Management Board as an item on the agenda.

The Connétable of St. Helier:

It was not an agenda item at any time between the States decision in July and the signing of the contract in November?

Mr. J. Richardson:

No.

The Connétable of St. Helier:

Do you not think that is a bit strange given the magnitude of the project and the fact that you had the key ... I mean you were obviously on the Corporate Management Board and one assumes the Treasurer

is also involved in that forum; would that not have been a good forum to have the discussions about whether the purse is going to be able to fund the project when the signature happened?

Mr. J. Richardson:

I think the purse had been established that it could fund the project, which is why the Treasurer had decided or the Treasury and Resources Minister recommended to the States in July 2008 that it will be funded out of internal reserves as opposed to external borrowings. Had the circumstances changed then clearly we would have ... and it could not be funded out of internal funds and had to go to external then clearly we would have to go back to the States.

The Connétable of St. Helier:

Can I just pursue this point: you had been involved with this project for how many years roughly from its inception?

Mr. J. Richardson:

I have been involved with this project since 1996.

The Connétable of St. Helier:

So 12 years work to bring about the replacement incinerator and we had a period between July and November when the pressure was on the cost envelope because of issues like planning. I am surprised it was never on the agenda of the C.M.B. (Corporate Management Board) given that that is the coordinating chief officer group, but I am also surprised that at no stage the Treasury Minister was asked by the Accounting Officer of the project: "Have you got all your ducks in line? Is this going to happen as we have all envisaged?" Did you simply assume that it was all being ... Treasury had the hedging matter under control?

Mr. J. Richardson:

The Treasury and their officers had the matter under control. Well, we assumed professionally, they are professional accountants, chartered accountants, they should have been running this in exactly the same way as we would have managed the technical contract, legal aspects of the contract, et cetera, through our legal advisers, technical and professional advisers and insurance advisers.

The Connétable of St. Helier:

Do you think the Corporate Management Board perhaps missed a trick there and that there should have been some discussion at some stage at the latter part of 2008? Certainly perhaps should have been an agenda item; are there any risks we have not appreciated? Is everyone doing their bit correctly? It is easy enough with hindsight to say that would have been a useful discussion. Do you think that discussion should have been an agenda item?

Mr. J. Richardson:

I think if the Treasurer had flagged up that there was a significant problem then or a very high degree of risk or the Treasurer had a problem, then it would have been reasonable in the first instance for the Treasurer to have discussed it with myself and I would have expected probably the Treasurer, myself and the Chief Executive would have sat down and said: "What is the risk? How are we managing it? Is it an issue?" I do not think we would have gone straight to Corporate Management Board, but I certainly never had an indication from the Treasurer or the Treasury officers that they were not managing this, they were not in control of what was going on.

The Connétable of St. Helier:

You have recently moved to number 2 ...

Mr. J. Richardson:

Sorry, in hindsight you can look back and you can ask some questions, and I do not think it is for here today but obviously those issues are being addressed in another forum. Clearly the issues were not managed properly and hence the results that we have got and why we are discussing it.

The Connétable of St. Helier:

You have recently moved to number 2 in terms of Corporate Management Board. Again, it is a hypothetical question, but had you been chairing the C.M.B. during 2008, as a chief executive, would you, do you think, have made this an agenda item?

Mr. J. Richardson:

I do not think I would because the issues of the additional cost, because of the redesign, and the issues of the cost because of the currency fluctuation, were discussed with the Chief Executive, certainly the additional cost was and I certainly recall one discussion where I was advising him that we will literally, on a daily basis, put in the exchange rate of that day into a spreadsheet we were running to see how the prices were fluctuating. We were managing that and we were managing that within an envelope.

The Connétable of St. Helier:

My final point ...

Mr. J. Richardson:

Sorry, if I can just finish. What you will see is that when you refer to 13th November, it is in the C.A.G.'s report, it was my memo to the Treasurer which was saying that we noticed a very significant change and I needed assurance from the Treasurer that ... it is on page 48, paragraph 176. The Chief Officer for Transport and Technical Services, and that was copied to the Chief Executive.

The Connétable of St. Helier:

My final point is that the job description of the Chief Executive to the States in the first role that is listed in that job description dated 2002 is to ensure the policy objectives set by the Chief Minister and the Council of Ministers are met and the Executive Government of the Island is discharged efficiently and effectively. It does seem to me that that is the forum where this kind of discussion could have been very usefully had because ...

Mr. J. Richardson:

I think the discussion was had with the respective parties, that is myself, the Treasurer and the Chief Executive, and whether that should have been referred to the Corporate Management Board I think would have been a matter for the Chief Executive to decide. But we were very well aware of the issues that arose at the time.

Mr. K. Keen:

Could I make a point about the Corporate Management Board? I have got the annual report for 2007, there is a statement on internal control and it says: "In 2006 the Corporate Management Board established an Audit Committee to support them in their responsibilities for monitoring and reviewing risk control and government processes within States funded bodies and the associated assurance that these processes are adequate." I mean, on that basis I suppose I would have assumed that major risks were being monitored by the Corporate Management Board.

Mr. J. Richardson:

The audit group of the Corporate Management Board tend to review the internal audit reports that came through and those audit reports for the Energy from Waste project through the various stages were coming out with relatively or very few risks in terms of recommendations as you would see in a normal

audit report. We managed as part of the E.f.W. project team a risk register and clearly the whole issue of currency was a risk that we had identified and were managing.

Mr. K. Keen:

Thank you. I am just really more interested in the point that the Corporate Management Board seems to have a responsibility for monitoring and reviewing risk as I find it in here, and I ... number 3.

Mr. J. Richardson:

The words are very clear what it says. I cannot argue with the words but I think that the risk for these specific projects would fall to the individuals concerned and the Audit Committee was established but their function tends to be to review the internal audit reports that come through and certainly the Corporate Management Board has got a strategic risk register which we monitor and maintain, but we do not go down into individual specific areas and specific projects as such. We have not up to now anyway.

Mr. K. Keen:

Even for the biggest piece of capital expenditure?

Mr. J. Richardson:

Not to date.

Senator B.E. Shenton:

Could I just go back to the accounting officer responsibilities because of course when we brought in ministerial government the function of the accounting officer was very important with regard to holding people to account and knowing where responsibilities lay. Ian Black, the Treasurer of the States, clearly stated that you were the Accounting Officer for all risks involved with the Energy from Waste projects, including the currency risk. Would you say from the point of view of the currency hedging that the Treasurer of the States was, in fact, the Accounting Officer for this part?

Mr. J. Richardson:

Yes. Absolutely. I have absolutely no doubt in my mind as where responsibility rests for this project. In terms of the technical side of it and all the evidence it rested with Transport and Technical Services, that was the Accounting Officer for T.T.S. which up until last month was my responsibility. I have no doubt whatsoever and I would not in any way question that accountability. But there was one element of it that was transferred to the Treasury and I can repeat myself many, many times today, as far as I am concerned that responsibility was transferred to the Treasury on 27th October, I keep repeating the date because it is very clear. They took responsibility on 21st August 2007 for the fund element of this project and they continued to. I have got the minutes here of all the funding working group meetings and it is very clear they were responsible.

Senator B.E. Shenton:

From 21st August 2007?

Mr. J. Richardson:

21st August 2007, that was the first meeting of the funding working group. It is in the C.A.G.'s report, paragraph 69.

Senator B.E. Shenton:

Deloitte did some very good work for you with regard to trying to work out which was the best bid taking currencies into account, did you make any recommendations for Treasury that perhaps they should continue to employ Deloitte to look at the hedging issue?

Mr. J. Richardson:

Well, I think if you look ... I think this is the crux of the discussion, if you continue referring to this meeting of 21st August the Treasury decided not to do that, and if you refer to paragraph 71, second paragraph: "The Chief Officer, Transport and Technical Services [that was myself] indicated this would be accepted and asked the Director of Waste Strategy to revise the brief to enable the financial adviser role to proceed." Now if you then referred to the previous paragraph you will see it was the officers from the Treasury and Resources: "S.I.M.T.&R. (Strategic Investment Manager, Treasury and Resources) indicated that he would have to review the detail but queried whether the roles needed, if the funding source could be delivered by Treasury A.D.F.I.T.&R. suggested that would be sensible if the E.f.W. project adviser role were limited to providing financial models, evaluations and life cycle analysis. So it is very, very clear where those roles sat. The Treasury said, and it is minuted there, that the E.f.W. project adviser should be limited to the financial models and the evaluation and life cycle analysis, it did not include funding and hedging.

Mr. M. Magee:

Could I raise something, John, because I think in the third paragraph that you are saying it was clear that the responsibility passed across, as at that point in time I would view it that if you defined what funding meant. Funding was paying for the project. So that was paying for the project and that assumption was it was in sterling at that point in time because the contract has been put out to tender in sterling, and so therefore what Treasury would ... in effect, accepting as a responsibility was paying for this thing in pound notes. I think it has changed post that to something that is quite different, and so I know you are using funding and hedging for F.X. (foreign exchange) synonymously. You are saying they are the same thing, and I can understand why you are saying that. But I think at that point in time when Treasury have said: "We will take responsibility", you are really saying: "Well, we will pay for it rather than perhaps raising a bond" or something like that, and maybe Deloitte have looked into it. So what they are saying is: "We are assuming the risk for paying for it. You come up with the price and we will pay for it." But they also say, and this would have to be considered against the amount of risk falling to the E.P.C. (Engineering Procurement and Construction) contractor under the contract. To me that risk profile shifted because all the risk was shifted back to the States and away from the E.P.C. contractor.

Mr. J. Richardson:

The answer I just gave was in specific relation to the chairman's question about Deloitte's role. So Deloitte's role was very clearly identified here, and I think it is as clear as it possibly can be there, as to what their role was. Picking up your specific question, you are absolutely right. At that stage, 2007, the project was going to be funded by external borrowing and that, as I have already said, has to be the responsibility of the Treasury and Resources Department, the Treasury and Resources Minister, because under the Public Finances Law they are the only people who can enter into external borrowings. As the project progressed and it became clear that tenders were received and there was a considerable euro element which had to be managed, the Treasury officers continued to take that role. Now at no time - I repeat, at no time - did any Treasury officer or the Treasurer come to me and say: "The goalposts have changed, the scope of this project has changed, we cannot manage the split of it." They accepted that work and they carried on with that element of it, which was the euro management. Now, I cannot be clearer than that. No one ever came to me from the Treasury and said: "We are now getting into different waters. It is a completely different area where we need specific advice, we have not got the capacity or the resource to provide it. You will have to do it on your own." Had they, and I think this is absolutely key, certainly from my position as Accounting Officer, had the officers or the Treasurer come to me during the evaluation period where it was very clear we had the euro element to manage, and we had seen the euro rate fall during that period, because again it is in the C.A.G.'s report, if you look at his graph fairly early on. When you considered where the euro was - it is on page 15 - when we were first working with the project and we were doing the initial estimates you will see the euro rate was up at 1.4,

which is where it had been for many years. It then took a drop in March/April time 2008 down to about 1.2, 1.27, which is where we did the evaluation, and it did not drop significantly until the very end stage of that. But at no stage did anyone from the Treasury ever come to me and say: "We cannot manage this. We need specialist advice. We need different advisers." Had they, I would have used the mechanisms I have used for all the other appointments, and the first line would have been to probably approach Deloitte for their advice as to whether they could take on that role. If they had said, yes, then Eversheds would have been responsible for modifying Deloitte's contract to include responsibility and liability for that advice, they did not, because I was not asked to provide it. Had Deloitte said they could not provide that advice then I would have asked Deloitte to advise me on appointing independent new advisers on investment in the euro currency issues. I did not because I was not asked to. If I had then Eversheds would have produced a contract and made sure that the liability for that information and advice was passed clearly to those advisers. It did not because it never happened. It never came back to me from the Treasury they needed different advice, they were using their own advisers to advise them so it is clear the responsibility rests with the Treasury.

Mr. M. Magee:

Can I ask a follow on question? It is linked to page 65 of the report which was talking about the paper of 6th November, which was a recommendation of the way forward with hedging. One of the alternatives here was to pay a one-off fee to the consortium that won the contract, so was the decision, in terms of picking one of the options there, was that made by Treasury without discussions with other parties because I guess what is in my head was that there is pressure for costs in the project at that point in time and so therefore did they shy away from spending 1.28 million to solidify the position rather than ...

Mr. J. Richardson:

I think you have got to go back a bit further than that and I think it was September, I am not sure exactly when, there was ... it was September. There was a funding working group meeting on 1st September at which stage we had spoken to the contractor and we had a price from the contractor, and that price we had requested and I have seen some of the minutes, I cannot just lay my hands on the minute, but certainly it was in the minutes where we asked the contractor to provide us with a price for managing the euro element of it. The contractor came back with that price which was passed back to the Treasury at this stage and the Treasury from thereon took those decisions. They were consulting with their advisers, Hewetts and Royal London.

Mr. M. Magee:

So there is no pressure on Treasury that if £1.28 would have had to have been paid that would push the contract up to too high a value that would have been untenable? What we are really saying here is they had an opportunity to pay an extra £1.3 million or some figure that would have been ascertained on 14th November; was there any pressure on them not to accept that as an alternative rather than, in effect, letting the thing run with them taking the risk?

Mr. J. Richardson:

On the Treasury?

Mr. M. Magee:

On Treasury.

Mr. J. Richardson:

There is on pressure on the Treasury because the Treasury were managing this and they were the ones advising on which way we should be going.

Mr. M. Magee:
It was their choice?

Mr. J. Richardson:
Absolutely.

Senator B.E. Shenton:
Do you not think that you should have perhaps got a quote from the successful bidder earlier than that with regard to negating the currency risk so that you could compare all the bids on a like for like basis?

Mr. J. Richardson:
Well, the bids are all compared on a like for like basis all the way through at 1.2729. All the way through the evaluation process, as is seen in the report here, we use 1.2729 as our evaluation point. At that stage when you look back at page 15 you see that the rate throughout that whole evaluation process was pretty stable.

Senator B.E. Shenton:
The fact though they were willing to give you terms whereby they could take the currency risk off you, if they had given you that at an earlier stage you would not have had to use rough euro exchange rate calculations to work out which was the best bid.

Mr. J. Richardson:
I think there is an element of looking back in hindsight there because we did not know at that stage we were going to see that significant drop-off further on. So, yes, the answer is we could have gone to them earlier on but the rate was remaining fairly static, as you can see from that draft at that stage.

Mr. K. Keen:
Was there an original intention to just take a bid in sterling full stop, sort of thing? It seems, from reading the report, that was the intention at one case and I think it is mentioned, paragraph 74 on page 20, and it seems given that that would have been a possibility, Mr. Richardson, that you would have just ... the States would never have been exposed to the currency risk in the first place is because they would have received bids in sterling.

Mr. J. Richardson:
The specification was written requesting the bids in sterling.

Mr. K. Keen:
Thank you, I recall that.

Mr. J. Richardson:
No, the specification was written that the bids were to be received in sterling but clearly both bidders ...

Mr. K. Keen:
Refused that?

Mr. J. Richardson:
Well, both bidders, you have to respect where they were coming from, they wanted to put in the most commercially attractive bid to try to win the job and they obviously took the decision that they would put in their bid with a mix of euro and sterling. Now both did exactly the same thing.

Senator B.E. Shenton:

You could perhaps also put that they realised what the currency risk was better than the Treasury Department or the States of Jersey and they did not want to take the risk on that the States of Jersey seem to be more than happy to take on.

Mr. J. Richardson:

Again when you go back to that graph and you look at the trend, there clearly had been one move in the rate from the fairly traditional 1.4 down to the 1.26, 1.27 at that time of bidding, and they obviously decided that they would put the bid in euros and in sterling.

Mr. K. Keen:

Presumably you put that in your specification on advice and for good reason, and then allowed it to be negotiated away, effectively.

Mr. J. Richardson:

We did not negotiate it away, both bidders decided to ... had one bidder put in a fixed price in sterling and one bidder put in a euro/sterling rate there would have been a comparison to make and there would have been a risk to evaluate it. But it was not the case.

Senator B.E. Shenton:

Going back a little bit please, John, if you do not mind: who was responsible for engaging Deloitte and what was seen to be their role?

Mr. J. Richardson:

T.T.S. were responsible for engaging Deloitte as our financial advisers. Their role was to advise us on the financial analysis of the bids and to use their expertise on evaluating other similar bids for large power generating facilities and E.f.W. waste facilities on whether the bids were reasonable, was appropriate, doing the N.P.V. (net present value) calculations, life cycle costing for us, and in addition to that, which is quite important, there was a requirement that came out of P.95/2005 that we had to go back to the States with a cost benefit analysis with our preferred solution against other technologies.

Senator B.E. Shenton:

Were Deloitte working with you right the way through with regard to the euro/pound sort of risk that were running at the time in 2008?

Mr. J. Richardson:

No, Deloitte were very, very clear about their role because it was very clearly laid out in their terms of reference. Their role was about managing the evaluation of the tenders, the modelling; you can see it, it is on - again I come back to this page 18, page 19 of what the roles were. That their role as project financial adviser would be to develop the financial model for that project.

Senator B.E. Shenton:

So they did not give you any advice at all about hedging and the risks?

Mr. J. Richardson:

That was specifically excluded at the request of the Treasury, which is here, I am not going to repeat it. It is here in the minutes, in the notes. Had the Treasury come to me and said: "We cannot manage the hedging, the euro investment issue" then I could not have asked Deloitte, without modifying the terms of reference and their contract, and hence their liability, to do that. There was a funding working group meeting, I think it was the last one which was November ... I think you have had all these minutes as part of the C.A.G.'s report, where the financial adviser from Deloitte was ... he was not present at the meeting, he was on the telephone conference call and there was discussion about it. It is the meeting of

1st September. There was this specific reference to the financial adviser from Deloitte here, but he was very careful in the advice he was giving because it was not in his terms of reference. Clearly, any professional firm, any professional accountancy firm, is going to be very cautious, if it is not in their terms of reference then liability does not rest with them, and had we wanted it to we would have to change that contract.

Senator B.E. Shenton:

Treasury are now arguing that it was not in their terms of reference and yet ...

Mr. J. Richardson:

I think it goes back to an earlier point; I accept there were not formal appointment terms for the Treasury to advise us, that is clear, there were not. But again, I cannot give any clearer than what was in that first funding group meeting. Treasury took responsibility for that project. They never came back to us with any changes to it.

Mr. K. Keen:

I have obviously misunderstood the C.A.G.'s report, but on page 20, the final paragraph of the Deloitte terms of reference, which I assume are the ones that were approved, says: "To ensure that proper financial advice is provided to the States of Jersey to enable it to take a robust decision on the proposed scheme." It seems to me that given that there was a currency element it would be impossible for them not to take that into account. Indeed, they do not carry on and say on the C.A.G.'s paragraph 75, on page 20: "It was clear from an early stage of Deloitte's involvement that foreign currency risk would be a significant match in the evaluation of various bids. This was subsequently covered in Deloitte's evaluation report." Where I have misinterpreted it seems to me that at that point Deloitte were doing quite a good job of saying: "There is a foreign currency risk that needs to be managed here."

Mr. J. Richardson:

I think your comment is absolutely right, but I think you have got to read it very carefully. What it says is: "Deloitte's involvement at the foreign currency risk would be a very significant matter in the evaluation of the various bids." It is the evaluation of the bids. It is not how the States managed the funding and the hedging or otherwise of that currency. It is very clear. The C.A.G.'s approval is absolutely clear. It is the evaluation of the bids.

Senator B.E. Shenton:

Deloitte were more interested in the beauty parade than the actual execution.

Mr. J. Richardson:

That is what their role was. Deloitte were not employed to advise us on hedging of euro. They were involved in ... they were clearly, and it is absolutely clear there, their role was to advise us on evaluation of bids.

Mr. A. Fearn:

Mr. Richardson, if I may focus on the project management side of things. Would you say there was an overarching project control and who that individual was?

Mr. J. Richardson:

The whole project was managed under the O.G.C. (Office of Government Commerce) system. It was the first time ... because of the scale of this project we used a formalised method of project management. As we already discussed, as Accounting Officer I was responsible for the management of that project and I had a director of waste strategy project and he was reporting directly to me for the management of the project but, as I made it very clear already, there was a clear divide between the role

and responsibility for managing the contract and the project as opposed to managing the funding and hence the currency we were talking about this morning.

Mr. A. Fearn:

Thank you. Was there a project steering group that sat to take sessions such as we have heard over the period of the project?

Mr. J. Richardson:

Yes.

Mr. A. Fearn:

The project clearly moved the incorporation of currency risk being a key component for the projects got moving; how was that managed in your view?

Mr. J. Richardson:

The project brief clearly lays out the method of procuring and managing the project. There is a project management structure of which using the O.G.C. system, and that is the O.G.C. system we used for it, the sponsoring Minister is the Minister for Transport and Technical Services, the project sponsor was myself, the Chief Officer for Transport and Technical Services, project manager, the Director of Waste Strategy Projects, lead professional was our head of technical consultant, and then under that group we had a subgroup of advisers which consisted of Eversheds, Rosper(?), HSBC for our insurance advisers, Deloitte and 3 or 4 other consultants, they are all here. There is a very clear responsibility set out. The project board met weekly and the main board, which included the Head of Corporate Capital from the Treasury met quarterly. So it is very clear, it is all laid out in here in the project brief which, I do not know if you have a copy of, but you are welcome to it. As part of that role there was a requirement to meet and manage the funding side of it and because of our working with Treasury all the way through on this project we set up the funding working group, which is the one that is referred to several times already.

Mr. A. Fearn:

How did that funding working group report into the main steering group?

Mr. J. Richardson:

The funding working group consisted of myself and the Waste Strategy Director, so it was the 2 key players, if you like, on that group. Then as we would have a project board meeting any issues that were coming out of that would have been referred to the project board.

Mr. A. Fearn:

Was the issue of FX hedging or lack of raised during these sub-meetings and how was that issue escalated through into the steering board, if indeed it was discussed at the sub-funding group?

Mr. J. Richardson:

Clearly, with the Accounting Officer which is myself for the project and the Director of Waste Strategy on both the project board and the funding group then that was a very clear transition through, and the issues were then reported to the main project board.

Mr. A. Fearn:

So the issue of the FX hedging, the understanding of that funding board was that that laid solely with Treasury?

Mr. J. Richardson:

Yes, because on the main project board was the Head of Corporate Capital, just for the record he is

referred to in the C.A.G.'s report as A.D.F.I.T.&R., so wherever you see reference to A.D.F.I.T.&R. that was a representative from the Treasury who sat on the funding working group and sat on the main project board. So there were 3 people in effect on the project board; myself, the project director and the A.D.F.I.T.&R. who sat on both the funding working group and the main board.

Senator B.E. Shenton:

Who was the chairman of the funding working group?

Mr. J. Richardson:

I was chairman of the funding working group. It was set up by Transport and Technical Services.

Senator B.E. Shenton:

I just want to go back to ... you mentioned the use of consultants and how - I do not want to be flippant - civil servants love the use of consultants; you employ the consultant to provide an alternative reference and you always make sure that you have got indemnity insurance so that if their advice proves to be incorrect. You mention that you had terms of reference and these setups. Were all the consultants used within the group, except for Treasury because of course the relationship with Treasury is slightly different. This could be looked at as a weakness because there were no terms of reference, there were no set guidelines and so on and so forth. I do not want to ask hypothetical questions but certainly from the responses you have given so far, you would imply that Treasury failed to carry out the task to the level that you would expect from an external consultant; would you not agree?

Mr. J. Richardson:

I am in danger of repeating myself too many times this morning. The role is very clearly laid out. That Treasury took on that responsibility for the funding issues which in the very early days, which was August 2007, as I have already said, was very clear about borrowing money in sterling. The issues that then transpired that came out of that, was about the euro issue and they continued to provide that role, and it was their advice that I relied on to manage the funding and, as you have seen, through the C.A.G.'s report, the advice they took from their advisers.

Senator B.E. Shenton:

Are you satisfied with the way they carried out their role?

Mr. J. Richardson:

Clearly from where we have ended up with this project with the issues to do with hedging, then there were some questions as to the validity of that advice, and the C.A.G.'s report is very clear about where his opinion is in terms of how that was managed and the issues that arose from it.

Senator B.E. Shenton:

Of course, because the advice is coming internally we do not have the indemnity insurance to fall back on that we would have with another consultant.

Mr. J. Richardson:

Had it been very different to that, where had the Treasury said to me they could not provide that advice then I would have appointed independent financial advisers with that expertise and they would have been ... their contract would have very clearly had the indemnity required in it.

The Connétable of St. Helier:

Sorry, just coming back again, the very last comment then that had Treasury not said they could not give you the advice and you would have appointed an external consultant to give you that advice, from that I am taking with that comment you assumed your responsibility was for the funding and the hedging?

Mr. J. Richardson:

Had they passed that responsibility back to me by saying they could not manage it then yes it would have been with me, but it was not.

The Connétable of St. Helier:

So up until that point ... well that point never occurred, so right the way through to now you still believe that was a Treasury function?

Mr. J. Richardson:

Absolutely.

The Connétable of St. Helier:

Thank you.

Mr. K. Keen:

Mr. Richardson, just one more thing and you are probably going to have to repeat yourself again, but I just think for the absolute clarity, the thing that you rely on in passing the funding risk to Treasury and Resources is this third paragraph on page 19 where a member of Mr. Black's staff, A.D.F.I.T.&R. noted that the funding source risk then fell to the Treasury and Resources and this would have to be considered against, et cetera. Was that in your view sufficient to pass that responsibility to the Treasurer?

Mr. J. Richardson:

No. As I said at the very beginning, the responsibility was a States decision. It was P.95/2005. It charged them, it cannot be clearer. So the responsibility for the funding was passed by States, P.95/2005, to the then Policy and Resources Committee who were responsible for capital funding, capital programme, which clearly when we moved in 2006 to a ministerial government, transferred to T.&R. (Treasury and Resources). It cannot be clearer. Then from that point on the Treasury became involved and continued to be involved with us all the way through the project and, yes, that is where the Treasury Officers defined the roles. That meeting was the crucial meeting which defined the roles and responsibilities.

Mr. K. Keen:

But they had already been in a formal sense in P.95/2005?

Mr. J. Richardson:

Yes.

Mr. K. Keen:

All I was getting at, I guess, was it did not seem to me that that amount of responsibility could just be passed by a sentence in a minute given what has come, but you have clarified that. Thank you.

Senator B.E. Shenton:

Thank you very much for coming along.

Mr. J. Richardson:

Thank you.