

# STATES OF JERSEY

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

**MONDAY, 13th JULY 2009**

**Panel:**

Senator B.E. Shenton (Chairman)  
Connétable J.M. Refault of St. Peter  
Connétable A.S. Crowcroft of St. Helier  
Senator A. Breckon  
Mr. A. Fearn

**Witnesses:**

Senator T.A. Le Sueur (The Chief Minister)  
Mr. W.D. Ogley (Chief Executive, Chief Minister's Department)

**Also present:**

Mr. C. Swinson (Comptroller and Auditor General)  
Ms. A. Heuston (Committee Clerk)

**Senator B.E. Shenton (Chairman):**

Just to welcome Bill and Terry to the meeting and thank them for coming along. I will also do a bit of housekeeping and read this note: "The proceedings 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 for anything said during the hearing unless they say something which 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." Just to go round the table, you know Simon, Alan, myself and John. Anna is our P.A.C. (Public Accounts Committee) support and this is Alexander Fearn who is a member of the P.A.C. Committee.

**Senator T.A. Le Sueur (The Chief Minister):**

Good afternoon. Pleased to meet you.

**Mr. A. Fearn:**

Thank you, and you.

**Senator T.A. Le Sueur:**

I also know the Comptroller and Auditor General who is sitting there.

**Senator B.E. Shenton:**

It is slightly unusual, I think, for the P.A.C. to call the Minister to a public hearing but in this particular instance we did think it would be worthwhile to get you along in view of some of the submissions that have been given to us so far.

**Senator T.A. Le Sueur:**

Okay.

**Senator B.E. Shenton:**

When Senator Ozouf appeared before the panel he said that he was aware of the hedging problem within a few hours of taking office and that it was one of the most serious things he had to deal with. When did you first become aware that there was a problem with regard to the currency hedging issue?

**Senator T.A. Le Sueur:**

Some time early in December. I cannot give you an exact date but certainly early in December.

**Senator B.E. Shenton:**

So it would be around about the time that Senator Ozouf was aware and not before that?

**Senator T.A. Le Sueur:**

Probably before because I was speaking to the Treasurer from time to time on a variety of things, so while equally Senator Ozouf would have been aware when he became Treasury Minister, I was aware probably slightly before he was Treasury Minister but I made him aware when he took over from me.

**Senator B.E. Shenton:**

When you did become aware what action did you take?

**Senator T.A. Le Sueur:**

I said to the Treasurer that we have this problem that needs to be resolved.

**Senator B.E. Shenton:**

Was it explained to you why the problem had arisen?

**Senator T.A. Le Sueur:**

Not in any great detail. I was more aware that there was a problem than how it had arisen.

**Senator B.E. Shenton:**

You did not ask as to how the problem came about?

**Senator T.A. Le Sueur:**

I was concerned not so much that the problem had come about; I was just concerned that a policy which should have been implemented had not been implemented.

**Senator B.E. Shenton:**

Going back to the policy implementation, the policy obviously was contained within the report which accompanied the proposition for the incinerator.

**Senator T.A. Le Sueur:**

Correct.

**Senator B.E. Shenton:**

As Minister, where do you think your responsibility lies when you bring a proposition or report to the House where you make facts that are going to be carried out?

**Senator T.A. Le Sueur:**

The proposition, of course, Projet 73, was concerned primarily with how the Energy from Waste plant should be funded, whether it should be from borrowing or from the consolidated fund, and my proposal was to do it from the consolidated fund. Contained within the report were also comments to the effect that the currency risk would be eliminated at the time that the contract was finalised: "The exchange risk will be eliminated upon the signing of the contract at which time the euro/sterling rate will be deemed to freeze."

**Senator B.E. Shenton:**

When you brought that to the States, you are in charge of policy, the civil service are in charge of enacting that policy. Who in your opinion was responsible for making sure that policy was enacted?

**Senator T.A. Le Sueur:**

The ultimate responsibility for ensuring the policy is acted upon must remain with the accounting officer of the Treasury, which is the States Treasurer.

**Senator B.E. Shenton:**

Just going back to the role of the Treasurer of the States, under the Public Finances Law are you aware of who the Treasurer reports to?

**Senator T.A. Le Sueur:**

I believe the Treasurer reports to the Treasury Minister but I would have to look at the Public Finances Law to reassure myself on that point.

**Senator B.E. Shenton:**

Would you be surprised to find that the Treasurer actually reports to the States itself?

**Senator T.A. Le Sueur:**

That may be within the law but as a day-to-day practicality I do not see the States Treasurer turning up in the States every 2 weeks to report to them so I am not sure in what context you are asking the question.

**Senator B.E. Shenton:**

I am just trying to find out the roles and responsibility and the reporting line. So your assumption is that the Treasurer of the States reports to the Treasury Minister?

**Senator T.A. Le Sueur:**

The Treasurer as accounting officer has an obligation to deliver the policy which we have asked his department to enact and to be accountable for that and I would presume, at least in the first instance, he would do that through the Treasury Minister. It may be that his ultimate responsibility lies to the States but I would have thought that that was a matter of the wording within the law rather than the practical application. In my 20 years in the States I have never known the States Treasurer make a formal report to the States, other than, of course, in the context of the report he makes each year in terms of the annual financial statements.

**Senator B.E. Shenton:**

Moving on then, one assumes you had confidence when you brought the report to the States that there was enough currency and cash management expertise within the Treasury Department. Am I right in

assuming that?

**Senator T.A. Le Sueur:**

I do not think it is right to assume that I knew that there was adequate currency expertise within the States Treasury. Indeed, it is unusual for the States Treasury to be involved in currency transactions so even if there were some expertise it would not have been a primary function of the Treasury to look at that. The States policy, as I understand it, in respect of currency transactions is to translate them into sterling virtually instantaneously, whether they be payments or receipts, and that was effectively what the policy within P.73 stated that if there was a euro exchange risk it would be eliminated by converting it to sterling.

**Connétable J.M. Refault of St. Peter:**

Thank you. Just picking up on that point there, would it be fair to say, therefore, that you assume that the Treasurer assumed he had the right amount of staff in there to do the currency exchange? You say you were not sure; did you assume in passing down the instructions to him that he would make sure he had the right staff in place?

**Senator T.A. Le Sueur:**

Yes. I may be naive but I would have thought that a simple matter of converting sterling to euros or euros to sterling was an operational matter and probably a fairly straightforward operational matter.

**The Connétable of St. Peter:**

Can we just go back a little back now to when the actual projet was accepted by the House. Can you recall how the instruction was passed on to the then Treasurer from the then Treasury Minister that it was his responsibility to do that hedging?

**Senator T.A. Le Sueur:**

The instruction contained in the proposition was: "To permit the withdrawal of an additional £102,810,000 from the consolidated fund in order to fund the Energy from Waste plant as set out in the report of the T.T.S. Minister." So the instruction would have been given to the States Treasurer to earmark sufficient funds in the consolidated fund.

**The Connétable of St. Peter:**

Whose responsibility would it have been at that point to have given him that instruction to do that?

**Senator T.A. Le Sueur:**

I do not believe he would have needed an instruction specifically. The States had authorised it and so the instruction effectively came from the States.

**The Connétable of St. Peter:**

At a previous hearing the now Treasury Minister had the view that the item we are talking about, about converting the euro to sterling, was within the report that had not been accepted because it was not part of the proposition. The States only voted on the proposition and this element was contained within the report and therefore it was not agreed by the States as such. So would it be fair to accept that the Treasurer of the States then would have assumed that he had to do that without a specific instruction to do that from somebody else?

**Senator T.A. Le Sueur:**

The Treasury has overall financial responsibility for the project and so I would have assumed it would be contained within that overall responsibility. I do not see it as an action necessarily arising from this proposition directly because I think the report on the proposition was stating what was already envisaged

in the Treasurer's mind.

**The Connétable of St. Peter:**

Going back to a previous hearing, the Chief Officer of Treasury told this panel that he believed it was the accounting officer at T.T.S. (Transport and Technical Services), the Chief Officer of T.T.S.'s responsibility to carry out the hedging. Would that be fair for him to say that?

**Senator T.A. Le Sueur:**

I do not think so. I think the financial responsibility for the funding of the contract was down to the Treasury and the Treasury Minister and the States Treasurer. The responsibility for the contract is that of T.T.S. but it is not the same thing as the responsibility for the funding of the contract, for the provision of funds in order to deliver.

**The Connétable of St. Peter:**

Just to conclude, my final question for you, Chief Minister: can we assume therefore from what we have just discussed there was no clear instruction passed to the Treasurer, rather an implied instruction?

**Senator T.A. Le Sueur:**

I think that would be a fair comment, yes.

**The Connétable of St. Peter:**

Thank you.

**Connétable A.S. Crowcroft of St. Helier:**

Can I come in with a couple of related questions really. I am interested that there does not appear to have been any political oversight once the decision was made that the exchange rate risk would be eliminated. It was assumed that officers would go off and do that. In my experience, as a politician, particularly a decision of this magnitude with this kind of money tied up in it, I would want some updates from my officers that this was actually being carried out. At least 6 months passed between 20th May when the States approved P.73 and the signing of the contract in November that year, so a week short of 6 months.

**Senator T.A. Le Sueur:**

I think in fact Projet 73 was lodged in May and was debated in July.

**The Connétable of St. Helier:**

Still a good period.

**Senator T.A. Le Sueur:**

Then there was a reasonable period between.

**The Connétable of St. Helier:**

Did you as Treasury Minister not want to find out how it was going, were we on course to meet the promises made, whether it is in the report or the proposition, were we on course to fulfil the expectations of the States that what they voted for was actually happening?

**Senator T.A. Le Sueur:**

Not what they voted for, it was what was contained in the report. They voted that the States could transfer money from the consolidated fund.

**The Connétable of St. Helier:**

They made that decision on the assumption that the report raises the prospect of a currency risk and then puts it very firmly to bed by saying it will be eliminated at the time of the signing.

**Senator T.A. Le Sueur:**

At the time of the signing, so in the intervening period before the signing was a period of limbo. We did not know what the final contract price would be, we did not know the total overall costs of the project, but whatever it was that was going to be resolved at the time that the contract was signed.

**The Connétable of St. Helier:**

You relied on the officers to be working towards that end?

**Senator T.A. Le Sueur:**

I would not have relied on them to be doing a great deal of work at that time. They could have fixed an exchange rate but it was not envisaged that they were to fix an exchange rate other than at the time of the contract signing.

**The Connétable of St. Helier:**

What about the role of the Corporate Management Board? It surprised me to learn at a previous hearing - and I am sure I will be corrected if I am wrong - that the whole matter of the financing of the incinerator was never an agenda item in that period between the States agreement and the signing of the contract. It struck me, again given the significance and the size of this, that it is surprising that the key players at chief officer level were not working more corporately to ensure that all the i's were dotted and the t's crossed before that document was signed.

**Senator T.A. Le Sueur:**

I would not have thought it was necessarily something for the Corporate Management Board which contains a variety of officers, some of whom may have had a direct interest in the Energy from Waste plant, the majority of whom I would suspect probably did not. There was a funding group and I think those were the relevant chief officers who needed to be involved but I would not have expected the C.M.B. (Corporate Management Board) as a whole to have any particular involvement. I am not aware of the day-to-day activities of the C.M.B. and you would have to ask the Chief Executive or an officer who was involved there.

**The Connétable of St. Peter:**

Can I come in and ask the Chief Executive on that point? This is the first time we have heard mention of a funding group. Could you give us a bit more information on the funding group?

**Mr. W.D. Ogle (Chief Executive, Chief Minister's Department):**

Yes. The reference to it is set out within the Comptroller and Auditor General's report and it came out of the project management structure set up under T.T.S. to review funding which was then superseded by the report to the States on 20th May that you have talked about, in which case it moved to the Treasury. The funding group then continued in being, that group of officers, to oversee the funding and the management of the exchange rate. So it was that group that has been referred to and that had representatives from T.T.S., particularly T.T.S. and the Treasury.

**Senator B.E. Shenton:**

You mentioned at the very start that you were unaware of the problem until December. When the contract was going to be signed an email message was sent from T.T.S. to Treasury saying that they had great concerns about the fact that the contract was going to be signed and that the cost had risen significantly joined to the exchange rate. The response from Treasury was very much: "Go ahead and sign and the Minister will agree to it." They gave that sort of assurance that the Minister would agree to

it and yet one assumes by your previous answer that they did not run it past you that you would agree to it.

**Senator T.A. Le Sueur:**

Can we be clear what we are talking about here? I think there is a question of the difference in exchange rate which had arisen up to something like the 11th. I will try and find the date

**Senator B.E. Shenton:**

The key email was on 13th November.

**Senator T.A. Le Sueur:**

13th November, so there was a currency fluctuation which had caused a shortfall up to that date and I was alerted to that and made a decision - it is on page 52 of the report of the Comptroller and Auditor General - based on the availability of sufficient funds in order to meet the liability up to that date. I was advised in a report that there was sufficient funds within the capital risk reserve to meet that fluctuation and - it was one of the few decisions I did take in this respect - I authorised those funds to be used for that purpose.

**Senator B.E. Shenton:**

I think you were copied in on this email. The email was from the Chief Officer, Transport and Technical Services whose Minister was about to sign the contract, sent at 1010 hours to the Treasurer. Copies were sent to the Treasury and Resources Minister as well. The first line says: "As a result of a very significant change in the euro exchange rate over recent days we have incurred a large increase on the contract price for the new E.F.W. (Energy from Waste) plant. We are due to sign the contract tomorrow which is the last day of the extension. The movement of the euro versus sterling over the past 48 hours has had a very significant impact on the contract value below." Treasury's response to that email was: "Go ahead and sign." The fact that they were drawing your attention to the exchange rate problems at that date does not really coincide with your assertion that you did not know about it until the first week of December because according to this you agreed to sign the contract even though the cost was higher.

**Senator T.A. Le Sueur:**

I was aware that the exchange rate was fluctuating daily and I was aware that we had resolved the exchange rate fluctuations up to that date.

**Senator B.E. Shenton:**

They use the word "significant" twice. In your opinion what does the word "significant" mean?

**Senator T.A. Le Sueur:**

It says "over recent days" and certainly in the days leading up to 13th November there had been significant movements.

**Senator B.E. Shenton:**

Did you respond to this email that you were copied in to at all or did the Treasurer of the States take the ... who took the decision to go back to T.T.S. and say: "Go ahead and sign"?

**Senator T.A. Le Sueur:**

It was on the same date following that email which you referred to that I confirmed that the capital risk reserve could meet those fluctuations.

**Senator B.E. Shenton:**

So you were aware that the exchange rate had suffered a very significant change, that T.T.S. had asked you whether it was still okay to sign the contract and you had said yes?

**Senator T.A. Le Sueur:**

Yes.

**Senator B.E. Shenton:**

What did you do after that, bearing in mind that you assert that no one told you about it until December?

**Senator T.A. Le Sueur:**

After that I delegated to the States Treasurer the authority to deal with the ongoing transactions and that is recorded in the notes of the Comptroller and Auditor General as occurring on 14th November, the day the contract was signed.

**Senator B.E. Shenton:**

The basis that you made the decision to go ahead was I assume just because the actual cost was within the parameters set by the proposition. Is that correct?

**Senator T.A. Le Sueur:**

Yes, and because the fluctuations had been met within the capital risk reserve. There were fluctuations, I point out, for reasons other than just the currency fluctuations. There were variations for a number of things as often occurs in a contract of that magnitude.

**The Connétable of St. Peter:**

Can I just come back again to the funding group to the Chief Executive Officer, if I may? Given the fact that the funding group had a representative of the Treasurer who was put in there to look after the Treasury interest, is it conceivable that the Treasury Minister assumed he had delegated his authority to that group to make that decision on funding and hedging and minimising the risk?

**Senator T.A. Le Sueur:**

The only authority I delegated was a specific authority delegated to the States Treasurer.

**The Connétable of St. Peter:**

So therefore he could not assert that he assumed that delegation would pass further down to the Treasury representative on the funding group?

**Senator T.A. Le Sueur:**

Well, he may assume things but I think it would be an unfair assumption. The fact that you delegate to party A does not mean that party A can then delegate that authority to party B, C or D.

**The Connétable of St. Peter:**

I agree with you. Thank you for your clarity on that one.

**Senator B.E. Shenton:**

If I could just go back on something else that you said earlier. We were talking about the currency expertise within the department and you quite rightly said that you would expect the department to outsource expertise where it was not within the department. Are you satisfied within Treasury that when they do ask for external advice that it is properly documented as to what advice they are seeking? We have had a number of advisers give us evidence that it was very vague and generic advice that they gave rather than specific advice to do with this issue.



**Senator T.A. Le Sueur:**

I presume there you are talking about primarily Hewitts and Royal London?

**Senator B.E. Shenton:**

Yes.

**Senator T.A. Le Sueur:**

Both of whom were appointed as advisers for specific purposes. I think what was being sought from these people in this case was advice on the related matter rather than what was at the heart of their normal contract. So, in terms of what was specifically within their mandate, without having reviewed that mandate I do not know that would have specifically been referred to in that. I suspect probably not but that does not alter the fact that they were the people with a greater level of expertise than was possessed by the staff in the Treasury.

**Senator B.E. Shenton:**

Are you satisfied as Treasury Minister that record keeping with regard to decision-making processes within the Treasury Department to be of a standard ... certainly from my brief experience on the executive there was a lack of formalised decision-making notes and it was very much down to the junior staff to make a note of what they had been told as opposed to the senior staff giving proper direction.

**Senator T.A. Le Sueur:**

I am satisfied that the decisions I took as Treasury Minister were taken on the basis of fully documented advice prior to my making that decision and I would expect that advice to be verified before being presented to me. Indeed, it was normal practice for any advice given to the Minister to be produced by an officer and countersigned or verified by the Treasurer, or in his absence the Deputy Treasurer, but certainly a senior official of the Treasury, normally the Treasurer. So I would expect any advice given to me to make a decision on would be based on full and clear information. I cannot speak about the decision-making and recording activities within the department because that is an operational matter which I would have left to the States Treasurer.

**Senator B.E. Shenton:**

Going back to the decision of 14th November or whenever it was when T.T.S. said: "Should we go ahead and sign?" and the Treasury Department went back and said yes, was that you making that decision or was that just the Treasury Department as a whole making that decision?

**Senator T.A. Le Sueur:**

I make this quite clear: the only decision I was asked to make was to agree the transfer from the capital risk reserve of sufficient funds to meet the difference in price between the original valuation and the contract value.

**Senator B.E. Shenton:**

Were you told of the exchange rate problem at that time by your Treasurer?

**Senator T.A. Le Sueur:**

Yes, because the exchange rate problem, as you called it, was one of the factors contributing to the change in cost.

**Senator B.E. Shenton:**

Right. So the exchange rate problem was known to you in the middle of November not early December?

**Senator T.A. Le Sueur:**

I think it is rather loose to talk about the exchange rate problem. The fact that the exchange rate was fluctuating was known to me in November and it was on 14th November that I made a decision authorising the exchange rate variations up to that date to be covered from the capital risk reserve.

**The Connétable of St. Helier:**

Can I ask why when the contract was signed nobody referred back to the proposition P.73 and implemented what the States ... okay, it was not in the proposition, it was in the report but the States Members had asked very few questions about currency fluctuations because of the assurances in the proposition.

**Senator T.A. Le Sueur:**

Hindsight is a wonderful thing but the whole thrust of Projet 73 was how the thing was to be funded, whether it was to be funded from the consolidated fund or by borrowing. The exchange rate fluctuations, as you say, were contained within the report but if you had asked me in November what is P.73 all about I would have said it is about the consolidated fund.

**The Connétable of St. Helier:**

Have steps been taken to ensure that, whether this is done by the Chief Executive Officer or by individual heads of department, whenever the States approve something there is somebody appointed to make sure that when we get to the point of implementing the decisions of the States that what the States did is followed through? If we do not do that then the point of the States having these debates begins to seem rather pointless.

**Senator T.A. Le Sueur:**

Yes, absolutely. I cannot disagree with that. Yes, there should be a procedure for ensuring that whatever policy is agreed by the States, or indeed is agreed by the Minister, is implemented and that is why the people responsible, the accounting officers responsible for doing that, need to be held accountable.

**The Connétable of St. Helier:**

Is that policy in place now would you say or is it something that will arise perhaps as a result of this?

**Senator T.A. Le Sueur:**

I think probably this issue has focused the mind, if you like. So I would think it is very much in people's minds now and I would be very surprised if there were not procedures in all departments to ensure this is properly carried out.

**The Connétable of St. Peter:**

Can I come back, Chief Minister, just picking up on that point? You make the point the accounting officer would be accountable for this type of procurement implementation and you hope that there would be necessary strategies and provisions put in place in departments now. Are you aware that that is actually going on or is that really a question for the Chief Executive Officer?

**Senator T.A. Le Sueur:**

I certainly could not categorically state that it is going on in all situations. The Chief Executive Officer may be able to.

**The Connétable of St. Peter:**

Can I pass the question over then? Are the strategies being put in place or are they being drafted to avoid a repetition of this type of occurrence in the future?

**Mr. W.D. Ogley:**

No, the chief officer recommends a decision, because a lot of the States policies are then effected by ministerial decision, will ensure that goes forward, that the States policies have been followed through. If it is merely an officer then implementing a series of policies it is for them to check that. I think, as I have said before when I came to the P.A.C., I cannot give you a 100 per cent guarantee that it happens in every case. I wish I could but we certainly expect accounting officers to do so.

**The Connétable of St. Peter:**

Sorry, that does not give me a lot of comfort at the moment. We spoke about the accounting officers will be accountable, and on this occasion one could reasonably assume the T.T.S. Chief Officer was the accounting officer for that project but in this case he was not the accounting officer because the accounting officer, from the point of view of the funding, seems to have been the Treasurer of the States. So therefore the normal expected line of accountability did not seem to hold to the norm. I can understand why that was. The ex-Treasury Minister explained why that was and I can accept that and this was perhaps and hopefully a one-off occasion but are there plans and procedures in place now to ensure that this type of gap in the accountability or the translation of accountability from one accounting officer to another cannot reoccur? That is my question on that one.

**Senator T.A. Le Sueur:**

I am trying to think of any other possibility in which that might arise and at the moment I am scratching my head. This was a pretty unusual situation. I hate to say never, it could never happen in any other situation, but at the moment I cannot think of any other one readily coming to mind.

**The Connétable of St. Peter:**

But surely it is something that the States does all the time, that we make decisions in the States, we move quickly on. One came up today which was the terms of reference for the Town Park Steering Group, which were very specific, had been left behind in the dust and people are beavering away with new things. So I think the States are quite bad at making sure that decisions they make are fixed and are implemented and if they are not implemented the States advised that those previous decisions had been, for whatever reason, superseded.

**Senator T.A. Le Sueur:**

Yes, and I think at the moment there is a clear States decision, if you take the Town Park analogy, that the States will deliver a town park on that site in accordance with projet whatever it was of whenever it was. It may well be that in the fullness of time that decision gets superseded. At the present time it has not been superseded.

**Senator B.E. Shenton:**

If you could turn the clock back how would you co-ordinate this going forward between the 2 accounting officers? How would you structure it going forward?

**Senator T.A. Le Sueur:**

I think there needs to be absolute certainty about clarity of roles and I believe that there is going forward, so I do not think that will arise again.

**Senator B.E. Shenton:**

You cannot really run a business on “let us hope it does not happen again”.

**Senator T.A. Le Sueur:**

No. Well, up to a point you can. This to me was very much an isolated transaction. I think it is not

something which happens every year, so it is not going to happen next year.

**Senator B.E. Shenton:**

What do you perceive the role of the Corporate Management Board to be in something like this where it is the co-ordination of different departments on a large project?

**Senator T.A. Le Sueur:**

I do not think that the Corporate Management Board has a role to play in this one. The decision had been made by the States. It is not for the Corporate Management Board to second guess that decision, nor is it up to the Corporate Management Board to implement the decision. So I fail to see any particular role in this particular case for the Corporate Management Board. There might be if there was something going across every single States department and, again, it is rare to think of a specific capital project which would involve that. I can think of several States policies, for example on pay policy and how that is implemented, where there could be a Corporate Management Board role across the board but certainly not in terms of your normal capital project.

**Senator B.E. Shenton:**

Maybe I am being a bit stupid here but what you are saying is that you have not changed anything because you do not think this sort of thing will come up again?

**Senator T.A. Le Sueur:**

I certainly did not say we had not changed anything. I think what we have done now is to review existing procedures and strengthen them in terms, for example, of the way in which we deal with currency transactions.

**Senator B.E. Shenton:**

Personally I think this goes beyond currency transactions. It goes into how the States operate and how it co-ordinates between departments and where areas of responsibility lie.

**The Connétable of St. Helier:**

It is about the risk to the States as well. I would have thought if you had got a regular meeting of the best brains in the civil service and the best remunerated people in the civil service you would want them to consider all aspects of ongoing risk to the Island. That seems an ideal opportunity. I can understand that you are saying that they did not have a role in this instance and we know that they did not discuss it as an agenda item but surely moving forward it would be wise to say that major capital projects will come within the ambit of the Corporate Management Board to consider.

**Senator T.A. Le Sueur:**

I think there is a danger there that you blur the lines of accountability. It is quite clear that any capital project needs to have an accounting officer and not an accounting board. I think there is a danger that if you have the Corporate Management Board it subsumes the role of that accounting officer and if you do get any problem, which I hope we would not, then it is far more difficult to say who was responsible. The board has no status in law; accounting officers do. So I would far sooner have accountability of a named individual rather than a board. As I say, I am speaking here without experience about the activities of the board and if Bill wants to add anything on that he is welcome to do so.

**Mr. W.D. Ogley:**

To be very clear, there is a financial direction, as you know, 5.6 on the control of capital expenditure, which makes very clear the roles and responsibilities that have to be assumed and fulfilled. When the contract was signed the T.T.S. Chief Officer had followed that direction and had put in place the necessary checks, the only difference being, as I explained before, that the Treasurer is responsible for

the provision of funding, and that was made clear to the States in May. In normal contracts that are sterling-denominated it is the Treasurer's responsibility to deliver the sterling-denominated sum. The Chief Officer manages within that, including managing all the risks and accepting all that accountability. The same applied for this except that it was the Treasurer that had been responsible for managing the exchange rate risk, as the Chief Minister has explained. The Chief Officer of T.T.S., in fulfilling his responsibilities under 5.6, had sought confirmation that the funding was available - you have concentrated a fair bit on that today - and had received that confirmation. Sadly, clearly that confirmation was not entirely reflective of what had actually happened at that point. I do not think that can be laid at the responsibility of the accounting officer who is managing the project within that sterling-denominated non-risk, as it were.

**The Connétable of St. Peter:**

Thank you very much. The way you have just described that is evidence to me that there is a clear line of accountability. I am sorry to come back again to this difficulty that I have that there seems to be an impression we have drawn as we are going through this investigation that the accountabilities are transferrable.

**Senator T.A. Le Sueur:**

If you have gained that impression then I am sorry because I think the accountabilities are quite clear.

**The Connétable of St. Peter:**

Well, I agree with you but in some of the submissions we have had from some of the officers to this panel that has not been clear. They believe that they have been able to delegate their responsibility and the accountability to be getting jobs done. Are steps going to be made to reinforce where the accountability lies, at the point of delivery of the task, at the top of the tree?

**Senator T.A. Le Sueur:**

I am surprised if accounting officers are not aware of their obligations but certainly if they need to be made further aware, yes, that will need to be done. I accept that in this particular case there was an uncertainty because of this split function, because of this currency involvement. I think if you took any other capital project you would say there was a clear accountability to a single point of contact and that accounting officer is fully aware of his or her responsibilities.

**Senator B.E. Shenton:**

You have used the word "accountability" a lot. What does accountability actually mean?

**Senator T.A. Le Sueur:**

I suppose you could say the person with whom the buck stops. It is the person who takes responsibility for carrying out decisions made by the States or the Minister.

**Senator B.E. Shenton:**

The person where the buck stops that is responsibility. What is accountability?

**Senator T.A. Le Sueur:**

Accountability is being able to demonstrate how that work has been carried out.

**The Connétable of St. Peter:**

In the failure of carrying it out how would he or she be accountable for that failure?

**Senator T.A. Le Sueur:**

It ought to be clear from the way in which the person concerned demonstrates their accountability, any

failings or shortcomings in that process. I think that is perhaps part of the remit of P.A.C. to ensure that that accountability is reviewed objectively.

**The Connétable of St. Peter:**

I am sorry, Chief Minister. It is either me but I am not getting clarity. If, for example, you said to me: "John, would you go and get me so and so" and I failed to do that what would be your reaction to my failure and what would you expect that I would attract because of my failure?

**Senator T.A. Le Sueur:**

I would firstly say: "John, I asked you to go and get me a sandwich at lunchtime and you failed to do so. Could you explain to me why you failed to do so?" You might say: "I was going along and an old lady got knocked down by a car and I had to take her to hospital. By the time I got back from hospital the sandwiches had all gone and so I am sorry but I thought her needs were greater than yours." What I am saying in a rather longwinded way is that you do not automatically jump to a conclusion that something is at fault and there is no good reason for it. So if the explanation was not forthcoming or if the explanation was incredible - maybe that one sounded a little bit incredible - then you would question further and say: "Did you take a note of the car number or the old lady's name?" or something and investigate a bit more clearly to make sure that you were not pulling the wool over my eyes.

**The Connétable of St. Peter:**

Let me go down your incredible story again. As a result of that you died of hunger. Now, what do you say to the man who failed to get you your sandwich? Well, you would not, your relatives.

**Senator T.A. Le Sueur:**

If I were dead I could not very well ask you. I certainly accept the point that if I were dying of hunger I would probably have told you that before I asked you to go and get a sandwich.

**The Connétable of St. Peter:**

I quite often use that as an euphemism to say: "I am hungry, go and make me something" to my wife, because I am obviously not dying.

**Senator T.A. Le Sueur:**

Maybe we are pushing that a bit further than we should here.

**The Connétable of St. Peter:**

I think the point being there is an expectation that if somebody fails to live up to their high level of responsibility that they will be accountable for their failure, and I think this is where I am not getting clarity, that there will be some accountability which will be attracted by the person who was accountable or should be accountable for his or her failure.

**Senator T.A. Le Sueur:**

Yes, and if that is the case then there are disciplinary processes within the system which should deal with and provide appropriate remedies for such failures.

**Senator B.E. Shenton:**

Are those disciplinary procedures available to the general public to know what they are?

**Senator T.A. Le Sueur:**

In general cases disciplinary procedures would be internal to the business or department concerned. In extremis there may be good reasons for making it publicly known. It really depends on the nature of the misdemeanour or shortcoming.

**Senator B.E. Shenton:**

This is a bit of a loaded question in some ways but as Chief Minister of the Island are you there to defend the civil service or are you there to ensure the civil service operates in a robust and professional manner?

**Senator T.A. Le Sueur:**

I am there to ensure that the civil service acts in a robust and professional manner and to deal with any shortcomings and make sure that they are properly dealt with. In this case there have been disciplinary proceedings held in respect of people who may have fallen short of the standards I expect and disciplinary action has been or will be taken as a result of the outcome of that inquiry.

**Senator B.E. Shenton:**

I think it is little comfort to the public. Disciplinary action could be a post-it note on a file.

**Senator T.A. Le Sueur:**

If that were the level of the offence it may be a post-it note is appropriate. In this particular case I believe that the level of the seriousness of the shortcomings would merit rather more than a post-it note.

**Senator B.E. Shenton:**

As a seasoned politician, what do you think the best way would be to give the public comfort that the disciplinary processes are robust within the States of Jersey civil service?

**Senator T.A. Le Sueur:**

My primary objective is not to reassure the public but to make sure that the system is operating to the benefit of the Island and the people of the Island, and I believe that is being done through the processes that are being carried out. It is the Island's interests which I have to look after rather than satisfying the public need for information or appetite for scandal or ...

**Senator B.E. Shenton:**

We talk about the Public Finances Law, we talk about accountability, we talk about officers being held to account and so on and so forth but, as you are aware, we have another accounting officer that has put his hand up and said: "Look, I could not keep to the Public Finances Law." Can accounting officers turn round and say: "I am sorry" and just carry on with their job?

**Senator T.A. Le Sueur:**

Accounting officers can at the time of their appointment point out any reservations they may have about their ability to deliver and it will be for the Treasury Minister to consider whether those reservations are valid and acceptable. I have seen several of those reservations and I am sure the Comptroller and Auditor General has seen those as well because he gets a copy of that letter of appointment, of acceptance, by the accounting officers concerned. That is the only exception that I would envisage in the normal course of events. If there were anything outside of that then I would expect the accounting officer to raise it with his Minister or the Treasury Minister or the Chief Executive.

**Senator B.E. Shenton:**

I am conscious of the time. Alex, have you any questions?

**Mr. A. Fearn:**

Yes, I do. Good afternoon, Minister. If I may focus back in on a few points that I would seek clarity on. We have heard a lot about accountability and the role of boards and things like that. Something else that is very prevalent in a structure like that is escalation. It seems to me, from what I am hearing, there

is an opportunity for accountable officers to escalate to a thing like the Corporate Board. Is that something that exists within the States and is that level of escalation, particularly in light of this Energy from Waste report, something that is going to take place going forward?

**Senator T.A. Le Sueur:**

I would need to be quite clear what you mean by escalation.

**Mr. A. Fearn:**

Escalation of an issue that is found; there might be an issue around a particular department not being able to meet a particular States objective.

**Senator T.A. Le Sueur:**

If a department is unable to meet a States objective the first thing I would expect the chief officer or the accounting officer to do is to advise his Minister. I would expect his Minister to advise his fellow Ministers in the Council of Ministers. It may well be that parallel to that the chief officer would notify the Corporate Management Board but that is not something I would have experience of and in any case I do not think necessarily if he failed to do so that that would be wrong. I think the primary duty must be for the Minister to raise it with the Council of Ministers and for the Council of Ministers to say: "Yes, we have a problem here. Either we can resolve it within the Council of Ministers, or we need to go back to the States and provide him with additional resources to resolve it, or it is not a problem, chief officer or accounting officer, you are going to have to deal with this. We believe you have got all the tools you need." In the event that there is clarity that there is under-resourcing and escalation then it needs to be brought to the Council of Ministers unless the Minister is able to resolve it at his own level.

**Mr. A. Fearn:**

Thank you. If I may move on to the next subject. We have seen a review of the policy for dealing with euro payments, et cetera, kindly forwarded to us from the current Treasury Department.

**Senator T.A. Le Sueur:**

This is the recent financial direction on ...

**Mr. A. Fearn:**

As a result of the report that has been written on the Energy from Waste plant.

**Senator T.A. Le Sueur:**

The report by the Comptroller and Auditor General?

**Mr. A. Fearn:**

Yes. The changes that have taken place, have they been discussed at ministerial level or is that just something that has taken place within each department? For me, the 2 departments that are relevant here are obviously Treasury and Resources and also Transport and Technical Services.

**Senator T.A. Le Sueur:**

No. The current direction that you are referring to is very much a financial direction dealing with currency transactions. That to me is the principal remit of the Treasury and Resources Department and the Treasury Minister. I accept that there will be departments, such as the airport which has euro transactions, that do need to be aware of that as well but the policy needs to be set by the Treasury Minister and notified to all departments. I am sure that code of direction needs to go to every department. The reality at the current time is that currency transactions are relatively few and far between outside the Treasury but to the extent that they do occur everyone needs to be aware of them. It would be part of the Treasurer's obligations, as accounting officer, to make all his financial directors and



all the departments fully aware of the terms of that current direction and I am confident that he has done that.

**Mr. A. Fearn:**

Thank you.

**The Connétable of St. Peter:**

Just a couple of quick ones in conclusion thank you, gentlemen. The Comptroller and Auditor General's report R.24/2009 highlights a number of weaknesses. What action has been taken and what further action is likely to be implemented as a result of R.24/2009?

**Senator T.A. Le Sueur:**

Maybe you would like to refer me specifically to the weaknesses. Certainly in terms of a policy on currency transactions, that is in place. In terms of some of the shortcomings in expertise, that is a harder issue. It is quite clear not only from this report but from a more recent report from the Comptroller and Auditor General that the Treasury has been overstretched and to that extent it may well be that as former Treasury Minister I did not put forward sufficiently forcefully a case for additional resources for that department. I think the reality is that all departments have been faced with resource pressures in recent times and I was advised that there were sufficient resources in the Treasury to deal with, admittedly under pressure, all the issues being faced by them. I think this was an unusual one, coming at a time when there were further resource pressures due to the resignation of a key member of the senior management team which exacerbated the pressures and I think probably caused someone to take his eye off the ball.

**The Connétable of St. Peter:**

Thank you for that, Chief Minister. In conclusion from me anyway, this is an open hearing and we do have the media with us: what sort of crumb of comfort would you like to go out from this meeting to the people of Jersey to say that this cannot and will not happen again in the future?

**Senator T.A. Le Sueur:**

I think the current comfort I can give is that once the problem was identified it was dealt with and the resulting activities of my successor as Treasury Minister and the department in terms of hedging that has taken place to date has reduced the States exposure considerably and, while that does not condone the shortcomings of last year, it has at least minimised their effect.

**The Connétable of St. Helier:**

You have also given an undertaking today, I think, Minister, that there will be a follow-up or a follow through of undertakings made by the States so that they are implemented.

**Senator T.A. Le Sueur:**

Yes.

**Senator B.E. Shenton:**

I have not got anything further. When you say under-resourced, when the word comes into your mind, do you think of more people or do you think of more qualified people, more efficient people? You could be under-resourced because you have got the wrong people as opposed to not enough people. Which one is it?

**Senator T.A. Le Sueur:**

I think it is that the senior management team had a shortage of numbers. If there were greater numbers you could probably also have a greater variety of expertise within that number. I point out that the

Treasury in the time when I was Minister, the previous 3 years and before then, had gone through some fairly massive changes with things like moving to G.A.A.P. (generally accepted accounting principles) accounting and the whole of fiscal strategy and implementation of the goods and services tax, set against the backdrop of reduced numbers.

**Senator B.E. Shenton:**

Where does responsibility for that lie?

**Senator T.A. Le Sueur:**

Responsibility for that lies initially with the Minister to ensure that there are sufficient resources and further to the States for setting a business plan which allows departments to be adequately resourced. You may not have been as well aware as some of your colleagues of the pressures of fundamental spending reviews which have tended to transfer resources away from the central departments towards the social departments of Health, Society Security, Home Affairs and Education. That has reached a level now where the pendulum has possibly swung a bit too far and I think that is one of the reasons why in last year's business plan there was an amendment to give additional resource to the Chief Minister's Department, and indirectly to Treasury as well, to strengthen that level of support at a senior level.

**Senator B.E. Shenton:**

Thank you very much. We are more or less on time. Thank you very much for coming in.