

# STATES OF JERSEY

## Economic Affairs Scrutiny Panel Depositor Protection Scheme

**THURSDAY, 2nd JULY 2009**

**Panel:**

Deputy M.R. Higgins of St. Helier (Chairman)

Deputy C.F. Labey of Grouville

Deputy D.J.A. Wimberley of St. Mary

Deputy J.M. Maçon of St. Saviour

Deputy S. Pitman of St. Helier

**Witnesses:**

Senator A.J.H. Maclean (The Minister for Economic Development)

Mr. M. de Forest-Brown (Director of International Finance for the Chief Minister's Department)

Mr. J. Mews (Finance Industry Development, Chief Minister's Department)

**Present:**

Mr. T. Oldham (Scrutiny Officer)

**Deputy M.R. Higgins of St. Helier (Chairman):**

Can I start by thanking you for coming to see us today. Obviously we will just give you the normal ritual for the tape of identifying everybody. We all know each other, I think, around the table. Mike Higgins, Chairman.

**Deputy D.J.A. Wimberley of St. Mary:**

Daniel Wimberley of St. Mary.

**Deputy J.M. Maçon of St. Saviour:**

Jerry Maçon of St. Saviour

**Deputy S. Pitman of St. Helier:**

Deputy Pitman of St. Helier.

**Deputy M.R. Higgins:**

Tim Oldham, our Scrutiny Officer. Alan, if you would start, please.

**Senator A.J.H. Maclean (The Minister for Economic Development):**

Senator Alan Maclean, Minister for Economic Development.

**Mr. M. de Forest-Brown (Director of International Finance for the Chief Minister's Department):**

Martin de Forest-Brown, Director of International Finance for the Chief Minister's Department.

**Mr. J. Mews (Finance Industry Development, Chief Minister's Department):**

James Mews, Finance Industry Development, Chief Minister's Department.

**Deputy M.R. Higgins:**

Sorry, you have to reach over there to get near a microphone. What I would ask first is ... I had better explain, the panel have not had a chance to go through all the files that we have received and, in fact, I have managed to get through 2 of the 4 files. What will be happening is we want to use this as a preliminary to learn from you, largely in general terms and also get into some matters of details, on the scheme that you have got. Then what will be happening is we will be going through the information we have got and then, at the end, we will come back to you after we have done further interviews and hearings. So if I could ask you first of all if you could just outline the scheme as you are proposing it. You have also indicated that there is a matter of urgency about this and, again, if you would explain the matter of urgency.

**Senator A.J.H. Maclean:**

Martin, do you want to do the scheme then we will move to the ...

**Mr. M. de Forest-Brown:**

Okay, the scheme, in summary level, is a scheme which is based on schemes that exist in other jurisdictions. It is based on a review by our advisers, Oxera, and their review of other jurisdictions and items that we might consider for the Jersey scheme. In summary, a scheme is identified that will address the widest possible range of potential failures among all but the largest banks in the Island. That is consistent with other jurisdiction schemes where the funding of any particular scheme is sufficient to address most smaller banks but is not sufficient to address the very largest banks, as has been evidenced by the recent bail outs. In terms of pure numbers, what we are proposing is £100 million scheme over 5 years. So that means that there is £100 million of funds to apply to lost monies by depositors every 5 years. So if there was a failure of £60 million, say, in year one, and then later there was a problem of, say, £90 million then this would be capped at £100 million over a 5 year period. That is very similar to the Guernsey scheme. The £100 million would be allocated as to providing cover for £50,000 per name per deposit, by which I mean an individual name £50,000 but a joint account with 2 names that would be £100,000 of cover. The coverage is provided to retail customers, with minimal exceptions, so purely retail customers, and is provided both for local residents and for international depositors. The small numbers of exceptions are broadly around the areas of charities and amounts held in other people's names such as parents holding their children's balances or, say, inheritance balances on the way through from the deceased to the eventual owner. So the overarching scheme is retail. The scheme excludes all other vehicles, so all other court type entities. The scheme is one that matches very closely the schemes that are available in the U.K. (United Kingdom), Guernsey and the Isle of Man. The scheme has, in terms of funding the scheme, a number of caps in it and I have already mentioned the £50,000 cap per depositor. In addition, in terms of funding it, the funding is split between provisions by the banks, the banking community, and government. The banking contribution is calculated at 0.3 per cent of their deposit base, their retail deposit base, and that their contribution is capped at £10 million if they pay over ... if that would calculate an amount that is over £10 million and at £5 million if the amount they would pay is over £5 million but less £10 million. Again, those caps are being suggested or proposed on the basis that the equivalent scheme in Guernsey has a £5 million cap and we feel it is important that any scheme here balances the needs of the local community but also ensures the long-term health of the Island by ensuring that we are a competitive jurisdiction for financial businesses operating here. I think

those are the summary items of the scheme. Are there any other items that I have missed out?

**Senator A.J.H. Maclean:**

I think the second part of your question, Mr. Chairman, was about the need for the urgency that has been alluded to. I just cover the key points here. We had, back in November last year, a debate within the States driven by a proposition or question from Deputy Le Claire about the need for a depositor compensation scheme. At that time it was decided by the then Council of Ministers, the then Chief Minister, to put a political guarantee in place. As I think you have rightly pointed out that political guarantee was reconfirmed by the current Chief Minister and Council of Ministers and is still in place. Just for the avoidance of doubt, that particular guarantee is for just local retail depositors, not international, and this is in fact open-ended. So from a risk perspective to the public purse there is a much higher risk with that element than the proposed scheme that shortly will be before the States. So we believe it is wise from that perspective to move to a statutory scheme, which of course the political guarantee is not, and also there is higher risk with a political guarantee than the proposed scheme. That is the first point. Obviously outside of that we have got all the issues, the spotlight that is shining on off-shore financial centres, of which Jersey is one. You will be well aware of the Foot Review which is underway at the moment, and certainly an integral part of the Foot Review was the need for a depositor compensation scheme. That came across in his interviews within the Island. It is an undertaking that publicly the States have made that there would be a scheme brought forward by July, which of course is what we have done, and he will be reporting ... of course that is important that we stick to what we claimed we were going to do which was to deliver a scheme in an agreed time scale. Outside of that we have got other reviews that were underway in the past that have also expected to see a depositor compensation scheme. We have been reviewed by the I.M.F. (International Monetary Fund). But more importantly we have got the G20 in September and although the actual meeting of the G20 is in the latter half of September, the Finance Ministers meet at the beginning of September and that is largely deemed to be the time when the agenda is driven and not having a scheme in place then, we understand, would potentially disadvantage the Island. So from an international reputational and local depositor perspective we believe there is a more than a degree of urgency to progress this scheme, as indeed we

signalled some considerable time ago that we were going to do.

**Deputy M.R. Higgins:**

Can I just explore that a little bit. During the I.M.F. visit and everything else, was it an explicit undertaking or requirement of the I.M.F. to have a deposit protection scheme?

**Mr. M. de Forest-Brown:**

No, it is not. It is part of their overall review to see what infrastructure the Island has. So there is no specific element of an I.M.F. review programme that says you must have one but they simply look at it in the round as part of the overall infrastructure to make a general assessment of how the local finance industry is being managed and governed. So it is not a specific requirement.

**Deputy M.R. Higgins:**

So, G20 then, what input has the Island had into any of the G20 process. Where do we fit into all of this and what undertakings have been given in that respect?

**Mr. M. de Forest-Brown:**

The Island does not have any informal input into G20, it is a meeting of the G20 countries and their Chief Ministers or Prime Ministers and Finance Ministers. So very much that is their agenda. But, as you will be aware, the whole agenda running through the international community at the moment is a question mark against what role offshore jurisdictions play. In particular, the extent to which offshore jurisdictions operate without the infrastructure and the level of governance that they would like to see in larger jurisdictions. So there is this overarching environment in which offshore jurisdictions are, to a degree, presumed bad until proven innocent and very much this is part of that overall assessment, which is Jersey ... we have potentially the problem of arriving at the G20 where they could say that one of the only jurisdictions that is a major player in the financial services world without a depositor compensation scheme is Jersey. So it is just really a notable absence.

**Senator A.J.H. Maclean:**

One of the other points that I should have mentioned, of course, is competitiveness for the financial industry as a whole because at this current time financial services, banks in particular, are looking at their business models, they are considering consolidation opportunities and without having a D.C.S. (Depositor Compensation Scheme) in place, whereas our immediate competitors do, puts us potentially at a disadvantage so it is a remedy that we want to sort out as quickly as possible.

**Deputy M.R. Higgins:**

Okay, just on that point, most banks hate depositor compensation schemes in the sense because it involves a cost element to them. So are you saying at the moment we are at a competitive disadvantage because we do not have a scheme that others do?

**Senator A.J.H. Maclean:**

It is more a question of a level playing field, I think. Things have moved on. Your comment is absolutely correct if you go back 12 months, if you like. But bank have come around to realise that in the new world we are living in now other jurisdictions have adopted D.C.S. and if we are the only one who has not then it does put us at a potential competitive disadvantage when they are making key strategic decisions on relocating perhaps out of multiple jurisdictions into fewer, one or 2.

**Mr. M. de Forest-Brown:**

What you can say is that all banks will always want not to incur another cost. That is a given. So in the absence of any manifest need, banks have been strongly against having a compensation scheme for some time because they do not see any risk. Most of the banks that operate here have their parental support, so it is just a potential liability or a cost that they do not need to incur. So they have been very strongly of that position for some time. More recently certain banks have suffered people moving their deposits because they do not have a scheme and also they recognise, at a jurisdictional level, that Jersey is embarrassed by not having that compensation scheme in the current environment. So your comments are obviously clearly valid but now they have changed their mood and say, in terms of a least worst

option, the banks are strongly behind having a scheme.

**Deputy M.R. Higgins:**

I just have one last question first and then the others can join in. It is just following through on the Michael Foot report. We are looking at the drivers for the urgency. Now, Michael Foot was also, I think, very much concerned about financial stability. For example, can you tell me what the Island is doing about a special resolution regime for the changes? In other words, for dealing with ... managing the failure of banks. What have we done in that area besides the depositor compensation?

**Mr. M. de Forest-Brown:**

We are not doing anything in that area.

**Deputy M.R. Higgins:**

You are not doing anything at all?

**Mr. M. de Forest-Brown:**

No.

**Deputy M.R. Higgins:**

Interesting. I might add, by the way, I have spoken with H.M. (Her Majesty's) Treasury this morning and the Michael Foot team just to ascertain the urgency on this and my understanding is that if we are working on the scheme that would be taken on board. It is not a question of it has to be in. That is the impression I got from the officers that I spoke to. Okay, Jeremy, you were first.

**Deputy J.M. Maçon:**

You might have covered this already, but in the review by the I.M.F. did it make any recommendations towards the Island or did it just review it and ...?

**Mr. M. de Forest-Brown:**

I cannot remember specifically what it said. It said that ... I recall that they were simply saying that they thought it would be a good idea for us to bring one in. They did not say it was a requirement, they said that they were comfortable that the scheme came in in a format that was appropriate for Jersey but I would have to go back and check the exact wording. It was definitely in the: "On balance this is something that we would typically expect in a jurisdiction."

**Deputy J.M. Maçon:**

But were there any other main recommendations from this report or was it just about the depositor compensation scheme?

**Mr. M. de Forest-Brown:**

No, the I.M.F. report is a full review of our prudential and our anti-money laundering, combating financial terrorism regulations. This is just the tiniest part of that review.

**Deputy S. Pitman:**

You mentioned other jurisdictions, the U.K., Guernsey and Isle of Man, how long have they had these schemes in place?

**Mr. M. de Forest-Brown:**

The U.K. have had their scheme in for many, many years. I would not like to hazard a guess at when that first came in. The Isle of Man have had a legislative capacity, the scheme was only finalised crystallised very recently. Guernsey introduced their scheme in the last 6 months, really as a response to Landsbanki. So there has been a shared view within the Islands generally that the preference is not to have a scheme because they are in very similar situations to us. They have got subsidiaries or branches of parent banks and so they do not see an actual problem here. Clearly the Landsbanki problem and the Kaupthing problem in the Isle of Man has crystallised thinking in that respect. So those schemes have been brought in fairly recently.



**Mr. J. Mews:**

The Isle of Man, they did have a scheme but it was very much after the recommended ... anything that they could do consistent with the E.U. (European Union) directive. So what they did in last autumn was they changed all of that and they brought it very much in line with international standards in terms of what the U.K. could do so you had a total change of their position really in terms of the protection which they were offering which is absolutely in line with what Martin was talking about the sea change.

**Deputy M.R. Higgins:**

I was just going to correct Martin on that because I have had lots of dealings with the Isle of Man in the past on their deposit scheme and they were involved with the B.C.C.I. (Bank of Credit and Commerce International) failure. So there was a lot of working been going on on ... I agree with you, James, that they brought in changes recently.

**Mr. M. de Forest-Brown:**

Yes, sorry, I meant the crystallisation of their changes to the £50,000 limit, previously they had a £20,000 limit, only the first £18,000 being covered.

**The Deputy of St. Mary:**

Shona, have you finished on that one? What about other E.U. countries? The very first paragraph in the Oxera report talks about ... states that all E.U. countries have got D.C.S. When the various countries have those in place?

**Mr. J. Mews:**

I cannot remember precisely when the E.U. directive came in but basically it has been an international norm across Europe for some years. The European directive previously has been very generous in the terms of what can be included in the D.C.S. or not. So there were very wide limits on what could be in. So, as Martin has stated with the Isle of Man who followed that, it was only in effect an £18,000 pay

out. Now, international standards are saying it has to be much more than that, the scheme has to be tighter and also totally changing really the way schemes are constituted, because they are saying the scheme has got to be simple, you have got to be able to have a pay out quickly and that is a key part of the scheme which we put forward. They say that because the schemes are to benefit the most needy members of society we need to have some monies getting to people quickly and that is why our scheme incorporates paying out the first £5,000 of the claim within 7 days. That is very much in keeping with the change in international standards, which has very much happened over the last 6 months in particular. So, in summary, deposit protection has been in place in E.U. countries for a considerable amount of time but it has been a very woolly, wishy-washy thing and now it is crystallising to be much more focused, much more clearer.

**The Deputy of St. Mary:**

It is interesting that these countries, in the absence of a perception that banks can fail, had these schemes in place. The E.U. made sure that all these countries has these schemes in place and I am just trying to square that with suddenly we are in a rush because these countries have had these schemes for years.

**Mr. M. de Forest-Brown:**

I think the issue is ... you may recall my opening remarks yesterday at the briefing which is that one has to look at banking models. Banks generally take funding, including retail deposits, and invest that in risky assets. So I think there has been an environment of ... the need for support for depositor in that environment. The Jersey business model is to take retail deposits and pass them up to the parent. As a general rule we do not invest in risky assets, so we have not faced the same risks that cause problems for banks and that is why we have not had a bank failure or even any inclination of a failure out with the U.K. or some other major government letting their parent bank fail. So, to this day, we would still believe that the likelihood or the need for a scheme is very, very remote but it has become apparent that notwithstanding that in terms of general comfort from consumers and in terms of this badge of honour, in terms of things that people typically expect a major financial centre to have, that that mood has changed.

**The Deputy of St. Mary:**

But the suggestion is, as you said in this hearing or one of you has said in this hearing, that up until now it has been the banks that have been telling you it is all right, there is not really a risk. They have been resisting in a sense and saying they do not want it, they do not want the potential liability, which is odd because if it is a safe environment then there is not a potential liability, but anyway. Can you comment on that? This notion that in the past the banks have been telling you there is not a potential liability so we do not need to go there.

**Senator A.J.H. Maclean:**

I understand your point. I think banks speak for themselves so if you were speaking to Bank A, they would say: "We do not see that we need any cover so why would we want to take on a potential liability of paying for somebody else?" That is at conceptual level. To the extent that a scheme exists they are obliged to put a note in their account that such a potential liability exists. Not a contingent liability, it is not as strong as that but it is a potential liability so they have to make some note in their accounts. But at Head Office level, Head Office is not going to ever feel the confidence that there is never going to be a problem in a jurisdiction so, again, they are acknowledging that there is this potential liability once you crystallise a legal obligation under a scheme. However, we, the government, the regulator in terms looking at our community of banks in Jersey, are confident that the likelihood of a bank failure is extremely remote indeed because of the portfolio of banks. Now, the immediate answer was: "That does not make sense. We have just had bank failures in other jurisdictions so why is Jersey different?" The simple answer is that we are different and if you look at the portfolio of banks and the business model both locally and of their parents that they are different. Iceland had a series of banks that were (a) massively leveraged and (b) leveraged to the point that the jurisdiction was at risk of not being able to fund the problem. We do not have any such bank here in Jersey. So that was a specific issue that came out of both the bank's activities and the scale of the financial activities within the ultimate supportive jurisdiction, being Iceland.

**The Deputy of St. Mary:**

Thank you, that has clarified it. I have got one question, if I may, on this background of the urgency and so on. When you were talking about the G20, I think there was a suggestion that the G20 is concerned about depositor compensation, I just wonder if you could point to any evidence for that also what you think the G20's concerns really are with respect to offshore finance centres in general? Because if you are claiming that this is part of the reasoning then we need some evidence.

**Mr. M. de Forest-Brown:**

Yes, the G20 of itself has not given this high profile. What it has done is it has delegated to the international standard setters, whether that be O.E.C.D. (Organisation for Economic Co-operation and Development) or I.M.F. or F.A.T.F. (Financial Action Task Force on Money Laundering) or the Financial Stability Board to look at these issues and here we are definitely in the area of the Financial Stability Board. What the Financial Stability Board do is they look at jurisdictions to see whether the jurisdiction itself is robust and whether banks have appropriate measures in place to deal with major problems. That has been picked up by the Foot review, which has focused very much on sustainability, stability and sustainability, and seeking to identify whether suitable response measures are in place to respond to problems that could arise in financial institutions.

**The Deputy of St. Mary:**

So you are saying within the G20, in the sense that it delegates the detailed work to these various agencies that really this area we are talking about lies within the financial stability group mainly. That is where you would go to find the evidence that they were looking at this, that they were interested in this as a major component of the concerns ...

**Mr. M. de Forest-Brown:**

Yes, and it is just part of a general environment of ... regularly repeated environment in the media that off-shore jurisdictions are poorly resourced, poorly regulated. You know, these are poorly run jurisdictions without infrastructure and staff. So there is a generic question running through the whole

thing, so it may not specifically in any particular debate focus on D.C.S. but there is this general theme of if you are a quality jurisdiction you have to have these sorts of things: you have to have good regulation, you have to have good transparency, you have to have good infrastructure, you have to have good corporate governance, you have to have good rule of law. It is just part of that overall package. The question is simply, why is it the case that Jersey is all but the only jurisdiction that does not have a depositor compensation scheme? It is really at that level. It is like: "Well, this must be an indication that they really cannot afford it and therefore they cannot really afford to play because they are not big enough and strong enough to deal with it."

**Senator A.J.H. Maclean:**

Of course we have stated politically that we were going to have one and given a timeline when we were going to deliver one.

**Deputy S. Pitman:**

Can you just remind us when that political guarantee was given?

**Senator A.J.H. Maclean:**

It was given at the end of last year, in November I think it was.

**Mr. M. de Forest-Brown:**

19th October.

**Senator A.J.H. Maclean:**

October, and it was reconfirmed importantly, because it was given by the former Chief Minister and the former Council of Ministers but it was reconfirmed this year. I think in January or February.

**Mr. M. de Forest-Brown:**

It is a time that signifies the turning point in the international landscape as a result of other banks going

under and the general economic crisis, that the focus came on the provision of these schemes. It is best typified by the queues outside Northern Rock that were shown in all the media.

**Senator A.J.H. Maclean:**

Importantly, putting a statutory scheme in place such as this will remove £65 million of risk from the public purse to the banking sector. At the moment it is an unlimited scheme.

**Deputy M.R. Higgins:**

Not totally true, because remember again the existing scheme is unlimited in terms of liability. So it could mean far more to the public sector in terms of strategic reserve rather than ...

**Senator A.J.H. Maclean:**

The political scheme are you talking about?

**Deputy M.R. Higgins:**

Yes.

**Senator A.J.H. Maclean:**

Yes, absolutely. That is why we would need to move to statutory scheme to remove that risk. That was the point I was alluding to.

**Deputy J.M. Maçon:**

However, of course, by moving it from local to local and international depositors you are then increasing, to an extent, the amount you are making ...

**Deputy M.R. Higgins:**

They have brought the cap down, so they have restricted the exposure abroad and within the Island.

**Senator A.J.H. Maclean:**

But that does raise an important point because at the moment the political guarantee is only for local retail depositors. Again, from a business and reputational perspective, international investors in Jersey are not protected and they know that. There was a certain amount of funds earlier in the year, that seems to have abated as the risk has mitigated but, again, it is not a good position to be in. We need to be protecting all retail depositors, where they are local as well as international.

**Mr. M. de Forest-Brown:**

We looked at that very closely in terms of whether we should simply limit the scheme to residents. The case for that would have been that those who are choosing to deposit their money in Jersey from outside will be doing it knowingly with their eyes open and so on. But all of the advice we had, both from Oxera and elsewhere, was that it is part of the impression you are creating as a jurisdiction. Here you are trying to be an international financial jurisdiction and you are saying you cannot give any support to external depositors, and I think in terms of our proposition and in terms of the experience of foreign depositors or, sorry, depositors from outside of Jersey, their activity with the banks, all the evidence was that we did need to extend the scheme to international depositors.

**Deputy J.M. Maçon:**

Do you have the figures to compare local depositors next to international and what is that percentage breakdown roughly?

**Mr. J. Mews:**

I am just looking for that. Basically, total retail deposits, domestic and international, is £33 billion, and I am just searching for the table at the moment which finds the breakdown, but I think it is something like 10 being domestic and the remainder being international but ...

**Mr. M. De Forest-Brown:**

I would certainly expect the majority to be international. The interesting comparison would be possibly

the total local retail deposits as currently covered under the political guarantee versus the total coverage under £50,000 extended to local and international depositors. So where we have gone to in terms of overall exposure, I would imagine that that is probably an increase in exposure.

**Deputy J.M. Maçon:**

That is where I was trying to get, saying that although we might have an unlimited one for local depositors, if you were to ... despite having caps on this new scheme, if you were to increase it to international depositors then actually that is a bigger cost for us than just the local market.

**Mr. M. De Forest-Brown:**

Except that it would not be, because in moving to the formal scheme we have both identified that the first £65 million is paid by banks and it is the first £65 million. So whereas in the first scheme we are the only ... Jersey Government is the only payer, the only contributor, so they are right up there for the very first and any loss, under the proposed scheme the Government contribution only comes in to the extent that there is any liability which cannot be met by the banks, which would typically cover up to £65 million of loss. The analysis shows that with normal levels of recoveries that covers all banks up to the sixth bank, sixth largest bank, so the Government contribution would only step in if there was a failure among one of the larger banks, so one of the top 5.

**Deputy M.R. Higgins:**

So, just going back to those figures, then, if we have £10 billion of domestic deposits at the moment, the political guarantee, how much of that is retail deposits that would have been covered under that political scheme? We would be bankrupt. What were the figures being that ... considering we have a political guarantee at the moment and we have £10 billion of domestic deposits from the figures you just told me, what proportion of those would be retail deposits that would be under that scheme? We would not have enough money in our strategic reserve to cover it.

**Mr. M. De Forest-Brown:**



It does look that way. The point you have to start from is that deposit compensation schemes of any form do not cover the largest banks. Our assessment is that to the extent that we have even the remotest risk, it is outside the population of banks which are systemic in nature. So, we have reviewed the banking population and the first 12, 13 banks are manifestly systemic. They have all either had or their governments have already evidenced their support for their banking community to prevent them ...

**Deputy M.R. Higgins:**

Fortunately for us, yes.

**Mr. M. De Forest-Brown:**

Yes, absolutely. The assessment of giving the political guarantee was to say, well, assuming that that is the case, what is the slightly higher risk area that we have? We actually think it is not a higher risk for a couple of reasons. One is that a couple of the banks in that population that have not had evidence that they are systemic in nature are actually financially much stronger, and others are not in the same sort of business. They have a slightly different business model where they are not basically retail deposit takers. So when we look at that level of population, the level of deposits is much lower and so, therefore, while you are starting off with a huge figure, which is £10 billion, which is the total deposits, it is not the £50,000 cap, it is total; when you take out the large systemic banks, the political guarantee we estimated was not hugely dissimilar to the £100 million sort of order for the smaller banks. We can show you something ...

**Deputy M.R. Higgins:**

I might be very sceptical about that.

**Mr. J. Mews:**

Can I just ... I have now found the table. The precise figures: non-resident natural persons is 30.5 billion and resident natural persons is 3.3. So just to make sure that is correctly ...

**Mr. M. De Forest-Brown:**

And that is the total retail deposit?

**Mr. J. Mews:**

Yes.

**Mr. M. De Forest-Brown:**

That is not the 50 cap; that is the total?

**Mr. J. Mews:**

No, that is not, that is the total.

**Mr. M. De Forest-Brown:**

So you can see that there you actually start with the 3.3. There you can see we start actually from 3.3, and the bulk of those will be held in the largest subsidiaries or branches of U.K. and other major banks, so we were actually only looking at the risk population when we gave that political guarantee.

**Deputy M.R. Higgins:**

I still think it would have wiped out our strategic reserve of £500 million, though.

**Mr. M. De Forest-Brown:**

Well, if a bank that was in the top part of that went, then yes, it would have done. The point is that there is no expectation whatsoever that those banks will fail.

**The Deputy of St. Mary:**

It is difficult to have evidence for that, but can you provide some evidence for the claim that a big bank cannot fail? Because there is clearly on the record big banks have failed and been allowed to fail.

**Mr. M. De Forest-Brown:**

We are making an assessment of the current position, which is the banks that we have here have either already been supported or are the nature of bank that will receive systemic support ... sorry, support as a systemic bank by their government. So, we are not saying that big banks cannot fail, but what we have been through is the worst ... arguably one of the worst banking crises ever, and what has happened in that is the banks that did fail are not retail banks. What has become clear is all governments have realised that politically they cannot allow retail banks to fail. They will step in, which is why suddenly in the U.K. you have half a trillion of government support for the banking system. So, you cannot say they will not. All the evidence is that governments have learnt politically that you cannot have your ... a significant proportion of your population suddenly being made bankrupt. So they have realised, and they have also learnt from experience that the cost of supporting a bank and maintaining it and keeping it going always turns out to be significantly less than allowing it to fail. The hindsight now is very much that even the banks that they did let fail, the ones that were not retail, was that that was a mistake and it cost more ultimately to clear up the mess.

**The Deputy of St. Mary:**

Did you say half a trillion to keep the banks in the U.K. going?

**Mr. M. De Forest-Brown:**

Yes, that is off the top of my head. I seem to remember the sort of ...

**The Deputy of St. Mary:**

It is a lot of noughts.

**Mr. M. De Forest-Brown:**

Yes, that is £500 billion, yes.

**The Deputy of St. Mary:**

It is a lot of noughts, and what worries me is that some commentators ... and, again, I am asking for evidence that there is not more toxic liabilities in the system that will come out. That half trillion may go up and at some point a government, some government, decides no more.

**Mr. M. De Forest-Brown:**

As you say, there is always that extreme possibility. All the evidence is that the governments have done their analysis and have shown that they simply cannot allow the banks to fail. They have already ... they have stepped up and that is what they have done. So, that is the evidence. If one turns ... if we turn this issue around, Ministers are all interested in background but it does not really address the issue of whether one should or should not have a scheme because if a bank does fail the issues that we face as an Island are there and actually whether you have a scheme or not is kind of almost irrelevant. That is why one is identifying a scheme that meets as many of the criteria as possible and is consistent with international standards. So, yes, you can paint a scenario which is, well, yes, a bank could go down, in fact all of the banks and, indeed, all of the banks in the whole world could crash. Yes, you could wipe out modern capitalism as we know it. All of these things could happen ...

**Deputy M.R. Higgins:**

We got pretty close to it, I must admit.

**Mr. M. De Forest-Brown:**

Absolutely, we did, and what happened - and this is absolutely critical to our assumptions - is that the world governments realised at massive, massive cost to their joint exchequer that they cannot allow that to happen. You cannot let the world's economy implode, so they stepped up to the plate and they bailed out the banks.

**The Deputy of St. Mary:**

At a massive cost to the future.

**Deputy M.R. Higgins:**

Yes. What I would actually say there is ...

**Mr. M. De Forest-Brown:**

A smaller cost than actually letting them fail.

**Deputy M.R. Higgins:**

In fact, I was reading this morning a speech by Paul Tucker from the Bank of England and he was talking about banks that are too big to fail. Obviously the Governor of the Bank of England, Mervyn King, has been talking of late about slimming banks down because they have got too big and basically there is a realisation that governments cannot bail out the banks and, therefore, we have to come up with a much better structure. In fact, I am going to lead on to that in a moment, but what I would ask you to do as well because I am conscious of time ... what time do you have to leave, by the way?

**Senator A.J.H. Maclean:**

I think we are in for an hour, are we?

**Mr. M. De Forest-Brown:**

Yes, I think we are in for an hour.

**Deputy M.R. Higgins:**

Okay, we have about 15 minutes left on that basis. If we could extend it a little bit, perhaps, just to get a few points. What I would like to do is just look at the consultation process, how you have actually consulted on this. So, if you can give us a bit of background as to how you have arrived at the proposals that you have got?

**Mr. M. De Forest-Brown:**

We have consulted with the funders, so the banks. We have not consulted explicitly in any formal

process elsewhere. We have taken as read the environment that we operate in, whether that be media environment, the consumer demand, and we have taken that on the basis of letters, media comment, press. So we have assumed an environment and, as I mentioned in my briefing yesterday, we know where the position will be generally from the community, which is maximum coverage, minimum cost. We recognise that we need to do as much as possible for depositors and in looking at that we have looked at international standards and met those, both international standards and schemes that are already in operation that have been widely adopted and accepted elsewhere. So, absolutely, we have not had a formal consultation process. We chose to do that in the interests of time and we have moved quickly towards a scheme. We now have - and this is critical - the opportunity to introduce a scheme which has the capacity to be amended with the benefit of hindsight or with additional information because of the way it is drafted, and so we are confident that the scheme that we have is fit for purpose in immediately meeting the needs that face us. If we were bringing to you a scheme that looked markedly different from other schemes in other jurisdictions, then we would have a different issue or concern, possibly, but we are very comfortable that this meets international standards and matches other schemes.

**Mr. J. Mews:**

I could just add something to that as well because Martin has spoken about, you know, consultation in terms of the general sort of consultation where you send out a consultation document and anyone in Jersey has a chance to comment on that. But certainly in terms of developing the scheme there has been other consultation going on with key stakeholders and people who have a real interest and knowledge of this. So, for example, back in October last year when the banking crisis hit, there was regular meetings with government, the Commission, to discuss the situation and decide what should be happening, so from the word go the Commission were very much involved in this process and there has been regular discussions with Mark Sumner, head of the banking division at the Commission, all the way through. The Commission have had chances to feed into the process and one of the things we did was look at the draft scheme which was there previously, which had not been taken through to fruition. The Commissioner commented on I think it is 2 drafts, an earlier draft and they also fed in their comments

on where they thought the previous scheme could be improved, and what we have is a process where the Commission were given the opportunity to comment on a regular basis. Mark Sumner suggested that actually he would prefer to comment at the end of it generally, so a lot of that process went on right at the end. After the overall framework had been agreed, we then shared the scheme with the banks and the banks had a chance to comment on the draft - I think it was draft 12 or 13 - and there was about 6 or 7 of the banks fed in comments on that and there was a huge number of teleconferences as well which I spoke to various banks and talked them through what we had done. As a result of that, we then reached the draft which I felt was in a near enough final shape - because Oxera had been done, the Commission had been consulted with, the banks had been consulted with - to share with yourselves, which is when we sent draft 14 across to you. At the same time as that, we spoke to the Comptroller and Auditor General about what provisions he needed. We changed those provisions and added further things in. We spoke to the Viscount's Department about what should happen there. Again, there was very little wanted there. By this time we were engaging much more fully with Treasury as to if there were any things relating to governance and other things which they would need in the scheme from a funding perspective, and so that all went on. Then we shared ... then a draft went out with Jersey Finance and they had a chance to send it round industry for industry as a whole to comment on it, and that process took place. There were actually I think only a few comments received. The Association of Jersey Charities fed in and just made sure that the definition of charity was acceptable to them as well. So, while there was no wholesale consultation, there was considerable consultation going on with key stakeholders throughout the process.

**Deputy M.R. Higgins:**

Although some of the key stakeholders had expressed concern that it was rather hurried at the end.

**Mr. J. Mews:**

Well, of course it was hurried. We were on a ... we were told to bring the scheme as quickly as possible. There was no other way round it. We have been through I think roughly 20 drafts in about 2 months. We have been working flat out on this and ...

**Deputy M.R. Higgins:**

No, there is no criticism of that. We understand the pressure you have been under, so it is not a criticism in that way. It is just that obviously things have got telescoped at the end to meet the deadline and, therefore, people have had to give a quick judgment on it.

**Senator A.J.H. Maclean:**

Well, it is not reinventing the wheel, of course, because it is based, as Martin was saying, on international standards on schemes that exist elsewhere, particularly Guernsey. So, you know, it was not as if it was starting with a blank canvass to begin with.

**Deputy M.R. Higgins:**

Okay.

**The Deputy of St. Mary:**

That is, I must say, what puzzles me. I have a note here. This is easy, same as Guernsey, not problematic, and this was a theme of yesterday's presentation, really. That leads me to the question my understanding was that the first draft of this was February. Am I correct?

**Deputy M.R. Higgins:**

That is the Oxera report?

**The Deputy of St. Mary:**

Yes, the Oxera report, sorry, yes, for the tape. Yet the final version that we have here is dated May 2009. So I just wonder if you would like to take us through the backgrounds to the problems that may have been ... you know, the discussions that there may have been in bringing out this report.

**Mr. M. De Forest-Brown:**



Well, I do not think that they were substantive. I think that there was just a continuing dialogue, and I think as you have identified, this was slightly concertinaed towards the end. The government resources targeted at this particular project are very modest and they are the same resources that are targeted, I can assure you, at many, many other things. So, much of the delay and the passage of time on these items will be as limited resources in government juggle multiple priorities. I do not recall any significant or major points of substance, but I think that there was mostly just the passage of time as we turned from draft Oxera report to thinking, well, okay, what might that look like, starting to talk to stakeholders, starting to think about the shape of the law. For a long period we then moved into the area of funding and all the efforts were on funding, so away from anything really to do with Oxera. This was about paying for it. So could the Oxera report have been fast tracked and finalised earlier? Quite possibly, but it was something that was there, it was part of the resource, and we were working on all elements of the scheme. So, it was more a case of having had the passage of time, thinking it is about time we actually just agreed among ourselves that this is the final draft, the final form of the report.

**Deputy M.R. Higgins:**

I think part of this is ... can you explain the actual process of working with Oxera? Because the report was commissioned; I think from a question I asked in the States it cost £97,000 and was to be the basis upon what you were working on. Can you talk about the interaction you have had with Oxera in coming up with the scheme that you actually have?

**Mr. J. Mews:**

The Chief Economist, Dougie Peedle, was the person who first opened the dialogue with Oxera in October when it was clear that we had a choice. Everybody in Jersey was crying out for a scheme. The public was crying out for a scheme. I am sure you were all accosted in the streets as States Members, those who were States Members then. I think most of you were. We were getting inundated with calls through our customer services centre and there was no doubt that Jersey needed to move quickly. But what we were not prepared to do was to move quickly without any evidence of whether we could afford what we were going to do. That was key. We needed the facts, we needed the figures, and so that is

why we commissioned Oxera. So, Oxera went away. The first thing they had to do was to decide what data they needed, and they liaised with the Commission in order to get the data from the banks under the Banking Business Law. So there was a process which went on there with correspondence between Oxera and the Commission. Then the Commission obtained the data, anonymised it and then passed it across to Oxera. Then Oxera started their number-crunching processes and coming up with the key information we needed to see what a scheme could look like, bearing in mind the balances in Jersey. I must admit when the scheme first came out I think people were slightly surprised because we knew we had all this money in Jersey; the big question was could we afford it. The big thing which Oxera came back and said was yes, we can. The reason for that is that balances are skewed towards being very large balances, so though we have in total £33 billion of retail deposits, many of those are well over a million. A lot of banks in Jersey will have retail deposits of average over a million pounds. So, this really showed that we could afford a scheme which is in keeping with that which the rest of the world has and that was great news. So, there was a meeting, and I cannot remember the exact time ... I think there was a meeting in February. Was it 10th February? I have the chronology here. I think 10th February at which officers met with Oxera in order for Oxera to explain their findings. Then a week later there was a meeting with politicians as well. That gave us the basis on which to really move forward with the scheme. At the same time, there was some speaking with Oxera going on as to actually breaking down the data a bit more. In the report, as you will see from the February draft, there are lots of summaries in there but actually it does not strip things out bank by bank or banking group by banking group. So we spoke to Oxera, they sent further things across. It was a variety of telephone calls in particular discussing certain issues and, as a result of that, more data was given to us in certain areas. So, really, it was one of dialogue, as you would expect. I am not sure ...

**Deputy M.R. Higgins:**

Yes, that is fine. That is just helpful to understand the process. I do note that your earlier drafts of the law go back to October of last year, which is before even Oxera gave the stuff in February. So, had you pretty well sort of scoped out the scheme, put in the main elements prior to the Oxera input?

**Mr. J. Mews:**

There are certain things which are common to all D.C.S.s around the world, and back in October there was a very real chance that Jersey might have to bring in a D.C.S. overnight. You know, Guernsey had to do practically that and there was a real possibility Jersey might have to do the same. What we did not want to do was be rushed into it if we did not have to because we wanted to know whether we could afford it, but I was tasked to start drafting a scheme back in October and certainly putting the framework together so if we needed it we could go full tilt ahead. As events turned out, none of the U.K. banks, none of the banks which have parents ... which were in Jersey which have parents elsewhere were allowed to fail and it became clear that all the governments were standing behind the banks, as Martin has discussed. So then we knew we had the time to really analyse the data. So that is why there is a history of some early drafts and then it really progressing once we knew what the data was.

**Mr. M. De Forest-Brown:**

If one thinks about a scheme, there is X dimensions. In many ways, you can draft law at one level, just leave out the banks, what is going to be in there. So things that are included are ... leave that blank. The total amount that will be charged to banks is ... leave it blank. So you can do lots of drafting and structuring in early documents.

**Deputy M.R. Higgins:**

I am well aware of that, I have done it.

**Mr. M. De Forest-Brown:**

Yes, fine, but that explains the reason why there was things. We were very much waiting for the OXERA input before we actually filled out those blanks.

**Deputy M.R. Higgins:**

Okay.

**Deputy C.F. Labey of Grouville:**

I do not know, I have to speak now for the tape, do I? Or will it pick me up? Okay. Just for the record, I apologise for being late. I have just been at a funeral. Mr. Chairman, could I just ask is this a hearing on the scheme or is it just a preliminary hearing about the timetable?

**Deputy M.R. Higgins:**

No, it is both in a sense. What we are doing is we are getting the first information on the scheme and it is the start of our hearing process.

**The Deputy of Grouville:**

Right, okay. I forget who mentioned it. It was about the Viscount's Department's comments. Could somebody talk me through these because I gather they were quite rushed and they felt ... the Viscount's Department felt that they could not comment properly because they did not have sufficient time. Are they going to comment more conclusively or is what they have said thus far it?

**Mr. J. Mews:**

Right. Well, I would need to look at the email in particular dealing with that. Perhaps you could refer me to which one it is.

**Deputy M.R. Higgins:**

She has not had access to any of this.

**The Deputy of Grouville:**

I do not have anything.

**Mr. J. Mews:**

Oh, right. So this is as a result of speaking to the Viscount?

**Deputy M.R. Higgins:**

Yes.

**Mr. J. Mews:**

Basically, the Viscount's Department did have a short period of time to look at it, like everybody else, and like us in drafting the law. The Viscount basically looked at the scheme, gave some comments and indicated that he was broadly happy with the scheme. One of the big questions is to do with subrogation of rights and there was a lot of discussions with the Law Officers actually about what we could do in regulations, what we could not do in regulations. So, for example, in the previous ... in the initial draft where there was a law brought in, you can basically make sure by law that people's rights are subrogated. Now, this is basically to do with what a scheme can claim back from somebody. So if you are claiming from a scheme, can you then also claim from a bank, or do you give your rights ... from the liquidator, do you give your rights to the scheme and then the scheme gets that money back first? That is the method by which it reduces the cost of the scheme and hence potentially the costs on government. So, there was a number of discussions with the Viscount in which the Viscount looked at it, but in summary the Viscount indicated that they were happy with the scheme as we presented it.

**The Deputy of Grouville:**

But did they not also ... if we are sort of half focusing on the timetable, did they not also comment that they would have preferred more time to look at it, then they could do a sort of proper job?

**Mr. J. Mews:**

I cannot recall any comments like that in any of the correspondence I have had from them. The indication which I had from recollection - and I would need to look at the email - was that yes, they could have done it, they would like more time, that would not be all, but they felt the scheme was satisfactory and fit for purpose.

**Mr. M. De Forest-Brown:**

I think I can confirm without any shadow of a doubt that everybody who has had anything to do with this process from beginning to end wished they could have had more time to deal with it.

**Deputy M.R. Higgins:**

In fact, can I just go into a few specific areas because time is going on. I am going to ask a few specific sort of questions to see what the responses are from a quick glance through the scheme itself and some other things. First of all, the question of let us say a bank fails and you are having to deal with the administrator. How are you going to deal with the situation where the administrator is overseas? In other words, the bank, foreign bank, you have the host country are dealing with the failure, they have their administrators; how are you going to deal with the branch or a subsidiary here in Jersey in terms of getting the data, what powers do you have to get the data and so on, to be able to implement the scheme and enable the board to get straight into dealing with the matter?

**Mr. J. Mews:**

Well, with due respect, that is an issue which nothing we can do in Jersey can solve. So it is not really relevant to this discussion about whether this scheme is fit for Jersey because we cannot put anything in our law which will compel somebody outside Jersey to give us information. That is something which we would hope would happen, but there is nothing we can do to make that happen. Our laws are limited to who is in Jersey and who is not in Jersey.

**Deputy M.R. Higgins:**

Okay. I always get this wrong and you can correct me on this one: the difference between bank and subsidiary, I think if I remember correctly is it a subsidiary would have greater powers if actually registered in the Island as a company sort of here, or is it the branch?

**Mr. M. De Forest-Brown:**

The bank is a separate legal ... sorry, a subsidiary is a separate legal entity here so we have a much clearer ...

**Deputy M.R. Higgins:**

That is what I thought it was, yes. So, where we have a subsidiary in the Island and it has deposits here, if it fails we do have certain rights against them. So, in other words a local administrator would have to be appointed, would it not?

**Mr. J. Mews:**

Yes.

**Deputy M.R. Higgins:**

But obviously you have the parent of the bank also have their own administrator in the home country. Now, the question is about funds, whether we can get ... what rights we have over the assets in here, because one of the problems I think with Landsbanki was the fact that money had been sort of upstreamed to head office and the fact the reason why the Landsbanki people are not getting their money back is that some of it went to Heritable in the U.K., some of it went to Iceland, and because of the failure of the bank there was no claim on any of those assets. The same as the letters of comfort were totally worthless as well. So what I am trying to look at is the practicality of we could have effectively a deposit protection scheme here which is almost worthless in a sense because we cannot get access to or we may find that some of the funds have been ring-fenced by the administrators elsewhere.

**Mr. M. De Forest-Brown:**

That is just a general point of law, is it not? If you just take a shop out there that goes bust ...

**Deputy M.R. Higgins:**

Woolworth's, for example.

**Mr. M. De Forest-Brown:**

They can only get what they can get under their legal contracts, so there is nothing different there. I

mean, in all our financial institutions they can just do what they can do contractually.

**The Deputy of St. Mary:**

Can I come in there? It is not so much that there will be a liability to the depositors who have lost out, but we will not be able to ... or the suggestion is that we will not be able to reclaim under the conditions that are mentioned here on subrogation. We will not be able to get at the funds in order to get the money back, if you like. Is that the position?

**Mr. J. Mews:**

I think the key thing here is that it does not actually ... this is about recoveries to the scheme, so the scheme is set up, the maximum liability of banks and industry is £100 million, so ultimately banks will put up ... if we have to pay out £100 million to depositors who have lost money, banks would put up 65 and Government will put up 35, absent the entire failure of the banking community which is highly unlikely. Now, in terms of what a scheme can actually recover back in recoveries, that is a separate issue, but yes, it is relevant to how much ... whether the government contribution will go down from 35 to perhaps 10 or £5 million, but as Martin said, it is nothing we can control and it is nothing which is really that relevant to the scheme itself.

**Mr. M. De Forest-Brown:**

Outwith asking the banks to keep the money here under the bed somewhere, I am not quite sure I understand your point. The fact is, you know, banks, businesses, pass their funds on elsewhere and that is ...

**The Deputy of St. Mary:**

No, I accept that. I was looking at the idea of recovery and the ability of the States to recover any money that they put into it, and there could be major problems. Let us look at the idea of ...

**Mr. M. De Forest-Brown:**



Hold on, I do not accept that there could be major problems that we can do anything about. We can set the law that says that the rights of the individual that we have paid money to is subrogated to it ...

**The Deputy of St. Mary:**

The individuals, yes.

**Mr. M. De Forest-Brown:**

Yes, and yes, it is possible that for whatever other contractual arrangements between the bank and other third parties that the level of recoveries may not be as high as we would want them to be. To the extent that there are any recoveries that come into the jurisdiction of Jersey law, they would be obtainable under Jersey law, and to the extent that they are then paid to the depositor who has already been paid out, they would be subrogated under law to the scheme. So there is not a major ... the only major problem here is whether the liquidator ... what level the liquidator or the administrator can recover externally from value that has gone outside the Island, and that is totally outwith the scheme or anything that we are doing to do with the scheme. That is a contractual relationship between the bank and its counterparties.

**Senator A.J.H. Maclean:**

There is clearly an element of risk here, you are right in that respect, but we have recent experience obviously with Landsbanki and the recovery there, albeit after a period of time, is running at about I think 80 per cent?

**Mr. M. De Forest-Brown:**

Yes, 70.

**Deputy M.R. Higgins:**

They hope it is going to be that at the end?

**Senator A.J.H. Maclean:**

That is what it is looking like now.

**Mr. M. De Forest-Brown:**

Which is not uncommon for banks.

**Deputy M.R. Higgins:**

Also, looking at the other one, what about the idea ... again, the problems with Landsbanki and the Icelandic banks in the Isle of Man were money being paid into a bank to be transferred to the credit of the depositor, the bank has gone down in the meantime, that money being in limbo. How would we be able to help people recover that money and how would we be able to sort of recover that money?

**Mr. M. De Forest-Brown:**

It will be covered by the rule of law, it is as simple as that.

**Deputy M.R. Higgins:**

Well, it seems to be lost in the ether as far as the Landsbanki ...

**Mr. M. De Forest-Brown:**

That will be decided by the courts on who had ownership of it if it was not clear from contracts.

**Deputy M.R. Higgins:**

Okay.

**The Deputy of Grouville:**

Could I ask, the £50,000 ...

**Mr. M. De Forest-Brown:**

Sorry, just going ... what I can tell you is that all of these issues are the challenges of any bank going down. There is massive complexity about who owns what and what the contract ... those are totally separate relationships from the scheme. I agree they are intellectually interesting and they are interesting to sort of explore, okay, well, maybe they go to the level that one could presume in terms of recoveries under a scheme. All the evidence we have taken is that recoveries generally tend to be high. Yes, there are plenty of problems along the way, but those ... but this is a separate issue from analysis of the scheme.

**Deputy M.R. Higgins:**

Actually, the root of my question essentially is what lessons have been learnt from the most recent failures? Have they been incorporated into the scheme that we have?

**Mr. J. Mews:**

Absolutely. Basically, the key lesson is actually what Guernsey tried to do, because Guernsey put out a consultation paper saying: "Let us put a limit on the amount which banks can upstream to their parents" which is one of the key things because, as we know, our banking model over here is that the Jersey subsidiary or branch takes in money. If it is a subsidiary, it feeds it up to the parent normally in the U.K. So, as Martin said yesterday, basically our problems only really arise if the parent goes under. Jersey banks are cash rich and they give their money, they upstream it to the parent. So Guernsey looked into can we limit the amount which is upstreamed, which then means that the subsidiary in Guernsey would always have enough funds? They did a consultation paper and the banks said: "Well, you can introduce that if you want but we will all leave Guernsey overnight" because there is no purpose for them having the subsidiaries in Guernsey then. So that has been considered elsewhere and rejected. So we have looked at what other jurisdictions have tried to do as a result of the banking crisis and what they have looked at doing, and we have taken that into account in designing the scheme.

**Deputy M.R. Higgins:**

Sorry, I interrupted you.

**The Deputy of Grouville:**

I was just going to go back to the £50,000 cover of individuals or retail, is that what you call it?

**Mr. M. De Forest-Brown:**

Retail.

**The Deputy of Grouville:**

How much is covered with offshore companies and trusts that deposit their money here?

**Mr. M. De Forest-Brown:**

As a general rule, nothing.

**The Deputy of Grouville:**

Oh, really?

**Mr. M. De Forest-Brown:**

So that is what we mean by retail. We mean people like you and I having our own bank account. If you are a corporate vehicle of any form, a technical term, you know, a company or a trust or anything that is not a person is generally not covered. There are some very minor exceptions.

**Deputy M.R. Higgins:**

You do not include partnerships either, do you?

**Mr. M. De Forest-Brown:**

No, not in the name of the partnership. If it was in the name of an individual, a partner, yes.

**The Deputy of Grouville:**

So no offshore companies or trusts' bank deposits are covered, yet bank accounts that are in individuals' names, joint names and all the rest of it, they are covered?

**Senator A.J.H. Maclean:**

Joint names would be £50,000 in each name, yes.

**The Deputy of Grouville:**

Yes, that is what I picked up yesterday.

**Mr. M. De Forest-Brown:**

The rationale behind that is because this is about supporting kind of the poor and the needy, effectively, your first money. Money that comes from corporates and trusts is generally part of a much bigger pool of money of either very wealthy people or corporate monies and so on, and a depositor compensation scheme is meant to address the needs of you and I with our £20,000 in a bank account or £5,000 or whatever it is, you know, that we lose that. That is what it is meant to be for.

**The Deputy of Grouville:**

Can I ask an aside? It is not specifically related to this depositor compensation. It is about the U.K. Government investing in the banks. How is that going to affect the offshore industry? Because effectively by the Government investing or sort of propping up the banks how do the branches then sell themselves as being offshore if they are government owned?

**Mr. M. De Forest-Brown:**

Offshore is about the jurisdiction. So, we have bank subsidiaries and branches that operate in the jurisdiction. Yes, they may be owned by parent companies in another jurisdiction which may or may not be state owned or have a majority ownership by the state. Most of the money that was provided to the banks was in the way of funding, so sort of lending to the banks. In the most high profile cases, Lloyds TSB and RBS, they have also invested heavily in the equity, the shares of the company, and as a

result are majority owners, but that does not affect ... there is no immediate direct effect. There are kind of ... there are environment impacts on the subsidiaries operating out of Jersey, but there is no immediate direct impact.

**The Deputy of Grouville:**

So if the bank owns ... sorry, if the government owns a bank, it does not actually affect the offshore industry? The subsidiaries over here are still offshore?

**Mr. M. De Forest-Brown:**

Yes.

**The Deputy of Grouville:**

Okay. Sorry, that was an aside. I just wanted to get it clear.

**The Deputy of St. Mary:**

Can I go back to the deposits, just to get ... I am going on about the scope of the risk. You said £33 billion in retail deposits. I think that is the international, is it not? Can you give some idea of the number? Because what matters in terms of the risk is the number of £50,000 packages there are, the number of depositors. It is not £1 million deposit and the £50,000 deposit gets the same guarantee, £50,000, so what matters to the risk is how many depositors and in how many different banks they are. Have you got those as a breakdown?

**Mr. M. De Forest-Brown:**

You are absolutely right, and that is really the bulk of the activity that went on between February and so on, which is us going through all of these sorts of questions and thinking: "Well, how does this work and what does that mean? Let us break down the data in a way that we can analyse." What we have done is identified that applying £50,000 to individual accounts under the scheme that we have identified that with a £100 million fund that we can cover under additional recoveries ... under normal levels of

recoveries up to the sixth bank in terms of deposits. So you have many elements of the matrix and we could spend hours in here going through examples and saying: "If you tweak it like this, how does this work over here?" But what we are trying to do is see whether we can afford £50,000 of cover for individuals' accounts that are in the ... in terms of risk the slightly more risky banks on the basis that we do not really believe that any of them are risky whatsoever. So that is the way we have modelled it.

**Mr. J. Mews:**

Just briefly, in terms of looking at documents, I discovered this document in my inbox which was the recent email from Oxera which I forwarded I think was it yesterday?

**Male Speaker:**

This morning.

**Mr. J. Mews:**

This morning even. So much has happened! Which I think may be useful for you to look at in that regard because this was some data which I asked from Oxera saying if there is a 60 per cent recovery rate - which is lower than Landsbanki can expect to recover back and is considered to be quite a low estimate, actually, because banks, generally recover most of the assets - if you look at that, that shows group by group. It will show 2 figures, the asset shortfall and the underestimated final G.G.S.(?) costs, and that sounds like jargon but basically if you look at it you have a final column on there which shows per banking group what the cost would be, an estimate, and it says under-estimate but Oxera believe it is going to be quite close to that figure what actually the cost would be to the scheme. That shows that if the sixth largest banking group went down and the total cost of the scheme after recoveries would be around £37 million, so the States would not even have to put anything in. After that, it would have ... if it was a larger banking group, it would be capped at £100 million. But that just goes to show that up to number 6 in terms of banking groups under normal recovery regime, the States would not have to pay out anything at all.

**The Deputy of St. Mary:**

I would like to know what the basis of the assumption is of recovering assets from a failed bank.

**Mr. M. De Forest-Brown:**

Sixty per cent.

**Mr. J. Mews:**

Sixty per cent.

**The Deputy of St. Mary:**

Sixty per cent?

**Mr. M. De Forest-Brown:**

Yes.

**The Deputy of St. Mary:**

Now I would love to know what underlies that figure because I thought that when banks ...

**Mr. M. De Forest-Brown:**

No, we have just taken it ...

**Deputy M.R. Higgins:**

... B.C.C.I., for example, is one of the worst examples ...

**Mr. M. De Forest-Brown:**

There is a funding issue, yes, but we are talking about ultimate eventual payment by government. So 60 per cent is based just on experience to date on what happens with banks. So if you take Landsbanki, they are getting 70 per cent back. We were just discussing that earlier.



**Mr. J. Mews:**

Seventy to 80 per cent, they think. B.C.C.I. is even higher.

**Deputy M.R. Higgins:**

But it took a long ...

**Mr. M. De Forest-Brown:**

Long time, yes, but that is ... yes.

**Deputy J.M. Maçon:**

Yesterday you mentioned the aspect of tax deductions for banks, I believe. Can you just expand and explain that point?

**Mr. M. De Forest-Brown:**

Well, it is quite simply if they pay out £10 million and they have sufficient profits, it will be deductible against their profits. So let us say you have a bank that made £20 million in profits and they had to pay out £10 million under this scheme, that would reduce their profits from £20 million to £10 million so they would not have to pay tax on that first £10 million.

**The Deputy of Grouville:**

Is this scheme the same as Guernsey apart from ... I believe we are asking more from our banks, a larger contribution than Guernsey banks. Other than that, is the scheme the same?

**Mr. M. De Forest-Brown:**

Is the scheme ... in most respects it is very, very similar to Guernsey. There are probably quite a few little, tiny wrinkles. The one you have identified most clearly, yes, is the fact that they have a flat £5 million cap as a maximum payout and we have a £10 million cap and/or a £5 million cap. So that is one

of the biggest items. Their way of charging against the banks is slightly different. They introduced a fixed flat rate charge against all banks come what may. We have not done that. We have only done ours based on their relevant deposits on the basis that we did not think it was appropriate to charge people who did not have any relevant deposits. In terms of the charging rate theirs is slightly different as well, and they have some as yet unfinalised risk weighting on to determine exactly what each bank pays, and they have not yet defined exactly how that is going to work.

**The Deputy of Grouville:**

Their scheme was brought in in a huge rush. Did they get it off the peg from anywhere else, like the U.K.? No, there is a reason why I am asking. **[Laughter] [Interruption]**

**Deputy M.R. Higgins:**

Why not get it off the peg?

**Mr. J. Mews:**

Popping into the shop to buy one.

**Deputy M.R. Higgins:**

Yes.

**Mr. M. De Forest-Brown:**

You have absolutely hit the nail on the head, which is at one level, you know, it is kind of ... there are limited elements of a scheme and so, you know, you have a short list of 10 decisions or something, maybe it is longer, but they are big decisions and it is like what is your decision going to be on each of those? So, yes, to an extent they did get it off the shelf because it is a £50,000 scheme, they are trying to limit their liability so they are thinking: "What can we afford? £100 million." So yes, no, it is not a straight copy but it meets international standards and is very similar to the U.K. and so on and so forth.

**The Deputy of Grouville:**

Okay. After the U.K. and Guernsey brought theirs in, have there been any substantial amendments to their schemes since they have been brought in?

**Mr. J. Mews:**

Guernsey, no. It is so fresh off the press that there would not be time ... there is not time yet to make any anyway. The U.K., if you look at ... I sent this across and, to be perfectly honest, because the email was so wide in the sort of request for information, I thought I would send you, you know, everything, really. But there is a lot of this which, to be perfectly honest, you do not need to read and there are a lot of reports and consultation papers from the F.S.A. (Financial Services Authority) in the U.K. in which they are saying: "We are looking at changing our scheme because of lessons learnt from the financial crisis." In particular, as I alluded to earlier, one of the big questions internationally is how quick can we get the money out to people. Part of that is making sure there is proper funding in place, one of the key things which we have addressed and spent quite a lot of time looking at, and also simplifying the procedures. That is very much in, I think, the consultation paper which you drafted some years ago. For example, one of the issues is whether S.M.E.s (small-medium enterprises), small companies, should be in the scheme. Actually, one of the things which is very difficult to do is if you have an S.M.E. in, what is an S.M.E., what is not an S.M.E.? Is a company in at one date or out at a different day? Is it how much assets it has had at the time? Is it number of employees? Is it its tax returns? All that sort of thing makes it incredibly difficult for a scheme to pay out quickly, so what people are moving to is the idea that you have to know who you are paying out to or who you are not paying out to so you can get the money to them quickly. You do not want a scheme that, you know, has to find out too many pieces of information before it pays out. In the scheme which you drafted you suggested for that reason, at least according to the consultation paper, all companies should be in. The analysis which we have seen shows that actually we cannot afford all companies; that is not a sensible thing to do in terms of the cost. In fact, it does not also meet what the international standard is now in terms of, you know, jurisdictions just do not protect large companies. So, winding back slightly, yes, they are looking at revising the rules and they are looking to revise them all over the world. There is about half this lever

arch is filled with consultation papers from the U.K. alone as to thinking: “What should we do with this?” and it is a massive debate at the moment.

**Deputy M.R. Higgins:**

So, in fact, part of the debate is to go out ... this is a question I was going to ask anyway. Obviously you put forward an *ex post* scheme which is again what I was putting forward in mine many, many years ago. The U.K., according to Paul Tucker, are looking now to go *ex ante* and have a standing fund where they all contribute in because that way they were saying that because the banks, some of them are more risky than others, then therefore they should pay a higher sort of premium into the fund.

**Mr. M. De Forest-Brown:**

There are 2 things there. One is they have always had a pre-funded scheme; it is out there at the moment. The current cap on contributions is something like £2.8 billion a year and they are looking at that. If you look at their website you will see that there are banks going bust left, right and centre, but they are always small banks and this shows how important this is to have a pre-funded scheme in the environment where you have lots of small banks or things that are being covered. So yes, it is pre-funded. They have and all large jurisdictions have a regular series of banks going bust. They often tend to be sort of community-type banks or mutuals. The second point is absolutely, the debate always is who pays? So they are looking again at what is the right charge for each institution and so they are looking at going from the flat rate scheme which we have adopted that they used to have to varying it. We chose to avoid that because it is an argument that seems to never satisfy anybody. You simply end up with winners and losers, as you do under a flat rate scheme. So we just thought there is no point in having that endless debate. Guernsey have not finalised their risk weighting. It shows how difficult it is. So we proposed and had supported by the Jersey bankers a flat rate of 0.3 per cent.

**The Deputy of St. Mary:**

There is a real problem with that, is there not - and I have it twice in my notes here - about the fact that the good fund the bad? Basically, it is the virtuous subsidise the people who do risky things, fail, who

are incompetent and so on. That is a real problem at the heart of this, and when you are putting government money in as well to back, essentially we are going to compensate people who have suffered because of a failure. There is a real problem. In tourism, for instance, if one bad company puts the whole brand down, then there are ways of dealing with that, which is Q.A. (quality assurance), make sure there are not any bad apples. So I just wonder if you would like to comment on that.

**Mr. M. De Forest-Brown:**

Yes, interestingly the banks have said obviously with the introduction of the scheme they would like the opportunity to give their views if new banks come to the Island because they are all pretty comfortable with their population here currently but they would obviously be worried if we suddenly brought in a B.C.C.I. or somebody that they thought was, you know, known in the industry to be difficult.

**Mr. J. Mews:**

Sorry, I was going to say that was one of the reasons with the top 500 rule, the makeup and structure in Jersey is very much safer, you have not got the smaller, riskier building society types that would do exactly as you were describing.

**The Deputy of St. Mary:**

I suspect some of the top 500 would have gone under, but they have been bailed out.

**Mr. M. De Forest-Brown:**

Sorry?

**The Deputy of St. Mary:**

Some of the top 500 have failed and they have been bailed out.

**Mr. M. De Forest-Brown:**

Yes, we use the phrase top 500 for systemic; in other words, those that are likely to be supported, those

who are too big to fail, those retail banks that are too big to fail because they have on occasion allowed investment banks or ...

**Deputy M.R. Higgins:**

Like Lehman, yes.

**Mr. M. De Forest-Brown:**

Yes.

**Deputy M.R. Higgins:**

Anyway, can I just move on to just 2 other things and then ... because I think time is going on. You have mentioned again that we should have confidence in the banks we have actually got located in the Island because of the nature of their business. You mentioned the business models and so on. Do you have any information that you could give us that could give us a bit of a background about the type of banks we have actually got here, the type of business they are doing? Because, as I say, I forget how many banking licences we have currently, and they just seem to be ... well, we know they are not a homogenous group; they are all doing different things and so on. We would like to have an understanding of what the banks are doing and the nature of their activities. So are they just like a moneybox in a sense, all the money comes in from people, whether it be expatriates and so on, and then it is being uplifted into London, or what?

**Mr. M. De Forest-Brown:**

We can provide you with some information on that, but in summary the biggest chunk of banks and the biggest chunk in terms of having retail deposits, which is obviously the issue that affects us here, is that that is exactly what they do. They bring in the money and they pass it upstream and that is exactly what they do. They are retail gatherers. They are providers of funds to their corporate. Those same banks may do a small amount of lending. If you took a big ... an Icelandic bank or an investment bank, to the extent that they bring in some retail deposits they borrow then 10 times as much as that and invest all of

that in risky assets. That is where the hazard arises. Here we just take in retail deposits, no extra borrowing, not invested in risky assets, just fed up line, maybe 10 per cent or so on average is invested in, say, local mortgages or other forms of lending structure. So it is a very, very small lending book. So that is the standard model and that accounts for, I do not know, 80 per cent of banking here. The only other different type of banking is high net worth private client banking, which is really much more in the nature of providing high net worth services to the wealthy. So that is, you know, discretionary management of their portfolio, managing their assets, and so we have a number of banks here that to the extent that they have retail deposits it is usually part of their clients' £5 million that they are managing and so it is a small element of it. So, they do not want a deposit scheme because they do not need it to win their clients and their clients are not getting any comfort from being covered for £50,000 when they have so much money with the bank.

**Deputy M.R. Higgins:**

This is the fiduciary bank type argument for the fiduciary accounts?

**Mr. M. De Forest-Brown:**

Well, sorry, the banks that are just dealing with ... yes, either just servicing wealthy individuals or trusts or the like. So the third part of the picture really is the services the banks provide to all of the businesses in the Island, which is where they generate a lot of their money. So this is actually providing services to trusts and to funds and so on and so forth. So it is a very, very simple model. It would be a much more complex answer if you were looking at a U.K. or another jurisdiction, which will have a whole range of banking through investment banking and complex dealing with ...

**The Deputy of St. Mary:**

When you say retail gatherers, you mentioned yesterday expats who do not want to ... who are already taxed in Spain or Cyprus, for example, and then they want to put their money in Jersey because if it went to London then it might be taxed twice. Are there any other categories? Is that really all we are talking about? There must be different types of depositor that we are gathering?

**Mr. M. De Forest-Brown:**

We are. The bulk of this issue, where the liability could arise for us, is obviously deposits. What we are talking about here is focus ... we can have another debate about how banks work and the whole thing, but basically what we are here talking about is a scheme to support depositors, so that is the bit we are focused on. So yes, they do other things but we are not interested in those because we are not talking about them.

**The Deputy of St. Mary:**

No, I am talking about the types of retail depositors. That is what the question was about.

**Mr. M. De Forest-Brown:**

Oh, I am sorry, I misunderstood your question. There will be expats of one form or another around the world, whether they are British or other expats, but to the extent they are retail deposits they will be, yes, just expatriates or sometimes even local residents. We will have lots of people living in other jurisdictions throughout the E.U. making deposits. So yes, sorry, they are not always expats; they do not have to be outside their own country of origin. They could be just directly from people in their own country for whatever reason.

**Deputy M.R. Higgins:**

If I could also ask again, what requirements or regulations have you drafted to make sure that the banks have the information you need in the event of a failure in a very user-friendly way? So, for example, Paul Tucker in his thing is going on again about the need to make sure that banks are providing information on a regular basis. Not just when it fails; it is trying to gather it all together so you can get the payment schemes into being. Have you made a requirement for the banks to provide the information on the depositors and to quickly give it in a very quick and friendly manner?

**Mr. J. Mews:**



Yes. The scheme basically provides for the bank to provide information to the scheme about deposits and so that can be quickly ascertained and so that the figures can be calculated. It is quite a complex issue. One of the things which the U.K. is having a big battle with its banks at the moment is whether the banks hold what is called a single customer view. That is where the banks invest huge amounts of time and money because the estimate of the bill is, for all the U.K. banks, in the billions to do this, to actually carefully analyse each customer to know exactly what is held by way of mortgage, by way of loan, by way of deposits and other things in order to every single time know what they would pay out. The banks are flatly refusing to do that and there is a massive debate about that in the U.K. Here in Jersey we need to look at what happens in that debate and clearly if it becomes a group standard then we can adopt that but it would be ... it would be unfeasible for us to adopt things which are way and beyond what the U.K. requires for. So that is a space for us to watch and as we have talked about having a review of this, the banks want there to be a review within a year, and we clearly need to review in the light of the changing circumstances.

**Deputy M.R. Higgins:**

Okay. Now, in the case of a failure, the board is going to be established, so the board will not have that information prior to the failure until it has established itself and is up and running to be able to call in that information to make the payouts.

**Mr. M. De Forest-Brown:**

That is correct.

**Deputy M.R. Higgins:**

What is actually being suggested is - and, in fact, it was in the discussions way back when I was in the Commission as well - was the idea of the banks having a requirement to provide information to the regulator on a regular basis about the level of deposits so they could understand the sort of liabilities that were there and some of the problems that were going on. Have you brought in any sort of provisions in that way? Is the Commission involved in this thing, getting data, for example?

**Mr. J. Mews:**

That is one of the discussions to have because the powers already exist for the regulator to get the information, so it is not something which we need to add in at the moment. But that is one of the key things actually to explore going forward. The banks have already said they are happy to provide that information on an annual basis. Whether it should be more than that is another question, but they are happy to provide information. We have made enquiries and the provisions are there to enable that to be required as well. So I think that is all in place.

**Deputy M.R. Higgins:**

Okay. I am not going to go into much more because, again, I have only just quickly skimmed through what we received. The others, by the way, have not received it. In fact, if I can just make a comment on that. First of all, I would like to state where we are coming from as a committee. Please do not treat us as the enemy. We are not. We actually want to work with you, in a sense. We want a good ... we are all agreed that there should be a Depositor Compensation Scheme for the Island. What we want to do is make sure we have got the best possible scheme for the Island and meets the needs and we are okay. So, we are coming from that perspective so do not see us as being an enemy. We are not trying to drive holes in what you are doing. We are trying to determine, test how far you have got and so on to make sure that we have got the scheme that we want. I would like to make that clear from the start; I think we are all agreed on that. The second thing I would like to say is, blanket confidentiality. Now, what we have is a situation where the 4 volumes came the other day. I signed it for myself, not for the committee, and the committee have not had sight or copies of the volumes or anything else, and I do believe a lot of the material that is in those files should not be confidential and they should be allowed to have anyway. The only thing that I could see - and correct me if I am wrong - the only thing that I would consider confidential is the tables, the breakdowns, showing the individual groups. Although the banks are anonymised, and you have all got a number and they have got the various deposits against them and so on, but where you have a group you can pretty well guess which the group might ...

**Senator A.J.H. Maclean:**

Exactly.

**Deputy M.R. Higgins:**

I can understand that being confidential and this all being bound. We do not want to do anything to damage the industry or the banks anyway. So, what I am going to ask you to do is review this thing about the confidentiality, about what people have to sign up to, I think. We should always make it the minimum, the most essential things, that are the things that must be kept totally confidential. So, I am going to ask you to consider that and liaise with Tim on that over the coming week, if you will.

**Senator A.J.H. Maclean:**

Presumably, Mr. Chairman, you are referring to not just this particular review but reviews generally in confidentiality?

**Deputy M.R. Higgins:**

I think, generally, it makes sense to do that. Not everything is confidential.

**Senator A.J.H. Maclean:**

No, I would accept that and I think it is fair to say that quite an amount of the information that you were sent probably is not confidential.

**Deputy M.R. Higgins:**

And it is the general arena, I know.

**Senator A.J.H. Maclean:**

However, to go through all of it individually and identify what is and what is not I think, in itself, would provide some difficulty.

**Mr. M. De Forrest-Brown:**

We would have to provide some generic words that agree, so if we could say something like any bank numbers, or something like that, but we can discuss that, explore that.

**Deputy M.R. Higgins:**

As I say, from what I read of what I saw, I think they were the only things that I would consider confidential and, as I say, there is no intention on the part of anybody here to impact on the banks or the Island in any way to jeopardise the position.

**Senator A.J.H. Maclean:**

No, that is fine and more than happy to look at that and see if we can work out, as Martin was saying, some wording that would hopefully cover that up. Your other point, I am delighted. I do not think we ever doubted that you were trying to be anything other than constructive in this process, both individually and as a panel, and we clearly welcome that. There is some degree of urgency with this, as I hope you have appreciated from the comments we made earlier on, from an Island perspective. You know, there are reputational issues, there are risks by not progressing this as we have identified for some months that we were going to do so. Could I ask you whether you will be able to give some consideration to allowing the debate to proceed on this matter with the possibility of amending, at a later date, if you so chose? As we were pointing out, this is a scheme that has not come from a clean, blank canvass but it has largely taken international standards, existing schemes. You may well have areas that you are concerned about but it would give you a far more leisurely opportunity to consider it and have a full and open debate on the 14th to give the industry and, obviously, residents the confidence and certainty needed by progressing the matter.

**Deputy M.R. Higgins:**

The only answer I can give you to that, Alan, is we have not discussed it yet and therefore not in a position ...

**Senator A.J.H. Maclean:**

That is why I said will you give it your consideration.

**Deputy M.R. Higgins:**

We will consider it and we will pass on our view as to what we are going to do. We have to have a discussion as a panel about how we progress.

**Senator A.J.H. Maclean:**

Yes, I know. I appreciate that. I was not expecting you to answer either yes or no to that. I was just asking if you would give it some serious consideration, recognising that this is a serious issue for the Island as a whole, both reputationally for business and also for consumers, and the scheme is changing. The Guernsey scheme, as you probably noted, has got areas where there may be some improvements coming and, indeed, there will be opportunities to do the same to ours, and that is happening in many other jurisdictions where, as circumstances change, improvements are required. You could still go through your process and bring amendments at a later stage if you felt that was necessary.

**Deputy M.R. Higgins:**

Well, as I say, we will consider that and we will give you a response. In fact, there are 2 other things, one, that if we do decide to review it, I might add, from the discussions I had with the Treasury this morning, it would not affect - from what I was told, anyway - anything that might come out of the Foot thing because of the fact that it would be tabled on the 14th and have principles debated, it would be taken as scrutiny as per the U.K. and then the legislative process.

**Senator A.J.H. Maclean:**

Well, it is partly a confidence thing but it is not just Foot. I mean, Foot is important but there are all the other areas that we have previously discussed, you know, local exposure to the taxpayer and we have covered all ...

**Deputy M.R. Higgins:**

We will cover those, yes. There is one thing, it is changing ... coming out of the ... sorry, the bank evidence has been called, has it not?

**Senator A.J.H. Maclean:**

Deferred.

**The Deputy of St. Mary:**

I believe it is the 20th. Deferred to the 20th.

**Deputy M.R. Higgins:**

Well, not on 14th anyway.

**The Deputy of Grouville:**

Why was it? I was not party to those discussions.

**Deputy M.R. Higgins:**

It was mentioned in the States yesterday.

**The Deputy of Grouville:**

Yes, I picked it up in the States. Why has it been deferred?

**Senator A.J.H. Maclean:**

The Constable of St. Clement who is rapporteur for that particular ...

**The Deputy of Grouville:**

Yes, he came to our hearing earlier this week.

**Senator A.J.H. Maclean:**

He came to the hearing, that is right. There was a separate proposition brought by Deputy Green and the Constable thought it was more sensible to have discussions with Deputy Green and, you know, they are going to work together and see if there are areas with commonality and decide what they are going to do after the summer recess. So, they jointly agreed that the most sensible, pragmatic way forward would be to defer it.

**Deputy M.R. Higgins:**

I might add that also helps us with the Depositor Scheme because it means our officer, who is writing a report, can devote his time to ...

**Senator A.J.H. Maclean:**

I might add that that was also due consideration. As I said to you, when we have had our private discussions, that it was important to move on the D.C.S. scheme as quickly as possible and when the Constable came to me and said: "We are thinking about deferring it" I was very enthusiastic because I would be keen, obviously, for you to put all your resources into progressing D.C.S. as quickly as possible.

**Deputy M.R. Higgins:**

Right, well, has anybody got any other questions they are putting in?

**The Deputy of St. Mary:**

The Government money; this is a question about Government money in the scheme and whether you can give us information about which other schemes have this sort of backing from the States. You know, what is the ... what other scheme ... how are they constituted in terms of the commitment from the banks who, after all, are the people who are covering each other's potential failures and governments elsewhere. You know, what is the ...?

**Mr. M. de Forest-Brown:**

I think the key point here is that ours is more explicit than you will find in other schemes. There are not a great deal of schemes you will find around the place that have an explicit obligation of government but that is because, in the nature of most other jurisdictions, either the smaller schemes, small bank creditors, can be dealt with or you have got the major problem that you just saw happening in places like the U.K. where the Government have to step in and bail them out, out with the scheme but by other means. So, you will not typically find schemes. What we could have done is said - arbitrarily, we could say: "Well, actually, we have a £65 million scheme" and that is it to the extent that suddenly if there was any monies needed behind, over 65 and up to 150 or something, Government could sort of take a view at the time. However, given that Guernsey has introduced a £100 million scheme - and our banking business and our financial services are so much bigger than Guernsey - we thought it would be not a very credible scheme to have a scheme that was giving cover of less than £100 million. So, we kind of ... again, it is, as I said before, in terms of trying to balance off the least worst scenario - because you are always trying to do that, really - we thought we could not get away with a scheme that is less than £100 million. We did not think that would be credible in the environment and then, because of the skewed balances that we have, that it was important to introduce a cap so that certain institutions are not penalised heavily and that cap had to bear in mind the cap that Guernsey is offering of £5 million. So, the answer to your initial question is you will not find many schemes around the world that have explicit government funding. Guernsey have introduced an up-front funding. In Guernsey they will fund as well, rather than ultimately pay, and they currently have an offer of ... their proposals are, there is a £20 million first slice, a pre-funded slice, which Government are funding until they have recovered that from industry, but that is the nature of the Guernsey explicit involvement.

**Mr. J. Mews:**

Just to elaborate on that slightly, so in Guernsey it is explicit that Government will guarantee £20 million and if that is explicit in Guernsey, the Guernsey Government hope to recover that all, because of the nature of their scheme, but that is explicit from the legislation. Also, we need to look at the facts, say, of the Isle of Man. The Isle of Man put £105 million into accounting, basically, to pay out the



depositors. They paid out the first money to the depositors directly. Now that was not in the Isle of Man scheme explicitly but they felt they had to do that. So, as Martin said, things may not be explicitly written in there. Sometimes they are like Guernsey, generally they are not, but in reality governments often have to step in.

**The Deputy of St. Mary:**

I think I have to press you on this. I mean, I did ask ... you have given me the detail of Guernsey; £20 million appears to be the amount that is behind the scheme from the Government, but what about generally because it looks to me as if the industry has succeeded in shifting a larger slice of the liability of the Government here. I just wonder what your comments are on that because, obviously, this split is critical, is it not.

**Mr. M. de Forest-Brown:**

Yes. I think that comes out of analysing the balances and this is where you make a decision which is about, as I say, coming up with the least bad scheme. Unfortunately, the nature of balance is here. Whereas in Guernsey they are spread more evenly across their institutions we have a high skew so that most of our deposits are held in a small number of banks. I mean, that is good and bad. It is good in that we know that they are held with banks that we all have real confidence that they are going to be supported by the U.K. Government, but it is bad in that the way it skews the scheme and, given the landscape that has now been painted by Guernsey, we face a real risk that if we bring in the wrong sort of scheme, that we could lose business significantly over to Guernsey who have now put their scheme in place. So, you are right but it is because of those limitations. The alternative would be for the Government to pay less and charge more on the banks. That is simply the alternative. That is the option and the question is at what level would that make us uncompetitive and we believe that we have got ... we have put forward proposals that are appropriate and, in particular, it focuses on the cap. We have not said: "Oh, we must have a £5 million cap." We have got as far as to say: "Well, actually, we think there is enough about Jersey that will make them swallow the £10 million cap" at a time when these guys are making decisions about where they consolidate their activities. We felt that if we pushed for a different

level of cap, a higher level of cap or, in fact, an uncapped level, that we would have some pretty serious opposition from the banks.

**Deputy M.R. Higgins:**

Carolyn, do you have a question?

**The Deputy of Grouville:**

Yes, I do. Are all the Island's banks, subsidiaries, whatever, branches, are they all going to participate in the scheme?

**Mr. M. de Forest-Brown:**

No, in that we charge against their relevant deposits, so if a bank does not have any relevant deposits it will not be charged. It does not have any deposits to cover, so it does not need the protection, so it should not ...

**The Deputy of Grouville:**

But all those that do ...

**Senator A.J.H. Maclean:**

Anybody with retail assets, yes.

**Mr. M. de Forest-Brown:**

All those ... yes, will be charged.

**The Deputy of Grouville:**

Right.

**Deputy M.R. Higgins:**

So by relevant depositors you are talking about retail deposits or individuals?

**Mr. M. de Forest-Brown:**

Yes.

**The Deputy of Grouville:**

Okay. Will they be accredited in some way or will it be a known fact that all banks over here are ...

**Mr. M. de Forest-Brown:**

Yes, they are all licensed by the Jersey Commissioner.

**Deputy M.R. Higgins:**

That would be a licensed condition, will it?

**Mr. M. de Forest-Brown:**

Well, there are only licensed deposit takers here at one institution.

**Deputy M.R. Higgins:**

Will it be added to the permit those, essentially which of the permits you operate in the Island as a condition of operating in the Island that they are a member of the scheme?

**Mr. M. de Forest-Brown:**

That will be the law. The legislation will require that if they are a licensed deposit taker they will be in the scheme.

**Deputy M.R. Higgins:**

Thank you. Just one last thing before ... sorry, you go ahead.

**The Deputy of Grouville:**

Well, I was going to finish my questions. Is there going to be any restriction on bank risks that they take within their business or will that be their problem?

**Mr. M. de Forest-Brown:**

No, we have not introduced that. The business model here is a very low risk business model, to the extent that it is so low risk it is not as if you are close to some reasonable level of risk. Risk is defined by the capital ratios that are calculated for banks. We have very, very high capital ratios so we have more capital here than typically is held by banks in other jurisdictions, and also we have banks with a much lower risk model. So, there is no explicit limitation anywhere in terms of risk, but that is set by this capital requirement that the Commission applies to each bank, which is higher than is the case in other jurisdictions.

**The Deputy of Grouville:**

Okay, and just one more thing, from me to Alan, just to say, is there going to be anything coming forward to support small businesses?

**Senator A.J.H. Maclean:**

On the basis that they are not covered by the scheme?

**The Deputy of Grouville:**

Yes.

**Senator A.J.H. Maclean:**

Not specifically at the moment, but I do think we have to do some further work to consider what the ramifications are for small businesses.

**Mr. J. Mews:**

One of the key things is that small businesses can keep the money in their own personal names, so they can be protected and possibly that is the message we need to send out there, so that people understand that.

**The Deputy of Grouville:**

Yes.

**Deputy M.R. Higgins:**

Although you say that because of ... the separate legal personality that a small company may have, if it is a registered company, that would not apply.

**Mr. M. de Forest-Brown:**

It is incorporated, you are right, it would not be covered, but the message to the people is do not keep big chunks of cash in a company, take it out and put it in your own personal name and then you are covered.

**Senator A.J.H. Maclean:**

There are reasons why people might not want to do that, so there are some issues that ...

**Deputy M.R. Higgins:**

Issues you have got to look at, yes. Can I just ask, finally ...

**Mr. M. de Forest-Brown:**

So it is joined up government in this case.

**Deputy M.R. Higgins:**

My own final question is community bank. Why did you leave out the community bank?

**Mr. J. Mews:**

The community bank is a charity. It has ... without stating what the exact figures are, which I am not entirely certain, but I understand that the community bank can, by spreading its assets in 4 banks, be entirely covered. Charities are in the scheme.

**Deputy M.R. Higgins:**

Shona, any questions?

**Deputy S. Pitman:**

No.

**Deputy M.R. Higgins:**

Okay, well I think we have taken you almost to 2 hours, so I am grateful for the extra time as well and for the explanations, so thank you.

**Senator A.J.H. Maclean:**

Thank you.