



Economic and International Affairs Scrutiny Panel

Ferry Tender

Witness: The Minister for Sustainable Economic Development

Tuesday, 19th November 2024

Panel:

Deputy M. Tadier of St. Brelade (Chair)

Deputy G.P. Southern of St. Helier Central

Deputy M.B. Andrews of St. Helier North

Witnesses:

Deputy K.F. Morel of St. John, St. Lawrence and Trinity, The Minister for Sustainable Economic Development

Deputy S.G. Luce of Grouville and St. Martin

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

Mr. M. Thomas, Chief Executive Officer, Ports of Jersey

[15:35]

Deputy M. Tadier of St. Brelade (Chair):

Minister, can I first of all say thank you for attending upon us today on an issue which I think, it is fair to say, has attracted a reasonable amount of public interest and still continues to do so. So thank you to you and your officers and your colleague. If I can just start off proceedings by drawing your attention to this - I think it is also for those listening - that these proceedings are covered by parliamentary privilege and essentially you are afforded and we are afforded the same privilege that we would have as during a States sitting, and effectively as long as what you are saying today is something that you know to be untrue then we - of course we would not expect that - but otherwise you are covered for what you give to us today in the same way as we would be, as I said, in a States

sitting. If I can just add, although I was away on States business for Wednesday, I did manage to tune in for the statement and subsequent questions. It is quite clear that there were outstanding questions that other Members wished to ask after the full 30 minutes, and I think this session here is partly to answer to that desire for continued questioning of some of the points that you did make in your statement, Minister. Could I ask, just for the record, that we introduce ourselves? So I am Deputy Montfort Tadier, I am the chair of the Economic and International Affairs Scrutiny Panel.

Deputy M.B. Andrews of St. Helier North:

I am Deputy Max Andrews.

Deputy G.P. Southern of St. Helier Central:

Geoff Southern, member of the panel.

The Minister for Sustainable Economic Development:

Deputy Kirsten Morel, Minister of Sustainable Economic Development.

Deputy S.G. Luce of Grouville and St. Martin:

Deputy Steve Luce, Deputy for St Martin and Grouville.

Chief Officer, Infrastructure and Environment Department:

Andy Scate, I am the chief officer for Infrastructure and Environment.

Chief Executive Officer, Ports of Jersey:

Matt Thomas, I am the C.E.O. (chief executive officer) of Ports of Jersey.

Deputy M. Tadier:

Before we start with the questions, although this is a question in a sense about what your capacities are here, I must admit I was not expecting or we were not expecting Deputy Luce to be present. Could you just explain why you brought him along and what his capacity is here today?

The Minister for Sustainable Economic Development:

Yes, absolutely.

Deputy S.G. Luce:

I am happy to explain. Obviously I have got quite a lot of experience in ferry work. I worked heavily on contingency for Brexit along with the Economic Department 4, 5, 6 years ago. When I heard about some of the challenges over 12 months ago now faced by our ferry company, I offered my

services to the then Minister, as a Back-Bencher, to help if I could in any way and the offer was taken up. I have worked alongside Deputy Morel ever since.

The Minister for Sustainable Economic Development:

So that was in relation to contingency and then moving forward, as obviously Deputy Luce became Minister for the Environment and became part of the Council of Ministers. He has been sighted on the whole process from a Ministerial perspective with me, alongside some other Ministers as well.

Deputy M. Tadier:

Can I just clarify, so you said Deputy Luce started working with you, effectively, as an adviser but before he was a Minister?

The Minister for Sustainable Economic Development:

Well, as adviser and also Deputy Luce was a member of Scrutiny at the time. As we were going into that time back in December last year, where we were seeking contingency, I did think it would be worthwhile having eyes on me as well, because I come at this always from the perspective of I am just trying to do what is right for Jersey. I do not have a particular political angle on this whole scenario at all and so I wanted to know that when, in this case around contingency, were we doing the right things and having another set of eyes, particularly in this case also experienced eyes because of the background that Deputy Luce just talked about, it seemed like a really good idea to invite Deputy Luce along.

Deputy M. Tadier:

It just adds another element of surprise to us in the sense that we are finding out there are still a lot of questions about the process and we did not know that Deputy Luce was involved in it.

The Minister for Sustainable Economic Development:

That was not part of the process. That was a part of the contingency.

Deputy M. Tadier:

While you are welcome to bring anyone you like, we are going to ask obviously direct questions to you. You are our Minister in the sense that we scrutinise you, we do not scrutinise the Environment Department.

The Minister for Sustainable Economic Development:

That is correct.

Deputy M. Tadier:

But could you also just explain the capacity in which your other 2 officers, if I can call them that, are accompanying you today?

The Minister for Sustainable Economic Development:

So, obviously Andy Scate is the senior reporting officer for the ferry tender process, having taken over from Richard Corrigan a month or so ago.

Chief Officer, Infrastructure and Environment Department:

24th October.

Chief Executive Officer, Ports of Jersey:

I guess, from a Port's perspective, there is a natural overlap, but we have been engaged to provide technical advice to Government throughout the procurement process.

Deputy M. Tadier:

Okay, thank you.

The Minister for Sustainable Economic Development:

If I could just quickly go back. I think one of the points, I guess, by bringing Deputy Luce here, is to show that none of this, since December last year through until today, have I been doing on my own. I have been working with other Ministers and obviously Scrutiny. I have briefed Scrutiny whenever asked to. I have always done this in conjunction with others to check my thinking all the way through.

Deputy M. Tadier:

Can I just say, one thing that struck me is your absence of Assistant Ministers in this whole process. So you do have 2 Assistant Ministers, one of whom has a good background in logistics and the other of whom is a corporate lawyer. It seems that you could have probably done with advice on both of those areas from your Assistant Ministers rather than bringing in a Minister who is not directly related to your department.

Deputy S.G. Luce:

Might I just answer that, Chair, because I did say in the introductions I was here as Deputy for St. Martin and Grouville and not as Minister for the Environment. I joined this project as a Back-Bencher. I would like to feel I would still be part of it as a Back-Bencher if I had not become a Minister.

Deputy M. Tadier:

It does blur the lines between the Troy Rule, the Executive and Government. We are here to scrutinise Government, we are not here to scrutinise the Deputy of St Martin and Grouville. Insofar as I have said, I do not mean any disrespect to Deputy Luce, but we will be directing questions to you, Minister.

The Minister for Sustainable Economic Development:

Absolutely, I did not expect anything else. But just quickly on Deputy Jehan and Deputy Scott. Deputy Jehan ...

Deputy M. Tadier:

Constable.

The Minister for Sustainable Economic Development:

Constable, sorry, thank you. I do not know where I got Deputy from. The Constable of St. John has been sighted on many parts of this; not all, but many. He has been there, and like I say, other Ministers have also been very sighted on this as well. If you wanted, I could actually bring 4 or 5 Ministers in who have been there for most of this process. But I did not bring 4 or 5.

Deputy M. Tadier:

Let us turn to questions, because I do not want to get bogged down in that. You bring who you like, Minister, but ultimately we will be asking you the questions and bringing others as you need to. The first thing I want to ask, it arises out of a question you were asked by Deputy Warr on Wednesday, where he asked - and I am not going to focus on the question but rather the answer for the time being - how was it that Condor were allowed to submit a bid in the first place if you knew they were in financial difficulty? Your answer was: "I cannot go into any detail about any decisions made with the procurement process. I was not there for all those decisions. But Condor were able to enter into the bidding process and I have to take assurances from the assessors that that was a reasonable thing to do." There are a couple of questions that I think arise from that statement you made. The first is that you said you were not there for all of those decisions that were made in the procurement process. Can I clarify, do you mean that you were not there for any of those decisions or that you were not there for some of those decisions?

The Minister for Sustainable Economic Development:

No, what I was trying to say there is that the process, quite appropriately, and I believe this is also the case in Guernsey, the actual process itself was a procurement process. As a Minister, I was not in that procurement process. That was a process that was run by the procurement team in conjunction with the then S.R.O. (senior reporting officer) and other officers. That was to ensure

that I then come in afterwards with a recommendation, et cetera, being able to see that with fresh eyes, so I did not take part in that process.

Deputy M. Tadier:

But the criteria of the procurement process, were you involved in putting those criteria together?

The Minister for Sustainable Economic Development:

I was involved in looking at some of the minimum service requirements. I remember adding to one of the minimum service requirements at the time. Outside of that, I obviously was sent the invitation to tender beforehand and read through it, but it was the procurement team that designed the procurement process. Please do correct me if I am wrong. Again, this is why I have asked officers to be here as well, because on that side I am not as sighted as others.

Deputy M. Tadier:

When you talk about the S.R.O. ...

The Minister for Sustainable Economic Development:

Sorry, I think Matt wants to say something.

Deputy M. Tadier:

Can I just finish that? So in terms of the S.R.O., tell us what that means. What is an S.R.O.?

[15:45]

The Minister for Sustainable Economic Development:

Senior reporting officer.

Deputy M. Tadier:

And who was that?

The Minister for Sustainable Economic Development:

During this, up until 24th October, it was Richard Corrigan.

Deputy M. Tadier:

We had actually asked for Richard Corrigan to ... he was invited as well. He is not here today. Is there a reason for that?

The Minister for Sustainable Economic Development:

So Richard Corrigan is on sick leave and has been ... I do not really want to go any further into that, because that is entirely personal.

Deputy M. Tadier:

We would not want somebody who is on ...

The Minister for Sustainable Economic Development:

He could have been here, could not have been here. I am concerned about some of the media coverage. As someone who is on leave for those reasons, I am concerned that excessive media coverage may be difficult.

Deputy M. Tadier:

We would not want somebody who is on sick leave to attend, but we wish him a speedy recovery. But we are mindful, of course, that up until this point he had been involved in the process.

The Minister for Sustainable Economic Development:

That is correct.

Deputy M. Tadier:

You did say that you had to take assurances from the assessors about, in this case, Condor's inclusion in the first place in the bid. Did you take those assurances from the assessors? Who were the assessors?

The Minister for Sustainable Economic Development:

Again, I am not keen on naming people. There was a team on our side. There were 4 evaluators.

Deputy M. Tadier:

Officers?

The Minister for Sustainable Economic Development:

A mixture of officers of government, a legal officer from the Law Officers, Matt.

Chief Officer, Infrastructure and Environment Department:

If it helps, it is normally in a procurement process, firstly, the S.R.O. role is the senior government officer responsible to oversee the process, to make sure that the process is being undertaken in the right way, and ultimately to make recommendations to the Minister as a result of the process. Normally under the Public Finances Manual we have accountable officer roles, A.O. roles, and an S.R.O. role. The S.R.O. effectively is in charge of executing the process. The A.O. effectively signs

the cheques, if I put it that way. They have budget responsibility for the process in the department. That is what the S.R.O. role is. So that is my role since 24th October. Just as part of the procurement process, it is normal just to have generally an officer-based team who are effectively there to do the evaluations. I can talk, if you want, about other procurements we have done, but generally you get an officer team who mark up assessments and go through that process, then make a recommendation to the Minister.

Deputy M. Tadier:

Thank you. I think we will come back to that. Could I ask, was Mr Thomas involved in that as well as an assessor?

Chief Executive Officer, Ports of Jersey:

Yes.

Deputy M. Tadier:

Thank you.

The Minister for Sustainable Economic Development:

Just very quickly, I think, because ... I think it is part of the discourse of Jersey politics that Ministers oversee everything. There are times when Ministers do not, and that is to remove political influence. So a large tender process like this, one of the reasons it is done by officers in the actual physical process is to remove the political influence

Deputy M. Tadier:

I understand that. Do you accept, though, in order to set up the process, the criteria, it is important that you made sure that you were happy with the beginning of the process and that you are happy ... that you do take responsibility overall for the process?

The Minister for Sustainable Economic Development:

Absolutely. I do not try to duck that responsibility, but I just want you to understand that I am not there day in, day out, looking at the bids, checking what is happening, speaking to different parties, et cetera. That is not the role of the Minister. It would be inappropriate.

Deputy M. Tadier:

I do need to ask this question about the previous S.R.O. because you indicated that, and you gave a statement about why he was removed from the process, so this is before he was on sick leave he was removed from this process. I think what you described is an error of judgment. Do you have

confidence that that was only an error of judgment in that in fact he was a capable person throughout the whole process, and can you explain then why he was removed from the process?

The Minister for Sustainable Economic Development:

He removed himself from the process. He was not removed, he removed himself.

Deputy M. Tadier:

Do you agree with that, it was the right thing to do?

The Minister for Sustainable Economic Development:

Yes, absolutely. I believe that the media coverage around that proves that it was the right thing to do.

Deputy M. Tadier:

Is there not a risk though that you have lost somebody who is really capable and in fact if he did not do anything wrong, it was just aesthetic, if you like, but you have actually lost somebody who has been very capable in that process that could be a valuable asset in this next phase of the process?

The Minister for Sustainable Economic Development:

That is absolutely correct. The term I used on the day was: "I just had my team decapitated."

Deputy M. Tadier:

Did you not plead with him not to leave? Did you not say to him: "You do not need to leave, I have got confidence in you"?

The Minister for Sustainable Economic Development:

It was not a question of pleading, it was a question of making sure that public perception and the public could have faith in the process that was ongoing. I believe that given the media coverage at the time and the nature of the mistake, that it was the right thing to do. I have to say that Andy has been a superb S.R.O. ever since. In fact, there is one strong advantage that comes out of it, which is that Andy picked up all the documents and everything with fresh eyes, having seen nothing, and he came to the same conclusions.

Deputy M. Tadier:

Can I pass to Deputy Southern?

Deputy G.P. Southern:

Here we are, present time, with the joint tender process having failed to produce a single candidate for the ferry. My question is a when question. When did you notice, if at all, that this process, the ferry-bidding process, was going wrong, or did you not notice it?

The Minister for Sustainable Economic Development:

No, it is a really interesting concept of “going wrong”. I have to get my timeline to be precise. So, it was, I believe, 17th October, which should be a Thursday - because I remember it as a Thursday - so just double check. That is when Deputy Inder provided notice of Guernsey’s selection of Brittany Ferries as their preferred bidder. It was that moment when I realised that there could be a problem here because I was not in a position ... I did not even have a paper at the time to ... I had no recommendation from officers at that time. But I did know that Guernsey had gone ahead and made a decision and there had been no joint discussion about it. It was at that point that it came clear to me that this could be difficult.

Deputy G.P. Southern:

At any stage, did you notice that that was a risk? That the failure to come to an agreed approach was a risk?

The Minister for Sustainable Economic Development:

That has always been there, and so in the invitation-to-tender documents, it is quite clear that both islands ... the documents themselves provide the possibility for both islands to reach a joint decision, for both islands to reach separate decisions or for either island to abandon the process entirely. The fact that they have clauses in the tender documents along those lines shows you that there has always been ... with any joint tender, it is always a possible risk that you will not come to the same conclusions.

Deputy G.P. Southern:

Now here we are with not a joint negotiation going on or tender going on. Where do you see things going next? Given that we have arrived at where we are, we cannot help that.

The Minister for Sustainable Economic Development:

We are into another process that has begun. We are waiting for the bids to arrive. Andy is a much better person to tell you the timelines, et cetera. But we are into a new process and the aim is to announce a winner of that process. That process is around the Jersey-only service. It is to announce, hopefully, a winner. I mean, if I am being honest, I believe it will be the first week of December. I think to do it before then is going to be tough. We are going to try to do it before then, but that would mean next week. I think it is much more likely to be the week after.

Deputy G.P. Southern:

What makes you think you can come to a conclusion, having spent 6 months failing to come to a conclusion, and you are giving yourself a few weeks to come to that conclusion?.

The Minister for Sustainable Economic Development:

A lot of the work has already been done on the previous bids, and so effectively what we are asking for is a refreshing of the existing bids focused on the Jersey-only service. I believe both have agreed to take part, so I believe they believe they can make the timeframes.

Deputy M. Tadier:

Can I ask about the reputational damage to the Island? So you have 2 ferry companies which, in good faith, have entered into a proposition for a joint tender for both islands with bigger market share, bigger communities that they serve, and at the last minute they are being told actually there is a different proposition. But we know that Condor Ferries, Brittany Ferries, has already been offered the Guernsey section, so Guernsey said: "We want you to operate our service." So it seems to me that there are different scenarios here whereby if Condor had the ability, if they are also selected by you, Minister, to operate in both islands, whereas DFDS have only got the opportunity to operate in one island. Already that is not a level playing field, is it, for both companies in terms of their tender process?

The Minister for Sustainable Economic Development:

That has been one of my concerns about this new process, but I will ask Andy to speak to that.

Chief Officer, Infrastructure and Environment Department:

Both companies have been asked exactly the same question. We are now specific. We are not able to make a joint decision with Guernsey because of the decision they have made. So we have asked both companies for a Jersey-only service, so we are expecting a submission to serve Jersey. Both companies would be able to serve Jersey. We are expecting ... we have had a positive response in terms of the process. They have both indicated they will participate and we are expecting an answer back from their initial submission on close of play tomorrow.

Deputy M. Tadier:

But do you accept the fact that it is no longer a level playing field because Condor have already got the Guernsey contract, if you like, so they will be serving Jersey and Guernsey if they win, whereas DFDS can only ever serve one island?

The Minister for Sustainable Economic Development:

They are being asked the same question, which is to provide a bid for a Jersey-only service.

Deputy M. Tadier:

Sure, but one of which has already been given the Guernsey leg, and that could easily be joined up, could it not?

The Minister for Sustainable Economic Development:

Potentially, but even on the Jersey-only service, we ultimately would still have some ferries to Guernsey.

Deputy M. Tadier:

So I go back to the question about reputational damage. Do you think that this process, a 6-month process, which has not provided a clear winner for Jersey, do you think there has been any reputational damage for the Island because of that?

The Minister for Sustainable Economic Development:

It is impossible for me to answer that in so many ways, but I will stick to why are we in this situation. We are in this situation because I was not able to agree with Guernsey ... when they came forward on 17th October and told us that: "We are going with Brittany Ferries" I was not able, when I did get my recommendation paper and looked at the bids and looked at what had gone on, I was not able to safely say, yes, that Jersey should follow that role. I said in the States that DFDS had been eliminated. It still strikes me as a very strange basis for elimination. But I accepted it ...

Deputy M. Tadier: .

Who eliminated them?

The Minister for Sustainable Economic Development:

That was by, in theory, both islands. So through that scoring process ...

Deputy M. Tadier:

But you eliminated DFDS?

The Minister for Sustainable Economic Development:

I did not eliminate DFDS.

Deputy M. Tadier:

But you were in charge of the process.

The Minister for Sustainable Economic Development:

The process came up with DFDS being eliminated. I accepted that.

Deputy M. Tadier:

You talk about the process as if it is separate from you, but you created the process.

The Minister for Sustainable Economic Development:

Because it is separate from me.

Deputy M. Tadier:

Can you explain that to us?

The Minister for Sustainable Economic Development:

I did not create the process.

Deputy M. Tadier:

But you have also told us that DFDS beat Condor on the criteria. So in Jersey, as far as Jersey is concerned, DFDS came out above Condor, so they won the Jersey criteria, they won the marking process for Jersey, but they have been eliminated by whom?

The Minister for Sustainable Economic Development:

On the consensus scoring, both sides marked them down and eliminated them on the legal side.

Deputy M. Tadier:

So both you and your Guernsey counterpart?

The Minister for Sustainable Economic Development:

Guernsey and Jersey.

Deputy M. Tadier:

You and Guernsey.

The Minister for Sustainable Economic Development:

No, because I was not involved in that part of the process.

Deputy M. Tadier:

But the process is not animate so there needs to be a conscious person behind it, an agency, who eliminated DFDS.

The Minister for Sustainable Economic Development:

I find it fascinating because I agree with you; there should be a conscious person.

Deputy M. Tadier:

So why did not you just actually say: "I do not agree that they have been ... I have not chosen to eliminate them, I think they won."

The Minister for Sustainable Economic Development:

Because it is not my ...

Deputy M. Tadier:

So whose decision was it?

The Minister for Sustainable Economic Development:

I do not know if Andy wants to come in here. You will have a better way of explaining this than me.

Chief Officer, Infrastructure and Environment Department:

Yes, I think during the previous process, if I call it process one, Jersey were not content with either bid. There were still areas of clarification we wanted to seek from both companies. That process effectively did not end up with a decision to appoint either company because we terminated it. But at the time of termination, the DFDS bid had a legal mark down on it because of some legal elements relating to contract and the Brittany bid had other marks down it from a Jersey perspective around commercials and investment and financials. The position at the time was that actually Jersey wanted ... as a result of the scoring, that we wanted to go into further clarification and talk about that difference with our Guernsey colleagues, but that was ... we were unable to do that.

The Minister for Sustainable Economic Development:

May I come in, Chair?

Deputy M. Tadier:

Can you hold that thought? I just want to ask you this. You can make a note if you want but I do not want to lose my thought. You said in your statement that: "The DFDS bid failed on a technical legal point, one which I could not personally fathom because the legal element was still to be negotiated." Okay, so in that sense you could have said: "Actually I disagree that we have failed on the legal point because we have not negotiated it yet", but instead you went on to say that you accepted the fact that it had failed, and then you talk about the elimination. So you are in a point where you said DFDS were eliminated. Can you clarify that?

The Minister for Sustainable Economic Development:

I think it is fascinating that you, Chair, have said exactly what I have been trying to do, which is put the human into the process. For the past month, that is exactly what I have been trying to do. Bring human reasoning to bear on the process, which came up with some really interesting results. I will say it, it is simple.

[16:00]

In the legal fail, I did not understand it. I still do not understand it. It seemed to me that the marking around that legal fail was ... whoever was evaluating that did not think in any way.

Deputy M. Tadier:

Who did evaluate that?

The Minister for Sustainable Economic Development:

I prefer not to say, thank you.

Deputy M. Tadier:

Can you tell us was it one of your officers or was it an external? I think we need to know who was evaluating that technical point. Who created the technical point, who created that technical criteria in the first place?

The Minister for Sustainable Economic Development:

Legal evaluators, okay, who are not part of Government but equally are not external ... may we turn that off, please?

Deputy M. Tadier:

I do not know why it has just come on.

The Minister for Sustainable Economic Development:

Legal evaluators in both Jersey and Guernsey marked the DFDS bid on the contractual side of it, which is just 5 per cent of the overall marking, they marked that as a mandatory fail. I found that difficult to understand at the time, and I still do, but because the bid at this stage is to be ... the process at this stage is still in the hands of the senior reporting officers. It was not in my hands. Guernsey chose at that point to say: "Right, DFDS are eliminated." Jersey said: "Hold on a sec, this is a bit interesting, we would like to discuss this." We were told: "No discussion, this is what is happening" so we accepted that. Afterwards when we ... we still had massive concerns around Brittany Ferries/Condor bid, particularly around the technical, the commercial and the financial

aspects. We had real concerns about that. I, as a Jersey Minister, could not overlook those concerns. In the marking they were shown to be in the failed status. Guernsey had very, very different scoring on that. What should have happened at that point is, first of all, the senior reporting officers, the Guernsey senior reporting officer and the Jersey senior reporting officer, should have come together to discuss the scores that had come in but Guernsey chose to tie up its scores and just say: "We are awarding to Brittany Ferries." No meeting took place, as I understand it, between the senior reporting officers to see: "Look, we have got 2 very different perspectives of this, can we come together?" That was, in my view, denied by our counterpart, which was Guernsey. So that conversation did not happen. We then tried at the political level to bring politicians around the table and say: "Look, Jersey has got some really genuine, very genuine [as I alluded to in my statement], concerns." But we were not given the opportunity. We did talk with Guernsey politicians but we were told: "We are not changing our mind, this is what we are doing." So we were in a position where if you are trying to come to a joint perspective, my perspective, and I was in the room with Deputy Luce, and I was in the room with Deputy Gorst and Deputy Farnham, and possibly others, where we were told there is no ... effectively, there is no room for discussion because Guernsey will not ... is not open to changing its mind. We asked clarification questions, and Guernsey had said: "Go ahead and ask your clarification questions." We asked DFDS and we asked Brittany Ferries clarification questions, we had those come back in. Guernsey said to us: "We are not interested in that information, that will not change our minds." It was not even a matter of changing the minds, it was a matter of saying: "Will you bring this new information into your thinking?" and the answer was: "No."

Deputy M.B. Andrews:

Thank you very much, Chair. Thank you for being in attendance, all of you, today at short notice. I just want to really understand, and I know so many members the public would want this question to be answered. In relation to the ferry process, obviously it has been undertaken and many Islanders would be questioning: "Well why has there been no firm selected?" and I would just like to have your thoughts on why we are in the position we are in.

The Minister for Sustainable Economic Development:

Thank you, Deputy Andrews. I thought I had just explained that. Through the process one party had been eliminated. The party that was not eliminated was not ... there were still many, many questions from a Jersey perspective that had not been answered. One of them was who is signing the contract. So one thing that came through was that, as I said, I believe in answers to my questions - was it Friday last? - following an inquiry from the Chief Minister to Condor Ferries/Brittany Ferries, "Will we be signing a contract with Brittany Ferries?" The answer came back: "No, you will be signing with Condor." Well, by the terms of the tender that means Brittany Ferries should have been

eliminated. Because they were bidding the contract should have been signed with the bidder not with another party, quite simply, whether it is a subsidiary or not.

Deputy M. Tadier:

Can I ask how it took 6 months to find that out? Would that not be one of the first questions you ask is: "Who is going to be operating this for you?" Because we know that they took over the majority share, I think, during the process, is that correct?

The Minister for Sustainable Economic Development:

I believe so.

Deputy M. Tadier:

I think it was in August. At which point, I would have thought somebody politically would be asking: "Okay, so now this changes it. Presumably they have taken it over", so all those questions which we will touch on about Condor's financial precariousness, has that now changed? Who is going to be operating this? Why was that not established back in ... that point?

The Minister for Sustainable Economic Development:

So again, those questions were asked. The person in this room that is best placed to answer those, because they were in 4 days of meetings with Brittany Ferries/Condor and separately DFDS, is Mr Thomas, at the end.

Chief Executive Officer, Ports of Jersey:

To answer the question, the bidding entity was Brittany Ferries, so the financial due diligence to your earlier question was undertaken on Brittany Ferries. It was much later in the process that it became clear that there was uncertainty about who the bidding entity was actually going to be. That was a point that was discussed at various points throughout the process, but the final clarification in the form of a yes/no answer was requested by the Chief Minister, at which point confirmation was it was no longer Brittany Ferries, it would be Condor that was signing the contract.

The Minister for Sustainable Economic Development:

Yes, so there you go, 1st November; so 2 weeks last Friday. Certainly when I spoke to officers, including Matt, including the then S.R.O., what I got was trying to get those answers was very difficult. That was the sense that I got. Trying to get those really clear answers was not easy and that is one of the things that I think speaks a lot about why it was not possible for us to award directly in the way that Guernsey did to Condor.

Deputy M.B. Andrews:

I read the speech that you made in the States Assembly, Minister, and I noted that there was mention of an overwhelming majority of the Council of Ministers were in support of DFDS.

The Minister for Sustainable Economic Development:

No, sorry, they were not in support of DFDS; they were in support of abandoning the process.

Deputy M.B. Andrews:

Abandoning the process?

The Minister for Sustainable Economic Development:

Yes.

Deputy M.B. Andrews:

Okay, but has there been potentially a split within the Council of Ministers over the firms who have come forward as part of this tender process or has it been a case of there has been consensus in terms of agreement for who to potentially go with earlier on?

The Minister for Sustainable Economic Development:

My view is, and certainly when we did that, that was Friday, 1st November, it was a really strong Council of Ministers that got it, understood why this ... we took an informal vote. It has to be said to be informal, and I think the result was 13 to 2 in favour of that moving forward. Again, I come at it from, this is how I am ... anyone I spoke to about this around the Council of Ministers' table, and indeed Scrutiny, I came from the perspective of this is how I am seeing it, these are the concerns I have from a Jersey perspective. Guernsey does not seem to have those concerns, but these are our concerns. Am I ... and I think I said it: "Am I insane for thinking a bit like this?" I think those were my exact words many occasions. I want to know, because I am not politically DFDS or Condor/Brittany. I just want the best ferry services for Jersey and I want them to be financially resilient. Everyone I approached and spoke to about it around the Council of Ministers' table, it came from that perspective. "Please tell me if I am looking at this wrong."

Deputy M. Tadier:

But clearly 2 did not agree though, 2 out of the 15, is that right?

The Minister for Sustainable Economic Development:

As you wish.

Deputy M. Tadier:

I am just asking.

The Minister for Sustainable Economic Development:

Yes, 2 out of the 15. I would hardly call that a split.

Deputy M. Tadier:

Well, it is a split, but it is a 13-2 split. Who were the 2? Were they significant?

The Minister for Sustainable Economic Development:

It was an informal vote, so it was not recorded in that way. It was to get a sense of what the Council of Ministers thought.

Deputy G.P. Southern:

Could I just return to my initial question?

The Minister for Sustainable Economic Development:

Excuse me, sorry, just very quickly, I think Deputy Luce is right. The numbers that I have put on that, there were a couple of people who voted a different way. But it may not have been 13.

Deputy S.G. Luce:

I am not sure it can be 13-2 because there are not that many Ministers.

The Minister for Sustainable Economic Development:

Do not hold me to the numbers; accept 2 did vote the other way.

Deputy M. Tadier:

We have all got questions, but the point is, it was effectively saying: "Look, we do not ... to end the process here", but the process had already ended, had it not? It had fallen apart.

The Minister for Sustainable Economic Development:

Yes.

Deputy M. Tadier:

The point is the 13 out of the 15 did not agree with awarding it to Condor, because if they had it would have simply been agreeing with Guernsey and the whole process would be over and it would be done and dusted. It is fair to say that 13 out of the 15 did not want to go with Condor/Brittany Ferries, is it not, under what they knew?

The Minister for Sustainable Economic Development:

No, because that was not the question. The question was not: "Do you want to go with Condor?"

Deputy M. Tadier:

But it is implicit there, isn't it?

The Minister for Sustainable Economic Development:

No, it is not.

Deputy M. Tadier:

It is implicit because ...

The Minister for Sustainable Economic Development:

No, it is absolutely not, actually.

Deputy M. Tadier:

Because if they want to continue ... the process could only continue if Jersey had agreed with Guernsey and that is why it had broken down because Jersey...

The Minister for Sustainable Economic Development:

The other option was: "Do we want to try harder? Can we do any more to see if Guernsey will come back around the table to discuss the way forward?"

Deputy M. Tadier:

And that position did not win out?

The Minister for Sustainable Economic Development:

No. One of the things people were saying was, "Oh, Deputy Morel is indecisive, Deputy Morel is prevaricating, Deputy Morel cannot make a decision." No, that is not true. We were trying to see how ... what could we do in terms of bringing ourselves round the table with Guernsey. That took about 2 weeks of just seeing, can we get round the table to have that meaningful conversation where the options are open, but that was not possible.

Deputy G.P. Southern:

If I return to my first question, which was: was there something wrong with the process?

The Minister for Sustainable Economic Development:

I have no doubt there was.

Deputy G.P. Southern:

Did you actually have a flawed tender process operating from the very start?

The Minister for Sustainable Economic Development:

To answer, I do not want to catch myself, I would say there is a lot to learn. Sorry, Matt, did you want to answer?

Chief Executive Officer, Ports of Jersey:

Yes, I am happy to. I think the process itself was really robust and so maybe to put a bit of colour on the Minister's words, it is the Council of Ministers and the Minister for Sustainable Economic Development that says: "These are my aspirations for the ferry services of the future." It is then for officers to put a process in place. I think the process brought forward some of the biggest ferry operators in Europe and all of the bids were actually really strong. They included significant commitments to invest in the Island's ferry services.

Deputy G.P. Southern:

Both bids?

The Minister for Sustainable Economic Development:

All bids, including the others that did not get through.

Deputy G.P. Southern:

And a company that was trailing a trail of debt was actually able to do that to say: "Oh yes, we can modernise this and we can ..."

Chief Executive Officer, Ports of Jersey:

The commitments to invest were absolutely provided and then it is which best meets the Island's requirements and do I have the confidence that what is on paper will actually come through in reality? I think it was very much at the end of the process that the 2 islands maybe took a different course. Where Guernsey were able to say: "We have all the information we require to make a decision" whereas I think, from a Jersey perspective we had, it is great on paper but will this be able to be provided through, as I think Deputy Morel, the Minister, alluded to in his statement to the States Assembly. I think the process is very good, honestly. It is at the end of this that it is really unfortunate the 2 islands have taken different approaches when the finishing line is in sight.

Deputy M. Tadier:

Can I just ask on that, is that it seems to me that that was always a potential possibility, that the 2 islands do not agree. Was that something that you had envisaged, Minister?

The Minister for Sustainable Economic Development:

Yes, and I had had conversations with my counterpart in Guernsey, and we had said the important thing is to keep talking because ultimately ... and it is always difficult to speak for a third party, but I do remember Richard Corrigan saying this to me, that he had said this to Guernsey, ultimately, the decision is political, it is not a process-driven decision. This was the issue that I had. If you went purely with what came out at the other end of the process, purely scores and numbers and assessments in that respect, the way the actual process happened I believe, when I looked at those results and I looked at the bids in front of me, because I then had them, it was not a result that matched what was sat in front of me in black and white on paper. That is what was so difficult to reconcile. So this comes back to, Chair, your point about putting humans into the process. Genuinely what I have been doing and what I have spent the last month trying to do, and it is Kafkaesque, is try to shepherd a process that was coming out with quite odd results at the end into what made sense. I have to say, partly that was because it was not possible to sit round the table with Guernsey and have a discussion about their findings and answers.

Deputy M. Tadier:

Can I come back to the point that when you talked earlier about the technical legal point and that there were some individuals involved in this who are neither Government nor external. we are really talking about the law officers here, are we not? You have been given law advice from the Law Officers' Department saying: "And we think that DFDS's bid has failed on a legal point."

[16:15]

The Minister for Sustainable Economic Development:

It was not legal advice in that sense, it was a person doing an evaluating job of the bids that came in and they spoke to their counterpart in Guernsey, and they came up with these 2 scores.

Deputy M. Tadier:

How are those 2 appointed to the process in the first place?

The Minister for Sustainable Economic Development:

Again, I would have to look at the S.R.O.

Chief Officer, Infrastructure and Environment Department:

Each of the areas from the previous process of 5 areas, and there were evaluators appointed who were subject matter experts in their areas to provide that advice.

Deputy M. Tadier:

So these lawyers, were they commercial lawyers? Is that what we are talking about? They were subject matter experts?

Chief Officer, Infrastructure and Environment Department:

Well, subject matter experts in providing a view on contracts and law, yes. We would have asked ...

Deputy M. Tadier:

Those who gave legal advice on this legal point ...

The Minister for Sustainable Economic Development:

It is really important, Chair, they were not giving legal advice. It is really important to say that.

Deputy M. Tadier:

But the ones who assessed that they had failed on a technical legal point, they were lawyers. Is that right?

The Minister for Sustainable Economic Development:

Correct.

Deputy M. Tadier:

And were they commercial lawyers or were they generalists?

Chief Officer, Infrastructure and Environment Department:

I would say more generalist.

Deputy M. Tadier:

They are generalists because they are law officers and they advise Government routinely on legal issues. Had you ever considered getting external commercial lawyers to actually adjudicate on this point instead of the internal legal officers?

The Minister for Sustainable Economic Development:

In hindsight I think that would have been a preferable way forward.

Deputy M. Tadier:

Will you do that for the next tender process, the current tender process?

The Minister for Sustainable Economic Development:

At the moment we have ... yes, we have an independent third party evaluating.

Chief Officer, Infrastructure and Environment Department:

If it helps, what we have decided to do for this new second process, albeit a short process, is to have an independent third-party evaluator sitting outside of Government. I think it is really important for us to show both companies that we are doing something fresh and that we are effectively bringing in an external party to do those evaluations and effectively get those markings. I will take information to the Minister.

Deputy M. Tadier:

That is useful. So following on from that, have the criteria for this new tender process remained the same? Obviously the route is different, we know that, but have there been any specific ... any other changes that you could let us know about in this new tender process that we should be aware of?

The Minister for Sustainable Economic Development:

Some of the minimum service requirements have changed. It is very important - thank you, Deputy Luce - it is important, we are in the tender process so we cannot say things that might prejudice that process.

Deputy M. Tadier:

Sure.

Chief Officer, Infrastructure and Environment Department:

Obviously it being a Jersey-only service, some of the requirements of service have changed, so we have been able to tell both companies about what they are; those minimum service requirements. At the end of the last process and going into this process, we have also made clear to both companies where we did have ongoing issues that we wanted to resolve. Both companies have been told where we found ourselves from the past process. We have been open with them as to where our issues have been. So we have told both companies that. We would expect to explore that again with them in this new shortened process. We still fundamentally want those issues answered for us. I think we are just making sure we cover those points.

The Minister for Sustainable Economic Development:

Sorry, I did not realise Deputy Wilson was online.

Deputy M. Tadier:

No, she is all right. I think she is online. She is not necessarily in a position to ask a question, but I am just making sure to bring her in. Can I ask, and I will bring in my colleagues in a moment and thank them for their patience, I think you covered quite clearly in your statement that there are potential benefits to having a Jersey-only tender, and I think that is right. I think we could call that a positive spin, if you like. I think that is part of the coin. But the flip side of the coin is maybe that there will be extra operating costs or less profit for any tender if they are only operating the U.K. (United Kingdom), Jersey, France routes. Do you accept that, first of all, it is a different proposition for them and there may be pros and cons to any tenderer for that?

The Minister for Sustainable Economic Development:

I would accept that. I think Matt might have something he can say around the way that works.

Chief Executive Officer, Ports of Jersey:

Yes, I think pros and cons is the right way of putting it. There are shorter travel times if you are not passing, so there are swings and roundabouts. I think ultimately the proof will be in the pudding on what the bidders are prepared to commit to.

Deputy M. Tadier:

In that regard, if we presume that any company that tenders might think that there are potentially good times and bad times, there might be times where the market is good where we are making a lot of profit, there might be times when we are not quite making as much as we thought we would. Would it be normal for a company to come to Government and say: "We would expect you, if we cannot make a minimum amount of profit, to step in at that point and maybe help us in terms of investment of our fleet." Are those the kind of things that might easily get discussed?

The Minister for Sustainable Economic Development:

So they could be discussed. I would say that we are absolutely ... both the previous tender process and the current tender process, we are looking for a firm that will stand for 15 years without asking Government for help. That is absolutely what Jersey deserves. We deserve ferry services that we can rely on, come what may, in terms of the economic cycle.

Chief Executive Officer, Ports of Jersey:

I think one of the points ... it is a really good point, Chair, that it is important in any contract that there is a balance. I think the financial sustainability, it is in the Island's interest that the ferry operator is financially sustainable. So the process and the agreement we would look to seek, it is important that actually the ferry operator is making money on these services for them to be able to invest in the longer term. I think perhaps some of the points you are talking about there are *force majeure*

scenarios that we could all think of, of pandemics, where I would say, okay, all bets are off. That is a different set of considerations that you need to deal with.

Deputy M. Tadier:

Does the carrying of a significant amount of debt, therefore, ring an alarm bell about how much money can be reinvested in a fleet versus how much money goes to servicing the pre-existing debt?

Chief Executive Officer, Ports of Jersey:

It is certainly a consideration. Sorry ...

The Minister for Sustainable Economic Development:

No, absolutely, it has got to be a consideration. As is the way ... the likelihood of that fleet investment has to be weighed up against evidence like that.

Deputy G.P. Southern:

And that is what you have done?

The Minister for Sustainable Economic Development:

Yes.

Deputy G.P. Southern:

So this new way of sorting out the tenders contains that element?

The Minister for Sustainable Economic Development:

Yes, that would certainly be one of the elements we are looking at.

Deputy G.P. Southern:

We are not putting ourselves into a supportive role in the sense of we are not going to finance part of the service?

The Minister for Sustainable Economic Development:

That is correct. I have no intention of Jersey financing any elements of the service.

Chief Officer, Infrastructure and Environment Department:

Just going back to the fundamental point about why we are doing this. We want to have the assurance that the contract will run for its 15-year term. We want to make sure that the ferry company is financially sustainable. We want to see the investment in the fleet for the benefit of Islanders. Ultimately, these are the issues, these are the big fundamental issues, for this contract

that we want to be really assured of before we make a decision on it. At the moment in time, we have not made a decision on ... the only decision we have made is not to make a decision, if that makes sense. We are embarking on a new process to make sure that we get absolute clarity on those points before the Minister makes that decision.

The Minister for Sustainable Economic Development:

I think it is really important, and this is what I was hoping people understood from my statement last week, was in many ways the easy decision, after Guernsey made their decision, would have been for me to say: "Yes, let us just go with Guernsey. Let us just do that." The reason I did not do that is because I still had significant concerns about the way ... about the finances of the company that was potentially providing those services in that way. We wanted to ask more questions about that to find out more, to satisfy ourselves whether that was a way forward. I think that the really important decision that was made was to actually stand firm and say: "No, we cannot award to either bidder at the end of this process." That is not a position Jersey is in and therefore we have to do something else. The pain that comes from that in terms of the scrutiny, and I do not mean that in a negative way, just that it would have been a lot easier for me just to say: "Yes, we follow and we do it." But there were significant concerns that I could not overlook, and I still maintain that that is why I am here as Minister, and it is inserting the human into the process.

Deputy M.B. Andrews:

Can I just ask, what risk exists moving forward? We have got 2 firms who initially were part of the first ferry tender process who did not quite match the requirements that Jersey has set out. If both of those firms are coming forward once again as part of a new process, how reassured can you be that finally a decision will be made?

The Minister for Sustainable Economic Development:

I can be reassured. I am sure that we will make a decision one way or the other.

Deputy M.B. Andrews:

Can I just ask as well, obviously you are in your capacity as a Minister, you are part of the political Executive alongside 12 Ministers as well, and when we are looking at this process how difficult is it for you to potentially have a stance on maybe going with one firm but then the process in itself is maybe hindering your ability to take a decision?

The Minister for Sustainable Economic Development:

That is a really interesting question, Deputy Andrews, because in terms of the last process, I felt that the only decision that was open to me was to ultimately end the process, and actually Guernsey kind of forced that issue by going ahead and naming someone outside of it. There are just realities,

I guess, in life. Because one firm had been eliminated, and again I say I find it hard to understand exactly why, but they were, and the other company, from the Jersey perspective, did not pass muster - I will just leave it at that - in that process - that can change in a new process - it was not possible for me to award it. It is a really weird and strange and unpleasant situation to be in, there is no question, because Islanders want a decision. I know that and I knew that, but I was not able in that situation to make a safe decision. Again, one of the reasons why the process binds you, which I think is perhaps what you are talking about, is the threat of legal action. If one party to the tender process feels they have been treated unfairly they have fairly strong recourse to ... as the Attorney General said last week, they potentially have strong recourse to judicial review, and that would be a worse place to get into, in my view, because then you could ... if that was successful, you could have the whole thing re-run, the contract awarded to the other party, huge damages paid, whatever that may be. So, as Minister, you are sat there looking at something, you know that you want to give Islanders a decision, because that is what Islanders are seeking, but I was in the process where ... I was looking at the end of the process and saying: "But I cannot award either way." One of the reasons for that - one of the reasons - is the potential for legal action around that, if you are seen to act unfairly to either party.

Deputy M. Tadier:

Can I just follow in on that? We know we have got a new process coming up. The bids have not been submitted yet, have they? The bids have not been prepared or submitted?

Chief Officer, Infrastructure and Environment Department:

No, we are expecting the bids back with us tomorrow.

Deputy M. Tadier:

Are we going to be clear about who we are doing ... who the bids are coming from and who the contract will be signed with? Because what you have already said, Minister, is that you have got strong concerns about Condor running a service for Jersey because of the viability of the next ...

The Minister for Sustainable Economic Development:

Up to the last process.

Deputy M. Tadier:

Yes, but you have also said that you were concerned about who was signing it and was it going to be Brittany Ferries or Condor Ferries. Those are 2 different propositions, presumably, and you would be more comfortable with Brittany Ferries rather than signing with Condor; that is what you have told us, I think.

The Minister for Sustainable Economic Development:

I believe that would be the case.

Deputy M. Tadier:

To what extent do you think it could be argued ... not looking at it externally but people have told us outside who have submitted potential questions for this hearing, saying that It seems that you have already made up your mind in terms of who the preferred bidder is. You told us that DFDS have put a stronger bid in, as far as Jersey is considered, in the previous one.

The Minister for Sustainable Economic Development:

In the last process. It is really important that as I am sitting in this room, one of Condor's lawyers is sat in this room with me at this moment, and so I have to be very careful in what I say in general. But I think it is right that the last process ended, anything to do with that process is in that process and that process has ended and the decision was not made between the 2. We are in the new process. I am completely open to either bidder winning that process. We have an engaged external assessment of that process in order to deal with the issues that you are talking about very much so. I absolutely do not have a preference one way or the other. This is a new process. That process where, as I said in my statement, DFDS with more investments, et cetera, that was that process. I have no idea what they are going to bring forward in this one. No idea whatsoever. I have no idea what Brittany Ferries and Condor will bring forward in this one. No idea who I will be signing a contract in one of those parties until they bring forward the bid.

Deputy M. Tadier:

But the manageability of any debt is going to be a consideration, presumably for any bidder?

The Minister for Sustainable Economic Development:

Absolutely, to be honest. It does not matter what the contract is, outside of ferries, you think if you are building a school and you are contracting with a party, if that party building that school has large amounts of debt that is a consideration in your procurement process as to whether awarding the contract or not. Debt has to play a role in that. Financial viability might be a better word or better phrase but you have to look at that underlying strength in order to do that. This is a 15-year contract worth over £1 billion.

Deputy M. Tadier:

I know we are coming towards the end, and we started I think 5 minutes late so maybe you will allow us to have 5 minutes.

The Minister for Sustainable Economic Development:

Five minutes, yes.

Deputy M. Tadier:

Or so.

The Minister for Sustainable Economic Development:

Less keen on the “or so”.

Deputy M. Tadier:

I do have to ask about the contingencies. I do not know if that was what you were going to ask, Deputy Southern. I will let you take over.

Deputy G.P. Southern:

Carry on.

Deputy M. Tadier:

We understand you put contingencies in, what we mean by that is you put ferries on standby in the eventuality that there was a problem. We have understood that that has cost about £3 million to date. You have told the States you think that was a worthwhile and correct thing to do.

[16:30]

Can I ask about how long you think that is going to have to continue for?

The Minister for Sustainable Economic Development:

So at the moment, we have contingency up to 3rd January.

Deputy M. Tadier:

Okay. What about the period between January and March?

The Minister for Sustainable Economic Development:

Those are decisions that are upon me at the moment. Ideally, I would like to see through this process before having to make those decisions.

Deputy M. Tadier:

Is it at the cost of about £500,000 a month; is that roughly what we are talking about?

The Minister for Sustainable Economic Development:

Yes.

Deputy M. Tadier:

Okay. Got any questions?

Deputy G.P. Southern:

Within that context, can you sum up how much damage you think has been done by the process, the tendering process, and the abandonment of the old system?

The Minister for Sustainable Economic Development:

I cannot answer that question. I cannot. How can I quantify damage done or not done by a process on a population? I do not know. That is not something I can answer, I am really sorry.

Deputy M. Tadier:

Can I go back to a question about there was a third bidder. I think we can name them because I have seen it in the public domain. It is Irish Ferries who put themselves into the process early on. You told the Assembly they were eliminated quite early on. But, of course, DFDS were also eliminated at the very end of the process. How can we be assured that the other bidder was eliminated for a justifiable reason? Can you tell us the reason? We have to ask you.

The Minister for Sustainable Economic Development:

I cannot tell you this precise reason.

Deputy M. Tadier:

We heard rumours that it might be that they did not have the boats.

The Minister for Sustainable Economic Development:

Off the top of my head - this was many months ago - I cannot remember. Matt, do you know?

Chief Executive Officer, Ports of Jersey:

Sorry.

Chief Officer, Infrastructure and Environment Department:

I do not know but we can provide clarity back to you.

The Minister for Sustainable Economic Development:

We can certainly provide you with that but off the top of my head I do not.

Deputy M. Tadier:

It just seems that we have been put into this situation where it is very binary and sometimes the psychology of a binary choice poses interesting conundrums for the public, I suppose. Can you be reassured that Irish Ferries were eliminated for a reason that they would still be eliminated for now, if you know what I mean?

The Minister for Sustainable Economic Development:

Yes, I believe so, and Andy did ... it was around the fleet, I believe. It was around their ability to muster a fleet, I believe.

Deputy M. Tadier:

Okay, and there was no letters of - I do not know what you call them - no assurances sought that they could not ... did they provide any assurances that they could have a fleet up and running as and when they were awarded the contract?

The Minister for Sustainable Economic Development:

I would have to go into more detail.

Chief Officer, Infrastructure and Environment Department:

I do not now, I was not involved at that point, but we can ... I can get that answer for you.

The Minister for Sustainable Economic Development:

We can find all that information for you but I have not double checked that far back.

Deputy M. Tadier:

The reason I ask is because I noticed DFDS, you said they had some boats but not all of them and that there was an assurance given that they would secure boats to run if and when they were awarded the contract.

The Minister for Sustainable Economic Development:

I think Matt might be able answer that.

Chief Executive Officer, Ports of Jersey:

Sorry, in terms of would they have their own fleet as part of their proposal as opposed to using Condor's fleet? Is that the question?

Deputy M. Tadier:

I did not necessarily mean that. I think it was just it came out in the statement and answers that DFDS did not necessarily have all the ships that they needed to run this but they had assurances that they would be able to get them and commission them.

Chief Executive Officer, Ports of Jersey:

Yes. They have their independent fleet was their proposal was based on, it was not based on using ...

Deputy M. Tadier:

I think subsequently it would be helpful to know whether it is us who do a Scrutiny piece of work or someone else to look into all 3 bids.

Chief Officer, Infrastructure and Environment Department:

Yes, we can get an answer. But what I have seen of the process, it was a full and robust process, the right stages were done, the right questions were asked, the right evaluations being done throughout the process, so we can get the Irish Ferries answer for you. There will be a clear reason as to why they were taken out.

Deputy M. Tadier:

Okay, now the question I wanted to ask is still around the interim provision. We do not know who is going to be running the ferry service as of March, we do know that the current company has got the contract until the end of March, so Condor should be running it until the end of March, all things being well. In the eventuality that the current provider does not continue and they maybe pull out earlier than March because I do not think you have received assurances that they would not pull out before then, is that correct?

The Minister for Sustainable Economic Development:

That is the letter I referred to in my statement, or at least I think it was in my statement as opposed to answers to my statement, I cannot remember. I did write to the directors of Condor Ferries/Brittany Ferries - Condor Ferries, it was - in September seeking assurance that if they were not to win the bid that they would be able to continue until the end of March, as their contract required.

Deputy M. Tadier:

What did they say?

The Minister for Sustainable Economic Development:

The answer was, in short and paraphrasing, and I apologise for the detail that is being lost, the answer was they could not guarantee those services unless we came forward ... unless we could confirm or unless we can provide anywhere between £11 million and £36 million, I think it was, to continue.

Deputy G.P. Southern:

Some contingency.

The Minister for Sustainable Economic Development:

Yes.

Deputy M. Tadier:

Without going around in circles, that surely is then the alarm bell which says if you cannot even cover your current obligation then how can we award you this, and therefore why were they not eliminated at that point from the ...?

The Minister for Sustainable Economic Development:

That question that I asked in September was not part of the process.

Deputy G.P. Southern:

But it is part of the new system.

Chief Officer, Infrastructure and Environment Department:

I think in fairness to the Minister, that is exactly some of the issues that the Minister has been grappling with. We have got to make a decision that we feel comfortable with as an Island that we know is going to go back to this fundamental point, we are going to have a sustainable ferry company for 15 years that is going to invest in fleet and provide services to the Island. The Minister's view is of course informed by experience and things that are relevant today. These are exactly some of the issues that we are trying to ... that we were trying to resolve. Through I guess round one we were unable to fully resolve and now we have got to still get those same assurances in round 2, for sure.

Deputy M. Tadier:

I think this ties then into the contingency because it seems to me the key contingency comes into play potentially once the preferred bidder has been announced, because that is the point at which we are most likely to need contingency. While we have been paying £500,000 a month up until now while there has been no announcement, it seems that the period we are talking about is between any announcement and the end of the current contract. Could you give us assurances that actually the key months between now and March that we need contingencies?

The Minister for Sustainable Economic Development:

As I said, that is the decision I have yet to make. It is a decision that is upon me but because I cannot just take the entire contingency solution for one month, this is on a quarterly basis. On one of the vessels I have taken it for one month, but on other vessels I have to do it on a quarterly basis. So the question is quite simply: do I say yes to the contingency today and then in 2 weeks' time the contract may be awarded to Condor/Brittany Ferries and quite simply unlikely to need that contingency, or do I speak to the contingency providers: "Can we wait 2 weeks until we decide this" and potentially save the Island from ...

Deputy M. Tadier:

If you do not take out contingency on the basis that you think you might award it to Condor, that is not what you have done up until now, is it? I think you have taken out contingency on the basis that ... is that correct?

Deputy S.G. Luce:

Can I just say a few words? I think it is important to realise that over the last 12 months there have been a number of times, a number of opportunities, where we have had to renew the contingency, as the Minister has already said, and every opportunity Government of Jersey, the Minister in particular, has sought reassurances from Condor Ferries that they ... financial reassurances and at every opportunity that assurance has not been given, which has meant that time after time throughout the last 12 months the contingency has had to be renewed because of the risk that the Government, that the Minister perceived, was that there was a risk that Condor Ferries might stop operating in a very short period of time. We would have passengers in the U.K., on the Continent and that.

Deputy M. Tadier:

But what I am saying is that the contingency is most needed at the point at which the ...

The Minister for Sustainable Economic Development:

I am very aware of that.

Deputy M. Tadier:

... it is announced. What I am saying is that you knew it was not going to be announced until at least September I think, and now it has been knocked back to November. So surely the logic is that a contingency becomes ... the insolvency of Condor becomes most critical at the point at which hypothetically they are not awarded the contract and therefore debts are called in by the banks and

they potentially go out of business straight away. Is that a reasonable scenario? Given that that has always been the logic up until now, would you not simply apply that logic to the next?

The Minister for Sustainable Economic Development:

I am quite likely to apply that logic but that decision has yet to be made, but it is upon me. So I will be making it in short order.

Deputy M. Tadier:

I guess what I am saying is that you spent £3 million on contingency up until now that you have not needed. At the point when you might now need it, do you stop your insurance policy?

The Minister for Sustainable Economic Development:

No, in general.

Deputy M. Tadier:

Have you got any other questions? Minister, have you got any answers or any points that you would like to convey to questions we have not asked?

The Minister for Sustainable Economic Development:

No, other than to thank the panel.

Deputy M. Tadier:

Can I thank you for coming in? I know this has been a difficult period for you and others. I hope you appreciate that there is a job of Scrutiny to be done and we appreciate you coming in today. Can we wish you all the best for a speedy resolution in either direction for this matter?

The Minister for Sustainable Economic Development:

Thank you. I think if there is one thing it is, and this is not about me trying to, in any way, buck accountability, I come back to that point that at all times I have worked with other Ministers, as much as anything, to check my thinking. This is not about me just having one particular way of thinking. This is, I am constantly checking it. Am I seeing this right? I am working with officers who provide recommendations, et cetera. This is not me in a vacuum doing all of this. But at the end of the day, when it comes to a 15-year ferry contract, I think we have got to be really careful about how we award it and who we award it to and taking the extra few weeks that this has taken. The difficulty around the coverage, which I have to admit is difficult, it puts enormous pressures on all individuals involved, is that is valid or worthwhile given the length of the contract and the importance of these services to this Island. So I think it is really important that we take these extra few weeks to make the right decision, whichever way that decision goes, and it is really important it can go either way.

Deputy M. Tadier:

Thank you. Before we end, thank you again, can I thank those who have listened, thanks for any members of the public who have written to us or submitted questions, and apologies if we have not been able to get through everything today but we only had limited time so, again, thank you and we will bring this session to a close.

[16:41]