STATES OF JERSEY

Economic Affairs Panel
Depositor Compensation Scheme

MONDAY, 7th SEPTEMBER 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 (Chairman)

Witnesses:
Mr. G. Cook (Chief Executive, Jersey Finance Limited)
Ms. A. McFadyen (JBA Representative and Chief Executive, Standard Chartered)

In Attendance:
Mr. T. Oldham (Scrutiny Officer)

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

Thanks for joining us. Sorry we have kept you a bit late but we have overrun with Mike Wilkins, as you saw. If I could just check on timing, I think we were originally scheduled for an hour and a half but if we run over a little bit is that a problem for you?

Mr. G. Cook:

I need to be somewhere at 12 noon.

Deputy M.R. Higgins:

We are not planning on overrunning, we will try and keep it quite short. Thank you. For a start what we have got to go through is a ritual of identifying ourselves for the purposes of the tape so I shall start. It is Mike Higgins, Chairman of the panel.

Deputy C.F. Labey of Grouville:

Carolyn Labey, Vice Chairman.

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

Daniel Wimberley, Deputy of St. Mary.

Deputy J.M. Maçon of St. Saviour:

Deputy Jeremy Maçon of St. Saviour.

Deputy S. Pitman of St. Helier:

Deputy Shona Pitman.

Deputy M.R. Higgins:

If I could ask both of you to identify yourselves for the tape?

Mr. G. Cook (Chief Executive, Jersey Finance Limited):

I am Geoff Cook with Jersey Finance.

Ms. A. McFadyen (Chief Executive, Standard Chartered):

I am Alison McFadyen, I am C.E.O (Chief Executive Officer) of Standard Chartered and I am here representing the Jersey Bankers Association today.

Deputy M.R. Higgins:

Right, that is interesting. I had not realised Jersey Bankers Association, you were coming as their representative.

Ms. A. McFadyen:

I believe I am.

Deputy M.R. Higgins:

Thank you. That is fine. In that case we may be having a follow-up session again on that because we are not quite ready for that aspect.

Ms. A. McFadyen:

Okay. I can be either.

Deputy M.R. Higgins:

Okay. What I would like to do first of all is if you would like to go through the consultation process that has taken place on the scheme that is being put forward and the regulations. So can I ask you both, either one of you starting, about your role and the timing of the consultation and the nature for consultation. If you can just elaborate on that point.

Mr. G. Cook:

Yes, if I begin I think you will probably have a lot more detail in terms of the J.B.A. (Jersey Bankers Association) involvement. Our role in this particular consultation has been more one of observer. Feeding back information to the government and to the Jersey Bankers Association about the media coverage and the gatekeeper commentary. When I say the gatekeeper I mean professionals and intermediaries who might be in a position to recommend business to come to Jersey, in other parts of the world who recommend their clients to place business here. So because we are the promotional representative body for the finance industry we tend to gather that kind of feedback quite quickly and quite readily. But in this particular instance the government have engaged directly with the J.B.A. in a consultation process rather than through Jersey Finance.

Deputy M.R. Higgins:

Which I think is the norm, is it not? Are you normally used for most sort of banking type legislation these days?

Mr. G. Cook:

We are used more often, yes, particularly where there are wider applications than simply a sector, so if a particular piece of legislation or regulation or where new product development affects a range of sectors we would ordinarily be used in those circumstances. I think the government decided in this instance that they would negotiate directly with the J.B.A.

Deputy M.R. Higgins:

Were you involved very early on in any discussions before they even started any consultation on this?

Mr. G. Cook:

If you go back to around September, October, November of 2008 we were certainly feeding information to them to express our concerns about the perception issue surrounding Jersey not having a depositor compensation scheme. So yes, we were feeding that information to them and we attend most of the J.B.A. meetings. It is usually our technical director, Robert Kirkby, as most of our interface tends to be about technical consultation around laws, regulations although we do feed into them our marketing activity and client feedback and they do the same on a reciprocal basis to do with keeping up with what is happening in the market place.

Deputy M.R. Higgins:

Could you just elaborate a bit more on the information that you were feeding to government way back in September, October, November of last year. What sort of things were you telling government at the time?

Mr. G. Cook:

Well, if you look at the time I have brought some along today some coverage if you are interested to see them, but there was a lot of press coverage of the whole issue around banking stability, largely driven by the financial crisis and the stability issues originally initiated in the U.S. (United States), then Northern Rock, so the Lehman problem, the Northern Rock problem and then more subsequently nearer to home the Landsbanki and Kaupthing issues. So you will find at that time if you simply Google it you will find there is a huge amount of press coverage of the whole issue around banking stability, the safety of customers' deposits and it came into very clear focus at that time when we were covered a lot and highlighted as not having a formal compensation scheme in place.

Deputy M.R. Higgins:

So do you think the recommendation to government that they should be considering one at that time?

Mr. G. Cook:

We were certainly in a dialogue with him saying that we needed to be clear about our media statements and at the time we worked through with them, trying to be consistent about messages on banking stability, our top 500 policy and took the route that we would reassure people based on the strength of the banking industry in Jersey and the fact that it is based on a very traditional model and has really no exposure to investment banking nor the kinds of activities that caused the instability issues in the banks that failed.

Deputy M.R. Higgins:

But we have been told that there is anecdotal evidence that there was withdrawal of funds from the Island during this period of time. Is that correct?

Mr. G. Cook:

Yes. We cannot quantify it because the problem is that some clients will tell you that they are withdrawing their funds and they will tell you that they are withdrawing it: "Because you do not have a depositor compensation scheme." A lot more will simply withdraw the funds. Where clients have disclosed it that banks made attempts to try and persuade them to transfer the funds to alternate booking centres within the same group. So typically what would have happened is that Jersey-based depositors would have been encouraged to place their deposits in the Isle of Man or in Guernsey ... well essentially the Isle of Man, because of the presence of a longstanding scheme. Obviously history has proven that has not been quite as straightforward as perhaps people thought it might be but it certainly influenced behaviour at the time. The net consequence of that is that the international groups, that are multi-jurisdictional, have posted on their websites quite clear statements that their Jersey booking option does not have the support of a depositor compensation scheme.

The Deputy of Grouville:

Would you say that your business is mainly international?

Mr. G. Cook:

The organisations that we represent, the majority of their business is international, yes.

The Deputy of Grouville:

So they are concerned about this depositor compensation scheme not being in place where we are proposing to guarantee deposits of £50,000? You think not having such a scheme in place would make a big impact in the banking world as far as you are concerned?

Mr. G. Cook:

Yes, even quite high value clients; it does not on the face of it seem logical, does it? You know, if you are worth many millions why would you be bothered about a £50,000 compensation scheme, but I think people have come to regard it as part of the toolkit of a responsible finance centre.

The Deputy of Grouville:

You believe that having a scheme such as this is better than a political guarantee?

Mr. G. Cook:

Yes, I do. I do not think that by and large that the international client base trust political guarantees. Politicians come and go so they would have much more confidence in something that has statutory backing.

Deputy M.R. Higgins:

Okay, so we are deviating slightly, but if you can carry on again with the consultation about the process, that is the involvement of J.F.L. (Jersey Finance Limited). Alison, can you explain J.B.A. who are obviously involved from the beginning there?

Ms. A. McFadyen:

Yes, I think we were and to be fair I think the J.B.A. changed its views over the months and years. Originally J.B.A. did not want a depositor protection scheme, could not see the point of it, good banks ... I think the back end of 2008 sort of changed all of that when suddenly banks were allowed to fail and suddenly customers were asking for it. The consultation process from memory started around November, but it could have been earlier. Certainly the J.B.A. meeting in November. At that stage I would say it was kind of seen as we do need to have a depositor protection scheme and at that stage people were starting to haemorrhage a bit of money, a lot of the small accounts were going and so the more clearing banks were starting to panic about that having a big impact. The consultation, I think at that stage the J.B.A. said: "Yes, we think we should have one." That consultation followed through, I think there was a couple of special meetings, I certainly have got minutes from a J.B.A. in March but I think there were a couple of special meetings because the world was changing quite fast at that stage. So I think first of all the J.B.A. said: "Get one in quickly" and then various members of the J.B.A. who were also involved in the Isle of Man and Guernsey were suddenly seeing massive bills coming in for Kaupthing and suddenly said: "Oh my God, do we really want a deposit protection scheme and if we get one in here we have got to be very careful about how it is written, how we account for it, because we need to be sure that any potential losses that come of it we understand and we can account for and understand on our balance sheet." I think certainly the March meeting concluded that things had died down, things were quieter, there was not the same haemorrhaging, it was more of a slow leakage now and certainly if there was another banking scare it would all escalate again. So the message from J.B.A. was while not all banks think it is absolutely necessary it is seen as a hygiene factor now and without one we are just not playing on an even playing field. So it was I think we need one, and the message was if we are going to have one let us get one in quickly. But it was very balanced and we did change our views as time progressed.

Deputy M.R. Higgins:

Now, in terms of the consultation or negotiation or ... did you have a working party, for example, with the government?

Ms. A. McFadyen:

It was pretty much all of the J.B.A. and we were all interested. It was one of those meeting where everybody turned up so certainly the J.B.A. with the normal committee meeting and I think, from memory, there was a couple of extras that were called with Martin de Forest-Brown and James Mews, and at that point even extra people came along, so not just the representatives of the J.B.A. but it was a very full table for the banks to talk about it.

Deputy M.R. Higgins:

You also had Oxera come in, did you not?

Ms. A. McFadyen:

Yes, Oxera presented their findings as well.

The Deputy of St. Mary:

Is this the March meeting or a meeting before ...

Ms. A. McFadyen:

I looked back through my minutes and I think the Oxera presentations were a separate meeting and I could not find my minutes for that. So, from memory, I cannot remember when that was but they certainly did present their findings.

Deputy M.R. Higgins:

In terms of the mechanics of this scheme, obviously very early ones were more about whether we have a scheme or not. When did you start or when did the J.B.A. ... when and how basically did you get involved in terms of the actual mechanics and the actual things that were going to go into this scheme?

Ms. A. McFadyen:

I think it was a sort of iterative process. Martin, I think ... you know, first of all it was we want a scheme and then Martin went away and James went away and they were working on what the possibles were. Then they had the benefit of the Oxera findings and they came back and presented what they felt would be the right scheme for comment to the banks. So how much it would cost the banks, what would be the coverage, who would be covered. But from memory originally they needed some more information so they presented that as sort of that is the scheme but then they needed some more information from the banks which we then provided up through the J.F.S.C. (Jersey Financial Services Commission) so that we could give them some data to work with. Then after that they came back with what they felt would be right and then we could all work on that: "How much would it cost if there was a big bank failure? How much would it cost the banks and what sort of coverage there would be."

Deputy M.R. Higgins:

So were there many papers going back and forth, working papers?

Ms. A. McFadyen:

Working papers less. I think it was more of a dialogue and so they would present ... certainly the Oxera findings I think was in a presentation format but I think it was much more of the dialogue.

Deputy M.R. Higgins:

Obviously these sort of meetings were recorded in some way so you had the progress and see how things were going. Who took the minutes for these meetings?

Ms. A. McFadyen:

Martyn Scriven if it was an official J.B.A. meeting. I do not know if there were minutes for a couple of them but I do not know, I really do not know. I cannot remember, it seems a long time ago.

Deputy M.R. Higgins:

Do you see any reason why the J.B.A. could not give us the extracts of their minutes to do with ...

Ms. A. McFadyen:

I do not think so. I think the minutes are public on the website.

Mr. G. Cook:

Can I just check for a moment, I though you had already requested them?

Deputy M.R. Higgins:

We have been requesting them, we have not had any yet.

Mr. G. Cook:

Right. Well, Martyn Scriven would normally be the point of reference and I think Martin Fricker is the current president.

Deputy M.R. Higgins:

We are communicating with them at the moment.

Ms. A. McFadyen:

I can certainly go back and ... as far as I am aware, the J.B.A. minutes are on their public website so, as far as I know, they are available for anybody to see. I do not think it is in a secure place but I may be wrong.

Deputy M.R. Higgins:

If you could take it as a formal request from this panel to the J.B.A., copies of all minutes and records of the consultation. I will explain why. That is quite simply there are no official records on the public site of any meetings or any records or any file notes which, to be honest, is rather strange. So we would welcome the assistance of the Jersey Bankers Association so we can understand the process and the stages that everything went through.

Ms. A. McFadyen:

No problem, I will do that.

Deputy M.R. Higgins:

In terms of Oxera, did you have any separate ... again, coming back to you, you are not aware then of a working party that was set up to negotiate with Oxera or any sort of detail in the main?

Ms. A. McFadyen:

I am not aware of one, no. I think it was pretty much always the whole J.B.A. invited along.

Mr. G. Cook:

My understanding was that Oxera were retained by the government so the J.B.A. were not involved in their commissioning.

Deputy M.R. Higgins:

No, they were not involved in the commissioning. But certainly there was a dialogue because obviously Oxera, to produce a report, had to get data, which I know a lot of it came through the J.F.S.C. but there was again further dialogue, from what I can see from correspondence, where meetings have been arranged to try ascertain more information.

Ms. A. McFadyen:

There may have been individual meetings with individual banks. I am not sure about that.

Deputy M.R. Higgins:

Okay. We will move on to the next one then.

The Deputy of Grouville:

The funding of the scheme, do you regard it as adequate?

Mr. G. Cook:

Yes, I do given the differences in the profile of our banking industry compared to other countries, other jurisdictions, you could look at. I think it is. I think the overriding aim was to try and achieve as much coverage at as low a cost as possible. I think that is partly driven by ... well, it is certainly significantly driven by the differences in the profile of our banking industry but, secondly, also I think it is environmental in terms of what is happening with banking at the moment and what may happen in the future with regard to banks' reviews of their operations and where they are represented and the possibility of consolidation.

Deputy M.R. Higgins:

So in other words what you are talking about is the competitive nature between competing off-shore jurisdictions and their schemes and the cost to the bank, is that correct?

Mr. G. Cook:

Yes, I think it is the cost of doing business overall. Our perception built up through the media and through feedback from gatekeepers is that their primary concern is to have the £50,000 cover in place. They do not tend to scrutinise or look into what the detail of the scheme is, they do not look behind it, they simply look at the headline, do you have a scheme or do you not? Does it cover £50,000 or does it not? Provided those boxes are ticked then the consumer generally is happy.

The Deputy of Grouville:

This is what I am finding quite difficult to comprehend, especially from an international banking perspective. It is proposed that there will be £50,000 coverage to individuals, local and foreign individuals, but not to local business and obviously not trusts and not the off-shore industry. I do not know what percentage of the banking industry sort of relates to individuals, foreign individuals, local business, et cetera, but do you think that the coverage is right with the ...

Mr. G. Cook:

I think the issue is once you start moving outside of a very simple approach to who an individual is and identifying their accounts then you quickly move into a fairly grey complexity, which it makes it more difficult to manage a scheme and potentially makes it significantly more costly. My understanding is that sole traders and partnerships could manage around the scheme quite easily, it is more problematic for limited companies in terms of where they hold significant cash value. The problem with bringing limited companies in is I do not believe that you can differentiate. So if you bring a scheme in it is going to be quite difficult to implement a scheme that differentiates between a resident and a non resident. I think you start inviting all sorts of trouble in terms of the types of issues we have had with people like Ecofin about having preferential treatment for your resident customer base as opposed to your international customer base. So I do not think it is feasible to have a differentiated scheme or you have special treatment for your local population. So then you ask the question: "How would you bring limited companies in?" Probably relatively straightforward locally although there is probably scope for abuse in terms of how the company is structured and whether they keep different amounts in different institutions, smaller institutions, although I think I would be very surprised if anybody really did anything very significant in planning around such a remote eventuality. But I think the main problem is that you have ... we have got 33,000 companies on our companies register. A lot of those are international companies and some of them ... how will you measure them if they are securitisation vehicles or special purposes vehicles and they are holding cash elements, would that cash element be caught and protected by a compensation scheme? So I think you quickly move into quite a complicated set of questions that would make your scheme a lot less straightforward, a lot more difficult to manage and potentially more expensive.

The Deputy of Grouville:

But this is not what your clients are looking at. Even though ... this is what I cannot get my head around. They are international clients and they are not covered, probably not covered, with this proposed scheme but would it still effect that business, that type of business?

Mr. G. Cook:

I think a very large number of international individuals would be covered by this scheme. You know, very significant numbers so it certainly affects them, it affects the private client world. Private clients is about 55 per cent of the jurisdiction's business so getting up to a half to two-thirds of the footprint is to do with individuals, with different types of arrangements, expatriate banking. Now, some will have value interests which are not netted and covered anyway but the direct cash holdings they have here are of concern to them and what I call the high end of premier banking or premium banking, which is your international expatriate, probably hundreds of thousands of them around the world that bank here will be concerned. If you have got £50,000, £100,000, £250,000, £300,000 you are concerned about whether you have coverage or not and there are a lot of them. So I do think the international community is concerned about whether they have coverage or not.

The Deputy of Grouville:

Okay, and that, you think, makes up 55 per cent of ...

Mr. G. Cook:

No, I do not know the exact proportion, it is almost an unknowable thing. I think it is a question that you can never get a definite answer to. Private clients covers, and the personal finance business, about 55-65 per cent of our business. How much of that is sort of mega wealthy people who are not concerned about £50,000 protection and how much coming further down the value chain you become more concerned, I do not know, it is an unknowable question. All we do know is it created a huge amount of media attention and we still get asked about it by the media. All the banks that we have, had sufficient customer interest to feel that they have to, from a legal point of view and a customer servicing point of view, be very plain on their websites and on their literature about the fact the client's money is not protected by a depositor compensation scheme.

Deputy M.R. Higgins:

Michael Foot will be very clear about the publicity materials that have been given about the coverage of the scheme and the amount of protection and how solid it is. In fact, just going through the coverage side of it, obviously the scheme is largely individuals and you have mentioned obviously about companies. There is a concern that the scheme does not cover local business especially ... because if a bank failed, and we know it is very remote and so on, then not only is the company going to lose the money that it actually has there but it is also going to lose any financing facilities that has. When we have such a high proportion of the local population employed by small businesses, yes it is a disaster for individuals if a bank goes down but it is going to be disaster for the companies as well and those people may still find themselves out of a job and still have no money. So is it not possible that we can find a scheme that could cover, for example, small businesses, 2-man trading businesses, whatever, employing locals in the Island to give that extra degree of protection? I am not talking about the international S.P.V.s (special purpose vehicles) or anything else, a totally different type of corporation and entity.

Mr. G. Cook:

Well, my view is you would find it legally almost impossible to separate the 2 within the same scheme. I think you would have a problem with differential treatment but I do not know what your thoughts are?

Ms. A. McFadyen:

Yes, I think you are absolutely right and that is what I read through the transcripts, that coming out loud and clear. I think as Geoff said the real problem is going to be around definition and I think the scheme that is on the table at the moment has either a one year or a 2 year review period. For what it is worth, my view would be get it in in its current form and in the meantime work on whether it is possible to extend the definitions to that group of people. Because I think it is going to be quite complex and it is not something that can be done in a month or 2 months because if you have got a small business, do you protect the owners of that business individually and again in the business. Definition of turnover, who is covered who is not? Do you look at any non-Jersey businesses that are covered? Is it the shell businesses or is it the actual functioning businesses in Jersey? I think the definition of that will be incredibly complex but I do think it is a worthy thing to look at. But I think it needs quite a lot of work to first of all define it and then understand what coverage would be needed and then understand what would be needed to support that. I do not think it is a quick piece of work but I think it is certainly something that is worth looking at.

Deputy M.R. Higgins:

Okay, there are other things that have cropped up as we have been going through and doing our research, we know that in a number of other jurisdictions for example their scheme cover situations where a person has ... right now the scheme is £50,000 but they say there are occasions in life when you may suddenly come into some money, whether through inheritance or through redundancy or whatever, and you may temporarily have more than £50,000 in an account which you have not had a chance, through financial planning, to place elsewhere. A number of countries give protection to people with that type of situation. Is there a case for that, do you think?

Ms. A. McFadyen:

Possibly. How have they defined that?

Deputy M.R. Higgins:

Again, we would have to look in detail but it is the concept that they are looking at, they realise that there are those occasions in life when you will have larger sums of money than you would ... probably more than you have ever in life, in a sense, in an account which is transient but through circumstances the bank bails or whatever and you lose the lot. So just looking at something ...

Ms. A. McFadyen:

I have certainly known customers who, perhaps in a similar situation, divided their money up into various banks so if they have come into £250,000 they put £50,000, £50,000, £50,000 and they just divide it for exactly that reason. Certainly during the difficult times. I know a lot of people that were doing that and that is one way to advise clients accordingly. But I think, again, it is quite difficult to define that and it probably needs some work to define it, exactly how you would capture that. You know, is it there for a week or is it somebody who has had it for 6 months. It is difficult.

Deputy M.R. Higgins:

You would have to have time cap on it definitely. In terms of trusts, now at the moment we are proposing to give protection to people who have got money placed in a bank for the benefit of their children's education. Other jurisdictions have got protection that goes beyond that. They have money on trust funds up to a certain level for certain other purposes. Again, is there an argument for increasing it?

Mr. G. Cook:

I think anything you do ... you are trying to stretch something in 2 different directions, are you not? So anything you do to enlarge the scope of coverage has an immediate effect, I would have thought, on the cost.

Deputy M.R. Higgins:

We are coming to that, do not worry.

Mr. G. Cook:

They are interconnected. So the more extensions, the more additional categories or variety of things you allow in, the coverage of the total value increases, therefore your cost increases. So I think like most things in life it is balance, is it not? You try and centre it up somewhere where you think you are doing the best you can for the most you can given your resources available.

Ms. A. McFadyen:

I also think the world will change, you know. What is acceptable now, which I think is £50,000 for natural persons, in 5 years' time the mark may have got higher and we may then feel that we have to push that bar up. But I think at the moment that is an acceptable scheme. Although some jurisdictions give more, Singapore has pretty much full coverage, some do more in amounts, I still think our scheme is acceptable to the vast majority.

Deputy M.R. Higgins:

I know some have got full protection, some of it is limited and they will try to claw that back, just try to get over the crisis, but we also know that the E.U. (European Union) is looking at 80,000 euros, what would the feeling be on that if that came in?

Mr. G. Cook:

I do not think the issue is one of a competitive issue. So if the international standard moves to a certain level, and this jurisdiction has a stated policy of meeting international standards, if that becomes the norm then it becomes the norm for us I would say. But what you are looking at all of the time is what is the cost of your operating environment compared to your competitors. You do not want to get out of line with it if you possibly can because if your cost of doing business is greater then the value you can offer to the end client is lower, therefore you attract less business and you are at a competitive disadvantage. But provided that becomes the bar for everybody then you just have to absorb that as a cost of doing business. The problem is absorbing something and coming out of line. Indeed I think there is a very strong case at the moment for us to be not only in line with others but to be slightly more attractive to banking institutions to safeguard the current footprint of the banking industry.

Deputy M.R. Higgins:

Can you elaborate on that?

Mr. G. Cook:

Yes, if you look at the pressures of the banking crisis then banks capital ratios have come under pressure, their profitability has come under pressure globally and we believe they will be undertaking strategy reviews at the moment trying to work out how they can maximise revenue and minimise costs in a much more difficult environment. We are in an environment with interest rate compression so the margins that banks receive off the traditional activities have been significantly pressurised, they have come down. So in that environment while you are making less money you want to look at your costs critically. We believe that centres will look at their international operations and assess whether they need to be in all of the jurisdictions that they are currently in. I think part of that assessment is multiple exposure to things like contingent liabilities or depositor compensator schemes.

Deputy M.R. Higgins:

But, again, depositor compensation schemes, as we have already talking, banks recognise now the need for a scheme and also it is a cost of doing business. I am afraid no matter where you go you are going to have a depositor compensation scheme. In fact I was amazed to read, I think, 80 or 90 countries have got depositor compensation schemes already and there is about another 30 or 40 working on them, so we are down the road quite a bit. Whether we have a scheme or not is not in question. It is a question of the nature for the scheme.

Mr. G. Cook:

That is my point. I do not think people would question the fact you would have to have a deposit compensation scheme, I think all banks recognise that, but most of them are funded with some kind of cap arrangement. They are finite in terms of the financial underwriting. So if you are in multiple jurisdictions you are exposed to multiple caps, if you are in fewer jurisdictions your liability is less. So there are reasons why, not just on that rationale alone, it would be part of the overall mix of criteria that banks would assess about whether they need to be in as many jurisdictions as they are currently.

Deputy M.R. Higgins:

In terms of the funding, moving on to this here, the funding model that has been proposed, how did we arrive at that particular model?

Mr. G. Cook:

I do not know. My understanding is that it was the recommendation or the preferred model that has come out of the Oxera report that has then been debated with the banking industry.

Ms. A. McFadyen:

I think it was originally - talking with James Mews and Martin de Forest-Brown - based on the U.K. (United Kingdom) .3 per cent of eligible deposits and that sort of translated into: "Okay, what would that mean?" Then comparing it with caps that were being used in other jurisdictions and coming up with what we felt was fair across the banks in some sort of ... so you are paying relative to what you are eligible deposits are. So if you have no eligible deposits why should you be funding a scheme, and if you have got loads and loads of eligible deposits, yes, you should pay more for the protection it is giving your customers. So, as I understand it, they felt £100 million was about the right cap because that compared well with other jurisdictions. How do we get to £100 million but also how do we compare the caps that the banks are being asked to pay. So I think, from my understanding, they came up with £10 million for the bigger banks and a cap for £5 million for the middle tier.

Deputy M.R. Higgins:

When you say "they came up with", who came up with it?

Ms. A. McFadyen:

I think this was Martin, James and Oxera working together.

Deputy M.R. Higgins:

Right, because the original Oxera report did not make a recommendation. The first papers came out and set out the different funding options. Of course the International Association of Deposit Insurers' main document that they produced in May states that these schemes are largely funded by the industry themselves because they are the ones who benefit from the scheme.

The Deputy of Grouville:

On that point, could I ask why should government put in monies to basically prop up these businesses, i.e. the banks.

Mr. G. Cook:

First of all, I think nobody is putting any money in initially, it is not a funded scheme so it is a contingent liability. I think this government, this jurisdiction, has pursued a policy of transparency in its approach to legislation, to regulation and I do not think this is any different. If you look at all the schemes that have been triggered, they have needed government support and intervention and money. I think this jurisdiction has been transparent about that up front and saying that it is likely that some form of government support is going to be required. They are codifying that through the regulation. But given every other bank failure I think you will find that government money has been involved somewhere.

Deputy M.R. Higgins:

Many of them are systemic failures ...

The Deputy of St. Mary:

Can I ask how many other D.C.S. (depositor compensation scheme) schemes are funded by governments as opposed to the banks? I am not talking about ...

Mr. G. Cook:

It depends at what point you accept there is some funding. If funded in the sense of the scheme supported financially, I do not think there are many. But I think that the reason for that here is the different profile of our banking industry and I think that is why the government has had the confidence to do that explicitly as opposed to implicitly in the background. Because whether you commit funding to a scheme or not, at some stage if the failures are significantly beyond the scheme you are going to have to put government money in.

Deputy M.R. Higgins:

I just want to go back, we jumped on a bit here. So we are looking at this thing and you are saying most of these proposals then were coming from Martin de Forest-Brown and James and all the others?

Ms. A. McFadyen:

Yes.

Deputy M.R. Higgins:

So there was industry feedback on that. But caps, where do the caps arise from?

Ms. A. McFadyen:

They were presented to us and discussed and certainly the J.B.A. were ... some were very much more knowledgeable having lived through Isle of Man and Guernsey and were much more focused on what this potentially can cost.

Deputy M.R. Higgins:

That is interesting. Carry on.

Ms. A. McFadyen:

If you think about it, for a bank what you are actually doing is funding somebody else's failure, so you take something like the Kaupthing, the Icelandic banks were offering huge interest rates, taking money away from the banks that are less risky and then in the end you end up paying for that as well. So it is kind of a double whammy for the bank. In some ways it is difficult to say it is the whole banking industry. What we are talking about is an individual bank failure for some reason, which has probably been due to the way it has been run, it is taking more risk, and then you as another bank are being asked to fund that. As Geoff said, if you are in the Isle of Man, you are in Guernsey or you are in Jersey, you potentially could have bank failure that hits you in all 3 Islands. You could have bank failure that is hitting you all around the world. The cost of that to your bank, which has absolutely nothing to do with you, can be astronomical. Certainly the sentiment among a lot of the banks there was we would not be prepared to have either an unlimited liability for somebody else and we would want to know what that cap is, and it has to be a reasonable cap compared with our profitability in the Island and compared with other jurisdictions because it would make us make decisions about where we consolidate because it is a different dimension. It is one of the things in the mix that we will consider when we are looking at consolidation.

The Deputy of St. Mary:

Would it not be a factor in this decision about consolidation if you have got a very strict policy of top 500 and all the banks here are rock solid, therefore there is less risk of having this rogue bank that has done risky things and therefore you have to bail it out with your money? So is that not the protection and the attraction for banks to do business here?

Ms. A. McFadyen:

I agree and I think that is exactly the answer why government perhaps should be prepared to put in as well. Because in the end it is not the banks' decision who is allowed in. We as banks think the chance of failure with our existing set of banks is - short of world catastrophe - very unlikely but we are not in charge of that policy of what banks come in and we feel that if the government is also feeling the same then there is no reason why the government should not contribute.

The Deputy of St. Mary:

So that policy has made you very secure? That policy has made all the banks very secure with each other, it is a club of banks that are good and sound.

Ms. A. McFadyen:

Yes, we are comfortable. Yes.

The Deputy of St. Mary:

So the government having done that for you by regulation ...

Ms. A. McFadyen:

But that is not to say in the future that that necessarily would remain the same.

The Deputy of St. Mary:

Well, that is reckoning that Geoff is not going to last long.

Ms. A. McFadyen:

But you know what I mean, in 15 years' time ... things could all go quiet and in 15 years' time it could be that people forget, the corporate memory forgets. Our view was just it is very unlikely, this was a cap that was equivalent to other jurisdictions. It was one we could live with and it makes sense, I think, that the government put money in as well.

Deputy M.R. Higgins:

One area of the cap that is not consistent with the other jurisdictions is the 5 year limit. I cannot find another example of where there is a 5 year limit.

Mr. G. Cook:

Guernsey I think has a 5 year limit, does it not?

Deputy M.R. Higgins:

I do not think so.

Ms. A. McFadyen:

I think it does.

Deputy M.R. Higgins:

We will double check that. We were talking about ...

Ms. A. McFadyen:

I thought it did.

Deputy M.R. Higgins:

They have £100 million but not the 5 year, as I understand.

The Deputy of St. Mary:

Are there any other examples of 5 years?

Ms. A. McFadyen:

I would have to check, I do not know.

Mr. J. Cook:

I do not know at this stage.

Deputy M.R. Higgins:

So 5 years is one area of the cap. Obviously there is £100 million cap. Now, if Guernsey, for example, has got £100 million cap and they have a lower deposit base than ours, is there not scope for a slightly higher cap here?

Mr. G. Cook:

Well, I think that reflects the profile of their banking industry. They have allowed in small institutions and they have had some problems, including some actual failures. So I think making comparisons and trying to align schemes does not make sense. I think you need to design a scheme for your jurisdiction. Your overriding objective has to give the necessary reassurance to the end depositor, to the investor. That has got to be your overriding consideration. I think your next consideration is to try and do that at as low a cost as you can possibly achieve because that assists your competitive position. The profile of banking here is different to Guernsey or Isle of Man, or even the United Kingdom, as a consequence I think that differentiation justifies a different treatment.

Deputy M.R. Higgins:

Right, in terms of, again, the I.A.D.I. (International Association of Deposit Insurers) paper which I was referring to earlier, they do believe that these schemes should be funded by the banks themselves. I acknowledge what you are saying about explicit and implicit government assistance but is there any reason why the banks could not fund a scheme at all?

Mr. G. Cook:

It would increase the exposure obviously and those contingent liabilities have to be disclosed to head offices therefore it increases the risk of doing business here. As the government would have to intervene more than likely in a very significant failure in any event, as has been the case in every single failure as far as I am aware, then why do that? Why put questions in the mind of head office groupings about whether they are exposed to a risk here that they are not comfortable with in terms of the contingent liability. I would just reiterate again, I think the government would have to put its hand in its pocket anyway so why not do that transparently and explicitly in an open and honest way?

Deputy M.R. Higgins:

Can I ask your view on that?

Ms. A. McFadyen:

It would depend how much but I would be very uncomfortable with a much bigger cap. The number of banks here have been declining and a number have ... well, 2 or 3 licences so when you also multiply it out through licenses, some banks are ending up paying a lot. As I say, if you have got Guernsey, Isle of Man and a bank that has failed all around the world, this can be exceptionally expensive. Certainly there was a lot of banks who were very forceful about not wanting a bigger cap and it would definitely impact on their decision on where they consolidate definitely.

Deputy M.R. Higgins:

How did the banks react to the idea of ... obviously what is before us is an ex-post scheme and yet internationally everyone is moving more to an ex-ante scheme or a hybrid.

Ms. A. McFadyen:

I think the bigger jurisdictions where you have got multiple, multiple, multiple financial institutions, it does make sense to have a pay up front scheme because it is a relatively small amount covering a vast amount. Here again we have got a very small number of banks and I also think the chances of failure are extremely limited so I think our view was that a post-funded scheme would be much better.

Mr. G. Cook:

Yes, I think the other point I would make is that I think where that is increasingly happened it has been reaction to failures, as they are travelling in that direction and the amounts that are funded are often quite minimal. Just enough to enable an administration capability to be in existence. I do not think they are meaningful prefunding in terms of any proportion of any realistic loss.

Deputy M.R. Higgins:

I know that when we met with the F.S.C.S. (Financial Services Compensation Scheme) in London, they do want to move to an ex-ante scheme just for the amount of money that they have already had to pay out on banks, they are going to be paying for the next, probably, 10 years or so. They are waiting for that to cease first before they get around to getting another funding model. But that is definitely the way that they want to go as well, and the British Government appears to want to go.

Ms. A. McFadyen:

They have had to pay out a lot of ...

Mr. G. Cook:

I think that is because of a lot of banking failures so that is understandable in those circumstances.

Deputy M.R. Higgins:

But in terms of ex-ante schemes though there is also ... it becomes part of what you are saying too, that you are paying for the failure of another bank and if you have, let us say, a hybrid scheme - for the sake of argument - where there is some up front funding then even the bank that ... we are talking theoretical here. Let us say the bank that is perhaps more risky than the others and does go down, it will at least have contributed towards its failure. Whereas instead of the other banks, the good banks, having to sort of pay in as well. So is there not a case for ...

Ms. A. McFadyen:

I can definitely see your argument. I think from the point of view of banks here, because we feel currently a failure is extremely unlikely, whatever that cost is per annum it is an actual cost to us now and we would rather take the hit in the event of a catastrophe in that year that it happens or in the 5 years subsequent to that than have a known X that will hit our profits straight away.

Deputy M.R. Higgins:

I know what you are saying, but even if there was a counterargument that if you are hit subsequently it could be very much countercyclical as well in terms of hitting at the wrong time and having a greater impact on the bank, whereas a smoothing effect with some sort of fee ... and it is also you have got a pot of money there anyway that can be used not only to ... we will come on to this in a moment about the mechanics of it, but we are told the scheme will come into place as soon as a bank fails if a bank fails. But it is not quite that simple.

Mr. G. Cook:

No. I think the issue with prefunding is that ... the problem I would have in terms of marketing the jurisdiction and trying to keep it attractive both for the existing banking footprint to maintain their size here but for new entrants as well, is that you are giving people a new cost, you are drawing attention to a new overhead at a time when banks are capital constrained and doing their very best to take their costs down. So that would not be a good message to be having to deliver at a time like this.

Deputy M.R. Higgins:

Except again that more and more banking schemes, deposit schemes are going ex-ante worldwide. It seems to be the trend from a lot of the papers we are reading. In terms of joining these schemes, it is a cost, it is another business cost and it is increasing. No doubt the customer is going to be paying for it down the line anyway so I am sure it is all taken into the mix. Can we just talk ... basically you have already explained that the caps ... some people in the industry feel that you do not want too high a cap, you do not want to have an unlimited commitment to a scheme in terms of paying in subsequent years, hence 5 years, because we know that Isle of Man, for example, is a continuous type one, U.K. is a continuing scheme. In fact I think the majority of them are. I would welcome if you could come back to us with another scheme that has 5 years or a time limiting cap.

Mr. G. Cook:

I think my sense of industry is that what people would wish to see is a scheme in place but for the dialogue to continue. So if we have not arrived at the optimum scheme then it can be kept under review and if changes are agreed and necessary they can be made at some subsequent date. But our strong wish at the moment would be to see a scheme in place because while any scheme is not in place we are perceived as being weaker in our offering than other competitive jurisdictions.

Deputy M.R. Higgins:

I think we fully expect that there will be a scheme in place shortly, very shortly. This committee, like every other States Member, voted in principle for a depositor compensation scheme. It is just making sure we are getting the right scheme.

The Deputy of St. Mary:

I am slightly puzzled by this business of attracting banks because on the one hand you are saying it is less attractive to banks if there is a cost in a D.C.S., that they have to shell out so much, and on the other hand we are hearing that what is good about Jersey is the fact that there is very, very low risk of anything happening. So it is untoward. So the banks in coming here are joining a very good club of sound banks and everybody is cosy and none of them take excessive risks and all is hunky dory. Now, I would have thought that is, for a banker - or the sort of banker I thought bankers were - a more attractive option than saying: "Well, you know, we will not hit you for any money up front and it is all a bit like that but it is cheap to run a bank here." Is it not a better proposition to say: "This is safe as houses here"?

Mr. G. Cook:

In fact it is not cheap to run a bank here and that is part of the problem. You look at these things and this is an expensive place to run a bank.

The Deputy of St. Mary:

But how major a factor is the possibility of paying out on a D.C.S. when all the other banks have ....

Mr. G. Cook:

I do not think that kind of judgmental ... no, I absolutely understand you looking at it that way and that is a very sensible and common sense way to look at it but it ignores the fact you have got to observe accounting conventions and if you have got a contingent liability on your books it is there. So if you are looking at your overall risk assessment essentially in a banking group, you will look at the degree of exposure you have to contingent liabilities around your group. You will not make that kind of differentiation or judgment about probability ...

The Deputy of St. Mary:

So banks do not make judgments about the degree of risk?

Mr. G. Cook:

Yes, of course they do but they also have to reflect contingent liabilities in their books.

The Deputy of St. Mary:

With no grading as to the degree of risk? This is a contingent liability with 0.1 per cent possibility of ever happening and this is a 12 per cent chance.

Mr. G. Cook:

Yes, well I do not know whether they grade depositor compensation schemes in terms of the degree of probability of risk but I suspect they just look at the contingent liability and the cap.

Deputy M.R. Higgins:

Also, from our point of view, the jurisdiction and the regulatory framework and the types of banks they let in, so that is a major consideration as well.

Ms. A. McFadyen:

Yes, and in some areas Jersey scores extremely highly and in some areas Jersey would not. So it is in the mix. It is: "How profitable can we be if we open up here? How much business can we do?" If you go into an ex-ante scheme that would definitely hit your profits without a doubt. If you have a post-funded scheme it is a maybe but look at the club, so it is a maybe that might never happen. But, you know, it is a good place in terms of regulation. It is a good place in terms of living. It is becoming a ... with all offshore centres it is becoming a question mark for a lot of head offices: "Do we want to have an offshore jurisdiction? Do we want Jersey? Do we want Cayman?" So there is a lot of things in the mix and I think Jersey needs to make sure it ticks as many boxes as it possibly can rather than crossing some.

Deputy M.R. Higgins:

Yes, but we are watching the G20 and everybody else as well.

Deputy J.M. Maçon:

Just on that point, I believe under subsequent regulations backing up the scheme from the Treasury Department any monies paid into the scheme by the industry would be tax deductible so in that situation if you did have where the industry were to pay into the scheme up front but it was tax deductible, how would that be viewed?

Ms. A. McFadyen:

Either way, because we pay tax on our profits so we are either paying ... let us say you have to pay £1 million a year into the scheme if it is a prefunded scheme, that will reduce our profits by £1 million so that will reduce our tax. If we end up paying £10 million in the event of a disaster in a post-funded scheme, that will reduce our profits by £10 million in that year and that will reduce our tax in that year. So it is purely an accounting ... you know, whenever we pay the money it will reduce our profits. So you will either lose the tax in a pre-funded scheme every year or you will lose it in one hit if the catastrophe happens.

The Deputy of Grouville:

Could I ask, and I possibly should know the answer to this, Jersey Finance Limited, are they ever consulted upon if a new bank wants to set up in Jersey?

Mr. J. Cook:

Not in that sense, no. Not from a regulatory approvals basis. We are often the first point of contact with a new bank inquiry because we do promotion around the world and, if you like, we are the voice of the finance industry in articulating and marketing our proposition. We will often be the first point of a stirring of interest. But what we will generally do is put across the attractions of the jurisdiction for banking entities, banking operations but then we will quite quickly, if there is interest, put them in touch with the regulator and notify the government there is interest so that it becomes a co-ordinated effort. But the judgment about whether a bank does or does not come here from a regulatory, a prudential, point of view is entirely the Jersey Financial Services Commission.

The Deputy of Grouville:

Yes, regulating but would you ever advise them to say, you know: "If we let this bank in it might not look good for business because of X, Y, Z"?

Mr. G. Cook:

The quality gate they have already got would really prevent that happening. It is a very strict licensing policy. It is not just about market cap, it is about concentration of share ownership, it is about business activities, the business model, the sustainability. So they have a very strict licensing policy so we would ... so if it passes their quality gate it is going to be a good bank.

The Deputy of Grouville:

Right, so it is reasonable to say that we should all have huge amounts of confidence in the banks that are here. So I am going to go back to this coverage and funding, banks benefit from the regulations and what Alison was saying just before, you do not have a say in which banks are let in and therefore why should you be asked to cover them. Likewise, and I still go back to this, why should we go to the taxpayer and say: "You are being asked to prop a bank going down" which is a business. Why should the taxpayer prop up a bank as opposed to any other business?

The Deputy of St. Mary:

Also the taxpayer has already funded that regulatory regime which is so good and so watertight.

Mr. G. Cook:

I would answer that by asking the question: "Who is the taxpayer?" The financial services industry, either directly or indirectly, pays three-quarters of the tax in Jersey. So I think it is perfectly legitimate for the government to have a hand in the game. That is transparent. It is about recognising that government intervention or involvement will be necessary in that kind of calamity or extreme eventuality. You are just recognising that up front.

The Deputy of St. Mary:

Sorry, I get confused by this government getting involved with a calamity because it seems to me that ... well, a systemic failure does not happen in Jersey, what happens is the parent in Paris or London goes belly up. There are no Jersey banks. In fact somebody wanted to set one up and I do not think you were very complimentary about it. So it is not the same situation, is it? It is Sarkozy who is going to have to save this bank, not us, not little Jersey. We have just got to pick up the pieces.

Mr. G. Cook:

If you get a systemic failure then, yes, it is going to be of that order, is it not? You are going to be relying on the parental support because ... indeed, nobody is big enough to sort out systemic risk. If we get to kind of Armageddon there are no schemes anywhere that would ...

The Deputy of St. Mary:

Well, RBS was bailed out, a different group, by just being bought.

Mr. G. Cook:

Yes, that is right.

The Deputy of St. Mary:

But if we are talking about a little bank going down, that is what we talking about. So it is not the same baby, is it? It is not the same kind of thing?

Mr. G. Cook:

In which case it is highly unlikely the government would have to put any money in.

Deputy M.R. Higgins:

Anyway, let us move on.

Mr. G. Cook:

Yes, I think you are getting into quite circular arguments with this.

Deputy M.R. Higgins:

A lot of these we would love to explore but we just want to make sure we cover all the points.

The Deputy of St. Mary:

Well, that cuts both ways really. If the situation is absolutely safe then there is nothing wrong with the banks paying for everything because it is never going to happen. But then you say: "Oh no, no, it might happen" but it never going to happen so it is all right for the government to play its part and put in the background money. The ultimate backstop is the government because it is absolutely safe.

Deputy M.R. Higgins:

Okay, we may return to this later when we get to the end but I want to move on to looking at the mechanics of the scheme. Now, if a bank fails, and we are obviously talking about it is not going to be particularly a local bank unless it is a subsidiary of a parent and we would expect the parent to support the subsidiary. But in fact what is the nature of the guarantees that are given by parents for subsidiaries in the Island?

Ms. A. McFadyen:

It is usually a letter of comfort, is it not?

Mr. G. Cook:

Some are letters of comfort. None of them have any legally enforceable basis. Your confidence is in that organisation's commitment to its own brand and reputation. An international bank will not chop an arm off or a foot off or say: "There is a bit of a problem in that unit so we will just chop it away" we will walk away from our liabilities, because their international reputation is too important.

Deputy J.M. Maçon:

Unless of course they are going down totally in which case ...

Ms. A. McFadyen:

Then it is the same with a branch or subsidiary, I suspect.

Deputy M.R. Higgins:

But in terms of a subsidiary, we have been told that in some jurisdictions guarantees are given as opposed to a letter of comfort which has no legal validity, are you aware of any guarantees that have been given within the Island?

Ms. A. McFadyen:

I know our bank, I am not sure it ever gives a guarantee.

Mr. G. Cook:

Guarantees of what nature, I am sorry?

Ms. A. McFadyen:

Guarantee of subsidiaries, stands behind the subsidiary.

Mr. G. Cook:

I see. I am not aware of any.

Deputy M.R. Higgins:

Are you aware, for example, of any agreements with parents that they keep certain levels of assets within the Island, let us say this Island - or any other jurisdiction for that matter - because some countries are ringfencing assets for the protection of their depositors.

Ms. A. McFadyen:

They are.

Mr. G. Cook:

I think the problem with that in a jurisdiction like ours is there is nowhere to deploy the asset, to get a return on it. So I think that would be counterproductive for Jersey.

Deputy M.R. Higgins:

But as you just said, Alison, it does take place in some jurisdictions.

Ms. A. McFadyen:

Yes, for instance I think in Switzerland you have to hold Swiss securities and that keeps it within

Switzerland. But as Geoff said, I am sure where we would place our money. A lot of the rationale for head offices having a Jersey business is the fact that it provides them with a lot of liquidity. If you took that away you would again put one of the crosses in the box for Jersey as to why have a Jersey business.

Deputy M.R. Higgins:

But going back, if we look at the failure of Landsbanki in Guernsey, one of the problems was the upstreaming of money on to Iceland and then all through their subsidiaries in the U.K., which has caused problems for not only residents in Guernsey getting their deposits back but also people who deposited from outside.

Mr. G. Cook:

But I would argue that is a licensing problem because if you look at the models that banks are going to pursue when you agree the model in outline then that would tip you off to have a concern about where those assets might eventually end up. If you take in very large banks, which by and large we have, their liquidity support goes into a large parent and it does not get into more esoteric activities. My understanding of some of the problems that were created by the Icelandic banks is that those funds were not going into wholesale money markets, they were being deployed directly into commercial assets which then were difficult to realise when liquidity was required and, if realised, realised at distressed asset prices. So I think your problem there is one of licensing the banking model.

Deputy M.R. Higgins:

Has there not been problems recently in terms of money being upstreamed to London, and many banks accept that their parents are reluctant to lend to other banks, that seems to be a ... I think in the money market has the spreads not widened, there is conceivably greater risk and therefore they have looked at the banks that they normally lend to and think: "Well, we do not want to lend to them." But there is less lending in that sense, is that correct?

Ms. A. McFadyen:

Yes, Geoff might be better placed to talk to this.

Mr. G. Cook:

There is less interbank lending in the big financial centres but what all banks, by and large, have been short of is liquidity, they try and move from a wholesale funding model to the more traditional model which is our model, where you gather deposits from a very, very wide and large number of sources, retail sources, individuals, companies, as opposed to the wholesale markets. All the banks are trying to drive back to that traditional model. So as a consequence they are not ... the interbank lending has got very constrained but the point of that is that the deposits that Jersey provide are even more valuable than they were. They are not delivering the same return but because banks want diversified deposit taking in their liquidity pools, they do not want to be so reliant on borrowing from other banks because they do not trust their balance sheet strength. What we do and offer has actually become more valuable.

Deputy M.R. Higgins:

Getting another plus for Jersey at the moment.

Ms. A. McFadyen:

Yes.

Mr. G. Cook:

It is a plus for the Isle of Man and for Guernsey and any other centres as well. Whoever is providing liquidity, it is the same attraction.

Deputy M.R. Higgins:

Okay, looking at the actual mechanism in terms of failure, one of the problems with having Jersey basically being hosting banks within its jurisdiction is the fact that if a bank fails it is more likely to be the parent that is going to go down. Now, you may or may not get notice of the fact that it is going to go down. I know in the past I have joked with people that we read in the *F.T. (Financial Times)* before we are officially notified because we would be almost the last concern because if the bank is in trouble they are too busy trying to save themselves and their own regulators are trying to help save them, than think about the offshore branches and everything else. So if a bank goes down, how are we going to be able to protect depositors very quickly? We have got scheme and the scheme we are proposing is an ex-post scheme and there is absolutely nothing, except on paper, that says there will be a Jersey Deposit Guarantee Board. How long is the timescales and everything else involved in trying to have a scheme that would work? It is one thing to say: "Yes, we have got a scheme", trumpeting that out to the world but it is another thing having a scheme that will work and that is key as well because that is important for the credibility of the Island as well as having a scheme. Now, from a banking perspective your bank records, are they located in Jersey?

Ms. A. McFadyen:
Yes.

Deputy M.R. Higgins:
Yours are. But in the case of all your members they are not, are they? They may be based either head office or they may be with a third party who are doing all the processing for them.

Mr. G. Cook:
I cannot imagine there is a bank here that does not know its own customer records, wherever their support in terms of processing.

Deputy M.R. Higgins:
Well, there are examples worldwide ...

Ms. A. McFadyen:
Certainly ours are local. We do not rely on any systems to gather that information outside.

Deputy M.R. Higgins:

Okay, well we do not expect your bank to go down anyway. But at the same time that is reassuring. But, again, if the records are elsewhere and the bank goes down. Whoever is going to be operating the deposit scheme has got to be able to obtain those records, have they not?

Mr. G. Cook:

I do not think that is the weak link in the process because you have got enforceable legal agreements against the banks here that would be capable of action with their parents. I do not think that is the weak link.

Deputy M.R. Higgins:

Sorry, enforceable legal agreements? In what way?

Mr. G. Cook:

Because the local entities are committed to the depositor compensation scheme arrangements, so parents could not walk away from that.

The Deputy of St. Mary:

To the D.C.S.?

Mr. G. Cook:

To the D.C.S.

Deputy M.R. Higgins:

But if the parent has gone down anyway ...

Mr. G. Cook:

That is not going to help you, is it? You are then reliant on everybody else coming to the party to ...

Deputy M.R. Higgins:

No, that is in terms of the funding coming through, but we do not want to pay money out to just anybody who said: "I had a deposit with that bank." We want to be able to reconcile what their claims are against what is on the bank ...

Mr. G. Cook:

Please, by all means test it with any of your banks but I cannot conceive that there will be a bank here that did not have its customer records and could not identify its own customers.

Ms. A. McFadyen:

We were certainly able to identify all of our eligible deposits to feed through to the J.F.S.C. in less than half a day. By doing that we knew every individual customer. We could have added to that their names and addresses, we could have ... I think you would have to go out and get a few temps but you would quite quickly, I think, be able to get to that.

Deputy M.R. Higgins:

Do you have a single customer view?

Ms. A. McFadyen:

Yes.

Deputy M.R. Higgins:

You do?

Ms. A. McFadyen:

Yes.

Deputy M.R. Higgins:

A lot of banks do not because we know in the U.K. they are talking about 2012 or whatever.

Ms. A. McFadyen:

How complicated it is, yes.

Deputy M.R. Higgins:

Exactly, and the fact they cannot bring it all together. Of course having a single customer view, which you have, is essential for a quick pay out.

Ms. A. McFadyen:

Yes.

The Deputy of St. Mary:

So is that standard across the industry then?

Ms. A. McFadyen:

I think it is moving that way. I do not know.

Mr. G. Cook:

I do not think it is essential for quick payment, I am not sure I agree with that. But, no, I think many banks do not because small or medium sized banks will not have a global view of client relationships because they will be on different systems, platforms in different parts of the world. So you want that unitary view and only the bigger global brands have been able to afford that so far. But what I would reiterate is there will be a customer record here of who has got money deposited and then it will be up to that individual to prove through a claim their entitlement to that money. I think you do make an astute point but I think the area for focus is further up the food chain and before you get to that kind of claim event. I think where you do have a very good point is on the co-operation between regulatory bodies internationally and I think that has come into focus through the financial crisis quite acutely.

Deputy M.R. Higgins:

I might add on that, we had a letter from the Director of the F.S.C. (Financial Services Commission) the other day saying that as a result of his meeting with the panel they are now sorting out an M.O.U. (Memorandum of Understanding) with the Minister in terms of relationships because there is a looseness in what they are seeing in the legislation. So, yes, I agree there has to be much greater co-operation between regulators and also within the Island between bodies, and we are not convinced that is there at the moment.

Ms. A. McFadyen:

I think if you think about it, in the case of our bank, let us say it was in trouble, you have got 70 jurisdictions around the world so the communication between what happens in the home country and how you communicate effectively to the C.E.O.s (Chief Executive Officers) of those 70 countries, the regulators of those 70 countries, potentially the government of those 70 countries, would be a logistical nightmare at a time when you are trying to stop it happening in the first place.

Deputy M.R. Higgins:

You tend to forget about that side because you are concentrating on saving the bank. I fully accept that. In fact it will be interesting to watch Lehman on television tonight. Now, in terms of the actual working of the scheme though one of the objectives of the depositor scheme is to protect the small depositor to make sure that they get money readily. Now, the scheme as we are being told is supposed to be able to pay within 7 days. That has been described by the Guernsey Depositor Compensation Board as dotty. The F.S.C.S. in London expressed absolute amazement ...

Ms. A. McFadyen:

It is 7 days after receipt of claim, is it not?

Deputy M.R. Higgins:

From claim. But even the Isle of Man questioned the whole thing and they, of course, have had 2 failures, Guernsey have had one. So there is a lot of scepticism that we can deliver on it. In fact, to be honest, it has even been suggested it is just plain window dressing in our own legislation because 7 days no one is going to achieve it yet. Three months is the international norm and if we can meet the 3 months I think that would be a good test. Coming down to this, though, it is a question of I assume that you would expect that before any money is paid out, after all your members are going to be paying into a scheme to support the bank failure, that you would expect the deposit board to be able to reconcile the claims against the records in the bank.

Ms. A. McFadyen:

Absolutely. I would expect them to be working closely with whoever is managing the bank and hopefully they have kept most of the staff in the bank so the staff know where the records are and can access it.

Deputy M.R. Higgins:

Which is key.

Ms. A. McFadyen:

Yes.

Deputy M.R. Higgins:

Of course, we have been told that that is not necessary. Before this panel we have had evidence that it is not necessary to do that, the person can just come along with their claim and we will pay out on it because we know where they live in the Island.

Ms. A. McFadyen:

Then you spend the next 6 years trying to get back. No, I think you ... maybe proof of the bank account. You know, if they can produce who they are, proof of a statement, some proof that they do have that bank account.

Deputy M.R. Higgins:

I take that as a starting point and then you need the reconciliation. Now, it also comes on to one of the aspects of the scheme that we are not going for is the netting of deposits. For example, there is no set off at all. This is why I go back to this single customer view. Obviously, if you have the ability to net off loans to the person and so on then it reduces the cost of the scheme. Where do you see the balance? Do you think it should be netting and therefore reducing the cost to everybody, whether it is government funding or not or whether the banks are paying for it, or do you think it is too complex, too much hassle, we should forget about it? What is your view on that?

Ms. A. McFadyen:

I was reading the transcripts and trying to decide whether I had a view and I came to the conclusion that I did not have a view one way or the other. I cannot remember why that ended up there but I do not have a strong view one way or the other on that.

Deputy M.R. Higgins:

Do you have view from the J.F.L. point of view?

Mr. G. Cook:

I do not think it would affect the large proportion of the people covered in this scheme because, by and large - apart from the local market which in the overall scheme of things is quite small in relation to the total cover - people do not tend to borrow from this jurisdiction. So I do not think a netting off scheme would be relevant to the vast majority of people covered by this scheme. It does introduce a degree of complexity, you trying to establish more detailed records on a wider range of arrangements so probably would put more administration in. So I can see it in an onshore jurisdiction where perhaps you might have a one-to-one relationship where half your customers are borrowing and half your customers are saving but ...

Deputy M.R. Higgins:

Do you know whether there is any quantitative analysis of this done?

Mr. G. Cook:

What, of how many people borrow and how many are depositors?

Deputy M.R. Higgins:

Again, the idea of a single customer view really. It is understanding who your customers are and ...

Ms. A. McFadyen:

Our overdrafts are minuscule, tiny. It would be very different in one of the local clearing banks, I am sure.

Deputy M.R. Higgins:

Okay, moving on then to ...

Ms. A. McFadyen:

Could I just come back on the sort of feasibility of paying out? What we typically do in a bank is if there is a crisis or a potential crisis we plan for it, you know, we practice it, we prepare for it. I think that would be ... if you put a scheme like this in it would not be a bad idea to suggest that there is some sort of crisis plan and say: “Okay, what would we do?” and so you come up with a list of activities that you would do in the event that it happened. So you get a piece of paper out and say: “What would our actions be?”

Deputy M.R. Higgins:

I must say I like the view of the U.K. about the idea of a living will. The banks are planning for their death and it is all set out what happens, which I think is ...

Ms. A. McFadyen:

I think a crisis planning exercise around this scheme would be good practice.

The Deputy of St. Mary:

Is there a way of making that happen?

Ms. A. McFadyen:

Yes, I think that is something that perhaps government could initiate and we could spend 2 or 3 days running assimilations: "Okay, what would we do? Who would we call? Would be able to get the bank records?" Maybe pick a handful of banks to work with as a pilot and check all the decisions and then document it so that in the event that the unthinkable happens you have got your crisis plans in place.

Deputy M.R. Higgins:

It is something the F.S.C. could have reassurance on?

Ms. A. McFadyen:

Absolutely, yes.

Deputy M.R. Higgins:

Looking again at the working of the scheme then, we have had a lot of evidence, as I say, from others that ... I will give you example, Guernsey. When we spoke to the Guernsey Deposit Board they were saying that they have been working for almost a year now and they are still working through their scheme. They think the idea of us being able to implement a scheme, get all the people necessary, coordinate everything and do it immediately, and be able to pay out all this money very, very quickly is absolutely insane. Is there not ... I am just putting forward to you the suggestion that we should be really setting up a board, even if it is just named individuals on a retainer, in a sense, do all the work so the contingency plans are there and the activation checklists are there and everything else, rather than waiting ... I know we say it is hypothetical but the point is if we get one we are going to be ...

The Deputy of St. Mary:

It is just as well to do it properly, yes.

Deputy M.R. Higgins:

So what are your views on that?

Mr. G. Cook:

I think the problems that Guernsey have had are much more to do with the complexities in their scheme rather than the pay out process, the attempts they have made to get into things like risk-weighting and differentiation. While they have got the public headline of having a scheme in place the mechanics of their scheme, as I understand it, are still not properly sorted out. I think, as Alison suggested, having a road map, a documented road map of how you would form your board, what the constituents would be, what their roles and responsibilities are, what the respected powers of government and regulator are. To have that documented would be quite helpful even to the extent as Alison is perhaps just assimilating it. I do not think you need to have a retained capability. I think you need to have identified your structure and how you would achieve it within a reasonable timescale but I do not think you need the cost of retaining an ongoing overhead for the kind of eventuality we are talking about.

Deputy M.R. Higgins:

Within this scheme that is proposed it mentions the cost of a board would be about £250,000 a year if it is called upon. Again, £250,000 on a hybrid scheme or an ex-ante scheme where all the members are making a contribution, maybe even government makes a contribution, to the scheme to set up a board and have all the contingency plans there, is that not giving reassurance to depositors and to banks and everyone else that the scheme would be working? Improve our credibility, rather than just saying: "We have a scheme and if a bank fails we will set one up." Do you not think that would be better and would give more confidence?

Mr. G. Cook:

Certainly in the banking view that would give more confidence. As far as the consumer is concerned it does not make any difference at all.

Ms. A. McFadyen:

I would feel more comfortable with a road map, a set of absolute actions that would be taken and the type of person that we need. You know, would it be one of the big 4 accountancy firms that would head it up, would it have a government person? Because in practice, let us say 5 years elapses between putting the scheme in place and something awful happening, you will find that of the 3 people you have allocated to that, one is safariing in Kenya, somebody else has just had a baby and so in practice you find that the people you have identified, for some reason or another, cannot do it. So I think it is better to have a process rather than actual names on a page.

The Deputy of St. Mary:

I just want to test this a little bit. I can see ... I know what it was like in a company I was working for when the auditors came in, that was bad enough. Now to say: "Do a run through of the crisis that will kill the bank" might quite disruptive.

Ms. A. McFadyen:

We all do crisis planning. We all go to liquidity crisis planning ...

The Deputy of St. Mary:

Yes, so you can see that as a feasible thing, this part-time board and they would run this thing or J.F.S.C. would run it?

Ms. A. McFadyen:

Yes. Perhaps something J.F.L could assimilate. But what we do is typically sit in a room and it would be with all the interested parties and basically talk through each thing and then you might break for a week because you might need to decide how quickly could the banks get the records to you. Each bank goes away and works on that and then they come back for a week and then you work on the next phase of it. But at the end of it you should have a documented crisis plan with everything you need, including media messaging. We have crisis plans in place that it does not matter what the crisis is, we have a 20 page document that says: "Okay, this is who we contact, this is what we do" and when you are in crisis mode it is very helpful to have something written down otherwise you have this headless chicken sort of ...

Mr. G. Cook:

I think ... sorry, until you know what your scheme is it is not that easy to do that. So I think you need to get the parameters and the framework of the scheme agreed and then I see it as the next phase of how would you implement that scheme and what support is necessary for it. What machinery is required to make sure it ... if it has to be that, that it runs efficiently.

Deputy M.R. Higgins:

One of the problems that we also have, just moving on slightly further and just watching the clock as well, is that if a bank does fail because of the cross-border nature of banking - we have been told for example the government does have some money there that it will be putting into the scheme, probably the initial liquidity will be coming from government because I do not think levies would be recovered fast enough to be able to pay money out and so on, then there is the possibility that if the caps are reached then the government will be putting in money then - the government will be able to recover that money from the assets of the bank. But we also know that cross-border banking is notoriously complex, you have got conflict of laws, you have got national sort of preferences and no doubt jurisdictions are looking after their own to the exclusion of others.

Mr. G. Cook:

Political pressure as well.

Deputy M.R. Higgins:

There is a whole panoply of things that are going to come up and cause problems. So it is going to be many, many years and then there is not always the prospect of recovering money. Is that a true assessment, do you think, of the knowledge of world banking across the ...

Ms. A. McFadyen:

I think you are right in terms of timescale. It takes time to sort these things out but typically, I think, recovery rates are not too bad. I think I was reading somewhere between 50-60 per cent is often a recovery rate. It just takes a lot of time because the lawyers, usually in the home jurisdiction, are fighting it out. But I think you are right on time and complexity but it just has to run its course. But you do get recovery, it depends who it is and the circumstances but there is usually some level of recovery.

Deputy M.R. Higgins:

Is it possible - I am just curious on this - that through your head offices you can obtain information on the insolvency laws in your country and the processes that could all be fed back to the authorities over here so we can get a picture for each of the banks and the jurisdictions which are their home country of what goes on because I do not ... one piece of information that has come out to me is that no one has got a handle on what the problem is and the extent of problem. Therefore taking it into account in terms of planning.

Ms. A. McFadyen:

You are talking about U.K. insolvency laws?

Deputy M.R. Higgins:

Well, U.K. for that but it could also be French in the case of French banks, U.S. (United States). We know that the U.S. treats things totally differently to everybody else.

Ms. A. McFadyen:

In everything.

Deputy M.R. Higgins:

Also the other thing, too, that does concern me is the fact that whereas if we were a member of the E.U. then there would be money coming from European depositor compensation schemes so depositors would get some of that and then it might be topped up by money that is coming from here but because we are outside the European economic area we will not get any of that. We will not get any money from U.S. compensation schemes. So basically our own scheme is on its own and we are going to have to be paying out the money. So there are lots of issues here which, I might say, concern us.

Mr. G. Cook:

I think it has been designed on that basis and those assumptions, has it not? I do not think it is planned to have any recovery from other depositor compensation schemes.

Deputy M.R. Higgins:

There are provisions in the law that people are supposed to give it back or it is taken into account but I think the assumption has been there will be but in reality ...

Ms. A. McFadyen:

That is right, if in the end there is 50 per cent recovery then that will come back to the scheme.

Deputy M.R. Higgins:

But unfortunately it looks like, in the countries we seem to deal with, there is not that sort of protection.

Mr. G. Cook:

I think the issue you have there is that we have clients here banking in over 200 countries so trying to keep on top of the insolvency laws and legal infrastructures is just impossible.

Deputy M.R. Higgins:

It is not all the countries, it is just we have 49 banks who are grouped into certain territorial jurisdictions. So we know we have got so many U.K. banks, we have got so many French banks, et cetera, so it is really looking at those jurisdictions, the jurisdiction of the bank.

Mr. G. Cook:

I see.

Deputy M.R. Higgins:

Has anybody else go any questions?

The Deputy of Grouville:

If the £100 million does not cover the liabilities, who is it envisaged will cover the shortfall?

Ms. A. McFadyen:

I think it is the customer in the end. The customer ends up short. From memory, £100 million will cover, I think it is, banks one to 8 and I cannot remember, I would have to check that, but it is only in the big, big failures that there would ultimately be a shortfall.

Mr. G. Cook:

I think that is when parental support is likely to kick in, in that situation.

The Deputy of Grouville:

Well, yes, that is what I had envisaged so there might be a bigger liability than we had anticipated.

Mr. G. Cook:

I think that is quite unlikely at that size of bank because you are then more into very large institutions where you have potentially got systemic associations with natural government so I think that scenario of us having to solve that on our own is quite unlikely.

Deputy M.R. Higgins:

Although in future we may see a change to that because there has certainly been quite a violent reaction, in a sense, to the amount of money that members of the public and governments have had to put in to sure up their own banking systems. We know that, I think it is Paul Tucker from the Bank of England who is responsible for financial stability is saying that we cannot afford banks that are too big ...

The Deputy of St. Mary:

Talking about smaller banks.

Deputy M.R. Higgins:

They are talking about splitting banks up or ...

Ms. A. McFadyen:

They are certainly talking about when they sell their shares ultimately, potentially not selling to one of the current big players, to sell it to a small player to spread it a little more.

The Deputy of St. Mary:

Can I go off on a slightly different direction? Assets. I am concerned that when a bank fails one of the things they will do as they are failing is ... I cannot see where the assets are that claims will be made against because they will have gone.

Deputy M.R. Higgins:

You are talking in Jersey?

The Deputy of St. Mary:

Yes. As a naive ...

Ms. A. McFadyen:

Yes, the majority of assets, you are right, are sitting with the parent in the U.K. or France or wherever.

The Deputy of St. Mary:

So what is the situation with regard to ...

Ms. A. McFadyen:

Well, you would have a legal claim to it but obviously that would get caught up into the whole ... if it is the parent that has failed that is going to be the problem, will be getting it back.

The Deputy of St. Mary:

It is still legally the depositor's?

Ms. A. McFadyen:

Yes. Standard Chartered Jersey, for instance, lends its money to Standard Chartered in London. So if Standard Chartered in London has failed it has now got to fight to get that money back again.

The Deputy of St. Mary:

Because it is lent rather than ...

Ms. A. McFadyen:

Yes, and it is going to be caught up in the whole mix of a failure.

Deputy M.R. Higgins:

Again, the concern just generally that we have is the fact that, one, parental guarantees are not guarantees as such. We have talked about letters of comfort which have no legal validity. We know there is a reputational risk but banks could cast someone adrift if they felt it was in their interests overall. From the point of view of the failure of the parent, again, assets could have been upstreamed so we may have no assets here, including in a subsidiary. Certainly a French bank, if we got caught up with a liquidator over there, we could have very little in the way of assets to try to recover within the Island. So, yes, there may be assets, it may take years but it is going to be quite a messy business no matter what, is that correct?

Ms. A. McFadyen:

I think any bank failure will be a messy business, to be honest.

Mr. G. Cook:

It would take time. I do not think I could agree with your scenario though because if a major banking group decides to write off a subsidiary or part of its operations, what is the rest of its customer base going to think about that. It would put itself at risk of a run on that bank globally if it wrote off an institution that it was seen as having responsibility for. They just would not do it. It could sound the death knell for the group.

Ms. A. McFadyen:

If it is a going concern there is absolutely no way, it would try and sell it if it did not want it anymore but it would never cast it adrift.

Deputy M.R. Higgins:

I think the scenario I see is when they are in trouble themselves and it is the lesser of other evils in a sense. They may feel there is less damaged caused by letting it go adrift than trying to salvage whatever.

Ms. A. McFadyen:

But banking is all about confidence and as soon as you break that confidence ... that would be an absolutely catastrophic decision I think because the confidence would just die and that would cause its death anyway.

Mr. G. Cook:

Clients in other parts of the world would try and pull their money out, they would not be able to get it, you would have an immediate run on it, it would just be doomsday for a bank if it did that.

Deputy M.R. Higgins:

Right. Okay, any more questions?

The Deputy of Grouville:

Just briefly, you spoke about the Swiss securities to have some assets locally, would there be anything the equivalent here?

Ms. A. McFadyen:

I do not know of anything.

Mr. G. Cook:

We do not have our own financial markets so we do not create financial instruments here. We gather value from around the world and we place that in other large mature safe markets where the financial instruments are created that hold that value. So the Swiss economy is big enough to have their own central bank, they are big enough to create their own financial instruments, we do not have a central bank and we do not have that financial architecture, as it were.

The Deputy of Grouville:

So should we be looking at a product like that?

Mr. G. Cook:

I think that the infrastructure and costs would be disproportionate to the benefit. We are not a big ...

Deputy M.R. Higgins:

I was just smiling to myself because I was thinking it could be of mutual benefit obviously if we are being asked for government to assist the scheme and the banks and so on but equally if we had some ... I am not saying government debt, but we may need some government debt at some point, if the money was invested within the Island and helping the Island in that sense it might be quite useful.

Ms. A. McFadyen:

That would need quite a lot of exploration, I think.

The Deputy of Grouville:

A new product.

Deputy M.R. Higgins:

I am just smiling at the prospect. Okay, Carolyn, have you got anything else?

The Deputy of Grouville:

No, that is all now, thank you.

Deputy M.R. Higgins:

I think that has pretty well exhausted it. I must admit that I did not realise, Alison, you were here supposedly with the J.B.A. hat on and we may ... in fact we are still asking the J.B.A. to come forward anyway. But I would appreciate it if you could go away and find the minutes of any meetings to do with the scheme, because to be quite honest I think it is totally unacceptable that a scheme has been put forward and yet on the governance side we can find no records of how they have arrived at what they have got at. Now, we know that J.B.A. did take records, we would very much like to be able to see those because otherwise I think we are going to have to go to the public and say: "This has all been done behind closed doors. Everyone is denying everything. This is the scheme." So unless somebody is forthcoming with minutes shortly I am afraid that might well be one of the findings of this committee.

Ms. A. McFadyen:

Okay. Who do you want them sent to?

Deputy M.R. Higgins:

To Tim, please. Okay, other than that, thank you very much for coming. It is has been very interested.

Ms. A. McFadyen:

Thank you.

Mr. G. Cook:

Thank you.