

STATES OF JERSEY

Economic Affairs Scrutiny Panel Depositor Compensation Scheme

MONDAY, 3rd AUGUST 2009

Panel:

Deputy M.R. Higgins of St. Helier (Chairman)
Deputy G.P. Southern of St. Helier
Deputy D.J.A. Wimberley of St. Mary
Deputy S. Pitman of St. Helier
Deputy J.M. Maçon of St. Saviour
Deputy C.F. Labey of Grouville
Mr. T. Oldham (Scrutiny Officer)

Witnesses:

Senator A.J.H Maclean (Minister for Economic Development)
Mr. J. Mews (Finance Industry Development)
Mr. M. De Forest-Brown (Director of International Finance)

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

First of all, welcome. We are going to have to do the usual sort of thing for the tape, to identify everybody. So if I could ask, Alan, if you could start off, just say who you are so we have it for the tape.

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

Senator Alan Maclean, Minister for Economic Development.

Mr. J. Mews (Finance Industry Development):

James Mews, Finance Industry Development.

Mr. M. De Forest-Brown (Director of International Finance):

Martin De Forest-Brown, Director of International Finance.

Deputy M.R. Higgins:

I am Mike Higgins, Chairman of the Panel.

Deputy G.P. Southern of St. Helier:

Geoff Southern, just here to lend a hand and keep us quorate over August.

Deputy J.M. Maçon of St. Saviour:

Deputy Jeremy Maçon of St. Saviour.

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

Deputy Wimberley of St. Mary.

Deputy C.F. Labey of Grouville:

Carolyn Labey of Grouville.

Deputy S. Pitman of St. Helier:

Deputy Pitman of St. Helier.

Deputy M.R. Higgins:

Also Tim Oldham, our Scrutiny Officer. Okay, we have obviously been piling through all the documents that we have got and trying to come to grips with the scheme as proposed. So what we are going to do is we are planning on going through different areas and just try and seek clarification from you or an understanding from you of the scheme as it is. So if we just start off. Daniel, if you will go through the first area.

The Deputy of St. Mary:

So it is what is loosely called principles, this section. The first question we want to ask is about the I.A.D.I. (International Association of Deposit Insurers) core principles and to what extent they are incorporated, or to what extent you referred to them and incorporated them and which version.

Mr. J. Mews:

Shall I respond to that? Basically the Financial Services Commission sent through to us the principles as soon as it came out and so we looked at those and considered them to make sure that the scheme which we were coming up with matched those principles. Of course, we have got to bear in mind at the time they were proposals of principles rather than any accepted principles, but we looked at those and we came up with the conclusion that we met all those principles.

The Deputy of St. Mary:

When you say "as soon as they came out" what sort of date? Because the different versions are dated, are they? How does it work?

Mr. J. Mews:

I am just trying to think. It was Colin Powell(?) who sent them through to us from the Financial Services Commission. It was probably sent to us around February time but I would have to go back and check to be certain.

Deputy M.R. Higgins:

February 2009?

Mr. J. Mews:

Yes. Might have been March, February/March time.

Deputy M.R. Higgins:

Have you had a chance since you have now drafted the law to have a quick look back and make sure it does?

Mr. J. Mews:

Yes, we have.

The Deputy of St. Mary:

Yes, and on detail, I suppose, about the principles, the independence of the scheme from ... like political particularly controlled and so on, how is that built in?

Mr. J. Mews:

Well, one of the key things there when we compared our scheme to the F.S.C.S. (Financial Services Compensation Scheme) in the U.K. (United Kingdom) and the way that works with the F.S.C.S. and F.S.A. (Financial Services Authority) is that the F.S.A. set the rules but the F.S.C.S. apply them. So basically what we have got here is a situation where, in essence to save costs, the Minister will be setting up the scheme, so all the policy work, procedures and everything like that will be put in place by work done by people working under the Minister, then once all that has been established and in place then the Minister will step back, the board will be constituted and then the scheme will be able to operate independently from the Minister.

Deputy S. Pitman:

There are several functions of the Minister in the D.C.S. (Depositor Compensation Scheme) and one of them ... well, there is several in the draft regulations and while the board is being constituted in the meantime the Minister shall carry out the functions of the board. There are other roles that he has well. You talk about independence, to me that does not tie in with the scheme being independent.

Mr. M. De Forest-Brown:

Shall we talk about some concept here in the first instance, which is that what we are trying to do here is that, given that we think the likelihood of this scheme ever being called is very, very remote, one of the key requirements up front was to try and avoid any cost, which is why we have gone through a post-event scheme rather than a pre-event scheme. So the principle that we started with was to try and avoid having to establish an independent board before the event, because once you have established them you

have to pay them, you have all the costs that go along with it. So the concept behind this was to come up with a construct that allows us to ensure that the matters that need to be dealt with can be dealt with outwith a board, in which case we have endowed those abilities with the Minister. But with the understanding the way that would operate in practice is the second that a scheme needed to be called upon that we would be in a position to immediately put in place an independent board. So it is to try and balance those 2 elements. So clearly in terms of policy definition part of the scheme, the run up, that would all be dealt with under the powers of the Minister. But the second a board gets created then that would move away from government into the hands of the independent board.

Deputy S. Pitman:

Going back to the principles in the Basel Committee document on banking supervision, one of the key principles is that the deposit insurers should be operationally independent, transparent, accountable and insulated from undue political influence.

Mr. M. De Forest-Brown:

Which it would be. So that would be the case.

Deputy S. Pitman:

But there is a still a political role there.

Mr. M. De Forest-Brown:

In which one?

Deputy S. Pitman:

While the scheme is being set up.

The Deputy of St. Mary:

The interim board is the Minister.

Deputy S. Pitman:

In addition ...

Deputy M.R. Higgins:

The interim board is the Minister, can you just ...

Mr. M. De Forest-Brown:

It does not have anything ... the purpose behind that is to reduce costs. We could, as an option ... one of the options that was considered is to establish that board now as an independent body.

Deputy M.R. Higgins:

The balance of the arguments ...

Mr. M. De Forest-Brown:

The balance of the argument is there is nothing for them to do. Therefore all you would have is a cost of people sitting around with nothing to do.

The Deputy of Grouville:

Why should this cost if this is to benefit those in the industry?

Mr. J. Mews:

You need to have ...

Mr. M. De Forest-Brown:

Somebody has got to pay the board members.

Mr. J. Mews:

Yes, and you need people of quite a high skill set to sit on that board, so you would probably want a lawyer, you would probably want an accountant, you would want somebody with a lot of senior experience in the banking industry for the board to have credibility. So if you are having that sort of people you are going to have costs broadly equivalent, say, to what the commission pays its commissioners and chairman. So then we would have a cost to the States of possibly around £100-150,000 a year, which if we do not have to do that just seems to be quite sensible.

Deputy G.P. Southern:

Can I just suggest there that in terms of credibility, because one of the other things is it should be credible to the broader outside public or savers in the Island, it seems to me there is a balance there in credibility terms of we have not got board but everything will be put in place like that. If any bank goes down we are ready to go. It seems to me that appointing a chairman of such a body, an important body as this is not ... does not happen overnight. We know in the States if you want a Commission of Inquiry, you want somebody to advise you on X, Y and Z, and you can hunt around for 6 months. But you are saying: "We can get a board like that." Minister, in the position, you are sitting there, the bank goes under: "Right, what do I do?" Where do you get your chairman from? I ask the Minister because he is accountable.

Senator A.J.H. Maclean:

Well, we believe there would be the availability to find suitable people to fulfil the role of the board and, as both Martin and James have pointed out, the structure proposed effectively from a cost saving perspective is the one that we believe is the most appropriate and that the expertise will be available should we require it in a timely fashion to fulfil the obligations required.

Deputy G.P. Southern:

The evidence you have for having the experience available, experienced hand just sitting there waiting to be called up should the need arise?

Mr. M. De Forest-Brown:

As you note, this is not written down yet. This point ... the details of this have not been documented anywhere and that is recognised as a piece of work to do, but the principle behind it was we would appoint representatives from a firm of accountants and lawyers. So that is why we are confident that they will be available immediately because they would step in as a paid agent. So it is not looking around for somebody from the great and good who seems to meet all the criteria in the first instance, it would be an appointed paid professional from a professional firm. So we would call up the legal firms and the accountancy firms and say: "We need a *pro tem* ..." Now, that could be ... that could continue or they could hold that place until a further independent individual was found. But the basis behind all of this is simply to try and keep costs down.

Deputy G.P. Southern:

There is a balance between costs and credibility, do you accept that?

Mr. M. De Forest-Brown:

Yes.

Deputy M.R. Higgins:

I must say, I am surprised by that statement because remember if this law had gone through the States on 14th July it would have come into effect within 7 days. So, in other words, you have got no background material, you have not got everything in place so that if the law came into place you could act right away. So you would have a delay in trying to get a scheme going.

Senator A.J.H. Maclean:

You would not at all, because if you are effectively saying 7 days ... once the law was in place if there was immediately a bank failure, we would not be able to deal with that, yes we would. We would be able to go out and find suitable expertise from accountancy or law firms to fulfil the role of the board. So we could move immediately on that.

Deputy M.R. Higgins:

But the essential thing is you would not be up and running, you would have to sort of have to try and do that ... carry on.

Deputy S. Pitman:

Can I just ask one more? I just wanted to know if you know what other countries do, do they ... does the Minister or politicians play that role?

Mr. M. De Forest-Brown:

Sorry, which role are we tackling?

Deputy S. Pitman:

Well, while the scheme is being constituted. Here it is the Minister who takes on that role, in other countries who takes on that role?

Senator A.J.H. Maclean:

Perhaps we could look at Guernsey as an example because they brought in their law just before Christmas time last year and they still have not ... they have only just now constituted a board. So they have had an interim time of 8 months or so where they have been working on sorting that out. They still have not put their rules and other things in place. What they accepted was that there needed to be a law in place to give the public confidence but they accepted that it would take time to put everything in place because, of course, these things do take time. So you have an issue of what is more important; is it having it fully up and running at the time you legislate or is it bringing the law into give people the confidence which they want and then put it in place. That is the route we have chosen to take.

Mr. M. De Forest-Brown:

I think the issue here really is which tasks, in terms of balancing up that balance between costs and

credibility, are there that there are concerns about before the scheme eventually crystallises. I think that is the concern. I do not see that there is any activity in that period. It is a totally open question. If you have identified areas of activity that are going on prior to the scheme crystallising that you think warrant an independent board, then all well and good. That is certainly something we should look at but my take on this was we need a law, we do not think this is ever going to be called, we need a law that enables us to act quickly and to have a scheme in place and clarity so that you can advise depositors what it is they are protected under. But the detailed elements of that are such, as has been demonstrated in other jurisdictions, that there is the ability to establish it very quickly.

The Deputy of St. Mary:

We are going to go to the detail later but in terms of the overall hearing, we are already half way behind and it is very useful, it is really useful, so we can find out through the Chair about timing. Are you going in 2 hours because that is what we have booked or will there be a chance of going ... because we are already way behind, but it is very useful.

Senator A.J.H. Maclean:

Shall we wait until we get to that point?

Deputy M.R. Higgins:

Okay, can you just carrying on with the questions, Daniel.

Mr. J. Mews:

Sorry, just before we do carry on, about the difference between the independence of the board and the Minister, there is one very important point about that which is if you look at the financial services Commission, the same point arises and, as a result of that a previous I.M.F. (International Monetary Fund) visit identified that a memorandum of understanding needed to be entered into between the Commission and the Minister in order to set out in which circumstances the Minister would act. That is one of the key things which we need to put in place in order to show that the board is politically

independent from the Minister.

Deputy M.R. Higgins:

Okay, thank you for that clarification.

The Deputy of St. Mary:

Right, so moving on to a very different area. The base question is why should the Jersey Government develop a scheme that funds private sector companies? A big question of principle.

Mr. M. De Forest-Brown:

That is very straightforward. What we are trying to achieve is the least worst solution. Let us be clear that that is what you are trying to achieve, the least worst solution. Nobody wants a deposit scheme, it is something that happens in a bad set circumstances. The preference is that it does not happen and we, by means of history and regulation, have a better environment in banking terms than any jurisdiction in the world. There is no jurisdiction in the world that is in a better position in terms of the quality of the banks and the nature those risks that they undertake.

Deputy G.P. Southern:

Sorry, I understand that. I am just going to make a comment. I could not resist it. The least worst option reminds me of G.S.T. (Goods and Services Tax) which I have real doubts about. Anyway, just carry on.

Mr. M. De Forest-Brown:

One could make linkages to many issues where you are trying to minimise the worst outcomes. What are we trying to achieve here? We are trying to achieve a scheme that has credibility in terms of the amount that is covered, the total amount that is available for depositors. We are trying to achieve the criteria in terms of what is an acceptable level of cover for individuals. We are trying to develop something that is fundable and is credibly fundable without negative responses from the industry in

terms of voting with their feet. So all of these are a juggling of the multiple elements of the scheme. So the outcome of that scheme is that when you apply the charge out rate that was previously being used in the U.K., the .3 per cent, you do the numbers, add it up, you end up with - based on the liability of the banks - a figure of around £65 million. The reason you arrive at £65 million is because we have chosen to put in a cap with an eye on the competing jurisdictions. So we looked across the water and saw Guernsey had £5 million cap, we thought we could live with a greater cap, the industry were not happy with it but we thought we could get to a negotiated level where there was an acceptable gap but a reduced imposition on government and gave a fair charge to industry. So we introduced at £10 million. Now, when you run all of those numbers you come up with a figure of £65 million. Again, looking across the water, Guernsey have got a £100 million scheme. So starting from scratch in terms of credibility, could we have a scheme that offered cover that was less than Guernsey. We did not think so. So our starting point was we must have at least the same cover as Guernsey does, £100 million. So that was one we thought: "Okay, which of these pieces in the jigsaw can we move?" So we thought that was a minimum. We thought there were many arguments for having a higher figure but we thought: "£100 million, that is the minimum, let us run that through the numbers." We have ticked that box, we have ticked the £50,000 per depositor, because that is the current standard. We have ticked that box and then we have thought: "What is an acceptable charging rate?" Then we looked around and saw that the standard charging rate used in the U.K. used to be - but is not any longer, they are changing their scheme - the current standard of .3 per cent. So that is something which our major banks were familiar with. Then the last bit, as I have mentioned, was the cap. You run all of those numbers together and that results in a £100 million scheme, £65 million of funded. That leaves the shortfall. So what we suggested was, given that we think that this is very remote, given that this is a competitive time when we are trying to compete with other jurisdictions for consolidation activity by the banks, that we, to make that work, should put in government as a lender of last resort effectively for that last £35 million, should that eventuality arise. Then having run many of the scenarios and numbers on banks that result in a problem, is the likelihood of us requiring on that is even more remote in that that many small banks here, if they were to have a problem, would be covered by the £65 million. So that is how we arrived at the solution. The key point is that there is no up front funding, this is only obviously funded in the event

that there is a failure and in the event that there is a failure that takes you into an area that results in £100 million being required, and it takes you into that area post the recoveries from a liquidation or a receivership. If one looks at the evidence around in the industry elsewhere, and a very good example is the Isle of Man situation currently, the level of recoveries are extremely high for a bank and therefore in almost all circumstances, even if there was an initial pay out under the government's obligation, there is a very high chance that that money would be refunded in due course under the liquidation and receivership. So the reason we have ended up with the funding is we cannot see another part of that jigsaw to move without damaging either credibility or our competitive position. The number pops out of itself. It is not where we started from. We were not thinking: "There should be this much funding."

The Deputy of St. Mary:

Okay. We will come back to the ...

Deputy M.R. Higgins:

So, no, just a quick question on that, a very quick one. How many other schemes have explicit government funding in a D.C.S. scheme?

Mr. M. De Forest-Brown:

Very few.

Mr. J. Mews:

We discussed with Oxera and Oxera confirmed to us very few have explicit up front government funding in the legislation. However, when push comes to shove governments do have to put in, so the Isle of Man contributed £150 million into the scheme to support Kaupthing. They do not expect to get that back. They have also given £120 million up from liquidity to fund payment being made out to people quickly. There you can see something which, although the figures are larger than what we would have to pay out in the Jersey Government in the worst possible case scenario, you can see something which is very similar to what Jersey is doing but the difference is we tend to examine our navel a bit

more. We like to get things up front and explicit for the world to see. So what we are doing there increases the credibility of our scheme rather than lessens it and is a very important part of it.

Mr. M. De Forest-Brown:

Effectively all of the other jurisdictions have weighed in and supported it. So if you look at the U.K., Germany, France, they have all ...

Deputy M.R. Higgins:

There is a big difference between a systemic failure in very large institutions as opposed to the deposit scheme as such. It is ...

Mr. M. De Forest-Brown:

Yes, and if you look at our scheme, the only way we will be called on, this Government, by the £35 million is in the event of a systemic bank failing.

The Deputy of St. Mary:

But I thought the smaller principle within the £100 million ...

Deputy G.P. Southern:

Nonetheless there is a risk.

Deputy M.R. Higgins:

There is a risk no matter what.

Mr. M. De Forest-Brown:

No, but coming back to your point. My point in all of the other jurisdictions they have only stepped in to support systemic banks. The only way we will be called on for our £35 million is if a systemic bank failed. All of the other smaller banks can be bailed out with the £65 million.

The Deputy of St. Mary:

Okay, we might leave that as a point we can come back to. I think probably it is worth restating the original question, which is why is the government involved at all. Just to put a little bit of gloss on that, other sectors do not get liability guarantees from the government so why should bankers get support direct from the taxpayer whereas you would not do that for construction companies or with any other sector in fact?

Mr. M. De Forest-Brown:

The answer is ... I return to my previous answer, which is if you look at all of the elements of the jigsaw, it comes out as a result of trying to meet all the other elements of a jigsaw. There is a shortfall in funding and therefore ...

The Deputy of St. Mary:

Right, now I think putting it you really the reason is this fear of voting with their feet. That is why the £35 million has to come from the taxpayer, whereas you would not dream of doing it for any other sector, this business of guaranteeing liabilities?

Mr. M. De Forest-Brown:

I think we would do it wherever ... it is not for me to decide what the Ministers would do but in terms of my analysis and my proposals or my recommendations to Ministers is I would always put forward what I thought was the most commercially sensible solution. So if there was another sector where, as a result of some situation, you needed to provide support ... I am sure there are others, there must be other things that are going on where government needs to underwrite development plans. I am not close to them but there are building developments ... I am sure there are a whole range of areas where government has to step in and be provider or lender of last resort.

Deputy G.P. Southern:

Only on the waterfront. We have had a commercial statement there, politically how does the Minister feel about putting taxpayers' money at risk in a deal like this and effectively backing up the bank to save the bank?

Senator A.J.H. Maclean:

I think it is important you weigh up all considerations. The commercial aspects are important when you consider the value of the finance industry to the Island. We have to balance out the commercial aspects with sort of political considerations. So as far as I am ...

Deputy G.P. Southern:

Where do you see those political considerations?

Senator A.J.H. Maclean:

As far as I am concerned the proposal that has been put forward fairly balances the risk broad(?) ratio, if you want to put it like that. I suppose you have got to put together a deal and a scheme that is going to satisfy all parties. If you start losing business ... if the scheme is not commercial, you do run the risk of losing business.

Deputy G.P. Southern:

Is there a realistic risk of losing business? Is that what you are ...

Senator A.J.H. Maclean:

Not with the scheme that has been prompted. We believe it is a fairly tough scheme. We have put the cap at a higher level than Guernsey have. That was a risk, certainly it was a commercial risk, a risk we thought was worth taking. The £5-10 million is what I am referring to but we think in balance the scheme overall is a fair and reasonable scheme when you weigh up the risks associated to a taxpayer.

Deputy M.R. Higgins:

Daniel, can you just finish off?

The Deputy of St. Mary:

Yes. Now, I want to know whether there is any evidence of ... whether you have evidence within ... when you are talking to banks or trying to get them to come here or they are offering to come here, do you know why they come here? You must know why they come here. What is the list of things that ...

Senator A.J.H. Maclean:

Why do banks come to Jersey?

The Deputy of St. Mary:

Absolutely.

Senator A.J.H. Maclean:

Well, banks come to Jersey and they stay in Jersey and they develop their business in Jersey because it is a very well regulated jurisdiction with the expertise to develop their business.

The Deputy of St. Mary:

Is there definite evidence of that?

Deputy M.R. Higgins:

Also profitable.

Senator A.J.H. Maclean:

Of course, yes.

The Deputy of St. Mary:

Arrival questionnaires and so on, is there data about why they locate here because obviously it is a big

business thing to get banks to come here, so presumably you have done ... you know why they come here. We are trying to build up a picture.

Senator A.J.H. Maclean:

By working with banks the finance industry has evolved since the 1960s, it has developed, it has become far more sophisticated and we have had a lot of information and feedback from the banking sector, the financial services sector through agencies like J.F.L. (Jersey Finance Limited), we get feedback from the J.F.S.C. (Jersey Financial Services Commission) and other bodies and it is clear that the stability of Jersey, both politically and financially, is an important factor. The level of expertise that is available here and so on.

Deputy M.R. Higgins:

Can I just finish off this area with one question? One of the principles of the I.A.D.I. is avoiding moral hazards. Of course if you have got an explicit scheme where the government is putting in money, are we not increasing the risk that banks will act irresponsibly perhaps?

Mr. M. De Forest-Brown:

Absolutely not. This shows a key understanding. There is no more important point than the point I am about to make. We are not a risk asset sector. Moral hazard arises where somebody takes somebody else's money and puts it at risk because they know there is a support framework. The money in Jersey in banks is 90 per cent passed upstream to their parent. This is not invested, it is not leveraged, there is no moral hazard whatsoever in terms of the business model of our banks. This is so fundamental. It is fundamental to why the scheme is very unlikely, it is fundamental to why we have not had a bank failure. We have no liquidity problems on our ... we are not funding our banks with wholesale funding, we are funding with deposits. I will repeat this, and I will repeat it time and time again. This is absolutely critical to the understanding of the scheme that we have put in because there is almost zero risk. You have got to fundamentally understand this point we are not taking money and investing it in risk assets.

The Deputy of St. Mary:

I take your point.

Deputy M.R. Higgins:

Let me just give you this example then. Okay, we know that Landsbanki Guernsey was not accepted here but we also know many of the problems with the failure of it was some money that was upstreamed to the head office or to other branches which they were having great difficulty recovering for the benefit of the depositors of the Guernsey company. So, again, the idea of upstreaming money to the head office or whatever is not without risk either.

Mr. M. De Forest-Brown:

I agree it is not without risk but you raised the point of moral hazard in terms of decisions being made here. That moral hazard does not arise. There is not decision that can be made here, or typically be made here, that will allow people here to take on greater risk because there is a depositor compensation scheme. Does that mean there is not risk ultimately with the parent in a foreign jurisdiction? No, we cannot say that there is no risk, there is a very tiny marginal risk. All the evidence is that banks of a systemic nature have been and will continue to be bailed out by their parent governments.

Deputy M.R. Higgins:

Governments are now saying there is a danger and are talking about breaking up large groups because they believe the concept of too big to fail is no longer valid.

The Deputy of St. Mary:

Is itself dangerous.

Deputy M.R. Higgins:

Yes.

Mr. M. De Forest-Brown:

It is always possible that the landscape could change. I am commenting on the landscape as it is. I am sure if the landscape changed we would reassess our position.

The Deputy of St. Mary:

What evidence do you have of what happens to that money when it is upstreamed, because that is where the risk lies, is it not?

Mr. M. De Forest-Brown:

No, it is not. The risk is a liability of the parent back to the subsidiary here. It does not matter where the money goes, except to the extent that the parent bank is a risky animal in the round. That is the key element. That is what happened with the Iceland banks, their parents were highly risky. There was a longstanding commentary in terms of gradings, in terms of pricing of credit default swaps, in terms of commentary. All of these banks were over-leveraged and, indeed, leveraged to a point where even the jurisdiction could not support the banks.

Deputy M.R. Higgins:

I accept that but, again, many local authorities, at the very last minute, are still taking guidance from Moody's, it has only changed very late on and then the bank went down. Sorry, moving on then to Geoff to carry on.

Deputy G.P. Southern:

I am just interested in the consultation process. We started pre-November in the elections with statements, I think, from the Minister himself, that we do not need a deposit protection scheme because we have got the top 500 banks. The change from November to now, where we need it as a matter of urgency, is quite a significant one. Can you tell us what happened in the meantime, why are things so different now and they were not back in November?

Senator A.J.H. Maclean:

Well, the position in November was severe on a global basis but as both Martin and James, I think, have alluded to during the course of this hearing, the Jersey banks and the Jersey structure is, in many respects, every different. We still do not believe fundamentally that a depositor compensation scheme is needed. However, things have changed insofar as expectations from consumers, because of the fear of what is going on globally consumers are now feeling that this is something that they would like. Banks are reacting on a commercial basis, they are realising that there is a very real probability that business can be lost and there are examples now from some banks that Jersey banks are losing deposits and indeed depositors are saying: "We are not going to place any larger sums locally because you do not have a depositor compensation scheme." So it is an insurance policy that is important. It is important for consumers, for their confidence, both local and international depositors that we have in the Island, but it is also important from the bank's point of view to protect their businesses.

Deputy G.P. Southern:

So it is dealing with a perception?

Senator A.J.H. Maclean:

A perception, yes, indeed but it is also a changing ... well, a changing perception and changing market conditions and expectations.

Deputy G.P. Southern:

The Oxera report, as late as May of this year, says there is no evidence that money is being lost to Jersey only anecdotal, if any. Yet you are saying: "Hang on, money is being lost."

Senator A.J.H. Maclean:

Well, the information that we are getting from the banks themselves is suggesting that bank deposits are being lost and the increase ... not in any great sums but there is still a risk there. The banks themselves

are now saying to us they are worried about their deposits and they think it is a concern. They were certainly very concerned when this particular scheme was not put in place.

Deputy M.R. Higgins:

Is it not also a fact too that Jersey is pretty well getting to the extent of being totally isolated in terms of having a depositor scheme because something like 90 countries have got depositor compensation schemes, another 20 are trying to get them in at the same time. We are so out of kilter now with the rest of the world, and we were, by the way, in November.

Senator A.J.H. Maclean:

Absolutely, and the situation has got worse. You are right, from a competitive point of view we are about the only offshore jurisdiction or only jurisdiction that does not have a deposit compensation scheme. So, yes, we are at a competitive disadvantage. When individuals are weighing up where to deposit their money or where they put additional funding, that is an issue that counts against Jersey, which is not a position we want to be in.

Deputy G.P. Southern:

You say you have hard evidence that money had been lost to Jersey.

Senator A.J.H. Maclean:

We have empirical evidence having spoken to various banks, they have fed back ... I attended a meeting with a very senior banker after this particular scheme had been pulled and he pointed out his disappointment because of the risk they were seeing with loss of deposits.

Deputy J.M. Maçon:

On that point, Minister, what evidence is there to suggest that if the deposits are going it is singly down to the fact that we do not have a depositor compensation scheme not to other issues going on globally which has made people question deposits and where they put their money.

Senator A.J.H. Maclean:

Only the view of this particular individual, this particular banker, who was clear in his opinion that it was the fact that we had, as a government, given an undertaking back in December of last year that we would be introducing a depositor compensation scheme, that we would be doing so by July of this year, and his perception was the fact that we had not done so was affecting confidence and therefore the likelihood of an increased number of depositors being uncertain.

Deputy M.R. Higgins:

I might say on that particular point, all the international websites and journals appear to mention how the principles were passed unanimously by the States and that it is now going through scrutiny, the detail; so the message is out there that Jersey is adopting a scheme.

Senator A.J.H. Maclean:

Yes, indeed. I have to say that that is a position that we have, as you would imagine, been pushing hard, that it has been unanimously passed and now it is going through due process. You would expect us to say that. That is the position I took with this particular banker.

Deputy M.R. Higgins:

It corresponds to reality for once.

Senator A.J.H. Maclean:

It corresponds to reality as is usually the case. **[Laughter]**

Deputy M.R. Higgins:

Also the point we were making in the States that it was important to get the principles debated, even though we had that diversion for about an hour and a half.

Senator A.J.H. Maclean:

Can I just add, despite the fact we have made that point, this particular banker, and some others, do not always get the message and they are aware it has not been passed and depositors themselves do not necessarily get the message and so it would have been better to have done it ...

The Deputy of Grouville:

Just going back to this particular banker, are you seriously saying from 14th July when this was pulled to date, or to whenever this banker expressed his opinion, he has evidence of losing bank deposits. So we are talking about 2 weeks.

Senator A.J.H. Maclean:

No, that is not the case. The position is that we have gone through periods where as these things have hit the headlines ... it sort of fluctuates that when the matters hit the headlines that deposits will be moved. So in this recent period it has been a fairly calm period so there is not a general issue right now in terms of items being moved. What we have is a different issue, which is that for some time the banks have been communicating to their customers that a scheme was targeted for July so now what they having is a lot of customers phoning back, having kind of pencilled that in in their mind to come back, and say: "Well, is this now in place?" and this is where they are suffering some embarrassment that they have to say: "Yes, the principle has been agreed but the fine detail has not been. We hope to have it within the next few months." "Do you have date?" "No, but we think it might be October." So it is embarrassing in terms of their ability to deal with it given what they have said to customers hitherto. So they have a selling piece to do then with each customer to try and persuade them. We are not getting any evidence that there are significant outflows of deposits right now but there is an embarrassment issue in terms of their commitment to their customers.

Deputy G.P. Southern:

On that point, talking about members of the public and potential investors, and yet in the consultation process we have heard plenty of ... we have been referred several times to consulting with the banks, as

is appropriate, but there was not any public consultation. Can you say why not, in general terms?

Senator A.J.H. Maclean:

Well, I suppose in general terms first of all there was not time to do a formal consultation process, or we did not believe there was an effective time to do a formal consultation process but, more importantly, as far as the public were concerned the public had aired their views and demands for depositor compensation scheme quite widely during the process.

Deputy M.R. Higgins:

During which process?

Senator A.J.H. Maclean:

Since the global financial crisis had begun it was clear that depositors first of all expected there to be a depositor compensation scheme. Those calls have done nothing but increase since that process was unfolded.

Deputy G.P. Southern:

You are saying there was not time from, you said previously, December when you decided there was a need, and we are now in August, that is 8 months, there was not time to do any public consultation whatsoever?

Senator A.J.H. Maclean:

We did not feel there was any need to go into a formal consultation process, any further formal process of consultation from a public perspective, no.

Deputy G.P. Southern:

Do feel that might have reassured the public that they were at least having an input into the scheme that you were going to propose?

Senator A.J.H. Maclean:

I think the public were having significant input through the letter in the *J.E.P (Jersey Evening Post)* and the letters and the letters that came in regularly to the Ministers. It is very clear what the public want, they want maximum coverage at minimum costs. It is as simple as that.

Deputy G.P. Southern:

How does that comply with the code on public consultation that Ministers are supposed to follow?

Senator A.J.H. Maclean:

I think it was simply a case of feeling the mood of the jurisdiction.

Deputy M.R. Higgins:

For example, when we talk about the people you have consulted, did you consult, for example, with the Chamber of Commerce or the Small Business Forum.

The Deputy of St. Mary:

What about the more general question of who was consulted and then we will filter who was not.

Deputy M.R. Higgins:

Who did you consult, besides the J.B.A. (Jersey Bankers Association)?

Mr. J. Mews:

Shall I go through the list?

Senator A.J.H. Maclean:

James will give you the list.

Deputy M.R. Higgins:

James, when you go through it if you can also tell us when you consulted with them, please.

Mr. J. Mews:

I have got a list here of a variety of people who were consulted with and the times, rough times, of that process. So I think we need to start by going back to the date, on 3rd December, when the States agreed the proposal that a D.C.S. should be brought to the States as soon as possible and certainly by July. So I think we need to bear that in mind that the message we had very clearly from the States Chamber was that a scheme needed to be brought in as quickly as possible. Then if we scroll down we can see that first of all we met with the Jersey Bankers' Association back in October 2008, and that was also with the J.F.S.C., all the way through this process we have been speaking with the J.F.S.C. about various issues to do with the scheme and they have commented either on specific issues at various times or also on the scheme as a whole. There were a number of meetings with the J.B.A., I will not go through those.

Deputy M.R. Higgins:

If you would, please. Just try and list when they took place.

Mr. J. Mews:

Right. Well, the J.B.A. meets on a monthly basis, Martin and I or Martin or I have been to every single meeting since October so we have met with the J.B.A. on a monthly basis, we have either reported to them how the scheme is going or discuss certain particular issues which arise during that time, such as initially it was all to do with the getting the data which Oxera needed in order for the scheme to go ahead but then it moved on into other issues such as the fact that certain banks are here in Jersey for disaster recovery purposes, for example. So talking with them about how that works, finding out more about whether those should be included in the scheme. There were other questions put to the banks as well at various times through that process. I do not have a list of everything here, and it would probably take me over an hour to go through it, even if I did have it. If we then go on through, in February we referred the draft regulations to the Law Officers Department for further input on a legal basis as to how

the schemes could be followed and if there were any improvements for the process. We also had a meeting with Treasury and Resources officers on 24th February in which we discussed various issues to do with the scheme. Then we have further meetings with the J.B.A. On 23rd March, I met with representatives of the U.K. British Bankers' Association to talk to them about some of the changes which are going on in the U.K. and lessons which they have learnt as a result of that. On 25th March, J.F.L. was given a draft which they served later to their members in order to get comments from the financial services industry. Going back one step, on 19th March we sent a draft to the J.B.A. and banks fed in comments based on that draft. Then on 5th May we sent draft 14 to this Panel in order for this Panel to review it and have the opportunity to comment. On 7th May, the Council of Ministers looked at the broad principles of the scheme. On 19th May, the Viscount was asked for their views on the scheme and also the Comptroller and Auditor General. Again, they fed back into us. All through this time we had further meetings with Treasury and also with the Law Draftsmen. Then on 23rd May we had final comments from J.F.S.C. on the regulations, then final comments from J.F.L. towards the end of May. Then the scheme was lodged.

Deputy G.P. Southern:

Can I, before we go on to any further question on the consultation process and the development of your scheme, just point to one difference, one change that has occurred between the Oxera reports of February and of May, in that the only major change is the following, largely contained on page 38, section 5.5 of the report. What we have got is a sentence taken out from the February advice from Oxera which says: "In general there is an implicit expectation that the States will step in to prevent or mitigate the impact of larger or systemic failures." At the end of that paragraph it says: "However, a few international D.G.S.s (Deposit Guarantee Scheme) have explicit access to States funding." Now, in the final report that sentence has been taken out and I wondered why and who is responsible for that because the only reason for that specific statement being changed is surely if more governments had backed state funding in the system and, if not, how would that statement be changed?

Mr. M. De Forest-Brown:

I disagree. I think the issue there is about the word “explicit” and the understanding of that. I think it is very clear now that international governments are explicitly supporting their banks and have done. They have just put hundreds of billions of pounds in support of their bank. So we thought that ... we debated that issue with them and said: “Do we think that this gives a clear message about the nature of governments’ liabilities in a jurisdiction?” That was the debate, rightly or wrongly.

Deputy G.P. Southern:

Can I point to another change later in the paragraph, same paragraph: “Few of the D.G.S. established internationally benefit from explicit state funding suggesting that an explicit commitment to state funding may not be required for the D.G.S. to be credible.” We are back to this balance between cost and credibility and state funding. “Overall it is a largely political question [so I will direct this to the politician here] as to whether such commitment is acceptable from the state perspective and whether it would make the introduction of a D.G.S. more acceptable from an industry perspective.” Okay, where is the balance there? That has been excised from the final report. It seems to me that this is the major change that occurred in those reports, it has gone from no state funding, not necessary, nobody else does it, to: “Well, we better pile in.”

The Deputy of St. Mary:

These are Oxera reports.

Deputy G.P. Southern:

Particularly, politically, why that decision?

Senator A.J.H. Maclean:

Well, Oxera were commissioned to provide advice with regard to schemes, they looked at schemes around the world and they provided the appropriate advice. To be fair there was a scheme draw up - and indeed the Chairman is familiar with a scheme that he was involved in himself, back in 2002 I think it was - and indeed the funding arrangements for that scheme were that the banking industry were not

going to be involved, it was going to be ... sorry, were going to be involved 100 per cent, they were going to be funding the scheme, that went out to consultation and it was clear that it was not going to be accepted. Now, going back to what I said earlier on ...

Deputy G.P. Southern:

Accepted by whom?

Senator A.J.H. Maclean:

Well, accepted by the industry.

Deputy G.P. Southern:

Lots of consultation with the industry and the banks, okay. Where was consultation with the public saying: "As taxpayers, are you prepared to put hand in your pocket"?

Senator A.J.H. Maclean:

I think we have got to go back to what we were saying before about if you want to answer the consultation ...

Deputy G.P. Southern:

When was the taxpayer consulted?

Senator A.J.H. Maclean:

There was not consultation, as you know, with the public. The reason there was not extensive consultation or a formal consultation process with the public was because there were overwhelming calls coming from the public about this particular issue and that was quite simply that they wanted a depositor compensation scheme. Our role is to deliver a compensation scheme which was agreed unanimously by the States in December of last year. It is important that we ensure that the scheme that is delivered is competitive and it is essential that a scheme delivered also meets international standards. The scheme

that was presented to the States for debate in July of this year was competitive in terms of other jurisdictions and in terms of the banking industry elsewhere and within Jersey and it did meet international standards. On that basis, wherever depositors were looking, they would find that our scheme would stand up to those necessary standards.

Deputy M.R. Higgins:

Okay, let us move back to where we were before.

Deputy S. Pitman:

Can I just ask a question on consultation?

Deputy M.R. Higgins:

I just want to get these questions in first and then you can come in. Going back to the list you gave, James, for example you did not mention you spoke to the Chamber of Commerce or the Institute of Directors. Now, the reason why I am asking this question is obviously the scheme does not cover corporate deposits. So there would be small businesses in the Island that are not covered. There are an awful lot of small businesses in this Island, we know. We know a lot of the employment in this Island is in small businesses and if those businesses, for example, go down because of a bank failure, yes individuals may get some of their money back but if a company goes down we could have quite a considerable disaster on our hands there. Why did you not consult with the likes of the Chamber of Commerce and Institute of Directors?

Mr. M. De Forest-Brown:

Can I just ask, if we had consulted with small businesses and asked them whether their deposits should have been covered, what do you think their answer might have been?

Deputy M.R. Higgins:

So in other words you did not ask them because you knew what their answer was, they would want to be

covered.

Mr. M. De Forest-Brown:

The answer is that they would have wanted to be covered. Yes, and it is very clear ... clearly when you are putting a scheme together what you are trying to do, in all cases, is give the maximum cover you can possibly give to as many people as possible at as minimum cost. That is the requirement of the scheme.

Deputy M.R. Higgins:

I accept that and, even as Oxera say, there was no data given to them regarding small businesses. Okay, I know they mentioned the difference ... how do you define what a small business is? You can have a turnover limit, you can have a number of employees type limit. But the point is you had no discussions with those sectors to try and protect the smaller end of the corporate spectrum, the small businesses.

Mr. M. De Forest-Brown:

That is a fair challenge. I acknowledge that you are stating a point of fact, there was no consultation. The solution that was arrived at was that for 2 reasons the smaller end that we felt should be covered are those that are effectively sole traders, at the very smallest end. In those cases they have the option of managing their affairs to ensure that their cash income is covered. This is not inconsistent with the current fiscal environment which is designed to increasingly prevent deferral of cash roll up within businesses that avoids taxation. Proper taxation by the government. So this was effectively joined up government in this case, that it was saying we should not allow the position for a wealthy individual to set up company 1, 2, 3, 4, 5, 6, 7, 8 and have them all covered just because they are lots of small companies that he set up. So this was in a way ... okay, arguably more consultation should have gone on but this was us jumping ahead to the issue which is how do we prevent abuse, how do we make this consistent with other infrastructure, taxation infrastructure, and how do we ensure that the people who need to be covered, the most vulnerable, get the best cover that they can. The answers to all of those questions are addressed by the structure of the scheme.

Deputy M.R. Higgins:

For example, the scheme also does not cover partnerships. There are quite a number of small partnerships in the Island.

Mr. M. De Forest-Brown:

The same applies.

Senator A.J.H. Maclean:

I might just add on that particular point, at the height of the global financial crisis, when not only the public were concerned but quite naturally small and medium sized business owners and directors were concerned as well, there were a number of inquiries that came through Jersey Enterprise and we were feeding out information via Jersey Enterprise to them about ways in which they could help mitigate the position. Quite simply that is to ensure that large deposits are not held or they are moved into directors' personal names, and there are various mitigating circumstances that can be undertaken to help small businesses.

Deputy M.R. Higgins:

But that was not widely done, though. It was not, for example, in the *J.E.P.* saying to people: "Protect your deposits. You are not covered as a partnership, stick it into a personal account." It was only if they went through Jersey Enterprise.

Mr. M. De Forest-Brown:

We have no scheme.

Deputy M.R. Higgins:

True.

Deputy G.P. Southern:

But you decided, in principle, to exclude small businesses?

Mr. M. De Forest-Brown:

Yes.

Deputy S. Pitman:

Also charities?

Deputy G.P. Southern:

Okay, that is fine. Without consulting with their representatives.

Senator A.J.H. Maclean:

Charities are included ...

Deputy M.R. Higgins:

Up to £50,000?

Senator A.J.H. Maclean:

... which is an exception to Guernsey who do not cover charities.

Deputy S. Pitman:

On charities, how much consultation did you do with them?

Mr. J. Mews:

Sorry, I should have mentioned that we did speak to the Association of Jersey Charities about this.

Deputy S. Pitman:

About?

Mr. J. Mews:

About the scheme, and they basically very much wanted to be in the scheme, which was not surprising, and we made sure that they were in the scheme. We changed the definition of charity to make sure that it did cover all charities because the definition we had first come up with apparently did miss out certain charities.

Deputy S. Pitman:

My understanding of your whole consultation from the last hearing that we had with you was just how the charity ... how we should class a charity and the name of a charity, what a charity is. You did not consult the charities on the limits of £50,000?

Mr. J. Mews:

No, we did not consult the charities on the limit of £50,000. Putting charities in was very much an exception to the general rule. It is something which most jurisdictions do not do, if a charity is covered under the rules of the scheme anyway then a charity is covered, but to make sure that all charities are covered by the scheme is something which is unique to Jersey, I believe.

Mr. M. De Forest-Brown:

Charities cannot put the cash in their charity into the name of an individual, which is different from a small business owner. They do not have the options of mitigating their risk that a small business does so it is important to protect them.

Deputy M.R. Higgins:

Okay, we will come back to coverage in a second. Time is running on and I just want to make sure we cover these points on consultation. Can you tell me, in terms of consultation, which overseas regulatory bodies or overseas depositors you consulted?

Mr. M. De Forest-Brown:

Sorry, can I just make one point before that. The Panel will be aware that there was no consultation on the schemes in the other jurisdictions and Guernsey has brought in a scheme, and in effect we have effectively observed the response to the Guernsey scheme that has come in and I, for one, have not noticed a large outcry against the guillotine scheme and therefore, again, hands up we have not done the consultation, but you have proxy consultation out there, de facto, by the response of people to other schemes that have gone in, in other jurisdictions and it would be different if we were adopting a scheme that was fundamentally different to what was in other schemes and then there could be areas of potential concern, but we are basically mirroring, in many respects, schemes that exist in other jurisdictions. I think that is just worth making that point.

Deputy M.R. Higgins:

Just going back, which regulators, or which depositor compensation bodies did you consult with?

Mr. J. Mews:

As I have referred to so far when we started off this hearing, we started by looking what is the international standard. So, we looked at the international principles which are drawn up. We also looked at other schemes which were in other jurisdictions such as Guernsey, Isle of Man, U.K. and I spoke directly with the U.K. scheme. The purpose of that was in order to see what is coming down the track. What could be pre-empted of what they are wanting to change and about a week and a half ago the U.K. finished its consultation process in order to change its scheme and update it and many of the things which they are updating it with are things which we have already incorporated into our scheme and so in many ways we are staying ahead of the pack on this. So, I think we have done quite ...

Deputy G.P. Southern:

Such as?

Mr. J. Mews:

Well, one of the big issues in the U.K. is about payment out. One of the things you will see is that the international principle says that you should be able to have a substantial payout to people under the scheme within a short period of time and you will notice that we have incorporated in our scheme, which is different to Guernsey, different to the Isle of Man, different to the U.K., as it was, a provision whereby you can make sure that the first £5,000 of a claim is paid out early, within 7 days, and that is something which the U.K. was looking at bringing forward and now it has announced that it is going to do that as a result of its latest consultation, so that is a good example where we have looked at things and thought: "That is a really good idea." In the U.K. it is almost certainly going to come in.

Deputy M.R. Higgins:

Did you consult on that with the banks themselves? Their ability to be able to give you the information and provide all the information within 7 days to enable you to make the payout?

Mr. J. Mews:

Well, that all depends on the information being given to us clearly by the customer.

Deputy M.R. Higgins:

Are you paying out based on the customer saying: "I have money in the bank" you would not be checking with the bank to make sure that they have got that money?

Mr. J. Mews:

No. If the customer has up to date data which shows his position then you could do that. We have not finalised the details of this and I think we should be very clear here.

Deputy M.R. Higgins:

I was going to say, you would be the only jurisdiction in the world paying on that basis if you did.

Mr. J. Mews:

So, I think it is very likely that there would be discussions with the liquidator.

Mr. M. De Forest-Brown:

The point here is that a depositor has to apply for the ...

Deputy M.R. Higgins:

In all schemes you have to apply. There is also cross-checking.

Mr. M. De Forest-Brown:

Yes, absolutely. As you have identified there are many points of detail in terms of process which have not yet been ...

Senator A.J.H. Maclean:

Sorry, Mr. Chairman, could I just point out a confirmation. Guernsey introduced a scheme in some rush. There were, and are, and remain some key factors that are still to be organised and arranged with regard to that scheme like risk weightings of a payout of the bulk of the money. There are many things with these schemes that have to be, once introduced, finalised so it is not surprising that some of these issues have not been clarified at this point.

Deputy M.R. Higgins:

But the perception of the people was that if this thing was passed on 14th July, within 7 days we would have a working scheme and obviously that is not the case. Going back to Guernsey, we are going to be having discussions with the Guernsey board anyway to look into some of those aspects of their scheme.

Senator A.J.H. Maclean:

Can I just clarify that if the scheme had been approved in July there would have been a scheme that would have worked. There were issues that still had to be resolved, but Guernsey introduced a scheme in some haste and they have critical things that still are yet to be clarified. It does not mean the scheme

does not work and it does not give the necessary confidence both to consumers and obviously to the banking industries.

Deputy M.R. Higgins:

Can you tell me, in terms of your consultations with the Financial Services Commission, what did you discuss with them, what type of issues?

Mr. J. Mews:

What type of issues? One of the issues I have referred to which was discussed with the J.B.A. we also discussed with the Financial Services Commission so, for example, the whole disaster recovery issue. That was a precise issue. Another issue which we discussed with the F.S.C.S. was the definition of group banks and as a result of that we have the definition which we now have in the law. We have discussed widely on the scheme as it stands with the Financial Services Commission and they fed in comments to that process.

Deputy M.R. Higgins:

Did you discuss, for example, who determines the failure of the bank?

Mr. J. Mews:

Who determines the failure of the bank? We would have discussed that with the F.S.C.S., yes.

Deputy M.R. Higgins:

Is there anything you want to add? Okay. Carolyn, if you would start.

The Deputy of Grouville:

Why do the proposals only cover personal retail deposits?

Mr. J. Mews:

Well, it only covers personal retail deposits because the essence of the depositor compensation scheme is compensating the man in the street; those people who have most to lose as a result of placing deposits in banks. So, the essence of any scheme is protecting depositors; every day, normal retail depositors and so that is what our scheme set out to do and that is what it does. It does not cover a variety of other things. It does not cover trusts. It does not cover investments of any sort. It does not cover, for example, pensions and it does not cover various analogous things to those.

The Deputy of Grouville:

But it does cover foreign investors, does it not?

Mr. J. Mews:

Yes.

The Deputy of Grouville:

So, what justification can you give us for using the stabilisation fund for covering foreign investors? Going back to the consultation: "What do you think the taxpayer would have said, do you want to be covered or not, yes or no?" Well, what do you think the taxpayer might have said if they knew the stabilisation fund was going to be used to compensate foreign investors?

Senator A.J.H. Maclean:

First of all just if I can clarify, it is not the stabilisation fund. Any funding that is required in the short term would come from the rainy day fund, strategic reserve, but the principle no doubt is the same as to what you are driving at.

The Deputy of Grouville:

I think so; it is the taxpayers' money.

Senator A.J.H. Maclean:

Yes, but only from the point of view of a guarantee and only from the point of view of upfront funding, as Martin mentioned right at the beginning. The first £65 million or £66 million of a claim is going to be met by the banks. It is only the balance, should we get to that stage, and we are talking about systemic bank failure, to get to any risk of funding from the taxpayer. The basis of depositor compensation schemes are quite simply to protect the vulnerable; they are to protect those much smaller deposits and you can get small deposits from international depositors who deposit from elsewhere; small amounts, life savings, and that is the key and basis from the scheme itself.

Deputy G.P. Southern:

But nonetheless, politically we are using money from the rainy day fund, which is supposed to cover the economy in times of crisis, or in times of major disaster, and yet 90 per cent of the funds will be going to foreign investors. How does that keep politically, Minister?

Senator A.J.H. Maclean:

Well, first of all the only basis under which the money from the strategic reserve would be used would be the upfront funding to start with. The risk element £66 million, the first tranche of any failure on the basis of a systemic bank failure would come from the banks themselves, so any risk would be ...

Deputy G.P. Southern:

We are talking about the lack of risk and it is highly unlikely, but nonetheless, how do you feel politically about using the taxpayers' money to protect the Jersey economy in effect *in extremis* to fund foreign investors?

Senator A.J.H. Maclean:

Some taxpayers' money to underwrite an element of risk is involved there. Yes, I accept that but the scheme, as I said right at the beginning, has to be competitive and it has to meet international standards. We believe the scheme is both competitive and meets international standards and the structure has been put in place with consultation with the industry to ensure that we can deliver a scheme and we believe

that the balance of risk is acceptable.

Mr. M. De Forest-Brown:

Can I just say, it depends which way you pose the question. I think if you say, if you went out into the street and ask people ...

Deputy G.P. Southern:

I am tempted to say we ask the questions here.

Mr. M. De Forest-Brown:

If you ask somebody out there, would they like to be covered by more than £50,000, the answer is yes: "Would you like to use taxpayers' money?" "No." If you say: "Is it right to use taxpayers' money to support international depositors?" "No." "Is it right to do what is necessary to continue to ensure that Jersey gets the level of financial services business here in Jersey that is the core driver of the wealth of the economy?" If you ask the question to the people in the street: "Would you be prepared to risk a loss of a major employer, or risk the loss of a major business in response for saving the very, very remote possibility that you might have to pay a tiny sum of money in the scheme of things?" Then of course the answer would be different.

Deputy G.P. Southern:

I am sure we can all think of questions which will lead to either a yes or a no answer on the same and the fact is, you did not consult Jo Public, you did not consult ...

Mr. M. De Forest-Brown:

No, we did not, you are right.

Deputy G.P. Southern:

You did not ask those questions in any form.

Mr. M. De Forest-Brown:

But the point is that what we are about here is trying to ensure the long-term health of the Jersey economy and it is quite clear that the driver ...

Deputy G.P. Southern:

The question is, who should pay for that?

Mr. M. De Forest-Brown:

No.

The Deputy of Grouville:

It is.

Senator A.J.H. Maclean:

No, it is very simple. If you change the scheme and you want to deliver a scheme that is funded solely, solely, by the banks then you are going to run the very real risk of the banks leaving the Island. It is getting a clear balance.

Deputy M.R. Higgins:

What you are saying then is, we have become so dependent upon the finance industry that we have to come up with support from the States, otherwise we could lose that very industry that we are dependent on.

Senator A.J.H. Maclean:

The risk of losing the banking industry, as such, is small provided we have a competitive scheme. The scheme we have put together is very competitive; it has been agreed by the banks, they do not like it, but they have agreed to it and I think the balance is right in terms of what it is going to deliver.

Deputy M.R. Higgins:

What about the question then, do you think that we have become so dependent on the banking industry that we have to do this sort of thing?

Senator A.J.H. Maclean:

The economy and the Island relies very heavily upon the revenues that are delivered by the finance industry. The industry itself has diversified in terms of products geographically and so on. There is a great deal of other things being done to diversify the economy, if that is what you are ...

Deputy M.R. Higgins:

But we are dependent upon this industry and therefore we need to protect the industry.

Senator A.J.H. Maclean:

We get the majority of our tax receipts from the financial services industry in one shape or form, as you will be well aware. So, clearly it is an important part of the economy.

Deputy M.R. Higgins:

Therefore we need to protect it and therefore we need to do anything to keep it here.

Senator A.J.H. Maclean:

Well, naturally we need to do all we can to protect it. It would be the sensible thing to do, would it not?

Mr. J. Mews:

I think the very fundamental thing about this is that we started off from saying: "Does our scheme match international standards?" and Daniel asked the question about that. Let us be very clear there is not a single scheme in the world that only protects nationals of that scheme.

Deputy M.R. Higgins:

As we had at the very beginning though, it is the exception rather than the rule that state funding is used for these schemes.

Mr. M. De Forest-Brown:

Explicitly.

Deputy M.R. Higgins:

Explicitly, even so. It is quite clear in the reform.

Mr. J. Mews:

We think it is fundamental that in the actual event that there are failures of banks, it is explicitly the case that governments do have to support in some form or another and we have seen that time over and time over again over the last year.

Mr. M. De Forest-Brown:

When one puts that in context, where is the maximum fundraising from banks is £2 billion per year in the U.K. The government has stepped in with many hundreds of billions to bail out the current systemic bank problems.

Deputy M.R. Higgins:

But the important difference is, how many banks are we the home regulator for in this Island? How many banks are we responsible for? The U.K. is responsible for all those in its own ...

Mr. M. De Forest-Brown:

The key points is that there are no domestic Jersey banks and there is only one that we are the home regulator for.

Deputy M.R. Higgins:

Is that the British Bank of the Middle East?

Mr. M. De Forest-Brown:

It is HSBC. Sorry, in terms of their Middle East business.

Deputy M.R. Higgins:

Okay. So, in other words, all the other banks we are the host country, host regulator effectively; their responsibilities are to their own home governments, wherever they are located: United States, France, Germany, U.K. and so on?

Mr. M. De Forest-Brown:

Yes.

The Deputy of Grouville:

How many banks are we talking about in this scheme, who will sign up to this scheme?

Mr. M. De Forest-Brown:

Every bank with relevant deposits will sign up to the scheme and that is 25 groups.

Deputy M.R. Higgins:

Twenty-five out of 41?

Mr. M. De Forest-Brown:

Groups. A number of those have 3 or 4, but it is about 31 individual banks.

Mr. J. Mews:

Well, we have 47 banking licenses in total. In terms of the number with relevant deposits we have 25

groups who have deposits which would be protected by the scheme. There are also several other smaller groups.

Mr. M. De Forest-Brown:

There are about 8 other sub-licenses.

Mr. J. Mews:

Yes, around 8 others who do not have relevant deposits and so would fall outside the scheme.

Deputy J.M. Maçon:

On a question of funding we have commented on ...

The Deputy of Grouville:

Could I just finish? What justification is there for the 5-year limit which is going to cost £2.5 million in administration?

Deputy M.R. Higgins:

So, if a bank fails. There are 2 questions here, Carolyn. You have a question, why do we have a 5-year limit in terms of the banks contributing into the scheme and so £100 million over 5 million is the total scheme, and the second part of the question is, if the bank fails again within 5 years it could cost us £2.5 million.

Mr. M. De Forest-Brown:

There are 2 things here; one is again 5 years is just like £100 million, we could make it £200 million, we could make it £500 million, we could make it 3 years, we could make it 10 years. What we have done is we have come up with something that we think meets as many criteria as possible. So, there is no categorical answer to it, but we think that £100 million over 5 years, given that Guernsey out there have £100 million over 5 years, sets a competitive benchmark for us. In the U.K. it is unlimited.

The Deputy of Grouville:

The £2.5 million administration cost, who is going to meet that?

Mr. M. De Forest-Brown:

The £2.5 million comes out of £100 million, so whoever was paying it. If it is in the £65 million then the banks pay it, if you were up to £100 million then ultimately the taxpayer will be paying it. You have identified a key point which is that obviously it is expensive running an independent board and that is why we have done everything we can to minimise that cost before the need of a scheme which may never be needed.

The Deputy of Grouville:

No, but the £2.5 million is not the cost of a board, is it? This is the cost of the actual administrators.

Mr. M. De Forest-Brown:

Well, it is the whole cost of running the board. The whole running of the scheme which includes the board. It is all of the running cost, the board and administration and processes and interest, I think.

Mr. J. Mews:

Yes, I think to clarify most of that is, as you said, based on the administration cost but as Martin said it also includes the cost of the board itself and insurance and other things like that which you have to have.

Senator A.J.H. Maclean:

That is on the basis of a failure of course.

The Deputy of Grouville:

Well, yes, but that is basically what we are talking about.

Deputy M.R. Higgins:

Is there anything else you have, Carolyn?

The Deputy of Grouville:

No.

Deputy M.R. Higgins:

Okay. Jeremy. Sorry, just before we do there is one question. What research did you do into other country deposit compensation schemes which give coverage to local depositors? We are going to come on to this later but if, for example, a French or a German or an American bank failed, what sort of coverage are we going to receive on their deposit compensation scheme in the event of a failure? Did you do any research into that?

Mr. J. Mews:

Well, in looking at schemes generally that is one of the things we looked at and what seems very clear is that schemes protect banking licenses, or banks which are registered in that country. If you are a foreign depositor who banks with a bank in a different country then a different country scheme will normally pay out and if you are in the E.U. (European Union) then you are covered by the terms of the E.U. directive as it is implemented in each country and so you have a basic framework there. So, by looking to one document you have a rough idea of what every European country does. So, as a general rule all schemes operate the same way as the proposed Jersey scheme does. It is based on where the deposit is held.

Deputy M.R. Higgins:

Okay. For example, a deposit in a Jersey branch, or a Jersey subsidiary of a foreign bank, so in other words nearly all our banks here are foreign-owned. If the bank fails would any of our depositors here in Jersey receive money from their deposit compensation schemes in their home country? Then would we be talking about topping up from the Jersey scheme? What research did you do to see what money we

would get from these other countries?

Mr. J. Mews:

Well, basically we adopt a very simple principle here which is that Jersey should try to pay out as little as it possibly can in this circumstance. So, we started out with the clause in the law which basically looks at the fact that if a depositor is going to receive money from elsewhere then they should receive that first and then it should be taken off the amount which Jersey pays out. If you have a situation which as a lawyer is often called *Renvoi* where you have one law referring to another country and another country referring it back, so you have this situation where there is no actual resolution. We thought that the most appropriate thing was for the scheme to be able to talk to each other and reach a situation together, so that the depositor would not lose out and, basically, based on that then a solution could be reached in those few circumstances where there is a clash between laws.

Deputy M.R. Higgins:

Did you research the deposit schemes in the countries where the banks that are resident here, that we are hosting, their schemes to see how much money our depositors would receive in the event of a failure?

Mr. J. Mews:

Most of our banks are based in the E.U. and they have limits which are given by the E.U. directives. So, the answer is yes.

Deputy M.R. Higgins:

Did you also see if they would pay outside the European Union and also outside the European economic area?

Mr. J. Mews:

Well, the way we drafted our scheme was so that it would not matter because we drafted it in a way to take account of all situations and circumstances.

Deputy M.R. Higgins:

It certainly matters in those countries because they exclude countries outside the E.E.A. (European Economic Area) in many cases.

Mr. M. De Forest-Brown:

I think we are agreeing here. All we are saying is, the scheme takes account of all eventualities. If there is money available from another jurisdiction the drafting of the scheme at law will ensure that we gain that recovery. In practice there are very, very few schemes at all that you are allowed any kind of coverage and the exception is probably Ireland.

Deputy G.P. Southern:

So, we are talking about our fund.

Deputy M.R. Higgins:

Yes, I think it is our fund in the end. We will be paying out more because there will be less money coming in from those countries. So, we will be paying larger sums of money.

Mr. M. De Forest-Brown:

All the calculations that we have done in terms of the viability of our scheme assume that there is no recovery from another country under the deposit scheme.

Mr. J. Mews:

But the key thing here is that virtually all the banks here, other than the U.K. banks, have subsidiaries in Jersey and so there is no other scheme which would pay out in respect of subsidiaries.

Deputy M.R. Higgins:

Okay. How many subsidiaries and how many branches do we have in Jersey out of the ones who are in

the scheme? Remember there is a big difference between a bank and a subsidiary.

Mr. J. Mews:

Yes, exactly. Well, all your major High Street banks have branches generally, although not all of them.

Mr. M. De Forest-Brown:

I am not sure I understand the question. Why is there a difference?

Deputy M.R. Higgins:

There is an important difference when it comes to insolvency and everything else, but we will get to that later. Just answer the question, if you will. If you have the information, how many branches do we have and how many subsidiaries?

Mr. M. De Forest-Brown:

I do not have the figure off the top of my head.

Mr. J. Mews:

I think it might mislead the Panel to come up with a figure now. I would have to go away and look at it again.

Deputy M.R. Higgins:

Okay. If I can ask you just to supply that to us. Okay. Jeremy.

Mr. M. De Forest-Brown:

I would be intrigued to know what the issue is.

Deputy M.R. Higgins:

We will get to it. Do not worry.

Deputy J.M. Maçon:

On the case of the £65 million or £66 million, obviously if a bank goes down with the scheme that you are proposing that figure will be less because obviously the bank that would have paid into that £66 million will not be there, so it cannot pay in, so I suppose it depends on what deposits ...

Mr. M. De Forest-Brown:

I think the issue is that for the vast majority of banks the variation in that number is *de minimis* and probably less significant than the variations that could come about by the changes in deposit balances, for example. The clear eventuality is if you had a systemic bank that is currently capped then *in extremis* that would be £10 million that would not be going into the fund, however again, as I say, in the event of a systemic bank going down, you have other issues to address.

Deputy J.M. Maçon

Then on to a previous question from Deputy Labey, I think it was answered that the principles were passed but the fine detail was not there and this was the concern of the industry. However what we have also been discussing today, not having things like memorandums of understandings, not having the detail to be able to communicate with the banks to pay out within 7 days, that fine detail would not have been there had we passed the scheme anyway. So, is it just the case perhaps the fine detail, and in one case is perhaps more explicit because the regulations were not passed, or were put into the scrutiny function, whereas these other details which have not been ironed out because these things take time, is that not still a concern because that fine detail is not there?

Mr. M. De Forest-Brown:

Obviously we would like the whole thing to be done, but in terms of the resource available and moving to a quick as possible response for the security that the depositors want, the key thing is for them to understand how much they are covered for and that is the key thing that they want to get out there. The second most important thing is to know that the funding arrangements are in place for that, so that is the

next most important thing. Then the rest of the detail, I agree, is important, but I think you possibly overestimate the problems in trying to move very quickly towards that sort of response. It would not take long to have people in place and an action working party with key members of the banks up in place and agreeing the protocols. I do not see that as a major issue.

Senator A.J.H. Maclean:

A key point is to have established a scheme and get a statutory scheme in place, the framework in place, as Guernsey did very rapidly, for confidence. Confidence is important to business. It is important to consumers and that was the key factor that we were really working towards. The States have given a unanimous decision in December of last year to implement a scheme, that it would be done in July and that was not done so there is this confidence element that is important to remember.

Deputy M.R. Higgins:

I think there is also another point that needs to be made; whatever scheme is put forward has to be not only credible but one capable of working and that is where confidence comes from as well, and if you do not have that I do not see how people would have complete confidence in the scheme.

Senator A.J.H. Maclean:

Well, as the scheme proposed was both competitive, had the support of the industry and meets international standards certainly the framework was there. Granted, there may well need to be at some point in the future amendments, possibly, changes and clarification. That can come later but we were trying to deal with the vitally important element of giving necessary confidence by ...

Mr. M. De Forest-Brown:

All the categorical evidence from the Isle of Man and Guernsey shows that that is sufficient. I mean we had very, very clear ...

Deputy M.R. Higgins:

We will come back to this, do not worry.

Deputy J.M. Maçon

You have covered this briefly, but what led you to choose an ex-post method of funding rather than ex-ante?

Mr. M. De Forest-Brown:

Because the likelihood of the scheme being called is extremely remote.

Senator A.J.H. Maclean:

And the cost.

Mr. M. De Forest-Brown:

The primary reason is because we are so confident there will be no claim it would be pointless setting up a scheme; it would just be a waste of time as much as money.

Deputy G.P. Southern:

Waste of time and money, all right. We accept that as a qualification of your previous answer.

Deputy J.M. Maçon:

What consideration was given to ex-ante and hybrid schemes perhaps for funding proposals?

Deputy M.R. Higgins:

If any.

Deputy J.M. Maçon:

If any.

Deputy M.R. Higgins:

I think the answer is none, by the silence.

Mr. J. Mews:

I mean, quite categorically we considered all the variety of options and we decided that the one which we came up with was the best possible scheme for Jersey because of the nature of our banking community and all the different factors which we would have here in Jersey. So, you cannot just say: "Well, another scheme is perfect so we are going to take that" because you always have to play around with it to some degree to make sure it is right for you. So, we looked at the different possibilities, and this was part of the research which Oxera did for us, and our resounding conclusion was that the scheme which we came up with was the best for Jersey.

Deputy M.R. Higgins:

Okay. Going back to that. Guernsey, for example, does have part ex-ante, part ex-post and in a sense they have a £20 million pot they are working with. The U.K. scheme because of historical reasons is part ex-ante, part ex-post. In fact the vast majority of depositor compensation schemes are ex-ante schemes, including in Europe and it looks as if the U.K. itself is also moving now to an ex-ante scheme.

The Deputy of St. Mary:

So, was consideration given to those trends?

Mr. M. De Forest-Brown:

All those other jurisdictions have failures. Every one of those jurisdictions has regular failures, week in, week out. Go on their websites and look at them. They are all credit unions and ...

Deputy M.R. Higgins:

Week in and week out?

Mr. M. De Forest-Brown:

Yes. You go on the U.K. website and you will see, I do not know, 20 failures in the last year or something. It is a regular event that small deposit takers fail in large jurisdictions. Jersey does not have the same business model. We have never had a failure. That is why on the basis of the advice from Oxera that we did not need an ex-ante scheme.

Senator A.J.H. Maclean:

Not only that, we have not had a failure in the midst of the most severe global financial crisis since the 1930s or before which is another factor worth bearing in mind.

Deputy M.R. Higgins:

Only through the fact that the U.K. and others pumped in billions.

Senator A.J.H. Maclean:

Absolutely, but we have not.

Deputy M.R. Higgins:

However, had it not been, for example, Lehmans which went down, fine it was an investment bank, I accept that, but had a government with a branch here decided that they could not ... and look at the Irish banks, how dodgy they have been. We have Irish banks here. If it was not for the Irish Government nationalising their banks we could have had a failure.

Mr. M. De Forest-Brown:

With respect, I think you have just absolutely nailed the issue. The whole point is governments are almost incapable of allowing a retail bank to go down because of the political risk and that is why you have exactly nailed it by saying the only example that one has been allowed to fail is Lehmans which is not a retail bank.

Deputy M.R. Higgins:

I accept that, but now the thinking for the future is that because governments have been held to ransom by their banks, and there is no doubt about it that it has happened in the U.K., because of the importance to the banks to the economy they do not want to be placed in this situation again and they are now talking about decoupling the investment side of banks from the retail side of banks so that eventually we could see the situation where banks are not too big to fail and governments will not be there.

Mr. M. De Forest-Brown:

I think there are 2 points there. One is that obviously one adapts one's scheme to the circumstances that you face and at the moment we face the current status quo. The second point you make is a very long debate indeed and there is very, very significant opposition to reintroducing the Glass-Steagall Act in any shape or form.

Deputy M.R. Higgins:

From the banks, yes, which you have extensively ...

Deputy J.M. Maçon:

Just one final one. What evidence is there that banks would leave Jersey if ex-ante funding schemes with minimal government contribution were to be adopted?

Mr. M. De Forest-Brown:

I think ex-ante schemes of themselves would not result in a bank leaving. I just think they would look at us as rather an odd bunch quite frankly. I mean, why would you set up an ex-ante scheme and have all the costs that are incurred with looking after monies with a board and a constitution when the whole point is that the risk is so remote? There is no evidence that some small amount of money is going to make a bank leave but they would just think we were very odd folk in coming to such a conclusion, because there is no rationale for such a conclusion.

Deputy J.M. Maçon:

What evidence do you have for that? For that opinion?

Mr. M. De Forest-Brown:

Because there is no likelihood of a scheme being called, so why would you put in a whole range of infrastructure? If you look at every other jurisdiction there are regular claims for banks or deposit taking institutions that have failed and that is why you clearly need an ex-ante scheme. Here for the last 35 years, since we have introduced the current policies, there has been not a single problem and so therefore, on balance, I think there is evidence to show, as the Minister has just said, having gone through the worst problem ever, on balance the likelihood of needing an ex-ante scheme are minimal.

Deputy J.M. Maçon:

Thank you.

Deputy M.R. Higgins:

It could be they have just been very lucky.

Deputy S. Pitman:

Yes, I think that leads on to questions that I want to ask. I think that I know the answer. **[Laughter]**

What consideration has been given to risk weighting, in terms of calculating the levy on the banks?

Mr. J. Mews:

We considered risk weighting. We rejected it because it is an absolute nightmare to achieve in practice. How do you risk weight the bank? I mean, if we look back over last year we can see that not one of the credit agencies has properly managed to do that process. It would be rather arrogant to think that 2 or 3 civil servants sitting in the Jersey Government can do a better job than all the international businesses out there in the world. It is a massively difficult task to do and because of that - and we spoke to the F.S.C.S. and the B.B.A. (British Bankers' Association) in the U.K. as well as the J.B.A. here - we

concluded that it really was not a sensible thing to do. It is far better to have an equal policy across the board.

Deputy S. Pitman:

I understand there are other countries that are looking to introduce it and I think there are some countries who have actually introduced it and they have come up with set criteria to come up with a levy on the bank. If some countries can do it then why can Jersey not do it?

Senator A.J.H. Maclean:

Well, Guernsey have agreed a risk weighting basis for their scheme, but they have not agreed the terms of it yet because they are finding, as James was just pointing out, it is not very easy to deliver.

Mr. M. De Forest-Brown:

Can I understand what might be the benefit of risk weighting, either for government funding or for the depositor?

Deputy S. Pitman:

If I can just keep to the questions. There are certain advantages. Do you not recognise that possibly the public perception would see it fairer if there was a risk weighting?

The Deputy of St. Mary:

The obvious answer is, it is this moral hazard. You have the good subsidising the bad and that is what it is all about. That is why we are talking about risk weighting.

Mr. M. De Forest-Brown:

In that case, what would happen is every one of our banks that are systemic and are therefore guaranteed by their governments would say: "We have zero risk" and so therefore do not need to contribute.

The Deputy of St. Mary:

What are the penalties for risk in Jersey? If they are not buried in the D.C.S. if they are not implicit in the D.C.S. there is no penalty for risk, you just pay your levy for that rate, then what are the penalties for risk? Is there any way that the Jersey authorities can get at this risk factor? Because the risk factor is what determines the likelihood of ...

Mr. M. De Forest-Brown:

Well, we do not see that there is a risk in our banking model. They are pretty similar. They all pass the money upstream.

Deputy M.R. Higgins:

The money is just passed upstream ...

Senator A.J.H. Maclean:

How are you assessing risk? How do you assess risk?

The Deputy of St. Mary:

We will ask that in a minute.

Deputy M.R. Higgins:

Are you finished, Shona, with your question?

Mr. J. Mews:

Shona, there is one point as well that we have not yet said about this. One of the reasons that other jurisdictions, and I will decline to mention any in particular, have chosen to introduce risk weighting is that they have a wide spectrum of banks. We do not have that wide spectrum. Each of our banks would have a justifiable case to say they are not risky and they are as little risky as each other. So, they all present the same minimum degree of risk and so therefore they would also say they should be rated at

the same level and you would have every chance of reaching that conclusion.

Deputy S. Pitman:

So, what criteria do they have for saying such a thing, and you believing it?

The Deputy of St. Mary:

What is the evidence for this lack of risk?

Mr. M. De Forest-Brown:

Because they are systemic; because they have all received manifest government support and so therefore they can say: "We will not be allowed to fail."

Deputy M.R. Higgins:

If I can make a point on this one. When we start talking about risk and the banks ...

The Deputy of St. Mary:

No, not a point, what is the evidence of the biggest banks not failing? What was the evidence in America that the biggest banks did not go down? What is the evidence in the U.K.? I do not get this evidence. Give me a list of banks that have failed.

Mr. M. De Forest-Brown:

I am sorry, I am not sure I follow the point.

Deputy S. Pitman:

I think that is slightly different to the kind of risk that I was talking about.

Deputy M.R. Higgins:

I am just going to make a statement and I would like to hear what you have to say about it and it is along

with your question. In terms of risk, we have seen, for example, the money market in the U.K. really got clogged up and the governments have had to inject billions of pounds of liquidity into the markets because banks have not been lending to each other because they have not been trusting each other. Now, these are banks that we have in Jersey as well as elsewhere in the world. We have banks who are collecting deposits in Jersey who normally upstream it either to their parents or into the money markets, and we all know that they have credit limits which they will give to each bank and many of them have not been prepared to lend additional sums of money or to put money into the money market. So, even banks do not necessarily trust each other because again they do not know the level of the toxic debts that they will carry and the other liabilities that they have. So, to say generally that all our banks are without risk is not true.

The Deputy of St. Mary:

That is why I am asking, what the evidence is for this: “We are low risk.”

Mr. M. De Forest-Brown:

I am not suggesting that there is no variation in risk between groups. What I am saying is that if you try to introduce a scheme in a debate with industry in trying to resolve an acceptable risk weighting it is almost impossible because they would all argue that they are systemic. All that happens is you end up with an unresolved scheme. So, you end up with a scheme where you are saying you want to raise this money, but you are allowing them the opportunity to - should anything ultimately happen - be arguing left, right and centre about who owes what. That’s why we went for, “Right, we’re not going to allow you guys to equivocate, prevaricate, obfuscate, change the rules and present this sort of problem. We’re going to apply a flat scheme.”

The Deputy of St. Mary:

No. What we have said then is that without having resolved that, and whether there is extra risk in certain areas or otherwise, we will put up to £35 million in the pot.

Mr. M. De Forest-Brown:

I am sorry, I am not sure I follow the logic of your point. We were talking about the relative weight in between banks, not between ...

Deputy M.R. Higgins:

Let us move on because we have got something else.

Deputy S. Pitman:

Well, what I want to ask is you mentioned Guernsey. What were their reasons for bringing a risk weighting? What were their reasons? You also talked of the problems they are having in implementing it. What are those problems? Do you know?

Mr. M. De Forest-Brown:

Well, the problems they are having is that they cannot get their population to agree. That is quite simple.

Deputy S. Pitman:

Population?

Mr. M. De Forest-Brown:

Sorry, the banks cannot agree between them. So, every time they put forward a set of risk weightings then you get the five million arguments from every one of them why they should be lower than it is. You can take that as read and they are having particular problems because of the range of banks that they have there. I mean they have branches of leading banks, top tiers, they have small building societies, and they have Icelandic banks. So, they have a very broad range with very clear levels of risk and some with country risk including Icelandic, which was obviously the main case. So, they simply cannot resolve this issue and we observe that from a distance and that was for the very reason we went in and said, "Look, guys, we're not going to get caught in that argument. We're going to have a flat

scheme.” There were complaints. There were people who made their point and ultimately I said, “Look, we’re just not going to go there,” and in the end they basically said, “Okay, we can see the simplicity of that,” and it avoids us getting involved in a pointless argument and it is consistent with what they get charged in the UK.

Senator A.J.H. Maclean:

It has been one of the advantages of coming later, as well, with a proposed scheme. We have had the opportunity of not only to see what Guernsey has done but what other jurisdictions have done.

Deputy M.R. Higgins:

Okay, we are going to move on.

Deputy S. Pitman:

No, no, I have still got a quick one. Right, what is the risk of not being able to collect the funding on banks if firstly the levies and, I think, also if a bank goes into administration? If it cannot give you the funds where do you go?

Senator A.J.H. Maclean:

Well, you will not get the levies from the bank that has failed.

The Deputy of St. Mary:

No guarantees that, I suppose as the structured, is of getting more --

Deputy M.R. Higgins:

Under the scheme the board can sue the bank if they do not pay their levy.

Senator A.J.H. Maclean:

Yes. Ultimately the bank owes a legal debt which it has to pay. That can be enforced in any country in

the world. So, we do not see there being any problem in obtaining those monies from the banks.

The Deputy of St. Mary:

For levy monies?

Senator A.J.H. Maclean:

Yes.

Deputy S. Pitman:

With regards to a bank going into administration, if that cannot pay all of its compensation then is there a penalty?

Senator A.J.H. Maclean:

I think we need to bear in mind there are - and we have not talked at all about the recoverables that you get - you tend to see in bank failures reasonably high recoverables, even in Landsbanki --

Deputy M.R. Higgins:

Alan, if I can just leave it for a moment as we are going to come on to that next, actually.

Mr. M. De Forest-Brown:

The default option, in answer to your question, is we will not get the money from the bank that has gone into administration and that was the point that was made earlier.

Deputy M.R. Higgins:

Where will the money come from? It will come from the government. This is where --

Mr. M. De Forest-Brown:

This is a point we have made very clear, which is that in the event that one of the banks that would have

paid a levy, that there is an additional risk that that goes into the government pot as lender of the balance up to £100 million.

Senator A.J.H. Maclean:

That is after the £66 million that the banks themselves will fund. The government only steps in after that particular point. Of course, you have got recoverables, which we will come onto. With bank failures you tend to find reasonably high recoverable levels. Even Landsbanki, they are looking at 70% plus payout now.

The Deputy of St. Mary:

What is the risk on that? Is that the question you want to add now?

The Deputy of St. Saviour:

No, it is not quite. I just wanted to ask you have capped it at five years, the payout over time. My question is what evidence is there that payouts take longer than that?

Senator A.J.H. Maclean:

Well, it is five years to be competitive effectively with Guernsey, so we have come in line with them. It is a five-year period. The cap you are talking about is a £5 million cap that Guernsey have. We have got a £5 million and £10 million cap reflecting the styles of banks.

Deputy M.R. Higgins:

The Isle of Man, is there a period of time?

Senator A.J.H. Maclean:

The Isle of Man is quite hard to talk about because they have had an ad hoc scheme in force for a year until 23 October.

Deputy M.R. Higgins:

That was additional funding, yes, which is going to continue.

Senator A.J.H. Maclean:

Basically what they have now said is that they are going to continue a scheme with a £50,000 limit, so similar to what Jersey is doing, but they have not worked out the detail of that. So, we do not know what they are going to do.

Deputy M.R. Higgins:

Their levies are actually unlimited, if I am not mistaken, because BCCI, they were paying for many, many years.

Senator A.J.H. Maclean:

We do not know what they are going to move to. They are reviewing their scheme at the moment.

Deputy M.R. Higgins:

Yes. We will be speaking with them as well. Okay, let us move on then. First of all, coming onto some structural questions; why is it that you have adopted a board rather than, say, a corporation sole model because obviously the cost would be much less with that.

Senator A.J.H. Maclean:

Well this is actually one of the reasons the commission decided not to put the previous depositor compensation scheme out for consultation because the commission felt that that was not in accordance with corporate principles of governance.

Deputy M.R. Higgins:

Is that right? Interesting. Okay, we will come back to that. Right, now, going on then.

The Deputy of St. Mary:

No doubt when I see that on the transcript I will understand that.

Deputy M.R. Higgins:

No, no, I understand it.

Mr. M. De Forest-Brown:

I think it is one person at a time, isn't it?

Deputy M.R. Higgins:

It is, one person. Again, it is very much like a data protection commissioner, you would have all the staff and everything else answerable to the state. However, let us look at a bank failure because time is short and I want to actually go through this thing here. If a Jersey subsidiary fails, can you take us through what is actually going to happen with the process?

Mr. J. Mews:

Well, the first thing is that the board would need to meet in order to decide whether there has been a failure.

Deputy M.R. Higgins:

Okay, but the board has not been appointed it yet.

The Deputy of St. Mary:

Can we please have the answer first, everybody, because I am getting a bit frustrated here? I want to hear what happens from Mr Mews.

Mr. J. Mews:

The board would have to meet. It would then have to consider in its view whether there has been a

failure or not. Once it has made that decision it could either decide that there had not been a failure or that there has been a failure. If it decides that there has not been a failure then no further action is taken. If it decides that there had been a failure then certain things flow from that. Obviously it needs to tool up in order to be able to pay out and there are lots of points of detail here which, as we said, are going to be worked through and the economic development department had committed a further amount of funding in order for a project officer to work on this. So, there are things that at the moment we quite simply cannot tell you.

The Deputy of St. Saviour:

Okay, let us just go back to the beginning then. So, you say the bank has failed and the board will decide whether there had been a failure or not. According to the board they will notify the minister. Okay, they publish a notice, they will notify the minister, but the board has not come into existence yet, so how can the board determine the failure if it has not come into existence?

Mr. J. Mews:

Well, I think we have been very clear that the way we set things up is in order to minimise costs as much as possible. What that is not to say is that there will not be a board which can act at very short notice. So, for example, if you have a firm of lawyers on notice in order to act and provide one member of the board, they will provide somebody overnight. Again, a firm of accountants or auditors, they will provide somebody overnight. We will have a nomination - in fact probably several nominations - from the Jersey Banks Association to provide the Jersey banking experience.

Deputy M.R. Higgins:

But, someone has got to appoint that board member and that is the minister. Now, the point is the board, as you state in the law, is to tell the minister there has been a failure and to take action.

Mr. M. De Forest-Brown:

I do not see why there is a problem there. The minister ultimately appoints the board; the board

considers the evidence and then reports back. I mean you have established an independent board. I do not see what the problem is.

Deputy M.R. Higgins:

With most bank failures do you think you are going to get advance notice in many cases that there is going to be a failure or are you going to read it in the FT?

Mr. M. De Forest-Brown:

I do not understand why that is relevant. What is the problem?

Deputy M.R. Higgins:

It is because what we are talking about, the trigger mechanism for the scheme is the bank failing.

Mr. M. De Forest-Brown:

Could we talk through the Isle of Man example where --

Deputy M.R. Higgins:

No, no, no, no.

Mr. M. De Forest-Brown:

Well, this exactly highlights the fact that they did not declare a failure for how many months?

Deputy M.R. Higgins:

Okay, that is one scenario then. That is one scenario.

Mr. M. De Forest-Brown:

That is the point. The key point is the failure. It is not whether there is actually a bank failure; it is whether the board of the scheme accepts or confirms that there has been a failure for the purposes of the

scheme. That is the point.

The Deputy of St. Saviour:

But that can only happen if they are in existence, but they cannot come into existence until the minister says there is a failure.

Mr. J. Mews:

The minister does not have to say there is a failure in order for the board to be appointed. That is categorical.

Deputy M.R. Higgins:

Okay, that is also the case too, but you are saying you will not set up the board until there is a failure. That is what you told us earlier. So, the point is we are trying to see chicken and egg here essentially. You have a failure. You are saying under the scheme that the board will tell the minister that there has been a failure but the board does not exist because the minister has not appointed a board.

Mr. M. De Forest-Brown:

I think you have got to separate the issues between a failure of a bank, whatever that means, and a failure being defined as a failure under the purpose of the scheme. Where all the market evidence was that the bank was effectively failing or had failed or had appointed a liquidator or all of those sorts of things that very clearly indicate that the bank is now going to cease trading. At that point the minister would appoint the board and the board would then define whether there has been a failure for the purposes of the scheme.

Deputy M.R. Higgins:

You have actually defined in the law that when a bank becomes bankrupt or is made bankrupt - I think it is that sort of terminology in the actual wording of the law - the point is if the bank, for example, the parent is overseas and there is a failure determined in a US court, or the US regulator decides that they

should not be carrying on, basically that bank comes to an end at that point. Now, the financial services commissioner has got memorandums of understanding with various regulators elsewhere. Why did you not use the financial service commission as the trigger? So, in other words if under an M.O.U. they are going to be notified that this bank has failed or is likely to fail why were you using the F.S.C. as the trigger informing the trigger, and the minister then could decide --

Mr. M. De Forest-Brown:

Why should you use them? It is not in their constitution; it is not one of their roles. It is not defined as one of the tasks that they should be doing under the law.

Deputy M.R. Higgins:

They are the regulator. They are monitoring the health of all the banks that are here on the island.

The Deputy of St. Mary:

Was that option discussed is the question?

Mr. M. De Forest-Brown:

You could conceivably change the law, you are right.

The Deputy of St. Mary:

Was that option considered?

Senator A.J.H. Maclean:

No scheme in the world has that as a trigger mechanism. So, no.

Mr. M. De Forest-Brown:

This is a government issue. We see this as a government issue.

Deputy M.R. Higgins:

Okay.

The Deputy of St. Mary:

But then we are back to the definition of when is a failure going --

Mr. M. De Forest-Brown:

I think we are making a bit of a mountain out of a mole hill. This is quite simple. Just as you have seen in other jurisdictions, when you observe a bank is effectively failing, at that point we would constitute the board and it would then --

Deputy M.R. Higgins:

That is if you have advance notice. But even when I was talking to Michael Foot when he was here --

Mr. M. De Forest-Brown:

Well, just take the Landsbanki cases and the case in the Isle of Man, that is exactly what happened. The evidence became clear, they fired the starting gun and things got running.

Deputy M.R. Higgins:

They already had a board, actually, in existence.

Mr. M. De Forest-Brown:

I am not quite sure what the issue is that you seem to be addressing. Is it that you think the win would be frozen or hamstrung or something? I do not understand what the issue is.

Deputy M.R. Higgins:

No, the point is there seems to be a disconnect here between what you have actually got. Essentially there does not appear to be a pocket trigger mechanism. As I say, I spoke with Michael Foot when he

was here and actually mentioned the comment to him about bank failure. I said, "We'll probably read it in the FT," and he acknowledged that fact.

Mr. M. De Forest-Brown:

Yes, absolutely.

Deputy M.R. Higgins:

Right. So, in other words that is the trigger, a bank has failed, then you have got to click into action. Now, essentially what we are saying is the board cannot notify the minister because the board does not exist --

Mr. M. De Forest-Brown:

Well, no, he kicks into action and appoints the board. I really do not see what the problem is.

Senator A.J.H. Maclean:

It should be relatively straightforward. We are making a mountain out of a mole hill with this situation. There is plenty of expertise advice available to the minister to determine whether or not he believes there are circumstances to constitute a board. The board, themselves, could be found - and brought in the expertise - from local accountants and local lawyers' firms, and they themselves would then determine, based on the law, whether or not it is a failure under the terms of the scheme itself. End of story.

Mr. M. De Forest-Brown:

If you could see a flaw in the law we would love additional drafting that would clarify the position. We have no problem with it; we just do not see the issue.

Deputy M.R. Higgins:

We may well come back to you.

Deputy S. Pitman:

Can I just clarify something then? I am hearing that there is actually no formal process for the minister to be informed of a bank that is failing. You were saying there are experts.

The Deputy of St. Mary:

Yes, it is question three, isn't it? Question three on this list, "What documented guidance and procedures are currently in place should the scheme --"

Deputy M.R. Higgins:

Well, the answer is not. We have already had that answer. I am sorry, the time is limited and there are important points I want to make. Sorry, Daniel, we have covered this area. Okay, let us just go through again the idea of the failure for a moment here. We said the failure of a subsidiary. It could be a branch. What is the difference between the failure of a branch or a subsidiary from the point of view of the mechanics of that as a scheme and how you are going to actually deal with a failure?

Mr. M. De Forest-Brown:

I think the key point here is I do not think a subsidiary in Jersey, and certainly not a branch, fail. It is the group that would fail.

Deputy M.R. Higgins:

Okay, the group would fail but it has a knock-on effect further down the line here in the island. We have a branch or a subsidiary. For example, in terms of the insolvency of the organisation and the process and recovery of money depends very highly on whether it is a branch or a subsidiary. How much work did you do into looking into?

Mr. M. De Forest-Brown:

In what respect does it differ?

Deputy M.R. Higgins:

Well, you tell me. Have you done the research?

Mr. M. De Forest-Brown:

I do not see that there is a difference at all.

Deputy M.R. Higgins:

There is an important difference. So, you obviously have not done any work in that area?

The Deputy of St. Mary:

From their point of view they think subsidiary and branch are comparable for the purposes of this business of setup and getting going?

Mr. J. Mews:

Yes. In essence basically what you have got is a situation whereby there are claim forms; people have to fill them in if they believe they have got a claim against the scheme and they send them in and the scheme decides whether it should pay out to each one. So, in essence, yes there are similarities.

Deputy M.R. Higgins:

What about the recovery of the money though? Let us say, for example, fine, you have got the scheme, they are putting in their claims. Now, our board are, for example, going to have segregation. For the rights of the individuals are going to be handed over to them in return for the compensation they are going to get. Right, what are the chances of recovering the money from branches or subsidiaries? What is the likelihood of you being able to claim back depending on the systems that are being used in those countries depending on subsidiaries and branches?

Mr. M. De Forest-Brown:

Can I just say that we did not look at the scheme on -- the way you are leading might lead you to the position where you might have, if you thought that the likelihood of recovery was either greater or lesser in a branch or a subsidiary - I can think of many different variations of where the recovery might be good or bad based on what the group's activities were. I cannot see the flow of logic between what the level of recoveries is or whether that is different between a branch or a subsidiary and how that affects our scheme. Our scheme presumes the funding in the first instance at zero recovery.

Deputy M.R. Higgins:

So you are assuming the zero recovery which means that the government money will be called upon in that case.

Mr. M. De Forest-Brown:

Well, it depends on the amount of money. If it is a bank that has only got £20 million at risk then no. What we have done is the analysis that given the circumstances in most bank failures that we work out at the level of the scheme that we introduce how many banks are covered in full. If we assume zero recovery, population X is covered; and if you assume a normal level of recovery it increases the total number of banks that are covered by the scheme by a small incremental number - it is one, two or three additional banks that would be covered - that is because the nature of our banking system are mostly small deposits and in some you get into very big deposits. So, that cut off, actually the level of recovery does not make a huge difference in the range of banks but it makes one or two key extra banks. So, when we say the scheme will cover us up to the sixth item out of the £65 million that is assuming a normal level of recovery.

Mr. J. Mews:

Also looking at the question which you asked, no, we do not expect to see any difference in recoveries between a branch or a subsidiary.

Deputy S. Pitman:

Right.

Deputy M.R. Higgins:

Okay. So, for example, an American --

Mr. J. Mews:

Could you perhaps name one of our American banks?

Deputy M.R. Higgins:

Would you like me to mention one? What about Citibank?

Mr. J. Mews:

Citibank? Yes, so we have Citibank which has a very, very small amount of deposits here which would entirely be recovered, but we would expect to make all recoveries from Citibank. They have a sophisticated system of law. I believe that Citibank is not a branch but is a subsidiary, therefore, American law would never even come into question. It is simply about being dealt with here in Jersey.

Deputy M.R. Higgins:

That assumes that we have assets in Jersey that can actually be recovered.

The Deputy of St. Mary:

Are we talking about recovery or are we talking about getting the money to the depositor?

Deputy M.R. Higgins:

I am looking at recovery back to the scheme. So, in other words if we had taken on segregation we are paying --

The Deputy of St. Mary:

Oh, sorry. I thought we were further down the road.

Deputy M.R. Higgins:

Yes. So, what we are actually looking at here is - by the way I am not highlighting Citibank --

Mr. M. De Forest-Brown:

We can have a lot of discussions hypothetically. I think if we could get down, as we have down, and looked at individual banks' cases, most of these hypothetical examples just do not arise. The vast majority of banks here will be fully recovered at £65 million with no recoveries. So, the only thing that we are looking at is one or two banks at the margin where recoveries actually make any difference and that takes us from - I do not remember exact numbers - if the £65 million covers with no recovery up to something like eight, then take in 60% recovery takes us up to bank six. It is something like that. It is like one or two additional banks makes any difference to it.

Deputy M.R. Higgins:

What I am looking at is, again, the differences in insolvency laws, the difference in legal process --

Mr. M. De Forest-Brown:

But it does not make any difference.

Deputy M.R. Higgins:

Yes, it does. If the branch, for example, has failed, trying to recover money back from the parent. For example, if a bank branch fails, under American law they are treated differently, under English law they are treated differently.

Mr. M. De Forest-Brown:

I agree with what you are saying that it may be a difference in terms of recoveries. I do not think it makes any difference under the scheme applying it to our banks, whether it makes any difference with

the government funding. With this bank, if you assume no recoveries it does not make a difference; if you go to this bank it does not make any difference because you step from the point where it is totally covered to the point where it is not covered at all. So, I think you are barking up the wrong tree. It does not fundamentally make any difference on the marginal bank. You might find there is one bank, and in that case we could just look at it and we would then know that in fact it is a subsidiary so you do not need to look between the subsidiary and branch. So, it is a hypothetical question that does not arise in practice and I think that is important.

The Deputy of St. Saviour:

Is that just running under the thinking because the rest of the industry would have paid for it, therefore, for the government the getting the money back is not an issue?

Mr. M. De Forest-Brown:

No, no, no. It is because the level of recovery will only affect one or two banks. So, it is not there is some big population and we need to have something different for subsidiaries.

Deputy M.R. Higgins:

Okay, I think we have exhausted that at the moment. Can I just ask for another question? I am going to move onto another question because time is short, but do not worry we are going to come back to these at a later stage. Just one here, for example, as well, one thing that does not appear to be covered - and we have seen this with failings that have taken place, with Landsbanki as an example. There are no provisions in the scheme that if I paid money into a branch, let us say, in the UK to be transferred into my account in Jersey and the bank goes down in Jersey, how are you going to deal with that money in transit? It was one of the problems with the Landsbanki Guernsey one. So, that money seems to be lost; it is in limbo. It is not actually in the bank; it is in the financial system. How are you going to try and recover that?

Mr. M. De Forest-Brown:

I think it is always in one place under the law.

Deputy M.R. Higgins:

Well, it is still in limbo.

Mr. M. De Forest-Brown:

No, no, no. It will be in one place under the law.

Mr. J. Mews:

It will either be in the UK or Jersey. So, it will be treated accordingly and be dealt with by that country's deposit compensation scheme.

The Deputy of St. Mary:

Back to the way in which the scheme works. What consideration was given to the argument around net or gross deposits? Can you tell us how you resolved that one?

Mr. M. De Forest-Brown:

Quite simply we thought that the sensible thing would obviously be to net things off and actually it is quite clear that this has caused real problems in other schemes, that the --

The Deputy of St. Mary:

I bet it has done!

Mr. M. De Forest-Brown:

Yes -- in trying to get a single customer view. You will see if you follow the debate currently that they are looking at that in terms of the revisions to the UK scheme. A single customer view presents banks with real problems. It is because they keep acquiring each other and having multiple systems. So, the banks would rather incur a greater level of cost and just swallow it recognising that any debt actually

remains a legal debt of the bank and so they can still go and recover, even if it is in administration. So, it is only a timing issue of whether they net it off immediately or whether they go and collect it later.

The Deputy of St. Mary:

So, you have resolved that one under straightforward pragmatics.

Mr. M. De Forest-Brown:

Yes.

The Deputy of St. Mary:

Practical to do that and not that.

Mr. J. Mews:

Also by talking to the UK scheme who said that was very much the model they wished to move towards and it caused them huge amounts of problems in the past.

Deputy M.R. Higgins:

Okay, sure. Anything else, Daniel?

The Deputy of St. Mary:

Okay, we say, for example, we have got to top banks here and everything else in terms that if a branch went down or a subsidiary went down it would be largely because of the failure of the parent abroad. We are relying at the moment on letters of comfort from the banks for the branches that we actually have here. So, the parent will step in and bail them out. Is that correct?

Mr. M. De Forest-Brown:

No. I am not sure what you mean by a letter of comfort that they could step in and bail them out. This is not really a case of --

Deputy M.R. Higgins:

Well, I am looking at a different scenario. Let us say the parent has not gone down but, for whatever reason, a subsidiary in the island has gone down. Now, we would normally have a letter of comfort from the parent to cover any losses associated with that bank, correct?

Mr. M. De Forest-Brown:

I am not sure I can understand the situation of a bank in Jersey going down without its parent going down.

Deputy M.R. Higgins:

Okay, but let us say hypothetically --

Mr. M. De Forest-Brown:

Unfortunately this is a pragmatic scheme and we have looked through the facts and the decision we have in place.

The Deputy of St. Mary:

Or hypothetically you know the banks are going to go down any more.

Deputy M.R. Higgins:

You do have letters of comfort though, do you not from parents?

Mr. M. De Forest-Brown:

No, I do not think that is true. I think there are some cases where banks have letters of comfort and others that do not actually.

Deputy M.R. Higgins:

So, in other words, we have got no guarantee the parent will bail out any --

Mr. M. De Forest-Brown:

Well, it is not about bailing out. That is the whole point.

Deputy M.R. Higgins:

Because I am thinking in the case of Landsbanki, for example, the letter of comfort - or the letter they received - from the Icelandic government was worthless and there is no money going to be recovered from that. So, are letters of comfort --

Mr. J. Mews:

There is an issue there which has not yet been resolved, but that is an entirely separate issue from anything in Jersey. We do not have a comparable situation.

Deputy M.R. Higgins:

But we do have letters of comfort, do we not?

Mr. J. Mews:

Yes, but we do not have any governments which are not big enough to support their banks.

Deputy M.R. Higgins:

Okay, and the letters of comfort, what legal validity are they?

Mr. J. Mews:

Well, as I have said, it does not really matter. We can talk hypotheticals for the next three weeks --

Deputy M.R. Higgins:

Well, no, in reality what is the legal position with a letter of comfort?

Mr. J. Mews:

Well, a letter of comfort cannot normally be sued upon but it is something which is normally given due weight to by the regulator in considering a banking licence.

Deputy M.R. Higgins:

Where the bank has failed.

Mr. M. De Forest-Brown:

I do not think letters of comfort are relevant to this matter in discussion here today. I do not think it affects anything. If you could discuss a situation where it does I would be interested. Sorry, I just do not understand what the issue is.

Deputy M.R. Higgins:

We will be going back to this meeting.

The Deputy of St. Mary:

Can I change tack a little bit and talk about recovery after the crash and after you have paid the depositor your recovery? As a lay person I find this very puzzling that the deposited money is upstream, as you have told us that several times, which has gone. So, how can it be recovered? I am just innocent, broadly among the rules, I do not understand it because the money has gone. There are no assets here; they have all been upstream.

Mr. M. De Forest-Brown:

That is right. So, the only way we can get our money back is to get it back from the parent. So, it is a legal debt of the parent to pay the money back for the subsidiary.

Deputy M.R. Higgins:

Going back to this thing that the parent has failed, then we have to rely on the laws in the home state as to whether we are going to be able to recover any money from that state. Some of the states ring fence their banks and will prevent recovery from outside their own country.

The Deputy of St. Mary:

True or false? I suppose is the question really.

Mr. J. Mews:

There is only one country which has tried to do that, Iceland, when all its banks failed. Other countries do not ring fence.

Mr. M. De Forest-Brown:

That was a temp solution which they are now bailing out as they have got money from the EU.

The Deputy of St. Mary:

Okay, well I will give you one example, the United States for example, you can have a situation where an American bank, all their own creditors will be dealt with before any of our banks.

Mr. M. De Forest-Brown:

All of our American banks will be dealt with under the scheme. Again, we have got to look at actual problems. The trouble is we are spending a lot of time thinking about theoretical problems. If only we could get down to some of the details and actually look at the practical problems that are faced by the marginal bank. It is quite simple, there are three populations. There is a population which if they go down that is the end of the world as we know it because they are so large; there are one or two marginal banks where all of these issues that you are raising about letters of comfort or recoveries and then there are the rest which are all covered under the scheme. So, we are having all of these discussions around possibly two banks. So, I think we probably need to think how we can best answer these in an anonymised way to say, "Here are roughly what the two issues that are face by the two marginal banks

and therefore all of these questions are moot.”

Mr. J. Mews:

For example, with any American banks that we might have here, any research which we did and which we could do, and we could spend days researching American law, but at the end of the day we would be talking about money which the banks here in Jersey would not get back under our scheme. We are not talking about anything affecting any potential government monies which might have to be put into a scheme. So, it is moot as far as we are concerned. It really does not matter.

The Deputy of St. Mary:

So, going back to the lots of detail right at the beginning when Mike asked you the first question of, “How would it run if a bank failed?” and you started off by saying the board meets, decides whether there has been a failure, your two will have to pay out and then there is a lot of detail to be worked out. So, have the questions here have sort of vanished because lots of detail was to be worked out. Can you fill us in on what this lots of detail to be worked out is because that rather took the wind out of all the questions? It seems odd that there is a scheme that is ready to roll and there is lots of detail to be worked out.

Mr. J. Mews:

Well, you can have things, which, let us face it, in a perfect world are nice to have and you and you have got what you do in a prices situation. So, for example, we have spoken about how there should be a memorandum of understanding in place between the board and the minister. That is something which we are going to spend time working on over the next six months. That is something which is the nice to have. It is not essential to the running of the scheme. Again, you have got the whole detail. The JFSC for example have got several lever arch files of documents concerning delegated powers, the circumstances in which things work, will hold employment situation of any staff and huge numbers of other areas. So, all of that sort of thing is something which actually if a board is going to be seen as a proper independently functioning board needs to be worked out and that is something which we will

have a project officer doing. There is also going to be huge amounts of detail concerned with, “Actually, we need to have a claim form constructed, get all the systems set up in advance so that should a bank go down we have a very quick and easy process to follow,” that is all the sort of stuff which will be worked on and will be put in force, but unfortunately we do not have that now because we have been concerned with bringing a scheme forwards as quickly as we possibly can so it will work at high levels.

The Deputy of St. Saviour:

But what you have done actually effectively is produced a scheme where you have built up people’s expectations over the event of a bank failure that you will pay out in seven days time and there is no way you have any mechanisms in place or the banks have any mechanisms in place. You would not be able to do it. In fact, to be perfectly honest, I even wonder if you would be able to give me the three months which is the norm.

Mr. J. Mews:

Well, I think the answer to that question is that under the scheme we have got a number of things which are being proposed but one of them is up front liquidity.

The Deputy of St. Saviour:

Which is the government’s money, isn’t it? It is the government’s money.

Mr. J. Mews:

Yes, we clearly have up front liquidity in place in order to pay out. All we need then is a very simple claim form, a one-page document which can go out to people. These are the real basic rudimentary points because that is what you have asked me for. That is what could be sent out very, very quickly to people who ask for it. Then what would happen is people would send responses in. During that time if we had not had the time to work out everything else could be very promptly outsourced.

The Deputy of St. Saviour:

Where are you going to get the information from to confirm those people are entitled to the money their balance sheet is claiming?

Mr. M. De Forest-Brown:

Well, I think, again, it is something we will look at but my expectation was that it would be something along the lines of if a citizen puts in a submission with proof of identity, a copy of their recent bank statement, some evidence of what their recent balances were, basic identity information. Where we met certain criteria that we know who they are or know where they have come from, but we would make payment. In fact, probably, that would be geared far more towards the local jurisdiction than elsewhere in the first instance.

The Deputy of St. Saviour:

Ninety percent of those depositors are foreigners.

Mr. M. De Forest-Brown:

Yes.

Senator A.J.H. Maclean:

It is designed, do not forget, £5,000 paid out within seven days and it is there for everyday use to deal with problems that people have had.

The Deputy of St. Saviour:

The point we are trying to make here is there are no methods in place to be able to achieve that. For example, going back into the banks, and no bank records. Some of the banks are using third parties to process all their data. It could be, again, you are having to deal with a parent because the information is not processed in the island - it is processed abroad. In which case, they are going to be dealing with their own people, their own depositors first before they even think about the depositors overseas. So, again, the timeline of getting confirmation of what you are seeking could be extended.

Mr. J. Mews:

Well, the key thing there is the depositors are our own depositors. If one bank went under it would treat all depositors who are under that brand name regardless of whether it is subsidiary or a branch in the same way because that is the key thing in terms of the business. Now, the scheme would be able to get information from the bank which goes under. The scheme, do not forget, is a creditor. It is people have segregated their rights to the scheme and it has equal rights with all other creditors to obtain information. So, it would be given all the information it needs and it would, therefore, be able to pay out and it would be able to corroborate the information which people give to it.

Deputy S. Pitman:

May I just note the time?

Deputy M.R. Higgins:

Yes, in fact has anybody got any final questions that they want to ask?

The Deputy of St. Mary:

Well, I had a couple; little quickies I suppose.

Deputy M.R. Higgins:

I think what we might do then is just digest what we have heard today and we will come back later.

Okay. Thank you very much.

Mr. J. Mews:

Just before we close, could I ask, Mr Chairman, your intentions with regard to the completion of this particular review in terms of timing and your confidence that you will be able to deliver a review in time for a debate as suggested in October?

Deputy M.R. Higgins:

Our intention is to try and meet the date that we have given, that is 20 October. If we can do it earlier then we will bring it back to the States earlier. What we may not be able to do is do a full review because of the amount of material and everything else we have got to do and, again, as I say, had we been informed earlier on we could have done the formal review on a more timely basis and we will concentrate in certain areas, but we will be back to the States by 20 October.

Mr. J. Mews:

So, 20 October or before.

Deputy M.R. Higgins:

Or before if we can do it. I am saying that obviously before we have actually got fully into the review, but that is our intention.

Mr. J. Mews:

Okay, can I also ask have you appointed as a panel an expert, because I know you have been looking for an expert to advise, and that was an issue that was apparently delaying matters?

Deputy M.R. Higgins:

I might add that the officers have been dealing with that. We will have a representative from the International Association of Deposit Insurers.

Mr. J. Mews:

But nobody is formally appointed at the moment.

Deputy M.R. Higgins:

It is in the process of being --

The Deputy of St. Mary:

Maybe later today!

Deputy S. Pitman:

We have had an offer.

Deputy M.R. Higgins:

Yes, we have had offers and we are actually just discussing the different people. So, it is imminent.

Mr. J. Mews:

So, the fact that somebody is not appointed is not going to cause any undue delay beyond the deadlines that we have discussed?

Deputy M.R. Higgins:

No, they will be coming in and if it is the person I think it will be then we will have him in the island to work very efficiently.

The Deputy of St. Mary:

I think it is fair to say we are doing our best.

Deputy M.R. Higgins:

Yes.

Deputy S. Pitman:

Thank you.

Deputy M.R. Higgins:

Might have their leading figures in the field as well. Thank you for your time.

Mr. J. Mews:

Thank you very much. Can I also just add finally that if there is any further information that you require from the Department at all, if you can let us know. We will either deliver it in writing or happy to attend.

Deputy M.R. Higgins:

Okay, there is one that I would like to see. We have obviously been told there have been many meetings of the banking industry, JBA and so on. We have not received any information about the level of consultation they did, any notes made on the meeting, whether they had any concerns with the consultation or any decisions made or any comments that have come back from banks with the exception of one or two emails. There must have been far more information than we have had.

Mr. M. De Forest-Brown:

Actually, no, there was not. We just had these open meetings where we kicked around all the issues. We have had them yelling at us and the usual debates and then we have had minutes at the JBA.

Deputy M.R. Higgins:

Can we have copies of the JBA minutes then?

Mr. M. De Forest-Brown:

I am not sure whether you can have copies of the JBA minutes. You might be able to have a copy of the relevant minutes and it will not tell you much.

Deputy M.R. Higgins:

I would not say all. I would like to see what you have actually discussed on the scheme.

The Deputy of St. Mary:

Would there not be notes of those discussions, formal notes, nothing written down?

Mr. M. De Forest-Brown:

No, not on a formal record. Individuals may have taken their own.

Deputy M.R. Higgins:

This sounds a strange consultation exercise, I must say.

Mr. M. De Forest-Brown:

Well, it is not a formal consultation exercise. I think that is clear. We have always said that. We have gone in to debate the issues with the bankers in open forum in the JBA. If they have wanted to make their comments they have generally made them orally at the meetings.

Deputy M.R. Higgins:

I must say actually I am surprised because, again, the normal consultation thing, you would have three months, you would have people giving back their responses --

Mr. M. De Forest-Brown:

Yes, I know, but these were different circumstances. We were under pressure to try to produce a scheme as quickly as possible.

Deputy M.R. Higgins:

Well, maybe. You said July and yet you started this in October. Anyway, I will just leave it at that. I have asked for the information.

Mr. J. Mews:

As far as the JBA minutes are concerned, presumably you will be interviewing representatives from the Jersey Banks Association. They are the appropriate ones to ask for the minutes of their meeting, clearly.

Deputy M.R. Higgins:

It is only in relation to this that we want, anyway. Okay, well thank you very much.