

STATES OF JERSEY

COMMITTEE OF INQUIRY INTO TENDER PROCESS AND AWARD OF BUS SERVICE CONTRACT

BLAMPIED ROOM, STATES BUILDING

Committee: Mr Huw Shephard (President)
 Mr Christopher Blackstone (Member)
 Mr Trevor Garrett (Member)
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 -
In attendance Mr Mac Spence (Committee Clerk)

EVIDENCE FROM:

MR A. MUIR
(Environment and Public Services Department)

on

Wednesday, 2nd February 2005

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MR SHEPHEARD: The Committee of Inquiry into the bus tendering process have all assembled and the witness to give evidence today is Mr Alan Muir of the Environment and Public Services Department. Mr Muir, I do not know if you are aware that the Committee has been receiving evidence on oath, but I will immediately proceed to administer the oath to you.

The witness was sworn

MR SHEPHEARD: Thank you, Mr Muir. Now, Mr Muir, is it right that during the whole of the time that we are concerned with, which is roughly from late 1999 until 2003, you were Director of Highways and Transportation in what was then the Public Services Department?

MR MUIR: I was Principal Engineer, Highways Traffic and Civils between the time 1999 up until March, I think, 2001 and then I was appointed Director of Traffic and Transportation when the Department was reorganised.

MR SHEPHEARD: Right. Most of the questioning that you are going to face today is going to come from my colleagues Mr Garrett and Mr Blackstone. I will probably chip in with questions if I think it is important to clarify a point and I may have some questions for you myself at an appropriate point in the proceedings. I will hand you over now to Mr Garrett.

MR MUIR: May I remove my jacket?

MR SHEPHEARD: Of course, yes.

MR GARRETT: Good morning.

MR MUIR: Good morning.

MR GARRETT: You described your position at Public Services. I am particularly interested in the sort of latter rôle. What kind of work were you involved in with that? What was the sort of scope of your work? What was the sort of range of subjects that you had been dealing with at that time?

MR MUIR: Er, principally things to do with highways, traffic and civil engineering, so it would range from dealing with Traffic Orders, dealing with traffic management schemes and residents' parking. There was the work up at the airport, the realignment of the road up to the airport, Alpha Taxi Way; trying to develop certain policies that the Committee were keen, policy and strategies that the Committee were keen to develop; liaising on planning applications. There is a

myriad of work that has to be done.

MR GARRETT: It is fairly evident that you were busy because, as you are aware, we have looked through emails and all manner of material, and I have been struck particularly by the fact that I have seen emails generated by you fairly early in the morning right through to sort of evening time. Can you describe the sort of typical working day and really your worse case scenario? What kind of hours were you putting in up there?

MR MUIR: Um, probably at that period of time I actually was working perhaps seven days a week, not all day on Saturday or Sunday, but probably all Saturday afternoon and Sunday from around about ten o'clock through to maybe three o'clock/four o'clock. Invariably, I would be in at eight o'clock on the morning and probably not be home before seven, sometimes having to take some work home with me as well. It was purely because of the volume of work that we were trying to get through and the resources that we had available.

MR GARRETT: Bearing in mind the pressure that you were under at the time, was consideration ever given to the thought of employing a consultant-type project manager for the bus issues so they could devote their time purely for that and not be diverted on other things?

MR MUIR: I don't recall there being any consideration for that. I do recall there being consideration to bringing in consultants to develop or comment on the proposed strategy for the Bus Strategy and then subsequently they took on doing most of the tendering process.

MR GARRETT: Linked into the volume of work that you were dealing with, what kind of sort of welfare arrangements were put in place up there, basically to safeguard your health?

MR MUIR: Um, I wouldn't have said there were any particularly special arrangements put in. I never asked for any. In essence, I think that is basically the way that a lot of people actually work at Public Services.

MR GARRETT: Is there a welfare arrangement up there? I mean, is there somebody tasked with the responsibility of caring for the welfare of staff?

MR MUIR: In general, the management team try and look after the welfare of the staff.

MR GARRETT: And who looks after the management team?

MR MUIR: I think we look after ourselves, but we do talk about it. We do realise that there are

pressures on people.

MR GARRETT: Okay. This is a sort of very much a leading question. We are here. You have seen our terms of reference. Clearly something went wrong. What is your view on what has happened?

MR MUIR: Um, I'm not sure that I can give you a view. All I did was I did my job and the reason that I am here is presumably to answer questions that you have in relation to how I did my job or how the work went. I don't really think that it is appropriate for me to give a view on things.

MR GARRETT: Do you think that mistakes might have been made?

MR MUIR: I think you are, again, looking with hindsight. Managers have the hindsight to ----

MR GARRETT: I appreciate that.

MR MUIR: But I think we did the best that we could with the resources that were available and with the information that was available to us at that time, and we provided the advice on that basis.

MR GARRETT: Okay. During the period that were you were involved with the bus issues, how often did you meet with John Richardson? Sorry, did you report directly to John Richardson? There is no layer in between?

MR MUIR: It depends when you are actually speaking of. Between 1999 and 2001, my direct line manager was Alan Keeling, who was the Director of Engineering. His opposite was John Richardson as Director of Operations and above them was Clive Swinnerton. After 1999 [sic], when the Department was reorganised, I became Director of Traffic and Transportation and at that time Clive Swinnerton was still the Chief Exec. I can't recall exactly when John took over, but John was Chief Exec designate and, of course, John was part of the management team involved in decision making of what advice would be given to the Committee and why. I can't actually recall exactly when Clive went and John was completely and utterly in charge.

MR GARRETT: But from 2001, you had been reporting to John Richardson, had you?

MR MUIR: Yeah, John it would have been, yeah.

MR GARRETT: And how often did you meet with him to discuss your work and so forth?

MR MUIR: Well, the management team met regularly on a Monday, it was -- every Monday morning the management team would meet -- and I would occasionally have, I say occasionally

but regularly, about every two months or whatever, I would have one to ones and the like as well.

MR GARRETT: Was it only ever Mondays or, as projects became more intense ----

MR MUIR: There would be other times. Clearly there would be meetings set up to discuss certain aspects that were going on.

MR GARRETT: But the formal arrangement was once a week.

MR MUIR: Once a week there was a formal arrangement for all the management team to get together.

MR GARRETT: When I was doing my research, I was struck by the number of people who got involved in this project. You have the Committee, obviously, the Department and then you had a working group set up to progress the service level agreement, the Bus Strategy Steering Group and then later you had the Transport Strategy Task Force. Then, on top of that, there were a range of consultants involved. I have found mentions of OXERA, Halcrow, Andium and FourSight. Why were so many people involved in it?

MR MUIR: Certainly the decision to have the Bus Strategy Steering Group was to ensure that there was a consensus, I believe, across the States Committees that were interested. That meant that there had to be someone from Finance and Economics, someone from what was Economic Development Committee and somebody from Jersey Transport Association and invariably that is how it was set up, I think, to make sure that there was a consensus or some feed-in by the other interested Committees and politicians.

MR GARRETT: To put it another way, would it be fair to say that this was a group, a broad group, that could shoulder the blame if it went wrong?

MR MUIR: I don't know. I mean, you are asking for an opinion again, and I don't know the way that the politicians thought. I believe it was actually stated in the Bus Strategy that was taken to the States that they would continue with this group so that there was quite, I think, transparency across the ----

MR GARRETT: Is that not a view that you once expressed?

MR MUIR: Sorry?

MR GARRETT: Is that not a view that you once expressed, that the Bus Strategy Steering Group

was there to shoulder the blame?

MR MUIR: I don't recall that.

MR GARRETT: Bearing in mind all the range of people who were involved, who was actually in charge of it all? Who was making sure that it all happened and that there wasn't a monstrous overlap, oversight or whatever? Who was running it?

MR MUIR: Um, I wouldn't have said there was ... if you are talking about someone who had total control of what was happening and had the final decision, that doesn't actually exist because you have always got the Committee system.

MR GARRETT: I appreciate that, but on a day to day running basis, who was actually making sure that it all happened. Who was making sure that there wasn't a monstrous overlap of activity or in fact that there weren't huge gaps in the activities so that issues were overlooked?

MR MUIR: I suppose that I would be the culprit for that one, after a certain time.

MR GARRETT: What kind of communication policy was put in place to make sure that people were kept up to speed on what was happening?

MR MUIR: Well, we kept taking reports to the Committee. I ... when we were dealing with Halcrow, we had lots of emails going on, keeping everybody up to date. Obviously it was quite difficult to keep arranging meetings because Halcrow weren't based on the Island. I'm not sure which particular aspects that you are referring to.

MR GARRETT: What I am trying to do is to make sure or establish from you how or what steps were taken to make sure that the people who needed to know what was going on actually received the information, again, so that there wasn't an overlap and so that if somebody thought of a good idea that they should embark on a particular line of enquiry, they wouldn't actually overlap with the work that had already been done?

MR MUIR: I mean, in essence, that was basically reporting to the Bus Strategy Steering Group, so there were regular reports going to the Bus Strategy Steering Group.

MR GARRETT: Was there any kind of project plan set out, listing sort of timescales for the completion of aspects of the project?

MR MUIR: I believe I did something like that, yes.

MR GARRETT: Do you know who produced that?

MR MUIR: I believe I did, yes.

MR GARRETT: Right.

MR MUIR: There was a Microsoft project plan with dates on it and what was actually going to happen.

MR GARRETT: I don't think we've received that yet.

MR MUIR: Possibly. I can check up on that.

MR GARRETT: Can you arrange for a copy to come to us, please? Would you have also been responsible for ... sorry, I will let you jot your note. **(Pause)**

MR MUIR: There were also other things that were done as well. Clearly, Halcrow provided a time frame for going out to tender, expressions of interest, etc, etc.

MR GARRETT: I have seen that document. It doesn't have the kind of detail that I am sort of looking at. Were you also responsible for making sure that tasks were actually performed to a satisfactory standard?

MR MUIR: I suppose so, yes.

MR GARRETT: Okay. Moving back really into history, were you involved in any way in the production of the Sustainable Transport Strategy?

MR MUIR: I was.

MR GARRETT: Were you the author of it?

MR MUIR: Um, a substantial part of it, yes.

MR GARRETT: Was that at political direction? In other words, did politicians give you the theme that they wanted to pursue and you put the words around it?

MR MUIR: I think that it was something that was developed with a basic framework of a reasonable Transportation Strategy, but with certain influences from the Committees of the day. It wasn't just the Public Services Committee because clearly it was distributed to people before it was put into the States' domain so that the Planning Committee could actually put their input in, the Home Affairs Committee could put their input in, Tourism and the like. So it was something that grew out of discussion and contributions from the other Committees.

MR GARRETT: Okay. Would it be fair to say that the sort of Bus Strategy has its origins really in that document?

MR MUIR: There was a section in the document about public transport and buses were obviously part of the public transport section and, yes, the Bus Strategy flowed from that.

MR GARRETT: Okay. Apart from the Bus Strategy, what else has been achieved out of the Sustainable Transport Strategy?

MR MUIR: There have been a number of things that have been achieved. The problem about the overall Strategy is that it lacked funding. We actually gave estimates to the Finance and Economics Committee of the amounts of funding that would be likely to be required, but in the essence that funding has never transpired and we have really only managed to do things within our own particular budgets or what other people have managed to do, but there have been certain things. I mean, for example, the only diesel fuel that is in the Island now is low sulphur fuel, so that has helped the emissions. We have done things like the safe routes to school. We have carried out pedestrian improvements. We have provided footways in other areas. There is a list of all the things.

MR GARRETT: But the main stumbling block is lack of money?

MR MUIR: The main stumbling block has always been lack of money.

MR GARRETT: Going forwards, we are interested to establish the circumstances under which John Griffiths was appointed as a consultant. Do you have any knowledge of that issue?

MR MUIR: I believe that John was appointed in 2000, I think it was. I wasn't actually involved at the outset in the appointment because I think it followed a report that was taken to the Committee in respect of how we should be going forward. I think the report recommended that the way we should be going forward was to try and seek an arrangement with the existing operator, that we could set up a service level agreement and achieve a satisfactory quality bus service by going to a service level agreement. Now, that was tasked to one of the directors of the day. I think it was him that actually ----

MR GARRETT: Any idea who that was?

MR MUIR: Stuart Lusby.

MR GARRETT: Right. Okay. What happened to Stuart Lusby?

MR MUIR: He works at the Treasury.

MR GARRETT: All right, okay. Are you aware that Mr Griffiths had no formal training in relation to service level agreement work?

MR MUIR: I am not aware that that is the case. I am not aware that there would be a particular degree or something like that in service level agreements.

MR GARRETT: It didn't feature in his degree course -- we have it from him. Did you know that he never worked in any aspect of the bus industry?

MR MUIR: I was aware of that.

MR GARRETT: Or even the transport industry?

MR MUIR: I was aware of that. I didn't ... personally, I didn't see that as being a particular difficulty because we had a bus operator that knew what was needed in the bus industry.

MR GARRETT: Are you aware that his main area of operation had been in the Health Service?

MR MUIR: That is how I knew of him, yeah. I think he did quite a substantial amount of work for the Health Department in Jersey and I think that is how he was known to Treasury, and Treasury obviously had a high regard for him.

MR GARRETT: Would you accept that the introduction of a person into an environment which wasn't necessarily that harmonious at the time, the introduction of a person who clearly lacked qualifications and experience in the specific field of transport and, more specifically bus and related business, wasn't necessarily going to help the process?

MR MUIR: I think that the process was to develop a service level agreement with the existing operator, the existing bus operator. John had a lot of experience in developing service level agreements, so it was his expertise in developing those that we were interested in. I also understand that it was a question of John contacting, for example, London Transport if he needed anything that was not available from Jersey Bus. But the service level agreement was supposed to be developed between the two parties; in other words, the Public Services Committee and Jersey Bus.

MR GARRETT: But you believe he was perfectly well qualified and really there was no better

option available to work in this field?

MR MUIR: I was happy with it. As I say, I hadn't actually been the one that was involved in deciding who was going to do it. The first time I met John was when he had been appointed and that was the way we were going.

MR GARRETT: I understand at one stage Jersey Bus expressed grave discontent with Mr Griffiths, even to the extent that there was an exchange of quite serious language about him, as a result of which he offered to resign. Do you know why his offer wasn't taken up?

MR MUIR: I'm not au fait with that one. I'm certainly au fait that when John first met Jersey Bus, Jersey Bus seemed to be extremely happy with John. They were quite happy to work and I think everything was going quite well for quite some time. I'm personally not aware of there being any correspondence or anything like that from Jersey Bus that said they were unhappy with him.

MR GARRETT: Bearing in mind, quite apart from his limited qualifications in service level agreement areas, he was not an accountant. So can you imagine the discontent of Jersey Bus when he started delving into their accounts and commenting on them?

MR MUIR: Well, John was part of a firm, FourSight. I mean, I appreciate that it seems to have come out that John wasn't a qualified accountant, but I am sure he, with his colleagues, had plenty of experience of actually going through accounts and having a look to find out what is actually going on within a company.

MR GARRETT: However, I think it is the case that he started to make demands of Jersey Bus, either on his own back or inspired by others, to start looking at the accounts of places such as the Living Legend and the Boardwalk Café and so forth, and that seems to have caused a serious upset. Why would he have done that?

MR MUIR: My understanding of what was wanted was that, yes, Jersey Bus were happy to produce the financial figures for Jersey Bus. However, we were talking about a service level agreement that included, or was likely to include, the school buses. Part of the school bus arrangement is Tantivy Blue Coach that are part of the Diamond Jersey Group. So I understood that the main point was to have access to Tantivy Blue Coach.

MR GARRETT: I can understand that. What I can't understand is why you should go delving

into areas which were clearly non-bus.

MR MUIR: As I say, I think that John was trying to be firm. I think that John obviously wanted to check out why certain things had occurred. He obviously felt that he had to have access to those.

MR GARRETT: We will leave that point for the moment. Chris Blackstone who I am working with here is an accountant and he may come back to you on those specific points, because that is an area he has looked at in great detail. Just in conclusion on the John Griffiths issue, was substantial progress ever made on the development of a service level agreement?

MR MUIR: I would have said there was quite good progress made. I believe that we even had ... It seemed to be going quite well, I would have said, until the lawyers got involved. We seemed to be making quite good progress with Chris Lewis and Mike Cotillard. There were a number of issues that we had to obviously discuss and we got there, but it then became something that was handed over to Jersey Bus' lawyers and I think that is when it seemed to be more a question of some difficulty arising.

MR GARRETT: Was the problem exclusively caused by the intervention of lawyers on behalf of Jersey Bus?

MR MUIR: No, I'm not saying that. You are speaking about the service level agreement. I think there were other factors that came into it that perhaps upset the progress of the service level agreement.

MR GARRETT: What factors are those, in your view?

MR MUIR: Well, certainly, as I said, the service level agreement that I was speaking of was in the year 2000 and, in the summer of 2000, the Committee decided to award a licence to Pioneer Coaches to operate the Hoppa bus service.

MR GARRETT: So it wasn't purely Jersey Bus, there were some political activities which didn't help the situation?

MR MUIR: That is what I am saying. I may be wrong, but the question I picked up from you was how was the development of the service level agreement, and I think the service level agreement was actually going along quite well. I think we had a lot of good meetings with Jersey Bus and a lot of hard work was put in by both particularly John Griffiths and Chris Lewis.

MR GARRETT: But then you intimated that the wheels started to come off when the lawyers got involved, but it wasn't purely that?

MR MUIR: No, no. Again, you were talking about the service level agreement and what I am saying is that, when the lawyers started getting involved, it started to move away from, or I felt it was starting to move away, from the kind of partnership approach and it was becoming a bit more polarised to a certain extent. I didn't think that was unrecoverable. I thought we could recover that. What I am saying is that things like the SLA seemed to be thrown to the side because of other things that happened rather than because the SLA failed.

MR GARRETT: What involvement did you have in the drafting of the Bus Strategy?

MR MUIR: In essence, I made comments on it.

MR GARRETT: Who drafted it?

MR MUIR: Deputy Crowcroft.

MR GARRETT: Is it normal for a politician to draft a document like that?

MR MUIR: It's not unheard of, but ----

MR GARRETT: That is not the question I asked. Is it normal? Is it common?

MR MUIR: It is not. I wouldn't have said it was normal in Public Services, no.

MR GARRETT: Why would he suddenly do something like that?

MR MUIR: You would have to ask him.

MR GARRETT: You are not aware of any explanation that was ever offered as to why this document suddenly materialised?

MR MUIR: I think there was a question that the Committee was keen to have a Bus Strategy developed and I think that Deputy Crowcroft had some ideas that he wanted to take forward, so he started developing the Bus Strategy and passed it to the Department and also Roger Childs from Halcrow was brought in to have a look at it and I think OXERA were asked to comment on it as well.

MR GARRETT: Was the strategy fully costed or was it purely a document of words?

MR MUIR: The actual one that went to the States, it obviously couldn't be costed until we knew exactly what the outcome of the tendering process was going to be.

MR GARRETT: I disagree with you, because Halcrow have produced a shadow tender.

MR MUIR: Yes.

MR GARRETT: I am not sure how long that process took, but I can't imagine it would have been too challenging to an organisation like Halcrow. Clearly there was an idea of what kind of service was required, and I would have thought they could have produced some reasonably accurate figures and then done some projections over five to seven years to give you an idea as to what it was going to cost.

MR MUIR: You would have had to have known what the passenger usage was -- a lot of activity information that wasn't available to us.

MR GARRETT: But Halcrow didn't have that information apparently when they produced their shadow bid, their shadow tender.

MR MUIR: The shadow tender was purely in the case of how much it would cost to actually operate the service, how much the operator's cost would be. There was nothing about income. Clearly what the States was interested in, what the Treasury was interested in, was what the net outgoing from the States was going to be. So you have got the cost of the bus operation, you have also got the fare income and plus, if you want to put in additional services, you have to know "Well, is that service going to affect another service which is operating?" and how will you relate the amount of passenger usage to it. There are also things like other parts of the States' traffic policies. If you put up parking charges, you may have to put more buses on because you might encourage more people on to the buses. So you then have to gauge is the existing service going to provide sufficient capacity or are you going to have to provide additional buses. So there were a lot of questions that you have to go through to do that.

MR GARRETT: I hear what you are saying, but do you think that if, with a little time, it would have been quite feasible for an organisation like Halcrow to have, without infringing Jersey Bus at all in terms of accessing confidential information, actually got the information together on possible passenger demand and so forth?

MR MUIR: It wouldn't have been a little time; it would have been a fairly reasonable time. It would have been possible to gauge some idea of what existing usage was. You could also do other

types of surveys, stated preference surveys and the like, which we actually did in '92, to try and gauge how many people, or what would make people make different choices about their travel arrangements.

MR GARRETT: So it is possible?

MR MUIR: It is possible.

MR GARRETT: I am trying to understand why the process was rushed and time wasn't devoted to actually gather all the information to make the process run smoothly so that complete information would have been presented to the States, so that the tenderers would have had access to detailed information, which would have prevented some of the problems that arose later on capacity and so forth. Why wasn't time taken out to make sure that all the information was available?

MR MUIR: Well, I think that what happened was originally it was all going to be done, the Bus Strategy would be based on working with the existing operator and developing a service level agreement and introducing a service level agreement that would last for five years or whatever and, at the end of that five years, you would then go out to tender based on the information that you would have gathered during that particular five years.

MR GARRETT: What changed?

MR MUIR: I think what changed was that there was a change of direction.

MR GARRETT: Who prompted that?

MR MUIR: I think there was a breakdown between Jersey Bus and ---

MR GARRETT: That is not what I asked. I asked who prompted that change of direction, specifically which person prompted that change of direction?

MR MUIR: I don't know that there was a person who did that.

MR GARRETT: Broadly, was it the Committee?

MR MUIR: I think it was because there was a problem between the Committee and Jersey Bus that arose because of certain decisions that were being made.

MR GARRETT: Okay, so the next logical question is why did that situation arise? You said, you know, difficulties and so forth, but what was specific? What was going wrong?

MR MUIR: I think what was going wrong was that, while the Committee had hoped to go forward with the service level agreement, there was constant pressure from Jersey Bus to come up with subsidies and the Committee wasn't in a position to come up with subsidies and, as a result, Jersey Bus would decide "We're going to drop services" and I think that the Committee felt that there had to come a point where they had to go in a different direction.

MR GARRETT: So you are saying that it is purely Jersey Bus' fault?

MR MUIR: I never said that it was just Jersey Bus' fault. I think it is the way that it ended up coming out. **(Pause)**

MR GARRETT: There was a political group which was set up to, I don't know, drive the service level agreement activities. Who was chairing that? Do you know?

MR MUIR: Which group is that?

MR GARRETT: There was a group set up to drive ... it wasn't the Steering Group. I think it was the ... I am trying to think of the name that they gave it. **(Pause)** It was just known as a working group.

MR MUIR: Yes.

MR GARRETT: Who chaired that?

MR MUIR: It would have been Simon Crowcroft.

MR GARRETT: Right. And what was your relationship with them at the time? Were you working with them? Were you involved in that project at all?

MR MUIR: I was involved in respect of developing what I would call the operational aspects of the SLA.

MR GARRETT: Did you attend their meetings?

MR MUIR: I actually only recall one meeting that we were at with Jersey Bus.

MR GARRETT: But were there other meetings where the group just met in isolation?

MR MUIR: I actually don't recall the group meeting, but that is probably ----

MR GARRETT: So a group was set up to progress the service level agreement and what you are telling me is that they only held one meeting.

MR MUIR: I'm not sure that it was ... I'm not sure that it turned out that it was necessarily a group.

I think it was people who had to be reported to in respect of progress on the service level agreement so that they could then, as I say, report to the Committee.

MR GARRETT: Who else was on the Committee besides Simon Crowcroft?

MR MUIR: This is in 2000?

MR GARRETT: Yes.

MR MUIR: Celia Scott Warren, I think ... I honestly can't recall the ones who were on there. I think Gerard Baudains. Was Gerard Baudains on it?

MR GARRETT: I don't know. Were you closer to the Bus Strategy Steering Group and did that meet more often?

MR MUIR: It did meet more often, yes.

MR GARRETT: And is the Transport Strategy Task Force a derivative of the Steering Group?

MR MUIR: No.

MR GARRETT: No. It is completely divorced and something new?

MR MUIR: Yes.

MR GARRETT: In relation to your relationship with Halcrow, when they were brought on the scene, were they reporting to you or was it a sort of partnership enterprise?

MR MUIR: Halcrow were brought on board to look at ... well, Roger Childs was brought on board to look at the draft Bus Strategy. That was basically Roger advising the Committee and I think I contacted him about a few things. My main relationship with Roger and Halcrow kicked off when the decision was made that they would be going for tendering, which was after the Bus Strategy.

MR GARRETT: Right.

MR MUIR: It was agreed by the States by then.

MR GARRETT: If I could rewind for a moment back into history, in my research I found some correspondence dating from May 2000 making references to "*doing a Condor*" on Jersey Bus. What was that about?

MR MUIR: Um, I think the expression was used in a letter or an email.

MR GARRETT: There were several items of correspondence on the subject.

MR MUIR: Um, I think the expression was that Condor had more or less been looked upon as not providing the services that were wanted by the Island and so, therefore, the Jersey Transport Authority put the services out to tender. When the tenders come back in, Condor actually won the tender and their services actually improved. So, therefore, I think there was a term where “*doing a Condor*” was in essence, I would say, putting the work out to tender.

MR GARRETT: So as early as May 2000, people in your Department and the politicians were fairly determined to go down the competitive tendering route?

MR MUIR: That expression did not come from the Department.

MR GARRETT: I will check on that. It certainly appears in some of your correspondence.

MR MUIR: It is quoting. I think you will find it is in quotes.

MR GARRETT: Right. Who did come up with the phrase?

MR MUIR: I believe it was in an email between the President and the SG, the Solicitor General.

MR GARRETT: Oh right. I saw some correspondence with Harbours or somebody.

MR MUIR: Perhaps, I don't know. If you know where it is, I can have a look.

MR GARRETT: It is not important, but the point I am making is that, in May 2000, there was at that stage a determined effort, commitment, to go down the tendering route.

MR MUIR: I don't believe it was a commitment, certainly not from the Department's point of view, to go down the tendering route at that time.

MR GARRETT: Maybe not from the Department, but I am talking about politically.

MR MUIR: But I can't speak politically. I can only ----

MR GARRETT: You are not aware of any ----

MR MUIR: I can only speak about the advice that would be going from the Department, and the advice from the Department at the time was that we should be developing an SLA with the existing operator.

MR GARRETT: That's fine, but if there is a subplot going on almost behind your back, you could find yourself being undermined in that, and certainly any efforts that you had made to try to develop a service level agreement, which is based, in my experience, very much on a partnership approach to the development of a single document that everybody signs up to, that is not going

to be achieved if behind the scenes other steps are being taken which are likely to antagonise and seriously upset Jersey Bus.

MR MUIR: Well, again, I can only comment on the approach that the Department has taken. If, as the case might have been -- and this is where I clearly honestly don't recall exactly where it came from, but I do recall being asked to contact the Solicitor General because the advice I was giving to the Committee was that the legislation that was around at that particular time would not enable the Committee to enter into things like tendering or SLAs or whatever with the existing operator. The law would have to be changed and I, therefore, would have to check out with the Solicitor General exactly what would need to be done and would it be possible to do it within the existing legislation.

MR GARRETT: I think I picked up some correspondence. I don't know whether it was from you, but somebody was in touch with the harbour master of the day, or deputy harbour master, exploring the legislation which they had used or thought about using when they did their exercise, which is how it came into being. Moving forwards to December 2000, I noticed from an Act of the Public Services Committee that there is a comment there on the "*considerable opposition to the company*", that is JMT, Jersey Bus, "*both within the States and among the general public*". Do you know what that was about?

MR MUIR: I don't recall ... Without actually having a look, I'm not actually sure what was going on there, but, I mean, there had been ... I mean, I think even the people from Jersey Bus would admit that there was constant pressure on them from certain members of the public, saying that they were old fashioned, that their buses were old and that they weren't accessible and things like that.

MR GARRETT: Can I come in on that point? Would you accept that it is difficult for Jersey Bus to contemplate investment in new fleet when they were only being offered a one year contract all the time?

MR MUIR: Yes.

MR GARRETT: So it is not necessarily event making.

MR MUIR: I didn't say it was event making, I was just saying ----

MR GARRETT: No, but I wanted to clarify that point.

MR MUIR: But I want to clarify that this wasn't news to the Committee of that day. This was something that had been happening with Jersey Bus, I think, perhaps ever since I had arrived on the Island. I mean, I had actually been a passenger on Jersey Bus for years and appreciated that they ran a timeous service that was actually run to the timetable and all the rest of it, but, in essence, there were quite a lot of people out there who expected a far superior bus service to what was being offered and there was quite a lot of political support for including that.

You had situations. I mean, I live in St. John. I know that the bus, particularly during the winter, the last bus used to be something like about a quarter past six. There was no evening service. People in St. John, residents of St. John and some people were in Trinity were envious of the fact that people in Gorey and people in St. Brelades had an evening service up to midnight, but there was just not enough people in St. John and Trinity to keep a bus service going up there.

MR GARRETT: Do you think somebody lost the PR battle there to possibly make sure that people were aware so that opposition would have vaporised to a certain extent?

MR MUIR: I think that the PR exercises that are actually run in the Island are quite often ... well, you are started to get my opinion now.

MR GARRETT: But your opinions are valid.

MR MUIR: No, no, because I will upset Mr McRandle.

MR GARRETT: I don't think you would upset him. Seriously, do you think the PR battle was lost? Do you think from that point, either from May or certainly there was a clear expression in December of opposition to Jersey Bus, do you think that really the progress towards a competitive tendering process and ultimately the replacement of Jersey Bus by Connex or whoever picked up a momentum all of its own because there was this view, starting in December, May or December 2000, that really Jersey Bus was a problem? I mean, do you think that it was a well founded view, or do you think it could have been turned around?

MR MUIR: I would still say that the Officers felt that working with the existing operator was likely to turn out to give a better chance of things happening. However, there came a point where the

demands of Jersey Bus and the demands of the Committee, the States just didn't come together.

MR GARRETT: Did you express your views that you felt that Jersey Bus was a good option for the future?

MR MUIR: Provided we could get a service level agreement that was acceptable and that ultimately we could get a model for funding that that was acceptable to the States.

MR GARRETT: Do you mean you actually told your political masters that you felt that really Jersey Bus wasn't such a bad option for the future providing it was handled properly?

MR MUIR: I think the Department had always taken that view, yes.

MR GARRETT: I actually noticed that, in January 2001, the Public Services Committee actually considered a draft proposition outlining the future Bus Strategy. So I assume that either Simon Crowcroft or somebody actually started the process by then.

MR MUIR: Yes.

MR GARRETT: So, sorry, the service level agreement discussions hadn't really got going by then, had they?

MR MUIR: Sorry, in January 2001?

MR GARRETT: January 2001.

MR MUIR: The service level agreement had actually been all drafted up in the previous year. We had actually started in the previous year.

MR GARRETT: But hadn't there been a complete breakdown by then?

MR MUIR: I think I mentioned earlier on that I don't think the breakdown ... I mean, Jersey Bus may have their view on it, but I don't think the breakdown was actually in respect of the service level agreement. I think the breakdown came because there was the Hoppa bus situation in the summer of 2000. I think, I believe, that the draft that you are talking about was still talking along the lines of a service level agreement with Jersey Bus.

MR GARRETT: Right. That was a point I wanted to raise with you, whether or not that you knew that the draft that was brought into play early in 2001 was focused on competitive tendering and so forth, or was there ----

MR MUIR: Eventually.

MR GARRETT: Eventually, so it actually changed form.

MR MUIR: Yes. The one ... again, I would need to check, but I'm fairly sure that the initial draft of the Bus Strategy was on the basis of agreeing a service level agreement with the existing operator and then, over a period of time, the buses would be put out to tender. As I say, I can't, without actually going back and looking at all the stuff, remember what the time frame was, but we were probably talking about an SLA that would last for three to five years and, during that three to five years, we would build up a picture of exactly what was happening in terms of what buses were in the Island; would be able to develop new routes; we would be able to develop new packages, new products that would then meet what the Island's need was; and, at the end of that period of time, it would be a question of putting it out to tender with full information so that all people who were going to tender would know exactly what they were tendering on.

MR GARRETT: I am going to ask you to apply hindsight, and I appreciate how fraught is, but, bearing in mind everything that has happened since, do you wish that people had followed that line?

MR MUIR: I don't think I should answer questions about hindsight. **(Pause)**

MR GARRETT: At one stage there was quite a discussion about the requirement for an open book policy. I have touched on it before, about the work of Mr Griffiths. Do you know exactly who started that process? Was it a political requirement or was it something that really the origins of which are a bit of a mystery?

MR MUIR: Open book?

MR GARRETT: Open book.

MR MUIR: Well, I think this was purely because over the years this had come up a number of times when it was speaking about the licence applications. Again, the law as it was written required the operator or operators -- there could have been more than one operator -- to apply for a licence to operate on the Island. Clearly it was becoming difficult and people were making demands -- "Why aren't you putting on new buses? Why aren't you doing this thing and this thing?" Again, to be fair to Jersey Bus they were saying "We are not getting the money through. We need to have more in the way of support." Therefore, in essence, it was meaning there would have to be

some subsidy of some sort. That was what was spoken about. It was actually seeing if we could go forward with a subsidy.

MR GARRETT: Can I say that I can fully understand the requirement for an open book policy in relation to the Jersey Bus bus operation.

MR MUIR: Yes.

MR GARRETT: And because of the relationship with Tantivy, in terms of the school bus service, some overview of their accounts as well.

MR MUIR: Yes.

MR GARRETT: What I am trying to find out, because I think it is a crucial issue because I think it really had a bearing on what happened later, is who set the demand for the additional financial information of Boardwalk Café, Living Legend and everything else. Where did that come from?

MR MUIR: I believe it would have come from discussions that would have been had with the Treasury.

MR GARRETT: Right. I am not asking for hindsight, but can you think of any justification for requiring that information?

MR MUIR: Certainly Tantivy Blue Coach.

MR GARRETT: I can understand that.

MR MUIR: But you also had a situation where there were certainly some routes that were operating to the sites of Jersey Bus associated companies.

MR GARRETT: The Living Legend is one example of that. Bearing in mind that I don't know what rate it is in the tourism list, do you think that is unreasonable, that the bus service should provide a bus to get visitors to a major sort of tourist site?

MR MUIR: I think the bus should go to the major tourist sites.

MR GARRETT: Similarly, Boardwalk Café is at a beach which is a very popular beach? You couldn't really blame Jersey Bus for not putting on a bus to that beach. The fact that they have got a bus interest there really is probably neither here nor there in terms of their bus operation.

MR MUIR: Hmm. **(Pause)**

MR GARRETT: Do you know, bearing in mind the breadth of the open book policy demand that

was applied to Jersey Bus, has a similar demand been made of Connex? Does anybody want to look at the books of Connex to see if there is any cross-fertilisation or cross-subsidy from the Jersey operation to support any other Connex operations anywhere else?

MR MUIR: I think that Connex have got to supply all their accounts and any other information that they have been asked to supply.

MR GARRETT: But that is confined to Jersey, as I understand it.

MR MUIR: Sorry?

MR GARRETT: That is confined to the Jersey bus operation.

MR MUIR: Yes.

MR GARRETT: Right. But if Connex (and I don't know that they have) have any business interests elsewhere, non-bus related in Jersey, nobody is looking for accounts on those business interests and, similarly, nobody is looking to see whether or not the Jersey operation is supporting Connex London or wherever. Nobody is making demands, broad demands, for Connex to produce that kind of financial information that you are aware of?

MR MUIR: Not that I'm aware of, no.

MR GARRETT: Thank you. I noticed that, on 19th July 2001, there was a risk workshop put together. Did you participate in that exercise?

MR MUIR: [nods]

MR GARRETT: Can you recall what was the range of risks? I don't want to get into too much detail, but was it a fruitful exercise?

MR MUIR: It was, yes.

MR GARRETT: Okay. What happened after the exercise where the risks were identified? What did you do to convert the risk analysis operation into some meaningful piece of work that would protect you and the Committee from anything that, you know, might go wrong? Is there a document that sets out an action plan to safeguard you, the Committee and the future move towards the bus tendering operation from some of the pitfalls that were identified in that risk workshop?

MR MUIR: I think there was an action plan actually produced at the risk workshop. I think

unfortunately there were a number of risks that were difficult to manage at all.

MR GARRETT: I'm not sure that we have got a complete set of documentation on that. I have seen the actual references to the risk workshop, but I don't know that I have actually got anything that suggests that it was converted into something like an action plan.

MR MUIR: There was an output from the risk workshop that actually identified this and who would be responsible and what would be done.

MR GARRETT: Yes, I have seen that bit, but was it taken forwards beyond that to some kind of monitoring process to, say, if you were tasked to prevent some form of disaster, did anybody ever check to make sure you were doing it?

MR MUIR: Um, I wouldn't have said there was a regular monitoring of it.

MR GARRETT: Because I think one of the risks that was identified in there was the threat of competition opening up in opposition to a new service provider, which is exactly what happened when Easylink came on the scene.

MR MUIR: Yes, but the law, one of the things was to change the law, right?

MR GARRETT: Right.

MR MUIR: And the law was changed and when Easylink actually went into operation, it was actually found that it wasn't operating legally, so, in essence, the situation was dealt with. Unfortunately, perhaps, the fact that what turned out to be an illegal operation was allowed to go on over the summer, that is how Easylink survived.

MR GARRETT: But would you not say, digressing for a moment, that in fact the Easylink service filled a bit of a slot that was missing at that time, particularly with regard to capacity?

MR MUIR: The capacity was up to the contractor to actually provide that.

MR GARRETT: But I'm not sure that he was at that stage. Would you agree?

MR MUIR: Sorry?

MR GARRETT: Would you say that he was at that stage providing the capacity that was required?

MR MUIR: Well, to my mind, that is a hypothetical question because we would never find out because Easylink was operating.

MR GARRETT: We will move away from that because we have heard differing views on that issue. Moving specifically towards the legislation, the amendments to the legislation, in your rôle were you actually responsible for driving that issue forward?

MR MUIR: Yes.

MR GARRETT: Okay. Can you just outline the process that you went through from presumably the approval of the Strategy through to ... did you draft some initial documents and then what happened after that? Can you just sort of run us through the process?

MR MUIR: In essence, there were some interim things that had to be done so that the Committee could keep going with its general business. So there were some preliminary changes made to the Motor Traffic Law at the outset and then we made up a list of what things would have to be done and we drafted in the help of Andium Limited to review the existing law on the basis of that briefing note plus the correspondence we had previously had with the Solicitor General and the like about how we would be able to remodel the law to allow things like tendering. That was actually then, as I say, given to Andium Limited.

Andium Limited, I had several meetings with them, where they also met the President. They met -- what do you call them -- the Competition Authority. They met the Law Draftsmen. But, in essence, Andium Limited drew up the basic bones of how we should change the law and then, once the Committee had actually approved how the law was going to go forward -- because obviously there were options as to whether you wanted to totally deregulate, whether you want to more or less carry on on a similar line as we do or at the minute, or whether you wanted to make a completely different authority involved -- there was a decision made to carry on with the Committee more or less being the authority. Andium then drew up the law drafting instructions that were then passed to the Law Draftsmen.

MR GARRETT: What was the chronology there? Approval of the Strategy and roughly what happened next and when?

MR MUIR: I think it was round about September time. No, I beg your pardon, it was before that. It was more or less as soon as the Strategy was approved. Again, I think there was a ... I think I put a chronology out for that one as well. I think it was round about the middle of the summer. I

would need to check. I would need to check. Sorry.

MR GARRETT: My colleague may come back on this issue. (**Mr Garrett and Mr Shephard conferred**) Do you know why eventually the legislation was not in place by the time the tendering process was initiated?

MR MUIR: Sorry, why the?

MR GARRETT: I said at the time the tendering process was initiated, but by the time the tendering process was completed, why was the law not in place? (**Pause**) I know there was a delay because the States' sitting was cancelled on one occasion because of the death of the Queen Mother, but the law wasn't there.

MR MUIR: Sorry, well, the law was in place by the time the tendering process was completed.

MR GARRETT: Is it not the case that the tendering process had to be delayed so that the law could be put in place?

MR MUIR: The initial tendering process took place and it was running in parallel with the amendments to the legislation.

MR GARRETT: Right, but then there was a meeting, I think, on 15th March with presentations.

MR MUIR: Yes.

MR GARRETT: And then nothing happened until the beginning of May.

MR MUIR: That is right, because we were waiting on the law actually being in place.

MR GARRETT: Right. That is what I was getting at.

MR MUIR: Yes.

MR GARRETT: Why had that situation arisen? Do you know? Is there a logical reason?

MR MUIR: I think the logical reason was that when the States voted for the Bus Strategy they actually asked for the law to be changed and the tendering to go ahead. I think, because the States had actually asked for tendering to go ahead, that is why we went ahead with it.

MR GARRETT: I am concerned about why the law got sort of hung up a bit.

MR MUIR: Why the law got hung up a bit?

MR GARRETT: Well, why wasn't it there? Immediately after 15th March, why wasn't it there to allow the Committee to proceed?

MR MUIR: I think basically, again, it was the pressures of time on the law drafting side of things.

MR GARRETT: Okay. Do you accept that the tender documents that were issued in January 2002 highlighted an agreement from August 2001 where the States gave an undertaking to the union regarding the preservation of terms and conditions of employment? In the first instance, can you explain why Mr Shenton became involved in that issue?

MR MUIR: I honestly don't know. I wasn't actually in the Island when it happened.

MR GARRETT: You were on leave, were you?

MR MUIR: Yes.

MR GARRETT: So you could offer no explanation as to why Mr Shenton indicated that he was appalled by the situation that he found in the way in which the matter was being dealt with?

MR MUIR: No.

MR GARRETT: In your absence at that time, who would have deputised for you?

MR MUIR: It wasn't a question of somebody deputising. Well, Clive Swinnerton was the person who was actually handling the issues, I believe, at that time, either Clive or John.

MR GARRETT: To your knowledge, when that agreement was struck, did anybody stipulate that wage negotiations for the following year, scheduled for February and March, would be put on hold pending the appointment of a new operator?

MR MUIR: Sorry, can you repeat that?

MR GARRETT: When the States agreed to preserve the terms and conditions of employment for bus drivers and support staff, did anybody say or indicate that the wage negotiations scheduled for the following spring should be put on hold until the new operator was in place?

MR MUIR: I don't know. All I knew was that when I come back there was this agreement that actually said that, that it would go in the tender documents based on the conditions that existed in August 2001.

MR GARRETT: But nobody said "No more pay rises", to your knowledge, "until the new operator is in place"?

MR MUIR: Not to my knowledge, no.

MR GARRETT: Did anybody give any explicit instructions to Jersey Bus or the union limiting

their pay negotiations to cost of living increases?

MR MUIR: Who could?

MR GARRETT: That couldn't be done?

MR MUIR: I wouldn't have thought so. I mean, you had an agreement that was between the employee and the employer. I wouldn't have thought the States would be able to interfere in that. I can only assume that when Senator Shenton, or maybe he was just Mr Shenton ----

MR GARRETT: He was Mr Shenton at the time.

MR MUIR: When Mr Shenton was brokering that, that must have been what was wanted at the time by the Jersey Bus drivers.

MR GARRETT: This is an important point. You are not aware of any instruction being issued anywhere by anybody to say "Listen, Jersey Bus and Transport and General Workers' Union, you are only allowed to negotiate a pure cost of living increase in the spring of 2002"? Nobody issued that instruction?

MR MUIR: I'm only aware of the agreement. **(Sound of car passing by)**

MR GARRETT: Sorry, we got interrupted.

MR MUIR: I'm only aware of the agreement.

MR GARRETT: Fine. **(Pause)** At any stage during the tendering process, did you or indeed anybody else at Public Services supply documents to Halcrow or any of the tenderers or any other interested parties setting out the terms and conditions of employment that applied to Jersey Bus staff at that stage?

MR MUIR: I sent the ... having got the agreement of both Jersey Bus and the Transport and General Workers' Union to include the details of existing agreements in the tender documents, I forwarded those to Halcrow to issue them to the tenderers in confidence.

MR GARRETT: And what were those terms and conditions? Was that purely in relation to pay? Did you have access to some kind of manual providing what I would refer to as the sort of softer side of terms and conditions of employment -- annual leave entitlement, grievance procedures, disciplinary procedures and all those manner of things? Did you have access to that material or were the details that you circulated purely focused on pay?

MR MUIR: The details that I circulated were the details that were provided by Jersey Bus on behalf of their drivers with the acknowledgement of the Transport and General Workers' Union.

MR GARRETT: But that was purely pay?

MR MUIR: Well, those were the details that were given to me. I asked for the information that was supposedly part of the agreement with Mr Shenton in August 2001 and that is the stuff that I forwarded to Halcrow.

MR GARRETT: Sorry, I do need clarity on this. The material that you were given focused on pay? You never got to receive the manual that sort of covered the other bits?

MR MUIR: I never received the manual, no.

MR GARRETT: No.

MR MUIR: I only received the stuff that Jersey Bus sent to us.

MR GARRETT: Do you know who was responsible for actually ensuring that the agreement that was brokered by Mr Shenton was carried through into fruition? Who actually ... was somebody told or was it just assumed that Connex would pick it up and run with it when they were appointed?

MR MUIR: Connex, the same as all the rest of the tenderers, were told that this was the agreement that was in place and that they would be expected to honour that agreement.

MR GARRETT: But nobody actually was told to make sure that it happened?

MR MUIR: No.

MR GARRETT: Because it had been quite an important feature, as I understand it, at that time. It certainly had been contentious at one point. So nobody was told to run with it and make sure that it happened?

MR MUIR: I'm not sure if I follow what you are actually saying, because it was part of the tendering process and it was part of the contract.

MR GARRETT: The point I am coming to is that when Connex opened their bidding with Transport and General Workers' Union, they offered something a little less than what Jersey Bus staff were expecting and what I am trying to do is find out why that happened.

MR MUIR: Compared to the August agreement?

MR GARRETT: Bearing in mind that the only material that seemed to have been circulated focused really on pay, I don't think pay was the issue. I think it was the other softer bits. As I said, what I am trying to do is to find out why that situation arose, because, again, there was an opportunity there for things to go wrong and certainly an opportunity for Connex to get it seriously wrong with the potential staff by not offering them a comparable deal on terms and conditions of employment. What I am trying to establish is how that situation arose. Was anybody tasked to actually progress it, oversee it and make sure that it happened or was it just simply assumed that Connex would pick it up and run with it?

MR MUIR: I think it was just basically that is what the agreement was that was made between the States and the manual workers. That was to be incorporated in the tender documents and, therefore, whoever the operators were that were chosen had to honour that. Now, I don't recall the Transport and General Workers' Union actually contacting anybody to say that Connex were not honouring that.

MR GARRETT: They got there in the end, but my understanding is that it was about three days before Connex went live.

MR MUIR: Well, my understanding is that the agreement made was not the agreement of August.

MR GARRETT: Certainly on the pay issue that had moved forwards, but my understanding is that there were some fairly interesting negotiations between representatives of the Transport and General Workers' Union and Connex to take the process forwards from the initial offering to the contract of employment that the TGWU were happy for staff to sign up to.

MR MUIR: Well, all I would say is that we would have to have informed the bidders of what these conditions were. All that they had were the conditions that we had actually asked from Jersey Bus. So if there were other conditions, those weren't passed to us to pass on to the bidders.

MR GARRETT: Right. In a report which I think you drafted -- it ultimately got the term RC53/2003, which is December 2003.

MR MUIR: Hmm hmm.

MR GARRETT: **That** one.

MR MUIR: Right.

MR GARRETT: Is **that** one yours?

MR MUIR: I would have contributed to it.

MR GARRETT: Contributed to it?

MR MUIR: Yes.

MR GARRETT: What I am trying to find out is who the author was.

MR MUIR: There will be several contributions to that.

MR GARRETT: Who else contributed to it?

MR MUIR: Well, is that not the one ----

MR GARRETT: This is the annual report on the public bus transport/school bus service for the first year of the Connex bus service.

MR MUIR: So myself, I would have contributed to it and my colleague would have contributed to it.

MR GARRETT: Your colleague, who is that?

MR MUIR: Well, my colleagues would actually contribute to it. I would have ... there would be Mike Collier would contribute it, people from Finance would contribute to it and then plainly the Committee would contribute to it as well because it is the Committee's report.

MR GARRETT: In there, there is a comment about the changeover of staff, other than logistical difficulties, meant that commuters experienced some loss of service in the first days. Were you responsible for that comment?

MR MUIR: I don't believe I was, no.

MR GARRETT: Do you know who was?

MR MUIR: Probably Mike.

MR GARRETT: Did anybody from the Department actually spend time at the Weighbridge or out on the streets of the Island looking at the first few days of operation?

MR MUIR: Yeah.

MR GARRETT: You spent time there?

MR MUIR: No, Mike did.

MR GARRETT: Mike did, and it is those observations that formed the basis of his comments, you assume?

MR MUIR: [nods]

MR GARRETT: Do you know ultimately whether the staff ... I said before that there was a contract there, but it was three days before the process went live. Are you confident from any enquiries that you made that the staff were happy that they had got exactly the same deal as they had been working to with Jersey Bus or would Mike Collier have been responsible for just commenting on any issues like that?

MR MUIR: Um, I'm not aware of the Transport and General Workers' Union contacting the Department to say they are not happy with their performance.

MR GARRETT: And you are not aware of any significant changes being made to their terms and conditions of employment? There were no moans, groans or discontent that you are aware of?

MR MUIR: I wasn't aware of there being any.

MR GARRETT: Do you know what happened after Connex was appointed? I mean, it is great on day one. The terms and conditions of employment are there as per 2001, but did they stick to that, to your knowledge, or did they immediately set about trying to change the terms and conditions of employment, to your knowledge? **(Pause)**

MR MUIR: I'm sorry, I'm not quite ... what you are asking me?

MR GARRETT: What I am saying is that, in 2002, Connex is appointed. They implement terms and conditions of employment which everybody is happy with because it reflects what Jersey Bus had put in place. What happened after that? Did Connex set about changing the terms and conditions of employment or seek to change the terms and conditions of employment, causing any kind of upset, to your knowledge?

MR MUIR: Not to my knowledge. I appreciate that they were in discussions. My understanding was that the T&G, particularly -- in fact, I am sure there is something somewhere that Mr Kavanagh from the T&G was actually quite impressed with Connex, so the impression from our point of view was that things were going not too badly with Connex.

MR GARRETT: It must be said that from the report that we have heard it would appear that there is little or no discontent because the loss rate on staff appears to be remarkably low and, clearly, if there was serious discontent on that front, I would have thought people would have been

leaving there regularly, but that is not the case.

Moving on to a slightly different area of interest, when the process got rolling and the tendering process really started to heat up, how often did you meet with John Richardson and Halcrow, Mike Collier and everybody that was involved, the complete team that was involved in this process? How often did you meet? Sorry, was John Richardson a regular party to any discussions or was he slightly removed?

MR MUIR: I would keep John informed. Most of it was actually done via email. I don't recall us having ... well, it was quite a short time period, so I don't recall us actually having any significant meetings between the time that the tender documents went out and when the tender documents were returned.

MR GARRETT: Again, don't you think there is an opportunity there for things to go wrong and for issues to be overlooked if you are not actually collectively getting round the table and making sure that everybody is singing from the same hymn sheet?

MR MUIR: Well, we seemed to be keeping up to date with each other by email. I mean, we were in contact virtually daily.

MR GARRETT: As you were progressing along this path, did Halcrow send you copies of the tender documents that were going to be issued?

MR MUIR: We got copies before they were sent out and we made some comments on that. They then sent us copies of the documents that were sent out. The initial documents were sent out, the letter of invitation and the specification. I pointed out to them that one of the documents that they had sent out was in fact the wrong document, that the timetable information was wrong, and that they would have to reissue that. There were also changes to the conditions of contract. The way the conditions of contract were put together, we issued comments on that.

MR GARRETT: I am particularly interested in the conditions of contract. What changes or what deficiencies had you identified in the conditions of contract that they had issued?

MR MUIR: There were a number of drafting things in respect of, you know, who it was who was actually, shall we say, the contracting parties and there were a few other issues, but that was all done along with the Law Officers. The Law Officers actually commented on the conditions of

contract.

MR GARRETT: They weren't massive issues?

MR MUIR: No. (Pause)

MR GARRETT: Although you used the word "we" quite frequently, would it be reasonable to say that you looked -- specifically you looked -- at the documentation and you examined the conditions of contract?

MR MUIR: On behalf of the Department?

MR GARRETT: Yes.

MR MUIR: But it was also looked at by the Law Officers.

MR GARRETT: In that process, did you become familiar with the section of the conditions of contract referred to as "*Contractor to inform himself fully*"?

MR MUIR: Yes.

MR GARRETT: In my analysis, I have actually broken it down into four component parts. The first bit is: "*The Contractor shall satisfy himself that the information, including documentation provided by The States, is adequate and will not prejudice the performance of any of the Contractor's obligations under the Contract.*" My understanding of that is, if you are issued with a document, it is your duty to examine that document and be satisfied with the content.

Then the second part kicks in. It says: "*The Contractor shall inform The States immediately of any inadequacy whereupon The States shall make good the inadequacy to the reasonable satisfaction of the Contractor.*" So if the contractor, the tenderer, has concerns about anything that has been issued in the process, the obligation is on the contractor, the tenderer, to come back and query that, yes?

MR MUIR: Hmm hmm.

MR GARRETT: Okay. The third section is: "*The Contractor shall be deemed to have examined the requirements specified and these conditions*", which is fairly self-evident.

Then you come to a fourth section: "*No claim from the Contractor for additional payment will be allowed on the grounds of misinterpretation of any matter relating to the requirements specified in these conditions on which the Contractor could reasonably have*

satisfied himself.” My understanding of that would be that, if you have received a document, you have examined it and you haven’t come back to seek clarification on the issue, please don’t come to the States to look for more money on any issue that you could have reasonably satisfied on yourself through asking questions. Is that a reasonable interpretation of that provision?

MR MUIR: I think that is the layman’s interpretation of the provision. I think a lawyer would have a slightly different view, otherwise we wouldn’t have lawyers.

MR GARRETT: Indeed. But I’m a layman.

MR MUIR: So am I.

MR GARRETT: I have a lawyer here. Do you accept that Mike Cotillard sent a copy of the Transport and General Workers’ Union letter to Halcrow on 12th February?

MR MUIR: I do now.

MR GARRETT: Do you agree that that letter included clear reference to the shift allowance?

MR MUIR: The shift allowance claim, yes.

MR GARRETT: Yes. The whole thing was a claim, wasn’t it? It was a wage claim.

MR MUIR: Yes.

MR GARRETT: From the evidence which was available, are you content that Halcrow immediately circulated that material to all of the tenderers on 12th February?

MR MUIR: I am, yes, now.

MR GARRETT: Is there any question in your mind whether the tenderers actually received that material? **(Pause)**

MR MUIR: Um, obviously I haven’t seen all of the evidence for all of the tenderers, but I’m clear that we have actually checked with each of the ones who were on the ... each of the five tenderers who actually tendered and they all accept that they had received that.

MR GARRETT: My understanding is that it was sent by email and fax, so it would have been unusual for them not to have received it. Following the circulation of that material, I know it was probably not the way that it should have been done, but did any of the tenderers come back to you to seek clarification on any of the issues that were outlined in *Bulletin 2*, including the letter from the Transport and General Workers’ Union?

MR MUIR: Absolutely not.

MR GARRETT: From your contact with Halcrow, do you know whether any of the tenderers got in touch with them to seek clarification on that material?

MR MUIR: I'm not aware of there being any.

MR GARRETT: Going back to my layman's interpretation of that section of the contract, would you accept that in the absence ... no, to go back, bear in mind the evidence that people clearly received the material and there is no evidence to suggest that they queried it, questioned it, challenged it, would it be fair to say that they must therefore have acknowledged and accepted it?

MR MUIR: Accepted what, accepted that the claim would be met?

MR GARRETT: No, accepted the material.

MR MUIR: They accepted the material, yes.

MR GARRETT: Okay. From that point, would you say, would you agree, that any tenderer was faced with an interesting commercial decision: include details of that shift allowance in their tender and risk that their tender would be high or exclude it, assuming that the claim would not be met or that it would be negotiated down to a lower level. Would you accept that that is the position that tenderers faced?

MR MUIR: Probably.

MR GARRETT: We have also received evidence that Halcrow sent a copy of the bulletin, together with the TGWU letter, to your office on 12th February. Did you, or indeed did any member of your staff, actually receive that?

MR MUIR: No.

MR GARRETT: Can you explain why?

MR MUIR: I can't explain why, but it was never received in the Department. I think Halcrow actually said that they sent it by email and by post at one point. I don't believe they still insist that they sent it by email.

MR GARRETT: But they do insist that they sent it by post.

MR MUIR: They do insist that they sent it by post, but we have no record of it being received in the

Department. If that had been received in the Department, the normal process is that the letter would come into the Department. I understand that they said it was sent with a compliments slip. The letter would come into the Department, it would be opened by the secretaries, the secretaries would stamp it in, the secretaries would then take a copy of it and put a stamped copy into the file and pass on a copy of the one stamped to whoever was the person that should be receiving it.

MR GARRETT: Quite apart from that process, you don't run a sort of mail register, a handwritten sort of ledger or anything like that?

MR MUIR: My section does. The Department doesn't, but my section does.

MR GARRETT: Have we received a copy of that?

MR MUIR: It's on a computer spreadsheet.

MR GARRETT: But have we received a copy of it?

MR MUIR: No.

MR GARRETT: Why?

MR MUIR: Well, it's not something I would have thought you would have been over interested in.

MR GARRETT: I think it is critical to know what mail came in during this period, bearing in mind the sort of concerns that have been expressed about that issue. I think it is fundamental.

MR MUIR: It is not on that list.

MR GARRETT: Can you forward a copy of your computerised mail register to us, please?

MR MUIR: I can try and make it available to you. It is a fairly big Excel file.

MR GARRETT: Can you not extract a section of it?

MR MUIR: I can try and print it off, yes.

MR SHEPHEARD: If the section covering the whole of February 2002 could be extracted and, whether it is extracted in the form of a print or extracted in the form of a smaller Excel file and emailed to us, we wouldn't complain whichever version we get.

MR MUIR: Okay.

MR GARRETT: Over the last three years or so, between 2001 to, say, 2004, how many pieces of mail have been lost in your section?

MR MUIR: I think that is a difficult question to answer because we don't know if it is lost.

MR GARRETT: But people eventually write back and say “Why haven’t you answered my letter.”

MR MUIR: That is basically why. This goes back to my days before I came to Jersey. Traffic in particular is an area where you tend to get quite a lot of correspondence and, in the past, there have been situations where people have said “I sent you a letter” and, in essence, we had no record of receiving that letter. So that was why I started. First of all, it was a mail book and then we put it on to an Excel sheet, where we try to fill in the mail that is coming in all the time. Now, clearly it depends on people always being able to have the time to fill it in, so there may be gaps in that as well, but, in essence, it tries to record as best we can the mail that comes to the Highways and Traffic Section. We have had situations in the past, where people have said they sent us a particular document and we can go into that and check that we never received it, or there may be a situation where somebody has actually said “I sent you a document and you haven’t responded” and we go and check and we find that we did receive it but it has not been dealt with or something like that.

MR GARRETT: But the system is fallible?

MR MUIR: The system is fallible, yes.

MR GARRETT: Can you just describe the security arrangements in your office, particularly with regard to access to faxed material and so forth? If you are missing from your desk, do people have access to your desk or do they have to get past the secretary first?

MR MUIR: No, they have access to the desk.

MR GARRETT: And that is just your colleagues. Members of the public couldn’t stroll in there?

MR MUIR: No.

MR GARRETT: Okay. Moving forwards ----

MR MUIR: Can I just mention that I believe there have been a few letters. I mean, there are letters that appear to have been in Halcrow’s file that we have not received and, interestingly, the only one that is in Halcrow’s file that says “*Copied to A Muir, States of Jersey*” is that one particular letter that they claim they sent to us. Why would they write on to just that one?

MR GARRETT: I don’t know. I thought that was found somewhere else. I don’t think it was

found in Halcrow's office. I think it was found at one of the tenderers. Somehow a copy that was faxed to one of the tenderers had a note on it saying that it had been faxed to your or sent to you. I don't think it was in Halcrow's office. I don't know. We will return to that later. To your knowledge, did you, or indeed did anybody else within the Public Services Department or Public Services Committee, ever indicate, infer, imply or whatever that Jersey Bus would not be successful in their bid?

MR MUIR: Sorry?

MR GARRETT: I said did anybody ever state, imply, infer or whatever that Jersey Bus would not be successful in their bid during the tendering process?

MR MUIR: No.

MR GARRETT: Not at all? Nobody ever made any kind of statement that "There are problems with Jersey Bus and maybe we shouldn't think of them too highly"?

MR MUIR: I don't recall anything like that.

MR GARRETT: When the tenders were being considered, how did you feel about the relationship between Jersey Bus and the Committee? Did you think it was not conducive to the development of a successful partnership?

MR MUIR: I don't know that that was something that we, the Department, were particularly worried about. We felt that we had put out a straightforward tender document and we would treat the tenders returned as they came in. The view -- not the view, but the process -- was supposed to be done on the best price for the quality being provided. So that was the basis of it. If Jersey Bus had come in with the best price and the best quality provided, then ...

MR GARRETT: Can you explain why it was then that Halcrow made a comment in their evaluation document making it clear that they didn't feel that the situation was conducive to the development of a successful partnership? Clearly Jersey Bus wouldn't have told them that. Who told them?

MR MUIR: Have you actually looked at the ... well, obviously I can't put words into Halcrow's mouth, but Halcrow had actually done quite a lot of discussion with Jersey Bus during the tender period, I believe. I have seen references to being on the phone for hours to Jersey Bus and also

the actual letters that were accompanying Jersey Bus' tender had some what we would call criticisms of the process. So I suspect that Halcrow perhaps ... I shouldn't speculate on behalf of Halcrow, but that may have influenced them.

MR GARRETT: You are not conscious of anybody ever indicating to Halcrow, or indeed anybody else, that there were problems and that the problems between Jersey Bus and the Committee were such that it really was never going to happen, that a partnership would never be achieved?

MR MUIR: Well, I certainly never said that to them and I don't recall anybody else saying it.

MR GARRETT: Were you present when the tenders were opened?

MR MUIR: Yes.

MR GARRETT: And you were there throughout the process?

MR MUIR: Of opening the tenders?

MR GARRETT: Opening the tenders.

MR MUIR: Yes. I actually came in specially for it. I was on leave that day.

MR GARRETT: And who was there from Halcrow?

MR MUIR: Roger Childs and Roger Macklin.

MR GARRETT: Was anybody else from Public Services there?

MR MUIR: John Richardson and Clive Swinnerton.

MR GARRETT: Can you explain the process to us, please?

MR MUIR: I believe we had Jersey Bus' envelope with us because, rather than send it to Birmingham, they delivered it to the offices and we booked it in. Halcrow brought over the other four envelopes, and I can't remember who it was that actually opened them, but I know that I recorded the names and the amounts as they came out. But, in essence, all that happened was that the documents were opened, we identified which operator's tender it was and I put down the amount of compliant tender and, if there was a non-compliant tender, I recorded the amount of the non-compliant tender. And then the list that I had filled in was signed by all the people who were there.

MR GARRETT: How long did the process take?

MR MUIR: Probably no longer than, I don't know, maybe 20 minutes/half an hour.

MR GARRETT: So there was no detailed review of the material at that stage?

MR MUIR: Oh no.

MR GARRETT: Okay. Do you remember on the same occasion Roger Childs or Roger Macklin handing over three what have been referred to as "*brown envelopes*".

MR MUIR: I don't actually recall that, no.

MR GARRETT: Did it not happen, or can you not recall it happening?

MR MUIR: Um, I don't recall it at all.

MR GARRETT: Assuming that he did (and I have got no reason to doubt him), what would have happened to that material?

MR MUIR: Which material?

MR GARRETT: The three brown envelopes.

MR MUIR: It would probably have been booked in, yes.

MR GARRETT: My understanding is that those envelopes contained a complete set of Halcrow documents, everything that they had received and everything that they had generated.

MR MUIR: We have never received any of them.

MR GARRETT: Are you saying that they have given an inaccurate account to us?

MR MUIR: We have never received a full set of documents from Halcrow in one piece.

MR GARRETT: Or three envelopes?

MR MUIR: Or three envelopes. **(Pause)**

MR GARRETT: At the conclusion of the tender opening process, were copies made of the tenders for security reasons if for no other reason?

MR MUIR: No. The tenders were not copied at all.

MR GARRETT: Never?

MR MUIR: No, they were copied only after Halcrow ... Halcrow took all the tenders away and then went round the various companies and eventually we got the tenders back and they then ... we then copied all the tenders for the Bus Strategy Steering Group.

MR GARRETT: What kind of time was that? When did they come back to you, roughly?

MR MUIR: Um, I think ... I may be wrong about this, but I think I may have brought them back on something like 6th or 7th March. I went over to City Airport to meet Roger Childs and Roger Macklin to get their initial views on the tenders.

MR GARRETT: And did they supply you with one master copy and then you copied the rest back here?

MR MUIR: Yes.

MR GARRETT: Right. Did you actually examine the material at that stage?

MR MUIR: Examine the?

MR GARRETT: The tenders.

MR MUIR: Um, the only tenders ... because the recommendation was to reject two of the tenderers, the only ones that I actually had a look at were the three that were the preferred operators.

MR GARRETT: Dunn-Line, Connex and Jersey Bus?

MR MUIR: Yes.

MR GARRETT: Did you look at them in detail?

MR MUIR: Um, not ... well, it depends on what you call detail. I had a look through them just to see that everything was as ... well, let us put it this way, I checked the arithmetic. I also had a quick scan through what they were proposing to actually provide.

MR GARRETT: In the Dunn-Line tender, did you notice the explicit reference to the £72 per week for the shift allowance for all bus drivers?

MR MUIR: No.

MR GARRETT: Why?

MR MUIR: Whereabouts is that?

MR GARRETT: It's in their maths, in their arithmetic.

MR MUIR: Yes, I have seen that subsequently, but there was nothing in their tender that actually says that there was a £72 a week shift allowance.

MR GARRETT: Yes, there is.

MR MUIR: Where? **(Pause)**

MR GARRETT: You will have to bear with me because I didn't plan on reaching that point this

morning. I will bring it in this afternoon. There is a specific reference in their tender, take it from me.

MR MUIR: In their?

MR GARRETT: In their calculations.

MR MUIR: Yes. There is something in their calculations, but ----

MR GARRETT: But it actually says “£72 per week shift allowance” and there is the sum of two hundred and some odd thousand pounds included in that, to allow for that.

MR MUIR: I have seen that subsequently, yes.

MR GARRETT: Fine, and you agree that, linked to that, there is a specific reference to the shift allowance of £72 per week from what you have seen subsequently?

MR MUIR: Yes, but at the time, the evidence that we would have had at the time, there wouldn't have been anything to suggest that as being something that was unusual. I wouldn't have known.

MR GARRETT: It is a large sum of money. When you are going through the maths, you might say “Hang on, there's a large sum of money here that ----

MR MUIR: Yes, but I wasn't scrutinising those bids because that had already been done by Halcrow.

MR GARRETT: You said before that you went through their arithmetic.

MR MUIR: No, the arithmetic on the tender submission, the actual compliant tender that broke it down into driving, broke it down into administration, broke it down into the buses and their mark-up, so it is just a single page thing that's in there.

MR GARRETT: Okay, bearing in mind your rôle ----

MR MUIR: The things that are similar in every tender is really what I'm talking about. You know, my recollection is that Dunn-Line's tender was a much, much more detailed tender in terms of how they had made their prices up than it was for the likes of Connex or for Jersey Bus. It was much, much more detailed. The thing that I was comparing was the actual submission of the tender, the prices that they had at the end of the day.

MR GARRETT: So would you describe your review as being superficial?

MR MUIR: We had employed a well respected consultant, who had lots of experience in putting out tender documents, to put out tender documents and report on the tender documents having done a full examination of them. I didn't think it was necessary with their experience, their particular

expertise, for me to scrutinise every single aspect of the document that was submitted. I thought it reasonable that I looked to make sure that the issues that we hoped would be covered in the tender were covered and also to check the arithmetic of the actual submission itself.

MR GARRETT: And you didn't think it necessary to go into any of the detail?

MR MUIR: Well, the detail, I think, that you are speaking of is actually right down to how many hours the drivers would be driving, what their wage rates were, etc, etc, no, I didn't see that as being particularly necessary.

MR GARRETT: This goes back to the point I was making earlier about who was in charge of the thing. My concern is that there is an assumption that Halcrow were doing it, but how do we know that they are doing it if somebody isn't actually making sure that all of the Is are being dotted and the Ts crossed? What was your rôle? What was your responsibility? What was expected of you to make sure that everything that needed to be done was done and that it was done properly?

MR MUIR: Well, I think it depends what you mean by needing to be done. As I said, they are a consultant, a quality assured consultant, that has got certain procedures that they have to go through. They had actually put the document together. I'd looked at the document they had put together before it went out and made comments on it. The documents when they came back from the various contractors, Halcrow are eminently capable of going through these things and making sure that the documentation is complete and doing any checks that need to be done on those particular documents. That is what they were getting paid for. That's what they're good at. So for me to actually go through that, it is like having a dog and barking.

MR GARRETT: I would suggest that there are certain management responsibilities, even when you are employing consultants or employing staff, to make sure that jobs are done properly. I don't actually agree with the philosophy of completely doing it again yourself and I wouldn't have expected you to look at the tenders that were rejected necessarily, but I think you may have had some responsibility on the part of Public Services just to make sure that you were fully up to speed on what was happening and what had been proposed by the various tenderers just to make sure on behalf of the States of Jersey that a level playing field actually did exist, but we will

come on to that. On 28th February 2002, did you attend a meeting with Roger Macklin of Halcrow and Mike Cotillard and Chris Lewis of Jersey Bus?

MR MUIR: Yes.

MR GARRETT: What was the purpose of that meeting?

MR MUIR: The purpose of the meeting was that ... Halcrow had arranged the meeting. The purpose of the meeting was to seek some clarification on aspects of the tender.

MR GARRETT: Okay. Were similar meetings held with other tenderers?

MR MUIR: They were.

MR GARRETT: Did you attend any of those meetings?

MR MUIR: No. They were all held on the mainland, and I believe that Halcrow had actually tried to hold a meeting the previous week with Jersey Bus when Halcrow were actually across, but Jersey Bus couldn't make it and they also invited Jersey Bus to go across to the UK to meet them, but Jersey Bus couldn't make it.

MR GARRETT: Where was that meeting held?

MR MUIR: It was held in Jersey Bus' offices, I believe.

MR GARRETT: One of the issues that is of concern to us is whether you were present when people ran through their agenda. When did you arrive at that meeting? Did you deliver Roger Macklin there?

MR MUIR: No.

MR GARRETT: So he went there independently?

MR MUIR: Yes.

MR GARRETT: When did you arrive at the meeting?

MR MUIR: I honestly don't know exactly when. I know the meeting was on its way.

MR GARRETT: So it had already started. They were already running through the agenda when you arrived?

MR MUIR: I'm not even sure there was an agenda. I don't recall an agenda. I don't remember seeing an agenda.

MR GARRETT: But presumably Roger Macklin had a sort of checklist that he was trying to work

through?

MR MUIR: I'm sure he did, yes.

MR GARRETT: Right. How long do you think the meeting had been running before you got there?

MR MUIR: I don't know.

MR GARRETT: Why were you delayed in your arrival at that meeting?

MR MUIR: I think it was a ... from my recollection, I had told Roger that I might be a bit late because it was a Committee agenda day. There is always a last minute panic to make sure that you get everything on to the agenda, plus there are lots of other things going on as well.

MR GARRETT: So this is an in-house activity?

MR MUIR: Yes.

MR GARRETT: You weren't attending a meeting at any other third party?

MR MUIR: No. I don't believe I was.

MR GARRETT: Did anybody brief you on the issues that had been discussed before you arrived?

MR MUIR: No, I just came into the meeting.

MR GARRETT: To your knowledge, was the Transport and General Workers' Union claim discussed in that meeting?

MR MUIR: No. **(Pause)**

MR GARRETT: Do you maintain any kind of diary, ledger, file note system or anything else as a record of your involvement in meetings or discussions that you have, points or positions that you have taken on particular issues?

MR MUIR: Um, sorry, I'm not quite clear.

MR GARRETT: Do you maintain a diary, an office diary?

MR MUIR: No, I don't have an office diary. I use an electronic diary just purely for appointments.

MR GARRETT: But if you attend a meeting, either during that meeting or immediately afterwards, you don't compile any kind of notes?

MR MUIR: I took notes at that meeting.

MR GARRETT: Have we received a copy of those? I have received notes recorded by Halcrow.

MR MUIR: I thought you had, but perhaps not.

MR GARRETT: Can you revisit your files and make sure that we have a copy of that, please?

MR MUIR: Yes.

MR GARRETT: Are your notes simply sort of jottings, one worders?

MR MUIR: Yes.

MR GARRETT: Okay, not now but at some later stage, if you could let us have a copy of those?

Did you provide Mr Richardson with any feedback following that meeting on any of the issues that had been discussed?

MR MUIR: I don't recall.

MR GARRETT: And this happened eight days after the tenders were opened, yes?

MR MUIR: Yes. **(The Committee conferred)**

MR SHEPHEARD: It seems to us that it is now perhaps a convenient moment to break for lunch.

We will adjourn until two o'clock. Mr Muir, I have to tell you that, as you are in the middle of giving your evidence to the Committee, you must not discuss that evidence with anyone until you are back in here and discussing it with us, please.

Adjourned until two o'clock

MR SHEPHEARD: Right, Mr Muir, we think we are all reassembled. We will resume the hearing, and I would remind you, as I am obliged to, that of course you are still under oath.

MR GARRETT: I'd like you now to think about the special meeting that was held on 15th March, an issue that I have raised previously, but I want some background. Was consideration ever given to the thought of videoing, audio recording or any other form of recording of the presentations?

MR MUIR: No.

MR GARRETT: No. Was any kind of detailed record made, a written record made, of the presentations and, more importantly, the deliberations that followed the presentations?

MR MUIR: Um, my recollection is that there was a Committee Clerk there who took notes, but I don't recall anything actually being produced that we had as a record of what was happening.

MR GARRETT: If it had been produced, it would have been a typical Committee note as opposed

to a detail account of who said what to who?

MR MUIR: Yes, yes.

MR GARRETT: Okay. During the presentations, did any of the tenderers raise a concern about the completeness or quality of the material that they were supplied with?

MR MUIR: No. I don't recall that at all. In fact, I recall that most of the tenderers actually complimented the Committee on the documents that were actually there and in the process.

MR GARRETT: Did anybody express concerns about the timescales that were being set?

MR MUIR: Set when actually producing the tenders?

MR GARRETT: Delivering the tenders, yes.

MR MUIR: I don't actually recall that, no.

MR GARRETT: Okay. So nobody said they had not had enough time to gather information on passenger demand or anything like that?

MR MUIR: No. I think that was made quite clear in the tender documents that ----

MR GARRETT: The onus rests with them?

MR MUIR: Yes, and that they had to satisfy themselves. It was pointed out that there were things like relief buses on morning peak and during the summer in particular and that the existing operator put on additional services for that, so that was actually explained to all the tenders.

MR GARRETT: And, from what you said before, nobody raised any concern or questioned issues relating to the shift allowance issue during their presentations?

MR MUIR: No.

MR GARRETT: In the absence of that kind of question, did you assume that everybody had taken note of it and made whatever commercial decisions they wished to make on it?

MR MUIR: Well, again, you are actually asking for an opinion. I didn't know it existed at that time and I don't believe anyone from the Committee and anyone from the Department knew it existed at that time, so it is not something that I can really give you a fact and figure on.

MR GARRETT: At the end of the presentations, was there sort of a gathering of the Bus Strategy Steering Group to discuss, review or whatever the presentations?

MR MUIR: Yes.

MR GARRETT: What influenced people to favour Connex, would you say? Was it simply the bottom right-hand corner of their costs or was it ... you know, there has been reference to added value issues that were raised during their presentations.

MR MUIR: Cost and quality. The quality of the proposal that they were putting forward, I think, struck a number of the Committee Members, but, I mean, again, I can only by what my impression was at that particular time. What each Committee Member was saying you would have to obviously ask them, but certainly it was the fact that it was the lowest price and it was also the one that seemed to be giving the best added value from the proposal.

MR GARRETT: I will leave the issue there because I think my colleague may want to come back and give you some questions later. In my examination of papers, just sort of following the chronology through, I noticed that, I think it was, on 18th April you emailed Robin Hacquoil quoting a *JEP* article, where he was quoted as saying "*For 25 years we really have not had a quality bus service in Jersey*". Can you describe your reaction to that article? Do you think it was a piece of good timing? **(Pause)** Bearing in mind that the decision making process was pending at that stage, apparently.

MR MUIR: You are asking for an opinion and obviously I must have expressed something in the email. Can you direct me to the email and I will have a look?

MR GARRETT: If it is in date order, it is 18th April 2002.

MR MUIR: Has it not got a reference on it?

MR GARRETT: No, sorry. I didn't make a note of that one.

MR MUIR: 18th April.

MR GARRETT: 18th April.

MR MUIR: 2002. **(Pause)** It was from me to?

MR GARRETT: From you to Robin Hacquoil. **(Pause)**

MR MUIR: Is it actually dated 19th April?

MR GARRETT: Yes, you quoted a *JEP* article of the 18th. **(Pause)**

MR MUIR: Yes.

MR GARRETT: Do you think it conveys an impression of total impartiality on the part of the

President of the Committee?

MR MUIR: Well, I think what it says is that ... it is actually saying here ... I didn't personally recall him saying that in the States. That is the way it was reported by the *JEP*. Is Mr McRandle still here?

MR GARRETT: No.

MR MUIR: I have to say that I am concerned at times about the way the *JEP* actually report things and whether they report them accurately. Now, I can't comment on whether it was accurate because, as I say, I didn't understand that to be the case.

MR GARRETT: Can you understand the upset of Mr Cotillard?

MR MUIR: Of course I can, of course I can.

MR GARRETT: Could you understand that possibly other people who may have been involved in the selection process may have been influenced by that kind of comment, just as Mr Cotillard was clearly upset by it inferring that Jersey Bus had not been providing a good service?

MR MUIR: I think that the President had been able to make it quite clear to people what he was actually trying to say.

MR GARRETT: Yes, the problem is that you will appreciate that that doesn't always get reported.

MR MUIR: I appreciate that, but I would also expect that the other people who were on the Committee were actually in the States and heard exactly what he said in the way it was meant to be said rather than what was the way it was reported. So whether any explanation was actually required, I don't particularly know because, again, you are actually asking me to comment on something that I didn't actually hear myself.

MR GARRETT: Did you draft on behalf of the President a letter to Mike Cotillard at all explaining the situation?

MR MUIR: I don't recall that off the top of my head.

MR GARRETT: Would you know whether that kind of letter would have been in the file held at your Department of the President's sort of correspondence?

MR MUIR: If there was a letter to Mike Cotillard, it would have.

MR GARRETT: Is that file readily available to any Member of the Committee and do they

routinely come in and examine it?

MR MUIR: The Committee?

MR GARRETT: Yes.

MR MUIR: No. I beg your pardon, if you are talking about the President's file?

MR GARRETT: Yes.

MR MUIR: The President, if it was a letter that came to the President and the President had actually responded and things like that as well, Deputy Hacquoil when he was President actually used to bring the file to the Committee meetings for the Committee Members to actually look at themselves.

MR GARRETT: That is the clarification that I was looking for.

MR MUIR: Oh sorry, right, okay. I am pleased we managed to clarify that.

MR GARRETT: There was another meeting on 30th April to finalise the selection process. We discussed this morning the gap between 15th March and that 30th April event was because the legislation hadn't been finalised.

MR MUIR: Yes.

MR GARRETT: Was there a meeting of the Bus Strategy Steering Group immediately before the Public Services Committee met to finalise the process?

MR MUIR: The Members of the Bus Strategy Steering Group attended the meeting for the selection process.

MR GARRETT: Was there a separate meeting?

MR MUIR: In essence, it was a meeting of the Bus Strategy Steering Group and then the Committee made its decision.

MR GARRETT: Right, but in the minutes -- and I appreciate that there are limitations on minutes -- there is a description of the Bus Strategy Steering Group having a unanimous view. When did they form the unanimous view on the selection of Connex?

MR MUIR: At that meeting.

MR GARRETT: At that meeting. So there was no separate deliberation. They brought with them the views that they had formed on 15th March and immediately sat down and all said "Yes, we

think Connex should be the one”?

MR MUIR: Well, there were also some clarifications. There was a report given to them about some clarifications about things.

MR GARRETT: Was the sort of final process scientific in any way, or was it just a discussion and a subjective view “Yes, we think Connex”? Did anybody run over the figures and sort of go through any evaluation process, or was it just “On the basis of our observations, Connex is the best choice”?

MR MUIR: There was a report that was put to the Committee that actually included all the tenders, the formal tenders, which actually gives you all the breakdowns. It gave a report on some of the clarification issues. In other words, one of the things that the Committee was concerned about was were new buses going to be available on day one, so it gave clarification on all that. So there was a report given to the Bus Strategy Steering Group on that date. In fact, I believe it was perhaps emailed to them before then.

MR GARRETT: Okay. Moving forwards, on 23rd September, I noticed that there are emails within Public Services expressing concern about the volume of work that has been undertaken at your garages. Was that kind of problem identified in the risk analysis exercise that you did?

MR MUIR: I believe it was, yes.

MR GARRETT: Right. Was that an issue that was considered in the selection process and setting the timescale, that everything might get a bit tight?

MR MUIR: Um, during the discussions at the tender interviews or the presentations, I am pretty sure that those questions were asked and answered all positively, that it was tight but it should be okay.

MR GARRETT: If your garage had not been able to provide that kind of support, presumably the system would have failed?

MR MUIR: No, the system wouldn't necessarily have failed because Connex had in fact investigated a number of other options and were actually looking at it.

MR GARRETT: Certainly I saw reference to Normans and so forth and there were concerns about the suitability of those kinds of premises.

MR MUIR: Yes.

MR GARRETT: So, whilst they were looking at it, I am not sure that anybody had identified what Plan B was going to be. They possibly thought there might have been a need for one, but I don't think one actually existed.

MR MUIR: Plan B existed when? Are you talking about ----

MR GARRETT: In the run up to Connex going live, I don't think anybody had actually ... other than the support that your garage provided, I don't think anybody else had an effective, operable Plan B.

MR MUIR: But that was down to the contractor to establish.

MR GARRETT: Yes. It is an interesting question, but, based on the relationship that existed between Jersey Bus and the Public Services Committee, if they had been the successful tenderer, do you think they would have been given the same level of support?

MR MUIR: I would have hoped so.

MR GARRETT: That is not the question I asked. Do you think they would have been? I mean, do you think, in all seriousness, Jersey Bus would have got the same level of support?

MR MUIR: In the circumstances that existed then, Jersey Bus wouldn't have actually required the support. Jersey Bus would have had the garage facilities. The garage facilities ----

MR GARRETT: But they were dealing with a massive volume of new buses coming in.

MR MUIR: Jersey Bus didn't intend to bring in all the new buses from day one.

MR GARRETT: They were going to phase them in?

MR MUIR: Yes. They were going to phase it in. In fact, Jersey Bus ----

MR GARRETT: Putting it a slightly different way, if they had been faced with some kind of crisis and their garage got wiped out, would Public Services have offered them the same level of support, do you think?

MR MUIR: The Public Services Department would have offered them the same level of support.

MR GARRETT: The Committee? Would the Committee have done?

MR MUIR: The Committee I don't think would have had a choice in that particular thing. I think the Department would have been looking to the customers that are in the Island and would have co-

operated fully with Jersey Bus.

MR GARRETT: Thank you. Moving on to issues relating to the contract with Jersey Bus, do you know of any differences between the requirements set out in the tender documents and the contract that Connex eventually signed?

MR MUIR: Requirements?

MR GARRETT: The tender documents set out what the contract was going to look like.

MR MUIR: Hmm.

MR GARRETT: Eventually Connex signed a contract. What were the differences between what was set out in the tender period and what they eventually signed?

MR MUIR: I would have said that they were fairly minimal, the differences.

MR GARRETT: Did anybody keep a log of all the issues that were raised, because I understand Connex raised a few, including the suggested alteration to the definition of force majeure to take certain forms of strikes out and there were a number of issues like that. Did anybody keep a log of the issues that were raised and the way in which they were resolved?

MR MUIR: If you are talking about a log, it is not done in a log form until eventually the way it panned out, but there is a full record of all the documentation and email exchanges that took place between the Law Officers, myself, Roger Childs and the people from Connex, Mourants, etc.

MR GARRETT: Is it usual for there to be such sort of discussion, bearing in mind the tender documents set out an expectation as to what was going to be delivered and then suddenly there are discussions on variations to the contract? Bear in mind that Connex had actually put in their bid on the specifications set on day one, should there have been any discussion? Clearly there were probably some legal issues that needed to be tidied up, but should there be discussions about changes, fundamental changes, to the contract, like changing the definition of force majeure?

MR MUIR: Well, I don't think the definition of force majeure was fundamentally changed.

MR GARRETT: It wasn't, but should there even have been that discussion? Should that have been entertained?

MR MUIR: Well, I would have said that Connex perhaps -- not Connex, but Connex's lawyers -- perhaps stretched or tried to stretch what was an invitation, I believe, in the tender documentation, because the tender documentation actually permits the preferred operator to have a look at the conditions of contract and suggest changes or variations. I believe that is the case.

MR GARRETT: Don't worry, I will look at that separately. There was an email I spotted on 9th July 2002, where he set out certain suggestions in relation to designating somebody as a public transport manager. Who was that, do you know?

MR MUIR: Sorry?

MR GARRETT: Roger Childs suggested on 9th July that somebody should be designated as public transport manager. Who was that?

MR MUIR: That was going to be Mike Collier.

MR GARRETT: He also set out in a technical note that he forwarded at the time a suggestion that he set out a sort matrix chart about the way in which any changes to the sort of service should actually be handled. There were some that could be dealt with at an officer level and some go through to the Committee. Was that advice followed meticulously?

MR MUIR: I can't recall if it was followed meticulously, but certainly by far the majority of it was included in the schedule for the conditions of licence.

MR GARRETT: There was also a suggestion under the heading "*Key Issues*" that a register should be kept of all the licensing variations. Was that established? Did Mike Collier set that up?

MR MUIR: It is deposited at the Greffe, yes.

MR GARRETT: Okay. And it was there from day one?

MR MUIR: I believe it was, yeah. There should be something at the Greffe that has a copy of the licence and the conditions attached to those licences.

MR GARRETT: But is there a register which shows sort of variations that have been resolved over the process, over the period of time?

MR MUIR: The register wouldn't be ... it wouldn't be down as a register at the Greffe.

MR GARRETT: At the Greffe.

MR MUIR: Yes.

MR GARRETT: But do you maintain a register up in your office so that if somebody was to enquire “What was the quality of service provided or the depth of service provided by Connex on day one and what has changed, what services, what routes have been cut out and why were they cut out”, would one be able to follow a chain of events through to understand what changes have been made?

MR MUIR: If you are talking about a folder that you can just go and look up, I am not sure that there have been several significant changes, but I am not aware of there being a folder that you just go and inspect, because clearly it depends on what you would call a change. I’ve not been involved with the buses since the Committee of Inquiry was announced, for obvious reasons, and I don’t believe there have been any significant changes that would require a change to the licence, but I may be wrong on that.

MR GARRETT: An issue that I raised yesterday is that there is a letter from Dennis Ord as part of the sort of final tendering process, where he gave an assurance that the buses would comply with the Island’s width restrictions. As we know, they didn’t. They were 2.3 inches over-width. When that was disclosed, did anybody take the matter up with Mr Ord?

MR MUIR: Firstly, it was actually permitted in the tender document. There is, again, a bit in the tender document which explains that the existing buses that Jersey Bus operated were in fact over-width. So, therefore, there is an opportunity for small deviations from the maximum that is allowed so long as it is approved by the Motor Traffic Officer. So that was made, again, quite clear in the tender document itself. When Connex told us the vehicle that they were going to use, we made sure that that was put in front of the Motor Traffic Officers and the Motor Traffic Officers were quite happy with the width that was involved. I think we are talking about the width of the wheel nuts, which I believe is around about the same width as the width over the hinges and the Dennis Darts that were being used in the Island as it was and I also believe that Jersey Bus vehicles were allowed to be over length compared to what the Island’s standard and whatever it was, Construction and Use Law is.

MR GARRETT: Do you think Dennis Ord could have worded his tender submission a little more

carefully to say that they don't actually comply with the legislation, which is quite specific, seven foot six wide or the metric equivalent, but they are no wider than the current buses used by Jersey Bus? It is a bit of a statement to put in a tender document. It implies, you know, that they are in absolute compliance with Jersey law, the terminology that is used, and that is not what was delivered, which I understand caused something of an upset.

MR MUIR: Well, it did comply with the law if the Motor Traffic Officer approved it.

MR GARRETT: Yes, but there would be a bit of a twist there if he wouldn't have done it but, if the Motor Traffic Office or the DVS had not approved it, there would have been a difficulty?

MR MUIR: It might have been a difficulty for Connex, yes, but, there again, it would have been, I think, quite difficult for the Motor Traffic Officer to refuse Connex a licence for those vehicles when vehicles of similar width were still running about the Island.

MR GARRETT: Indeed. I said I don't think he would have done, but the point I am making is that Dennis Ord made a commitment and the terminology he used was quite specific -- they are within the width restrictions. He didn't make reference to exemption permits being issued by DVS. We have sorted that, I think, sufficiently. Has any form of independent audit ever been conducted on the performance of Jersey Bus?

MR MUIR: On?

MR GARRETT: Sorry, on Connex. My brain's gone.

MR MUIR: Um, I'm aware that ... audit of what? What are we talking about?

MR GARRETT: Looking at their performance against what they actually tendered to provide.

MR MUIR: There has been, as far as I am aware, some mystery traveller type work done fairly recently.

MR GARRETT: That is very recent?

MR MUIR: I honestly don't know the date. I just know from working in the Department and clearly ... well, throughout the time that I was involved in the first year, when we could actually get the information, we were looking at things like missed trips, the behaviour of drivers, reports for discipline and things like that.

MR GARRETT: The problem is, of course, that a lot of the information was coming back from

Connex. So what I was looking for was more of an independent view, just to make sure that what they tendered to provide they are actually providing.

MR MUIR: Well, I mean, again, Mike was out on the road as well having a look at these sorts of things and we also had the Jersey Bus Users' Forum, who were quite good independent auditors at times.

MR GARRETT: Yes.

MR MUIR: They would send us their information and it would then be checked up. Plus people who actually wrote into the Department with particular issues about something or other. That would be checked up too.

MR GARRETT: Would you say that the work of Mike Collier was in pursuance of section 11 of the conditions of contract, which says: "The States will from time to time monitor provisions of the service operated under the contract"?

MR MUIR: Section 11?

MR GARRETT: Section 11, I think it is. Section 11.1? (Pause)

MR MUIR: 11.1? (Pause) 10.1 do you mean?

MR GARRETT: There may have been a shift in the numbers between the different editions. Does 10.1 refer to ----

MR MUIR: 10.1 is "Performance": "The Committee will from time to time monitor or procure the monitoring of the provision of the services operated under the contract."

MR GARRETT: That is the same.

MR MUIR: "The Committee will advise the contractor of any adverse observations and also of any complaints received from customers." Is that the one you are talking about?

MR GARRETT: Yes. Clearly there has been a variation of the numbering.

MR MUIR: Yes. That, I believe, is the up to date one. That is the signed document.

MR GARRETT: Right. Does the work of Mike Collier fulfil that requirement? Is that what was in the mind of the people who drafted that provision?

MR MUIR: No, I don't think that ... I think what was in the minds of people that drafted that provision was basically we could virtually do anything if the Committee so wished.

MR GARRETT: We heard from a representative of Connex the other day, when I spoke about the provision of inspectors out on the road, and they said “No, no, that’s not our responsibility, that the responsibility of the States.”

MR MUIR: It is.

MR GARRETT: I will come to that, but you don’t see that you take on the sole responsibility for monitoring, nor is there an obligation on you to provide almost a daily monitoring activity? That provision is sufficiently flexible to allow you to do it as and when you see fit.

MR MUIR: Yeah. I mean, again, as I say, I’m sure there has been independent auditors who have been doing checks on things on the buses. Again, because I have not been involved particularly with the buses for the past year or so, I think there has actually been either an internal audit or, you know, auditors employed by Internal Audit who have actually done things about looking at the buses and there has also been mystery travellers. Plus, as I say, we have reports that come from customers. We have reports that come from ... (indistinct) ... and Mike himself doing certain things. Now, these are what I would call photographs in time of what is actually happening. An inspector regularly going out on a daily basis inspecting what is happening on the buses in terms of people should be handing over their fare, tickets should be getting issued and all the rest of it, that is an obligation that is actually on Connex. However, again, the ticket machines that they have are, you know, fairly useful from the point of view of the information that they actually provide. So, therefore, you can again see discrepancies that come up.

MR GARRETT: Can you understand why it was that Connex seemed to be under the illusion that it wasn’t particularly their responsibility? They felt that their inspectors had a responsibility solely to operate around the Weighbridge to make sure buses left on time.

MR MUIR: I think it has been made clear to Connex in the past where their obligations lie and, as I said, it is in the contract. They actually did a submission. In their tender document it was submitted. **(Pause)** In their tender document it is submitted -- I don’t know what number it is, I would need to go and check it in **here** -- but, in section 4: “*Main assumptions included in the tender. 4.1 Staff Costs.*” Subparagraph (a) is “*Mileage and costs include both depot and on road supervisors who will be appointed to key locations and others who will have a roving*

responsibility for service quality and fare revision.”

MR GARRETT: Certainly the impression I got from the evidence that was given to us the other day is that there may not be total clarity yet on that point, but we will leave that for the time being. There was a note also, dated 3rd May, on the award of the licence to Connex, setting out six criteria, one of which was quite specific in relation to the provision of capacity. Are you happy in your own mind that they have sort of satisfied that requirement?

MR MUIR: That they have satisfied the requirement?

MR GARRETT: Satisfied the requirement in relation to capacity, certainly in the first few days?

MR MUIR: In the first few days, I would suggest they didn't satisfy the capacity.

MR GARRETT: The first few weeks?

MR MUIR: It got better.

MR GARRETT: Eventually. **(Pause)** What is the complaints procedure? Do you receive complaints? Does Connex receive complaints? How are they sorted?

MR MUIR: We both receive complaints and, again, I can only speak up until about a year ago. If a complaint was received in the Department by letter, that was passed to Connex for action. If it was received by Connex, Connex had to action and sort by sending us up a schedule of ... I believe what they still do is they still send up copies of letters and responses that they actually give to these letters of complaint.

MR GARRETT: I appreciate you have not been directly involved, but, to your knowledge, is the complaint level going up or down or is it static?

MR MUIR: If I ... well, I can't comment clearly on exactly what is being said in the Department, but it just so happens that I have been involved in some other matters lately that had sort of public surveys and the like involved and certainly the public seem to be relatively pleased with Connex's level of service and the quality of the service.

MR GARRETT: Can I look at a specific complaint? Unfortunately, I don't have the email reference, but 14th November 2002, Deputy Roy Le Hérissier contacted you by email, I think it was, about the complaint about youngsters being left at the Weighbridge late at night. You might recall it. Did you ever sort of go to look? Did you actually send Mike Collier or did you

go yourself late at night to see the extent of the problem?

MR MUIR: Personally I didn't. Mike actually lives out to the east of the Island. In fact, I believe that he knew the complainant and spoke to the complaint and ----

MR GARRETT: Without reasonable research, you wouldn't know whether it was just two youngsters, which is the complaint you were dealing with, or 20 were being left at the Weighbridge.

MR MUIR: Yes, and that is obviously something that can change from evening to evening, if there just happens to be something on, something or other that Connex aren't aware of, but I believe they have relief buses available supposedly to take, you know, any overflow, any sort of duplication.

MR GARRETT: When were those put in place?

MR MUIR: They were put in place right from the outset.

MR GARRETT: I note from your reply that you actually suggested that youngsters should either get to the Weighbridge earlier or walk home or even hitch a lift.

MR MUIR: That was my reply?

MR GARRETT: Is that a satisfactory solution?

MR MUIR: Is that my reply?

MR GARRETT: That is your reply.

MR MUIR: In truth?

MR GARRETT: Hmm.

MR MUIR: Can you tell me the date of it?

MR GARRETT: The original, the start of the correspondence was 14th November 2002. It is either yourself or Mike Collier chipping in. **(Pause)**

MR MUIR: I'm normally a little bit more diplomatic than that. **(Pause)** It wasn't me that said it and it wasn't Mike Collier who said it. It is actually M241 in the documents.

MR GARRETT: Right. I don't have my master file with me.

MR MUIR: Do you want to see it?

MR GARRETT: Um, you can tell me from there who said it.

MR MUIR: Deputy Hacquoil.

MR GARRETT: Right. Thank you. **(Pause)** Moving on to the claims that were raised by Connex in respect of the relief bus service in the first instance and then on to shift allowances, I noticed that concern was in fact raised by Ian Everson back in June 2002 about whether Connex had the capability to provide relief services, because we all know that eventually there were some difficulties in that regard. Can you briefly, because I know that in fact the Committee rejected the claim, but we heard the other day that in fact Connex are still pursuing that claim in relation to funding for relief services. So can you briefly outline for our benefit the basis of the Connex claim for money in respect of the relief services?

MR MUIR: My recollection is that Connex believe that they had to put on ... well, I think initially they weren't actually sure that they were putting on any relief services, but it was made quite plain to them that the information was in the tender documents. In fact, I had actually clarified it to Dennis Ord and Tania Morisson at a meeting that they had when they came across during the tendering period. I met them and I also met the Dunns who came across for a visit to the Island to see what the Island was like. I pointed out to them at that time that they should go down to the Weighbridge at the peak periods to have a look and see just how many vehicles are going out and in because there would be duplication. I also told them at the time that it would be the same during the summer, that there was some peak ... sorry, there was some duplicate journeys that have to be done for reliefs. So, as far as the Department is concerned, we made it quite plain to Connex and to all the tenders that there were going to be relief journeys and that they should be providing the capacity for the passengers on demand.

Now, if the Department or the Committee decided that they wanted to do something, say, for example, hike up the cost of parking to an extent that meant that many, many more people were travelling by bus than would be formerly, then I think the contractor would have a reasonable claim to say "Look, I don't have sufficient capacity on my buses, I need to get some new buses." We would look at it then. But the situation hadn't changed. We hadn't done anything at all to encourage more passengers so, therefore, they were obliged to carry all the passengers that were there on demand. Now, they said that they had only included a certain

amount of money for that eventually and it wasn't the amount of money they were expending on their buses.

MR GARRETT: There are some quite clear provisions in the tender documents that I have seen that made it clear that any tenderer needs to put on sufficient capacity for the foreseeable demand.

MR MUIR: Yes.

MR GARRETT: But then there is also that provision that I referred to earlier about contractors satisfying themselves on all the information and so forth, so if there had have been a query on the capacity issue, the duty rested with them to come back and get that clarification before putting in their tender.

MR MUIR: I would have said that if it was a serious concern to them, they would have been wise to do that, but, as I said earlier on today as well, I actually believe that most conditions of contract are open to some sort of interpretation, particularly if lawyers get involved.

MR GARRETT: Bearing in mind your commitment to reject that, why did you ultimately link the rejection of that with a suggestion that the States should provide money for the shift allowance issue? Surely the two issues could stand alone -- reject one and then go and deal with the other? But the inference that I pick up from the terminology that you have used is "Don't pay them that one, but give them some money on that one."

MR MUIR: Again, it was ... I think it is quite important to point out that the whole process of the tendering process and the ... (indistinct) ... of a bus operator was to have a situation where we hopefully didn't have conflict, that we were actually working in partnership. You know, that was the purpose of the SLA as well, or developing an SLA with the operator.

MR GARRETT: Even if it was going to cost the States a great deal of money?

MR MUIR: Sorry?

MR GARRETT: Even if it involved the States spending a great deal of money?

MR MUIR: Well, I think the whole point, as I say, was that the idea was to work in partnership. Rather than always being contractual, I think it is sensible, if you are going to enter into a contract with somebody for seven years, you have to make sure that you are getting value for

money without actually being, shall we say, too accommodating. It was quite clear in respect of the shift allowance -- sorry, the relief buses -- that they had actually been covered for that. We had said right at the outset that that was the case. What ended up happening was that they agreed to absorb the costs of the reliefs and incorporate those reliefs actually into the timetable so they were actually running them all the time if the States were agreeable to meeting the shift allowance, and the recommendation from the consultants was to go along that route.

MR GARRETT: Right. That may be a slight variation. Did you take any legal advice on that before decisions were taken?

MR MUIR: We did take legal advice on it, yes.

MR GARRETT: From?

MR MUIR: The Law Officers.

MR GARRETT: More specifically, SG, or do you know? **(Pause)** Darren Woodside?

MR MUIR: Yes.

MR GARRETT: Right. Can I ask you to go now through a similar process in relation to your understanding of the basis for the claim from Connex in relation to the shift allowances?

MR MUIR: Sorry?

MR GARRETT: Can you explain your understanding of the basis of the claim submitted by Connex on the shift allowance?

MR MUIR: The basis of the claim as we understood it at the time was that they were not aware that there was ... they did not expect to have to pay a £72 a week shift allowance. There was no agreement in place when they actually were tendering. They were surprised that there was a £72 a week shift allowance and, from our point of view, we didn't know anything about a £72 a week shift allowance. We were under the impression that they were in exactly the same boat.

MR GARRETT: Did you actually ----

MR MUIR: That it was something that they could not have foreseen at the time of tender and, therefore, it was a reasonable claim.

MR GARRETT: Didn't you go back to check with Halcrow to find out what they had been told?

MR MUIR: Halcrow were involved in the determination of the claim.

MR GARRETT: I have seen that.

MR MUIR: Sorry?

MR GARRETT: I have seen that.

MR MUIR: Had there been knowledge, it was quite plain we were discussing with Connex that it was on the basis that there was no knowledge of this £72 a week shift allowance. Halcrow were involved in that. If they were our advisers and they were aware of the £72 a week shift allowance claim, I would have expected them to advise us of that and bring it up in terms in the discussions with Connex. Had we known about that, we might have had a completely different approach.

MR GARRETT: Can you offer any explanation as to how that issue was overlooked?

MR MUIR: I can't. I mean, again, I can only go -- myself, the Chief Exec and the other people from the Department involved could only go -- on what we understood the situation to be at the time. We understood the situation to be at the time that there was this unforeseen £72 a week shift allowance that had been introduced after the tender, the contract had been awarded.

MR GARRETT: And Halcrow supported the payment of money?

MR MUIR: Yes.

MR GARRETT: When it was discovered that Connex had received full details of the pay claim, what was the reaction?

MR MUIR: What was our reaction?

MR GARRETT: What was your reaction, yes?

MR MUIR: Just disbelief.

MR GARRETT: Disbelief at Connex, disbelief at Halcrow, disbelief at both?

MR MUIR: Disbelief at both. I mean, I was gutted. We in the Department were not aware of any £72 claim. It came as an absolute bolt out of the blue when we found out that Jersey Bus had actually advised Halcrow of this claim when the claim came in and had submitted details of the claim to Halcrow and Halcrow had actually sent that to the other tenderers.

MR GARRETT: I did notice when you put in an email giving details of the telephone conversation that I think you had with Mick Kavanagh that there was some surprise in the

terminology that you used. When you received notice finally that the agreement had been signed off, did you actually explore the background to it at all? Did you go back to the union and say “What is this about?”

MR MUIR: No, I didn't personally, no.

MR GARRETT: Did you go back to Jersey Bus and say “Please explain what has happened here”?

MR MUIR: No.

MR GARRETT: Did you go back to Halcrow and say ----

MR MUIR: If you also recall ... well, no.

MR GARRETT: Okay.

MR MUIR: But I would have thought there was some duty on the Transport and General Workers' Union to let us know. If you recall, in their letter to us they were talking about transparency. You know, if they had said “Yes, there is a wage negotiation going on”, you know, we were talking about something that was £72 a week, which was an awful lot of money. It is a bit high. You would have thought that they would have had the courtesy to actually contact us rather than contacting merely the employer and the employer then going on to Halcrow.

MR GARRETT: I think the view was taken that Halcrow was acting in that rôle, that that was the contact point, so let them know. I would believe that the assumption was made that Halcrow would notify everybody. If that didn't happen, that is an issue that we have to consider. Are you aware of the background to this so-called high level of shift allowance payments at all?

MR MUIR: In respect of what?

MR GARRETT: The basis of the £72 per week shift allowance claim. Did you have any understanding of the background to it, the basis of it?

MR MUIR: Only what I've read in the letter.

MR GARRETT: Evidence has been presented to us to suggest that, because the tender documents excluded any reference to the school bus services, there was a reasonable assumption made on the part of the union that their staff, that their members, were going to lose a significant amount of money which they had enjoyed for years and years and years. There was no reference to

school bus, so end of school bus service because the tender documents specified a pure public bus service. So they lodged a claim to try to recover the anticipated loss of salary. Do you think that is totally unreasonable in the circumstances, bearing in mind they had enjoyed this. They had been working extremely long hours, but they had enjoyed that kind of salary for many years. Is it unreasonable to assume that they might want to protect that on behalf of their members?

MR MUIR: Um, I think again you are asking an opinion of me. I don't think that is for me to comment on. **(Pause)**

MR GARRETT: Anyway, just to sort of recap on this, correct me if I am wrong. The claim in respect of relief services came in. You have acknowledged it really didn't have a solid foundation to it, but really in pursuance of the sort of development of a partnership approach and not wishing to be involved in constant conflict with Connex and in the belief that Connex had no knowledge of the claim during the tendering process, it was agreed that they should be paid a sum of money -- not necessarily the full claim, but a sum of money.

MR MUIR: No knowledge that bus drivers were going to get an extra £72 a week, yes.

MR GARRETT: No knowledge that the claim existed? **(Pause)** What I am trying to do is differentiate between claim and agreement.

MR MUIR: But I didn't know that the claim existed.

MR GARRETT: Right.

MR MUIR: The Department didn't know the claim existed, so, from that point of view, it was a wage agreed.

MR GARRETT: But was Connex's position that they knew nothing about the issue at all? They knew nothing about the claim? When they came to you ----

MR MUIR: That was the impression.

MR GARRETT: The impression or an absolute? They knew nothing about the issue at all? It is important.

MR MUIR: Because we didn't know about the fact that it was in a claim, it always came across that they did not know about the agreement. But the agreement was actually made after ----

MR GARRETT: This is an accepted point. The agreement was signed in May, but the actual ----

MR MUIR: Is that the case?

MR GARRETT: That is the case.

MR MUIR: That is the first that I have actually heard that.

MR GARRETT: Well, on the basis of the evidence that was presented to us, I understand that it was signed off in May, but the agreement was reached at the end of February/beginning of March time.

MR MUIR: Well, that is contrary as well to some information that came to us, because I am sure that there is a letter from Mr Cotillard that says that all wage negotiations are off until the tenders are accepted.

MR GARRETT: That is my understanding, that wage negotiations continued and either towards the end of February/beginning March they reached agreement on it, bearing in mind ----

MR MUIR: I am absolutely positive there is a letter from Mr Cotillard.

MR GARRETT: Bearing in mind that the tendering process was being delayed, it may have been that it was in response to that, "Let's get on and settle it." I will check on our files.

MR MUIR: As I say, I am pretty sure that there was a letter that was sent to the President saying that all wage negotiations would have to be put on hold.

MR GARRETT: It may be there is some confusion in here, but I will check on that. But the key issue is whether or not ... I think there is a difference between claim and agreement.

MR MUIR: Yes.

MR GARRETT: Was Connex, to your knowledge, aware that the claim had been submitted?

MR MUIR: I am now aware that they were aware.

MR GARRETT: When the decisions were taken to pay them the money, to your knowledge, was Connex aware that the claim had been submitted?

MR MUIR: They must have been.

MR GARRETT: But they didn't bring that to the table to say "Oh by the way, we knew that this claim was in play".

MR MUIR: No, and nor did Halcrow.

MR GARRETT: Right. **(Pause)** Going back to the issue of the claim, the point I raised earlier

about the contractor having to fully inform themselves and so forth, you accept that would have applied to Connex when they received that notification of the claim, which clearly they did, that it was down to them to make a commercial decision. Are you aware of the terminology that they used in their tender submission to describe the salary issue? **(Pause)** I will quote it: *“Included in our costs is the assumption that the wage claim in respect of Jersey Bus staff is met in full.”*

MR MUIR: Yes, I am aware.

MR GARRETT: Okay. *“We would be prepared to discuss a reduction in the staff costs directly applicable to the present staff should the claim be settled at a lower level.”* I can only read that one way. I am not a lawyer, but I can only read that one way, that they have looked at the entire claim that was on the table at that time and they have taken account of it in full. They haven't put in there any kind of caveat, any kind of explanatory note. They have only used terminology which says “It is met in full.” Could you interpret it any other way?

MR MUIR: Um, well, I don't know what they were thinking. Again, as I say, what they were thinking at the time is down to Connex.

MR GARRETT: As a literal reading of it -- I'm not worried about what they were thinking -- as a literal reading of it, would you say that that says to anybody who reads it ----

MR MUIR: As a layman, yes.

MR GARRETT: That they had taken full account of it?

MR MUIR: Yes.

MR GARRETT: So, taking all those issues into account and we know that Connex received details of the claim and we know that they put this paragraph in their tender submission, how did we end up paying them money and why did we pay them so much money -- £186,000? Was there an error?

MR MUIR: The information that we had at the time was that Connex were not aware of the wage agreement. The wage agreement was made after the contract was awarded. The first we knew of it was in May. We understood the first that Connex knew of the agreement was in May. We understood that the first that Halcrow knew of it was in May, and Halcrow were involved all the way through in the discussions.

MR GARRETT: So it is simply a mistake that led to this? **(Pause)**

MR MUIR: It depends what you mean by “*mistake*”. I think -- I don’t think, I know -- that the Department would have treated it differently had we had the knowledge then that we have now.

MR GARRETT: I am just thinking that this is a claim for £186,000. In fact it was bigger than that initially. What steps did anybody take to delve into the background, to make sure that the people that went to that meeting were fully briefed and speaking from a position of strength? Did anybody enquire into the background? Did anybody rake through the old documentation to say “What information was in the possession of Connex? Never mind what Connex is telling us, what information existed at that time?” Did anybody do that?

MR MUIR: We could only go through what we had. We did not have the information from Halcrow. Now, whether Halcrow went back through their information or not I don’t particularly know.

MR GARRETT: So I go back. Do you think it was simply a mistake that led to this, oversight or something slightly worse?

MR MUIR: I don’t think there was any oversight on the part of the Department. I don’t think there was a mistake made by the Department because the Department acted on the information it had available to it at the time. I believe there was an oversight by Halcrow.

MR GARRETT: How about the conduct of Connex in this matter? Do you think that they presented all of the information fairly?

MR MUIR: I think they could have been more open.

MR GARRETT: Thank you. **(Pause)** You may actually have answered many of these questions previously, but this is at the heart of the issue. One of our terms of reference is specifically to look at the accuracy of information in reports and so forth, so I hope you will bear with us.

MR MUIR: Yes.

MR GARRETT: When you submitted anything to do with the bus service, did you route it through John Richardson if it was headed for political circles or were you empowered to forward material directly to the President of the Committee and so forth without reference to John?

MR MUIR: Which material were you talking about?

MR GARRETT: If you were putting in a report to the Committee?

MR MUIR: Reports to the Committee would invariably go through the management team in the first instance.

MR GARRETT: Right.

MR MUIR: And invariably the President would attend the management team meeting as well so that the President would see the reports that were coming up before they were actually put into final form to go to the Committee.

MR GARRETT: If Mike Collier was producing anything, would it be routed through you and then through into the management team?

MR MUIR: Invariably, yes.

MR GARRETT: Invariably or always?

MR MUIR: Well, often it was a question of trying to meet the deadlines, so there could be situations where a report would have gone to the management team and that's the first that I would actually have seen it was actually at the management team.

MR GARRETT: But you would have some knowledge of it. It couldn't by-pass you completely and disappear straight to the Committee?

MR MUIR: Unless I was ----

MR GARRETT: On leave.

MR MUIR: On leave or something like that, yes.

MR GARRETT: I'm just looking through and it seems you have actually provided answers to many of the questions that I was going to put to you. **(Pause)** One specific one is, I think, an unfortunate event. Did you draft a report, a letter, for Maurice Dubras to Terry Le Sueur?

MR MUIR: Yes.

MR GARRETT: You are aware of the letter I'm talking about?

MR MUIR: Yes.

MR GARRETT: Do you regret saying some of the things that you put in that letter?

MR MUIR: Some of the things I put in the letter?

MR GARRETT: Did you include the phrase about "*the Committee's outrage at the conniving that*

appears to have taken place between Transport and General Workers' Union and Jersey Bus"?

MR MUIR: I was asked to ... I had sent up a previous draft that did not have anything like that in it and I was asked to express the outrage of the Committee and put that paragraph.

MR GARRETT: In those terms?

MR MUIR: Sorry?

MR GARRETT: And who asked you to do that, the President?

MR MUIR: The President asked me to do that on behalf of the Committee and I emailed the President the revised draft and I pointed out that he may want to have a look and see whether the outrage was too much or too little.

MR GARRETT: From your involvement in drafting letters for Presidents and Committees and so forth, is that unusually strong language?

MR MUIR: It is strong language, yes.

MR GARRETT: Possibly that is an issue we need to explore elsewhere. **(Pause)** In the report that you put in which was known as RC53/2003, presented to the States on 9th December, I think it was, you said before that you didn't draft that exclusively on your own, that there were other people who contributed to it. Is there any way of knowing who had what input into it, what sections you produced?

MR MUIR: It would be difficult. There might be tracked changes, but certainly there were a number of meetings and amendments made to that.

MR GARRETT: References in there to issues of the wage settlement, would that have been down to you? There is an introductory section, "*Summary*", which draws attention to "*This resulted from a wage agreement reached by the Transport and General Workers' Union and the previous operator after the contract being awarded to Connex*". Is that something you would have written?

MR MUIR: I actually don't think I wrote that. I think that I probably edited it and changed some of the wording.

MR GARRETT: So who would have written that?

MR MUIR: I think it was Mike that wrote that.

MR GARRETT: Right. Maybe we need to explore that with him.

MR MUIR: That is a summary right at the front?

MR GARRETT: Right at the front.

MR MUIR: The summary at the front was put together from text within, wasn't it?

MR GARRETT: It was. It is like an executive summary.

MR MUIR: Yes, yes.

MR GARRETT: So would you have done that, or?

MR MUIR: With the?

MR GARRETT: The exec summary.

MR MUIR: The exec summary would have been put together from the bits that were within, yes.

MR GARRETT: And you would have done that?

MR MUIR: I think I did that along with the President.

MR GARRETT: But you would then have been dependent, you would have been drawing on the material inside the report, which Mike Collier produced on that issue?

MR MUIR: That particular issue, yes. **(The Committee conferred)**

MR GARRETT: We need to regroup for a second.

MR SHEPHEARD: Yes, Mr Muir, I want to deal, if I may, with the drafting of the amendments to the Motor Traffic Law. It is right, I think, that the first contact with the Law Draftsmen was on 12th September 2001?

MR MUIR: Probably, yes. **(Pause)**

MR SHEPHEARD: And that was followed with the actual instructions from ... now, let me get the order of things clear. At some point you had instructed Andium Limited. That is a company run by Mr Richard Syvret, who used to be an Officer of the Finance and Economics Committee.

MR MUIR: Yes.

MR SHEPHEARD: Now, when was he appointed to assist in preparing the instructions?

MR MUIR: I would have to check the actual date in the file, but the summer of 2001.

MR SHEPHEARD: The summer of 2001. And it's right, I think, that he produced a report that was considered by the Committee.

MR MUIR: Yes.

MR SHEPHEARD: Which included, I think, three options as to which way they could go.

MR MUIR: Yes.

MR SHEPHEARD: They chose one of those.

MR MUIR: Yes.

MR SHEPHEARD: He prepared draft instructions and they went through you to the Law Draftsman's Office.

MR MUIR: Yes.

MR SHEPHEARD: Now, the Law Draftsman's response to you was on 22nd November, when the Draftsman, or the Assistant Draftsman, who was actually doing the work first got in touch with you; is that right?

MR MUIR: Possibly.

MR SHEPHEARD: And there was some consideration of whether the definitions of "*omnibus*" and "*charabanc*" should be retained or should be got rid of.

MR MUIR: Yes.

MR SHEPHEARD: And I think the upshot of that was that it was actually decided that the terms should be retained because they were used in other laws where they had the same meanings as they had in the Motor Traffic Law and it would have been a far too complicated exercise to get all those changes done in one fell swoop.

MR MUIR: I believe that is the case.

MR SHEPHEARD: So I think there was a first working draft of the regulations in about the end of January 2002, a second one on 18th February and then a further one in March because some of the penalties for breaches of provisions of the legislation had to be upgraded; is that right?

MR MUIR: (No audible response)

MR SHEPHEARD: And then, towards the end of March there was some concern about whether the words that were being employed by the draftsman were apt to cover the situation or apt to cover the policy that the Committee were in fact implementing.

MR MUIR: Yes. There was a concern that the wording could still have been interpreted as though,

even though you had gone out to tender, to obtain the operator, it would be open to a challenge just through the normal appeal process by someone who had applied for a licence and the Solicitor General asked for some slight modification just to make sure that it was absolutely crystal clear that the process of going out to tender was actually awarding licences and therefore not subject to the normal public meetings, etc, etc, that would be done when a licence is actually awarded.

MR SHEPHEARD: But that change to the draft legislation wasn't in fact made until later in the year, was it, because I think this draft was ----

MR MUIR: I think it was changed to do that. Within the year it was changed to make it absolutely ... I think the Law Officers were absolutely happy with the draft that was finally approved by the states in April. However, they decided that when there was another modification being made to the Motor Traffic Law at the end of that year, it seemed sensible to make it absolutely crystal clear to everyone that what their interpretation was was actually fact in law.

MR SHEPHEARD: I have read different variations of the law and I have had the benefit of seeing the exchanges between yourself and the Law Draftsman, so I think you and I are ad idem on that. I think that seems to be absolutely right. I don't think I have got any further questions at this juncture. Mr Blackstone?

MR BLACKSTONE: Mr Muir, good afternoon. I am sorry I am going to jump about a bit first of all because I just want to clarify some of the things you have said already. Mr Griffiths, the consultant, he was appointed by Stuart Lusby, you said?

MR MUIR: I'm sure it was Stuart. Stuart was the Corporate Resources Director. He was the man that was tasked with doing the report on developing the SLA and all the rest of it.

MR BLACKSTONE: Mr Lusby was Finance Director of PSD at that point?

MR MUIR: He was Corporate Resources Director.

MR BLACKSTONE: Hmm hmm. Apart from progressing the SLA, Mr Griffiths was also involved in examining accounts and preparing a fair rate of return.

MR MUIR: Advising on a fair rate of return?

MR BLACKSTONE: Hmm hmm. Are you aware, or would you be surprised to know that Mr Griffiths had no accounting qualifications?

MR MUIR: I wasn't aware at the time, no.

MR BLACKSTONE: No. And you were aware though that he had no experience in transportation?

MR MUIR: I was aware that he had no experience in transportation, but from my point of view, as I say, it was a question of developing a service level agreement and ----

MR BLACKSTONE: The SLA, I am happy with the SLA side.

MR MUIR: And really Chris Lewis, you know, and his people were as experienced as anyone in the operation of the buses, so, between us, we were going to come up with an SLA that was ----

MR BLACKSTONE: Yes, I am not too worried about the SLA side. It is the accounting. For example, somewhere a figure of 5.3% return was deemed to be appropriate. This was in about June 2001. Deputy Crowcroft did mention that figure in the States in reply to a question. Jersey Bus had asked for a 15% mark-up and a counter-offer was made of 5.3%. Where did that 5.3% come from?

MR MUIR: I can't actually be totally sure because I don't think I was involved in the meeting with the 5.3. My understanding was that there was this publication by a group called TAS.

MR BLACKSTONE: TAS, yes, TAS Syndicates.

MR MUIR: And they do a comparison of something like 150-odd bus companies in the UK.

MR BLACKSTONE: Yes.

MR MUIR: And I believe, but I actually read a note somewhere else that it was a slightly different figure from 5.3, but I believe it was actually done on the basis of firms that had turnovers within the bands of the turnover that Jersey Bus had.

MR BLACKSTONE: Well, Mr Griffiths did produce two schedules. We have seen one producing an average rate of 8.1 and one of 10.3.

MR MUIR: Which is 150-odd?

MR BLACKSTONE: Who?

MR MUIR: Is that the 150-odd companies?

MR BLACKSTONE: There were quite a lot of companies involved, yes, but he denied having the responsibility for the 5.3% when we questioned him last week.

MR MUIR: It wouldn't surprise me that it perhaps wasn't John.

MR BLACKSTONE: Because he was the expert employed to look at the fair rate of return and I would have thought that came from him. I was surprised it didn't. Anyway, we will leave that one. Obviously you are not aware what happened there. Going on to the Hoppa dispute in June 2000, a strike followed and then there was a meeting chaired by Senator Le Sueur, which Deputy Crowcroft also attended, I believe. I don't think you were there.

MR MUIR: No.

MR BLACKSTONE: But what came out of that and what was confirmed in subsequent PSC minutes was that there would be a three to five year agreement with Jersey Bus and competitive tendering would not start until after that. You are familiar with that agreement?

MR MUIR: Yes.

MR BLACKSTONE: And it was to be made subject to a memorandum in September 2000 and to go on to the SLA in March 2001. Within 12 months of that agreement being reached, everything had been thrown out of the window and everybody was going helter-skelter for a tendering process. Do you think it is right and honourable that PSC should just renege on their agreement out of hand like that?

MR MUIR: I think you are asking me for an opinion there. I can only go on what the process ----

MR BLACKSTONE: But you do acknowledge that a firm agreement was made?

MR MUIR: That is my understanding. There was an agreement made that the Committee would enter into a memorandum of understanding and that a service level agreement, a voluntary service level agreement, because none of this could actually stack up in law because the law needed to be changed.

MR BLACKSTONE: That's right.

MR MUIR: But a voluntary service level agreement would be set up with Jersey Bus to end up having a life time of, I think it was, three to five years.

MR BLACKSTONE: Yes.

MR MUIR: And it then comes back to what Mr Garrett was talking about earlier on, that over that period of time we then glean all the activity information with a view to going out to tender once

the service level agreement period expires.

MR BLACKSTONE: The point I was making was that it seemed surprising that PSC didn't stand by that agreement. You made a comment that "*good progress was made on the SLA until the lawyers got involved*". Now, I think Bailhache Labesse were representing Jersey Bus and I believe the Solicitor General did also comment on the draft service level agreement at some length. Neither were happy with it, so it wasn't just Jersey Bus.

MR MUIR: No, no, it wasn't just them.

MR BLACKSTONE: You stated that the Bus Strategy was drafted by Deputy Crowcroft, that he was the one that put that process in motion.

MR MUIR: Most of the basis of it was put together by Deputy Crowcroft.

MR BLACKSTONE: What sort of timescale are we looking at? Would this be back in 2000 or would it have been the end of 2001 when the Bus Strategy was put to the States?

MR MUIR: It was. I would have said it was more over 2001. **(Pause)**

MR BLACKSTONE: Of course, Deputy Crowcroft didn't come on to PSC until December 1999?

MR MUIR: He was President from 2000. I think he was actually on the Committee before that.

MR BLACKSTONE: On 14th December 1999 he was certainly President, yes.

MR MUIR: But I think he was on the Committee before that.

MR BLACKSTONE: Was he, right. You said that the Bus Strategy Steering Group met on a number of occasions. Do you have the minutes of their meetings?

MR MUIR: There was ... the first meeting that took place ... what minutes I have I have actually supplied to the Committee of Inquiry.

MR BLACKSTONE: Did they not always keep minutes then?

MR MUIR: The first ... I can only think of one where there was absolutely no real record of the meeting at all. It had been hoped it would get a Committee Clerk for each of the meetings, so the first meeting I took the minutes. I believe the second meeting that took place was actually a full Committee meeting as well with the Committee, so therefore there was a Committee Clerk available, and that is invariably what happened, that the Bus Strategy Steering Group came to

Committee meetings and, therefore, what was decided and discussed was actually part of the Committee minutes.

MR BLACKSTONE: I see. So they didn't meet separately on their own?

MR MUIR: They met separately on their own on a couple of occasions and, as I say, I made notes the very first time they did that.

MR BLACKSTONE: But subsequently there were not minutes?

MR MUIR: No, because, as I say, I think the majority of time, I think all but one, it was a question of them meeting during the course of a Committee meeting.

MR BLACKSTONE: Sure. You said that Roger Childs looked at the draft Bus Strategy which was passed by the States in July 2001. When was he reviewing that?

MR MUIR: When did he review it?

MR BLACKSTONE: Yes.

MR MUIR: It was probably round about June, I would think.

MR BLACKSTONE: June 2001?

MR MUIR: Yes. **(Pause)**

MR BLACKSTONE: There was discussion on a Dunn-Line tender and your review of it. In fact, the shift allowance is mentioned specifically in the notes not in the first page of the document, so you didn't review all the notes?

MR MUIR: No, I didn't review all the notes. When you say "*notes*", can you clarify that for me? I think the Dunn-Line document is actually a very, very thick document.

MR BLACKSTONE: Yes, but there were specific notes on their costings running to several pages. It was their tender, which is a single page document, essentially the figures?

MR MUIR: Yes, but what I wouldn't look at is the guts. If there were things about basic aspects of their proposal, I would have looked at that, but that's the guts.

MR BLACKSTONE: Their shift allowance is spelt out.

MR MUIR: **That one there**, it is all figures. That is the guts, but it just said "*shift allowance*".

MR BLACKSTONE: And that didn't raise any query?

MR MUIR: It wouldn't have, no, "so what if they operate shifts". I don't think I would have.

MR BLACKSTONE: Accepted.

MR MUIR: Sorry, I thought you were referring to maybe something that was in the front of the document.

MR BLACKSTONE: Now, your review of the tenders took place some time after they were actually opened on 18th February, because Halcrow took them away and then sent them back to you?

MR MUIR: That is my recollection. Well, they didn't send them back. I think I actually brought them back. I met Halcrow in London.

MR BLACKSTONE: You made some reference to you taking copies for the BSSG?

MR MUIR: Yes.

MR BLACKSTONE: And did they all get copies of all the tenders?

MR MUIR: When the actual ... on the day of the meeting where we had ----

MR BLACKSTONE: The beauty contest?

MR MUIR: Yes. I prepared folders for every single member of the Bus Strategy Steering Group. I told them that that would be available actually at the meeting. It had all of the tenders in, albeit they were only interviewing three of the tenderers, and they had to return them at the end of the meeting, because clearly there was a lot of confidential information in there.

MR BLACKSTONE: Sure.

MR MUIR: Business information, and they were all shredded, apart from, if my recollection is right, we kept one just for record purposes.

MR BLACKSTONE: We have just heard one of the members of the BSSG that she hadn't seen the actual tenders, but it may be a failure of memory. It is a couple of years ago.

MR MUIR: I can assure you that every single member of the Bus Strategy Steering Group, there was one made for them and I think they were all at the beauty contest, as you call it, but I may be wrong.

MR BLACKSTONE: On the shift claim, you said that you got legal advice before you made out the payment, and that came from the Law Officers. Do you have a copy of that legal advice?

MR MUIR: Yeah, I do.

MR BLACKSTONE: It doesn't appear to have reached us.

MR MUIR: It should have.

MR BLACKSTONE: Perhaps you can provide a second copy to us.

MR MUIR: It should have now. It may have been in ---

MR BLACKSTONE: It was not in the specific files, to our knowledge. We haven't found it.

MR MUIR: It could well be because it came to our knowledge just when we were reviewing certain things last week or the beginning of this week. It became quite ... it was just on Friday, I believe it was. We came across a whole email file that hadn't been actually copied out. So it may have been in that one.

MR SPENCE: Such files have been received in the last couple of days, but not reviewed by yourselves yet.

MR SHEPHEARD: That is right.

MR MUIR: If it is any help, it is actually ... I broke that large file down into different categories and that should contained certainly be in the Law Officers' file.

MR BLACKSTONE: We have been rather busy for the last couple of days, as you have probably noticed.

MR SPENCE: I remember Mr Muir mentioning a particular sub-file to me, so it must be in there. It should be in there.

MR SHEPHEARD: Some further research will be necessary.

MR BLACKSTONE: When did you finally hear about the shift allowance? Was that in May 2002?

MR MUIR: I heard that there was a £72 a week shift allowance being paid to Jersey Bus bus drivers from September 2002. I heard about that in a telephone conversation with Mick Kavanagh round about twenty-oddth of May, 24th May perhaps, 2002.

MR BLACKSTONE: At which point steam came out of your ears.

MR MUIR: Well ...

MR BLACKSTONE: And presumably then you went back and checked all the documentation, including Connex's tender and everything else?

MR MUIR: I checked Connex's tender. I checked ... well, we checked to see what there was in respect of the £72 a week shift allowance and there was nothing there.

MR BLACKSTONE: Well, there is in the tender.

MR MUIR: Sorry?

MR BLACKSTONE: In Connex's tender they say specifically, as I think Mr Garrett said, that the wage claim of Jersey Bus, that they had assumed that the wage claim of Jersey Bus would be paid in full.

MR MUIR: But we didn't know that was a claim. I didn't know that was a claim.

MR BLACKSTONE: No, a claim, that is what we are talking about. They were aware of the claim and they said in their tender document "We have provided for the wage claim being paid in full. Should it be settled in a lesser amount, we are prepared to reduce our tender accordingly", or words that effect.

MR MUIR: Yes, yes.

MR BLACKSTONE: Yes. So they did include it. They admitted that they had included it.

MR MUIR: That is what they say, yes.

MR BLACKSTONE: And why then is the PSC paying them the same thing the second time over?

MR MUIR: Because we didn't know that they ----

MR BLACKSTONE: But you did. By this time you knew about it because, in April 2003, Connex prepared notes of a meeting at which they said the consultant's advice -- that is Halcrow -- was that it would be reasonable for the States to meet the claim of Connex for an additional £186,500. This is April 2003.

MR MUIR: Yes.

MR BLACKSTONE: Long after you knew about the existence of the claim.

MR MUIR: No. We didn't know about the claim. I didn't know about the claim until December 2003.

MR BLACKSTONE: 2003?

MR MUIR: Yes.

MR BLACKSTONE: I thought you said by May 2002.

MR MUIR: I was told by Mick Kavanagh on the phone that a wage agreement included a shift allowance of £72 a week.

MR BLACKSTONE: That was in May?

MR MUIR: That was in May.

MR BLACKSTONE: 2002?

MR MUIR: 2002.

MR BLACKSTONE: And then you went back, as you just said, and checked all the documents.

MR MUIR: Hmm.

MR BLACKSTONE: So, by the time we get round to April 2003, you definitely knew about the shift allowance.

MR MUIR: No.

MR BLACKSTONE: You just said you did.

MR MUIR: I didn't. What I knew about was, yes, there was a shift allowance, but, as far as we understood, that shift allowance wasn't known about before the contract was awarded. This was a post-contract award that, to our knowledge, no one knew about.

MR BLACKSTONE: But then you said when Mick Kavanagh told you about the shift allowance you went back and checked the agreements, the contracts and things.

MR MUIR: Which contracts?

MR BLACKSTONE: Sorry, the tender documents. I beg your pardon. You went back and checked the tender documents, you said, to see if it was there and you said it wasn't in the tender documents.

MR MUIR: There was nothing in the tender documents about a £72 a week shift allowance.

MR BLACKSTONE: In Connex's tender?

MR MUIR: There is nothing in their tender about a £72 a week shift allowance.

MR BLACKSTONE: Not specifically, but it says "*We have provided for the wage claim to be settled in full.*"

MR MUIR: Hmm.

MR BLACKSTONE: The wage claim has two parts, right? One was a 4.5 across the board and the other was a £72 a week shift allowance.

MR MUIR: But the Department didn't know about it.

MR BLACKSTONE: I'm not saying that the Department didn't know at that time. You were advised by Mick Kavanagh in May 2002, you said.

MR MUIR: Hmm.

MR BLACKSTONE: And then you went back and checked the documents and you just said that there was nothing in Connex's tender which said that the shift allowance had been included.

MR MUIR: I am not sure what you are getting at.

MR BLACKSTONE: I have it here. **(Pause)**

MR MUIR: We had no details of what the claim was.

MR BLACKSTONE: You didn't have to.

MR MUIR: And we understood that Connex had no idea what the claim was.

MR BLACKSTONE: Connex did know what the claim was, didn't they?

MR MUIR: It seems so.

MR BLACKSTONE: The actual wording is -- this is Connex's tender document: "*Included in our costs is the assumption that the wage claim of the present Jersey Bus staff is met in full*" -- both halves, right, in full -- "*We would be prepared to discuss a reduction in the staff costs directly applicable to the present staff should the claim be settled at a lower level.*" Is there any ambiguity whatsoever in that statement?

MR MUIR: I don't think so.

MR BLACKSTONE: No, nor do I. In other words, Connex included in their tender bid the full amount of the wage claim, part 1 and part 2. They said they did.

MR MUIR: That is your reading of it. It is perhaps everybody's reading of it, but ----

MR BLACKSTONE: Sorry?

MR MUIR: It's your reading of it. I think it would be the normal lay person's reading of it, but, as I say ----

MR BLACKSTONE: I know lawyers get complicated, but is there anything complicated in

that? It is a straight statement of fact. There is no law involved. **(Pause)** It says that the wage claim was included in full. What could be clearer than that?

MR MUIR: Right.

MR BLACKSTONE: And before you came to pay this, to pay Connex again, you had read through that and seen that again.

MR MUIR: That was part of the discussions, where they had said that they would meet the wage claim in full, but we were not aware that they were aware of what the claim constituted.

MR BLACKSTONE: But you became so later on.

MR MUIR: After we had actually discussed the settlement of the claim. We didn't find out that Connex were aware of the claim until December 2003, after we had agreed to pay it.

MR BLACKSTONE: But didn't you, before you went back and agreed to pay out £186,000 of taxpayers' money, did you not go back and check the documentation and look at what Connex had actually included in their bid? **(Pause)**

MR MUIR: The impression we had was that Connex were totally unaware of any £72 a week.

MR BLACKSTONE: To have such an impression you couldn't have read that document, could you?

MR MUIR: I don't think that's the case, Mr Blackstone. I think the case is ----

MR BLACKSTONE: I do. The document is crystal clear and you have just admitted yourself there is no ambiguity in it. I agree there is no ambiguity there. If you then went ahead and processed and recommended Connex's claim be paid a second time for the shift allowance, I don't believe you could have read that. You say you did?

MR MUIR: I know what the words say, but, as I say, our understanding, the Department's understanding was that there was no mention of any £72 a week claim. The first that the £72 a week came into the public realm at all was in May 2002, after the contract was awarded. At the time that the tenders were submitted in February 2002, it was the Department's understanding that there wasn't a claim and that the ----

MR BLACKSTONE: I am not querying the Department in February 2002.

MR MUIR: But we assumed ----

MR BLACKSTONE: I am not querying that. It has been open to query during this hearing, but that is not what I am querying now. You said that in May 2002, Mick Kavanagh told you that there was a shift allowance claim.

MR MUIR: Yeah.

MR BLACKSTONE: So you did know there was a shift allowance claim in May 2002.

MR MUIR: No, I knew there was a shift allowance agreement. I didn't know there was a claim. I didn't know it formed part ----

MR BLACKSTONE: You knew there was a shift allowance agreement of £72 a week?

MR MUIR: I didn't know there was a claim.

MR BLACKSTONE: No, Mick Kavanagh told you in May 2002 ----

MR MUIR: Yeah.

MR BLACKSTONE: ---- that there was a shift allowance agreement.

MR MUIR: Yes.

MR BLACKSTONE: ---- which had been agreed with Jersey Bus on or about 9th May 2002.

MR MUIR: Yeah.

MR BLACKSTONE: At that time, you did not know that it was in the tender documents. I accept that. But when Mick Kavanagh told you this, did you not then go back and look at the tender documents to see exactly what the facts were before you gaily paid out £186,000?

MR MUIR: I think we are obviously at some misunderstanding here. We didn't "*gaily pay out £186,000*". We went into discussions on the basis of a claim that came from the contractor, saying that they did not expect that there would be a wage agreement with £72 a week shift allowance. Now, our understanding was that there had been no indication to the contractor, the operator, that there was even a claim for £72 a week shift allowance.

MR BLACKSTONE: You didn't find that out until when?

MR MUIR: We didn't find that out until December 2003, which is some eight months after we had actually been talking to them.

MR BLACKSTONE: And that was after you had actually paid out this extra £186,000?

MR MUIR: It was, yes, it was.

MR BLACKSTONE: But, before you went and paid out this money, you should have gone and checked the facts, surely? Connex made a claim that they didn't include it, yet here you have only got to look. We have only been in this job for four months, you know. We have been working pretty hard, but it is blatantly apparent that Connex knew about it.

MR MUIR: But you have all the documents in front of you.

MR BLACKSTONE: You had Connex's tender document.

MR MUIR: But I didn't have Halcrow's documents in front of me.

MR BLACKSTONE: You didn't have Halcrow's?

MR MUIR: No.

MR BLACKSTONE: But you had Connex's.

MR MUIR: And we actually had the advice of Halcrow and I have actually got something that is from Halcrow.

MR BLACKSTONE: I have got it right here, and this is the document of 3rd April 2003.

MR MUIR: I think I have actually got something before then as well.

MR BLACKSTONE: The consultant's advice is that it would be reasonable for the States to meet the claim of Connex, but we queried Mr Roger Childs on this and he admitted last week that this wording was unfortunate. What he should have said was if Connex had not been aware of the claim, the consultant's advice, etc, etc. He admitted that this is not entirely clear. But then we come to the fact that, obviously, Connex were perfectly well aware of this claim in part 1 and part 2.

MR MUIR: Because Halcrow sent them out the details of the claim.

MR BLACKSTONE: Yes, they were aware.

MR MUIR: But if I can refer you to document M268, it is an email to me, dated 24th November 2002, from Roger Childs, copied to Roger Macklin, it was about the tendering base revenue, which was an issue. It says "*Alan, with apologies for the delayed ... (indistinct) ... We have also given further thought to the issue of meeting additional costs and we attach an extract from the note from RM to me sums up our feelings on this.*" Then it says "*With regard to the increased costs of drivers' 2002 bonus payments awarded after the tendering process by the previous*

operator, the situation is rather different. This was a cost that none of the tenderers at the time of tendering were aware of and was therefore not either within their power to proceed or to escape from paying if they were successful. It is suggested that such actual payments as are incurred be accepted and should be shown separately on each four weekly invoice but not eligible for the addition of the agreed profit margin. After the end of year one, such payments should be subsumed into the overall tender cost figures.” So he actually had ----

MR BLACKSTONE: So the recommendation from Halcrow, yes.

MR MUIR: From Halcrow, yes. As far as Halcrow was concerned, there was no evidence before tendering that this figure was known about.

MR BLACKSTONE: As far as Halcrow were concerned?

MR MUIR: There is no evidence that this figure was known about.

MR BLACKSTONE: And Halcrow had that information on 12th February 2002.

MR MUIR: Yes, and this is the advice they have given to us on 24th November 2002.

MR BLACKSTONE: Rather dodgy advice, it sounds to me. We will see the legal advice as well and presumably the Law Officers who gave it were made privy to all the documentation.

MR MUIR: They were made privy to the documentation that we had at the time.

MR BLACKSTONE: But not including Connex's bid documents?

MR MUIR: Oh they would have had that, yes.

MR BLACKSTONE: Which said that the wage claim was included in full. Thank you. We will move on. Late 2003, I have seen correspondence around that date between Connex and, I think, PSD detailing proposed route cuts. These route cuts were to compensate for the shift allowance for years 2 and 3, I believe.

MR MUIR: It was to design out ... in the absence of getting any further funding, it was to design out the £186,000 subsidy.

MR BLACKSTONE: They were paid the £186,000 ----

MR MUIR: No, no, for future years.

MR BLACKSTONE: For future years, yes. So Connex not only included in their tender the full wage claim, but they have been paid it for year one and then they had route cuts to compensate

them for years two and three, right?

MR MUIR: Yes.

MR BLACKSTONE: Thank you.

MR MUIR: That was one of the proposals.

MR BLACKSTONE: Yes.

MR MUIR: I don't think it was accepted.

MR BLACKSTONE: They were proposing to have the routes cut.

MR MUIR: But it wasn't going to be accepted.

MR BLACKSTONE: They knew about the claim. **(Pause)** In September 2001, Halcrow were asked to look at the subsidies to be paid to Jersey Bus for the final year and they held discussions with Jersey Bus, which were apparently quite amicable, and they came up with an agreed subsidy not that far off what Jersey Bus were asking for. It was a bit lower. In their report at that time they said "*Discussions have been held with Jersey Bus regarding the costs presented and Halcrow are grateful for the access to key staff and the high level of co-operation offered.*"

Six months later, in their assessment of the bids, Halcrow refer to Jersey Bus in rather different terms. They say "*We are not however convinced that the spirit of co-operation that is essential for the development of a successful partnership arrangement exists or is possible between the parties.*" Where on earth could they have got that information from? It wouldn't have been from Jersey Bus. They are not going to shoot themselves in the foot, are they?

MR MUIR: You would have to ask Halcrow.

MR BLACKSTONE: I did. They said it came possibly from Mr Muir or possibly from some of the politicians.

MR MUIR: It wouldn't be me. I always had some very good working relationships with Jersey Bus.

MR BLACKSTONE: You never bad mouthed Jersey Bus to Halcrow?

MR MUIR: [shakes head]

MR BLACKSTONE: We then get round to the July/August 2001 period, which was really the final sort of fraught situation, with final offers flashing backwards and forwards from all directions. You probably don't remember.

MR MUIR: Can you clarify that again?

MR BLACKSTONE: July and August 2001. There were negotiations going on between Jersey Bus and the Public Services Committee, which by that stage got pretty fraught and they referred to final offers and all that sort of thing.

MR MUIR: Yes. I think I wasn't around at that time.

MR BLACKSTONE: You weren't around?

MR MUIR: No, I think I was actually in New York at the end of July/beginning of August.

MR BLACKSTONE: I will just think about that. **(Pause)** I will pass on that if you weren't there. Senator Ted Vibert fired an absolute volley of questions in the States -- I think 18 questions -- to Deputy Dubras at the beginning of this year or late last year. Who drafted the replies for Mr Dubras?

MR MUIR: Several people. It was a combination of people.

MR BLACKSTONE: Names, please?

MR MUIR: I would have been involved. Mike Collier would have been involved. John Richardson would have been involved. Certainly the President was involved.

MR BLACKSTONE: At that time Mr Dubras, yes?

MR MUIR: Yes, and I think possibly -- I may be wrong, but I think possibly -- the Vice President might have been involved as well. **(Pause)**

MR BLACKSTONE: Excuse me for ferreting around, but we have been swamped in paper. In May 2001, Mr Griffiths produced a draft report. He sent this to you under cover of an email, saying "*I attach a financial analysis of the ding ding. In confidence to you, Clive and John only, please no further, including the President if you don't mind.*" Why would he not want the President to have a copy of this draft report?

MR MUIR: I think because it was a draft and probably because the President at the time, I believe, was Deputy Crowcroft.

MR BLACKSTONE: Yes.

MR MUIR: I think that John would have been quite keen to make sure that it was only officers that had sight of it.

MR BLACKSTONE: Why? He was employed by the Public Services Committee, I assume.

MR MUIR: Yes.

MR BLACKSTONE: Why shouldn't his ultimate employers know about this?

MR MUIR: Well, they would have. They would eventually, it is just ...

MR BLACKSTONE: He goes on: "*I do not intend to reveal any of this information at Monday's meeting. I would welcome your advice as to how much or how little you want me to disclose.*"

Did you agree with him that his report shouldn't be disclosed to the Committee?

MR MUIR: I can't honestly recall. What date was it?

MR BLACKSTONE: This is May 2001.

MR MUIR: Yes, when was the meeting going to be.

MR BLACKSTONE: I don't have the date of the meeting and the email itself is not dated. It would be about that time. **(Pause)** In fact, that first sentence says "*Please no further including the President if you don't mind. I cannot afford to get sued.*" What on earth is he talking about?

MR MUIR: Um, I think you would have to ask John that.

MR BLACKSTONE: We did. He was rather vague about it.

MR MUIR: You have to bear in mind that John was dealing with some very confidential information that he wouldn't want to get into the public domain.

MR BLACKSTONE: But the President is surely not the public domain? **(Pause)** Did he imply that the President of the Committee was not confidential?

MR MUIR: I don't know. I'm just saying that he would want to make sure that it would not get into the public domain.

MR BLACKSTONE: And we come back to this old chestnut that he recommends that the accounts of all other companies -- all, I would emphasise the word "*all*" -- within the group be examined, the Living Legend, the Boardwalk Café, the works. Halcrow, when were they first appointed?

MR MUIR: Um ... my first recollection of Halcrow being appointed was probably round about June 2001 to comment on the Bus Strategy. **(Pause)**

MR BLACKSTONE: We have got a document here from Halcrow "*Jersey Bus Strategy:*

Implementation, Issues and Methodology. Key dates: end July 2000, States approval to proceed; early August 2000, calls for expressions of interest; end of August 2000, shortlist of bidders.” If they are advising you in 2001, they wouldn’t be putting in dates from 2000, would they?

MR MUIR: I think they have put the wrong date.

MR BLACKSTONE: Would your computer have got the wrong date? There is a reference on this of September 2000.

MR MUIR: That is not my computer that has that on.

MR BLACKSTONE: “C:\Documents and Settings\Muir A\Local Settings\ Temporary Internet Files”.

MR MUIR: Yes, but that is my one **there**, on **that** row **there**. It doesn’t have a date on it, my row. The one above that is actually on the document itself. It was emailed from Halcrow.

MR BLACKSTONE: So Halcrow in preparing that document made a mistake of one year?

MR MUIR: I suspect so.

MR BLACKSTONE: They were referring to 2000, but in fact they were preparing documents in 2001?

MR MUIR: The first contact I ever had with Halcrow was in round about June 2001.

MR BLACKSTONE: Well, if the first line of that reference isn’t yours, it must be Halcrow’s then. So their date there, their computer, infallible as those beasts are, said this document was around in September 2000.

MR MUIR: I think that is probably just another footer that is on there, but, I mean, presumably you did check this with Halcrow?

MR BLACKSTONE: They are, you know, a firm of some repute. You know, it very much surprises me if they are talking about implementation in some detail in the year 2000 if they didn’t prepare this document until 2001. **(Pause)** You have no knowledge of Halcrow coming on the scene in 2000?

MR MUIR: No, absolutely none.

MR BLACKSTONE: It looks to me as if somebody did.

MR MUIR: Can you let me have the reference of that, please, so I can check it on my own computer?

MR BLACKSTONE: "C:\ ----

MR MUIR: No, no, have you got the reference in the top right-hand corner? There should be a number.

MR BLACKSTONE: F7?

MR SPENCE: F7, 8, 9 and 10.

MR BLACKSTONE: Right through to F25. **(Pause)** The clause for the dates is 4.2.1. **(Pause)**

MR MUIR: I mean, they would have to be clairvoyant.

MR BLACKSTONE: Hmm?

MR MUIR: They would have to be clairvoyant. If you go to paragraph 3.3.2 of F13 -- it is actually "F13" at the top -- but if you go to paragraph 3.3.2, I'm just picking one here, Mr Blackstone, that I'm sure ... it is just to try and find out whether the date here is wrong and that, but you actually see in 3.3.2 that they are saying "*There is an arrangement through which pupils and students can use the local bus service, for example when staying in school for afternoon activities on payment of reduced flat fare, currently 35p, 39p from September 2001.*"

MR BLACKSTONE: Point taken.

MR MUIR: I'm absolutely cast iron sure that that is supposed to be 2001. **(Pause)**

MR BLACKSTONE: It is strange that their computer picks up the date of 2000 as well, that's all. The amount you are referring to on the school bus is, of course, forecast. They do say it is due to be put up. When was it mooted that the school bus fare should be put up to 39p?

MR MUIR: I suspect it was ... I suspect it was done around about that time, yes.

MR BLACKSTONE: In 2001 and not in 2000?

MR MUIR: Not in 2000, yes.

MR BLACKSTONE: I think we might have to go back to Halcrow on that one.

MR MUIR: They also say that their fee rates would be held until the end of May 2002. I don't think they would be saying that in 2000. I mean, unfortunately what I don't have is ... I think this has obviously come through by email. What I've not got here is my ... certainly the email that has come through. I can provide you with that if it is ----

MR BLACKSTONE: I think we will check back with Halcrow on that and perhaps you can

check back with your emails as well.

MR MUIR: Yes. **(Pause)** I think there was also a Committee Act that they had decided to appoint Halcrow, and that is round about May/June 2001. In fact, it was 11th June 2001 and it is D224.

I think that is right.

MR SPENCE: I will have to extract that as well, Sir. I don't have it.

MR SHEPHEARD: Very well.

MR BLACKSTONE: I think we have both got to do a bit of research on that one, Mr Muir.

MR MUIR: Do you want to see the Act?

MR BLACKSTONE: No, we will check back with Mr Childs, I think. **(Pause)** Moving forward to the first part of 2002, the beauty contest and the selection of the preferred operator and all that sort of section, when was the preferred operator selected?

MR MUIR: The preferred operator was selected at the meeting at the end of April. **(Pause)**

MR BLACKSTONE: Following the beauty contest -- excuse that wording, but it is one which I have used often in business -- on 15th March, did the BSSG stay and discuss the bids after the tenderers had left?

MR MUIR: Yes.

MR BLACKSTONE: But the preferred operator was not selected at that time?

MR MUIR: No, because we had to wait until the law changed.

MR BLACKSTONE: Was there a subsequent meeting of the BSSG prior to the announcement of the preferred operator on 1st May?

MR MUIR: They met with the Committee on ----

MR BLACKSTONE: 30th April?

MR MUIR: Yes.

MR BLACKSTONE: So there were no separate minutes of the BSSG meeting because the PSC meeting minutes were fairly brief. It just said "*On the recommendation of the BSSG*", etc, etc. It didn't record any discussion.

MR MUIR: No.

MR BLACKSTONE: Right. And I think you told Mr Garrett earlier that the presentations took

place on 15th March, but the decision about the preferred operator was delayed until 1st May and that was due to the law change which was pending. **(Pause)** If the decision had preceded the amendment to the law, would it have meant that the whole tendering process would have been rendered illegal and therefore invalid? **(Pause)**

MR MUIR: You are asking me a legal question.

MR BLACKSTONE: True. Pass. Now, the tenderers all supplied perfectly adequate cover sheets -- these are the signed sheets -- with their tenders, which were submitted on 18th February. Why were they subsequently told to prepare new cover sheets dated 29th April?

MR MUIR: To comply with the tendering process.

MR BLACKSTONE: So their tender documents that they submitted did not comply ----

MR MUIR: To meet the law.

MR BLACKSTONE: Did not meet the law?

MR MUIR: It was to meet the law that had just been introduced.

MR BLACKSTONE: So the earlier documents they submitted did not meet the law?

MR MUIR: They were ... again, you would have to see what the lawyers actually said, but ...

MR BLACKSTONE: With these subsequent tender sheets redated or dated 29th April, they did not again submit the full wad of tender documents, did they?

MR MUIR: No.

MR BLACKSTONE: So you were still going on the tenders submitted in February.

MR MUIR: The tenders were perfectly legitimate tenders. There was nothing legally wrong with the tenders.

MR BLACKSTONE: Hmm hmm.

MR MUIR: It is the fact that the tenders had to be submitted under the Motor Traffic Law as amended on whatever it was of March. That is what the tenders -- sorry, April -- had to be submitted under. So it was just a legal nicety to make sure that the tender, when it was accepted, whoever that might be, it wasn't open to a straightforward challenge under the old law.

MR BLACKSTONE: So these redated cover sheets were sent out in late April 2002 to the three tenderers on the short list.

MR MUIR: Yes.

MR BLACKSTONE: Together with letters advising them and various questions purportedly seeking clarification of the tenders prior to the selection of the preferred operator.

MR MUIR: Yes.

MR BLACKSTONE: I suggest, Mr Muir, that this was a simple window dressing exercise to give a semblance of legality to the decision, which had already been taken by PSC and BSSG immediately following the presentations on 15th March. Am I correct in that assumption?

MR MUIR: We followed the advice of the Law Officers.

MR BLACKSTONE: Was this a simple window dressing exercise?

MR MUIR: We followed the advice of the Law Officers.

MR BLACKSTONE: Hmm?

MR MUIR: We followed the advice of the Law Officers.

MR BLACKSTONE: But the decision of the preferred operator had been taken earlier, had it not?

MR MUIR: The decision was taken on 30th April.

MR BLACKSTONE: Mr Muir, I remind you that you are giving evidence under oath.

MR MUIR: I am.

MR BLACKSTONE: I will ask you again, was or was not the decision to select Connex as the preferred operator taken by the Public Services Committee and the BSSG on 15th March 2002?

MR MUIR: They selected the operator under the law on 30th April.

MR BLACKSTONE: Did they select the preferred operator -- leave out the words "*under the law*" -- did they select the preferred operator on 15th March? **(Pause)**

MR MUIR: What's on the Act of the Committee?

MR BLACKSTONE: Hmm?

MR MUIR: What's on the Act of the Committee?

MR BLACKSTONE: What's on?

MR MUIR: The Act of the Committee.

MR BLACKSTONE: Nothing. There is no Act of the Committee on 15th March confirming

that the preferred operator was selected. **(Pause)** You are saying -- I will ask you a third time -- was the decision to select Connex as the preferred operator taken on 15th March or on 30th April?

MR MUIR: On 15th March it was the Bus Strategy Steering Group that met.

MR BLACKSTONE: Did what?

MR MUIR: That met.

MR BLACKSTONE: Yes.

MR MUIR: So the Committee are the ones who make the decision, not the Bus Strategy Steering Group.

MR BLACKSTONE: On the recommendations of the Bus Strategy Steering Group.

MR MUIR: Yes.

MR BLACKSTONE: I would like you to look at this document, please, Mr Muir? **(Document handed to witness)** **This** is an email which was given to the Committee of Inquiry from the Public Services Department, file references H249, 250, 251 and 252. The email is from E Muir - Alan Muir, sorry -- 16th March 2002 to Robin Hacquoil: *“I attach copies of each of the documents. I will also fax copies to ensure you receive them.”* The cover sheet shows *“Bus Strategy statement 19th March, Med PSC appointed operator Dep”*, which I presume means the media release. *“The first document is headed up to be made by the President of the Public Services Committee in the States on 19th March 2002 on the Bus Strategy and selection of the preferred operator.”*

MR MUIR: Yeah.

MR BLACKSTONE: Page 2, para 2: *“On 15th March, each of these operators”*, that is Connex, Dunn-Line and Jersey Bus, *“presented their proposals to a joint meeting of the Steering Group and the Public Services Committee.”*

MR MUIR: Yeah.

MR BLACKSTONE: *“The Committee and the Steering Group unanimously selected Connex Bus UK to be the preferred operator.”*

MR MUIR: Yes.

MR BLACKSTONE: This draft is for signature by Deputy R.C. Hacquoil, President, Public

Services, dated 19th March 2002.

MR MUIR: Yeah.

MR BLACKSTONE: The second document is a press release, undated, but it says “*Editor’s briefing for representatives of the press to be held at 9.15 on 20th March in the Members Room*”, blah, blah, blah. The first line: “*Connex Bus, a subsidiary of the French giant Vivendi, has been selected as the preferred operator for Jersey’s bus network from October.*”

MR MUIR: Yeah.

MR BLACKSTONE: Does that not state quite clearly that the Public Services Committee and the BSSG selected the preferred operator on 15th March?

MR MUIR: On the basis of the information that they had, yes.

MR BLACKSTONE: Is there any reason that this is not correct?

MR MUIR: There is no reason it is not correct, except the fact that it wasn’t ----

MR BLACKSTONE: So a decision was taken on 15th March?

MR MUIR: A decision was taken.

MR BLACKSTONE: The decision to select the preferred operator.

MR MUIR: A decision was taken. The decision was taken on the 30th April.

MR BLACKSTONE: Sorry, “*a*” decision or “*the*” decision? What is the difference? The decision was taken on 15th March. Here are the documents that say it was under cover of an email from you to the President. **(Pause)**

MR MUIR: I don’t know what you want me to say.

MR BLACKSTONE: The subsequent exercise on 30th April was nothing more than a window dressing exercise to make it clear that it complied with the law. Is that not correct?

MR MUIR: We worked on the advice of the Law Officers.

MR BLACKSTONE: That you couldn’t disclose the decision until 30th April?

MR MUIR: The Law Officers told us we couldn’t make a decision until 30th April.

MR BLACKSTONE: But the decision was made. These documents say it was. Again, there is no ambiguity. They spell it out. It says “*has been selected*” and “*The press briefing will be held at 9.15 on 20th March.*” **(Pause)** I have no further questions.

MR SHEPHEARD: Mr Garrett?

MR GARRETT: Can I just take you back to the letter that was signed by Mr Dubras which he amended? In the same paragraph where it referred to the “*conniving*” issue, there is a reference to “*I have asked the Attorney General for his opinion on whether the Transport and General Workers’ Union acted improperly during the tender process and whether there is any means of redress.*” Is that something that he included in there or something that you put in there?

MR MUIR: I think it was probably something that I put in.

MR GARRETT: Did you actually go to the Attorney General as indicated in that letter?

MR MUIR: We did write to the Attorney General, yes.

MR GARRETT: And what was his response, do you know?

MR MUIR: I think I have given the information, again, and it is probably in the same ones that ----

MR GARRETT: Right, more research called for. You have explained how really all the pieces fell into place in December 2003.

MR MUIR: December/January.

MR GARRETT: December/January. When you started to realise that you were dealing with an unsatisfactory situation, by then a payment had been made to Connex which, on the basis of the new information which was available to you in December-ish was clearly inappropriate, what action did you take?

MR MUIR: How?

MR GARRETT: In terms of going back to Halcrow and expressing your discontent.

MR MUIR: I wrote to Halcrow asking for details of ... well, trying to get really to the bottom of what actually happened. We sent them some letters, firstly, asking for copies of the correspondence that was all sent out, details of any records that they had of it being sent to ----

MR GARRETT: As you can appreciate, I have seen that material. When you received that and realised that they had erred really in supporting the claim from Connex, did you reach for your lawyer or did you get upset in some way?

MR MUIR: We did actually contact the Law Officers and sought their advice. Again, that should be ----

MR GARRETT: In the new material.

MR MUIR: Well, if you have not already had it, it should be in the new material. I also know that both Halcrow and Connex were asked to a meeting with the President and Vice President and they came ... well, in fact, Halcrow was actually at that Committee meeting. They were asked to come to a Committee meeting and then Roger Childs from Halcrow was also asked to attend the President and the Vice President to discuss what actions they had taken.

MR GARRETT: Was there a failure in the PR battle here, and this is an internal PR battle rather than that involving the media? Do you think that the situation could have been clarified without really the necessity for this group to be sitting here today, because the evidence that you have presented clearly indicates a set of circumstances which are at significant variance to everybody's belief, and it was that belief that culminated in the establishment of this Committee of Inquiry. Do you think that action could have been taken swiftly in either December 2003 or very early January 2004 to actually correct the impressions that had come into play at that stage?

MR MUIR: I think there were some steps taken. If you recall, in January 2004, the Head of Audit was asked to do an audit of the correspondence and what had actually transpired. I think it was hoped that that audit would actually clarify things. I mean, in essence, what happened was that the audit, if I recall, showed that there was no record of this particular letter that Halcrow had claimed to have sent to Public Services. There was no record of it having arrived in this Department or being in the Department. It also highlighted that there was another letter from the Transport and General Workers that they had sent to Halcrow and Halcrow hadn't passed that on to Public Services either. So the audit was in there, but that audit, it appears, didn't satisfy the people who were chasing it. That is why we are probably here today.

MR GARRETT: Fine. I had actually drafted a significant number of questions, but your answers, it is either the case that John Richardson was involved in issues or Mike Collier was involved in some issues or, indeed, you have provided answers which actually push the whole issue in a slightly different direction. What I would like to do at this stage, in so far as my own questions are concerned, is put them on hold to actually review them when we have had a chance to consider all of the evidence that is available and, if it is necessary, I would like to reserve the

right personally to ask you any additional questions if that is necessary. Thank you.

MR SHEPHEARD: Is there anything further that you would like to say to us at this stage, Mr Muir, about the issues that we have to confront and grapple with or about perhaps what could have been done differently?

MR MUIR: I think being done differently is, again, hindsight and we didn't have the benefit of the information that we have now, so I don't think it is appropriate for me to comment with hindsight. All I would say is that the Department did not know about that shift allowance. There is clearly, to my mind anyway, no evidence that it actually arrived in the Department. I have absolutely no recollection of the matter being mentioned in my presence with Jersey Bus. Halcrow had umpteen opportunities to actually advise the Department of the existence of the wage claim. That was never ever advised to us. We were taking Halcrow's advice all the way through in terms of dealing with Connex's claim for the reliefs and for the shift allowance. We relied on them. They were the ones that handled the process and, in essence, there was a lot of silence from them in respect of the issues that seem to have come up. I don't honestly believe that the Department has acted improperly at all. I think the Department has used the advice it was given. It seems that that advice has perhaps been a bit lacking.

MR SHEPHEARD: If I can pick up on one matter that was put to you this morning? This is the question of the brown envelopes. Now, we were informed in evidence last week by representatives of Halcrow that when they brought the tenders to Jersey, they brought with them three brown envelopes, or five brown envelopes, each of which contained a copy of the pack that had been sent out to each tenderer and the two bulletins that Halcrow had issued during the tendering process, which included *Bulletin 2*, which had attached to it a copy of the letter dated 6th February from the Transport and General Workers' Union to Jersey Bus. Halcrow also told us in evidence last week that those envelopes were left by them in the room where the tenders were opened. Now, have you any knowledge at all of what became of those envelopes?

MR MUIR: None whatsoever. I honestly ... I can't honestly remember the envelopes. I recall getting stuff from Halcrow for the tender documents. It came in dribs and drabs. I mentioned earlier on about the wrong specification for timetables being sent out. I recall getting copies of

the ... I recall having copies of the revised specification. I did not get a full copy of the conditions of contract from Halcrow until I requested it some time later when Connex were wanting to look at the contract documents again. I certainly don't recall there being a wage supplied by Halcrow that was the full tender document altogether. We have always put it together ourselves. The only *Bulletin No. 2* we had got is *Bulletin No. 2*, which is something like four pages without any attachment to it. It also says in that *Bulletin No. 2* something along the lines of the wage negotiations have not been finished. There was ----

MR SHEPHEARD: On the basis of the evidence that we have heard so far, it is perfectly true that negotiations were ongoing, but the union had made this claim for a percentage increase and a shift allowance. Now, the evidence that we have got, to be absolutely clear about this, is that that information was in the hands of the Department -- whether it had been seen by any officer or not, it was in the hands of the Department -- from 20th February onwards, when the tenders were opened. But you are not able to confirm or deny that?

MR MUIR: I have never seen that in the Department until, as I say, the end of December/beginning of January 2004. I mean, what would have been the purpose? If the Department had actually received that, right up until 30th April, it would have been able to do something about it. We did not know about it. If we had known about it, we would have done something about it.

MR SHEPHEARD: What motive could the witnesses from Halcrow have had for telling us an untruth?

MR MUIR: I don't know. I'm not saying that they have said an untruth. How did Halcrow know exactly what was in these brown envelopes that were there?

MR SHEPHEARD: Because Halcrow prepared them.

MR MUIR: But Halcrow said that they sent the stuff to us in ... Halcrow said that they sent the stuff to us by email and by fax or letter, or whatever it was. We have got no record of them coming either way.

MR SHEPHEARD: Halcrow have resiled from the position that anything was sent to you by email, certainly. I think it was quite clear in the evidence from Mr Davies that we received last week that the letter of 6th February was not sent to you as an attachment, a scanned attachment, to an

email.

MR MUIR: But I would ask then why was it not sent? Everything else had been coming through by email. Why was it not sent? It was just as easy for them to email it to us as it was to post it to us.

MR SHEPHEARD: I couldn't agree with you more, Mr Muir. That is a matter that will obviously exercise the minds of the Committee while we are preparing our report. I don't think I can take the matter any further. Any further questions? No? Mr Muir, we are very grateful. I think we have completed your evidence in a most expeditious way. We had been prepared to sit quite some time later than this in order to accommodate taking the whole of your evidence. There are, as my colleagues have pointed out, one or two matters that we might want to revisit, but that is not going to be for a little while yet. Thank you very much.

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