

STATES OF JERSEY

Economic Affairs Scrutiny Panel Depositor Compensation Scheme

MONDAY, 28th SEPTEMBER 2009

Panel:

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

Deputy C.F. Labey of Grouville

Deputy G.P. Southern of St. Helier

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

Deputy S. Pitman of St. Helier

Witnesses:

Senator A.J.H. Maclean (Minister for Economic Affairs)

Mr. J. Mews

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

Also Present:

Mr. R. LaBrosse (Adviser)

Mr. T. Oldham (Scrutiny Officer)

Ms. K. Boydens (Scrutiny Officer)

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

Before we start, I was asked by Mike Dunn to explain why the earlier part of the session was not open to the public. I will just state again that I asked them if they would not come in as we were still formulating our question plan. Whatever we are going to be asking will be coming out during the session anyway and it was just to enable us to get ready for the meeting. There is nothing hidden about that. So that is the reason why. I would like to welcome back the Minister and the officers again for a further session and it will be the last one. So we will just start off with normal formalities and identify everybody for the basis of the transcript. I am Mike Higgins, I am Chairman of the Economic Affairs Scrutiny Panel.

Deputy C.F. Labey of Grouville:

Carolyn Labey, Deputy of Grouville, Vice Chair.

Deputy S. Pitman of St. Helier:

Deputy Shona Pitman.

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

Daniel Wimberley, the Deputy of St. Mary.

Deputy G.P. Southern of St. Helier:

Deputy Geoff Southern of St. Helier.

Deputy M.R. Higgins:
Ray?

Mr. R. LaBrosse (Adviser):
Ray LaBrosse, Adviser to the panel.

Deputy M.R. Higgins:
We have 2 scrutiny officers, Tim Oldham and Kellie Boydens in attendance as well. In fact I am going to ask Deputy Wimberley to start off the questioning.

The Deputy of St. Mary:
So a general question first for the Minister.

Senator A.J.H. Maclean (Minister for Economic Development):
Sorry, just before starting, do you want us to introduce ourselves or ...?

Deputy M.R. Higgins:
Certainly, I am getting ahead myself. Please do.

Senator A.J.H. Maclean:
Senator Alan Maclean, Minister for Economic Development.

Mr. M. De Forest-Brown (Director of International Finance):
I am Martin De Forest-Brown, Director of International Finance.

Mr. J. Mews (Finance Industry Development):
James Mews, Finance Industry Development.

Deputy M.R. Higgins:
Thank you. Daniel.

The Deputy of St. Mary:
Yes, as I was saying, a general question to start with. Do you think, and I am addressing this to the Minister, that the world of banking has changed since say the beginning of the year and is continuing to change?

Senator A.J.H. Maclean:
I think the fundamental changes to the banking industry around the world, and this is not relevant to Jersey specifically, changed dramatically at the end of the last year, 2008, from September onwards. I suspect that there will be continuous changes as we go forward.

The Deputy of St. Mary:
That was the crisis phase, October and November and so on, where everybody was flying around in a flap and the bankers came to you and said: "We need a scheme." But have you seen evidence that ... you know, what is your overall take on what has been happening since then in terms of the banking sector as a whole?

Senator A.J.H. Maclean:

I think governments around the world are looking very closely at banks and the way in which they operate their businesses and probably the most relevant issue is that of risk. There is a continual and ongoing assessment of the risks involved to individual banks and therefore governments' views of that.

The Deputy of St. Mary:

Would you agree that there is a bigger change than you are implying in political attitudes to the banking sector. I could quote various pronouncements by people like Lord Myners and Lord Turner. In no uncertain terms it appears that the scenery has changed. How much do you think it is changing really?

Senator A.J.H. Maclean:

I am not quite sure the angle of your question. Are you trying to get me to put a weighting on the change? Clearly there are ongoing changes as I have said, governments are looking closely at banking sectors in their own jurisdictions and collectively I think that is a process that will be ongoing.

The Deputy of St. Mary:

Yes, so in terms of the scheme, are you thinking that the way it is set up at the moment is likely to last or are you thinking: "Maybe not"?

Senator A.J.H. Maclean:

If you are talking specifically now about a depositor compensator scheme and the proposed scheme, I think it is fair to say that all governments are continually looking at the schemes that are in place. You can see, for example, the Isle of Man is revising its scheme and is proposing to have a new scheme in place, or a revised scheme I should say, within a matter of months. Guernsey introduced a scheme, they were in a position where they had to move relatively quickly, last year and they are continually looking at revising and amending the scheme. I do not think that is a particularly surprising circumstance and I would imagine that as time goes on schemes will have to be revised.

The Deputy of St. Mary:

So you think that the emphasis on cost minimisation might have to shift?

Senator A.J.H. Maclean:

I think all aspects of the scheme will have to continuously be revised to ensure that jurisdictions that have schemes have schemes that are appropriate for that particular jurisdiction and, most importantly, to meet at least minimum international standards.

Deputy M.R. Higgins:

What do you understand by cost minimisation in this context?

Senator A.J.H. Maclean:

The way in which the scheme is funded and, in particular, the cost to either the sector or the cost that will be relevant to the jurisdiction of the government, for example.

The Deputy of St. Mary:

It seems to us, I think, that the premise of this scheme is nobody is going to fail. The banks in Jersey are not going to fail, no bank is going to fail. That seems to us to be the premise, would you stick by that?

Senator A.J.H. Maclean:

I think it is fair to say that you - when I say “you” all jurisdictions - would look at the profile of their banking sector when looking at a scheme they are putting together. I think in Jersey we believe that the risk of a failure is much lower than perhaps other jurisdictions, particularly the larger ones, where there are many more smaller banks and consequently more operators and lower bank ratings and what have you, and there is a higher risk. Jersey, we do not believe, has a particularly high risk. We have never felt there is a significant likelihood of a failure within Jersey.

Deputy M.R. Higgins:

Do you think, though, that our banking model is without risk?

Senator A.J.H. Maclean:

I do not think any model is ever without risk. I think there is a low risk.

The Deputy of St. Mary:

The model in Jersey is that it is all branches and subsidiaries and the parents are too big to fail. Is that correct?

Senator A.J.H. Maclean:

I think there is a feeling, and it was played out at the time the banking crisis started last year, that government stepped forward to support systemic banks and I think it has been proven to date that governments are prepared to support their systemic banks.

The Deputy of St. Mary:

Do you notice any changes in the notion of a systemic bank over the last couple of months?

Senator A.J.H. Maclean:

Not specifically. I do not think that there is a likelihood, but that could probably change in the short term. There have been suggestions clearly that some of the larger groups, governments, would like to see the banks being broken down into smaller units. As I said, and I think this is a relevant point, there is every likelihood that jurisdictions will have to continually look at schemes and look at the potential of updating them should matters change in any of the areas that are relevant.

The Deputy of St. Mary:

Are you not boxed into a corner, though, in setting up the scheme in the way it has been set up? What freedom have you got to change the cost allocations between the public and the banks?

Senator A.J.H. Maclean:

I think in terms of the fundamentals of the scheme, when they have been set up, I think it is right and appropriate ... we feel it is right, certainly from the advice we have

taken in all respects that it is appropriate for Jersey. I do not think we are boxed into a corner at all.

Deputy M.R. Higgins:

Can you explain that a little bit further, why you think the advice you received ... why are you convinced that the scheme as structured is the best for the Island in terms of the funding model?

Senator A.J.H. Maclean:

For the reason I have said, it has taken into consideration professional advice that we have received.

Deputy M.R. Higgins:

Which professional advice sorry?

Senator A.J.H. Maclean:

Well, Oxera have given some good advice based on the information they had available on the structure of the banking industry here.

Deputy M.R. Higgins:

But the scheme itself is not Oxera's scheme, is it? It is your scheme, it is Economic Development's scheme. Not Oxera putting forward a particular scheme?

Senator A.J.H. Maclean:

No, but they have advised on the basis of the scheme that we have looked at, and the advice seems to be supportive of what we are looking to do.

Deputy M.R. Higgins:

When you say it is supportive, can I just clarify this again. You say supportive, I have got a question so I am going to come in early on this one, how honest and transparent do you think the exercise has been with this scheme. So you are saying, for example, that Oxera have put forward supportive evidence and so on, how transparent and honest is the scheme you put forward and the process you have adopted?

Senator A.J.H. Maclean:

I am not sure what you are meaning by the question. As far as I am concerned the process has been perfectly transparent. If you would like to elaborate on your question?

Deputy M.R. Higgins:

Okay, for example, we are aware that Oxera changed part of their final report to reflect requests from Jersey to downplay or to up-play certain aspects of the scheme. Is that totally honest and transparent?

Senator A.J.H. Maclean:

I think Oxera respond and their advice is relevant to the information that is pertinent to the jurisdiction in question, in this case Jersey. I think they were asked to clarify various points but I do not believe there is anything that is not transparent.

Deputy M.R. Higgins:

They were asked to emphasise or de-emphasise certain aspects of what is being proposed to make it more acceptable.

Mr. J. Mews:

I think at this point it might be useful if you take us to the particular points which you are talking about so we can answer those one by one.

Deputy M.R. Higgins:

Okay, you wrote, I think it is 22nd May ... sorry, because I am being asked for this I am going to read out an email which was otherwise confidential.

Mr. J. Mews:

If the email is confidential do you think you should seek permission ...

Deputy M.R. Higgins:

Well, you have asked me ... I am asking you in general terms whether the whole process has been honest and transparent. If you are sending emails to Oxera asking them to change the report to downplay certain aspects or to up-play other aspects then I do not see that as being totally honest and transparent. Now, if you want me to read out what you have said, I am more than happy to do so but it means that we will bring this into the public record.

Mr. J. Mews:

I am very happy for all emails which I have sent, provided they do not impact on anybody else's confidentiality, to be placed on the public record. I am fully happy with the process and the transparency of it and of the discussions which have gone on with Oxera and the basis behind this report.

Deputy M.R. Higgins:

Okay. Thank you. Just to run through ... that also I assume applies to another email that you sent on the question of openness and transparency when you were seeking information so that a colleague of yours could bring forward proposals on caps by stealth, is that also correct?

Mr. J. Mews:

I do not recall any emails which I wrote stating the words "caps by stealth". Perhaps you would like to read out the phrase?

Deputy M.R. Higgins:

I shall, I will have to find it first but it is here and I can tell you it refers to an Oxbridge colleague of yours who was a First in Maths and he said: "If you provide us with some additional information ..." and then you refer to caps and stealth. In fact, I will get it out for you and we will show you before the end of the session.

Mr. J. Mews:

Please do.

Deputy M.R. Higgins:

So, in other words, what we have is ... certainly, in 2 instances anyway, it appears that the process is being, to us anyway, less than honest and less than transparent.

Mr. J. Mews:

The very fact that we have sent you emails which refer to how the report has changed just shows how honest and transparent we have been.

Deputy M.R. Higgins:

I am sorry, we have had to drag a lot of this stuff out of you. It was also, as we have already discussed, confidential. So it is only through this discussion now that we can get this out into the public arena. The other thing, too ...

Senator A.J.H. Maclean:

Can I just add a point on that, Mr. Chairman? All the information that was requested was supplied. There was a delay in some of it relating in particular to emails simply because of data protection issues surrounding that. But I think it is fair to say that you have had all the details now of everything that has been requested so I do not ...

Deputy M.R. Higgins:

We have not had everything that has been requested. One example, for example, is the comments made banks with the data supplied. We have asked for that and we have still not received it.

Senator A.J.H. Maclean:

To be fair, I have continually asked if all the information ... I have written to you, Mr. Chairman, directly and said if there is anything that is not being supplied then I need to know about it.

Deputy M.R. Higgins:

Okay, well I am drawing it to your attention now, you can still supply that information.

Mr. J. Mews:

We were asked that request on Friday or Thursday, which I think Tim can substantiate, and first he asked for the questionnaire which went to banks. I explained that was something which went from the Financial Services Commission and not from my department but that I would look to see if I had a copy. As soon as we looked and we found we had something which we thought was the final information, we then sent it across to Tim later the same day. I then got a request back later the same day - and let us remember that we are talking about approximately 4 months since we first sent information about the scheme to you - despite that ...

Deputy M.R. Higgins:

When did you send the file, for example, of all the emails and all the other information that we asked for?

Mr. J. Mews:

The file? We have sent ...

Deputy M.R. Higgins:

The 4 files.

Mr. J. Mews:

The 4 files? I will have to go away and come back to you on that.

Deputy M.R. Higgins:

This is 30th June. In addition to that those files were classed as, as you have said, confidential, virtually everything in it, and we have asked for you to go through and sift out because it is not all confidential. Therefore that has delayed our sort of process as well. What I am saying is there has been, I think, less than a candid response to what we require. We have asked for information on other things, I accept, we had some, albeit late. For example, we have asked both of you whether you have file notes and minutes of meetings. Now, as public servants we are absolutely amazed that you have no file notes, no minutes of meetings with the Jersey Bankers or other people that you have discussed this programme with, or even Oxera.

Mr. J. Mews:

I sent those to you in July, Mike, I am sorry.

Deputy M.R. Higgins:

You sent a copy of 2 minutes, very late. First of all, when we asked you in hearing before we were told categorically you had no file notes and you had no minutes.

Mr. J. Mews:

I do not think that is correct. Could you please refer to the exact record of that?

Deputy M.R. Higgins:

Tim, do you have it?

Mr. J. Mews:

We sent you a meeting note of a meeting with the J.B.A. (Jersey Bankers' Association) on 18th March, we sent you meeting notes of the meeting between myself and Alex Taylor of the British Banking Association on 23rd March, sent a meeting note of myself and the F.S.C.S. (Financial Services Compensation Scheme), the U.K. (United Kingdom) scheme, on 30th April, and also another note of a meeting with the J.B.A. on 21st May. I do not think that the fact that we sent these across substantiates the allegation which you are making.

Deputy M.R. Higgins:

With respect, those requests were made early; the statement was made in an open hearing that you did not have file notes and minutes and it was only when it was put out on radio that we were going to start naming names if we did not get the information we required, it is funny how they arrived shortly afterwards. What I would say, however ...

Mr. J. Mews:

That is incorrect and I would ask you to pull up the exact statement in the transcript.

Deputy M.R. Higgins:

Okay, while the officer is looking for that.

Deputy G.P. Southern:

Can I keep things going while we search through out notes. The Minister, it seems to me, is conflating 2 things when he talks about setting up of a D.C.S. (Depositor Compensation Scheme) and the massive support given by some governments, many governments, to systemic banking. Is the comparison that should be made between one D.C.S. and another D.C.S. rather than: “Oh well they will never fail because of this massive support, billions of pounds that has gone into the system”?

Senator A.J.H. Maclean:

In one respect you are right and that is something that has been taken into consideration. We have to look at all the factors. One of the factors is obviously about systemic banks, also looking at other jurisdictions, particularly relevant jurisdictions to ourselves, the sort of schemes that they are putting place and how they compare to what we are considering doing. So, yes, you are right in that respect.

Deputy G.P. Southern:

Returning to Deputy Wimberley’s question or approach, that banking is changing and one of those changes is that there is talk at this stage of breaking up banks to ... not to ensure that they cannot fail but to prevent this attitude: “We will take risks because we are covered. No government will let us fail.” To what extent does the current D.C.S. accommodate those possible or potential changes?

Senator A.J.H. Maclean:

I think what is important when developing a depositor compensation scheme, we had to look at the facts that were relevant at the time that it was being developed. Yes, there are suggestions that possibly governments might be looking to break up banks and so on and so forth but we have to deal with the reality of what we have got now. Now, the second part is are you saying is there enough flexibility to be able to change? Yes, there is flexibility to be able to change should we need to do so but we believe that we have presented a scheme that is relevant to jurisdictions such as Jersey and specifically relevant to Jersey and Jersey’s banking make up.

Deputy G.P. Southern:

Where does that flexibility exist? Because there is a body you are setting up to run the D.C.S. in the first place, it is an imaginary body, one that can be called into action at the drop of a hat.

Senator A.J.H. Maclean:

You would need to change the scheme fundamentally, would you not, if that was required but we do not believe at this stage, with the information available, that there is a need to do so. Martin, do you want to make a comment on it.

Mr. M. De Forest-Brown:

I just think I would repeat what the Minister said, that we would observe jurisdictions changing their schemes as circumstances change. We have prepared a scheme that meets the immediate requirements and we obviously accept and have suggested that there should be an annual review. There will be items of detail that will be able to be changed other than by full legislation and fully expect that there will be future reviews and changes as circumstances change.

Mr. J. Mews:

As much as possible, though, we did try to future proof it by speaking to people such as the British scheme and also to the British Banker's Association to say: "What is coming down the track and what do you really think is going to be changed for sure?" We knew there was a number of consultations which were going on at the time and part of that you can see in the fact that we try to make the scheme generally as simple as possible. For example, we have not had a process of netting off, which is something which the British scheme said they want to move away from if they possibly can because it just makes it very difficult in order for a scheme to know if it can pay out or not. So there are certain things which we clearly looked at and said: "Yes, we know for certain that is coming in and therefore we will take those into account as well." But, as I am sure you are all aware, there is also a huge amount of change going on at the moment so we could not possibly predict what a lot of that was going to be.

Deputy G.P. Southern:

Can I just come back and take you on to the issue? We visited Guernsey and they were talking about a year with real people and an entire board working on their scheme and just developing something concrete after a year's work. They felt they were finally on top of the system and had got somewhere. Yet we are setting up a mythical body with no board, no chair, that can protect deposits. Is there any credibility in such a scheme? Have we got a credible scheme?

Senator A.J.H. Maclean:

It is a very credible scheme. I do not think there is a problem at all. The decision was taken to ensure a scheme that was fit for purpose, fit for the jurisdiction in question - in other words Jersey - and by setting it up in this way we were also conscious that we wanted to keep cost as low as possible. If there should be a bank failure then, of course, the process will move forward, the board will be put in place. It is pre-mandated, or will be pre-mandated, with appropriate professionals: lawyers, accountants and so on, and the board will then be constituted.

Deputy G.P. Southern:

Congratulations for certainly producing a scheme which is not expensive but whether that balances with the due degree of credibility in the scheme ... doing something on the cheap does not make anything more credible.

Senator A.J.H. Maclean:

There is no suggestion, I might add, that it is done on the cheap, it is just done cost-effectively. There is a difference.

Deputy G.P. Southern:

There is a difference in the form of words and we can agree or disagree on that form of words until the cows come home.

Mr. J. Mews:

I think one of the important things to note in that regard is that one of the reasons Guernsey has been working hard over the last year is because they have introduced risk-rating and one of the most difficult things for Guernsey to come up with was how do you play that out? They have taken a year to get to the bottom of how they want to risk-rate their banks. Now, one of the advantages of having more simple schemes,

such as the one we have introduced is that you do not need to spend quite as long working on some of the intricacies, the difficulties, the complexities which is one of the things which Guernsey has very much had to do.

Deputy S. Pitman:

You talk about they have just spent a year risk-rating and they have finally worked it out?

Mr. J. Mews:

Yes, that is my understanding.

Deputy S. Pitman:

Because there are many jurisdictions now moving towards ex-ante or hybrid, having learnt their mistakes from having been exposed, why then ... I understand that Guernsey is going towards this, if they have just reached a solution to their risk-rating, why not Jersey?

Mr. J. Mews:

Shall I answer that or Martin?

Mr. M. De Forest-Brown:

I am happy to give a response to that. Risk-rating have been seen to be an effective way of grading banks in complex jurisdictions, complex economies. I am sure your adviser will have informed you or updated you about how that has worked to good effect in other jurisdictions. I think we need to be careful of extending the complex world of larger economies to Jersey where we are talking about a very small number of banks, we are talking about a very large proportion of those with very minimal retail exposure to the extent that the current scheme clearly protects every bank up to the seventh bank in terms of potential liability, or the sixth bank. So even at a fairly modest level of scheme, certainly within the £65 million that is proposed to be funded by the banks, all of our banks up to number 6 are covered. So therefore we are having a very extensive debate arguably about what different jurisdictions around the world should do. Having had discussions with your adviser Mr. LaBrosse, I would totally agree and endorse his view that many jurisdictions around the world need to look more carefully at having different arrangements that properly address the circumstances that operate in those jurisdictions. Where I think there is a danger, and that is taking the infrastructure and complexity necessary for large jurisdictions around the world and apply it to Jersey where we have a very simple jurisdiction ...

Deputy S. Pitman:

I was talking about Guernsey.

Mr. M. De Forest-Brown:

Sorry, this is a long-winded answer to your question. But the point is that Jersey's banks are such that a risk-rating ... it is very unclear to what extent the risk-rating would provide any additional benefit to the scheme. I am happy to explore an example. If you had a suggestion of how that might be to the benefit of the scheme I am happy to explore that and discuss how it might not be. So the answer to your question is, the reason we do not and have not explored a risk-rating in Jersey is because we do not think it is appropriate for the Jersey situation. We looked at it

carefully, we discussed it with the banks, the banks were very clear that they would fundamentally disagree on any risk-rating and therefore it would have taken a very significant period to introduce that risk-rating and probably unsuccessfully in the final analysis.

The Deputy of Grouville:

Why is it not appropriate for Jersey? Could you explain?

Mr. M. De Forest-Brown:

Quite simply because, as you are aware, a bank has failed in Guernsey and the nature of the banks in Guernsey are not the same as Jersey. In Jersey we have systemic banks or small banks without retail exposure. In Guernsey, as in the Isle of Man, they have banks that have been found not to be systemic and that have been found to be risky and therefore they require a different model for a solution.

Deputy G.P. Southern:

We are in danger there, again, of conflating 2 issues. We can keep a simple scheme, we do not have to go into netting off, we do not have to go into risk-rating, I personally do not have an argument with that at all, keep it simple. The other half of the question that was posed was about ex-post or ex-ante or hybrid funding. So not only have we got some real people, do we have a real board, do we have a real chairman, do we have some real money there to cover these deposits? The fact is you are going against the trend internationally for ex-post funding; is that the case, Minister?

Mr. M. De Forest-Brown:

Exactly. It is the same answer - just to respond, because it is part of the same answer - and the point that the panel keeps making is it is against the trend of international. Yes, I probably accept that. The point is you are taking circumstances that are fundamentally different, in different jurisdictions, and saying because that is what everybody else is doing let us close our eyes to what might be different circumstances in Jersey. The circumstances are different in Jersey. In Jersey all of the banks are easily supported or are systemic and we are really looking at one or 2 banks right in the middle which might require a degree of funding. Therefore, what the panel is proposing, and ultimately it is for the panel and the House in due course to decide, how much money should be applied, how much infrastructure should be established for an extremely remote risk? One can make similar analogies, should we have a defence force here because there is a remote risk that somebody could evade us. One is also making those judgments between ...

Deputy M.R. Higgins:

You do not believe there is a risk to Jersey banks is what you are saying essentially. You believe that in our banks there is no risk?

Mr. M. De Forest-Brown:

I believe that the scheme that we have come up with will be sufficient to deal with what I think will be a very extreme event.

Deputy G.P. Southern:

In terms of the competition going on for receiving deposits, you feel confident that the scheme that you have come up with, no board, no ex-ante funding, et cetera, compares favourably with our rivals and competitors elsewhere? Do the banks think that is the case?

Mr. M. De Forest-Brown:

In an offshore jurisdiction, yes. I think on the balance of attractiveness I think that the Jersey proposition in the round ... so that is not just the scheme, it is more than just the scheme, it is the actual banks we had and the stability of the economy and the quality of our professionals. I think that the overall package suggests that having a scheme, as has been found in Guernsey - they simply announced a scheme without any infrastructure in the first instance - just the very announcement of a scheme gave the retail customer that level of comfort that they required, that there was a statutory backing for protection. My belief, personally, is that a statutory backed scheme will be sufficient to provide what is required in Jersey for it to be competitive. If whoever in due course believes that it is worth spending what could be £1 million or more to put an infrastructure in place then happy to have that debate and happy to explore those options. I do not think ...

Deputy G.P. Southern:

£30 billion of deposit and we are quibbling about spending £1 million perhaps in order to make something substantive.

Deputy M.R. Higgins:

In fact your own figures for a board are £250,000.

Mr. M. De Forest-Brown:

That is ultimately for us, as a democracy, to decide. Our proposals are that we do not think that those costs are necessary and that we think that the ex-post scheme is sufficient.

Deputy G.P. Southern:

Could I just ask the Minister, because we are talking now about the Minister's scheme that he is going to be proposing not the officers' scheme, to add some words there about ... again, I come back to this point about credibility and competition.

Senator A.J.H. Maclean:

The Minister clearly takes professional advice on these matters so when proposing his scheme he takes all the appropriate professional advice that you would expect him to take, as indeed you as a panel take professional advice to make your considerations on the matter. I am satisfied with the scheme as is proposed. I am satisfied that it is appropriate to Jersey as a jurisdiction and that it meets the requirements that we set out that it was going to be a scheme that was going to be simple to administer, it was going to be a scheme that was going to be low-cost in terms of administering. You talked a moment ago, Deputy Southern, about the lack of a board. Of course there is no lack of a board, it was just the board would only come into being should there be a failure. We believe the risk of a failure is ... it is not a question, as the Chairman points out, that we think there is no risk, it is just we think the risk in Jersey is very, very low.

Deputy G.P. Southern:

What we have heard in comparison with Guernsey, yes, Guernsey some time ago set up a system and announced its system and only just now, 12 months later, has got something I would say credible and active on the ground. But we can do it just like that, can we, in the event of a failure?

Senator A.J.H. Maclean:

I think we need to put that into perspective. First of all, Guernsey introduced a scheme which had a significant amount of detail that was still needed to be worked out. We have just heard about the risk-rating, for example, which they are only just getting to a stage where they are getting some form of result on. They had a scheme which delivered the confidence that was necessary for them, for their economy, at that particular time, bearing in mind of course that they had a bank failure. They have a very different make up to their banking industry, banking structure, than we do here in the Island. We are fortunate we have not had a banking failure and we think the risk is very, very low. Therefore we feel the scheme proposed is appropriate for the Island to give the confidence most importantly to the consumer and most importantly to vulnerable people in that regard, and to the industry itself.

Deputy G.P. Southern:

Back to the risk.

The Deputy of Grouville:

Oxera modelled what would happen with funding in certain markets, who came up with the formula?

Mr. M. De Forest-Brown:

It depends what you mean by the formula.

The Deputy of Grouville:

The formula, there is £100 million cap, it is going to cost 0.3 per cent and £50,000 is going to be covered.

Mr. M. De Forest-Brown:

Ultimately the scheme that is there is the recommendation of the officers after the discussions with Oxera and all other parties.

The Deputy of Grouville:

Which officers? Officers at E.D. (Economic Development)?

Deputy M.R. Higgins:

Yourselves, for example.

Mr. M. De Forest-Brown:

Yes, yes, it was us.

Deputy M.R. Higgins:

The 2 of you in front of us are the main people, is that correct?

Mr. M. De Forest-Brown:

Yes, we will have proposed that scheme to other members within government, we would have discussed it with the banks. Referring back to your comments about meetings, the particular meetings that I had with the Jersey Bankers' Association were 2 meetings where I went along and proposed the scheme. So, we tested them there, we tested them with our colleagues in government but ultimately they are the recommendations of us as officers.

The Deputy of Grouville:

So you have come up with the formula. Why did you ...

Mr. J. Mews:

Sorry, it might be worth just going back a step, because if you go back to last October, November and December, what we can see is that the States adopted a proposition that a U.K. type scheme should be put forward before the House. So one of the first things which we started doing, in deciding: "What shall we do?" is started from the U.K. scheme with a £50,000 limit at that stage, which had just been upped. So that was very much the starting point and then we had to take that and we had to get the data analysis back in order to say what could we afford, where could we go, what could we do? Obviously a scheme is far more complex, even a simplistic scheme like our own, than simply what is the headline limit. There are many more factors which go into it. A lot of those were then informed by the data which came back from Oxera and the report which Oxera gave to us as well as linked in with other specific issues to do with competitiveness and the precise nature of Jersey's banking industry, and a comparison with that and other jurisdictions. So I hope that gives a slightly fuller answer in terms of the development before you ask your next question.

The Deputy of Grouville:

So the officers decided on the formula, we have established that, who decided on the split between the government and the banking industry?

Mr. M. De Forest-Brown:

That pops out of the solution. There was no top down judgment on that. If one ...

The Deputy of Grouville:

What do you mean "pops out of the solution"?

Mr. M. De Forest-Brown:

I will explain. If you apply the .3 per cent to our banking deposits and add up what that accumulates and then you add in the caps that we felt were necessary to maintain our competitiveness with other jurisdictions. Then when you add up those numbers, so here you are roughly £200 billion - or whatever the number is - which is the core base, times 0.3 per cent, equals X less ... allocate that across the banks, apply a £10 million cap, that takes a bit of the top for these banks, what does that leave you with? It comes up to £65 million. So that is the math. It was simply applying a U.K. rate under the U.K. scheme, and we thought that was appropriate because we have such a big presence of U.K. banks and it would be a good idea to have a consistent model, applied that number, then thought: "Well, what do we think is a reasonable cap?" Guernsey has a £5 million cap. We were worried if we had an open-ended scheme that we might seriously risk losing banks, our major employers, to another jurisdiction or they would transfer business there. So we looked at a cap, we chose £10 million,

so double the cap in Guernsey, we applied that cap and when you do that math it just simply comes up with an answer of £65 million. So that is step one. Then we thought: “Okay, shall we have a £65 million scheme?” The world looks at things very simply and they look at us having £200 billion and them having £100 billion or whatever it is and say: “Hold on, how come they have got £100 million scheme and they have got £100 billion and you have got £200 billion and you have only got a £65 million scheme, so that does not make any sense at all.” In practice when you dig down below and look at the nature of our deposits it does make a bit of sense because we have lots of very high balances so we have lots of ... our average balance on many banks is £200,000 plus. D.C.S. schemes are not for those, it is for the modest investor or the modest depositor of £50,000. So if you look down to below that and look at the relevant deposits, the protected deposits, our numbers are broadly similar. The difference is the headline rates on deposits. Nonetheless we recognised that we work in a world where people make simple high level judgments from the outside without looking at the detail and so we thought it is inconceivable that Jersey could stand up and say: “Well, we have got a £65 million scheme” when Guernsey have got £100 million scheme. Totally arbitrarily, at one degree, we said we must have at least a minimum scheme of £100 million. We could have said: “We should have a £200 million scheme” or something else.

Deputy M.R. Higgins:

Which the Isle of Man has. You did not adopt that one, you chose Guernsey.

Mr. M. De Forest-Brown:

We thought the £100 million scheme was ... we thought a £65 million scheme was appropriate but we recognised that we live in a world and see Guernsey as our immediate competitors, we do not really see the same level of competitive threat from the Isle of Man, it is just too cold there, banks do not want to go out there.

Deputy M.R. Higgins:

Although the deposits that you said earlier were leaving the Island actually went to the Isle of Man and onshore.

Mr. M. De Forest-Brown:

The deposit moving, of which there is no definitive data, was being effected by a number of things. People moving between banks and also there was a big Irish player as well. But that is a separate issue from the real immediate competition that we always feel from Guernsey. So we were looking very much at having a competitive scheme with Guernsey and having a scheme that looked sensible compared to Guernsey. Again, all of these things are debatable and I welcome this line of questioning because I think here we get into the substance of it. Rather than worrying about how we got there, the key thing is when you have got a scheme on the table let us say whether we like the scheme or not and then let us debate the elements of the scheme and whether they are right or wrong. So the £100 million was arrived at as a proposal, it met the kind of combined balance of trying to think we need more money, we need a bigger scheme than £65 million, however recognising that has got to come from somewhere, and if it does not come from the banks then obviously it has got to come from government. We did not want a £200 million scheme which would immediately put the government on the hook for £135 million, so it was simply chosen £100 million. We thought that was an appropriate level.

Deputy G.P. Southern:

Then you have got a fundamental political decision about who has the liability and the Minister presumably is accepting that there will be a liability to the Jersey Government, to the taxpayer, despite the fact that when we were discussing with the U.K. about where does the liability lie they were very clear in their D.C.S. that the liability lies with the banks. This is a cost of doing business in the U.K. and separate from the massive support for the whole institutions, their D.C.S. will be paid for by the industry. They are very clear, so why are we putting a liability on the Jersey Government. It is a ministerial question. It is your decision. If you choose arbitrarily £100 million you end up with a liability. Sell it to me.

Senator A.J.H. Maclean:

Yes. Let us be fair about this and let us be realistic about this. The first tranche of the money, should there be a bank failure, is going to be met by the banks.

Deputy M.R. Higgins:

Let us just make that also clear initially the initial payout will come from government because of the current problems, so in other words it is a separate issue. That £100 million could come out of the strategic reserve to pay the money upfront before the money is recovered from the banks.

Senator A.J.H. Maclean:

Yes, from a cash flow perspective absolutely right. But in terms of risk, the first tranche, it is certainly the banks that are going to fulfil that. The risk to the taxpayer, if you like, is the £30 million should there be a catastrophic banking failure, and here we are talking about multiple bank failures not just a single bank failure. Would we ever get to the stage where we may need some of the £30 million and that is the bit that needs to be put ...

Deputy M.R. Higgins:

Is that correct because Landsbanki Guernsey, the failure was £120 million on that bank so therefore we would hit the cap anyway, the banks, if they were paying out they would have paid out £65 million and the State would have automatically been in for the next £35 million.

Mr. J. Mews:

That is a very simplistic way of looking at it because ...

Deputy G.P. Southern:

Depositors may well look at things very simplistically.

Mr. M. De Forest-Brown:

If you look at our banks and if you go through the data you will see that the only place that we get into the £100 million above the £65 million is at bank 5 and above. So we keep having these debates around kind of theoretical concepts. What we should be debating is about what happens for banks one to 5. We can talk about complex economies, we can talk about pre-funding, we should be having a debate about what scheme have we got in place and is it appropriate for banks one to 5? That is really ... we are expending an awful lot of energy on this, banks 6 to 47 are all covered by the

£65 million, by the money. We chose £100 million, let us be absolutely clear about this, simply because it would have been extremely difficult to explain going out with a headline scheme that is less than Guernsey. We could have very, very simply had a £65 million scheme and then, as in every other jurisdiction, to the extent that there was ever a liability that was beyond £65 million what do you think would happen? Just as in every other jurisdiction, although it is not statutorily stated, the government comes in and supports. Deputy Southern said that it is clearly the scheme's obligation to bail everybody out but the fact of the matter is it not within their ability. It is because the numbers simply do not add up so therefore what happens is the U.K. Government, the French Government, the German, the U.S. (United States), governments around the world have stepped in and avoided that being crystallised because then you would crystallise and discover that you would have to be recovering from the banks for the next 50 to 100 years so therefore they support them.

Deputy M.R. Higgins:

Which is the case.

Mr. M. De Forest-Brown:

So therefore they support them. So therefore whether you have that particular liability enshrined in statute or whether it is going to be there anyway if and when the remote event happens is kind of arbitrary. We just felt as a headline we could not go out to the world and say: "We have got a smaller scheme than Guernsey." It just would not make sense to them.

Deputy M.R. Higgins:

Okay, why did you, though, for example, cap the scheme at 5 years? So, in other words, maximum liability of any bank that is £10 million or £5 million ...

Mr. M. De Forest-Brown:

Because that is what Guernsey have done.

Deputy M.R. Higgins:

Guernsey are the only jurisdiction that has done that, it is unique.

Mr. M. De Forest-Brown:

I know. You have got to start from premise that we are looking for a scheme that is sufficient and that satisfies the public's desire for a scheme. We have come up with a scheme that satisfies the customer desire to say: "Have you got a scheme?" "Yes, we have got a scheme?" Is that scheme credible? Well, it covers every bank up to bank 6. So the only banks where there are some difficult issues are really banks one to 4, which are the top 4 U.K. clearers. I am really not trying to confuse or ... for me, and the reason why I am so comfortable supporting this scheme is I just think it is a very sensible solution to the circumstances we face. I think there is always going to be other angles. I think there is always going to be elements of a problem with any scheme. This is arguably the least worst scheme.

Deputy G.P. Southern:

Can I go back to the formula because I think it would be good to go back to Carolyn's question of the formula.

Deputy M.R. Higgins:

Let us hear the Minister first and then Daniel.

Senator A.J.H. Maclean:

I just want to raise one point that has not been taken into consideration with this and in particular the risk to the public purse and the £30 million that you are referring to. That is recoveries from banks. Right back to the early 1990s with B.C.C.I. (Bank of Credit and Commerce International) you saw 75 per cent recoveries, typically they have been around that rate and certainly for Kaupthing and Landsbanki they are predicted to be that rate or higher. So that fact must be taken into consideration as well.

Deputy M.R. Higgins:

We will come back to recoveries because we have some issues with that shortly.

The Deputy of St. Mary:

Going back to the formula, because I think that is important and you said it was nice to talk about the formula, what serious thought went into the 0.3 per cent? How much serious thought went into it?

Mr. M. De Forest-Brown:

A lot of serious thought and the pressure that we do find from the banks here all the time, and you see this in many formats, is a desire to try and keep things as simple as possible recognising they are multi jurisdictional schemes, they are U.K. businesses or they U.K./Guernsey/Jersey businesses. So they are always trying to get us to do things that are the same between Jersey and Guernsey or the same between Jersey and U.K. Now, the 0.3 per cent is what operated in the U.K. We could have had a 0.5 scheme, we could have had a 0.7 scheme, we could have had a 0.1 scheme. We looked at the options and it was one that we had operating in the U.K., it came to a number that we thought - having looked at the data - covered, and I will keep repeating this, every single bank up to and including bank 6. So any other number would not really have changed much. To the extent that any other number would have been different it would have simply given you additional bank funded monies that are not required in most eventualities. So let us quote some numbers here: bank number 6, and this best illustrates Jersey, total deposits in bank number 6, £575 million. Those that are covered by ...

Mr. J. Mews:

Sorry, Martin, that is the cost.

Mr. M. De Forest-Brown:

Sorry, that is the cost. The total D.C.S. costs at £50,000 is £575 million. The balance of deposits is much bigger. However, once you apply recoveries, the normal recoveries, even low level recoveries, the actual cost under the scheme will come out at about £40 million, £30 million. So this is bank number 5. So on that basis we could have come up with a scheme that said: "Well, let us forget everything else, let us just make sure we are covered up to bank number 6" the 4 U.K. clearers will stand by our assumption that they are covered by the U.K. cover, the U.K. support for systemic banks which is what the scheme is based on, and say: "Okay, let us have a £40 million scheme because that covers every single bank in Jersey."

The Deputy of Grouville:

Then government would not have had to put in anything?

Mr. M. De Forest-Brown:

In theory, yes. But the point is what we have done is we have ... I am not going to use words that I think are inappropriate but hopefully the panel can hear what I am saying. We thought that it was inconceivable to have a scheme that was less than Guernsey. So we needed to announce a scheme that was of a similar level to Guernsey, notwithstanding that we do not need the bulk of the £100 million. Notwithstanding the fact that we do not need some of the £65 million.

The Deputy of Grouville:

Is it not the case that government should be seen to be investing or a party to this scheme to be able to sell it to the outside world?

Mr. M. De Forest-Brown:

Absolutely, and I think there are real benefits of government appearing to be a statutory contributor to this. I think it says we take our finance industry seriously, it shows that we are fully supportive and it gets all the benefits of the headline of marketing this scheme to the outside world. What is clear, when you look below it, is that the monies that the government are there to stand ready to ... are not needed except in the case of a failure of banks one to 5.

Deputy M.R. Higgins:

Okay, we hear what you are saying about that but, again, the whole point is government are expected to put in up to £35 million under the scheme as it is at the present time. If you did not bring in that 5 year restriction, the 5 year cap effectively, then the banks could repay that money so there would be no government liability in terms of risk to government. There could still be government liquidity ...

Mr. M. De Forest-Brown:

You are absolutely right, we could change the scheme to ask the banks to pay more. Clearly that is an option. However, we are looking at our competitive position. We are faced with a position where in Guernsey banks are facing a £5 million or 5 year cap, that is a competitive landscape.

Deputy G.P. Southern:

Uniquely a 5 year cap. In the whole of the rest of the world nobody else has got a 5 year cap?

Mr. M. De Forest-Brown:

That is absolutely correct.

Deputy G.P. Southern:

But we are going down that line?

Mr. M. De Forest-Brown:

That is absolutely correct, but then if you ... let me try and think of a good example. If you are a business that is part of a duopoly, there are 2 businesses out there, you

have one eye ... I am sure Mr. LaBrosse here with his commercial background will absolutely confirm that with a duopoly you permanently observe what is your key competitor doing. It is just the nature of the game. Yes, totally agree that the rest of the world is not doing it, however Guernsey has now set down a benchmark and it says: "This is what our scheme is." We must give you advice as officers to say how do we best compete to ensure the long-term health of our finance industry. We think that putting in a scheme that makes us manifestly uncompetitive with Guernsey would be like financial suicide. I think you would absolutely be right in taking us off at the knees if we put forward such a scheme. So we have absolutely kept our eye very, very, very firmly on the Guernsey scheme.

Deputy M.R. Higgins:

In fact all the way through it appears to us that the scheme is not really designed to protect depositors, it is designed to protect Jersey's competitive position against Guernsey.

Mr. M. De Forest-Brown:

Both. Absolutely both. Absolutely both.

Deputy M.R. Higgins:

Sorry, virtually all the evidence we hear: competitive, competitive, competitive.

Mr. M. De Forest-Brown:

No, no, no, if you look at the detail our scheme supports every single bank up to number 6, it totally supports depositors in that space. The other banks are all banks that would not be effectively covered in their own countries, the U.K., Canada, wherever they are. They are banks that would require government support in the case of a failure. So we are no different from any other jurisdiction in the world. We are relying on major governments like the U.K. and Canada supporting our top 5 banks. So our scheme is totally targeted at depositors because it ensures that we have enough money in it to cover the deposits that are required up to bank 6. Now, in that case it is quite sufficient for us to have a £40 million scheme. That would be it. End of, we do not need any more. So we are only interested in having a scheme ... we only need, for proper protection of our depositors, a £40 million scheme or thereabouts. Let us assume you have 2 banks failing at the same time, so therefore you might need a bit more. So we have got £65 million. Then, okay, yes, we are always about marketing Jersey, that is the nature of the beast. We are permanently working in an extremely competitive environment where we are always competing for business. Fundamentally we know how important finance is to this jurisdiction so we need to support it and make our proposition to finance as good as possible at all times. The other elements of the scheme all take into account that competitive landscape having put the depositors first and ensured that we have got is sufficient to cover them.

The Deputy of Grouville:

So it could be a 40/60 scheme, it could be a 65/35 scheme, equally it could be a 90/10 per cent scheme?

Mr. M. De Forest-Brown:

Yes. As long as you were prepared to take the repercussions of trying to charge banks more and makes us fundamentally uncompetitive.

The Deputy of St. Mary:

Okay, I will rephrase the question. I asked you how much serious thought had gone into the 0.3 per cent as the key, the starting point more or less of your formula. You said there was a lot of pressure from the banks, it had to be kept as simple as possible and we had to do things the same as the U.K. But on other occasions you bang the drum saying Jersey is unique, we are uniquely positioned, et cetera, et cetera. I just do not see how much study there has been of alternatives to 0.3 per cent because that conditions all the rest.

Mr. M. De Forest-Brown:

But it does not, it does not, because if you took a 0.5 scheme ...

Deputy M.R. Higgins:

Which the industry indicated early on would be acceptable.

The Deputy of St. Mary:

For example, if you took a 0.5 per cent scheme.

Mr. M. De Forest-Brown:

If you took a 0.5 per cent scheme and ran the numbers through I think you would find that we were uncompetitive against Guernsey.

The Deputy of St. Mary:

Uncompetitive. What do you mean exactly by uncompetitive? Spell it out.

Mr. M. De Forest-Brown:

Well, the margin. It would be easier to book deposits in Guernsey rather than Jersey.

The Deputy of St. Mary:

No, no ...

Mr. M. De Forest-Brown:

Okay, so some money comes in ...

The Deputy of St. Mary:

If the depositor protection is the same why is it suddenly more ... explain this notion of competition.

Mr. M. De Forest-Brown:

If you are being charged at 0.5 per cent for each £1 of deposits, if you are a bank and you can put it in Jersey at 0.5 per cent and face that deposit charge, potential deposit charge, or you can put it in another jurisdiction where it has a lower deposit charge you would more likely, all other things being equal, put it in the other jurisdiction.

The Deputy of St. Mary:

As a customer?

Mr. M. De Forest-Brown:

No, no, no, no as the bank. The bank can book its deposits in different jurisdictions.

Deputy M.R. Higgins:

So we have got a lowest common denominator approach to our protection scheme?

Mr. M. De Forest-Brown:

What we are taking is a difficult set of circumstances and trying to put the depositors first for all reasonable eventualities and then ensuring that, as part of this, we permanently keep an eye on - and what I think is a good example of how Jersey has been so effective in securing such a successful finance industry - things and not shooting ourselves in the foot by coming up with things that are going to make us uncompetitive versus other jurisdictions.

Deputy M.R. Higgins:

Is it not the case because we have become so reliant on the financial industry, accounting for so much of G.V.A. (Gross Value Added) that really we have no alternative but to constantly make sure that the banks do not move away. So in other words if they threaten to move away because someone else is offering a cheaper ...

Mr. M. De Forest-Brown:

That is a political question, I do not have an answer. My job is to try and ensure the long-term health ... that is why I am Director of International Finance, so that is my role.

Deputy M.R. Higgins:

I understand that, I would like the Minister to answer it. So basically it appears that because we are so beholden to the finance industry in this Island for employment, for the income it is generating in terms of providing the taxes and everything else, that we have constantly got to listen to the banks and if they say: "It is cheaper there your scheme has to be comparable to, if not cheaper, otherwise we are going to move away", is that not the case?

Senator A.J.H. Maclean:

Mr. Chairman, it is about balance. It is about balance, we have to look at all the factors as we were saying earlier on. We have to consider how we best deliver appropriate protection for depositors but we have to clearly listen to what the banks have to say. Yes, it is both, it is all these things. We have to ensure that we get the right balance to ensure the long-term sustainability of the finance industry for all the reasons you have just highlighted: employment, jobs, tax revenue and so on. But we have to ensure that we meet the necessary standards expected internationally and, naturally, expected locally to protect local depositors. This is really all about ... in terms of protection for local depositors it is about the vulnerable, those that are going to be most affected by the loss of £50,000 which is where the ...

Deputy M.R. Higgins:

Ray, do you want to come in? Sorry, before Ray does, we have had a request about filming the session and I should have put it to you earlier. Do you have any problems with the session being filmed?

Senator A.J.H. Maclean:

Yes. We would have had to have prior notice. I am not prepared to allow it to occur.

Mr. R. LaBrosse:

I guess it is not appropriate for me to ask the Minister a question, but I would like to open an area for discussion perhaps with the officers. Certainly we would agree that the financial exposures of deposit insurers are higher now than they have ever been before, and one of the key elements in ensuring the effectiveness of a deposit protection system is one where the public fully understands the nature of the ongoing benefits; its benefits and limitations. I guess there is a couple of things that occurred to me in reviewing the documentation, one related to the whole area of public awareness and the steps that would be embodied there in the proposals to inform the public about the benefits and limitations, and second, the area of the operational readiness of the system to be able to make payouts in the timeframes that were envisaged in the regulations, just in terms of being able to do a 7-day payout, from my experience, would be fairly ambitious, there is not a regime anywhere I have seen that can get to that point that quickly, other than through an amalgamation of institutions over the course of a weekend or some kind of merger like that. Based on my experience in Canada, the payouts, in the best possible of circumstances, could be only about one week, and they have some 40-something years of experience with payouts and 43 failed financial institutions, and more normally it is closer to about 5 weeks, and I know that this is an area that has been discussed in Europe as to what is an appropriate timeframe. So perhaps the panel would like some elaboration on the public awareness elements as well as the payout capabilities.

Mr. M. De Forest-Brown:

Well I think the first thing is to say that there was a very clear demand for having a scheme on the books as soon as possible, full-stop. That is what Guernsey has responded to and put out an announcement that they have a scheme and allowed themselves to have a scheme. Obviously, once we get to the position of having a scheme, then we will look very clearly at what we can do in the way of communicating that, but fundamentally that is down to the banks to communicate what level of coverage their scheme has. But we will obviously look, where appropriate, to sort of best practice in that area. Sorry, can you remind me of the second part of ...

Deputy M.R. Higgins:

Can I just speak, sorry, before we go on to the second part of the question, let me just go back to that again, about the public awareness aspect. The I.M.F. (International Monetary Fund) have already indicated they will be bringing out a scheme, there must be publication of public awareness attitudes, so in other words people must know the limitations of the scheme, the extent of coverage and so on, they have made that quite clear. I might also say, in private discussions that I have had with the Michael Foote team, they have also emphasised that if we have a D.C.S. the public awareness side of it must be almost paramount, telling people of the extent, coverage and limitations of the scheme. So I am surprised, you have had the same data that we have had, that you have not put more emphasis into that. Can you explain why you have not?

Mr. M. De Forest-Brown:

We do not have a scheme yet.

Deputy M.R. Higgins:

But you could have put provision into the regulations and everything else about, for example, saying that, one, the banks or the board itself should be publicising this and so on.

Mr. M. De Forest-Brown:

I think what the understanding is, is that, as I said, the first step here is to get a scheme in place and Guernsey managed to do that virtually overnight. We are still debating ours 9 months on. Once we have a scheme, and it is recognised, and we have told the panel on previous occasions that we recognise that we have a significant further piece of work to do, to look at the detail of how we will manage and implement the scheme.

Deputy M.R. Higgins:

Is Guernsey's scheme, when it came out, was it a credible scheme?

Mr. M. De Forest-Brown:

It seemed to do the job in that the banks advised that they were ... the customers said: "Do you have a scheme?" and they answered that they had a scheme and that the number of customer inquiries and transfer of deposits dropped off.

Deputy M.R. Higgins:

When we are talking about credible, we are looking at 2 different things here. You are saying basically there was a scheme in place, it solved the problem, depositors were saying: "Have you got a scheme?" "Yes." "We are going to put our money there." But would the scheme have worked? From what you are saying, they are still 10 months down the road and they are still working on it, so the answer is it would not have been a credible scheme, it would not have worked.

Mr. M. De Forest-Brown:

I do not know, that is for them to answer, but they have a 100 million scheme in place, they have a statutory ... they have a law that says that you have a 100 million scheme. I think ... whether that works for all of their banks or each of their banks, I do not know. The fact is, they have a scheme in place, which has statutory backing, so the customer can take some comfort that there is 100 million scheme out there.

Deputy G.P. Southern:

Again I come back to, and has a real board, which has worked on, for example, I.A.D.I. (International Association of Deposit Insurers) core principle 12, getting the information out there, what is covered and what is not covered, so that the depositor clearly knows the position.

Mr. M. De Forest-Brown:

I come back to my previous point, which is we totally accept that there is more work to be done in this area. Our desire was to get a scheme out as soon as possible. They have been doing that since they have had their scheme out.

Deputy M.R. Higgins:

But, again, what we are looking at here is the credibility. Almost what you are saying is, let us get a scheme, no matter what, whether it works or not, whether there are lots of things to be fixed or not, let us get it out there so, in the world, people think Jersey has a scheme and they take comfort in that, whether it works or not, get a scheme.

Mr. M. De Forest-Brown:

All I can say is that Guernsey introduced a scheme with a significant amount of work outstanding and they have been working on that as fast as they are able since.

Deputy M.R. Higgins:

Who is going to work on our scheme, because we will not have a chair and we will not have a board?

Mr. M. De Forest-Brown:

There is a Project Officer that is going to focus on doing exactly this and to put forward proposals on whether it remains a board that would be appointed in the extreme event of a failure, or alternative models, but that is still to be debated.

Deputy M.R. Higgins:

Would it not be more credible if the board was there and doing the work?

Mr. M. De Forest-Brown:

That is the debate to be had, the point is, we are just simply trying to get a scheme out, and we are getting ... the cost of not having a scheme, we are continuing to debate all of these issues, and we are putting off getting a scheme in place. If we could get the scheme in place we could get on and focus our resources on that second part of the element.

The Deputy of Grouville:

I think we would accept that, but, given we only got the files on 30th June, 2 weeks before the States tabled this, we might be further down the line if we had got things sooner. I wanted to speak about ...

Mr. J. Mews:

Sorry, Carolyn, there is just a couple of things from the previous questions, which I should add in, which are sort of technical things, which may be helpful for the panel to be aware of. One of the questions was about public awareness and one of the important things there is that there are conditions placed on the banks as to what they must inform people who bank with them, and that is something that is set out in J.F.S.C. (Jersey Financial Services Commission) Codes of Practice. That is one of the things, which the banks have asked the Commission what they intend to be putting on those. So there is going to be a piece done there and the requirement is not ... the appropriate place is not for that to be in the rules of the scheme here, but the J.F.S.C. had indicated that the appropriate place is in the Codes of Practice, and Mark Sumner has indicated that is the sort of thing he is going to be looking at going forwards, so I thought that would be quite useful to add to the panel.

The Deputy of Grouville:

Okay, what I wanted to speak about was that the Minister has already confirmed that the sort of ultimate concern was really the sort of pensioner, if you like, with their life savings, to cover them. But banking business over here, 90 per cent is export and 10 per cent is local. So, given that, why were small business ... why are small businesses excluded from this scheme? So this scheme is basically covering 90 per cent export,

so can you talk me through why small local businesses are excluded from this scheme?

Senator A.J.H. Maclean:

It was not a question of excluding ... a conscious decision to ...

The Deputy of Grouville:

Well, they are not covered.

Senator A.J.H. Maclean:

No, they are not covered, but just to make the point that they were not consciously excluded per se. It is a complex area. There is a lot of work to be done with regard to definition of small business, and who in fact would be covered, but I think the reality is, if you consider where the risk lies and the makeup of the small business sector in the Island, the feeling was that, certainly in the initial stages, that you would find that businesses can make alternative arrangements to put surplus deposits, for example, that a small business might have, into a director's name or a private individual's name. So there are ways of mitigating any risk.

Deputy M.R. Higgins:

Let us explore that a little bit further. First and foremost, you say ... when did you decide that you were not going to include small business, first of all?

Senator A.J.H. Maclean:

There was no conscious decision not to include them, it was just the question that we needed to look for a scheme that we could get, that we could introduce, as we have explained before, that was going to be simple to administer, and certainly there is a great deal of complexity surrounding the issue of the introduction of ...

Deputy S. Pitman:

With respect, in the last hearing with yourselves it was said that, if we asked the small businesses whether they wanted to be included in the scheme, they would say no, and you based that decision, so ...

Senator A.J.H. Maclean:

The small businesses said yes, but you decided not to include them, and that was the statement.

Deputy S. Pitman:

The other point I wanted to ask is, why has the department not got a definition of what a small business is?

The Deputy of Grouville:

How does the Chamber of Commerce define small business?

Senator A.J.H. Maclean:

No, it is not a definition with regard to what a small business is, but what is involved within a small business if you were going to pay out to a small business within a scheme.

Deputy M.R. Higgins:

Expand.

Senator A.J.H. Maclean:

Well, you could have, for example, different setups within a small business in terms of directors' shares, small businesses can change, their structure changes over the passage of time, how do you deal with that. There are lots of different elements within the small business sector that is more difficult to define and ...

Deputy M.R. Higgins:

The U.K. for example, under companies law, has the definition of a small business, and it is based on a definition of a certain level of turnover, a certain number of employees, and there is a third category, and if you get 2 out of 3 you are a small business. Now, simply, if the U.K. have got a category, even the Isle of Man have got a category for small business, they protect small businesses, in their case to £20,000. Now, going back to this, I do not expect the Island to, that is too complex, it has been done elsewhere. Now, the other thing is that, from the very beginning, small businesses were not really considered. We have already heard what Deputy Pitman said, that in evidence previously we were told you knew what they wanted, you did not bother consulting with them, you knew they did not want a scheme, they wanted maximum cover and you decided not to include them. Now, in addition to that, no data was gathered, although Oxera were asking for data on small businesses and so on, no data was gathered; no attempt was made to gather it. There were no discussions with the small business community. So, in other words, from the very beginning, you have excluded small businesses, is that correct? That is what it appears to be from the evidence we have seen.

Mr. M. De Forest-Brown:

We were looking at it from the other end of the telescope, if you want to view it like that, the most important thing, as far as we were concerned, was to ensure that we got a credible scheme in and we were able to deliver it in the timeframe that we wanted to do so, and by doing that we wanted to keep it as simple as we possibly could, and obviously a scheme, as we have heard, with regard to Guernsey and other jurisdictions, schemes do change and they do evolve as time goes on, and there are opportunities in the future to look at the potential for the introduction small businesses. I should also add, if I may, that if you look at the makeup of small businesses in the Island, you will have a significant number of, for example, sole traders. That would not be an issue because of course they would have their deposits held in private names.

Deputy M.R. Higgins:

Up to £50,000 only.

Mr. M. De Forest-Brown:

Yes, which would be relevant to most small businesses.

Deputy M.R. Higgins:

Now, a business, I think it is 75 per cent of all businesses in the Island have 5 employees or less, and if they are not covered then the damage to the Island and to individuals is as great, if the business is not covered, as an individual losing his

money. So, in other words, I own a business, I suddenly find that the money that I have in the bank, the bank goes down, I do not have access to that money, I cannot get access to liquidity from the bank, I am going to go have to let all my employees go because quite simply I cannot afford wages. So therefore what we are saying is, the scheme should at least cover small and medium enterprises, trading ones.

The Deputy of Grouville:

I was going to ask, what do you think has a greater impact on our economy, somebody that holds an offshore deposit here or a small business?

Mr. M. De Forest-Brown:

They all have different impacts on the economy clearly, you cannot draw a comparison between the 2, both are important for different reasons.

Deputy M.R. Higgins:

Okay, but what about the small business community though, do you accept our arguments?

Mr. M. De Forest-Brown:

I have been very clear on that, I have absolutely no doubt whatsoever that foreign deposits have the biggest impact on this economy.

Deputy M.R. Higgins:

Okay, going back to the small ...

Mr. M. De Forest-Brown:

So much so that the Island is almost, whatever it is, 50 to 75 per cent of the economy is dependent on those foreign uses of the finance economy.

The Deputy of Grouville:

But the point is, they are covered. In this scheme they are covered.

Mr. M. De Forest-Brown:

Yes.

The Deputy of Grouville:

Yes, but small businesses are not that can sort of put sort of 5 people out of work if they are not covered.

Mr. M. De Forest-Brown:

I agree, but, as always, in any scheme, one has to take a decision on how much cost one can absorb versus the benefits, I mean that is the nature of the game in all cases, and so that is a debate, yes.

Deputy M.R. Higgins:

What you are saying as well is, for example, you are saying that we need to obviously protect the deposits of individuals from overseas as well as within the Island, because obviously we depend on so much money coming into the Island and again the banking industry.

Mr. M. De Forest-Brown:

Yes.

Deputy M.R. Higgins:

But equally, within the Island, we do depend on small business to a great extent, and if those small businesses fail because of a banking failure, we are in serious trouble within this Island.

The Deputy of St. Mary:

Can I ask a pointed question, which is ...

Deputy M.R. Higgins:

Do you accept that? Sorry, do you accept that?

Mr. M. De Forest-Brown:

I think there would be a very sensible debate to be had about what would the numbers look like, in terms of defining small businesses and what is the level of cover that is required. That is a fairly significant task and we were focused on getting a scheme out, which met the retail depositors as soon as possible. Guernsey did theirs overnight and did not cover small businesses.

Deputy M.R. Higgins:

The truth of the matter was you wanted a scheme quickly in for marketing purposes to prevent an outflow of funds to other jurisdictions.

Senator A.J.H. Maclean:

That is one factor I should point out, it is not the only factor, you also have to bear in mind that, with small businesses, they are going to have their deposits with the large retail banks, you are talking about the top 4 or 5, those are the ones, the systemic banks that we feel are a lower risk, so there is a risk issue here.

Deputy M.R. Higgins:

We will come back to the issue of the leading banks and the risk with them later on.

Mr. J. Mews:

There is a very, very difficult piece here, I mean you spoke to David Warr, for example, and, Carolyn, I believe you asked him how you define a small business, and he said: "That is a good 64 million dollar question." It is not an easy question to resolve in the context of a particular jurisdiction and it would require a huge amount of work.

Mr. M. De Forest-Brown:

I do not think we have ... all we have done is we have proposed a retail scheme, as of now, and we have said that the scheme will ... can be upgraded with you, there is always the opportunity to look at variations going forward. If it is felt that there is a sufficient case to look again at, or look at small businesses, my anecdotal understanding of it was that the biggest chunk of the economy was ... the relevant economy to this was sole traders who have the ability to keep their deposits in their own name. There is a separate issue, which is going beyond that, and looking at small incorporated businesses with more than one employee. If it is felt that requires further

work then I think we should look at that and then do it in due course, have that debate if that is felt to be needed ... felt to be a priority. For us, the priority was to get a scheme in place while, whatever the phrase is, while problems were happening. We needed to be responsive and get something in. Unfortunately I think that, as a jurisdiction, we have let ourselves down in that we have been unable to do that.

The Deputy of Grouville:

So you want to go ahead with that then, do you, there is a case there to look at that area?

Senator A.J.H. Maclean:

We certainly need to look, have a greater understanding of the risks associated in that area and what it looks like. As we pointed out, (a) small businesses operating within the Island are going to have their banks deposits with retail banks, which are in the top 4 or 5. The risk is a lot lower. A lot of sole traders ...

Deputy M.R. Higgins:

With respect, on the risk, the I.M.F. report itself highlights the vulnerability of the Island to, among others, the clearers and others in the U.K. and saying for example the upstreaming of assets from Jersey, if the parent gets into trouble, and we do not know what the British Government will do in the future, because the world has changed, and therefore we could find ourselves with some problems that we have banks in the Island with very little in the way of assets and we are going to be carrying the can because the U.K. will not be bailing out depositors in this Island. So the I.M.F. is highlighting problems that we could face and saying that we have to have contingency plans and so on. Just going back to this other point, just carrying on for a moment, if we go on to other areas of coverage, do you not think, and I have mentioned it to you before, and I know ... I think you tried to mention that it was investment products, there is a public policy case for protecting deposits of people who are saving for the future in terms of pension? Because we know that we have an aging population, we know that pensions are not sort of coping for it, and governments around the world are encouraging people to save more. Now, they can be in the form of investment products, which would not be covered, but there are schemes that have various deposit or savings type relationships to help people make provision for their pensions. Should that not also be covered?

Mr. M. De Forest-Brown:

Personally, in terms of putting forward the scheme that I propose, I think that there are a number of areas that we would continue to explore over time if people thought that there was enough of a case for them.

Deputy M.R. Higgins:

Would you like to expand on that? What else do you see then that you thought could be relevant?

Mr. M. De Forest-Brown:

I was worried about getting out a scheme as quickly as possible that met what the needs were at the time. I think we are confusing 2 issues here ...

Deputy M.R. Higgins:

What we are coming to, as the scheme was being considered, going back to October, at a time of financial meltdown worldwide, and really the driving force was trying to protect the banking industry here to stop an outflow of funds, is that not correct?

Mr. M. De Forest-Brown:

That was ...

Deputy M.R. Higgins:

That was the driving ... get a scheme in, no matter what it is, get the scheme in.

Mr. M. De Forest-Brown:

I am sure that was a very significant part of the position, and that remains the case today. The banks have told their customers, en masse, that their understanding is that the scheme is coming in shortly. I think we have a very severe risk of being highly embarrassed as a jurisdiction, to the detriment of the finance industry, if we are seen to be unable to deliver on important matters in times of need.

The Deputy of St. Mary:

Can I come to that question, because we seem to be talking about that a fair bit, the ... we need the scheme on the books as soon as possible, here we are 9 months on implying that it is something to do with the delays partly due to the panel, and then earlier you talked about the reality, or somebody talked about the reality we have now. We look at the facts when the scheme is being developed, and it just worries me that the whole thing has been completed reactive, and also when you look at the Bankers' Association, what they have told ... no, not the Bankers' Association, sorry, Alison --

Mr. M. De Forest-Brown:

Alison McFadyen, Standard Chartered.

The Deputy of St. Mary:

She described the thought processes within the banks, and they literally seem to have a timeframe of 2 months, and ... for that proposal, and I just wonder about this question of dealing with the future in a timely fashion and whether ... where the responsibility lies for this rush, because the rush is behind a lot of the problems, you know, we do not have time to look at things, we have to parachute people in, this poor guy has to be hired, just like that, and so on, and it has all been a rush, has it not? You have said yourselves that it has been a rush, a rushed process, you could not consult properly, you could not talk to anybody that was not a banker because you did not have time.

Martin de Forest Brown:

So your question is?

The Deputy of St. Mary:

The question is ... what is the question? **[Laughter]** The question is about this business of looking at the reality now and you are saying that the reality is not changing, we can only deal with the reality now, but that is the very attitude, would you not agree, that is the attitude that has got us into this rush in the first place? We could have had this scheme 5 years ago.

Mr. M. De Forest-Brown:

Absolutely we could have had the scheme 5 years ago. There is always ... I mean there is always remarkable opportunities for hindsight. Here we are, having been through one of the worst economic crises ever, and we have not had a banking failure, which possibly, you could argue, was a demonstration of the soundness of the previous policy not to have a scheme and spend a million a year running it for no benefit. I mean those are the debates we have to have, we have been ... the world has been taken by surprise by this economic crisis, we would have liked to have responded to it more quickly in terms of providing a scheme, we are where we are. I think as each week and month goes by, we are further embarrassed as a jurisdiction on our inability to respond to difficult circumstances promptly.

Deputy M.R. Higgins:

Well in fact, on that, there is only one delay effectively, and obviously there was a difference of opinion between the Minister and ourselves as to whether we should have been consulted much earlier on when we asked to be. Had we been, we would not probably be in the delay when we got to 14th July to debate it. As it is, the panel is doing its review over the summer period to go through it and explore these issues. It could have been explored much earlier if there had been a more co-operative way of doing it.

Mr. M. De Forest-Brown:

I might add, I do not think there is a lack of co-operation, certainly on our behalf, and I certainly feel, looking at the chronology, that ... and we have had a debate on this and I suggest we do not spend too long on it ... that we did and were willing to provide information at a much earlier stage, in fact we invited the panel to meet with us and explore the basis of the scheme long before the dates that have been quoted.

Deputy M.R. Higgins:

We spoke to the department in February and we asked, for example, details of the Oxera scheme and so. We were basically fobbed off and said there was not really anything going on. We find in March we are consulting on a draft law with the industry, which we obtain a copy, an early copy from the industry. Now, that is not co-operation. We understand that you had to sort of be responsible for work in progress, but we are not trying to interfere with that process, but, for example, the early Oxera report, you had one in February, you had another one in March. All that information could have been supplied to the panel to give us the background reading to enable us to go forward, and the same as getting things on 30th June and a lot of detail and expect us to respond within 2 weeks is ridiculous. So it is not an argument, I am just making a statement, I am just going to leave it at that. The point is made. However, let us move on.

The Deputy of Grouville:

Have we finished on these ...

Deputy G.P. Southern:

Can I come in on coverage?

Deputy M.R. Higgins:

Go on coverage, we are still on coverage, yes.

Deputy G.P. Southern:

The exception that small businesses are not included is not I think legitimate, but I note that you cover charities, charitable trusts, or trusts, in the scheme, and in particular special purpose vehicles that go under the name of trusts. Granite comes to mind.

Mr. M. De Forest-Brown:

They are not included.

Deputy M.R. Higgins:

How do you define charities?

Deputy G.P. Southern:

How do you distinguish between them? Charitable trusts and charities, how do you distinguish?

Mr. J. Mews:

There is a difference between the 2. Let us go to the law and look at it. If you would like to turn to the Banking Business Regulations, it might be quite helpful to look at it: "Charity means a corporation, association or trust, the income from the property of which is exempt from income tax by virtue of Article 115A(aa) or (ab) of the Income Tax (Jersey) Law 1961." So would you like me to explain what that means further?

Deputy M.R. Higgins:

Yes, please carry on.

Mr. J. Mews:

What that means is that charitable trusts, which are also proper charities, which are registered as such under the Income Tax Law, are covered, but those which are not, are not covered. Therefore, that is the reason that something that has a charitable longstop is not covered.

Deputy M.R. Higgins:

Explain the charitable longstop.

Mr. M. De Forest-Brown:

Special purpose vehicles that the Deputy was referring to, that sort of investment.

Deputy M.R. Higgins:

So, if you have, for example, a charity that is set up ... a charitable trust that is set up and says the beneficiary is going to be St. Johns Ambulance, but that the trustees have the power to change the beneficiary, as they do, and there are many corporate vehicles are fronting, using a charity as a front and saying it is for charitable purposes, the charity do not even know for a start that their name is being used, and also the beneficiary is to be changed before the thing is sort of finalised. Are they covered by the definition?

Mr. J. Mews:

I think the situation is, if you have a proper charity it is covered, if it is not a proper charity it is not covered.

Deputy G.P. Southern:

Income tax ... the Comptroller of Income Tax has done his work on this and he knows what is what. He knows that definition and he has got a list of, these are genuine charitable trusts and these are longstop charitable trusts, does he?

Mr. J. Mews:

Yes, I am sure many of you sit and give your time generously on the board of charities and other things like that here in Jersey, what happens is that the Comptroller of Income Tax does indeed write to the charity and informs them whether they are in or out, and that is something which, for example, the Association of Jersey Charities requests, and is given to them. There is a mechanism for determining this. This did go to the Controller of Income Tax and was discussed with him.

The Deputy of St. Mary:

So that is the method, you literally have the list within Income Tax and that is applied to the relevant deposit.

Mr. J. Mews:

Exactly.

The Deputy of Grouville:

Could I talk about upstreaming now, a subject that has not been covered. How do we know that our banks over here are not sort of hollow in that all their deposits have been upstreamed? Have we got ... you know, if that bank goes, we in effect become the creditor, do we not? So could you talk us through the upstreaming and if there is some sort of mechanism in place to either avoid this happening, so we are not a creditor, because if we are a creditor there is absolutely no way you can go on the 7-day thing.

Deputy M.R. Higgins:

Sorry, let me clarify the point. What we are saying here is, obviously banks in Jersey largely are deposit-type organisations, they are like a money box. Money is coming in from abroad, placed on deposit, and we know from the business model we have, most of that money is going up to the parent and, again, the I.M.F. highlighted this too, again the risk ... the risk associated with that is not without risk, merely safer when the parents are safe, because you know that the parents will look after the subsidiary, so if the parents themselves are in trouble, if the money has been upstreamed, then there may be no assets in the Island here, for example when it comes to the recovery if the bank fails. So you are not going to get any help from the parent because they are in trouble, there are no assets in Jersey because they have been upstreamed, and therefore we are talking about the recoveries, we are not going to get the level of recoveries we would expect. Now ... and also an example of that, I know it is an investment bank, but an example of that was Lehman Brothers who siphoned money from all their branches and subsidiaries around the world to the head office and they still went down and they are hollow shells around the world, which are going to take many, many years to try and unravel from an insolvency point of view, and the recoveries are probably going to be very low.

The Deputy of Grouville:

My question was ...

Mr. M. De Forest-Brown:

Just a small point in your question, which caused me some concern, and that was, I think you were suggesting that there might be a local bank collapse out with the health of the parent, is that what you were suggesting?

Deputy M.R. Higgins:

No, we can come to that in a second.

Mr. M. De Forest-Brown:

But you said in your point, you said something like: "If there was a local collapse and there are no assets here in the Island then you would have a problem in your recoveries."

Deputy M.R. Higgins:

Okay, let us look, there are 2 different aspects to this, there is one where the parent is in trouble and the money has been upstreamed to the parent, and if that bank goes down then the chances are you are not going to be making a recovery here, are you, because the money has gone?

Deputy G.P. Southern:

Question mark.

Deputy M.R. Higgins:

Okay ...

Mr. M. De Forest-Brown:

Yes, absolutely, the money is not here, it has gone somewhere else, very clear, yes, there is no bricks and mortar or there is no pile of money in the bank. The money has gone to the parent, it is an intercompany debt; that is how the world of finance works, money goes around the world.

The Deputy of Grouville:

How will that work to pay out the pensioner their £50,000?

Mr. J. Mews:

It is the rule of law, it is the basic laws, which insolvency laws apply in different countries and monies are made to other countries.

Mr. M. De Forest-Brown:

The way you have seen it operate with Landsbanki and others, that over time they work to retain their recoveries through the process of law.

Deputy M.R. Higgins:

Some, maybe, over a long period of time.

Mr. M. De Forest-Brown:

Yes, and that is the purpose of the pre-funding, to bridge that gap until that money is recovered, but the evidence is that the recoveries are very high.

Mr. J. Mews:

I mean, perhaps you might ask your expert about his, because when he met with us earlier he talked about level of recoveries in international banking failures. Now, B.C.C.I. World, across the whole thing, had recoveries of 75 to 80 per cent and that is ...

Deputy M.R. Higgins:

How many years did it take?

Mr. J. Mews:

Well, the time is not important, to be perfectly honest.

Deputy M.R. Higgins:

It is. It is. If we have £100 million of government liquidities being paid out to fund this scheme, then it is the government and the taxpayer that is waiting for that money to come back, and it could take 10 or 20 years.

Mr. M. De Forest-Brown:

It could, but that is the nature of the beast that we are dealing with. Yes, money has gone and we will recover it. There is a lot of experience out there about what happens in bank recoveries but ultimately whatever would be, would be the case, and that is the liability that we need to pre-fund that.

Mr. J. Mews:

That is no different to any scheme worldwide.

Mr. R. LaBrosse:

There is no real science in recoveries on banks that fail around the world, and recovery rates vary considerably from one case to the other, because one thing you know is the value of the liability, but you do not know the value of the asset, and whether you can do what you need to do with the asset to get it back. I guess I was surprised when I looked at this that the compensation stream has not been designated as a liquidator or a receiver in order to protect the government in terms of going after assets and recovering what best they can in whatever circumstances they are dealing with. Most jurisdictions around the world now are having separate regimes for failure of banks because of the special nature of their assets and liabilities and ... so I am not familiar with how it would work here in States of Jersey, how that would work, but timeliness is a very important issue when it comes to recoveries and more information that the deposit protection arrangement has ahead of time, the more quickly can they get at the assets and the better the recovery rates. In Canada we changed the mandate of our deposit insurer back in 1987 and our losses prior to that were 51 cents on the dollar. After we changed and gave it a more proactive mandate, our recoveries were ... our losses were only 11 cents on the dollar, so it made a significant difference in terms of what we could do. Fortunately we have not had a failure since 1996 but we have not sat and not reviewed our processes for recovery, so on the technical point in the States of Jersey, what organisation would be charged with responsibility to go and recover assets in a failed institution?

Mr. J. Mews:

The normal thing that happens is that the Viscount gets involved and I believe you have spoken to the Viscount and he has spoken at length about the methods which he would use, therefore I am not sure that there is any point me adding to that, he is the expert in Jersey on that.

Deputy M.R. Higgins:

Would the viscount be involved if it was the parent who failed? If the bank was in Jersey, a Jersey subsidiary, then the Viscount would be involved. If it is the parent that has gone down, and money has been, let us say, for example, upstreamed to the parent, and we are trying to recover money, who is responsible for ... for example we know the depositors are supposed to be being paid out using government money to help with the liquidity situation, and then their rights have been subrogated but who is looking after the government money that has been paid out and making sure we get it back? Are we devolving that to the Depositor Compensation Board, or what?

Mr. J. Mews:

The board has subrogated rights and therefore the board has rights to go directly against the institutions. Now, obviously, if you are talking about an international situation, that is a problem that all depositor compensation schemes face, and any creditor in an international insolvency faces the same difficulty, and fortunately, much as we in Jersey would like to write the rules for other countries around the world, we cannot do that because that is ultra vires, we do not have the power to go outside our own boundaries, so we can do everything that we can do, which is what Jersey law permits us to do, but we cannot do anything other than that, and that is really the beauty of everything, which Ray has been working on with the International Association of Deposit Insurers and the worldwide forums, which are being set up to work on exactly these very issues, because these are global problems, these are not Jersey problems, they are problems which we need to solve across the world together.

Deputy M.R. Higgins:

We acknowledge that, but what we are saying in effect is that if it is ... remember Jersey by and large is a host country, we do not have our own home-grown banks. They are abroad, it has failed.

Mr. M. De Forest-Brown:

So by and large; completely ... no home banks.

Deputy M.R. Higgins:

I thought we had one. I thought the British Bank of the Middle East was Jersey. I might add, the I.M.F. report states 12.

Mr. M. De Forest-Brown:

Not home banks.

Deputy M.R. Higgins:

They are talking about banks that are ... we are the home regulator for.

Mr. M. De Forest-Brown:

Yes, sorry, there are some of them for which we might be the home regulator, but we do not have any home banks with retail deposits.

Deputy M.R. Higgins:

Okay, but is it 12 or is it one or what?

Mr. M. De Forest-Brown:

I do not recognise the numbers, I would have to ...

Deputy G.P. Southern:

Is the question, are there ways of minimising our risk, is that the question, Ray, or would there be another question that is better?

Mr. R. LaBrosse:

No, I think that is a good question, Deputy, because in minimising exposure to losses, there are different kinds of deposit organisations around the world, as you know, those that are pay box, those that are risk-minimiser or are loss-minimiser type systems. This particular system looks more of a loss absorbing thing, with then running after, later on, to try and recover debts that one can. In the meantime, there is a commitment that payouts would be made in a very short period of time, so it seems to expose the government quite a bit in that kind of scenario. I fully support and agree with you on the point of having the government backstop to the system, because that makes it more credible, but it is also exposing the risk to the government of its support that there is very few ways in which that is being managed that I can see from reading the regulations.

Mr. M. De Forest-Brown:

Yes, and my question would be, what is proposed? What else might we do?

The Deputy of Grouville:

Well, I was going to ask, should we have some kind of mechanism in place or ask the banks to put a mechanism in place whereby they are obliged to keep a certain amount of assets here if they ...

Mr. M. De Forest-Brown:

Can you explain what that might look like? So we have this cash, what would you do with it?

The Deputy of St. Mary:

The question surely is to you, are there ways of minimising our risk? It is not for us to ...

Mr. M. De Forest-Brown:

We will come back to that one, but just answer this question, because this is ...

Deputy M.R. Higgins:

No, I will ask ... I will ask the question here, sorry, no.

Deputy G.P. Southern:

No, you are not going to answer the question, they are going to answer the question. The question is, what does the scheme do?

Mr. M. De Forest-Brown:

We cannot keep assets ... I think there is an understanding issue here. What would those assets here look like? There is nowhere to put the assets, that is why the money goes on, that is why these banks are here in the first place. What would you do with the money?

The Deputy of Grouville:

They are here because they do not have to keep assets here.

Mr. M. De Forest-Brown:

They are here to collect money and pass it to their parents, that is why they are here.

The Deputy of Grouville:

So what do the parents do with it?

Mr. M. De Forest-Brown:

They invest it, so they go and invest it as part of their overall balance sheet of investments.

Deputy G.P. Southern:

In a nice safe way.

Mr. M. De Forest-Brown:

No, not necessarily, mostly in risky sub-prime mortgages it appears.

The Deputy of Grouville:

My question to you was, are you going to put a mechanism in place to try and keep some form of assets here, whether it be investing in the stock exchange or whatever?

Mr. M. De Forest-Brown:

The answer is no, because the very existence of the model here, the reason many of the banks are here, is to collect money so that they can pass it upstream to their parents. If we said ... it is like having a car manufacturer in here and us telling them: "Sorry, you have to start making cheese." They would probably say: "On balance, we do cars, we do not do cheese, so we are going to leave." So the banking model here is to collect those monies and upstream them.

The Deputy of Grouville:

Okay, so the probability is, if the bank went under over here, then we would be the creditor.

Mr. M. De Forest-Brown:

Absolutely.

The Deputy of Grouville:

So therefore we have this shell of a bank, we are the creditor, it could be years and years before the depositors get their money back because we are the creditor.

Mr. M. De Forest-Brown:

In the case where it is an issue, we are talking about the full U.K. clearance, so in that case I would expect them to be progressing with recovery and payment of monies fairly promptly, I mean subject to the limitations on their ability to do so. It is not as if we have upstreamed that to a bank that we thought might either be a particular difficult bank or difficult jurisdiction where the rule of law was suspect. Most of our upstream deposits are to U.K. clearers.

The Deputy of Grouville:

So the worst case scenario would be that we would be ... the taxpayer would be stumping up this 65 million for an indefinite period.

Mr. M. De Forest-Brown:

As cash, yes, until that money has been reimbursed, but that is the case anywhere around the world that operates the scheme.

Deputy M.R. Higgins:

There is one other thing that is unique to the situation here. Because Jersey is located where it is, outside the European Union, outside the European Economic Area, outside the United States and Canada, that no depositor compensation scheme in those countries where the parents are located will pay any money to depositors in Jersey. So the scheme that we have has to be funded locally, because we are not going to get any help from anybody else. Is that not correct?

Mr. M. De Forest-Brown:

That is correct, yes.

Mr. J. Mews:

Each scheme pays for people who deposit with a bank in that jurisdiction. So, for example, if you have a bank in the U.K. and somebody has an account in the U.K., it is the U.K. scheme that operates. If it is in Jersey and somebody has an account in Jersey then it is the Jersey scheme that is operational. If somebody has an account in the U.S., if you have an account in the U.S., then it is the U.S. scheme that comes into play. The U.K. scheme would not pay out U.K. citizens who bank in the U.S.

Mr. M. De Forest-Brown:

There is a slight exception. There is a slight exception to that,

Deputy M.R. Higgins:

Sorry, let us go back, there is a difference with that, because there is, for example, the parent bank in Germany will pay out under the German scheme and it may be topped up if there is a difference in the U.K. scheme, so both the German government would be paying out money to depositors in German banks, if they are in the E.U. (European Union) or in the E.E.A. (European Environment Agency), and if that was not up to the U.K. levels they may have also brought in and topped up in the U.K., so there is money coming from the parent countries. In our case, there is none.

Mr. J. Mews:

Can we delve into that a little bit more? So you are saying, if there is an investor based in which country, with a deposit in which bank, could you just explain that a bit more so we can examine ...

Deputy M.R. Higgins:

I am not going to explain it to you. The fact is, we are not covered by the schemes that are in Europe whereby both the parent country and the ... let us say for example it is Britain and Germany, there is a top-up scheme involved, and you can receive money. You need not put into the regulations of this scheme, but if money is received by the depositor from another source that money will be deducted from any money that will be paid out in Jersey, and really that is false, because there is no money coming in from any other source.

Mr. J. Mews:

If you look at the Irish scheme, the Irish basically say they will protect people no matter where the depositors are based, no matter where the branch or subsidiary is.

Deputy M.R. Higgins:

Look at it closely, look at the regulations closely.

Mr. J. Mews:

So that is why we are dealing with that in the regulations, but if you look at all the other schemes, we do not expect there to be any interaction, because you do not have this trans-national, trans-branch or subsidiary, basis to the way they are set up, so with due respect, I do not quite follow what the implications of the question are on the scheme.

Deputy M.R. Higgins:

The bottom line is we are on our own. It is the Jersey scheme that will be funding depositors.

Mr. M. De Forest-Brown:

That is correct. There is no debate about it. That is correct and the only exception ... and the reason there is some wording is because the Irish do offer additional benefits.

Deputy G.P. Southern:

In the U.K. ...

Mr. M. De Forest-Brown:

We presume otherwise. We are not reliant on that.

Deputy G.P. Southern:

There is a clear distinction, as anywhere, between what the administrator is recovering on behalf of the shareholders and what the D.C.S. is attempting to do on behalf of depositors. There is a conflict there because the people being served are necessarily different and the U.K. has had to make special arrangements with the receivers in order that the D.C.S. gets its claim in. They have also - in order to be able to respond quickly - had to tell the banks: "We would like you to process information to us in this format so that we can understand and respond quickly." Is that still a problem with us? Can we get information? Can the D.C.S. when it is set up and operating get

hold of that rapid information? Is its place clearly defined, in terms of shareholder/depositor and who is claiming what?

Mr. J. Mews:

Well, in terms of shareholders and depositors the difference between those 2 is clearly a matter for law. The law sets out the difference. In terms of if you are referring to the insolvency situation and who would have priority, shareholders come at the bottom of the pile and creditors come before the shareholders.

Deputy M.R. Higgins:

But depositors are not at the top of the pile are they?

Mr. J. Mews:

In our scheme depositors are not at the top of the pile, no, just like in most of the jurisdictions. There is another piece of work - which we did not put in these regulations because of the fact that they are regulations and which we could not put in regulations - is to adjust our insolvency law and, therefore, to put depositors on a priority footing to other creditors who could claim against the scheme. We discussed that and that is an ongoing piece of work. Because of the nature of that we would have had to get Privy Council approval in order to do that, so we would probably have delayed another 9 months before that could come in.

Deputy M.R. Higgins:

A question on that for the Minister here. The I.M.F. have recommended that we have a separate banking solvency regime. Are you going to bring one in?

Mr. M. De Forest-Brown:

They are looking at that and they will bring proposals back --

Deputy M.R. Higgins:

Yes, the Minister is supposed to be ...

Mr. M. De Forest-Brown:

Yes, he may not have been aware of the situation.

Deputy G.P. Southern:

The question was to the Minister, please.

Deputy M.R. Higgins:

Sorry, if you can please reply to that. Okay, so you are going to look at it?

Deputy M.R. Higgins:

Carolyn, you were going to say something?

The Deputy of Grouville:

Yes, with the scheme James is talking about are proposals being considered to give local depositors priority?

Mr. J. Mews:

One of the things which Oxera have stressed in their report is the fact that it is rather parochial to think purely about local depositors and, particularly, if you have an international business model, which is very much what Jersey has. So therefore, you should either look at depositors as a whole or not at depositors and I am sure that is something which your expert would confirm to you, in terms of the way schemes are being set up across the world. There is no breaking down saying: "Well, let us protect our own." We should be working together globally in order to deal with the problems which we face.

The Deputy of Grouville:

But given our own 10 per cent of the market and 90 per cent are export, and it is the Jersey taxpayer being the backstop in this scheme, should we not give priority to local depositors. Is there not a moral obligation there?

Mr. J. Mews:

There is a serious piece of work which needs to be done looking at whether we should give priority to depositors, I believe. Now that would then be broken down. You could break that down into the subset of foreign depositors and local depositors. That is not something which we did for this because, as I have said, we would have had to bring in a primary law which would have taken far longer to be approved. The fact of this, as it stands, is we have brought in regulations under the banking business law, coupled with triennials which only last for 3 years, which is a very obscure principle which is not invoked much. That was because the banking business law did not create the powers to set out offences in it and penalties, so we had to dovetail these together. Now what that means is that we need to revise this in the fullness of time, within the 3 years, and we need to place everything on a proper footing. Now that also gives us time, connected with the year review which we said we would be doing in order to look at these, take on further points and make any tweaks which may be necessary.

The Deputy of Grouville:

Given the amount of time those laws will take, should they not be brought into force or should you not be bringing them forward if that was a considered option?

Mr. J. Mews:

Whether to increase the rights of certain parties to the detriment of other people is something which is quite a considerable step to take. It would not be proper to take that without spending more time researching it and speaking to a large range of people, in fact going out to a full consultation. So that is something which we were not able to do in the timescale and therefore it was not considered appropriate.

The Deputy of Grouville:

You could have been doing that now.

Mr. M. De Forest-Brown:

Could have been.

Deputy M.R. Higgins:

Okay. In fact I think we have got the answer to that. I have a question here about transition.

Mr. M. De Forest-Brown:

Could I just add something that may help? Just simply, we could exclude international depositors all together. So your point about giving the other people priority ...

The Deputy of Grouville:

Well, you could but that is not realistic, is it, because about an hour ago you told us that one of the objectives of the scheme was that so we can be competitive?

Mr. M. De Forest-Brown:

No, I agree. I am just saying in theory you could. So in theory you could have any level of ranking or pre-ranking between them.

The Deputy of Grouville:

Yes. But I am talking about realistic theories here.

Mr. M. De Forest-Brown:

Well, no, I think we could - it is a business decision where you lay out that landscape. I think they are all possible. I mean, others have commented that it may be risky but a possible solution is not covering international depositors. Any combination is possible but one has to take a judgment on what is easily communicable, what is fair and reasonable. So yes, your point is well made it is an option.

The Deputy of Grouville:

Exactly, but my point was: is it fair and reasonable to cover local depositors, considering it is local taxpayers that are paying for this scheme or sort of is the backstop?

Mr. M. De Forest-Brown:

Yes. It is not fair and reasonable. It is about trying to make an overall sensible decision. At one level I think it would probably make more sense, probably just to make it a local scheme only rather than put everybody in the scheme and say: "There is a change in rank." I think that might be a bit more difficult. I will have to think about that a bit more but ...

Deputy M.R. Higgins:

Surely that goes against your competitive nature?

Mr. M. De Forest-Brown:

Yes, I agree. So that is why we have not done it.

Deputy M.R. Higgins:

The point I would like to come to, on this scheme are we talking about a permanent depositor compensation scheme or are we talking about a scheme that will be in place for 2 years or 3 years maximum?

Mr. J. Mews:

Well I think, in terms of looking at the law and the propositions which have been put forward to the States, we have a standalone piece of law - the regulations - these regulations which once made are permanent unless they are rescinded in some way by

the House. Then we have also got the separate triennial regulations which - once passed by the House - would only be in force for 3 years.

Deputy M.R. Higgins:

The triennials, just remind us again what is included in the triennials regulation?

Mr. J. Mews:

That in the main is dealing with offences and criminal responsibility under the law. So they sit together; they are dovetailed together. What that means is, because the offences are set out in triennials, that in 3 years' time the regulations would have no teeth to them. They should be put on a proper footing and the law changed as a whole. So that is another piece of work which has to be done in order to make this not just a piece of law which lasts for 3 years but a piece of law which lasts for as long as it is wished to.

Deputy M.R. Higgins:

So when the banks believe, for example, that the scheme is only going to be in place for 3 years - perhaps 2 or 3 years - are they mistaken into believing it is not going to be a permanent scheme or have you given assurances to them that the scheme will be reviewed and they fall away?

Mr. J. Mews:

This is something which I think is probably more appropriate for Alan to answer.

Mr. M. De Forest-Brown:

I think we are getting slightly confused over the triennial issue. I mean triennials are just a process that ...

Deputy M.R. Higgins:

Yes, I understand that and then they will be incorporated in but reading documentation obtained from the Jersey Bankers' Association, it appears they have a perception - certainly a number of them - that what is agreed was the scheme would be temporary. I think the term was, well, transitional or whatever. The impression I got from reading it is that they believe the scheme could come to an end. It is only here now to meet the current sort of emergency type thing and it could be done away with later. Is that a fair assessment?

Senator A.J.H. Maclean

I do not think there is any intention that the scheme is necessarily going to be temporary. We started this hearing this morning asking - I think it was Deputy Wimberley - about the perception of the banking world, how it is changing. I do not think there is going to be any likelihood that other jurisdictions are going to remove a depository compensation scheme. We have to meet international standards. We would want to meet international standards. The likelihood of removing the scheme I cannot personally see that being a probability.

Deputy M.R. Higgins:

Probability. Are you saying - we are all saying - that the States are passionate about the idea of having a depositors compensation scheme? Are you saying again you

have no intentions or no promises have been given to the bank that it is only a temporary scheme?

Senator A.J.H. Maclean:

I am certainly not aware of any promises being given to the banks that the scheme is going to be ...

Mr. M. De Forest-Brown:

Absolutely. I am not even aware of even having had the discussion. I think you might be misinterpreting words - certainly what has always been the debate is the scheme may change over time, as we have said many, many times this morning. I do not recall any discussion whatsoever on a temporary scheme.

Deputy M.R. Higgins:

Can I just take it there is an assurance on your part and assurance from James Mews, both of you, that you gave no undertaking. Did you give an undertaking?

Mr. J. Mews:

I have given no undertaking at all, no.

Deputy M.R. Higgins:

That the scheme would not be a final scheme, that it would be temporary?

Mr. J. Mews:

As far as I am aware, the banks fully believe it is going to be a permanent scheme. They have asked for there to be a review, in order to look at maybe whether things need tweaking in the light of the international changes, but in terms of permanency, no, I think everyone is very much at the same mind at the moment.

Mr. M. De Forest-Brown:

Absolutely.

Deputy G.P. Southern:

The Minister just then said he wishes to meet international standards, and there is a statement I think that the regulations do comply with I.A.D.I. core principles. Does the Minister still stand by that?

Senator A.J.H. Maclean:

The requirement to meet international standards and to be competitive?

Deputy G.P. Southern:

I.A.D.I. core principles.

Deputy M.R. Higgins:

That this scheme meets the I.A.D.I. core principles?

Senator A.J.H. Maclean:

Martin, do you want to ...?

Mr. M. De Forest-Brown:

We have certainly tried to do that in all areas as possible. I mean whether it is 100 per cent compliant I could not say off the top of my head.

Deputy M.R. Higgins:

What was said previously was: yes it does.

Mr. M. De Forest-Brown:

When?

Deputy M.R. Higgins:

This is when we met with you on an earlier session.

Mr. M. De Forest-Brown:

I see.

Mr. J. Mews:

We did comment on that at the earlier session and we believe that it complies. Obviously, at the time when we put the scheme together the principles had not been set out in full and they were in draft and being consulted on at that time I believe.

Deputy M.R. Higgins:

They were published in May before they went to the States.

Mr. J. Mews:

The scheme was final in May and went to the States in its final form. It was being checked over by the law officers and things like that. So certainly, we believe that we are compliant with them. Now there are a number of principles which can be construed in a number of different ways and because the deposit protection schemes around the world are so different, I believe that is the reason why some of them are drafted in a rather broad manner. So it could be that there are areas you could say: "Well, is that in or is that out?" and it might be hard and there might be different views on that, but certainly we believe that they are compliant and that is our intention.

The Deputy of St. Mary:

You were certainly aiming for compliance with the final version not with the drafts of the I.A.D.I. principles because there is some confusion about drafts of the law; the regulations and drafts of the I.A.D.I. So I just want to be clear you are saying that you believe that the Jersey depositor compensation scheme complies with the I.A.D.I. principles as published in ...

Senator A.J.H. Maclean:

That is the aim.

The Deputy of St. Mary:

That is the aim?

Mr. J. Mews:

Yes.

The Deputy of St. Mary:

Okay. I just want to ask about - there are small businesses - just to make sure what sort of commitment there is. It was a bit equivocal what one of you said about commitment looking at that in the future and I just wanted, in view of the importance of small businesses to the goal of diversification, will there be work done to investigate the inclusion of small businesses in the scheme?

Senator A.J.H. Maclean:

We will certainly look in more detail at the impact and involvement of small businesses in the future.

The Deputy of St. Mary:

Right. Thank you.

Deputy M.R. Higgins:

I would like to come back to another point, just as a clarification in my own mind. If we look at the relationship of subsidiaries to the parent, in the Island most parents have given to the Financial Services Commission letters of comfort for these banks, saying that the parent will stand by the subsidiary. We know the letters of comfort have no legal validity - cannot be enforced. Are you aware of any letters of guarantee - which I believe have more legal validity than a letter of comfort - in place? In other words, do we have cast iron guarantees from the parents that they are going to support their subsidiaries in the event of a subsidiary getting into trouble?

Mr. M. De Forest-Brown:

Sorry, you are asking 2 questions there which were different. I think one was: was I aware of any letter or guarantee; and secondly, do we have a cast iron guarantee? I am not aware of any letters and I do not think there is such a thing as a cast iron guarantee.

Deputy M.R. Higgins:

Okay. So in other words, although we believe the parents will bail out - obviously for reputational reasons - their subsidiary, there is no legal liability on their part to do so?

Mr. M. De Forest-Brown:

There is more than a liability. We are a creditor at law.

Mr. J. Mews:

Yes.

Deputy M.R. Higgins:

But again, if the subsidiary is here it is coming in under our own law, if the assets are not there where are we going to recover those assets from?

Mr. M. De Forest-Brown:

I think the law operates - and let us say this is a U.K. parent, the U.K. parent will be obliged to run and consult in accordance with U.K. law. My understanding of that is it is obliged to treat creditors as they rank under the law.

Mr. J. Mews:

Yes.

Deputy M.R. Higgins:

Well, whether it be the U.K. or elsewhere, we found there is plenty of international experience that shows it almost does not follow that everyone is treated equally and if there are many instances of failure where money has not been recovered by jurisdiction; various procedural or legal devices or all those sort of things, that the money just does not come through. Can you confirm that is true, Ray?

Mr. R. LaBrosse:

I guess there are different approaches to insolvency around the world. There are territorial and there are national approaches and there is no agreed set of arrangements. So I guess the most obvious recent example was the failure of Lehman Brothers and the extent to which the funds flowed back to the United States. Now there are court cases going on to try to recover some of that in the U.K. for the benefit of the U.K. creditors, and so on. This is a difficult area because of the way in which the world is organised. We are all different and we have different approaches.

The Deputy of St. Mary:

I understand that there may be many issues around recovery of assets at the failure level. So if this is a U.K. bank there may be many issues about them making the recoveries on the balance sheet of the U.K. parent. My understanding is that we would rank as a creditor at law alongside other creditors, behind some, maybe ahead of others at law in the U.K. balance sheet and we will be treated as such. Is that your understanding?

Mr. R. LaBrosse:

Yes, that would be my understanding. I think it is one thing related to this area which I did not find in the regulations which maybe something you want to think about. You are already thinking about the priority given to depositors. That issue came up a little earlier. I think there is a lot of thinking about ranking of depositors and when they should be, but what is important for a compensation scheme is to know what is a deposit and have it clearly defined. I think that should be spelled out a bit more clearly in the regulations, so that in the event of a failure you do not have people coming in and saying: "Well, I think I have this thing. It should be subject to compensation but when you have a look at it is not because instead of being a deposit against a bank it turns out to be a mutual fund which is composed of deposits in banks and, therefore, may not be covered under your scheme." So I think it is helpful to have that.

Mr. M. De Forest-Brown:

Well, I thought ours was clear but it might be worth another look.

Mr. J. Mews:

I mean I think our scheme is very, very clear in that it only covers deposits with banks but obviously there is a bigger piece of investor awareness in there, in terms of trying to help them to understand what a deposit is, but that is something which I believe - and I discussed this with the law officers - it is not something we could define better in the regulations but it is about public awareness and a separate piece of work. I think that is very much borne out by the number of telephone calls which I fielded

from people at the time of the banking crisis who were wondering, you know, was there a scheme? Or they had money perhaps placed elsewhere and were saying: “Well, is this covered or is it not?” Or saying: “What will your scheme cover if it stays the same as it is at the moment?” and talking to them about that. A lot of people struggled with this issue of what was a deposit and what was not, but I think that is about consumer awareness.

Deputy M.R. Higgins:

But again, I think the C.D.I.C. (Canada Deposit Insurance Corporation) - if I remember correctly - have a list of, for example, deposit type instances they recognise and will pay out on. Therefore one of the arguments for having the board in existence and having a list, is it is agreed with the banks what type of deposits are covered and what are not.

The Deputy of St. Mary:

So is there a list in Jersey?

Deputy M.R. Higgins:

There is not.

The Deputy of St. Mary:

Is there a clear list in Jersey of what is a deposit and what is not?

Mr. J. Mews:

The whole thing is - as we have continually said - we are doing ongoing work on this whole piece of fleshing out what are fairly straightforward regulations. There is a lot of work to be done on that and that is one of the roles which will be done there in order to very clearly make it known what is a deposit, what is not a deposit. That is one of the things the project officer is going to do. Now, there may be a little bit of confusion about what can be set in stone before the board, as it were, is fully constituted. I believe that the Minister has full powers in order to pass documents concerning governance and other things such as that, on behalf of the board before the board is fully fledged and comes into force, so there is no sort of lacuna in terms of what can be done. All of that can be done and that piece of work will be done the project officer.

The Deputy of St. Mary:

Will the project officer also do all the public awareness work that is needed to make sure that depositors know exactly what the score is because that impacts on other things like lists?

Mr. M. De Forest-Brown:

The project officer will propose what needs to be done and then, depending on funding and approval by whoever approves, will do stuff, but the project officer is there to propose a way forward on the detail.

The Deputy of Grouville:

Has this person been employed yet?

Mr. M. De Forest-Brown:

There is a person, whether it is him who will do it or whether it is another person who will do it is yet to be decided.

The Deputy of Grouville:

Would you accept that if the States approve the depositor compensation scheme on 20th October there is still a lot of work to be done?

Mr. M. De Forest-Brown:

Yes, I would agree with that.

Deputy M.R. Higgins:

In fact, we are just coming to another aspect of that and it was touched on before. It comes down in a sense to part of the creditability of the scheme. You put into the scheme a 7 day payout for £5,000 and there is talk about paying out the rest of the money. Now, everyone that we have spoken to says it is an unrealistic expectation to be able to pay out in 7 days. Even the U.K. - we know the U.K. have been looking at it. We know they have had consultation papers on the single customer view and what has come out of it is bank systems are not in a state that they can do that. They are talking about I think it is 2 or 3 years hence. They are talking of spending an awful lot of money and as many of the banks in the Island are using the same systems as their parents, we are not in a position either to get a single customer to be able to pay out within 7 days. Most of the schemes are 3 months and in fact even the U.K. is talking about 20 days. What is your view on that?

Mr. J. Mews:

I went and spoke to the U.K. and asked them this very question and they were very clear that they would be moving towards a 7 day payout, and that it is very important that all schemes worked in order to have a system whereby some assets could be got back to those who have lost them as quickly as possible. Now, one thing which they also stressed is that in all the pieces of legislation you have, whether it is a 3 month period or whatever, you cannot fully account for what is going to happen in any one circumstance. So you have an aim and an objective. Now, one of the key things here which we really do need to differentiate is between a 7 day payout from the date of failure and 7 days from the date of a form being put in because, clearly, there is a difference between the 2. The other thing which we need to consider here is that Jersey has a much simpler system than those in other jurisdictions. Now, yes, if we had complicated definitions of S.M.E.s; yes, if we had the requirement of netting off and other things which make the whole system much harder to operate and to work out what the liability is, then you get to a situation where it is far harder to pay out within a short period of time because you have to make inquiries: are you still an S.M.E.? Do you have loans with this institution? There are so many questions which have to be asked and explored. But if you are working on a model where you are simply hoovering up deposits, as it were, and most people will have one deposit in Jersey, then it is very simple to get to a position of: is this person owed money or are they not owed money? So we are not talking about something which is quite as complicated.

Deputy G.P. Southern:

In the U.K. they are attempting to do this week's payment within a week and have pointed out that it is a complex, difficult task to get the banks to get into line in order

that they may achieve this, and that is without letting off and without highlighting any particular difficulties around S.M.E.s because that certainly did not come up. Yet we still appear to be going for the same objective. The evidence that we received from the U.K. is that that would be a difficult task.

The Deputy of St. Mary:

So will you consider rowing back from the 7 day commitment because what you are doing - it appears to us - is you are putting out there in the public domain an aspiration which cannot be realised. So are you going to re-think this 7 days, put out into the public domain in the way that it has been put out? Because I was not aware of 7 days from the date of failure versus 7 days from the date of the form being put in, that is 2 different things.

Deputy M.R. Higgins:

Sorry, let us just go through some of these things. So, first of all, do you acknowledge that the U.K. scheme is not now ... they are talking about many years hence by the time the banks have their systems changed. So, yes, it is an aspiration of 7 days but it is not achievable within the next 2 possibly 3 years. An awful lot of money, I think they were talking about millions and millions and millions of pounds, is going to have to be spent by the banks to change all their computer systems to gather the data to get a single customer view. So the U.K. when you say that they are doing it and we are doing the same, well we are not doing the same. It is going to take them a long time to do. Is that correct what I am saying?

Mr. J. Mews:

I fully accept that we are very different from the U.K. and therefore that there are huge complexities in the U.K. which means it is going to take them slightly longer than us to do this.

Deputy M.R. Higgins:

Do we have the same computer systems with our banks as the U.K. or are we ...

Mr. J. Mews:

It depends on the individual bank. I mean that is what we said. The U.K. has some huge amounts of difficulties because their scheme is vastly more complex than ours. Clearly, it is going to take longer to reconcile different systems if you have got some dealing with loans at some stages and others not. But the fact that you are talking about each depositor can only recover a maximum of £50,000 with one bank; you know, it does not matter for example if they have 5 different deposits which are all greatly more than that, as long as they can prove that they have £50,000 then the scheme can pay out. So it is much simpler to be done here. Again the scale ...

Deputy M.R. Higgins:

What evidence do you have the banks here have a simplified system to be able to provide that ...

Mr. J. Mews:

Sorry, Mike, could you let me finish?

Deputy M.R. Higgins:

Sorry, you have answered the question.

Mr. J. Mews:

Well, I am answering the question. I would be grateful if you would let me finish.

Deputy M.R. Higgins:

You are not. You are waffling all over the place. Do we have the systems in place at the present time?

Mr. J. Mews:

I would ask you to consider carefully about your last comment, please.

Deputy M.R. Higgins:

Which is what?

Mr. J. Mews:

I have been trying to answer the question. Now, clearly, if you look at the U.K. failure you are talking about on a scale vastly different to in Jersey. The amount of deposits held by a single major bank in the U.K. are just vastly greater than those held by a bank in Jersey. We are just not talking about the same scale, and yes it is a hugely different enterprise to do something of a scale of perhaps 100 times greater, maybe 1,000 times greater than it is to do in the Jersey context. There is no doubt about that. So therefore, for those reasons, I am confident that what Jersey is trying to do should be attainable.

Deputy M.R. Higgins:

Okay, you have said you are confident. What research have you done into the bank systems to enable you to be absolutely confident that it can deliver on the 7 days, which is the expectation we are putting out to the people?

Mr. J. Mews:

I think the key thing here is very much to look at the difference between our scheme and the U.K. scheme and you are trying to compare like with like and we are not comparing like with like here.

Deputy M.R. Higgins:

For example, can you tell me: do the banks here have separate systems, computer systems, gathering the data and having a single customer view compared to what their parents have in the U.K.?

Mr. M. De Forest-Brown:

In practice, one might envisage a process whereby an individual has made his submission and that the point that was made - this is 7 days from the submission of a claim - is the person makes submission of a claim and the process would be probably: look at the balance on the system; has over the amount? Yes. Sorted. There would be a smaller number of circumstances where individuals may have multiple holdings and a single item of those would not cover the amount. So somebody might have 3 accounts with, you know, 500 or 1,000 or something in multiple accounts. In terms of the form that the individual would be required to submit, they would typically put in a form that says: "This is their accounts and these are their balances that they are aware

of.” It may be that they have not had a recent statement so it might be a sort of estimated balance, or it may be supported by a last bank statement or something. Those are details that we need to work up. In practice there would be a team that will then take that application, they will look on the system to see if they can verify that and that would be immediately past the payment. So, knowing what their exact balance is as a single customer is in most cases probably not necessary to make this first initial payment on a ...

Deputy M.R. Higgins:

I hear what you are saying, but what research have you done? Have you checked with ...

Mr. M. De Forest-Brown:

Well, we have not done any ...

Deputy M.R. Higgins:

You have not done any, have you?

Mr. M. De Forest-Brown:

No, no, of course we would not do that research. I have to say, with due respect, it is well-understood that this government in its desire to keep costs down has a certain level of resources to deal with a very large number of projects. We need to use that resource as effectively as possible for all the priority claims. This is one very, very small element of this scheme; it is the key element, I agree, but I think that I can see, in my own mind, clearly ways in which we could, as the project officer fleshes this out, come up with a system that says: “Form, claim. I have these balances. Quick check. Yes, okay. I can see that is okay. Tick. Pass for payment over there. Payment made out.” It is not necessary to spend hours, days, weeks, months of officer time investigating bank systems to come up with that conclusion.

Deputy M.R. Higgins:

I think what I am saying is you eventually put a statement in which generates the expectation on the part of depositors that they will receive their money within that period of time and you have no basis of proof to ...

Mr. M. De Forest-Brown:

I have a basis of that because I just described the process which I think could work and I have no evidence that suggests there is any reason why that should not operate.

Mr. R. LaBrosse:

It is a technical point in terms of preparation for a payout which is what we are really talking about here. Jurisdictions typically have the authority to go into an institution before the failure has occurred in order to gather information about deposits and the nature of deposits, who the depositors are and the kinds of systems that are in place. That would help them greatly before the actual institution is closed to have that information and be able to then be ready to make a payout by hiring an accounting firm or some other entity to act as an agent in the payout process. So it is a technical issue which is vitally important to assuring the public and the depositors that they are going to get their money back as quickly as possible. Sure, there is the matter of creating the right kinds of forms and so on, but it is the entity understanding what is

the nature of the payout that is going to have to take place; if it is going to be very complicated or a rather simple one. That is important.

Deputy M.R. Higgins:

The scheme as put forward, for example, gives no provision to the depositor board or anything else to get that sort of access. The other point that needs to be made as well ...

Mr. J. Mews:

Well, the board can get access. I think it is worth correcting you on that.

Deputy M.R. Higgins:

The other thing that is missing is the fact that banks around the world do not always have their record-keeping and their computer systems necessarily in their particular branch. It can be done externally by a third party. Are those records going to be in Jersey? When the bank goes down, are we going to be able ... for example Depositor Compensation Scheme or the liquidator, are they going to get their hands on those things easily? We do not know. So, the point is, there is no guarantee you will be able to do a quick payout because you may get into all sorts of legal wrangles trying to get hold of the data to be able to do the reconciliation between.

Senator A.J.H. Maclean:

Can we move on? We are not going to prove this one way or the other. We are having an argument now.

Deputy M.R. Higgins:

Okay, I will accept that. Does anybody ...

Deputy G.P. Southern:

Well, the outstanding question from that discussion was the question of access. Will the D.C.S. in Jersey have that requisite access?

Mr. J. Mews:

Basically, this is something which clearly is the responsibility of more than one institution because one of the big things which is happening here is to remember that the J.F.S.C. are very much involved as the prime regulator of the banks. Now, that is clearly an important thing to speak to the J.F.S.C. about in terms of making sure that the J.F.S.C. are taking all of that sort of thing on board in terms of when they are checking out what banks are doing in making sure that they are up to speed in this as well as in many other areas. I think when you spoke to the J.B.A. they said they were very keen to ...

Deputy M.R. Higgins:

We have not had a meeting with the J.B.A. We have only had a representative from Standard Bank here.

Mr. J. Mews:

When you had your representative from the Jersey Bankers' Association here who spoke to you, one of the things which she spoke about was the fact that she thinks it is very important that you trial these things, you make sure that they work in practice

and clearly that is a very important thing to do. In terms of the exact records, one of the important things in terms of getting hold of records when there is an actual failure is for the board to be able to get things from the bank, or rather from the liquidator of the bank, as it will be, and regulation 17.4 gives that power to be able to go and get information from the bank, from the liquidator, et cetera and that is clearly a very important part of this scheme. Could there be complications in reality? Well, yes, there could and that is something which I think all deposit protection schemes around the world will have to take into account because if a lot of them do move to this 7-day payout which incidentally is from the date of failure, not from the date of application, from what I have heard discussed. We are talking about a tighter timeframe from the one which we put in our regulations. Should we move towards that? Yes, if there are particular legal wranglings then that could obviously cause problems in that regard but what you tend to do with every piece of legislation is to state what you expect the norm to be, what the aim is, the status quo and, yes, there could be arguments about that in reality but you have to face those as and when they come.

Mr. R. LaBrosse:

But what we are talking about here is in terms of getting information from the liquidator, so the institution has already been closed in that scenario.

Mr. J. Mews:

Yes, from the liquidator, yes.

Mr. R. LaBrosse:

What I was talking about is getting information in advance of the closure so that they would be ready to be in a position to make a payout in a quick and timely fashion. So, it is quite important if this organisation is to have any ... in terms of its operational readiness, to be able to be ready to make a payout rather than be faced with a payout and now a communication goes to the liquidator. That was the point earlier about perhaps this organisation should be made the liquidator for all banks because that may be an important element in getting information to secure the confidence in the scheme that it can meet the requirements.

Mr. J. Mews:

Yes, in reality what is likely to happen is that the Viscount would be the liquidator in Jersey and therefore the Viscount would be the owner of that information and the Viscount is somebody who would expect the Board to comply fully. So, I think that partly answers the question.

Deputy G.P. Southern:

But that pre-knowledge is not possible with the system that they are setting up because there is no board until there is a failure.

Mr. J. Mews:

Well, it is not because there is no board, as I have already said. The Minister is able to exercise all the powers of the board prior to the full board coming into existence. So, whatever information that can be obtained can be obtained in advance. One of the things which we have also spoken about doing, and this is in a wider debate as well, is about the need for better statistics on the industry as a whole and if you drill down into that you start looking at actual bank deposits with each institution. Now, it is

quite important that what we do is we obtain, on an annual basis, greater understanding of what each bank has and that is a piece of work which we have been working on as well.

Deputy G.P. Southern:

That is an issue that has been around a long time around the Jersey economy and what stats have we got? Very limited.

Senator A.J.H. Maclean:

Improving all the time.

Deputy G.P. Southern:

From a woeful position.

Mr. R. LaBrosse:

I guess my point is the credibility of the system is how well it is going to work in practice and the more - I will not say crisis management - advance preparation that can take place the better and I think it is important that the data gets collected, that somebody be responsible for analysing and looking at the data and trying to determine when closure is going to occur, I mean on top of what is happening internationally as well as domestically. So, that certainly can reside in the supervisor's office. There are lots of examples around the world where that function is contained but there has to be a clear line of responsibilities between the organisation in terms of does it have any independence to act? Is it accountable? Is it transparent? Is it composed of high integrity individuals that are running it? Because those are the aspects that are going to be important in the public's eye and internationally as to how this situation was handled when the crisis appeared, and lots of jurisdictions have difficulty when they include the deposit protection agency and the supervisor of just determining where the line of responsibility and what are they there to protect. So what I found when I was looking at the I.A.D.I. core principles and the arrangements outlined here, I did not really see a clear mandate being given to the compensation scheme which is one of the core principles number 3 that should be clearly stated and the powers within the legislation and Regulations just to thwart the delivery on the mandate. I think that that is an area when I think about embodying it rather than having it as a report on the Regulations but something in the Regulations themselves.

Deputy M.R. Higgins:

Again, there is another element that needs to be considered: there is a conflict, whether it be the regulator and the Depositor Compensation Scheme. The regulator, very often if there is a failure, it could be fingers pointed to them saying: "You have failed. Because this institution has failed, you have not done your job." Therefore, regulators worldwide attempted to try and either support an organisation or keep it going which can increase the costs later in terms of the losses that are made, whether it be the State or depositor. So there is a conflict there. Equally, there could be a conflict with your role as Minister because, again, you are the Minister responsible for the whole of the finance industry, you would not want to see a failure. At the same time while you are trying to resolve things - I am not saying you would - depending on the nature of the thing, there could be time delays which cause the losses to be even greater and therefore to separate the bodies would be far better.

Mr. M. De Forest-Brown:

There is a problem with where we are starting that type of analysis from, because our banks here in the main have a single large deposit with their parent. So, it seems to me that we keep discussing the matter as though there was a separate standalone or a parent bank here which had its own balance sheet invested in a range of assets where all the sorts of things that have been talked about by Mr. LaBrosse are wholly relevant; all of that mandate to be able to intervene and manage and run and so on. Our banks in the main have a single deposit with a parent bank and we have no ability to manage that U.K. parent. We have, on the face of it, no prospects of a local bank failing because we do not have the elements of failure within our banking system. They only fail as a result of the parent failing. We do not have risk assets that could suddenly lose value, we do not have wholesale funding which could suddenly dry up. We simply have, as you described it, a cashbox where we are collecting monies from around the world and passing them upstream. It is very hard to envisage what one might be doing here. In a way, yes, we have this real dependency on the parent but one needs to focus on that relationship; it is that dependency. Obviously, we should explore anything we can do to help in that dependency but I do not think it is possible to influence how the parent runs its business. I do not think that we will have any set of circumstances arising where effectively we are trying to run and manage a local bank.

The Deputy of St. Mary:

But with respect, the question was about a conflict of interest between the regulator and the D.C.S. and who is going to win and what work he had done to resolve that conflict and you told us that it is not going to be needed but the question is about the conflict.

Mr. M. De Forest-Brown:

Well what is the conflict? Explain to me how the conflict can arise again.

Deputy M.R. Higgins:

Sorry, just going slightly further back; going back even when you said first of all about the parent. Yes, there is not the risky investments by the Jersey bank; the money has gone upstream. The risky investments, as you have already stated, are done by the parent and the parent could bring down the other. Now, we also know that whenever a bank goes down there are attempts to try and find a buyer for it or to maintain part of the organisation to try and sell up what is good and bad and everything else. It could be, for example, that in a Jersey situation, let us say the subsidiary or whatever, we wanted to try and keep it going. It is employing people, keep the thing here, the regulator or the Minister might try and do it ...

Mr. M. De Forest-Brown:

No, you cannot keep it ... this shows that you fundamentally do not understand the system. They have one single deposit. If that money is not given back to them, that is it, end of. There is no keeping this thing going, it is not a mandatory parent business. It is me, I have got £100 here, I have given that £100 to somebody else. If that person does not give me the £100 back I can do nothing, I cannot continue, I cannot keep running my business, so the situation cannot arise. Unless it gets its money back, it cannot continue running; it is as simple as that.

The Deputy of St. Mary:

The answer about conflict of interest is there simply is not.

Mr. M. De Forest-Brown:

It does not arise in our circumstance because you must understand the nature of our banking industry. All of these questions, unless you get to grips with the banking industry, you cannot answer the questions. You have to understand the banking industry.

Mr. R. LaBrosse:

No, I understand fully the point you are making. The issue here, though, is the compensation scheme is on the hook to repay depositors that have been collected here, so the organisation needs information to make that happen quickly.

Mr. M. De Forest-Brown:

Yes.

Mr. R. LaBrosse:

The other issue is a much more difficult one, all the money is left because it is a loan to a parent and how are they going to proceed with getting any part of that money back to repay the system? That is where, I think, you are going with the: "That is the nature of the business here." We cannot do anything about that but it is the interest of the compensation scheme to minimise any exposure it has at all to losses because they are ultimately backed up by the government. So given the structure of how it is organised in Jersey, and I understand it is wholly unique here (it is probably unlike any other place but maybe Jersey is similar, I do not know) are you confident within the system that you have here that the funds will ultimately be able to be recaptured and repaid? Because if they are not, then it is the government that has paid out the money to begin with and it is how we are going to go about collecting that to protect the interests. Because if it is so difficult to be able to do that, then maybe it is worthwhile considering more of an ex ante fund at the beginning so that there is something here in Jersey to protect depositors by the banks having made some premium contributions, some levies in terms of the operation of the system and so forth. That is, I think, where the issue comes down to.

Mr. M. De Forest-Brown:

My confidence is no greater or no less than the experience of bank insolvencies around the world and we are dealing with, primarily, the 4 U.K. clearers and other similar banks. I would expect them to manage the insolvency of such a bank - which I do not envisage - and distribute that money, as we have seen in a much worse situation with the Icelandic banks in Guernsey and the Isle of Man, that is the basis of our presumption.

Mr. R. LaBrosse:

But most systems around the world, outside of Europe, involved in that way have a strong or heavy ex ante component. So the institutions that are operating in the environment are making premium contributions. Some are risk-weighted and there are various arrangements, so that there is money available here to try and protect the losses that may result from a bank failure.

Mr. M. De Forest-Brown:

Which they are used for bank failures which happen regularly in those jurisdictions and were not used, or were found wanting, when it came to a major bank that wanted to fail.

Mr. R. LaBrosse:

Well these systems are not set up to deal with the consequences of a systemic bank failure because that is a governmental ...

Mr. M. De Forest-Brown:

That is exactly the point, if we can just re-emphasise that. These are not set up to deal with the consequences of a systemic bank failure. The worldwide round, that is the case and neither is it the case in Jersey.

Deputy M.R. Higgins:

We have just found that governments, including the G20 in the last few days, have stated that the world has changed, banking is changing, they are going to be bringing in lots of regulations including the idea - we have heard Lord Turner in the U.K. - about living wills, about winding back these organisations. We will, I am sure, have this argument going on.

Mr. M. De Forest-Brown:

It is not an argument. I agree with you that they will absolutely be looking at those things and obviously to the extent that any of those develop and become standards, or the banks are changed in their nature, that we would continue to look at those and adapt our scheme if it had any fundamental implications. I do not think we should presume that such changes would make our scheme any more difficult. I think there is a presumption that there may be some unbundling and as a result of that that banks may no longer be too big to fail and, therefore, the basic presumption on our scheme is flawed. It may be that such a thing came to pass. My analysis of the situation would be that to the extent that banks are unbundled in the U.K. or elsewhere, they are more likely to separate retail businesses from non-retail businesses and we would be very much a part of - because it is the nature of our business - the retail business. I believe that there are 2 reasons banks are allowed to fail: one is that they are too big and the other because there is too much political risk. I think it is the retail banks which, in particular, cannot be allowed to fail because of the political risk of retail loss. I think to the extent that banks may be unbundled in the future is that we will be very much a part of a retail bank which would never be allowed to fail even if it was much smaller because of the political risk of depositors being left without money.

Deputy M.R. Higgins:

There is also another risk fallacy associated with this and I will just mention this - it will be a thing for another day - and that is quite simply that part of this living will will lead to slimmed-down structures and less need for financial centres all around the world and having multiple banks. So, again, it could be that we will see some restructuring in other areas ...

Mr. M. De Forest-Brown:

Well if the world does not need Jersey banks then we will not need a D.C.S.

Deputy M.R. Higgins:

I accept that. As time is pretty well going, I will ask the panel if they have any other questions and then I am going to come back to the issue that we had a bit of a disagreement on before and I will read out the appropriate things. Do you have any comments? No? Okay, just going back, I mentioned about caps and stealth. In one email, I will not say who it was to or whatever, but it was from James: "I am interested in asking my assistant Robert who is a maths genius and who has an Oxbridge Double First in something like mathematics or quantum physics, the opportunity to come up with a complex formula that would impose a cap by stealth."

Mr. J. Mews:

Yes, I can explain that is very much the case. One of the things which we wondered was when you look at the data, it seems fairly incredible, to be perfectly honest. You can have a £40 million scheme that covers up to the top 5 banks in Jersey even though you have ...

The Deputy of St. Mary:

For one failure.

Mr. J. Mews:

Sorry?

The Deputy of St. Mary:

For one failure.

Mr. J. Mews:

For one failure, yes.

The Deputy of St. Mary:

Banks never fail 2 at a time.

Mr. J. Mews:

Yes, exactly. You look at the data which says there is £200 billion on deposit and £40 million would cover all of those deposits. Once you have caps in place in the scheme, it is blatantly apparent what your scheme can fund but the public will just equate £200 billion potentially with £40 million; they can do the maths, and for their mind it does not add up. We have done the detailed research and it does add up. So one of the things I spoke to Robert about, who is far brainier than most people I know - and certainly a lot brainier than myself - was to go away and look at this very issue and say: "Look, can we come up with something which does not impose a cap by stealth in order to make the scheme more palatable?"

Mr. M. De Forest-Brown:

I think the word "stealth" there is confusion in it. The idea was rather than say: "We do not care how things work, there is a flat cap of £10 million." The question was: is there a formula that works to effectively achieve the same thing? We have fixed on the word "stealth" here as though there was some attempted trickery. The idea behind the request was just to come up with a formula, it might be a tapering formula, it might be a formula that works in a certain way that once it is applied this is the outcome, rather than having to say just flatly: "There is a cap." I am not sure that

generally in a whole range of examples or situations, caps or lines in the sand are ever a good idea. Cliff-edge events always seem to create some oddity. I am sure Mr. LaBrosse would confirm that whenever you put lines in the sand in all sorts of circumstances, all you do is then have to spend hours and hours or time trying to define exactly which side of the line you are. It is much better if you have something that is graduated and therefore that was the nature of the request; it was to try and come up with some formulae with the means of achieving the same thing rather than just imposing the flat cap.

The Deputy of St. Mary:

But what happened was you ended up with a flat cap which is puzzling because you have this super-brain who has been asked to graduate ... your argument is very sound; cliff-edges are not nice.

Mr. J. Mews:

Notwithstanding the size of his brain; he could not come up with anything so ...

Deputy M.R. Higgins:

The second one I mentioned was in terms of Oxera: “In essence, we would like the report to tie in with our scheme just more. This could be done by covering off the following areas in more depth. Firstly, explicitly providing that despite the fact that many schemes do not have State funding, if Jersey is to have a scheme that is competitive with other jurisdictions as Guernsey, State funding may be necessary to ensure the scheme is credible.” Then it also goes on to: “Secondly, thank you for removing all data we asked(?). However, we need to have a document that we can point to in public to justify the amount of the States contribution. We also say, thirdly, the section on S.M.E.s (Small and Medium Enterprises) could be slightly more focused towards the benefits of leaving them out, as in fact our scheme provides. Issues include the fact that no data was analysed on the size of the community and the fact that we do not know whether it is affordable to include them plus the difficulties already highlighted.” In other words, Oxera were being asked to write the report to ...

The Deputy of St. Mary:

To order.

Deputy M.R. Higgins:

Yes, to order.

Mr. M. De Forest-Brown:

I disagree. I think that all of those are comments on the report that they can take on board. I know that you have had an in-depth session with Oxera and they will give you their responses on that. I think all of those I am perfectly comfortable with as suggestions in terms of making the report as broad as possible or to avoid confusion. You have put your folder away at this point as though it is a done deal but I am happy to go back through each of those points and explain how we understood those comments and why we thought that they were appropriate.

The Deputy of St. Mary:

Fine, let us focus on the one I wrote down as it was the most startling for me: “Slightly more focused on the benefits of leaving them out.” I mean that refers to small businesses in Jersey.

Mr. M. De Forest-Brown:

I totally agree that that sounds odd. I think a better wording would have been something like let us put the balance of arguments for having them in or out. There was no deliberate intent. I think it was just felt that the report did not include the benefits of having them out as well as having them in, simple as that.

Senator A.J.H. Maclean:

Shall we just also put into perspective that we are looking to introduce a scheme in a fair timeframe. I said earlier on in this hearing that we need more data with regard to small and medium size businesses. We are going to obtain that data and we will look at the issues in more depth.

Deputy S. Pitman:

Will that include consulting with the small businesses?

The Deputy of St. Mary:

They have already said yes.

Deputy M.R. Higgins:

I will just finish off by saying that in the previous hearing on 3rd August when we did ask about minutes and files and everything else, we asked ...

Mr. M. De Forest-Brown:

While you are looking, have you not asked for information on this? Did I not see an advert on a request for information on S.M.E.s?

Deputy M.R. Higgins:

Sorry, say again?

Mr. M. De Forest-Brown:

Did the panel not request information? Yes, in the *J.E.P. (Jersey Evening Post)* was there an advert requesting information?

Deputy M.R. Higgins:

We put out a general advert to ask people to ...

Mr. M. De Forest-Brown:

For S.M.E.s so in fact you have ...

Deputy M.R. Higgins:

Not just S.M.E.s but people to write to us on any subject. What I say here is ...

Mr. M. De Forest-Brown:

Have you had any input from the S.M.E.s yet?

Deputy M.R. Higgins:

We have not gone through all the data yet. We have had obviously the ...

The Deputy of St. Mary:

We forwarded it all to David Waugh because ...

Mr. M. De Forest-Brown:

I am intrigued. Obviously it would be useful to know, given the allocation of resources and the difficulty always in choosing what projects we spend our time on is if you put out an open request for the scrutiny panel which obviously if you are a small business you would want to use that opportunity to make your case very quickly. If it is the case that you have not had much in the way of information, we would certainly want to be aware of that before we put out our own consultation to either see whether there is a way we need to be more targeted or whether it does not merit the level of interest that we think it might.

The Deputy of St. Mary:

It sounds like a sound point but in fact you have got to ask how many people read little notices in the *J.E.P.* and how much publicity were we able to generate around that topic and so on and so on.

Deputy G.P. Southern:

Chairman, I am concerned that we are not moving on and we are into philosophic reports at the moment.

Deputy M.R. Higgins:

I know. Just a final thing here to answer the questions tabled in the beginning. Okay, this is the point it says here that there is a question: "We have also been told there have been many meetings with the banking industry, J.B.A. and so on. We have not received any information about the level of consultation they did, any notes on the meetings, whether they have any concerns with the consultation we did, any decisions made or any comments that have come back from banks, with the exception of one or 2 emails. There must have been far more information than we have had." Mr. De Forest-Brown, you said: "No, there was not. We have just had these open meetings where we kicked around issues. We have had them yelling at us and the usual debates. We have had minutes at the J.B.A." I asked if we could have copies of the J.B.A. minutes. You said it is not sure whether we could have them because they are J.B.A. minutes.

Mr. M. De Forest-Brown:

You do have those now, yes.

Deputy M.R. Higgins:

We now have those. You were also questioned by the Deputy of St. Mary who said would there not be notes of those, informal notes, nothing written down. You said: "No, not on a formal record. Individuals may have taken their own." Basically it just goes on with exchanges back and forth. But we find it absolutely incredulous that as senior civil servants that records were not kept, not only for briefings for Ministers but also for reference as the scheme goes forward. My experience certainly was that we have file notes after every meeting.

The Deputy of St. Mary:

No comment?

Mr. M. De Forest-Brown:

My recollection is we took the scheme to the bankers. We proposed it. They gave us feedback. I can probably recall in those meetings where probably all of them said they did not like it or something. We said you do not like it for one reason, you do not like it for another. The meeting debated the issues. The meeting came to a consensus that they were supportive. They recognised the challenges that one bank would suffer and another bank would do better or vice versa depending on exactly how you had the scheme. We made the case that ours is a very simple, straightforward scheme based on the Guernsey one and based on the U.K. rate and we got to the position we got to. There was a particular action that we took away which was to look at the 0.3 per cent and how that was applied, which we did. We worked on that and we brought it back to a subsequent scheme. That was really the sum total of it. I think we are looking for items or we are looking for detail that just simply was not there. We took the scheme as outlined to the bankers, proposed it, kicked it around and broadly they supported it. That was it.

Deputy M.R. Higgins:

Okay, we have got that explanation. All I have asked for is if you can please submit to us the comments made by the bankers, that went along with the survey results, which we have asked for.

Mr. J. Mews:

Sorry, comments made by the bankers?

Deputy M.R. Higgins:

When the survey was done by J.F.S.C., information came back in the form of statistics and comments were made. At least 8 banks made comments and we have not seen any of that. We would like to see those comments, please.

Mr. J. Mews:

I believe that is a request you asked on Friday. I will push on with seeing if I can get that. If I do not have that information then I will get the J.F.S.C. or ask the J.F.S.C. to send it across to you.

Deputy M.R. Higgins:

Other than that, if no one has got any question we will adjourn.

Senator A.J.H. Maclean:

I would just like to reiterate again, Mr. Chairman, that in the interest of transparency and co-operation that if there is any other information that you require with regard to this review, if you can please let us know. We are more than happy to do what we can to get the information to you as soon as possible.

Deputy M.R. Higgins:

I appreciate that. We will be reviewing everything we have got. If we see there are some gaps, we will come straight back to you. Thank you very much.