



**TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
QUAIYL TINVAAL**

PROCEEDINGS

DAALTYN

(HANSARD)

**SELECT COMMITTEE OF TYNWALD
ON THE
MANX ELECTRICITY AUTHORITY**

**BING ER-LHEH TINVAAL MYCHIONE
LUGHT-REILL LECTRAGHYS ELLAN VANNIN**

Douglas, Friday, 22nd May 2009

Members Present:

Chairman: The Speaker of the House of Keys (Hon. S C Rodan)
 Mr D M W Butt, MLC
 Mr D Callister, MLC
 Mrs C M Christian, MLC
 Mr D J Quirk, MHK

Clerk:

Mr R Phillips, Clerk of Tynwald

Business transacted

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The Committee sat in private at 1.18 p.m.

Select Committee of Tynwald on the Manx Electricity Authority

*The Committee sat in public at 10.32 a.m.
in the Millennium Room,
Legislative Buildings, Douglas*

[MR SPEAKER *in the Chair*]

Procedural

The Chairman (The Speaker of the House of Keys, the Hon. S C Rodan): Good morning, everyone. Can I welcome you to this meeting, which is a sitting of the Select Committee of Tynwald on the Manx Electricity Authority, taking evidence in public session.

The Committee was established by Tynwald in July 2005, and it may be helpful if I set out our remit, which is:

'To investigate the true and correct position with regard to the Manx Electricity Authority's affairs and, noting the PKF Report, to investigate the role of the Authority, the Treasury, the Department of Trade and Industry and other parties deemed appropriate, to ascertain what went wrong and to report to Tynwald with findings and recommendations.'

Can I introduce to you my colleagues on the Committee: Mrs Christian; Mr Callister; Mr Quirk; Mr Butt; our Clerk, Mr Phillips; and the *Hansard* Editor, Mr Alford, who is responsible for recording today's proceedings. At this point, I would like to ask everyone to make sure mobile phones are switched off.

As you will have gathered from our remit, the investigation we are conducting is very wide-ranging and we have received a considerable quantity of written evidence. The Committee has therefore decided to progress its investigation by separating the various issues, where practicable, and to investigate them in sequence, and we will be issuing a series of interim reports. We are, therefore, currently concentrating on the issue of the MEA's compliance with financial regulations and the provision of information by the MEA to Treasury and the DTI.

We are conscious that many of the events being investigated took place some years ago and we have, therefore, in fairness to all the witnesses, prepared a file of evidence relating to the subject matter being investigated, and witnesses have had the opportunity to view that evidence and documentation in order to refresh their memories. The file is also available to the public, having been placed in the Tynwald Library. We have also issued lists of possible questions in advance to witnesses, to give them the opportunity to prepare their responses.

Administration of the Oath

The Chairman: At this point, I am calling forward our first witness today, Mr Proffitt. I would like to bid you good morning. Thank you for attending today.

Could I ask the Clerk to invite you to take the Solemn Oath, please.

Mr Proffitt took the Bible in his right hand and repeated the Oath.

Mr Proffitt: I swear by Almighty God that the evidence I shall give to the Committee at this and any further hearing shall be the truth, the whole truth, and nothing but the truth, so help me, God.

EVIDENCE OF MR M J PROFFITT

The Chairman: Thank you, Mr Proffitt.

At this point, I would like to begin by inviting you to state your name, role and responsibilities at the MEA during the time in question, but it might be more convenient for that then to lead into an opening statement which we have invited you to put to the Committee before we put any specific questions to you. Therefore, Mr Proffitt, I would like to hand over to you to make your opening statement.

Mr Proffitt: Thank you, Mr Chairman.

I was appointed to the board of the MEA in January 1997 as part of a re-organisation of management by the DTI. David North, then DTI minister, explained that the Council of Ministers wanted to appoint a board which could operate commercially and independently from the day-to-day Government procedure.

I was designated as the member with significant financial experience, Trevor Ferrer was designated as the member with significant engineering experience, and John McCallion was the newly-appointed Chairman. The one pre-existing board member was Mr George Shimmin, but he was unwell, subsequently, sadly, died, and was later replaced by Dr John Taylor.

The new board inherited a plan to meet the Island's future energy requirements by importing electricity from the UK by means of two undersea cables. Shortly after our appointment, the board was made aware that, politically, this was not acceptable and that we should devise a plan to make the Island free-standing.

The board developed a three-stage plan. Stage 1 was to commission a single undersea cable which would meet the Island's needs, together with existing infrastructure, for the immediate future. Stage 2 was to build a gas-powered electricity-generating power station that would meet the energy requirements for the foreseeable future. Stage 3 was to bring a supply of natural gas to the power station. At the material time, there were three options for this: to bring the gas from Scotland; secondly, to bring the gas from the west coast of Lancashire; and thirdly, to bring the gas from an existing well in Morecambe Bay. Option 1 would have had a northerly landing of the pipe; options 2 and 3 would have had easterly landings. Later on, we fixed on a fourth option, namely to tap into the second interconnector pipe which was laid between Scotland and Ireland and known as SIPS II. This option had a westerly landing at Glen Mooar, which would require that the gas be transported overland to Pulrose on the east.

On 15th January 2000, I was appointed as Acting Chief Executive Officer of the MEA on the retirement of Brian

Procedural

Administration of the Oath

Select Committee of Tynwald on the Manx Electricity Authority – Evidence of Mr M J Proffitt

Machin. I soon discovered that the projections for electricity demand required more urgent action than the board had previously understood: projected demands for 2014 were going to be reached in 2002. I presented this information to the MEA board and it was determined to bring the stage 3 process forward. In about May 2000, the Council of Ministers approved the board's plan and work began on delivering what we had been appointed for.

The ownership of an undersea cable between the UK and Douglas brought with it significant technological, financial and operational risks. A technology risk arose because there had never been a 65-mile AC sub-sea interconnector cable before. A financial risk arose because we would be paying for something which might not work and would be connected into the UK, where we did not have statutory rights. The laying of the cable was, furthermore, to be a joint venture with National Grid. The risks and nature of the project made it not only appropriate but common sense for the MEA to undertake the project through a subsidiary.

The company which was formed, and which would hold the asset and corresponding liability, was Manx Cable Company, or MCC. Initially, MCC was 50-50 owned by the MEA and National Grid. Both parties had the right to appoint two directors to the board. Subsequently, it became clear that it was in the MEA's best interests to acquire National Grid's interest and bring the cable into the sole MEA ownership. This is what we did. Prior to this acquisition, the assets of MCC were reported in the footnotes of the annual accounts of the MEA. After the acquisition, the assets and liabilities of MCC would appear directly in the MEA's consolidated balance sheet.

In addition to the share capital, MCC financed the laying of the cable by taking out a £35 million loan from HSBC. It has never been suggested that Treasury consent was required for MCC to take this loan. John Cashen, the Chief Financial Officer of the Treasury at the time, said, in his evidence to the Committee, that MCC, and I quote:

'... was a private company and they could borrow from whomever they wished. In such circumstances specific approval was not needed because they operated under the Companies Acts.'

This view, I gather, is supported by the opinion of the Attorney General at the time. No complaint was ever made by Treasury about the MEA not notifying them about this loan. This, however, was the same formula which MCC repeated when the £70 million and £50 million loans were taken out to refinance the existing MCC loan and provide the MEA with short-term finance in July 2003 and March 2004. All of this has been reported upon in detail to Government by PKF in their Report dated 1st July 2005. This important document is not included in the Select Committee's papers, but members do, no doubt, have access to it.

The only concern I am aware of being raised in Government about the MEA acquiring assets and taking out corresponding liabilities within MCC was at a liaison meeting attended by Brian Machin on 27th January 1999. According to the minutes of that meeting, included in the Committee's papers, a query was raised about whether the power of the DTI to give directions to the MEA would extend to the MEA's representatives on the MCC board. At the first liaison meeting which I attended as Acting CEO, on 19th January 2000, a request was made by Treasury for MCC's accounts to be laid directly before Tynwald. Notwithstanding the fact that MCC was not, at the time, a wholly-owned company, I

readily agreed to this, as the minutes show. Contrary to the evidence of Allan Bell to this Committee that I – and I quote Mr Bell – 'was determined from the absolute outset not to co-operate', not only did I agree to this, where my predecessor had not, but I got the MCC board, including two members of National Grid Group, to approve my actions as well.

At the time of my appointment as CEO, there were longstanding issues between Treasury and the MEA regarding compliance with the Treasury's capital project notes, or CPNs. These provisions, as the Committee has heard, take the form of standing directions made by Treasury pursuant to section 3(1)(f) of the Treasury Act, which empowers Treasury to give directions in relation to accounting and economies. I now know, from the Committee's papers, that as long ago as 3rd February 1997, the Attorney General advised Treasury that, and I quote the advice:

'If Treasury is empowered to give directions, it follows that it must also have the power to amend, revoke, suspend and issue new directions.'

Power to grant derogation or vary the CPNs is, as you have also heard from several witnesses, contained in the Regulations themselves. I also now know, from the Committee's papers, that on 11th January 1999, the Attorney General further advised the DTI that the statutory powers and duties given to Statutory Boards, and I quote the Attorney General's advice:

'... belong to the Boards themselves and not to any other organ of government...'

so that

'...the various powers of direction given to the Council of Ministers, the Treasury and the Department ... cannot be used to arrogate ... the discretions and duties which by statute are conferred and imposed on the Board, or to overrule action properly taken by the Board, so as to substitute the Departments' decision for that of the Board.'

This mirrors the MEA board's and my own understanding at the time.

At no time prior to my appointment as CEO had the MEA complied with the CPNs. This issue has been debated for years and had, before my appointment as CEO, become the source of some friction between Mr Ian Thompson and Mr Brian Machin. Instead of applying the CPNs, the MEA followed its more appropriate practices and procedures based upon best industry practice in the UK. These practices and procedures were based on the recommendations of the Institute of Electrical Engineers, of which the MEA was a member, and they were contained in two separate manuals: policies and procedures for generation, and policies and procedures for supply. Nobody has ever suggested these were, in any way, inadequate.

Treasury always recognised that it was inappropriate and impossible for the MEA to comply strictly with CPNs. Within three days of my appointment as CEO, I had a meeting with Ian Thompson and we discussed and agreed on this very point. In a letter, in the Committee's papers, dated 21st January 2000, Mr Thompson thanked me – I am quoting Mr Thompson – for 'an extremely positive and productive session'. He described the then existing position concerning the building of Peel Power Station as one of complete impasse. Instead of expecting the MEA to comply with CPNs in the interconnector project, he said that he merely wanted the MEA to keep him informed on a, quote, 'fundamental

basis'. He expressly acknowledged that the nature of the MEA is not conducive to their full application. Instead of full compliance, he sought 'to find a compromise that satisfies the requirements of the financial regulations and your own operational and commercial obligations' – 'your own' being a reference to the MEA.

Ian Thompson's reference to operational obligations acknowledged that application of the CPNs to the MEA would involve Treasury in what were properly MEA management decisions. The reference to commercial obligations acknowledged that application of the CPNs would result in the MEA being unable to meet its contractual obligations to third parties. One only has to glance through the detailed requirements of the CPNs and compare to the detailed tendering process in this case to see how inappropriate they would be to the MEA's ability to conduct a proper tendering process and thereafter manage the project and perform its contractual obligations. For example, under an EPC contract, payments must be made when milestones are reached, without review or approval. The CPNs require a Treasury review, timetable and process, which would place the contract in default.

When I became a member of the MEA board in 1997, I was surprised to find that it had no sub-committees. Based upon my experience in industry, I thought the board should form both a remuneration committee and an audit committee. Trevor Ferrer, our engineering designate, thought that there should also be a Health and Safety committee. The board agreed with the recommendation and three sub-committees were formed. I was asked to chair the audit sub-committee and asked the then Chief Financial Officer to hire an internal auditor to work with the committee. Initially, the position was filled internally, but subsequently we advertised and hired Mr Paul Dewar.

The whole point of internal audit is to have independent appraisal of internal systems of controls, and compliance therewith by management and staff. The MEA's internal audit charter makes this perfectly clear. The Head of Internal Audit has a functional reporting responsibility to the Chief Executive but, as the audit charter specifies, ultimately, the Head of Internal Audit reports to and is responsible to the Chairman of the Audit Committee, who is a member of the board. The internal audit charter also makes it clear that internal audit is allowed unrestricted access to records, personnel, properties and the operations of the MEA in order to fulfil its duties and responsibilities.

When I was appointed CEO, it was no longer appropriate for me to continue as Chairman of the Audit Committee and therefore I stepped down and was replaced by Terry Mackay. Any internal audit problems which arose during my tenure as CEO were reported to Terry Mackay and were documented in Paul Dewar's written monthly reports, which were included as part of the board's monthly packs. If I had tried to stop Paul Dewar from performing his role, a record would exist and the matter would have been taken up by Terry Mackay and the board with me.

Paul Dewar's claim, in evidence to this Committee, that I prevented him from having access to MCC is untrue. I recall a discussion on this matter taking place between myself, Terry Mackay and Clive Wilcox, and all of us agreed that the internal audit would examine the subsidiary transactions and internal controls when the contracts they were dealing with were completed. We gained confidence in this decision from a review of the fact that all the transactions at the material time

were being undertaken by professional consultants, who were indemnifying their actions. The board was fully briefed by Terry Mackay about this and agreed with our decision. The affairs of MCC were, of course, independently audited by KPMG, in any event. The insinuation that I tried to prevent the board finding out what was going on in MCC is utterly ridiculous. It was upon my suggestion that John McCallion and Trevor Ferrer became directors of MCC. The Board of MEA knew everything about MCC and, with me, ran the company.

I now turn to the so-called budget figure of £185 million. In fact, this was never a budget; merely a total of indicative costs for constituent elements of the project. The £80 million indicative cost of building the CCGT power station, for example, was based upon the £79.9 million initial EPC contract price and did not, and could not, include the cost of demolition and other ancillary works at the Pulrose site. Some of these works – for example, the building of the control centre and the refurbishment of the storage tanks – were actually ongoing works. Others – for example, the cost of disposing of contaminated soil and relaying of fuel lines – were new and could not have been anticipated at the time, let alone budgeted for. Similarly, the £20 million estimate for the gas pipeline project was the anticipated cost of laying the overland gas pipe itself. It did not and could not have included the £19 million cost of building a pressure-reduction station, which the MEA had no idea it would have to build. Nor did it include the costs of designing provision into the pipe to cater, at the DTI's request, for the wholesale supply of gas by the MEA to Manx Gas. All of this is analysed in the PKF Report. There is no suggestion that the DTI and Treasury were not aware that this work was being undertaken.

As is commonly the case in large projects of this nature, the anticipated costs for delivering the various elements of the project changed as new information, new requirements and new estimates came through. The Committee must bear in mind that this was the largest capital project ever undertaken on the Island. The requirements and specifications were changing as new matters arose.

During the liaison meeting on 12th April 2000, I reported to members of the DTI and Treasury that the MEA were exploring the possibility of raising a bond in the sum of £100 million. By 29th May 2001, the indicative costs of the project had risen to £176 million. Almost immediately, because of the DTI's desire to include a wind farm, it rose to £185 million. None of these sums were budgeted figures, nor could they be without quotes for the work involved. They were merely the best indications of costs for various elements at the time.

In my letter to Treasury of 29th May 1999, which the Committee has, I made it clear that the £176 million then envisaged was based upon the five-year plan produced the previous year and updated to include the purchase of National Grid's share of the cable, and would – and I quote from the letter – 'require adjustment to reflect the actual project costs as they are known'.

Similarly, in my meeting with the Treasury and DTI on 18th June 2001, the notes of which the Committee has, I made it clear that – and I quote – 'the final figure would not be determined until closure' and that, although the figures for the main elements of expenditure – roughly £80 million for the building of the new CCGT power station and £51 million for the MCC purchase – were fairly well fixed, the remainder would be confirmed only when the project was undertaken.

Questions have been raised about the role of Deloitte and Touche in this process and whether the figures which the MEA put forward were ever audited. As the notes of the 18th June 2001 meeting, which the Committee has, make clear, I expressly told the Treasury and DTI that Deloitte and Touche were instructed by the MEA board to advise upon financing and were not appointed to verify the indicative figures. Nobody suggested that the figures should, or could, be audited.

The Treasury and DTI, nevertheless, supported the MEA's proposals for a £185 million bond. They did so on terms which made provision, in clause 12, for the bond itself to be tapped, if required. The possibility of tapping the bond was raised by a number of institutional investors at the 20 or so presentations made by myself and John Cashen of Treasury. The flexibility of being able to tap a bond was one of the reasons why this form of finance was particularly attractive. Barclays Capital, at that time advising the MEA, did, in the event, make the recommendation that the bond be tapped for the final project closing costs. This recommendation was made in a written report to the MEA which was sent to Treasury in or around October 2004.

My task, as CEO, was to deliver the infrastructure required by Government in accordance with the directions and under the supervision of the board. I, together with other senior MEA executives, including Clive Wilcox and Ashton Lewis, formally reported to the board on a monthly basis, and informally reported more frequently. The suggestion of Alex Downie, in his evidence, that I may not have given the board sufficient or correct information is utterly untrue. The board packs record the detailed information which the board were provided with in preparation for monthly board meetings. Paragraph 2.17 of the PKF Report analyses one part of that pack and concludes that the board received regular updates of the costs involved in the project on a monthly basis. Paragraph 11.3 of the PKF Report records the board's written confirmation that they monitored the full detailed capital costs of the project on a regular basis. No member of the board has ever suggested that they were not given full or accurate information – and they were.

On 11th April 2001, there was a meeting between Treasury officials and the MEA project team to review the tendering process and to visit the site. The meeting preceded the opening of tenders which took place in May 2001, which Treasury was invited to attend but nobody did. The meeting on 11th April 2001 was attended by members of Parsons Brinckerhoff, also known as PB Power, the professionals engaged by the MEA to undertake this extremely complicated 30-day process. The purpose of this meeting was to satisfy Treasury that proper procurement procedures would be followed in relation to the tendering of the contract. The Treasury never came back to us with any input or criticism of the process. They must have been satisfied with it because, on 20th June 2001, they concurred in the MEA entering into the Nepco contract, as recommended by PB Power. They did so notwithstanding the fact, as their letter expressly recorded, that the MEA had not followed the CPNs. It is inconceivable that they would have agreed to this if they had serious concerns. The MEA had not complied with the CPNs when it built the 65-mile long subsea interconnector or, to the best of my knowledge, when it built the Peel power station either.

On 20th July 2001, Ian Thompson wrote to Ashton Lewis, seeking to progress the development of what he called a pragmatic approach to provide suitable arrangements as

regards the CPNs. His letter stated:

'I will restate my acceptance that they are not entirely appropriate and confirm once again my willingness to work with you to find something acceptable to all parties.'

As an interim measure, he suggested the MEA should provide copies of PB Power's monthly progress reports.

After an unfortunately phrased letter dated 23rd August 2001 was sent – which, to his credit, Ian Thompson subsequently apologised for – I responded on 29th August 2001, referring to the tacit understanding I and Ashton Lewis firmly believed was in place 'for Ashton Lewis to provide you with a monthly project report, which would be based on the EP contractor's monthly report.' Copies of such report were thereafter provided. Neither PB Power's report nor Ashton Lewis's own report contained the entire detailed financial information. The board packs did, however, contain the detailed report prepared by MEA accounting and reviewed by Clive Wilcox, and this report set out various financial management figures.

On 13th September 2001, Ian Thompson responded to my letter, stating:

'I accept and concur with your understanding of our agreement.'

He nevertheless wished me to attend a meeting with Treasury in order 'to try to understand the Authority's position and agree a solution that will satisfy all concerned.' The meeting took place at the Treasury on 26th September 2001 and the Committee papers include the minutes. They record that an agreement was reached, that agreement being that the Chief Internal Auditor and the MEA's Internal Auditor should meet to review the capital procedures and their application within the MEA. Upon a report of the results of that process, the extent to which the procedures might be reviewed would then be identified.

At the meeting, discussions were held about the nature of the reports which the MEA would provide to the Treasury. Ian Thompson sought copies of the PB Power reports, which did not contain financial information, but I said no, as these were management tools and the Treasury was not part of the MEA's management. I did, however, agree to provide a copy of Ashton Lewis's summary of these reports. On the issue of financial information, Ian Thompson wished to obtain copies of the management figures, but I resisted this on the basis that these were management tools and Treasury was not managing the project. I did, however, agree that Treasury should have access to Clive Wilcox and his team for the purpose of obtaining headline financial information sufficient for Treasury's purposes. After some discussion, Treasury accepted this compromise. I walked away from this meeting with a firm understanding that we had both an agreed mechanism for reaching a permanent solution on the CPN issue and an agreed reporting procedure.

On 14th November 2001, I attended a liaison meeting with the DTI and Treasury members in attendance. Ian Thompson gave an update to the DTI representatives, including Ken Bawden, on the progress made on the CPN issue. The minutes record him referring to the arrangements now in place to 'ensure that the approach taken by the MEA and the requirements of Treasury are reconciled.' Importantly, given the evidence which has been given to this Committee, they also record the express confirmation given by Ian Thompson that, I quote, 'the capital project reports being

submitted by the MEA were satisfactory'. In the light of this contemporaneous record, I do not think it is open to Treasury to now assert a contrary position.

In accordance with the agreement I made with Treasury on 26th September 2001, I asked Clive Wilcox to provide Treasury with financial figures which would enable them to know the fundamentals of what was going on. Clive informed me – which I was previously unaware – that the MEA already provided Treasury with headline expenditure figures on a regular basis. He showed what was being provided and I asked him to insert additional lines so that Treasury could see what was being spent on a project-by-project basis. I left these arrangements to Clive Wilcox and his staff. Nobody from Treasury ever complained to me that this information was unsatisfactory or that they were not receiving it. As far as I was aware, Treasury was receiving what it wanted. I therefore refute the claim of Treasury that I was unwilling for the MEA to provide Treasury with any financial information.

As part of their review of the MEA's activities, PKF undertook an analysis of the capital returns which the MEA provided to Treasury on a quarterly basis. At paragraph 2.15 of their Report, PKF calculated that a total of £183.5 million of capital expenditure was reported via these returns in the relevant period and that this included all of the MEA's capital expenditure, save for two things: firstly, the £54.6 million cost of acquiring the 50 per cent shareholding and refinancing the debt in MCC; and secondly, £36 million of sums capitalised in PGT after the relevant returns to the Treasury had been submitted.

The reasons why these sums were not included in the reports are explained in paragraphs 4.13 and 4.14 of the Report – that being PKF's Report. The former were historical figures reported in the footnotes to the MEA's accounts before MCC was acquired, and the latter were invoiced by PGT to MEA only after the returns were made. Both were, however, disclosed in the MEA's annual accounts for 2002 and 2003, as the detailed analysis at paragraph 4.9 of the PKF Report clearly shows. Paragraph 2.2 of the PKF Report also shows that, in the annual reports for 2002 and 2003, the MEA reported actual and committed expenditure of £226.4 million.

In his evidence to this Committee, Colin Kniveton claimed that:

'... cumulative analysis of the data supplied by the MEA to the Treasury reveals that the first time such information indicated that the MEA may have been spending more capital than it had been lent by the Treasury was in November 2004 when the draft accounts for the year ending 31st March 2004 were made available.'

In his evidence to this Committee, Allan Bell further stated that his officers were

'... highly trained officers in Treasury and they will automatically go over any Government accounts that come out with a fine toothcomb.'

I do not accept these statements, which seem to fly in the face of the PKF Report. PKF have determined that, in February 2004, Treasury had information from which they could determine that £226.4 million had been spent up to 31st March 2003. Treasury were well aware that spending was continuing, and indeed were continuing to receive the capital expenditure reports, throughout 2003, confirming this to be the case.

Paragraph 2.16 of the PKF Report clearly records that, by

their own admission, no reconciliation of the figures provided by the MEA was undertaken by Treasury. If attention had been given by Treasury to the breakdown of expenditure in quarterly reports, it would have been obvious that they excluded the £51 million in connection with the MCC purchase. It would also have been obvious that spending, on at least parts of the project, was exceeding the indicative sums which made up the £185 million. For example, the returns for the years ended 31st March 2003 and 2004 alone reported spending, under the heading 'Gas Pipeline', totalling £34.3 million, compared with the indicative cost sum of £20 million.

After my meeting with Treasury on 26th September 2001, and right up to 20th May 2002, the internal auditors carried out the work it was agreed that they should in order to move the CPN matter forward. A great deal of effort was put into this process, resulting in a detailed schedule, or what we are calling 'matrix', which analyses the requirements of the CPNs, the extent of the MEA's compliance, and the MEA's detailed response.

From reading the Committee's papers, I am aware that, on 3rd June 2002, Clive McGreal sent an e-mail to Mary Williams, attaching the results of that process but advising her not to – and I quote Mr McGreal's e-mail – 'get bogged down in the detail'.

From the Committee's papers, I am also now aware that on 6th June 2002, Mary Williams wrote a report to the Treasury Minister and Members, attaching a copy of the matrix and concluding that 'detailed discussions with the MEA CEO, together with the MEA Projects Officer, are paramount'.

Contrary to this advice and to the agreement of the 26th September 2001 Treasury meeting, Treasury resolved on 12th June 2002 that its only option was 'to issue a Treasury directive that the Manx Electricity Authority will, in future, comply with all aspects of the financial regulations.' Such a letter was sent by Mary Williams on 25th June 2002. The direction came as a complete bolt out of the blue. No attempt had been made by Treasury to continue with the agreed progress of dialogue; no threat or warning of any sort was given that this bombshell was about to land on my desk.

As the evidence given to this Committee by Mary Williams, the Attorney General and Ken Bawden all show, the direction was issued without consultation with anyone in Government. Allan Bell's evidence to this Committee, that Treasury issued the direction based on legal advice of the Attorney General, is clearly untrue. The letter in which the direction was contained was, furthermore, addressed to me personally, rather than to the MEA board. Completely at odds with Treasury's prior acceptance that CPNs could not properly be applied to the MEA, the direction sought to impose every single requirement of financial regulations upon the MEA, irrespective of the consequences. This was completely unreasonable and irrational. Compliance would have prevented me from carrying out my job of management. The letter also sought to exercise the power under section 3(1)(c), which had no application to the MEA.

Upon receipt of the direction, I consulted with the MEA board and they decided to seek legal advice. Without waiving privilege, the advice received was that the direction was outwith administrative law, *ultra vires*, an attempt to force the MEA into a position where it could not perform its responsibilities under the Electricity Act.

At a board meeting held on 27th June 2002, the MEA

board resolved to arrange a meeting with Treasury to respond and engage in the issues raised in Mary Williams' letter. Several days later, I called Mary Williams directly and told her that I thought this was a shocking way to deal with matters and went against everything we had been discussing. I suggested that she should withdraw the direction and let us continue along the path of using the matrix to agree a way forward. She said, 'No, a Treasury directive is a Treasury directive, and you will obey it.' I told her that I thought that sort of attitude hurtful and regrettable and that I had never received a letter with the tone and implication of hers in my life. She then started raising her voice and shouting, and I quote: 'It is not for you to question a Treasury directive.' I told her not to raise her voice, that I had been a Fellow of the Institute of Chartered Accountants for 30 years and had never been barked at like that, and would not put up with it. I told her if the direction was not withdrawn, the MEA board would likely push back on it. She refused to back down, and that is how the conversation ended.

On 25th and 26th July 2002, John McCallion and I responded to the direction by setting out the MEA's views that it was vexatious, insulting and unlawful. In paragraph 9 of my letter, I again offered to return to 'the open and constructive consultation that has taken place in the past, prior to the receipt of your letter.' I asked for a response to be provided prior to a meeting which had, by then, been arranged for 2nd August 2002. Some time shortly after that, John McCallion invited me to attend a meeting at the MEA offices we had arranged with Donald Gelling in an attempt to broker a resolution. It was a short meeting, during which Donald Gelling agreed to do what he could to help.

On 30th July 2002, I met with the Attorney General in his Chambers to seek his assistance as well. I told him about the direction, how I and the MEA board felt about the matter and that we had gone to legal counsel. I told him that I took the matter so seriously I considered it to amount to constructive dismissal, and if the Government did not want my services any longer they should just say so. I told him about the preparation of the matrix and my attempts and willingness to work things out with Treasury, as had previously been agreed. He told me that his office was advising Mary Williams that her letter was flawed legally, and that, in any event, this was no way to go about things. He agreed to try and help sort out a way forward.

On 31st July 2002, Allan Bell wrote a letter to John McCallion describing the recent correspondence as having culminated in a situation where both sides appeared to have misunderstood the intentions of the other. He offered to cancel the scheduled meeting for 2nd August, retract the correspondence on both sides, and establish a working party to 'find a constructive way forward which meets the requirements of both the Treasury and the MEA'. This was the withdrawal and the return to dialogue which I had offered Mary Williams, during our conversation and in my previously mentioned letter, that she had point-blank refused. On 1st August 2002, John McCallion wrote, agreeing to this suggestion. It was not, however, until 16th October 2002 that Mary Williams formally wrote, retracting her letter of 25th June 2002, that being the directive letter. Her delay in doing this was the subject of comment at the board meeting of the MEA on 26th September 2002. The minutes of this meeting are not included in the Committee's papers.

I will, Chairman, make some further reference to papers not included in the Committee's papers, but as assistance

to the Committee, I have brought those papers along and I intend to leave them with you.

The Chairman: Thank you, we have copies.

Mr Proffitt: The withdrawal of the direction by Mary Williams must have been one of the last things she did before taking up the position of Chief Secretary. Her letters to me and John McCallion, dated 16th October 2002, requested us to return our copies of her letter of 25th June 2002 so that they could be destroyed. The destruction of her letter was no part of the agreement previously made, and neither I nor John McCallion acceded to this request. In her evidence, Mary Williams claimed that it was I who phoned her up and insisted upon the correspondence being destroyed. In his evidence, Allan Bell said that he was sure that it was a request made by Donald Gelling at the meeting held even before Allan Bell offered to retract the correspondence. Both of these claims are untrue. Nobody at the MEA destroyed any document and Treasury never offered to return any documents to the MEA for destruction.

In her evidence to the Committee, Mary Williams further claims that, after the withdrawal of the direction, she attempted to contact me to further the proposals to set up a working party, but I was never in to her calls. That is untrue: she neither called me, nor did I call her. Upon re-reading her letter of 16th October 2002, I notice that she was suggesting in that letter that, at the time, neither she nor Treasury members had ever seen a copy of the matrix until it was supplied under cover of my letter of 26th July 2002. The documents provided by this Committee include Mary Williams' own report to the Treasury attaching the matrix, showing that her letter was untrue.

In their evidence to this Committee, various Treasury representatives have sought to represent the longstanding disagreement between the MEA and Treasury over the application of CPNs as evidence of my individual unwillingness to provide Treasury with any financial information. As Ken Bawden, however, explained, compliance with CPNs is essentially a question of procedure. It was the procedures which Treasury were unhappy about, not the level of information. If Treasury had been unhappy with the information which they were getting, they had powers, under section 8 of the Treasury Act, to require the MEA to provide it. They never sought to exercise those powers, nor did they ever even write to the MEA requesting information to be provided.

Upon Mark Shimmin replacing Mary Williams as Treasury CFO on 7th November 2002, I made contact with his office to progress the CPN issue. The committee has a Treasury e-mail which documents this. I met with Mark Shimmin at my office that Friday. Contrary to his view that the meeting did not provide a useful purpose, we actually agreed that Treasury would continue the work on the matrix by undertaking a review of the MEA's policies and procedures manuals. The objective of this was to resolve the matter of CPNs once and for all by Treasury either granting the MEA a formal derogation or incorporating the MEA's practices and procedures into them. The agreement we made is documented in the MEA's board minutes dated 28th November 2002. This is another record of the MEA not included in the Committee's pack.

At our first meeting, Mr Shimmin and I also agreed that, although the Electricity Act made no provision for this, it

would be a good way of improving MEA-Treasury relations for us to have regular quarterly liaison meetings directly with each other. These are the quarterly meetings referred to in the minutes of the DTI liaison of 14th February 2003 as having been initiated to improve co-ordination and mutual understanding between the MEA and the Treasury.

The second quarterly meeting with Mark Shimmin was also attended by MEA board member, Charles Fargher. As I reported to the board in February 2003, I considered these meetings important to 'foster better communications between Treasury and the MEA and this purpose, it is felt, is being achieved.' Charles Fargher's own views about the usefulness of these meetings were reported to the MEA board at a meeting on 29th May 2003. The minutes show that Mr Fargher advised the board that, following his attendance at a meeting between the CEO and the CFO of Treasury, Mark Shimmin, the relationship was good. Once again, these minutes are not in the Committee's papers.

Alison Cottier, my secretary at the time, set up dates in my diary for the next quarterly meetings with Mark Shimmin. Each of the next three meetings were cancelled by Mark Shimmin, each time on the day of the meeting and each time on the basis that he regretted that he had other engagements. The third time this happened, Alison Cottier told Mark Shimmin's secretary to please let her know when Mr Shimmin would be available to meet. Neither she nor Mark Shimmin ever came back with any dates for subsequent meetings.

In evidence to this Committee, no suggestion was made by Mark Shimmin that he or anyone else at Treasury made attempts to progress this matter. So far as I am aware, the agreed review of the MEA policies and procedures by Treasury was never undertaken. The evidence of Allan Bell to this Committee that:

'... there were several attempts at meetings between the various officers, but each time it was blocked by Mr Proffitt...'

and that I refused to join in is utterly untrue, as the documents you have show.

On 10th September 2003, Alan Teare, of Treasury, attended the quarterly liaison meeting held at the DTI's offices. As the minutes record, he requested, and I agreed, to provide an updated financial statement for the CCGT power station project. This detailed information was provided but, regrettably, is not in the Committee's papers. There is a reference to it, however, in a report dated 17th November 2003, made by Colin Kniveton to the Minister and Members of Treasury. At the top of that report, I notice that there is a manuscript note to the effect that, and I quote the manuscript note:

'The dispute about the legal position of MEA complying with Fin. Regs is resolved. CNK advised this is with MS.'

That was a quote handwritten on the top of an internal e-mail sent from one member of the Treasury to another, which I had never seen until I reviewed this Committee's files.

The report attached a schedule of 70 cost items, which I believe, but I cannot now recall, must be the same schedule that was included in the MEA board pack for 23rd September 2003. No complaint or comment was made about the information provided at the time.

According to the minutes, Treasury did not attend the next few liaison meetings. The claim, in Ian Thompson's

evidence, that I failed to provide the information promised on 10th September 2003 is obviously incorrect. Also incorrect is Treasury's claim that I refused to provide any financial information while I was CEO. The only financial information which Treasury asked for, and I was unwilling to supply, were the monthly management figures, and this was for the reasons which were discussed with Treasury at the meeting on 26th September 2001, and which Treasury accepted.

The issue of the final costs of building the CCGT power station was, once again, raised by Chris Corlett at the liaison meeting on 18th March 2004. The minutes of this meeting record I advised him that £80 million had been the costs on the contract, with an additional £11 million costs to the MEA for staffing etc, and that this was all net the J P Morgan case, that being the performance bond from J P Morgan – i.e. that the total spending for building the power station was £91 million. The figures that I gave him then, and which I had earlier given to both the DTI and the Treasury, were the same figures that I was being given by the corporate services division of the MEA and the same figures which were given to the board. I had no other source of figures.

On 10th March 2004, John McCallion had a one-to-one meeting with Allan Bell. This was a high-level meeting to discuss the major issues arising between the Treasury and the MEA. John McCallion made a briefing note to the MEA board, documenting the issues which had been discussed and the Minister's comments. This is another document which, regrettably, is not included in the Committee papers, but Chairman, you do have it now. Item number 1, it was recorded, was the excellent co-operation that existed between the MEA and Treasury. The minutes of the MEA board on 24th March 2004, also not in the Committee's papers, further evidence Allan Bell's comments about the enthusiasm and good relationship that existed between Mr C Kniveton of Treasury and the MEA. This is a very different picture from that now sought to be presented by Treasury to this Committee. Allan Bell's evidence that at the meeting he

'... again expressed my concerns that we were still only getting patchy co-operation from his Chief Executive...'

is totally untrue, as these documents clearly show. Far from being unhappy with the MEA's co-operation, we were being congratulated upon it at the material time.

At a meeting between the MEA and DTI on 13th October 2004, John McCallion notified Alex Downie and the DTI members of my intention to resign the post of CEO of the MEA on 15th November 2004. I had made this decision for two main reasons: first, I had achieved what I was appointed for and, without the Government's approval to the MEA's proposals for further infrastructural development across gas and telecoms, there was nothing more for me to do; secondly, I had become increasingly disillusioned about what I considered to be corrupt practices within Government.

For example, I refer to attempts made at a meeting attended by Richard Corkill and Mary Williams to persuade the MEA to buy ManSat, a proposal which the board considered but rejected, as ManSat was worthless! There are other examples of this type of behaviour and, in particular, between Government and Manx Telecom, where it became apparent that conflicts of interest were going to be a barrier to the MEA's previously referred-to vision of infrastructural developments on the Isle of Man.

I realise that, whilst my evidence this morning will be relevant only to the Committee's remit at this stage, I feel

that any investigation into the relationship of the MEA and Treasury during the material time cannot conclude decisively without consideration of those matters.

Mr Chairman, that concludes my opening statement. Thank you for the opportunity.

The Chairman: Thank you very much, Mr Proffitt.

Your statement has been very comprehensive and has covered a number of areas that we intend to put questions to you over, and it may appear that the question invites a repetitive response but, nonetheless, it is important that the record does show that response.

Can we go back, Mr Proffitt, if we may, to the 1999-2000 period when capital procedure notes and the application of financial regulations were coming to the fore. Do you, yourself, agree that financial regulations apply to all Statutory Boards, including the MEA?

Mr Proffitt: Mr Chairman, I do agree that they apply to all Statutory Boards, including the MEA. Further, I agree that their application is conditional upon: (a) them being relative to accounting and economics; and (b) that the direction is given lawfully and correctly. Thank you.

The Chairman: Mr Butt.

Mr Butt: Yes. Can I come in, Mr Proffitt. Your opening statement was numbered by paragraphs, the same as ours, I hope.

Mr Proffitt: Yes.

Mr Butt: Thank you, and thanks for the provision of those.

In relation to the financial regulations provisions in those days, if I refer to paragraph 6, you mention the Manx Cable Company taking out a £35 million loan from HSBC for the cable, and at the bottom of that paragraph you say this was the formula which MCC repeated when the £70 million and £50 million loans were taken out. When you say 'the same formula', it would appear, from John Cashen's evidence and your evidence, that he was aware, as Chief Financial Officer, that that loan had been taken out. Is that right?

Mr Proffitt: I am assuming that John Cashen was aware of it. We never spoke about it. They were in our financial statements.

Mr Butt: When you say 'the same formula', therefore, with the other two loans it is apparent that the Treasury were not informed of the other two loans, so it was not exactly the same formula.

Mr Proffitt: If the Treasury were aware of the £35 million original HSBC loan, it is not – and I repeat, it is not – because we informed them of it; it is because we did it, we included it in our financial statements, and those financial statements were sent to Treasury on an annual basis and they were put to Tynwald and accepted. We, I believe, have the right to take the view that that is how they became aware of it. We never asked for consent, consent was never given, and we never informed them of it, other than by filing our financial statements.

Mr Butt: Thank you.

Can I go on to the phrase 'the same formula'?

Mr Proffitt: Yes.

Mr Butt: With the loans of the £50 million and the £70 million, I understand that you did not use the Government guarantee to get a preferential rate on those loans. Did you do so on the loans for the £35 million?

Mr Proffitt: No, we did not.

Mr Butt: You did not: why not?

Mr Proffitt: Because the loans were taken as short term, to be ultimately long-term financed.

The loans were taken as short term because there were certain risks in the project timetable. If we had got a Government guarantee, it would not have been project financing and the full recourse of that debt would have been the responsibility of the MEA and the Treasury. The reason we take short-term project financing is to avoid recourse to the MEA's balance sheet or to Treasury's balance sheet if, during the course of the project, something goes wrong and the project fails. In the manner that we did it, which I call 'the same formula', we protected the MEA and the Government from the failure of the project.

Mr Butt: But where would the liability lie then? If it did go wrong, who would take the liability for those debts?

Mr Proffitt: In the case of the HSBC loan, HSBC would take the loss of £35 million; the MEA would have taken the loss of the equity that it put into it.

Mr Butt: So on the £50 million and the £70 million you are saying, therefore, Barclays should take the loss on that, by the same argument.

Mr Proffitt: The argument is similar. The recourse on the second loans was to the income of the MCC, which was restricted to the rent that the MEA paid for the use of the cable. Anything over and above that would have been resulting as a loss that the bank would take, and that was deliberately our risk-management philosophy.

Mr Butt: So by going through this process, for the reasons you explain, you took out all three loans at a higher rate than you could have done had you not used the Government guarantee.

Mr Proffitt: That is correct.

Mr Butt: You could have done it cheaper.

Mr Proffitt: Cheaper, but with full liability to all things that could go wrong.

Mr Butt: But there must be liability somewhere, surely?

Mr Proffitt: Project financing puts the debt onto the bank and the equity onto the investor and is not uncommon in projects that have considerable risk. We had never built an interconnector under the water before. In fact, it was the first

that exceeded 45 miles long, and by exceeding that length, the dielectric – that is a very important part of the cable construction – could not be guaranteed to work, so it could have been that the whole £35 million was lost.

Mr Butt: Thank you.

So, on a broader principle, you are saying that the three loans that MCC took out did not require to be notified to the Treasury – the one in the 1990s for £35 million and the next – did not need to be notified to Treasury at all?

Mr Proffitt: That is my position, yes.

Mr Butt: Did the money from MCC, then, go into the MEA?

Mr Proffitt: The money that MCC borrowed went to the project contractors.

Mr Butt: On behalf of the MEA?

Mr Proffitt: No, the MEA was not the contractor; the contractor was PGT.

I have to apologise for this because we get into quite technical structures, but the MCC was a borrower and a subsidiary of the MEA –

Mr Butt: I understand that, yes.

Mr Proffitt: The money that arose via debt was used to pay contractors to the scheme. Those contractors were, at first, Nepco, on behalf of Enron, and subsequently NEL Power, who was contracted by PGT. So no money ever stayed with the MEA, if that is what you are asking.

The Chairman: Mrs Christian.

Mrs Christian: Whilst I do not want to divert too much from the financial regulations issue, who was the contractor, who was the client, though? It was not MCC, was it?

Mr Proffitt: The client was PGT.

If I may, it is pertinent... When we asked for telecoms *vires* and the electricity and gas legislation went through in, I think, around June 2003, we were asked by Tynwald to ensure that the telecoms assets were kept separate from those of the MEA. The intent, and our way of adhering to that request, was that MCC would become not the Manx Cable Company but the Manx Cable and Pipeline Company, and PGT, the contractor or the client, would simply disappear.

Mrs Christian: Chairman, can I come back to the regulations issue?

Mr Proffitt, you have agreed that the financial regulations apply to Statutory Boards, including the MEA.

Mr Proffitt: Yes.

Mrs Christian: With a possibility for variation.

Mr Proffitt: The financial regulations apply, in my view, provided they are directed towards accounting and economics, and further providing that they are issued lawfully and correctly. I do not think there is a variation, as such.

Mrs Christian: Had you argued at any time on this basis with CPU, when they were seeking to work out an agreed way of getting information on a project?

Mr Proffitt: The best way of answering that is at the material time there was no argument. There was a tacit understanding, on both sides, that CPNs could not be applied, therefore we were working very hard to come to a defined number of areas where it recognises they cannot be applied, the suggestion being that, if Treasury were satisfied with that, they would either issue a derogation or they would alter the CPNs so that we were now complying with something that we could comply with. But there was never an argument, so it never got to that level.

Mrs Christian: What did you think the Treasury wanted this information for?

Mr Proffitt: I just thought they wanted the information so that they could understand the entire capital costs of what was going on.

Mrs Christian: Is that reasonable?

Mr Proffitt: Totally reasonable.

Mrs Christian: Right. In the letter of 21st January 2000 from Mr Thompson to yourself, he talks about the agreement that you have come to and he says:

‘We have agreed that you will keep us informed on a fundamental basis...’

– and I think you have referred to that phrase in your evidence –

‘... i.e. key issues of time, cost etc.’

Mr Proffitt: Yes.

Mrs Christian: And yet you had refused to give them management financial information?

Mr Proffitt: With respect, no. My refusal was to give management information. What I did give, with the full agreement of Treasury, was simply the financial information that showed the total costs of each category of the capital spend on... I thought it was a monthly basis, but I understand it was a quarterly basis.

Mrs Christian: And you believe that they got those total costs on a quarterly basis?

Mr Proffitt: With respect, I *know* they got those costs on a quarterly basis.

Mrs Christian: Did the Capital Projects Unit get those costs?

Mr Proffitt: My understanding was that the accounting office sent them to Treasury and addressed them to a Mr Neil somebody.

Mrs Christian: So there was no liaison with the Capital Projects Unit?

Mr Proffitt: Yes, there was. Treasury attended the DTI liaison meetings.

Mrs Christian: Sorry, in terms of getting that information. Was it sent to the Capital Projects Unit?

Mr Proffitt: I do not know where it was sent to, other than a bloke called Mr Neil somebody.

Mrs Christian: Thank you. There was a suggestion that there should be work done, from 2000 onwards, to get a compromise on the financial regulations. Did you have any direct involvement in ensuring that that process was progressed?

Mr Proffitt: Yes.

Mrs Christian: To what extent were you involved? There is a letter to Mr Lewis on 20th July from Mr Thompson, again saying:

‘I think it is some time since we last met. I feel it is time that we re-address and progress the matter of compliance by the Authority with capital procedures.’

Further on, it says:

‘We must deal with this as an item of urgency. It is essential that a monthly report is prepared for the Authority by your consultants and I am sure that you will have such provisions already in place. A copy of these reports would be appreciated.’

And so on. Given that you knew the Treasury wanted *financial* advice, why was it accepted that the PB Power Report, which apparently did not contain financial advice, was deemed to meet the requirement? Do you think Mr Thompson knew that the PB Power Report did not contain financial advice?

Mr Proffitt: I think Mr Thompson knew that he was going to get two reports on a monthly basis. One report would be from our operational side of the business and would be a full narrative of progress, problems, meeting timetables, the use of technology, equipment and manpower. The second report would be from our accounting office, and that would state quite clearly the total of the costs incurred in each category of the project on a monthly basis.

Now I repeat: I *thought* it was going out on a monthly basis. I found out – because it was not coming out from me, it was coming out from the accounting office – it actually came out on a quarterly basis and the PKF Report confirms this.

Mr Butt: Following on from Mrs Christian’s comments, you said certain information was sent to a Mr Neil somebody by your office. I may have missed a lot here, but I struggle to find any meaningful finance information from the MEA to CP or Treasury over this period which would be useful to them, although there is, in our file – and there may be others, but we only have one – an e-mail from Clodagh Maher to Mr Neil Rivers on 7th October 2002, which does show an MEA half-year capital spend at that stage, with some figures for the power station, the pipeline, the network services. As far as I know, this is the only e-mail we have seen or come across. Is it possible it has only been sent once and then it discontinued?

Mr Proffitt: No. We have copies of most of them. I am sure the MEA have copies of all of them. I know that, at the time of the PKF review, PKF obtained all of them and added them up, and the exercise showed, as my opening statement says, that Treasury were informed by February 2004 that the spend at that point had already reached £226 million.

Mr Butt: Thank you. The only one we have on our file is October 2002, and that is the early stage of construction.

Mr Proffitt: Excuse me, sir, I have been told that we were aware that they are not all in your files, but we have obtained them and we are more than willing to supply them to the Committee – that being all the e-mails that you would see the cumulative totals.

Mr Butt: Thank you.

Mrs Christian: Chairman, if I could just –

Mr Proffitt: Sorry, if I may, I would just like to add that the MEA and Treasury will also have all of the e-mails that were sent of the reports.

Sorry, Mrs Christian.

Mrs Christian: Just to follow on, on getting started on this process of getting information, in the letter of 29th August from yourself to Ian Thompson, you set out your understanding of the agreement with Ian Thompson, in that you expected Ashton Lewis to provide a monthly project report which would be based on the EPC contractor’s monthly report.

Mr Proffitt: Yes.

Mrs Christian: Would you accept that there may be some different interpretation or misunderstanding of that, in that Mr Thompson, when we read his evidence, believed he was going to get the EPC contractor’s report, not something based upon it?

Mr Proffitt: I made it very clear at the Treasury meeting on 26th September 2001, and it was agreed at that time by Treasury, that I would not send those documents because those documents contained lots of matters that were irrelevant to the purpose that Treasury were looking to satisfy. They contained commercial confidentialities that we had already signed and they contained negotiation items, and they were strictly for the management of those contracts.

My position all along is that I would always give whatever information I could, providing that it was not management information, because it was the MEA who were managing the project.

Mrs Christian: I think what you have just said is reflected in that letter, where you say:

‘We understand Treasury’s needs and wish to embrace them while running a very tight time programme.’

So there is an acceptance there that you –

Mr Proffitt: I believe we did embrace them.

Mrs Christian: Then you were having a meeting on...

There was a letter on 13th September to you from Mr Thompson. He says:

'I continue to look forward to receiving report number one. We believe that, following our discussion, it was left to yourselves to provide us with your proposals for other projects, that the circumstances of non-compliance surrounding both the interconnector and the processes for the power station are not allowed to recur. In the absence of any proposal, and being mindful that discussions have been going on for almost 12 months, to try and make progress I wrote to the Authority suggesting possible ways forward...'

and so on. His attitude seems to be somewhat indicative that they were not satisfied that you were meeting the needs of the Treasury.

Mr Proffitt: I can only answer that by saying – and as you will see from my opening statement – Ian Thompson is on record at the DTI at the liaison meetings as saying the reports are satisfactory and, in the absence of my knowing otherwise, I could not possibly do anything about that concern.

Mrs Christian: Just a final one, Chairman. He indicates, on 5th November, in an e-mail to Clive McGreal:

'I enclose for your attention a copy of the second monthly report for this scheme...'

– and it is the capital projects for the power station –

'... the contents of which continue to cause me concern. I understand that we were to receive the same report as the Authority board. We did not ask for a Treasury report, a special report.'

Were you made aware of this? He has conveyed this information to Clive McGreal.

Mr Proffitt: The first time I ever saw that letter, Mrs Christian, was in my review of this Committee's records provided to me, and I have to say that, when I saw it, I was surprised that this was an internal letter, being produced now, that seems to fly in the face of contemporaneous minutes of the DTI liaison meetings, where Mr Thompson himself is talking of his satisfaction. I was never aware of that, and certain other memos that I have seen for the first time seem to fly in total contradiction to the way in which Treasury were corresponding directly with me and attending the DTI liaison meetings.

Mrs Christian: The implication in the second part of this letter... He criticises certain steps taken by the MEA, which are not in line with financial regulations. For example, he says:

'The Isle of Man pipeline section causes particular concern in that it tells us several things: tenders have been received for the civil engineering works; no procedures have been followed; there has been no request for statutory payment cheques; there has been no request for a bond. The report advises that orders will be placed by the end of October, and yet there has been no tender report, nor has there been a request for Treasury concurrence.'

And so on. Do you believe that you should have done those things to comply with financial regulations?

Mr Proffitt: I believe we did all of those things.

Mrs Christian: But did not report them to the Treasury.

Mr Proffitt: The Treasury, through their review of our capital procedure notes analysis, knows of the procedures that we undertook.

Mrs Christian: But this was before that analysis had been concluded.

Mr Proffitt: The date, please, Mrs Christian?

Mrs Christian: 5th November 2001.

Mr Proffitt: No, that is not before the work was done. The work was being done jointly by Clive McGreal and –

Mrs Christian: Starting around about that time?

Mr Proffitt: Starting around about that time – but beforehand, in open conversation, we had always explained. So what happened in the 26th September 2001 Treasury meeting was that, rather than accept our explanations – which hitherto, in open letter, Mr Thompson was accepting – the Treasury asked for a full written, produced document. I undertook to have it done and Clive McGreal and Paul Dewar were exercised to do it.

If I may revert to your last question, just briefly, I have to contradict that internal letter, in the sense that the report Ian Thompson received from Ashton Lewis monthly was exactly the written report that I put in the board pack. So he may have thought he was not getting the same thing, but in point of actual fact he was getting the same thing, and he never challenged me on it. For some reason he is challenging Clive McGreal on it. I cannot help you with that.

Mrs Christian: Thank you, but this was not a financial report.

Mr Proffitt: The financial reports were coming from our financial managers and they were coming on a quarterly basis, I understand, although I thought they were going on a monthly basis.

The Chairman: Sticking with the provision of financial information as an issue, Mr Callister.

Mr Callister: The capital projects matter?

The Chairman: Yes, the submission of the financial information.

Mr Callister: To what extent were your views on capital project notes and Treasury requirements coloured by, or in fact influenced by, the practices of the MEA before your arrival? You said Peel Power Station never had any of this, which is not relevant to this inquiry, but to what extent was it based on historical methods?

Mr Proffitt: My attitude was not coloured by the past. I very quickly determined, from January 2000 onward, that the capital procedure notes could not be adhered to by the MEA. You would be trying to impose the impossible because of our contract-management type.

With respect, the capital procedure notes do not envisage the building of a power station and the connection of highly-technical equipment and networks. They more suit, if I

may suggest, the design-and-build style contract of public housing, or things of that nature.

Mr Callister: To some extent, then, the fact that the MEA is regarded as a commercial entity, would that be another reason why it would not be appropriate to accept Treasury CPNs?

Mr Proffitt: I think, Mr Callister, in my opening statement I do mention a letter from Mr Ian Thompson stating that, because of our commercial activities, he understands why we cannot comply with CPN.

Mr Callister: The commercial activities, though, would perhaps disappear when the whole matter here is £185 million that is being supported by the taxpayer initially and ongoing. So the commercial element –

Mr Proffitt: I am not sure I see the connection. I am sorry.

Mr Callister: Well, the information that would be required by Treasury, in turn, is information that the taxpayer would want Treasury to have, as providing the finance to do the scheme.

Mr Proffitt: My position is that the bond was paid for by the MEA and, therefore, the electricity consumers, as distinct from the taxpayers – it is not an aggressive distinction, I do not mean to make it in an aggressive way, but I think it is worth making – and the repayment of the bond was always set to be the responsibility of the MEA.

Having said that, I believe that Treasury got, in a timely basis, everything that they asked for, and I believe that the PKF Report, which is independent, supports that position.

Mr Callister: As we know, the Treasury is disputing that and that is what it is all about.

But as far as the outcome is concerned, you refer to this as the largest civil engineering contract the Island has ever seen, and possibly that is true. If you were starting again, would you take the same attitude, in view of the fact that your successor has now agreed that they *should* comply with Treasury capital requirements and so on, and is doing so in capital schemes? In view of the change that has happened in the board since you departed, would that change your view of this?

Mr Proffitt: My view is totally unchanged by that. I would do exactly the same thing.

I would add that, if they have not altered the CPNs since I saw them last – and I believe they have in order that my successor can comply – but if they have not and if my successor ever builds a power station again and complies with the CPNs, as they were written in my time, then he will fail, the power station will not be completed and there will be a number of lawsuits.

Mr Callister: This was, I presume, a huge contract in relation to your past experiences, but would you have had any past experiences with power generation?

Mr Proffitt: I have built about 15 power stations throughout the Caribbean.

Mr Callister: Fifteen power stations?

Mr Proffitt: Yes, all in support of very large hotels. I have probably contracted well over £1½ billion in real estate contracting.

Mr Callister: In relation to the size of our power station, what would they be, then?

Mr Proffitt: All 15 would exceed the Isle of Man power station in megawatt size, probably in value. Taken individually, they would be investments of about £30 million to £40 million at a time.

Mr Callister: So coming into this contract, then, you would feel fully confident that you could handle it in a most satisfactory way, even though, in fact, you were not dealing with hotels but dealing with a Government and its perhaps peculiar rules?

Mr Proffitt: With respect, Mr Callister, I was not dealing with the Government. I was working for a board and my responsibility was to manage the contracting across all of these schemes, which included Bord Gáis Éireann; National Grid Group; Enron, later NEL Power; and local contractors. Contracting has been something that I have had many years of experience of.

Mr Callister: But you would be answerable to the Government, to Tynwald, to the people as well, so –

Mr Proffitt: I believe, Mr Callister, on that matter I am fully aware of the provisions of the Electricity Act and I think also was my board.

Mr Quirk: Mr Proffitt, just one question from me on your opening statement.

I just wonder how that reflects your relationship between the MEA and Treasury, where you indicate that you were employed by the former DTI Minister, Mr North, and you were brought on board because the operation of a commercial... independent from day to day and Government procedures. I just wonder what expertise you thought you were going to bring in that you had to avoid Government procedures?

Mr Proffitt: I do not think there was ever a request to *avoid* anything, and just for the record and for the *Hansard*, I was not employed by Minister North.

Mr Quirk: Or recommended.

Mr Proffitt: Yes. But my reference to Minister North at the time was that in the first board meeting in 1997, the Chairman, John McCallion, explained to us, from his conversations with Minister North, our remit and what was expected of us. From that, we took it that the view of the DTI was that the previous board was not commercial enough to oversee what was sure to be a very large and complicated capital project, and for that reason, and maybe others unknown to me, there was an almost complete change of that board.

What is noticeable, I think, is that the definition of the new board, when you look at the skills of each individual, is very clearly commercial. It was not I who set those standards, and it was not I who determined there would be no political

Member on the board. I was glad to serve on the board; I was happy to do so.

The Chairman: Thank you.
Mr Butt.

Mr Butt: Can I follow up, Mr Proffitt, on something Mrs Christian raised. She read out some extracts from letters where there are obviously problems from Mr Thompson and other people about not receiving what they want, and you state, and you seem to rely on, a DTI liaison meeting where there is a minute which says Mr Thompson was satisfied with the procedures in 2001. Now you have seen other correspondence in our files, your files, which show that, in 2002, they were not happy. The directive was issued eventually, and even beyond the directive there is plenty of evidence in the files that they still were not happy. You are relying on one minute in one meeting where he said he was happy, was satisfied.

Mr Proffitt: No, sir, I am not.

Mr Butt: So why do you think Mr Thompson and his colleagues carried on saying they were not getting the information they needed?

Mr Proffitt: I cannot answer why Mr Thompson would characterise a matter in an internal e-mail to one of his colleagues differently to the external letters that he has written to me or to Ashton Lewis, and differently to the way he conducted himself at the quarterly DTI liaison meetings, but I am only relying on what I had at the material time, which was correspondence from him, evidencing his satisfaction and his willingness to go the route I was wanting, which evidenced our inability to conform, through that matrix, and to go for derogations and/or change the CPNs.

I cannot be responsible for internal memos or to answer why he characterises his feelings on the subject differently. I have to rely on the fact that he behaved truthfully in the DTI liaison meetings and that those meetings were minuted properly.

Mr Butt: But there were letters to you which did ask for more information, which is what Mrs Christian said –

Mr Proffitt: Those letters were all... Whatever information Mr Thompson was getting would, from time to time, be criticised but you will notice that his criticisms are only really around one thing and that is, 'We're getting the information, but we would like more.' Whenever you drill down on this, you find that the 'more' was that they wanted in on the management of the projects, and I would not allow that.

Mr Butt: I think the 'more' from the files is they wanted more financial information because they had the PB report which did not give any financial details.

Mr Proffitt: It would appear – although they never said it to me – that whilst one part of Treasury had all the financial information they were looking for, the other part of Treasury complained they did not have the information. I cannot be responsible for that.

The Chairman: Would it, therefore, be your view

that, contrary to the written and the oral evidence that the information was not forthcoming from the MEA, you were providing, on a monthly and a quarterly basis, all the information you believed was required and it was not being passed up the line, as it were, within Treasury?

Mr Proffitt: Well, at the material time, I would not have had a belief that it was not being passed up. I just had a knowledge that it was being given and my opening statement indicates the various agreements that we reached, the various processes we put in place, the various efforts we went to, all leading up, as you say, to a direction letter which is completely outwith all the letters and efforts that had gone before.

The Chairman: And similarly, Mr Thompson, as we discussed a few minutes ago, indicated that he agreed that the nature of the organisation was not conducive to the full application of the CPNs, but he was most pleased to offer any assistance to find a compromise.

Now he believes, and Treasury officers and the Chief Financial Officer all believed that, in fact, compromise was never reached; but from the evidence you have given, you believe – your understanding was – that that compromise – provision of the matrix and so on – had been reached. Would that be correct?

Mr Proffitt: Mr Chairman, that is correct, and I would like to draw, again, your attention to my opening statement, wherein I spotted, in my research of your records, kindly provided to me, an internal memo from Clive McGreal to somebody else, saying, 'It's okay, we've reached agreement and the agreement is in the hands of Mark Shimmin.' I had no knowledge of that e-mail until recently.

But we did our part. We did everything we could to produce an accurate matrix of CPN rules, as they apply to the MEA, and whether we did or did not comply, and in areas where we did not comply, we showed why we did not comply and what we did as an alternative. In the initial reviews, with Clive McGreal and Paul Dewar, as reported to me in a letter from Paul Dewar, there was concurrence on all of these non-comply issues and there was an intent to either write a derogation or alter the CPNs. That is a series of events starting in January 2000 and leading up to Paul Dewar putting this voluminous document into the hands of Clive McGreal, the record will show, on or around April or May of 2002. For some reason, the situation changed overnight and they stopped doing their part of it, which was to review it and amend the CPNs. Instead, there was a financial directive issued.

The Chairman: The provision of the financial information on a monthly basis: you have told us that you did not believe that was appropriate because it was management information. What would be the objection to providing such information? The Treasury were not going to get involved in the day-to-day management of the project; what would be the objection, if asked, simply for them to have that monthly financial information?

Mr Proffitt: The objection would be based around confidentiality. It would be based around our ability to negotiate and, in my view, would have been wrong to send a document which is entered into by one party to another,

that has confidential stuff in it, that is only for management briefing, to a third party. What I did, given that the third party was the Government of the Isle of Man, I sent them everything but on a totals basis. If something was recorded as being £25 million, within the detail of that it may have been that it was actually an error of £1½ million and we found it and we went back and we negotiated it.

So the Treasury got all the fundamental information that they required, and that was a tacit agreement when I walked away from the 26th September 2001 Treasury meeting. That was a meeting which was not just the internal auditors. I would draw your attention to the fact that the minutes will show that that was a meeting that had Richard Corkill as the Minister, Sir Miles Walker in attendance, Mr Radcliffe in attendance and Mr Braidwood in attendance, with Mr Thompson in attendance, Mary Williams in attendance. We reached an agreement and Treasury, in brief, reneged on that agreement!

Mrs Christian: Mr Chairman, may I just pursue this question of fundamental information which the Treasury required.

Did you discuss with Treasury what it was, (**Mr Proffitt:** Yes.) in detail, that they wanted? Did you come to an agreement about what was 'fundamental' in their terms? (**Mr Proffitt:** Yes.) And they accepted a totals basis as a reasonable basis (**Mr Proffitt:** Yes.) on the financial information?

Mr Proffitt: That was the agreement that I came away from the Treasury meeting on 26th September 2001 with.

Mrs Christian: Is that recorded?

Mr Proffitt: Yes.

Mrs Christian: What they meant by 'fundamental information'?

Mr Proffitt: Oh, sorry, no. 'Fundamental' was not a defined word in the minutes.

Mrs Christian: It was not a defined word?

Mr Proffitt: No, it was not.

Mrs Christian: No.

The Chairman: Just moving on to the tendering procedure, you told us in your evidence that the opening of tenders took place in May 2001. Treasury was invited to attend, but nobody did.

Ian Thompson, in a letter to Ashton Lewis of 1st June 2001, confirms what you said, that:

'Turning to the tenders, Mike invited us to attend the tender opening, which is normal, but we were unable because of incinerator commitments on the same day.'

But he goes on to say that it was agreed that 'we' – the CPU, Treasury –

'would be part of the tender review and appraisal process.'

So my question is, why was Treasury not invited to take place subsequently in that?

Mr Proffitt: I am happy to explain this, Chairman.

There is a fundamental difference in the tendering *process* review and the *tender* review and appraisal. It was always the intention to invite Treasury to the tendering process review and Ian Thompson and Clive McGreal attended. That, I believe, was on 8th April 2001 and that process was, basically, a presentation by PB Power of how the tenders would be built, the process of how they would be sent out and the protocol for them sending in their tenders, how the tenders would then be opened and recorded, and then how the tenders themselves would be sent to Parsons Brinckerhoff to fulfil their appraisal.

Treasury came to the process review, because I thought it was right and proper to show them how we were doing this, and they went away in full satisfaction and came back with no criticisms and no input. The next is the actual opening conducted by Terry Mackay, our Chairman of the Audit Committee. The bids were read out and recorded independently, locked away in the safe, and then the tender appraisal process was given to PB Power under the terms of a separate contract.

Nobody could have interfered with that contract; it would have been improper. However, on a practical side, it would be very naive for anybody at the MEA or in Government to think that they could appraise the difference in the tenders. It is a complicated issue of turbine performance against cost, against marginal cost, against fuel cost, taking out the life of the individual machine at net present value back to a value. So the most expensive bid could have been the most economical and the one that would achieve a life term of cheaper electricity. It is a very complicated activity and it was a contracted obligation of PB Power.

The Chairman: Why, then, would Ian Thompson believe that it had been agreed that he would be – after the opening of the tenders – part of the appraisal process that you have just referred to?

Mr Proffitt: It could not have ever possibly been clear that he would be part of a tender process of a tender with such complexity as a combined cycle gas turbine power station. I doubt that he was ever seriously of the view that he could take part in that, and I think possibly the letter is just badly written.

The Chairman: So he was under a misapprehension that there had been an agreement that he was going to be invited to the appraisal, post-tender opening?

Mr Proffitt: Absolutely.

The Chairman: Okay, moving on to the run up to the bond and the July 2001 Tynwald approval which was given for the bond.

In the meeting of 18th June 2001, as you referred to in your opening statement, you advised that Deloitte and Touche had not been appointed to independently verify the figures; that was a different process. It was verifying in respect of the financial aspects of the bond, that was the purpose of that particular report. If they were not expected to have independently verified the figures – and you have told us that nobody suggested that the figures should be audited by Treasury – how were those figures prepared and verified – the £185 million total?

Mr Proffitt: Originally, they would have been from the internal expertise of senior management at the MEA, taking into account commercial information available, market prices, etc, and taking into account the technology that we, at that time, thought we were going to deploy. That is a pertinent point because, at one stage, we were going to have a closed cycle, or what is called an open cycle gas turbine. That changed to being a closed cycle, which now involves much different technology and a steam boiler, and the original estimates, you will remember, were £100 million. The reason they jumped quickly to £176 million is because there was a change of concept in our approach to technology. In the event, there was no better way of doing it, I think, other than best estimates and indicative pricing at the time.

The Chairman: And the £185 million included, as you indicated, £10 million for wind farms. What happened to that £10 million and by what authority was it spent on something else other than wind farms?

Mr Proffitt: We spent it on the project, the gas pipeline, the power station... it is all part of the same spend. When the £185 million was given to us by Treasury under the terms of a promissory note, the promissory note was never conditional on how we spent it. We had a project to develop and that is exactly what we did. I did not believe that £10 million was to be escrowed and if we never had a wind farm, give it back. That was not my understanding at the time.

The Chairman: I believe Tynwald was told that £10 million would be earmarked for wind farm development. Were they mistaken – Tynwald – in believing that?

Mr Proffitt: No, I do not think they were mistaken at all. I think, if I am right, you are referring to Richard Corkill's presentation, at the time when he was Minister of Finance, and in the *Hansard* he is recorded as saying all these are indicative.

Now, the fact is we never built a wind farm because we never could build a wind farm, because the primary legislation in the Wildlife Act makes it a criminal act for anyone to disturb the breeding ground of certain birds. We enquired whether primary legislation could be changed for us and the answer was, 'Not a chance'. So we knew, at a very early stage, that wind farms were out for us.

The Chairman: So the whole business about a wind farm, was that a red herring from the outset?

Mr Proffitt: From the outset, it was our intention to build a 10 megawatt wind farm and I greatly regret that we did not; but it was a matter of primary legislation, not our intent.

The Chairman: Thank you.
Mr Butt, you wanted to come in?

Mr Butt: Yes, please.

The meeting of 18th June 2001 between you and the Treasury was the final meeting before the approval by Treasury for the bond and then, following from that, was the July Tynwald motion to provide the money for the bond, so that meeting was a very important meeting; it was just before the approval was given. In your evidence today, paragraph 15, if I can go through a couple of points, you say:

'I now turn to the so-called budget figure of £185 million.'

And you say this was never a budget, merely an indicative cost for the elements of the project.

Mr Proffitt: Yes, I think the record supports that position.

Mr Butt: But in the notes of that meeting of 18th June, you do go on to say:

'However, the capital requirement' –

this is to Mr Mark Shimmin, one of the Treasury people –

'would be in the range of £170 million to £185 million'.

You then go on, at the end of the same report, to say you were:

'confident that the MEA would be able to meet the figures in the projections and the MEA would operate within the proposed bond issue as long-term finance without recourse to further borrowing.'

On the basis of your comments there, they approved the loan and then took it to Tynwald. In your paragraph 15, you seem to indicate this was not so. You even mention, in the minutes of that meeting, that you said these were indicative costs, but you do go on to say, 'No, this will operate to this figure, we will not borrow any more.'

Mr Proffitt: Clearly, my intent there was to operate at best practice within the parameters that we thought were right. It did not happen. It cost more and we dealt with it.

Mr Butt: Would you accept the Treasury at the time believed it was £185 million and the *Hansard* of the Minister's speech does confirm that there would be no further moneys required?

Mr Proffitt: And I, on an indicative basis, also joined with the Minister in believing that, at that time. I think we all believed that, at that time.

Mr Butt: In your paragraph 15, you make a few statements. You say that the cost of the CCGT power station was based upon a £79.9 million EPC contract price and did not include the cost of demolition. Now, I am an amateur at this: why, when you build something new, would you not include the demolition of the thing beforehand?

Mr Proffitt: Because they are two different things. Nobody who builds power stations demolishes power stations. It is a different business.

Mr Butt: But when you go to Tynwald or Treasury with the proposal of what it will cost, surely that must be a part of your argument?

Mr Proffitt: It was. In the £185 million, there was a line for 'enabling works' –

Mr Butt: Contingencies?

Mr Proffitt: No, no, sir, I think we called it 'enabling works'. Contingencies would be for unknown contingencies

at the time and, at the time, we did recognise there were costs outside the CCGT power station contract and those costs would include the demolition.

Now, it is an interesting point because, when we came to demolish the old power station, the 'D' station as it was referred to, the contractor got it wrong and the crane to do the job had to be sent back and it cost more, primarily because nobody's analysis of the concrete and the steel that they used in those days was accurate.

At the same time, we found, when we removed the earth, that there had been an enormous escape of oil during the 1960s and that the ground was terribly contaminated. We had to deal with that within the new 1999-2001 environmental standards and it cost us a tremendous amount of money, in the end, to ship all that properly bagged and handled contaminate to Amsterdam, to have it incinerated. These costs were never in the original enabling costs estimate – nor was moving the tank farm fuel supply pipes, because we changed from being a single fuel to double fuel. These are just examples of how things changed but, at the time, the indication was we could do it all for £185 million.

Mr Butt: Right.

You also say in the same paragraph, in effect, that it did not include the cost of building a pressure reduction system for the pipeline. Surely, you must have researched what would be needed and it must have been part of your project for the pipeline... Everybody, I presume, would know you would need a pressure reduction system, so why are you saying that is an extra now?

Mr Proffitt: Because it was considered by the consultants and it is practice that the wholesaler of the gas operates the pressure reduction system.

Now, in the UK that would be called Transco, and in Ireland it is Bord Gáis Éireann, but when it came to the Isle of Man, neither of them would take responsibility because they had no licence to operate in the Manx jurisdiction. We did not have a gas regulator, so we ended up, in the event, having to build the pressure reduction station – I believe you are referring to the one at Glen Moorar – because we had to take the gas from a metre upstream of that pipe, off that PRS, as opposed to the original thinking, when we would take it from a metre downstream of the pressure reduction station. That is a £30 million job and it is a big difference.

Mr Butt: So are you saying, apart from that, in effect, glitch, that you did not put in the original £185 million the cost of building a pressure reduction station?

Mr Proffitt: That is correct.

Mrs Christian: Mr Chairman, can I just... Do you consider that a failure of your consultants to recognise that that cost was going to fall –

Mr Proffitt: No, I do not at all. It was a failure of the regulators to agree whose responsibility it should be – we were dealing with the regulator at Moffat for the UK and the regulator at Dublin – for the Island. This was actually quite a complicated discussion wherein we even invoked the UK to act on our part in the treaty that had to be signed, because we are not a sovereign nation. We had to ask the UK to intervene and it was complicated.

Even the Attorney General was involved at the time and it was a very complicated issue, but it involved us building and paying for the pressure reduction station, rather than either Transco or Bord Gáis Éireann.

Mrs Christian: Mr Proffitt, you have been involved in building a number of power stations, you have indicated to us this morning. Have any of them gone over by this sort of amount, in terms of their estimated costs at the beginning?

Mr Proffitt: Well, they all did, if you add them up accumulatively.

Mrs Christian: To a similar sort of extent?

Mr Proffitt: In aggregate, yes, probably.

Mrs Christian: Do you think there might have been more concession made or more allowance made, then, for contingency?

Mr Proffitt: Well, I can assure you, getting easements and building systems of this type in Jamaica is a little bit different from doing it in the Isle of Man. The major difference is where we had overruns, they were not a lack of estimated costs; they were additional costs imposed at the time. They were genuine *force majeure* when you go back to June 2001. We did not know about the pressure reduction station. We did not know about the provision of low pressure gas to Manx Gas at our cost. We did not know about various issues that we would come across, such as the wetlands when we came down the hill and had to go underneath and do directional drilling, which is six to seven times more than trenching. We did not know about the contaminated land. We did not know about lots of these issues and we changed our mind on some things, because we are an Island and we wanted dual fuel turbines, not single fuel and that created additional works.

Mrs Christian: But given that this figure was debated in Tynwald on the principle of certain amounts of money being allocated to certain projects, did you not think it appropriate to let Tynwald know that these things were changing?

Mr Proffitt: Well, I had no access to Tynwald, with respect –

Mrs Christian: Well, your board, then.

Mr Proffitt: – and what we did, the MEA, is we gave Treasury all the information required to determine how much we were spending and whether they knew or not, whether they added these forms up or not, the responsibility to Tynwald, I believe, is theirs, not the MEA's.

The Chairman: When you said, at this June 2001 meeting with Treasury, nobody suggested that the figures should be audited, why do you think nobody in Treasury would make such a request?

Mr Proffitt: I think, to be honest, that, given the nature of the work, there was nothing to audit it against. Building a CCGT power station in the Isle of Man or taking a pipe across the mountains in the Isle of Man is not necessarily going to be the same costs as across Yorkshire. There were no comparables.

The Chairman: So in concurring that £185 million was just broadly indicative, would Treasury's ease about that situation, and not wanting the figures verified, not stem from the fact that they expected that, if there was an overrun, as might easily be expected and which, as you have just said, is fairly normal for such projects, they would be fairly easy with that, because they would expect to be told about any additional borrowing requirements and no doubt would be, as we have heard from Treasury, perfectly happy to concur with such borrowing, if they were told about it?

Mr Proffitt: The question, Chairman, is?

The Chairman: Well, the question is, whereas it might seem surprising that nobody in Treasury said, 'Well, how do we audit and verify these figures?', could it be because they expected an overrun and, if there was an overrun, they would expect to know the size of the overrun and be asked to concur with additional borrowings?

Mr Proffitt: Chairman, I do not feel as though I have the capacity to answer that. I think the question is better directed to Treasury.

The Chairman: Okay, thank you.
Mr Butt.

Mr Butt: Thank you.

You said a while ago that you could not expect the contaminated soil, you could not expect various things and you said you did not expect to have to do the pressure reduction station. Yet in the minutes of the meeting of 18th June, which was the bid to Treasury for this, you do mention the pressure reduction station. So it was part of your thinking that there would be a pressure reduction station.

Mr Proffitt: Oh, Mr Butt, I apologise if I have given you the wrong impression. We always knew there would be a pressure reduction station, because we knew the gas is transported in the marine environment at 150 bar and you cannot transport it on land greater than 70 bar, so we knew it was always going to be there. The issue was who was going to pay for it and, at that time, we thought it was the main contractor, BGE, and they were unable to come to agreement on that.

The Chairman: Mr Quirk.

Mr Quirk: Can I just ask Mr Proffitt, at that particular time, was there big political wills to push you even further to deliver extra things, like get gas round the Island? What was the feeling at the time, that the politicians were putting on you at a senior level? Can you give us a flavour of that?

Mr Proffitt: I do not think we were being pushed, Mr Quirk. I think it is a matter of record that we were asked to relieve the DTI from the burden of commercialising the fibre optic cable and, in doing so, relieve them from the burden of the almost £400,000 they had had to pay to the Manx Cable Company to take that cable. So we took on that extra work and we developed a commercial business plan.

It is a fact that we were asked to make a provision for a supply of gas to Manx Gas, but I do not think there was ever any push back. I think we acknowledged that these were good ideas and we just got stuck into doing it.

Mr Quirk: So the picture was changing all the time, so therefore inevitably the costs would grow, as it went to a different direction.

Mr Proffitt: Well, I have to say yes. Costs are always relative to the intention at the time, and there was an additional cost to bring a domestic supply. That cost was not inconsequential, to take the gas from our... We have to introduce the gas to our turbine at 40 bar, otherwise the turbines will not run – 35 to 40 bar. But Manx Gas cannot take the gas into their system at anything higher than about 2½ to 3 bar, so we have to reduce it, and that is not without cost. It was about £15 million.

The Chairman: I would just like, Mr Callister, sticking with this...

Mr Callister: Yes, Mr Proffitt, this £185 million at the outset, that is presumably the budget for the contract. Is it not a budget for the contract and all the various aspects of their outline?

Mr Proffitt: I do not want to appear difficult, Mr Callister, but in my opening statement I made it very clear that we were not able to create a budget because we did not have the knowledge, so we listed what we thought were the indicative total costs. The only thing that could have been budgeted to a degree of accuracy would be the contract for the CCGT power station, but none of the enabling works or the works that the MEA undertook, like the piping, could be budgeted; they could only be estimated.

Mr Callister: So, does that mean that you would not be aware, as the contract went through, of what the increased costs were on this indicative figure? Was there a record of increased costs being kept?

Mr Proffitt: Yes, absolutely.

Mr Callister: Was that being passed to the Treasury?

Mr Proffitt: Absolutely yes, sir, it was.

Mr Callister: But there were increased costs against an unknown budget.

Mr Proffitt: The Treasury and the DTI liaison, in one of my opening statement paragraphs, were told, by way of example of this, that the pipeline was not going to be £20 million; it was going to be £34.1 million. I probably was asked, 'Are there any other areas?', and I would have said yes. And the Treasury and the DTI were told of the contaminated land. They were told the costs of the extra provision of pressure reduction for Manx Gas.

Mr Callister: So, Treasury, then, would have been clearly aware that there were large elements of increased costs here that were going to happen during the course of this whole project?

Mr Proffitt: Mr Callister, I think the answer to that question is yes, but I would ask you not to rely alone on my testimony, but to review the independent report of PKF, who share my position, in the paragraphs that I have quoted.

The Chairman: I want, in the final part of this session,

just to move on to the question of the direction that Treasury issued in July 2002.

Now, you attended a meeting with the Attorney General on 31st July 2002, following which the legal advice that was given by the Attorney General to the Treasury was changed. Mr Bell, in his evidence, said:

‘... clearly there was either pressure or extra information given to the Attorney General at the time which made him change his mind.’

At the meeting that you had, or otherwise, did you provide more information to the Attorney or in any way pressure him to change his mind about sanctioning the direction?

Mr Proffitt: Mr Chairman, first of all, I had no knowledge of the Attorney General’s state of mind as to what position he had taken. I had not even any knowledge whether he knew of the direction, so when I approached the Attorney General in that meeting, I went to him with the full support of the board to advise that there was a serious issue between the Treasury and the Statutory Board, being the MEA, and that we felt we needed to take legal advice and that we had taken legal advice.

That legal advice was that the directive was outwith administrative law, meaning they had not taken into account information that we had given to them – and that, later on, Mrs Williams acknowledges, in her internal letter, regarding the matrix – so, out of administrative law, *ultra vires*, because it was technically flawed, quoting the wrong provision of the Treasury Act, and we felt, and we shared with the Attorney General, that it would place the MEA in an impossible position to complete the project. So, something had to be done.

My mission was to describe to the Attorney General not only the view of the board, but the legal advice we had taken. I said, ‘This is no way forward. We should not be fighting with a Department of Government.’ I explained to him that we had gone to a lot of work to produce what seemed to be the fundamental issue, and that is compliance with Financial Regulations. We had gone to a lot of work to prove that compliance in that total regard was impossible. That fact had been agreed, lots of times, by Ian Thompson in writing, by the Treasury themselves, and all of the committee members on 26th September 2001. The work had been done with the internal auditors and it had come to an abrupt end, resulting in this document.

I said, ‘We would just ask that you consider where we are coming from and help with finding a way forward.’

The Chairman: But in identifying a way forward, in fact, it was the Attorney General, the senior law officer, you consulted about this. Presumably, that meeting was primarily to offer the legal advice you had received, independently, that the basis of the direction was legally flawed. You would not be seeking political advice or general advice from the Attorney General about how matters should go forward. Presumably, it was the legal aspects that you wanted to get over to him; that the original direction, as you indicated, was technically flawed and therefore did not carry any weight.

Mr Proffitt: The reason that I went to the Attorney General is because... and I alluded in my opening remarks earlier that the Chairman had been told by the Minister of the DTI that the Statutory Boards can avail themselves of the assistance of the Attorney General.

Now, when it comes to technical advice on the letter, we

took that from our solicitors. I did not show our solicitors’ report to the Attorney General. I simply advised him that we had had advice that the letter was out of administrative law, was *ultra vires*, and created an impossibility for the MEA to perform. I did not ask him to advise whether our advice was correct or not, or whether he would challenge it. I simply moved to the position that we wanted to take, which was resume the discussion over the matrix of CPN compliance. He suggested that that might be a good way forward and simply said, ‘Thanks for the advice and I will see if I can help.’ It was a short meeting.

The Chairman: And then, quite expediently, the original legal advice was reversed to permit the direction to be withdrawn.

Mr Proffitt: I have no knowledge of the original advice or the second advice, other than from the Committee’s records, which I have read and all that I have read is that the Attorney General does not actually confirm what you have just said. Perhaps I read it wrong.

The Chairman: Mr Callister.

Mr Callister: Yes.

With regard to the direction, presumably, the legal advice was based on the fact that it was down to section 3(1)(f) as being faulty, but if this direction had been given under section 8, do you think you would have had to comply?

Mr Proffitt: I think, probably, you are right in that one regard.

The other challenge was that it was out of administrative law, which was a new subject to me, because it governs how governments and municipalities must act. So, I had to do a bit of research to understand what that meant. Once I understood what it meant, I understood why the letter was outwith that law, because the information that we had provided criticised the position that they took in the letter.

Mr Callister: There was a technicality.

Mr Proffitt: Not that... I think the technicality was the point you raised, Mr Callister: if they had said 3(1)(c) instead of 3(1)(f), then I would not have raised the fact that it was *ultra vires*. I would have only raised that it was outwith administrative law and was imposing an act of impossibility on us.

The Chairman: Thank you.

Now, moving on, finally, beyond the question of the direction, Mr Butt, I would like you to... you have a number of questions which have arisen out of the statement.

Mr Butt: Yes, we mentioned the power station and the pressure reduction station, etc. You have said there was a definitive cost for the power station, because there was a contract initially.

Mr Proffitt: There was a definitive cost until Enron went broke. That ended that definition.

Mr Butt: In September 2003, Mr Chris Corlett from DTI met with you and you told him the power station would come in at the cost of £90.4 million: a very precise figure. I believe

some time round the same area, you told the politicians that it was completed on time and within budget. Is that correct?

Mr Proffitt: Yes.

Mr Butt: In the event, we know it actually cost £124 million or £126 million.

Mr Proffitt: No, sir.

Mr Butt: Well, that is what PKF say.

Mr Proffitt: Well, PKF confirmed that the power station contract came in at, as you say, £90 million. What I was confirming to the politicians was their specific interest at that time to the replacement of Enron. Now, this specific interest was raised, anecdotally, by my suggesting in the press that we would not allow, or we would not see, subcontractors losing money. This was of enormous interest politically at the time, because of the EPH Crowe losses incurred by Manx contractors. The style of contracting that Treasury used at the time of that EP Crowe loss was a different style of contracting than we use. We use what is called an EPC contract – which means engineering procurement and construction – and it is some significant steps ahead of a turnkey contract.

Now, specifically, one of the differences is that it allows for novation of some contracts, whereas the type of contract Treasury was using with the EP Crowe situation, to attempt to novate a contract of a company that is in administration would be tortuous interference. Now, we were able, because of the contracting that we do, to novate the contracts and take over from the position Enron left, and because we had a performance bond in place, and because we were taking over from Enron ourselves, in the name of PGT – Mrs Christian brought that company name up earlier – we were not going to profit from the contract. So, we were able to replace our cost overruns – which were obvious when you have a disaster like that – with (1) the proceeds of the performance bond and (2) our intention, obviously, not to take an internal profit on the contract.

Mr Butt: So you are saying it did not cost £126 million; it cost £89 million.

Mr Proffitt: I am saying that the CCGT power station contract cost around £90 million.

Now, when you add in other enabling works, it depends where you take it from the financial statement. The figure I gave to Chris Corlett was correct and the same figures were given to the board, as the board pack shows, on that date, if you look at the analysis of the costs. If you look at a footnote in those board meetings that were provided, in those minutes, there is a footnote that says we have got total costs of £127 million. Now those total costs would be the power station at £90 million and other costs not related to the power station – or related, in whatever manner you want to classify them.

Mr Butt: PKF do relate those costs to the power station, don't they?

Mr Proffitt: In their classification, they say 'power station'; but I do not regard moving the tank farm as being 'power station'. They did. I think they were wrong; that is fine.

Mr Butt: Moving on to Chris Corlett again, on 18th March 2004, you had another meeting with him, when you told him that –

Mr Proffitt: Sorry, Mr Butt, what was that date?

Mr Butt: On 18th March 2004 you had another meeting with him. You advised him that £80 million had been spent, with costs of £11 million and the total costs were now £91 million, which was very close to the previous one. You go on to say, on paragraph 43:

'The figures that I gave him then, and which I had earlier given to both the DTI and the Treasury, were the same figures that I was being given by the corporate services division of the MEA and the same figures which were given to the board. I had no other source of figures.'

Now, that is a statement that the power station has cost that amount of money, which explains a little now why it may be different. But that implies that... were the figures hidden from you; were there some other figures that you were not party to? Where there some figures which would account for the other £33 million or £36 million? You seem to be saying, 'I gave information on figures I was given. I had no other source of figures.' We now find, of course, it cost £36 million extra. Are you trying to say that, in effect, 'there are some hidden figures I did not know about'?

Mr Proffitt: Absolutely not! What I am saying is these were close to the final accounting, when you get to March 2004, and we were able to say, 'These are all our costs.' And the record shows that the information I gave, relative to that meeting, was 70 lines. If you review those 70 lines, you will find the CCGT power station costs as being the £90 million. If you look at the others, you will see other costs, like Manx Gas pressure reduction, Glen Moobar pressure reduction, contaminated land.

Mr Butt: Those are in the PKF Report as well. The PKF Report says £126 million for power station.

Mr Proffitt: Yes, but the PKF Report I do not believe handles the receipts of the performance bond, and I believe they improperly do some classification. If you look at the totals, all the numbers were given to everybody. Nobody had a different set of numbers.

Mr Butt: Just going on to the PKF Report, then. You said, in paragraph 27 of your submission... I just wonder, where does it say in the report...? Help us if you can: you said today that the Treasury had information in February 2004 that £226.4 million had been spent on the project. So, where does it say that in the PKF Report? If you could help us with that, I would be grateful.

Mr Proffitt: I am afraid this will take a few minutes to...

Mr Butt: It does not actually... It is 2.22, is it?

Mr Proffitt: In 2.2, quoting directly from the PKF Report, the 2002 annual report discloses capital expenditure in that year of £93.3 million; the 2003 annual report, a further expenditure of £98.2 million; capital commitments of £34.9 million. Taken together, these reports, which were filed, show a total of £226.4 million, and that is what Treasury had at 2004.

Mrs Christian: What date, Mr Proffitt? Do you know when they were filed? We can find out, it is alright, but if you just happen to –

Mr Proffitt: Well, what would happen, Mrs Christian, we would send these annual reports direct to Treasury and it says here, ‘February 2004’, but I could probably supply you with the date in February.

Mrs Christian: They were sent to Treasury in 2004.

Mr Proffitt: Yes.

Mrs Christian: The 2002 and 2003 accounts?

Mr Proffitt: The 2002 would have been sent earlier, I think. February 2004 must relate to 2003. That would be about right.

Mr Butt: When it refers to reports, do you mean the annual accounts or the annual report?

Mr Proffitt: Both: the annual account and reports. All the narratives, all the notes and all the numbers.

Mr Butt: Can I just follow on from that. You had a meeting with Richard Corkill a month later, on 24th March, talking about telecom issues –

Mr Proffitt: Oh, right.

Mr Butt: And, at that stage, you told him there was still £10 million left of the £185 million.

Mr Proffitt: I do not recall saying that. I doubt that I would have said that, because at that stage –

Mr Butt: Mr Corkill is on record, in his evidence here before us.

Mr Proffitt: Well, my evidence to you is that, on the written evidence that supports my statement, at that particular time the Government knew that we had spent £226 million. It would have been inconceivable for me to say there was £10 million left of the £185 million.

Mr Butt: Mr Corkill did tell us that: that there was £10 million left and I think a few days... round about that time, you went and got the second loan of £50 million at that stage. So, you told him, according to Mr Corkill, of the £185 million, there was still £10 million left.

Mr Proffitt: The only thing – Well, I am sorry, I have to disagree with that.

Trying to find some sense in it, I would have probably told him the wind farm has not been built and it is unlikely to get built, based on what we know about legislation. But I would not have said there was £10 million of the £185 million left – not when, just recently, I had told Treasury that we had spent £226 million.

Mr Butt: Well, that is the evidence of Mr Corkill. You think that is wrong.

Mr Proffitt: Well, I am sorry, Mr Butt, it is not my evidence.

Mr Butt: And, at the same time, I just wondered, in your relationship with Mr Corkill, as Treasury Minister and then Chief Minister, and with the Council of Ministers, I think, in July 2003, you did a presentation to CoMin about your future plans –

Mr Proffitt: Yes.

Mr Butt: I think in the minutes it mentions you were looking to borrow another £120 million, perhaps, for future telecoms issues, etc.

Mr Proffitt: I am not familiar with that number. I think-

Mr Butt: I just wondered, on that day, you were talking to Treasury, you were talking to the Council of Ministers; a loan is taken out on a very similar date to that, maybe the same day, even. I just wondered why, in your relationship about financial information to Government, to Treasury, you did not mention the loans at that stage?

Mr Proffitt: The July 4th 2003 Council of Ministers’ meeting was a big day for the MEA. It was a very big day. It was the day on which there was a one-item agenda and that was that we were given the opportunity to present a document that we called ‘Vision 2010’. In that document, we laid out what we could do with broadband on power line cables; how that would link into our fibre optic asset, into Blackpool; what we could do with Skype telephones on laptops, using broadband connections and patents that we had filed, that belong now to the MEA, on technology that we devised.

It was an enormously important day for the MEA because we had a great vision for what we could do on the Isle of Man, using our gas infrastructure, our fibre optic infrastructure and our broadband-on-power-lines technology. That is what that meeting was all about. There was no agenda to discuss the other capital projects –

Mr Butt: Except the question I am asking you, really, is –

Mr Proffitt: It is interesting you say we signed the loan on the same day.

Mr Butt: Well, similar.

Mr Proffitt: I am very keen to point out that you do not ask for a loan of that amount and then sign it on the same day as you ask. So, the fact that all the legals were complete and somewhere somebody was signing off on something, the work would have started back in whenever... it would have started maybe six or five months prior.

Mr Butt: Can I just interrupt. We are not here to discuss the loans today. We are here to discuss the financial compliance of MEA with Government, and here was a day where you were talking about the MEA and its future. The financial information, which would have been very useful to the Council of Ministers and Treasury on that day – that you had had to borrow some more money would have been useful – and you did not actually pass that on. I just wonder why you did not.

Mr Proffitt: Because it was certainly not appropriate, given the agenda we had. It was not our mindset, given the excitement we had over this proposal for the Isle of Man, and it did not come up.

Mr Butt: And the same with Richard Corkill in the 2004 meeting: he alleges that he asked you what was left of the £185 million and you said £10 million. Again, why did you not take that opportunity to say to him, 'Here is some financial information. There is another loan about to be taken out or had been arranged'?

Mr Proffitt: I had already – the financial information you suggest I should have given to Richard Corkill, I had already given within days to Treasury and the DTI.

Mr Butt: Did that show the loans?

Mr Proffitt: No. It showed our total expenditure.

Mr Butt: Okay. Thank you.

The Chairman: Thank you. Now, finally, Mr Callister.

Mr Callister: Well, yes, just slightly deviating from what –

The Chairman: I do not want to deviate. We have no time left.

Mr Callister: You do not want to go into any other area?

The Chairman: No. Notwithstanding, the last five minutes we have spent, really, on what you will understand is the next, later stage of our investigation. It is certainly not... the loan issue is not the issue for today.

So, notwithstanding that, purely in terms of the remit of the present investigation, I will ask colleagues if there are any other questions?

Mrs Christian: Yes, please, just two.

Mr Proffitt: two things. Who was responsible for sending financial information from the MEA to the Treasury?

Mr Proffitt: Responsible for the activity was Clodagh Maher; responsible for Clodagh Maher was Clive Wilcox; ultimate responsibility was mine.

Mrs Christian: In terms of the discussions after the withdrawal of the direction letter, that there should be a new start on work to go on to progress the matrix principles, who was responsible for that in the MEA?

Mr Proffitt: Again, the workings of it, Paul Dewar; ultimately responsible would be me, which is why I set up the first and the second meetings with Mark Shimmin. In a more rounded sense, it is why I invited Charles Fargher to be at that meeting: to get some overall probity to the fact that that is why I was asking for the meetings, to progress the matrix and finalise the CPN issue once and for all.

Mrs Christian: Did Mr Dewar have to report on progress to you?

Mr Proffitt: Mr Dewar's progress on that particular project was reported throughout the period from around October 2001, immediately after the Treasury meeting, and through the completion of his work, which was 2002, and then his work went to the board and it was approved. Then Mr Dewar set

up a meeting with Clive McGreal, handed it over to Treasury and, from that point of handover, all the next group of work should have been done by Treasury, and whatever was done or not done, I do not know. But that is what we were trying to resurrect in that November meeting.

Mrs Christian: Although it was agreed between yourselves and Treasury that there should be a resurrection of the development of this matrix, you believed it was the responsibility of Treasury?

Mr Proffitt: No. I believe it was the responsibility of the MEA and Treasury to work together. I believe MEA pushed to accomplish that and I believe Treasury reneged on that.

Mrs Christian: Right. Thank you.

The Chairman: Just finally, Mr Proffitt, in Mr Bell's evidence, when discussing the relationship between the MEA and Treasury, he stated:

'I think the difficulties were entirely focused around one individual, and that is the Chief Executive of the MEA. He was determined from the absolute outset not to co-operate.'

What is your reaction to those remarks?

Mr Proffitt: My reaction is, based on the evidence I have read of other people's attendance at the Committee and based on my own evidence that I have submitted, that those remarks are a complete and utter lie.

The Chairman: Thank you very much, Mr Proffitt. I would like to thank you very much for your assistance to the Committee this morning and for your statement and for providing us with a written copy. You have been very helpful. There will certainly be further evidence sessions with other witnesses and those sessions may raise further points requiring clarification. At any rate, we shall certainly reflect on your evidence this morning and it may well be the case that we will wish to contact you for further information or, indeed, recall you for further evidence in public.

As you are aware and I think as most people appreciate, there will also be further evidence sessions in connection with issues which this Committee will be pursuing after the current investigation into the capital procedure notes compliance issue is concluded.

Mr Proffitt: Mr Chairman, I would just like to add that I was happy to come here today and, if you invite me back or contact me for further information, I will be most happy to co-operate.

The Chairman: Thank you very much indeed. We appreciate that.

Ladies and gentlemen, this concludes today's session of taking evidence. The next session will take place on Thursday, 28th May at 2.30 p.m., when the witnesses will be Mr C J Wilcox, former MEA Finance Director, and Mr W J McCallion, former Chairman of the Board.

I declare this public session now closed. Thank you, very much.

The Committee sat in private at 1.18 p.m.