

1 Tuesday, 7 July 2009

2 OPEN SESSION

3 (10.05 am)

4 MS CALIGHAN: Sir, I have taken the liberty overnight of
5 amending the timetable to reflect where we have reached
6 and hopefully where we are going.

7 THE CHAIRMAN: So we have an amended timetable?

8 MS CALIGHAN: Sir, we have also reached agreement overnight
9 that we would go into closed session after each witness
10 has finished their open session evidence rather than
11 having a separate block of closed session evidence.

12 THE CHAIRMAN: Right.

13 MS PROOPS: Sorry, we are privately discussing whether what
14 is going to be most convenient is going in and out of
15 closed session with each witness or rather having each
16 ECGD witness conclude their open evidence and then go
17 into a closed session. Whatever is most convenient for
18 the Tribunal.

19 THE CHAIRMAN: I think there is something to be said for
20 while we have the first witness' evidence in mind to go
21 into the closed. I know it means more dodging in and
22 out for Mr Michaels and his team. So we are going to
23 have a closed session, supplemental questions by you,
24 Ms Calighan, and then some cross-examination by the
25 Information Commission and then from the Tribunal. All

1 right. Fine. Let's go with that. Any other bits of
2 paper you were going to give us overnight?

3 MR MICHAELS: Yes, sir. I indicated yesterday I had some
4 other bits of page. I have handed them out to the other
5 parties.

6 THE CHAIRMAN: Let me tell you what we have done with
7 yesterday's stuff so you know where it all is. We have
8 put that at the back of the supplementary open bundle,
9 the IFC/ECGD material which Ms Proops handed up
10 yesterday and the DEFRA guidance. So that starts at 215
11 in my open supplementary bundle and goes through to 237
12 in the IFC stuff and then the DEFRA is 238. Whatever is
13 coming in now ought, I suggest, go after that so when we
14 come back to it later we know where it is all. Is it
15 a good time to do it now or do we need it later?

16 MR MICHAELS: The other parties, Ms Calighan in particular,
17 have agreed that I can put some further brief questions,
18 with a guillotine of five minutes, to Mr Dodgson on the
19 issue that I raised at the end of yesterday and they
20 will be relevant to that, at least three of them.

21 THE CHAIRMAN: All right.

22 MR MICHAELS: I am afraid, sir, I have just noticed they
23 are not hole punched but that can be arranged at
24 lunchtime. (Handed).

25 THE CHAIRMAN: Yesterday weren't either so if someone at

1 some stage has a hole punch that would be helpful. You
2 have a different numbering?

3 MR MICHAELS: Yes, but there is no need to stick with that
4 numbering, that was simply the numbering that followed
5 on from the end of the previous bundle. I am quite
6 content to go with page 239.

7 THE CHAIRMAN: Yes, 239, we will go on from that. So you
8 have your five minutes starting now?

9 Evidence of Mr STEPHEN DODGSON (continued)

10 Cross-examination by MR MICHAELS

11 MR MICHAELS: Mr Dodgson, if I could ask you to open
12 bundle 2 at page 703. This is the second page of the
13 draft recommendation on the Common Approaches on
14 Environment and Officially Supported Export Credits, the
15 OECD Recommendation. Do you recognise this document?

16 A. Yeah.

17 Q. This is the version that had been accepted by the ECGD
18 at the time that BPU was determined?

19 A. Yes.

20 Q. The second page sets out general principles and sets out
21 objectives. If I can note:

22 "The general objectives of the recommendation are to
23 promote coherence between policies regarding officially
24 supported export credit agencies and policies for the
25 protection of the environment [et cetera]."

1 Underneath that I would appreciate if you could look
2 at paragraph 3 and if you could read paragraph 3 to
3 yourself, focusing particularly on the third bullet
4 point. Would you accept that the OECD recommendations
5 are based around, in part, the principle that taking
6 into account the environmental aspects of projects aims
7 to enhance financial risk assessment of those projects?

8 A. As I said in my evidence yesterday, there may be aspects
9 of environmental impacts that could impact on financial
10 risk, although in the main I would regard those as being
11 at the edges.

12 Q. If I could ask you to turn to this small bundle of
13 papers that I handed up. You should have them there
14 those documents, 1, 2, 3 and 4. Document number 2 is
15 ECGD's Mission and Status Review 2000 and I have only
16 included the relevant extract which is the section on
17 the ECGD sustainable development on page 5. If I could
18 ask you to look at paragraph 125. The first sentence
19 reads:

20 "ill-conceived and poorly executed projects can have
21 negative impacts on the environment and local people and
22 make for poorer quality risk."

23 Would you accept that is the case?

24 A. A project that is, for example, constructed badly will
25 inevitably, I would have thought, have an impact on the

1 payment risk, particularly in a project finance
2 situation where the revenue stream will service the debt
3 of the project.

4 Q. But would you recognise that what is being talked about
5 here is a project if it is poorly executed in such a way
6 that it would have environmental impacts is likely to
7 make for poorer quality risk?

8 A. Yeah.

9 Q. Finally can I ask you to look at document 3 in that
10 small sheaf of pages. This is a memorandum from the
11 Export Credit Guarantee Department to Parliamentary
12 Selection Committee and if you look at the top of
13 page 4, the very top, you will see that this was
14 produced in May 2003; correct? If I can ask you to turn
15 to page 5, the following page, you will see that this is
16 an annex setting out ECGD's answers to specific
17 questions posed by the Committee. Do you recognise
18 this?

19 A. Not immediately but I can read whichever reference you
20 want to draw my attention to.

21 Q. Paragraph 8. I would invite to you read paragraph 8,
22 which is the Committee's question, and then the response
23 of the ECGD. The case impact analysis process that is
24 referred to there is the process we looked at yesterday
25 that is designed to assess environmental and social

1 risks; correct?

2 A. Yes.

3 Q. And would you accept that in some cases going through
4 that process has resulted in better handling of the
5 risks involved in that case?

6 A. Well, the case impact assessment process is about
7 assisting ECGD in ensuring that the project complies
8 with international standards. So it's around
9 environmental compliance.

10 Q. Yes, but would you accept that this is indicating that
11 in some cases the process, the environmental impact
12 process, has resulted in a better understanding of the
13 financial risks involved in those cases?

14 A. It may to a limited degree, given that, as I said
15 earlier, there may be some aspects of environmental
16 impact that touch on the financial risk.

17 Q. Thank you.

18 Questions by the Tribunal

19 THE CHAIRMAN: We are just going to ask a few questions. As
20 was said to you yesterday, if any of our questions leave
21 you feeling that you would be able to give a better
22 answer in closed just say so and we will come back.
23 Mrs Chafer is going to go first.

24 MRS CHAFER: Can I refer you to open bundle 1. It's
25 page 114. Halfway down the page you have a bit that has

1 been redacted where someone has written in "BPU
2 assessment".

3 A. Yes.

4 MRS CHAFER: And just a little bit later down is what
5 appears to be a recommendation in bold there. I was
6 just interested in your comments s as to why that has
7 been released when it appears to be ...

8 A. That looks inadvertent to me if it was part of the BPU
9 assessment section. I mean, I can't tell from this but
10 it looks like it is part of that assessment.

11 MRS CHAFER: Thank you.

12 THE CHAIRMAN: Is this something which Mr Allwood is more
13 likely to be able to help us with?

14 A. He may be able to, yeah.

15 MRS CHAFER: Thank you.

16 MR TAYLOR: Morning. Whilst we have the report open in open
17 bundle 1 could you turn to page 120, please?

18 MS PROOPS: I am so sorry, I am being told by people behind
19 me that they can't hear the panel and possibly also the
20 witness.

21 MR TAYLOR: Apologies.

22 THE CHAIRMAN: We have been asked to take the witness to
23 page 120.

24 MR TAYLOR: You will see at the bottom of page 120 there is
25 a clearly redacted space and someone has written in "BPU

1 assessment". Could you turn over to page 121, please.
2 At the top of that page it seems to me that there's
3 a continuation of the paragraph potentially which forms
4 part of that BPU assessment. Could you comment on
5 whether that looks to be the case to you and perhaps
6 whether it ought to have been redacted?

7 A. You're right, there is no introductory paragraph number
8 and judging by the content it includes BPU assessment
9 considerations. So it looks to me as if that should not
10 have been disclosed.

11 MR TAYLOR: In the course of Ms Proops' questions yesterday
12 we were discussing the BPU principles and as part of the
13 questioning that led to whether ECGD would listen to
14 comments raised by stakeholders you gave an answer that
15 there must be a degree of responsiveness on major
16 issues. I just wondered if you could give me an example
17 of what kind of major issues might apply in those
18 circumstances.

19 A. When we were talking about major issues I said that
20 those major issues would include policies, products,
21 practices. Over a number of years the Department has
22 undertaken public consultations. We're in the middle of
23 a public consultation on a proposal to introduce a
24 letter(?) of credit guarantee scheme. We had a public
25 consultation on our foreign content rules. We have had

1 public consultations on our anti-bribery and corruption
2 measures. Those consultations are normally undertaken
3 under what were then Cabinet Office guidelines and they
4 invite stakeholder or interested parties to comment and
5 the Government will formally issue a response in writing
6 to those submissions made, as well as its decision and
7 what it would do to any proposal it had made.

8 MR TAYLOR: Thank you. That's it for me, thank you.

9 THE CHAIRMAN: A general point, but it may be somewhere else
10 in the papers, when the BPU report contains a particular
11 recommendation that something should happen before the
12 project goes forward or before closure, as a matter of
13 process where does that go? Is that published in any
14 way or does it go -- let me take it in stages. Does it
15 go to the project company? Presumably it must?

16 A. Depending on any conditions that we may seek to impose.

17 THE CHAIRMAN: Exactly.

18 A. It could either go to the financing bank or the project
19 company. That would be part of the commercial terms of
20 the guarantee.

21 THE CHAIRMAN: Does it go to the partner organisations?

22 A. It's possible that the partner organisations may have
23 similar conditions.

24 THE CHAIRMAN: Yes, but you mentioned somewhere in your
25 evidence that you pool information. Do you pool

1 specific recommendations and conditions that you're
2 imposing on a --

3 A. We certainly discuss and inform partners of any
4 conditions that we may be seeking to impose on any cover
5 or guarantees that we may issue to the project.

6 THE CHAIRMAN: Right. Is there any broader circulation than
7 that?

8 A. No, it would be internal. Possibly in certain
9 circumstances for projects it would be necessary to
10 inform ministers.

11 THE CHAIRMAN: Right. But, again, that would be in private?

12 A. Exactly.

13 THE CHAIRMAN: Similarly, something like the Mott MacDonald
14 report, that doesn't get published anywhere, that's just
15 between you as a private adviser advising ECGD?

16 Can you go to your witness statement? If someone
17 can help me find an open bundle because I have a closed
18 bundle, which is dangerous.

19 MS CALIGHAN: It is at page 387 of the open bundle, sir.

20 THE CHAIRMAN: Thank you.

21 It's paragraph 24 I am looking at. Some questions
22 were put to you yesterday about consultation and in the
23 middle of paragraph 24 there is the sentence:

24 "This is not a full consultation but provides
25 an opportunity for interested parties to make comments

1 which will be taken into account."

2 Is that the process which as far as you know
3 Mr Weiss was referred to when he referred to
4 consultation?

5 A. Yes.

6 THE CHAIRMAN: That's the same thing you think he would have
7 meant?

8 A. That is described in the case impact assessment process.

9 THE CHAIRMAN: Right. If you could turn on to paragraph 30
10 on page 395 were you describe the questioning and the
11 rigour which the Risk Committee imposes when it's
12 reviewing a report such as the BPU report in this case.
13 You mentioned yesterday that the ECGD's operations are
14 to some degree monitored by Parliament through the
15 Select Committees but that is, as I understand it,
16 a general monitoring. When you come to monitoring
17 a particular circumstance, a particular case where the
18 Risk Committee has considered a particular project,
19 there is no further overseeing body above the Risk
20 Committee which reviews or assesses the performance of
21 its duties as described in paragraph 30; is that right?

22 A. It can happen. As you know, Parliament in this
23 particular project did review the BPU report and our
24 involvement in the project, although I would agree that
25 that's unusual, they don't normally look at particular

1 projects. It's also the case that in a further recent
2 Parliamentary inquiry by the Environmental Audit
3 Committee the Committee itself commissioned the National
4 Audit Office to undertake a study for them to inform
5 their review of ECGD and as part of that independent
6 study by the National Audit Office they looked at
7 a number of cases, including this case, and some, but
8 not all, of the papers.

9 THE CHAIRMAN: So the answer is they can and on occasions
10 do?

11 A. Yes.

12 THE CHAIRMAN: That is all the questions I have. Do you
13 want to re-examine?

14 Re-examination by MS CALIGHAN

15 MS CALIGHAN: Thank you. I just have a small number of
16 questions in re-examination. Mr Dodgson, it was put to
17 you yesterday by counsel for the Information Commission,
18 Ms Proops, that if the assessment of the BPU was sound
19 then there is no reason why disclosure of the BPU report
20 would jeopardise ECGD's relationship with NGOs. You
21 will recall that that question was put. Even if the
22 reasoning of the BPU was sound is it possible --

23 MS PROOPS: Leading question.

24 MS CALIGHAN: Even if the reasoning of the BPU was sound
25 what responses do you think you might get from NGOs in

1 relation to the reasoning in that BPU report?

2 A. Well, that would inevitably be a matter of speculation
3 but given all the controversy around the project I can
4 imagine that there would be a public debate about that
5 report and in particular the assessment made by the
6 Business Principles Unit on compliance with
7 international standards.

8 Q. Do you consider that if the reasoning of the BPU report
9 was sound that NGOs would be --

10 MS PROOPS: Again, it's a leading question. A number of
11 leading questions were put in-chief which I didn't
12 object do because we don't know where they were going to
13 go at that stage, but this is re-examination and it is
14 not appropriate to lead the witness in his answers.

15 MS CALIGHAN: I will move on. I have a different topic.

16 It was put to you yesterday by Mr Michaels that
17 senior civil servants, as well as ministers, are
18 accountable for ECGD decisions and can be called to give
19 evidence to Parliament and you accepted that
20 proposition. What do you mean in that context by
21 "senior civil servants"?

22 A. Well, I'm personally a member of the senior civil
23 service. The senior civil service includes, I think,
24 the top four grades, if I can put it that way, of the
25 civil service.

1 Q. Can you explain what those grades are?

2 A. They would be permanent secretary, which is, in normal
3 circumstances, the head of a department, and normally
4 the accounting officer.

5 Q. In ECGD's case who would that be?

6 A. The chief executive.

7 Q. Who else?

8 A. Then there are, in ECGD's case, directors and they are
9 members of the ECGD Executive Committee and Management
10 Board.

11 Q. And you are a director?

12 A. Yes.

13 Q. Anyone else?

14 A. Other members of the senior civil service could include
15 heads of functional divisions or those -- all heads of
16 functional divisions at ECGD are headed by senior civil
17 servants.

18 Q. Are any of the members of the BPU senior civil servants?

19 A. They're not members of the senior civil service.

20 Q. I have no further questions.

21 THE CHAIRMAN: Right. Thank you very much for your time.

22 I'm sorry we overrun into the second day.

23 MS PROOPS: Presumably we go into closed session now with
24 this witness?

25 THE CHAIRMAN: Yes. I'm so sorry. Yes, closed session.

1 (The Tribunal went into closed session)

2 (12.07 pm)

3 (A short break)

4 (12.19 pm)

5 (The Tribunal returned to open session)

6 MS CALIGHAN: Sir, I am afraid I have some further documents

7 that I would like to hand forward.

8 THE CHAIRMAN: Right.

9 MS CALIGHAN: Within the first clip there should be three

10 documents and the remainder are a clip each.

11 THE CHAIRMAN: Are these going to go to the witness in due

12 course or are you going to make any introductions to

13 them?

14 MS CALIGHAN: I am going to put them to David Allwood.

15 MS PROOPS: Just before we start with Mr Allwood, I would

16 just like to clarify the evidence that we have agreed

17 can be referred to in open session.

18 THE CHAIRMAN: Yes, please.

19 MS PROOPS: For Mr Michaels' benefit, it is with reference

20 to the flash report. In answer to questions that I put

21 in cross-examination on the flash report, particularly

22 with respect to the passages in page 1045 and 1046

23 relating to BOTAS, Mr Dodgson accepted in his evidence

24 that those passages contained trenchant criticisms of,

25 in effect, an organ of the Turkish state. I think --

1 THE CHAIRMAN: That was where my note ends.

2 MS PROOPS: There was a question about honesty.

3 THE CHAIRMAN: Well, I think that word appears in the flash
4 report so the trenchant report as --

5 MS PROOPS: As relates to questions as to honesty as well.

6 THE CHAIRMAN: Yes. I do not think we need to add the
7 emphasis.

8 MS CALIGHAN: Can I call David Allwood, please.

9 Evidence of DAVID ALLWOOD (sworn)

10 Examination-in-chief by MS CALIGHAN

11 MS CALIGHAN: Thank you. Can you confirm your full name for
12 the Tribunal?

13 A. My name is David Michael Allwood.

14 Q. Could I ask you, please, to turn open blue bundle 1.
15 Could I ask you within that bundle, please, to turn to
16 page 413 of the bundle. Is that your witness statement
17 that you prepared for the purposes of these proceedings?

18 A. It is.

19 Q. Does this contain your evidence in open session for
20 these proceedings?

21 A. It does.

22 Q. Are the contents of it true?

23 A. I believe so.

24 Q. Thank you. Sir, do I have permission to ask a number of
25 supplementary questions?

1 THE CHAIRMAN: Agreed? Are you guillotined on this? Quick
2 as we can.

3 MS CALIGHAN: Thank you. Mr Allwood, are you a member of
4 the Senior Civil Service?

5 A. No, I am not.

6 Q. How many bands are there within the Senior Civil Service
7 that you are aware of?

8 A. Within the Senior Civil Service I am aware of three
9 bands.

10 Q. And outside the Senior Civil Service, how many bands are
11 you aware of?

12 A. ECGD operates a system with 11 bands, starting with one
13 at the bottom and 11 at the top.

14 Q. What is your band?

15 A. I am in band ten.

16 Q. What is the band of the other members of the BPU?

17 A. One is in band six and one is in band seven.

18 Q. Thank you. Can I ask you, please, to open bundle 3 and
19 turn, please, within that bundle to page 1041. Do you
20 recognise this document?

21 A. It is the report I wrote on my way back from the field
22 visit in June 2003.

23 Q. Thank you, sir. It is, of course, the flash report that
24 has been previously referred to. What was the purpose
25 of this report?

1 A. This was to provide an immediate report to colleagues on
2 my findings of that visit and to provide a record.

3 Q. Did you provide a copy of this report to the FCO?

4 A. Um, I believe I provided a copy to a number of
5 Government departments, including the FCO.

6 Q. I hope I will be permitted to lead on this question.

7 Did the FCO contact you in relation to a
8 Freedom of Information request which encompassed this
9 document among others?

10 A. They did, yes.

11 Q. Did you consent to this document being released?

12 A. No.

13 Q. As far as you recall, at the time you were consulted by
14 the FCO was the FCO intending to withhold or disclose
15 this document?

16 A. The information I had was that the FCO did not intend to
17 disclose this document.

18 Q. Sir, one of the documents that I handed up this morning
19 was a letter and I do hope that a copy can be provided
20 for the witness. Let me hand one up now. Sir, this is
21 the copy that was just handed up to you. It is a letter
22 with the letterhead of the
23 Foreign and Commonwealth Office sent from Richard
24 Shackleton (?) of the Climate Change and Energy Group to
25 Mr Phil Michaels dated 27th October 2008. Do you have

1 that document?

2 A. Yes, I have.

3 Q. It says that he is writing further to the ICO decision
4 notice in this case, that notice stated that the
5 Commissioner requires the FCO to provide to the
6 complainant a schedule identifying the information being
7 withheld and they now attach that schedule. If we look
8 at this schedule that is attached, I do not know if the
9 Tribunal is willing to take my word for it, but that
10 flash report document is not on that list of documents.

11 A. My recollection is that the flash report was number 20
12 and number 20 is not on that list.

13 Q. Thank you. Sir, we have no instructions from the
14 Foreign and Commonwealth Office as to whether or not
15 this was an inadvertent disclosure. All we can do is
16 give evidence within the knowledge of our witness and
17 you have heard his evidence as to the FCO's position at
18 the time he was consulted. We have this document, the
19 document is not on the list of documents to be withheld.

20 THE CHAIRMAN: I understood it was accepted that it had been
21 disclosed under Freedom of Information and was,
22 therefore, not challenging its open status.

23 MS CALIGHAN: We are not challenging its open status. It is
24 apparent from this document that it is not one of the
25 documents that was withheld under this request.

1 MS PROOPS: I asked Ms Calighan to clarify her client's case
2 on this issue because I am reluctant to see a situation
3 where the Tribunal cannot make an assessment of whether
4 the disclosure of the flash report was authorised by the
5 FCO. The difficulty with the evidence that has just
6 been given by Mr Allwood is it is effectively directed
7 at placing a question mark over whether this disclosure
8 was authorised. We do not understand why, bearing in
9 mind this flash report has been on the table for some
10 time now, Ms Calighan has been unable to obtain
11 instructions from the FCO via her instructing solicitor
12 so that the Tribunal can make a proper assessment of
13 whether this disclosure was authorised.

14 We would say that at this stage it is not acceptable
15 for ECGD to be, effectively, adopting an equivocal
16 position on whether this disclosure was authorised.

17 THE CHAIRMAN: There are two issues. One is authorised and
18 the other is whether it is in the public domain. Both
19 are relevant to our assessment of public interest.

20 MS PROOPS: Well, potentially not because if the disclosure
21 was inadvertent and, for example, it came into the
22 public domain by accident, there would be an argument to
23 say that you in those circumstances ought not to draw
24 inferences from the content of that information for the
25 purposes of this appeal. If, however, this was

1 a document that FCO acknowledge was not exempt from
2 disclosure under FOIA it should enter the public domain,
3 then that obviously entitles you to look at the
4 information and contrast it with the information that
5 ECGD is seeking to withhold at this point.

6 So it is important, I would suggest, to understand
7 and know whether, in fact, the Government's position is
8 that this was an inadvertent disclosure or whether
9 disclosure was authorised.

10 MS CALIGHAN: Well, we are attempting to seek instructions
11 and have been attempting to seek instructions and will
12 continue to do so until the close of this case. It is
13 certainly our position, as Mr Allwood has explained,
14 that when he was consulted about this document it was
15 his understanding that the FCO was intending to withhold
16 it. I will be addressing that matter further in closed
17 session, but all we can see from this document is that
18 on its face it was not one of the documents withheld by
19 the FCO.

20 THE CHAIRMAN: Well, it was not a document that was, well,
21 there are a number of possibilities. One is that it was
22 inadvertently disclosed, maybe somebody changed their
23 mind. I mean, there are a number of possibilities. The
24 fact is it is accepted that it is now a public document.
25 If there is more information that comes to light it can

1 be put before us in an effective way, an acceptable way,
2 before the end of the hearing that will no doubt help
3 us.

4 MS PROOPS: Yes.

5 MR MICHAELS: If I might, I would agree with Miss Proops.

6 This does ring significant alarm bells.

7 THE CHAIRMAN: Well, I think the alarm bells have been well
8 and truly rung. It is for Ms Calighan and her team to
9 react or not and at the end of the day we will see what
10 we have and we will make our decision. I am worried you
11 are just going to reaffirm what Ms Proops has just said
12 and Ms Calighan has said she has heard.

13 MR MICHAELS: I will but with one further marker I would
14 like to put down, if permitted. I am very concerned
15 that what might happen now is we are given very last
16 minute evidence tomorrow on the final morning of the
17 hearing.

18 THE CHAIRMAN: We may have to reconvene, we may have to
19 reconvene. We may have to do all sorts of things. Let
20 us not anticipate every problem that may or may not
21 arise. Let us see if anything comes up, see when it
22 comes up, see what it says and we will decide what we do
23 at that stage. You can make your representations at
24 that stage as to how you think we should deal with it.
25 Otherwise we spend a lot of time, I think, preparing for

1 the possible.

2 MS CALIGHAN: Can I ask you please to turn to page 5 of the
3 flash report, that is at open bundle 3, page 1045. It
4 is the internal page 5 of that report.

5 A. Yes.

6 Q. Can you clarify for the Tribunal which country does this
7 page concern?

8 A. This refers to Turkey.

9 Q. There is a paragraph just before the heading, "Selected
10 Details". It is the final paragraph under the heading,
11 "Summary." It refers to the BTC assurance team. Who or
12 what is the BTC assurance team?

13 A. The BTC assurance team is the team of BTC Co employees,
14 that is the project company employees, that were
15 monitoring the performance of the BOTAS contracts.

16 Q. We have seen reference to BOTAS, we understand that is
17 the correct pronunciation. Who or what is BOTAS?

18 A. As I put in the flash report, it is the state oil
19 company of Turkey.

20 Q. What was its role in connection with the BTC pipeline
21 project?

22 A. Its role was to implement the project and then to
23 operate it, following its implementation.

24 Q. Under the heading, "Selected Details", the third
25 paragraph down:

1 "Again compulsory land acquisition in Turkey must be
2 carried out by a designated state authority and the BTC
3 project has been identified as that authority."

4 There is then a reference to the NGO, RUDF. Who or
5 what is the NGO RUDF?

6 A. I am afraid I cannot remember what the acronym actually
7 stands for, but I know there is a list of acronyms at
8 the ends of the BPU report on the project so we could
9 look it up there. It is an NGO that was appointed to --
10 that particular NGO was appointed to monitor the
11 performance of the land acquisition conviction process.

12 Q. Would it stand for Rural Urban Development Foundation?

13 A. That sounds correct.

14 Q. Looking at that paragraph, and feel free to read it to
15 yourself again, what is the point that you are making or
16 seeking to make in this paragraph?

17 A. The point is that the project was being implemented in
18 three countries. In each of those countries there was
19 land acquisition process occurring. In Azerbaijan and
20 Georgia, an NGO had been appointed not only to monitor
21 the performance of that land acquisition but also
22 specifically to assist those from whom the land was
23 being acquired. We identified during this site visit
24 that the situation was different in Turkey in that our
25 UDF had only been appointed to monitor the process but

1 not to provide assistance to the land owners. That was
2 the difference of support that the Turkish landowners
3 were receiving compared to the Azerian, Georgian
4 landowners and it is that difference that I am seeking
5 to identify here.

6 Q. Who did you regard as responsible for that difference?

7 A. The project company, BTC Co.

8 Q. Why?

9 A. Because it was BTC Co that was setting the standards for
10 the whole of the implementation, all of the project
11 across all three countries.

12 Q. Who was responsible for identifying this difference or
13 this problem?

14 A. I would like to take some personal credit but I am not
15 sure I should. It was identified by the team of export
16 (indistinct) environment specialists during that site
17 visit.

18 Q. Was it identified as a problem by any of the NGOs?

19 A. I don't believe so.

20 Q. Can you please turn to the next page, page 1046. You
21 will have heard the questions put by Miss Proops to
22 Mr Dodgson about a passage halfway down that page
23 beginning, "There is also a fast track court process
24 using Article 27." Can you see that passage?

25 A. I can see it.

1 Q. Down to the end of that paragraph which ends in italics.

2 First of all, what is the point that you are seeking to
3 make in that passage?

4 A. I am seeking to make the point that the individuals that
5 were members of the BTC social coordinator and the BOTAS
6 land acquisition teams appeared to be rather confused
7 and inconsistent in the information they were providing.

8 Q. In that last sentence you say:

9 "This lack of consistency, transparency and honesty
10 from the project team is very disturbing."

11 Who or what was a member of the project team there?

12 A. I am talking about the individuals from the BTC social
13 coordinator and the members of the land acquisition team
14 that were seconded from BOTAS.

15 Q. Just to clarify, you have referred there to the BOTAS
16 land acquisition team. Is that the whole of BOTAS or a
17 part of it?

18 A. It is a very few number of individuals, a very small
19 number of individuals that were seconded to that team.

20 Q. So in that last sentence, are you seeking to criticise
21 the whole of BOTAS or a number of individual members of
22 BOTAS?

23 A. I am only seeking to criticise the individual members
24 that were part of that team.

25 THE CHAIRMAN: I do not know what weight you expect us to

1 place on such a leading question. You can ask the
2 leading questions, but the effect on the panel of a
3 witness who just responds to, you know, that sort of
4 question must be less than -- carry on.

5 MS CALIGHAN: How many members does the land acquisition
6 team in BOTAS have?

7 A. I can't remember the exact number but I should think
8 less than ten.

9 Q. Do you know roughly how big an organisation or small
10 an organisation BOTAS is in terms of number of
11 employees?

12 A. I would imagine it has tens of thousands of employees.

13 MS PROOPS: Can I just check whether I understand the line
14 of questioning. Irrespective of the number of employees
15 who have been seconded from BOTAS, is it being suggested
16 that they are somehow not representative of BOTAS as far
17 as they are cooperating with the land acquisition team?
18 Because if they are representative of BOTAS it does not
19 matter, does it, that they are only a handful?

20 THE CHAIRMAN: Let us see where the questions goes. Just
21 see where we go.

22 MS CALIGHAN: I do not have any further questions at the
23 moment about that document. Can I ask you please to
24 turn to your witness statement at open bundle 1,
25 page 420. Looking at paragraph 28, is that a complete

1 list of the members of the lender group?

2 A. Yes.

3 Q. Did the lender group include Mott McDonald?

4 A. No, Mott McDonald were our advisers.

5 Q. In relation to -- is it SACE? S-A-C-E?

6 A. That is the normal way of pronunciation, yes.

7 Q. SACE. You have described it as a private insurance
8 company that manages the provision of export credit
9 insurance on behalf of the Italian state. As far as you
10 are aware, is there any Italian legislation that relates
11 to the powers and constitution of that body?

12 A. There is.

13 Q. Can the witness please be provided with the -- I hope
14 there is a spare copy of the clip of documents that was
15 handed up to the Tribunal. Can I ask you to look at the
16 second document in that clip of documents, it is headed,
17 "Text of Legislative Decree Number 143,
18 March 31st 1998." We see that its title in Italian
19 creates the acronym SACE?

20 A. Yes.

21 Q. In Article 1 it provides that body was founded for the
22 purpose of providing insurance facilities for foreign
23 trade?

24 A. Yes.

25 Q. In the second sentence of Article 1 it provides that it

1 is classified as a Government corporation with
2 autonomous management of its corporate capital.

3 A. Yes.

4 Q. It goes on to say that it operates under the control of
5 the Ministry of Treasury, Budget and Economic Planning
6 and conducts its activities in accordance with
7 principles of efficiency and cost effectiveness on the
8 basis of deliberations adopted by the interministerial
9 committee on economic planning. Does that accord with
10 your understanding of the nature of this body?

11 A. Yes, if does.

12 Q. As far as you are aware, who was responsible for taking
13 decisions on behalf of SACE in relation to the provision
14 of credit insurance?

15 A. The Ministry.

16 Q. The ministry of?

17 A. I see from this document it is the Ministry of Treasury,
18 Budget and Economic Planning.

19 Q. Who or what is responsible for underwriting risk for
20 SACE?

21 A. The Italian government.

22 Q. Thank you. Can I ask you, please, to look at the next
23 set of documents which relate to the charter of the
24 Export Import Bank of the United States.

25 THE CHAIRMAN: Is it in issue whether -- are we going to go

1 through each of these to see what precisely what their
2 connection is with a nation state?

3 MR MICHAELS: I think there may be a way of short circuiting
4 this. We are perfectly content to accept that each of
5 these institutions has a connection with the nation
6 state that is set out in their constitutions and are
7 prepared to accept the evidence in these documents that
8 is adduced today.

9 THE CHAIRMAN: I think Ms Calighan's question is probably
10 going to where the ultimate decision making is. One is
11 described as a private insurance company, for example.

12 MR MICHAELS: Yes, and we would be prepared to accept the
13 correctness of whatever is set out in these
14 constitutional documents. It does not seem to me
15 necessary to take the witness through establishing the
16 correctness of these constitutional documents with that
17 concession, we can put them to one side for submissions
18 later on if you want to.

19 MS CALIGHAN: Indeed. Thank you very much, Sir.

20 THE CHAIRMAN: There does not seem to be much difference in
21 what people are saying in paragraph 2.

22 MS CALIGHAN: No, but we will seek to make submissions that
23 each of these organisations are emanations of their
24 particular state. I am grateful for that concession.

25 Can I ask you, please, to turn now to the BPU report

1 at open bundle 1, page 104. Looking at the penultimate
2 paragraph on that page, you appear to be talking there
3 about the field visit that you made to Turkey which we
4 saw was referred to in your flash report?

5 A. That is correct.

6 Q. Feel free to reread that paragraph to yourself.
7 Mr Allwood, in the middle of that paragraph is
8 a sentence that says:

9 "I have seen social issue specialist who has
10 observed civil land acquisition meetings, has commented
11 that RUDF did, in fact, provide advice directly to
12 landowners."

13 Now, it was put to Mr Dodgson by Mr Michaels
14 yesterday that this sentence seems to be an expression
15 of one of the views of the members of the lender group.
16 Can you comment, please, on that suggestion, that this
17 sentence appears to be an expression of one of the views
18 of the lender group?

19 A. I do not think this sentence is an expression of views,
20 I think this sentence just states two facts. One fact
21 is that the IFC social issues specialist who would
22 observe these meetings had made a comment and the second
23 fact is that that comment was that RUDF did contrary to
24 the requirement of their work at that stage provide
25 advice to the landowners.

1 Q. Can you leave that page open, please, and go back to the
2 flash report in open bundle three at page 1045. Now,
3 again, looking at that paragraph we looked at earlier
4 beginning, "Compulsory land acquisition in Turkey". Do
5 you have that paragraph?

6 A. I do.

7 Q. Now, it was suggested by Mr Michaels yesterday in
8 cross-examination of Mr Dodgson that this paragraph in
9 the flash report appears to conflict with the passage in
10 your BP review report at page 104. Now, can I ask you
11 the following questions. What did you do as a result of
12 identifying that flaw in the process in land acquisition
13 in Turkey?

14 A. The environmental specialists of the export credit
15 agencies put their heads together and discussed what
16 their response -- immediately following its
17 identification we got together, discussed what we should
18 do and directly afterwards talked to BTC Co, the project
19 team, about what we had found and asked them to change
20 the scope of works for RUDF so that it did include
21 provision of assistance to the landowners explicitly.
22 Even though we understood that assistance might have
23 been happening, we were concerned that it may not happen
24 in all situations and it was not in their scope of work.
25 We asked that should be changed and as the DPU final

1 report states those terms of reference were changed to
2 include the availability of our UDF to all landowners
3 who ask for advice.

4 Q. Thank you.

5 THE CHAIRMAN: If you are going onto another topic, it seems
6 to me that to some degree -- I am not sure whether you
7 are not getting your, sort of, re-examination in first
8 anticipating cross-examination points that may be made
9 to Mr Allwood and, secondly, whether we are not getting
10 into issues of whether the assessment ultimately made
11 was justified rather than whether the assessment
12 ultimately made should be disclosed.

13 MS CALIGHAN: I am dealing with a point Mr Michaels put to
14 a different witness yesterday suggesting that there was
15 an inconsistency between the two paragraphs. I am
16 simply seeking to deal with that point.

17 THE CHAIRMAN: Okay. Bear it in mind where we go onto
18 wherever you are going next.

19 MS CALIGHAN: I think my last topic is simply to deal with
20 the issue of legal privilege. I can either deal with
21 this -- (Pause) Can I ask you, please, to turn to
22 page 81 of the BPU report in open bundle 1. Sir, it
23 appears that I am going to have to hand forward further
24 documents for which I apologise. Can I hand copies
25 please to -- I am not sure that I have sufficient

1 copies, this is my difficulty. Sir, I am sorry, I am
2 going to have to deal with this after the luncheon
3 adjournment when I have had time to make appropriate
4 copies.

5 THE CHAIRMAN: We can share one up here, is that going to
6 help you?

7 MS CALIGHAN: I am not sure that I even have sufficient
8 copies for that.

9 MS PROOPS: I wonder if the point might not be outlined to
10 see if there is actually dispute in it before we start
11 looking at documents and have witnesses deal with the
12 issue.

13 MS CALIGHAN: The point is this. Mr Michaels in his
14 skeleton argument identified a number of passages in the
15 body of the BPU report that had been disclosed which he
16 said on their face appeared to be legally privileged.
17 The point that we seek to make is this, that in fact
18 those passages which appear to be legally privileged
19 had, in fact, related to advice given by members of the
20 lendor group which was then provided to BTC Co for
21 comment and they then responded to that advice. Having
22 been provided to the project sponsor, they could no
23 longer be regarded as legally privileged. Instead what
24 they were, in our submission, were communications
25 between one set of legal clients with another body

1 altogether and, therefore, could not be regarded as
2 legally privileged.

3 THE CHAIRMAN: Such privilege they had would be lost.

4 MS CALIGHAN: Indeed.

5 MR MICHAELS: Sir, this may short circuit it. I am content
6 to accept that. In our skeleton at paragraph 101 we
7 simply set out that there are a range of parts of the
8 BPU that appear to be legally privileged and we said
9 clearly the ECGD should explain. We are now being given
10 that explanation. It would have been helpful to have it
11 earlier, but we are now being given it. It is not
12 central to our case, I do not think we need -- it is not
13 central to the issues that the Tribunal needs to
14 determine in any event.

15 THE CHAIRMAN: No.

16 MS CALIGHAN: On that basis I do not seek to put any further
17 questions to this witness in open session.

18 THE CHAIRMAN: Do you want to start cross-examination now or
19 start it at 1.55?

20 MS PROOPS: I am in your hands.

21 THE CHAIRMAN: We will start sharp on 1.55. I think you may
22 have been in the room yesterday when I mentioned to Mr
23 Dodgson that having started your evidence you should not
24 communicate with anybody about the substance of your
25 evidence?

1 A. Yes.

2 THE CHAIRMAN: A potentially lonely lunchtime. Okay, 1.55.

3 Do not bother to stand up, we have to clear our papers

4 in our own time.

5 (12.55 pm)

6 (The short adjournment)

7

8 (1.58 pm)

9 Cross-examination by MS PROOPS

10 MS PROOPS: Mr Allwood, I'm going to ask you some questions

11 and the same caveat as I gave to Mr Dodgson I will give

12 to you. If you feel that my question is leading you

13 into giving answers that you will be more comfortable

14 addressing in closed session, please, just let us know

15 and we will deal with it in that way.

16 Just to begin with some fairly general questions.

17 You will accept, no doubt, that the work that is done by

18 the BPU is important work?

19 A. I do.

20 Q. Your assessments form the bedrock of any decision taken

21 by ECGD as to whether a project is acceptable from

22 an environmental, human rights and social point of view;

23 would you accept that?

24 A. It is the mainstay of the decision, yes.

25 Q. It is the mainstay of the decision?

1 A. For compliance, not decision to support.

2 Q. If you say that a particular project does not meet the
3 relevant standards that is likely to weigh very heavily
4 in the balance when ECGD is deciding whether or not to
5 support a particular project?

6 A. I would expect so but I have no evidence of that because
7 it's never occurred.

8 Q. It's never occurred?

9 A. No.

10 Q. And you would no doubt accept that it is extremely
11 important that your assessments are sound, rigorous and
12 in compliance with your own standards?

13 A. Of course.

14 Q. The work that is done by the BPU is also high profile,
15 particularly in the context of this project, the BTC
16 project; would you accept that?

17 A. I think it's high profile to a small number of people.

18 Q. Those people being NGOs, for example?

19 A. NGOs and the project company, the project sponsor and
20 the co-financiers.

21 Q. So you're including basically informed members of the
22 public like Friends Of The Earth?

23 A. Friends Of The Earth are certainly interested.

24 Q. I'm so sorry, I'm being told that people behind me can't
25 hear. I don't know if they can't hear me but they

1 certainly can't hear you so if you could speak up
2 a little more in your answers.

3 A. I apologise.

4 Q. It's clear from your evidence that the work done by the
5 BPU is to a large extent done in the public eye, in the
6 sense that you are engaging with members of the public,
7 NGOs, like Friends Of The Earth, for example?

8 A. On a small number of the cases that we deal with we
9 receive information from NGOs like Friends Of The Earth
10 and Corner House.

11 Q. And that this would be one of those cases?

12 A. This is one of those cases.

13 Q. So in the context of this particular project there was
14 no question of the BPU operating under the radar so far
15 as public awareness was concerned?

16 A. So far as awareness of those interested parties was
17 concerned. I don't think the general public were
18 concerned.

19 Q. You and your colleagues no doubt would have been aware
20 of the Business Principles at the time that you were
21 conducting your assessment?

22 A. I was the main contributor to their production in 2000.

23 Q. And, in fact, the function of the BPU is to ensure that
24 there is a rigorous application of the Business
25 Principles, at least so far as environmental, social and

1 human rights considerations are concerned?

2 A. That's correct.

3 Q. The thrust of the Business Principles is that there is

4 a strong imperative in favour of transparency; would you

5 accept that?

6 A. Transparency is one of the five issues that are

7 addressed by the statement of Business Principles.

8 Q. Would you accept that there is a strong imperative in

9 favour of transparency that emerges from the Business

10 Principles?

11 A. I agree that there is a requirement from the commitment

12 in the Business Principles to be as transparent as

13 possible but that --

14 Q. And that objective, to be as transparent as possible,

15 applies equally to the application of the Business

16 Principles, doesn't it?

17 A. Equally to what?

18 Q. To the application of the Business Principles. The

19 objective of achieving as great a transparency as

20 possible.

21 A. It includes the application of the Business Principles

22 themselves in the objective of transparency.

23 Q. Yes. Can we look at the Business Principles,

24 particularly I would ask you to turn to page 841.

25 I don't want to spend too long on this document.

1 A. Is that bundle 2?

2 Q. It is bundle 2, page 841, so it's towards the back of
3 bundle 2. If we look at the first bullet point. This
4 is a published document, this isn't just some internal
5 document for the benefit of civil servants, is it?

6 A. This was published on 14 December 2000.

7 Q. So this is a document that will inform the public's
8 perceptions of how ECGD will operate?

9 A. Yes.

10 Q. It we look at the first bullet point:

11 "ECGD will consult, listen to and respond to
12 relevant stakeholders on major issues."

13 There is no suggestion in that bullet point, or
14 indeed elsewhere in this document, that that objective
15 is limited to where you are dealing with formal public
16 consultations on policy issues, practice issues?

17 A. Well, I think it is limited because the first of the
18 policies states that ECGD will engage with all
19 stakeholders to discuss ECGD's policies, products and
20 practice and that engagement is consultation.

21 Q. I accept that is one of the policies that is identified
22 but if we look at the general objectives identified in
23 the first bullet point, in terms of the objective at
24 which the organisation is aimed, putting to one side the
25 issue of policies for the moment, the objective is not

1 limited to public consultations on policies, products
2 and practice, is it?

3 A. It does not say that in the text but the idea of the
4 policies is to depend on how ECGD expects to achieve
5 those objectives. And so the constraints set in the
6 policies, that the engagement will be on policies,
7 products and practice, clearly in my mind is relevant to
8 the first objective.

9 Q. Do you accept that members of the public reading this
10 document will read the way in which you have identified
11 your objectives as suggesting that ECGD is generally
12 committed to engaging with the public in a dialogue
13 effectively? Do you accept that that is the broad
14 thrust of the objective that is identified? At least
15 that is how it is likely to be read by members of the
16 public?

17 A. I think members of the public will read the whole of
18 that page together and they will see that the policy of
19 how ECGD intends to achieve the first objective on that
20 page is through engagement to discuss ECGD's policies,
21 products and practice.

22 Q. We take a different view of how this document would be
23 read by members of the public. Let's just put the point
24 slightly more broadly. As a matter of good governance
25 would you accept that where a government department

1 invites comments from or engagement by stakeholders in
2 a particular process, as a matter of good governance,
3 sound administration, that department should do its best
4 to respond to the comments, respond to the engagement?
5 For example, to explain to stakeholders how their
6 comment, how their evidence has been viewed and assessed
7 by the department?

8 A. I'm not sure that I would call it good governance but
9 where a government department or an organisation of any
10 kind had deliberately set out to invite comments then it
11 would be very appropriate for that organisation to
12 respond to people providing those comments, first of
13 all, to acknowledge their receipt and also ultimately to
14 respond on how they might have been might have been
15 taken into account.

16 Q. And where, for example, you have stakeholders who are
17 NGOs who may be expending substantial time and resources
18 putting together evidence and submissions on
19 a particular proposed project, that is going to
20 re-enforce the imperative to respond to the stakeholder
21 and to explain or give an account of how those
22 submissions, that evidence, has been assessed?

23 A. I think that might have some bearing but I wouldn't have
24 thought it was a determining factor. If organisations
25 voluntarily commit their time and resource to doing

1 something that they have not been requested to do and
2 certainly not ordered to do in any way then it's up to
3 those organisations to decide how much resource they
4 want to expend.

5 Q. Let's think about the process by which the BPU arrives
6 at its assessment of a particular project and let's say
7 the BTC project. The reality is that the quality of
8 that assessment is likely to be enhanced if major
9 stakeholders, such as Friends Of The Earth, such as
10 Corner House, are engaging with the department, giving
11 their views, putting forward their perspective, the
12 evidence that they have put together. That is likely to
13 assist the BPU in having a comprehensive 360-degree view
14 of the issues, isn't it?

15 A. It will certainly assist the BPU. It is not
16 a prerequisite. The BPU is set up and is expected by
17 the government to be able to do its own due diligence,
18 to come to its own decisions, without any assistance
19 with outside parties and so contributions voluntarily
20 provided by other organisations are welcomed and are
21 taken into account but they are not expected and they
22 are certainly not required.

23 Q. But the BTC project very specifically, you have just
24 confirmed in your evidence, in contrast with other
25 projects was a case where effectively you deliberately

1 sought to get feedback and input from stakeholders such
2 as NGOs?

3 A. No, the BTC project was just the same as every other
4 project in that we posted the notice on our website that
5 ECGD had received an application and was considering
6 that case and that website states that if interested
7 parties have comments they should send them to the BPU
8 in writing. It doesn't invite them to have comments, it
9 only says "If they have comments". That was the same
10 invitation, if you want to call it an invitation, it was
11 the same notice that we put to every other
12 hypotension(?) impact case.

13 Q. But I understood your evidence to be that in so far as
14 informed educated stakeholders like Friends Of The
15 Relevant and Corner House are providing you with
16 comments, are providing you with submissions that help
17 to fill out your picture of the particular issue, that
18 is likely to assist the BPU in reaching a fully informed
19 conclusion on the issue?

20 A. It may well provide additional information that we would
21 then seek to corroborate, investigate to determine
22 whether or not it was well-founded and had an important
23 bearing or not on the case.

24 Q. Am I to understand from the evidence that you are giving
25 that you recognise that NGOs, particularly in respect of

1 such an important, complex project, can make a valuable
2 contribution to the assessment process? Or do you say
3 they actually make no difference at all and they are
4 wasting their time giving you their comments?

5 A. I didn't say they were wasting their time. Valuable
6 depends, it can be a small value and a high value.
7 Sometimes the information might be very valuable because
8 it may identify an issue that we had not identified at
9 that stage ourselves. Sometimes it is of less value
10 because it serves merely to repeat something we had
11 already identified.

12 Q. So you accept that those contributions may, on
13 a particular case, be very valuable?

14 A. They could be.

15 Q. In contrast with the evidence that you have given that
16 in fact it is desirable, effectively, for there to be
17 a responsiveness to stakeholders who are engaging in the
18 process, I understood you to accept that that is
19 generally desirable, would you accept that where that
20 isn't happening and where, in effect, stakeholders are
21 being met with a brick wall, they are giving our their
22 submissions, providing you with their evidence, doing
23 their best to contribute to this process, they get
24 nothing back in terms of how their evidence, their
25 submissions, have been assessed, would you accept that

1 that is likely in the long-term to have an alienating
2 effect on stakeholders, NGOs?

3 A. Yes, I would accept that and that's why in the
4 Government's response to the Trade and Industry
5 Committee the Government has committed that in future
6 ECGD will provide that advice on all hypotension impact
7 cases.

8 Q. Yes, but as we know from Mr Dodgson's evidence that
9 never happened in this case?

10 A. That did not happen in this case but in 2005 we
11 committed that it would happen in future cases.

12 Q. If we just come back to the Business Principles for
13 a moment. There is nothing in this document that
14 suggests that particular protection will be given to
15 civil servants who are conducting sensitive assessments?
16 There is a reference to respecting legitimate commercial
17 and personal confidentiality but there is nothing in
18 this document to suggest to the public or to civil
19 servants that they can expect generally to operate under
20 the radar in so far as they are contributing to
21 potentially controversial or sensitive assessment
22 processes?

23 A. Well, as you have pointed out there is a reference to
24 respecting personal confidentiality. At the level I am
25 within the civil service I would anticipate that

1 included myself and my team.

2 Q. Do you think that is how members of the public would
3 read this document, that it is designed to protect the
4 interests of --

5 A. I am a member of the public as much as I'm a civil
6 servant but I was part of drafting this?

7 Q. If you could take off your civil servant hat for
8 a moment.

9 A. That's very difficult.

10 Q. It may just be a matter of construction for the Tribunal
11 but I will give you an opportunity to answer the
12 question. Do you accept that is unlikely to be how the
13 public would read this document?

14 A. There is nothing explicit within the statement of
15 Business Principles that states that civil servants'
16 views will be withheld but equally there is nothing
17 explicit that says they will be disclosed.

18 Q. We have been provided with no correspondence or internal
19 policy documents or any documents of any nature to
20 suggest that civil servants who may be interested in
21 coming and working for ECGD, and particularly within the
22 BPU, are given any kind of assurance that information
23 that they generate or reports that they generate will
24 generally be immune from disclosure to the public.
25 That's correct, isn't it?

1 A. That's because the situation to date has not happened.

2 Q. I just want to be absolutely clear. Do you accept that
3 civil servants are not given, have not been given,
4 express assurances that their reports will not be
5 disclosed to the public?

6 A. In that narrow sense of that framework, yes, you are
7 correct, no written confirmation that opinions will
8 never been disclosed has been provided.

9 Q. And, in fact, you have given no evidence that civil
10 servants are given oral assurances to that effect?
11 There is no evidence to that effect in your statement,
12 is there?

13 A. I would have thought that the fact that this case has
14 been continuing so long would suggest very clearly that
15 there is a desire on the part of ECGD to protect civil
16 servants' opinions.

17 Q. We're not looking at this point in time, we're looking
18 at point in time when the request was made, which is
19 back in August 2005.

20 A. And at that time --

21 Q. At that point in time you have not given any evidence to
22 the effect that civil servants, who, for example, were
23 contributing to this report, were given any kind of
24 assurance that the report would not be disclosed to the
25 public?

1 A. But the civil servants' opinions when the redacted
2 version of the BPU report was disclosed were withheld,
3 which is indicative that the Department thought that
4 those opinions should not be disclosed.

5 Q. I'm afraid that is not answering my question. You are
6 not suggesting to this Tribunal that civil servants were
7 given any oral or written assurance up until the point
8 that the request was made that their contributions, for
9 example, to this report, would not be disclosed to the
10 public?

11 A. That is correct, because the question never arose.

12 Q. You say the question never arose and yet the Business
13 Principles that you contributed to make absolutely
14 clear, if we look at the final policy bullet in 841,
15 that ECGD is aiming to expand the information it
16 publishes regarding the application of the Business
17 Principles. Now, that would include the operations of
18 the BPU because the BPU applies the Business Principles
19 in the context of environmental, human rights and social
20 assessments?

21 A. Yes, but this document was drafted and published in
22 December 2005 and since then there has been
23 a significant expansion of the information published
24 regarding the application of its Business Principles.

25 Q. You are perhaps not understanding what my question was

1 driving at. You are unable to say to this Tribunal that
2 any explicit assurance has been given to civil servants.
3 Your evidence seems to be, "We didn't need to give such
4 an assurance because it was obvious". The point that
5 I am putting to you is that, in fact, the Business
6 Principles that you helped to draft point in the other
7 direction, don't they?

8 A. The Business Principles say that ECGD will expand the
9 information provided about the application of its
10 Business Principles. And it has done.

11 Q. And the inference to be drawn from that --

12 A. And it does not explicitly include or exclude the
13 opinions of officials.

14 Q. And the inference to be drawn from that bullet point is
15 that civil servants working within the BPU have no
16 guarantee that the way in which they apply the Business
17 Principles in the context of BPU assessments will be
18 immune from disclosure?

19 A. Absolutely. There is no guarantee.

20 Q. Let's move on to think about the role of the Directive
21 because after these principles were adopted in
22 January 2003, which is 11 months prior to the completion
23 of your report, the Directive was adopted by the
24 European Union and you are presumably familiar with the
25 Directive on access to environmental information?

1 A. Yes, I am.

2 Q. Were you aware of that Directive at the time you were
3 conducting your assessment?

4 A. Yes, I was.

5 Q. You would, therefore, have been aware that the European
6 Union had adopted a Directive which would ultimate
7 require public authorities to disclose environmental
8 information to the widest extent possible? That's the
9 wording of the Directive. Do you accept that?

10 A. I accept that.

11 Q. You were aware that there was a presumption in favour of
12 disclosure of environmental information under the
13 Directive?

14 A. I'm aware of that.

15 Q. You were aware that any exceptions provided for in the
16 Directive would have to be construed narrowly?

17 A. That's correct.

18 Q. Against that background, bearing in mind that you have
19 just conceded that there was in any event no guarantee
20 that assessments being prepared by BPU officials would
21 not enter the public domain, would you accept that any
22 civil servant working within the BPU during the course
23 of 2003 would have been acutely aware that there was
24 a substantial risk that the assessments that they
25 conducted would be disclosable pursuant to the

1 Directive?

2 A. I think I would perhaps question "substantial".

3 Certainly I and my team were aware of the Directive,
4 aware of the expectation of disclosure and aware that
5 a considerable amount of the information that we held
6 might become disclosable. While I would agree there was
7 never a guarantee that our opinions would not be
8 disclosed we may or may not have considered whether or
9 not that was disclosable information.

10 Q. Right. The assessment that was conducted by the BPU in
11 respect of this particular project was an assessment --
12 let me, first of all, ask you a question that I put to
13 Mr Dodgson. Would you accept that the BTC project was
14 itself a project with very significant environmental
15 implications?

16 A. I think it had the potential for significant
17 environmental impacts. I don't think they occurred but
18 there were significant issues raised.

19 Q. You don't think building a 1,700 kilometre pipeline
20 itself, irrespective of any risks, is a significant
21 environmental matter?

22 A. I think it's -- you've changed your terminology there.
23 It is a significant environmental matter or issue to be
24 discovered, to be examined. The actual implementation
25 of it, and I have seen it after it has been finished, is

1 that there is very little impact on the ground visible
2 in large portions of it.

3 Q. Sorry, perhaps we are talking at cross purposes in terms
4 of environmental impact. I am assuming you are familiar
5 with the definition of "environmental information" in
6 the Directive that has now been translated into the
7 regulations?

8 A. Yes, I am.

9 Q. The definition is very broad, isn't it?

10 A. Mm hm.

11 Q. And it includes, for example, information as to the
12 state of the elements, land and so on?

13 A. Yes.

14 Q. Building a 1,700 kilometre pipeline across three
15 countries, I'm not talking about questions of
16 environmental damage, I'm just saying that that is
17 a project that is environmentally significant, isn't it?

18 A. You are correct.

19 Q. In addition to that this was a highly controversial
20 project because there were all sorts of arguments that
21 were being put forward that there was a potential that
22 this particular project posed a number of environmental
23 risks?

24 A. That is correct.

25 Q. And those were significant considerations? I'm not

1 saying the risks were significant, I'm saying the
2 considerations the arguments --

3 A. I would accept that.

4 Q. -- were significant and important?

5 A. Yes.

6 Q. And here we have the BPU's assessment of those risks?

7 A. Yes.

8 Q. This is precisely the sort of information that at first
9 blush one would expect to be disclosable under the
10 directive. It is -- let me just let you answer that
11 question then I will go on to elaborate if I need to.
12 Would you accept that?

13 A. It is precisely the sort of information that needs to be
14 considered carefully for disclosure because there are
15 some interested parties that would be very keen to see
16 it. The impact of such disclosure would have other
17 effects and I believe those need to be taken into
18 account in the decision about whether or not to release.

19 Q. I accept the point that you are making. I'm trying to
20 drive at an argument that is being made on behalf of
21 ECGD, that there was no significant public interest in
22 disclosure of this information, because that's what we
23 understand the thrust of that part of ECGD's case to be.
24 I want to understand from your evidence, putting to one
25 side any concerns that you may have about the effects of

1 disclosure of the report, for example, on the operation
2 of the BPU, putting those to one side --

3 A. They're very significant, and not just those.

4 Q. I'm going to ask you questions on those as well, let's
5 just look at the other side of the balance. Would you
6 accept that the information that is in the report in
7 terms of the BPU's assessment of these important
8 environmental risks is precisely the sort of information
9 in respect of which the Directive is likely to be aimed?
10 Would you accept that?

11 A. Well, that seeks to narrow down the Directive whereas
12 I would suggest that the Directive is much broader than
13 that and so there is a lot of information that the
14 Directive covers, much of which is factual information
15 that has been disclosed.

16 Q. Let me ask the question to you to try and shortcut it
17 this way. If we assume that there were no particular
18 concerns about disclosure in terms of the impact on BPU
19 or any other concerns, would you accept that there is
20 a strong public interest in this information entering
21 the public domain?

22 A. Accepting that we put aside for one moment the very
23 substantial other issues --

24 Q. Which we will deal with in due course.

25 A. Then there is a strong interest by a proportion of the

1 public in the disclosure.

2 Q. Mr Dodgson was asked a question in re-examination by
3 Ms Calighan that if you assume that the analysis in the
4 BPU report is sound and well-reasoned, the question was
5 put openly, what response would you get? And this is
6 what Mr Dodgson said:

7 "Given the controversial nature of this project
8 there would be a public debate about the report and the
9 assessment made by the BPU concerning compliance with
10 international standards."

11 Would you accept that it is very important in the
12 public interest, again putting to one side your concerns
13 about disclosure, that there is a public debate about
14 whether ECGD got the assessment right in terms of this
15 important complex project?

16 A. I'm sorry, I think I lost track of the ...

17 Q. I will put it to you again. Would you accept, putting
18 to one side your concerns that we will deal with in due
19 course, both in open and closed session, that there is
20 a strong public interest in the public having a debate
21 about whether ECGD got it right in terms of its
22 assessment of the environmental, human rights and social
23 impacts of this complex project?

24 A. I would accept that there are some parts of the public
25 that would like to have that debate. I think discerning

1 a public interest being a term of art is something that
2 is a little more difficult.

3 Q. I hope this question isn't going to be unfair but I do
4 just want to read you the preamble to the Aarhus
5 Convention. Are you familiar with the Convention?

6 A. I'm familiar with its existence, I'm certainly not
7 familiar with the text itself such that I can recall it.

8 Q. Are you aware that the Directive was adopted precisely
9 with a view to effectively European implementation of
10 the Convention?

11 A. Yes.

12 Q. This is what the preamble says:

13 "Recognising also that every person has the right to
14 live in an environment adequate to his or her health and
15 well-being and a duty, both individually and in
16 association with others, to protect and improve the
17 environment for the benefit of present and future
18 generations. Considering that to be able to assert this
19 right and observe this duty citizens must have access to
20 information, be entitled to participate in decision
21 making and have access to justice and environmental
22 matters and acknowledging in this regard that citizens
23 may need assistance in order to exercise their rights."

24 I will go on:

25 "Recognising that in the field of the environment

1 improved access to information and public participation
2 in decision making enhance the quality and the
3 implementation of decisions, contribute to public
4 awareness in environmental issues, give the public the
5 opportunity to express its concerns and enable public
6 authorities to take due account of such concerns."

7 Wouldn't disclosure of the BPU assessment of this
8 important and environmentally significant project serve
9 all of those aims?

10 A. Taken at that level I would agree, but that was
11 transferred into a directive and then through into the
12 Environmental Information Regulations and it's those
13 regulations that apply in the UK to which there are
14 exemptions permitted. And so while the overall thrust
15 is in accordance with the Convention itself the way the
16 UK Government has implemented those is through the
17 Environmental Information Regulations.

18 Q. Well, I'm not sure that the regulations are inconsistent
19 with either the Convention or the Directive but I have
20 already put to you the point and you have acknowledged
21 that in the context of the EIR you are not entitled
22 simply to look at those public interests that favour
23 withholding the information, you also have to take
24 account and gave due weight to public interest in
25 disclosure --

1 A. That's correct.

2 Q. And it's those interests that my questions were directed
3 at. Also, of course, you have acknowledged that you
4 yourself were aware of the Directive at that time you
5 conducted this assessment and presumably as
6 a responsible manager you would ensure that the people
7 working beneath you in BPU were also aware of the
8 effects of the Directive?

9 A. That's correct.

10 Q. You have accepted that BPU's function is to ensure that
11 the Business Principles are applied to particular
12 projects so far as environmental, social and human
13 rights matters are concerned. Would you accept that it
14 would be rather ironic, and indeed perverse, if the
15 imperative in favour of transparency that we see
16 emerging in the Business Principles did not apply to the
17 work of the BPU?

18 A. I think it applies to the work of the BPU and the rest
19 of Government and public organisations in the same way.

20 Q. So in light of the emphasis that is placed in the BPs on
21 transparency so far as the application of Business
22 Principles are concerned, it would be somewhat perverse
23 if the activities of the BPU could themselves generally
24 remain shrouded in darkness; would you accept that?

25 A. The activities of the BPU are the same --

1 Q. In terms of generating reports and so.

2 A. Are mirrored by other specialist units within ECGD and
3 across Government and the EIRs apply to them all
4 equally.

5 Q. You say in paragraph 45 that if this report is
6 disclosed, ie, your assessment?

7 A. You are talking about my witness statement now?

8 Q. Yes, I'm happy to refer you to it. Paragraph 45 of your
9 open statement. You will find your open statement
10 begins at 413 and paragraph 45 is at page 424. Just
11 take a moment to remind yourself of what you say there.
12 You say:

13 "Hitherto BPU assessments have not been disclosed.
14 If this one were to be disclosed all current and future
15 BPU staff would be aware that the assessments of all
16 cases could probably be made public in future."

17 The first point to make is that I think it's
18 important that you understand that the Commission's
19 position is not that all assessments will necessarily be
20 disclosable, our case is that every case will have to
21 turn on its own particular facts.

22 A. I understand that.

23 Q. Are you aware that the way in which the EIR and FOYA
24 applied are inherently dependent on the facts of
25 a particular case?

1 A. I am.

2 Q. So when you say, "Staff will be aware that the
3 assessments of all cases could possibly be made public
4 in the future", that is going to depend on the facts of
5 case, isn't it?

6 A. That's why there is the word "possibly" there.

7 Q. Yes. The word "possibly" can be used in another sense
8 here because the fact is you have already acknowledged
9 that civil servants working within the BPU are aware
10 that there is no guarantee that their assessments will
11 not be made public. So that possibility is there
12 irrespective of whether this report is disclosed?

13 A. The point I'm trying to make in that paragraph is to
14 indicate that that possibility will be brought more
15 clearly into focus and probably, in terms of
16 probability, raised by the initial disclosure of the
17 first one.

18 Q. When you say "possibility will be brought into focus"
19 are you saying that there is a problem within ECGD
20 because senior management knows that there is a risk of
21 disclosure because there has to be in light of the
22 Business Principles, in light of the Directive, but you
23 haven't educated your civil servants that those risks
24 are real? Is that what you're saying?

25 A. No, what I'm saying is that we are all cognisance of the

1 possibility but once it has actually happened it makes
2 it extremely clear that it is a real possibility rather
3 than just something that might happen but you don't know
4 what that probability is. Once something has happened
5 you're sure it can happen.

6 Q. So you're accepting that every case must turn on its own
7 particular facts?

8 A. I am.

9 Q. You are accepting that there was a real possibility of
10 disclosure anyway?

11 A. Mm hm.

12 Q. I'm struggling to see why the disclosure of this report
13 makes any difference to civil servants. The risk is
14 real, the risk is there, your duty is to educate civil
15 servants as to that risk?

16 A. I'm struggling to understand why you don't see the
17 difference it actually happening makes. There's
18 a possibility if I buy a ticket to the lottery that
19 I might win. It's a remote possibility. If one day
20 I do win then it will make it more real to me that
21 actually that possibility is real and it may happen.

22 Q. For a start we don't accept that disclosure in view of
23 the Directive is remote, but, in any event, the basic
24 point is that you acknowledge that you and other civil
25 servants working within the BPU are aware, quite apart

1 from disclosure of this report, there is a possibility
2 that your reports will enter the public domain?

3 A. That's correct.

4 Q. Paragraph 47, page 424. You suggest, if we look
5 actually on page 425, that members of the public, and
6 I assume you are referring to educated members of public
7 like Friends Of The Earth, for example -- I effectively
8 understand you to be saying that those members of the
9 public will already know which civil servant within BPU
10 is working on which part of the assessment process? Or
11 are you not saying that, have I misread that part of
12 your evidence?

13 A. I'm saying that the --

14 Q. I'm so sorry, I have taken to you the wrong paragraph.
15 It's my fault. Paragraph 46. I apologise. Last
16 sentence in paragraph 46:

17 "It is likely that third parties will know which
18 particular member of the BPU is working on a particular
19 assessment in a project by virtue of meetings and
20 correspondence with ECGD."

21 Yes?

22 A. That's correct.

23 Q. And in paragraph 31 you yourself allude to your own
24 engagement with NGOs. So you are, in common with other
25 members of the BPU, operating above the radar so far as

1 this particular assessment process is concerned?

2 A. I was one of the members of the lender group and UK
3 Government officials that met with NGOs, but by no means
4 the only one.

5 Q. Sure.

6 A. And the formal discussions with NGOs were, to my
7 recollection, always posted by another Government
8 department at which there were many civil servants
9 present.

10 Q. But so far as you are concerned you were operating above
11 the radar because you are attending public meetings with
12 third parties such as NGOs?

13 A. To the extent that the NGOs knew that I was one of the
14 people involved on the case, yes.

15 Q. Paragraph 40. You are confirming, and this is obviously
16 part of your open statement, that you were responsible
17 for drafting the content of the report; yes?

18 A. I was, yes.

19 Q. And it seems that you have no difficulty putting your
20 head above the parapet and giving that evidence in open
21 session to this Tribunal?

22 A. No, I don't.

23 Q. And that would suggest that you have no particular
24 concerns about identifying yourself as being the person
25 responsible for the conclusions that were released to

1 the public in the course of the internal review, because
2 we know that the conclusions of the report have been
3 disclosed?

4 A. I have no problems with the fact that I was the main
5 author of that report and that it's overall conclusions
6 were released.

7 Q. So the public knows that it was you personally that was
8 responsible for reaching those conclusions in the
9 report?

10 A. The public knows that I was the main contributor to that
11 report and the conclusions were those that have been
12 disclosed.

13 Q. You haven't answered my question. Do you want to answer
14 my question? My question was that you have no
15 particular concerns about confirming in open session
16 that you are the person responsible for the report and
17 you are the person responsible for the conclusions which
18 have been disclosed to the public? You have no concerns
19 about putting that information into the public domain,
20 it would seem?

21 A. I have not confirmed that I was the only contributor to
22 that report.

23 Q. That is not what my question was.

24 A. As head of the unit I am responsible for those
25 conclusions and, indeed, many of them were my own, but

1 I am not concerned, I am quite happy, for the public to
2 know that under my responsibility that report was
3 written. I made, contributed most of it and its overall
4 conclusions can be put in the public domain as something
5 under my responsibility.

6 Q. You say you contributed most of it, does that mean that
7 most of the assessment in the report is your
8 responsible, you were responsible for generating the
9 assessments?

10 A. Yes, it does.

11 Q. We know, apart from the evidence that you have given
12 today, that ECGD have no concerns about disclosing the
13 content of your conclusions to Corner House in the
14 context of the review?

15 A. And to repeat what Mr Dodgson said yesterday, that is
16 effectively inherent in the fact that we provided
17 support to the project and we only provide support if
18 the project meets the relevant international standards
19 in all material respects.

20 Q. Mr Allwood, we will move through this a lot more swiftly
21 if you just answer the question. It was a very simple
22 question. The question was simply: do you acknowledge
23 that ECGD had no concerns with disclosing the
24 conclusions of your report from the fact that they did
25 so --

1 A. Sometimes I feel the need to put my response in context.

2 But the answer to that question is simply, "Yes".

3 Q. I'm grateful. You have said in paragraph 45 of your
4 evidence that NGOs, ie, members of the public, certain
5 members of the public --

6 A. Can I point out that members of the public are much,
7 much wider than NGOs.

8 Q. They can be but in this context our position is that
9 Friends Of The Earth, Corner House, are effectively
10 members of the public, they are not part of the
11 institution.

12 A. No, I'm not suggesting they are not members of the
13 public, I am just reminding everyone that members of the
14 public a is much broader --

15 Q. I'm sure we are all aware of that fact.

16 A. Thank you.

17 Q. You say in your evidence at paragraph 45 that third
18 parties, and I assume that you are referring to NGOs
19 there, will know which particular member of the BPU is
20 working on a particular assessment. I'm so sorry,
21 I meant 46. Sorry, I keep confusing the paragraphs.
22 Paragraph 46, yes?

23 A. Yes.

24 Q. So members of the public, in this case NGOs, know who
25 was responsible for which bits of the assessment?

1 A. Hm mm.

2 Q. They know that the conclusions are that the BPU has
3 found that all standards have been met in respect of
4 this project because they know that from the
5 conclusions?

6 A. Correct, yes.

7 Q. And what that means is members of the public, like
8 Friends Of The Earth and Corner House, are reasonably
9 going to infer that they know which way particular
10 officials within the BPU jumped on particular issues
11 that they were responsible for? That's a natural
12 inference, isn't it?

13 A. They're going to know that the final conclusion of the
14 BPU on each issue was that we found it a material
15 compliance.

16 Q. Would you accept as a matter of common sense that if
17 members of the BPU are going to be criticised they are
18 going to be criticised in particular for the conclusions
19 that they have reached on this controversial project?

20 A. No, I don't think I will accept that that's necessarily
21 the case. They might be -- if the text of the BPU
22 opinions, BPU's assessments, were released they might be
23 criticised on small elements of that rather than the
24 overall conclusions.

25 Q. But we have a situation here where we have a number of

1 NGOs who clearly have very strong views as to the
2 legality of this particular project, whether it complies
3 with various international standards; yes?

4 A. Yeah. I think "legality" is --

5 Q. "Legality" may not be the correct term but whether it
6 complies with all the relevant standards. And it is
7 clear that there are strong views that the project, in
8 a number of material respects, does not meet standards?
9 That's the thrust of the submissions that were put
10 before you.

11 A. You were suggesting that I should agree that it is clear
12 that it does not meet it and this is not the case.

13 Q. No, I'm sorry, that is not the question I am putting to
14 you. What I'm looking at is the atmosphere in the
15 public domain and the position that has been adopted by
16 the parties and if anyone is going to criticise you
17 I imagine it is going to be they.

18 A. They were alleging non-compliance.

19 Q. They were alleging non-compliance?

20 A. Correct.

21 Q. Very strongly and robustly?

22 A. Yes.

23 Q. They now know, because of the publication of the
24 conclusions, that the BPU disagreed with them on those
25 issues?

1 A. Yes.

2 Q. If anything is going to invite criticism it's going to
3 be that you reached conclusions that in the NGOs eyes is
4 at odds with the evidence and is at odds with the
5 submissions that have been put before you?

6 A. If it's going to invite criticism of the organisation,
7 yes, I think that's correct. If it were going to
8 involve criticism of individuals then I think that only
9 when those individuals' specific views are disclosed
10 will those criticisms arise.

11 Q. The conclusions that have been published are known by
12 members of the public to, in effect, be your
13 conclusions; yes?

14 A. Yes.

15 Q. You have not given evidence of any comment, let alone
16 criticism being made of you, by members of the public,
17 by the Friends Of The Earth or individuals, in
18 connection with the publication of those conclusions?

19 A. That's correct.

20 Q. If you cannot even identify a single comment, let alone
21 a criticism, in respect of your conclusions on this
22 highly controversial project it's a reasonable inference
23 to draw that there is unlikely to be personal criticisms
24 emerging if you publish the reasoning?

25 A. No, I disagree with that.

1 Q. On what basis?

2 A. My experience has been that once detailed text, either
3 that I have written or have spoken, has been put into
4 the public domain then parts of that have been taken out
5 of context and used as public criticism of either myself
6 or the Department.

7 Q. Well, we have seen no evidence of that in your witness
8 statement which is the place one would expect it to be?

9 A. Because my memory is not something that I can actually
10 provide evidence, hard evidence, of.

11 Q. That would suggest that these criticisms were not
12 particularly significant if you can't actually remember
13 them?

14 A. No, I can remember them but I cannot provide evidence of
15 that apart from my memory. I can't substantiate them.

16 Q. At the time this request was being made obviously you
17 had completed your report; yes?

18 A. Sorry, I had ...?

19 Q. At the time the request was made, which was in August
20 2005, you had completed your report?

21 A. Yes.

22 Q. The relevant administrative decision had been taken?

23 A. Yes.

24 Q. The pipeline was close to completion?

25 A. Yes.

1 Q. And, as Mr Dodgson conceded in his evidence, the
2 administrative decision at that point was water under
3 the bridge because the project had happened, the
4 financial support had been given?

5 A. Yes.

6 Q. Would you accept that 18 months after the relevant
7 administrative decision has been taken that disclosure
8 would be made at a time when much of the heat in
9 relation to this controversial project, I'm not saying
10 all of it but much of it, will have dissipated?

11 A. No, I think there was still a fair amount of heat about
12 this project in the eyes of a number of people.

13 Q. Despite that, as you acknowledge, and despite the fact
14 there was disclosure of the BPU's conclusions, you have
15 not given evidence of any public backlash or complaint
16 or criticism?

17 A. That is correct.

18 Q. You say in paragraph 48 of your statement, page 425:

19 "If disclosure of BPU reports in their entirety to
20 interested potentially highly critical third parties
21 became the norm I would anticipate great difficulty in
22 recruiting experienced environmental specialists to the
23 BPU or retaining such specialists."

24 Would you accept we are not talking about things
25 becoming the norm in this case, we are talking about

1 a particular case that must be decided on its own
2 particular facts?

3 A. I agree we have agreed that it will be on a case by case
4 basis but, as I have pointed out, once there is hard
5 evidence that a report has been disclosed then there
6 will be an expectation in people's eye that future ones
7 will be disclosed. It may not be a correct expectation
8 but there will be an expectation of that. And I believe
9 that the potential risk of public criticism in the media
10 where they would not be able to respond would deter
11 people from applying for posts in the BPU.

12 Q. You said there that there would be an expectation, you
13 then went on to say it may not be a correct expectation.
14 The fact is it would not be a correct expectation
15 because, as you acknowledge, every case must be decided
16 on its own particular facts?

17 A. I can't change human nature.

18 Q. Well, let's think about that for a moment. It's your
19 job, isn't it, to educate civil servants to ensure that
20 their expectations are realistic and correct?

21 A. Yes, it is, but I can't talk to reassure potential
22 applicants for a job that have seen an advertisement and
23 are considering whether or not to apply if they have
24 seen evidence that holders of that post have been
25 publicly criticised in the media.

1 Q. Wouldn't you accept, in light of the Directive and in
2 light of the Business Principles, that you are subject
3 to a duty to inform potential applicants that because of
4 the pressures on public authorities that hold
5 environmental information to disclose you can offer them
6 no guarantee that the reports that they generate will
7 not be disclosed to the public?

8 A. I think that that would be a very wise thing to do and
9 we would probably do it, but what I can't do is to --
10 what that will put into potential applicants' minds is
11 that if I apply for a job in the private sector or in
12 a similar job in IFC or EBRD, where their policies
13 explicitly say internal reports will not be disclosed,
14 then a very competent environmentalist that I would like
15 to recruit would look at that, would look at the
16 competition and would think, "Well, why would I put my
17 personal credibility at risk".

18 Q. That is a risk that they face in any event?

19 A. Only if they work for the UK civil service.

20 Q. Yes, and if they work for the civil service that is
21 a risk they face in any event?

22 A. But if they are applying to the UK civil service or
23 considering it then that is a real risk in their mind,
24 that one way they take the risk, going another way they
25 don't take the risk, so which would they choose.

1 Q. I'm sure that is an argument that could be prayed in aid
2 across the civil service. I'm not sure it's an argument
3 that carries much weight but I will make submissions on
4 it in due course.

5 You said that there would be criticism of
6 individuals. Realistically speaking the criticisms are
7 likely to come, for example, from Friends Of The Earth,
8 Corner House and so on; correct? They're the entities
9 with the strongly held views?

10 A. If they held criticisms regarding those particular
11 issues then, yes.

12 Q. Would you accept that it's reasonable to assume that
13 there would be a fair degree of responsibility in terms
14 of how organisations like Friends Of The Earth and
15 Corner House use this information in that they are
16 likely to use the information, if they're going to
17 criticise anyone, to criticise the minister, to
18 criticise the Department as a whole?

19 A. It's only in my memory and it's not down on paper so
20 I apologise, it may be admissible, but I have been told
21 by a member of the NGO, of an NGO, that although they
22 were aware that information they were going to put in
23 the public domain in a report was factually incorrect it
24 made a good story and, therefore, they were going to
25 publish it. I also know that an interview I gave was

1 reported later in a totally out of context way. So
2 I can't agree with that, I'm afraid, my experience is
3 different.

4 Q. Obviously Mr Hildyard can give evidence on the position
5 so far as Corner House is concerned. The examples you
6 have given are fairly general examples, they are not
7 examples of NGOs basically conducting personal attacks
8 on individual civil servants. You have given an example
9 of you giving an interview, presumably publicly, and
10 being cited out of the context.

11 A. My recollection is as a result of the interview the out
12 of context statement was, "Mr Allwood said".

13 Q. That's a different issue, isn't it? It may be something
14 that you said in a public interview was misquoted. That
15 is a different matter. What is being suggested here --

16 A. How is that different from me providing an opinion on
17 paper and it being misquoted in public?

18 Q. Well, if your opinion is misquoted, it is misquoted and
19 the response of the Department can be, "Actually that is
20 a misquote from the document".

21 A. But the Department of civil servants do not have the
22 opportunity to respond.

23 Q. Well, I'm not sure that your example has much practical
24 reality because there is always a risk with any
25 information that is disclosed by a public authority that

1 it will be misquoted.

2 A. That's why I am perfectly happy with the commitment we
3 made to the Trade and Industry Committee, that we
4 followed up to the Environmental Audit Committee, the
5 commitment that ECGD will publish, immediately following
6 its decision, a note of decision addressing all of the
7 issues raised by interested parties, how they were taken
8 into account and what our response was. That will be
9 an ECGD report, it will not be a report written by
10 a single identifiable civil servant.

11 Q. But that is not what has happened in this case, is it?

12 A. That is not what has happened in this case. That is
13 what we have committed to following that.

14 Q. In this case, as Mr Dodgson conceded in his evidence,
15 members of the public have been left completely in the
16 dark as to how this assessment process was carried out
17 in terms of the substance of the analysis?

18 A. That's the case.

19 Q. You say that you would anticipate great difficulty in
20 recruiting experienced environmental specialists if the
21 report is disclosed. That is paragraph 48 of your
22 statement. You have not given evidence that you have
23 been unable to recruit individuals to work for the BPU
24 since this matter first became an issue in August 2005?

25 A. No, I haven't, but we are recruiting at the moment so

1 I will know shortly.

2 Q. We have to go on the evidence that you have given over
3 the intervening four years.

4 A. I think there is more information we can give in closed
5 session.

6 Q. We will discuss that in closed session but my question
7 was very specifically whether you have been unable to
8 recruit individuals and your answer is, "No, at least
9 not so far"?

10 THE CHAIRMAN: I think his answer was that it hasn't arisen.

11 MS PROOPS: I don't want to probe any further because we
12 will deal with that in closed session.

13 You have acknowledged the importance of the work
14 done by the BPU and Mr Dodgson accepted that the BPU
15 effectively has an important and fairly prestigious
16 role. Would you accept that also?

17 A. I trust it's important. I don't think it's prestigious.

18 Q. You disagree with Mr Dodgson in that respect? Would you
19 accept that given its importance it's likely that career
20 civil servants are going to be keen to participate in
21 the unit as an important way of furthering their
22 careers?

23 A. No, I don't think so because the roles within the BPU
24 are for environmental specialists, not for career civil
25 servants.

1 Q. Let me put it this way: for civil servants with
2 environmental specialist expertise?

3 A. Of which there are very few.

4 Q. Be that as it may, it's still going to be an attractive
5 option because of its importance?

6 A. No, I don't think it's any more attractive than other
7 roles within Government.

8 Q. So you again disagree with Mr Dodgson on that issue?

9 I'm not going to ask you questions about your
10 evidence on candour because that's not in issue in this
11 case.

12 Just a few further questions, I know I have taken
13 a quite a long time, on the Turkey information and I'm
14 not going to ask you questions in open session about
15 that information, what I want to do is ask you some
16 questions about flash report, which we can deal with in
17 open session.

18 A. Which bundle?

19 Q. It's bundle 3, page 1041. There has obviously been some
20 discussion as to whether this document should have been
21 disclosed, whether it was disclosure was authorised and
22 our position is that until we get authoritative
23 confirmation from the FCO that its disclosure wasn't not
24 authorised that's the position we're going to adopt.

25 If we turn to page 1045, please. I don't want to

1 spend too long on this because we have had some pretty
2 clear evidence from Mr Dodgson as to the content of this
3 document. Mr Dodgson accepted that if you look at
4 page 1045, the paragraph above the paragraph you were
5 taken to in-chief and the reference to BOTAS:

6 "BTC/BOTAS do not appear to have given any
7 consideration to how ...(reading to the words)... might
8 be given back to the previous owner."

9 Would you agree with the evidence given by
10 Mr Dodgson that in fact that is a trenchant criticism of
11 an organ of the Turkish State?

12 A. No, I would not agree with Mr Dodgson.

13 Q. In what respect?

14 A. The main criticism is of the BTC company because it
15 would have been the BTC company that would have or
16 should have, in my view, been encouraging the consortium
17 to make the consideration about returning to use,
18 returning to ownership. I don't think it's a particular
19 criticism of BOTAS because I don't think BOTAS normally
20 worried about such things.

21 Q. You understand that we have to distinguish between what
22 might have been going though on in your mind and what
23 you have actually said in the document, because what you
24 have said in the document is BTC/BOTAS?

25 A. That's correct.

1 Q. So the document, whatever you may have intended to say,
2 appears to incorporate a trenchant criticism that is
3 directed at both the BTC and at BOTAS?

4 A. I take -- I don't like the word "trenchant". The words
5 there are critical of both BTC and BOTAS.

6 Q. What is interesting is that Mr Dodgson, who was not
7 reading this document from the perspective of having
8 drafted it, and it was actually his word "trenchant",
9 his perspective was that this was a trenchant criticism?

10 A. I'm not disputing what he said.

11 Q. Turn to page 1046. Again, we have specific reference
12 not just to the BTC but also to the BOTAS Land
13 Acquisition Team. You were asked some questions about
14 how many employees of BOTAS formed part of the Land
15 Acquisition Team as a proportion of the total number of
16 employees employed by BOTAS. The basic point is that
17 the people who are working who have been seconded from
18 BOTAS are acting as representatives of BOTAS in this
19 context, aren't they?

20 A. That's one way of describing it, yes.

21 Q. Well, is it accurate?

22 A. I think as an employee of BOTAS one is always
23 representing the company but they were working for the
24 BTC project part of the company rather than the overall
25 conglomerate.

1 Q. As representatives of the BOTAS. Your document doesn't
2 simply remember to BTC, it also refers very specifically
3 to the BOTAS Land Acquisition Team, so this organ of the
4 state is firmly in the picture in terms of analysis at
5 this stage, isn't it?

6 A. Those members of it are, yes.

7 Q. Those representative members. And what you are doing in
8 this part of the document is questioning the
9 consistency, transparency and honesty of this particular
10 team; yes?

11 A. That's correct.

12 Q. And the team includes BOTAS representatives; yes?

13 A. Yes.

14 Q. Again, try to judge the document not from the
15 perspective of having written it but from the
16 perspective of a reader, would you accept that that is
17 a fairly trenchant criticism of both the BTC and of
18 BOTAS? That is how it is likely to be read, isn't it?

19 A. I would read it as being a criticism of those people
20 identified, ie, the project team, rather than the
21 organisations that they work for.

22 Q. That is despite the fact that you have, in the
23 preceding sentence, referred explicitly to the BOTAS
24 Land Acquisition Team and said:

25 "BTC's social coordinator and the BOTAS Land

1 Acquisition Team would not confirm that this was the
2 case and offered other excuses for using article 27
3 rather than article 10. This lack of consistency,
4 transparency and honesty from the project team is very
5 disturbing."

6 It is quite clear that you are drawing within the
7 frame of your criticism representatives of BOTAS; yes?

8 A. That they were members of the project team, yes.

9 Q. And you are not simply saying, "It is a bit unfortunate
10 they got a bit of the process wrong", you are actually
11 questioning their honesty here?

12 A. That's what it says.

13 Q. It is a serious matter?

14 A. It is a serious matter for those individuals.

15 Q. It's likely to be a sensitive matter, one would assume,
16 from the political point in terms of our relationship
17 with Turkey? Maybe you can't comment? I appreciate
18 that it may be the FCO --

19 A. I would not have anticipated it being that sensitive
20 that a few members of BOTAS were questioned in this way.

21 Q. You would not consider it sensitive that representatives
22 of an organ of state that their honesty was being
23 questioned?

24 A. It depends how you phrase the question, doesn't it?

25 Q. Well, I would suggest not. It is right to say, is it

1 not, that in respect of the Turkey information about
2 which I do not want you to make any explicit comments
3 but the ECGD is relying, in effect, on evidence from the
4 FCO in support of its case as to the sensitivity of this
5 information. Would you accept that?

6 A. Um, FCO has reinforced and confirmed our initial views.

7 Q. But we have had no explanation or evidence from the FCO
8 as to why on the one hand they were content to disclose
9 this information which we say, as a matter of common
10 sense, seems to be sensitive vis a vis your relationship
11 with Turkey, as against the Turkey information?

12 A. We would have some information about the other
13 information that we were discussing in closed session.
14 We have no information about this.

15 Q. That is all I have.

16 THE CHAIRMAN: We will have a break there, that is
17 a convenient moment. Do you have any idea of timing?

18 MR MICHAELS: I am intending to stick, as I have tried to
19 religiously, to the time limits I have agreed. That is
20 no criticism of Miss Proops because that was extremely
21 helpful. I have been allotted 45 minutes and I suspect
22 I will need that.

23 THE CHAIRMAN: You need your 45 minutes.

24 MR MICHAELS: It does leave me with concerns about the
25 remainder of the timetable which I suspect we may need

1 to discuss at the end of the day.

2 THE CHAIRMAN: I think we will look to be carrying on a bit
3 later tonight if we can do that, including the
4 transcribers. Let us take the break now.

5 MS PROOPS: I would hope to be certainly shorter with
6 Mr Allwood in close than I was with Mr Dodgson but we
7 will see how we go. Famous last words.

8 MR MICHAELS: Let us come back at half past.

9 (3.16 pm)

10 (A short break)

11 (3.31 pm)

12 A. Can I just add a little bit of extra evidence?

13 MS PROOPS: No, not as far as I am concerned.

14 THE CHAIRMAN: Sorry, what was the question?

15 A. A little piece of extra evidence occurred to me during
16 the break.

17 THE CHAIRMAN: Would you like to expand on one of your
18 earlier answers?

19 A. Yes, that is correct.

20 MR MICHAELS: Go on.

21 A. Simply to say that I was asked about recruitment of
22 civil servants and I can confirm that current
23 recruitment that we have just completed the shortlisting
24 of, none of the applicants were from the Civil Service.
25 We only received applications from outside the

1 Civil Service. The BPU is not attracting, apparently,
2 civil servant environmental specialists.

3 THE CHAIRMAN: Mr Michaels?

4 Cross-examination by MR MICHAELS

5 MR MICHAELS: When you were asked by Ms Proops -- or you
6 suggested to Ms Proops that the process of inviting
7 comments in this case was the same as with all projects.
8 You then went on to qualify that to say that, in fact,
9 it is the same as all high potential impact cases rather
10 than all projects?

11 A. That's correct.

12 Q. That is correct? Roughly how many higher potential
13 impact cases does the ECGD deal with each year?

14 A. Um, we get applications or enquiries about half a dozen
15 each year. It varies from year to year. We actually
16 issue support for maybe one a year.

17 Q. So it is fair to say that high potential impact cases in
18 which the BPU get round to producing a final BPU report
19 are very rare?

20 A. If you define rare as one or two a year, yes.

21 Q. Of those high potential impact cases, how many would you
22 say, since 2002 say, have compared in terms of
23 complexity and controversy with the BTC pipeline?

24 A. One has been more complex, two or three have been less
25 complex.

1 Q. So this is certainly one of the most complex and, would
2 it be fair to say, controversial of the last seven
3 years?

4 A. In terms of generating interest from external parties,
5 this and one other were the two that have generated
6 most.

7 Q. That one other would be Saklin(?)?

8 A. Would be Saklin, that's correct.

9 Q. Which was the subject of previous Information Tribunal?

10 A. Yes.

11 Q. One of the issues that you were asked about earlier was
12 the extent to which your head is above the parapet and
13 you sought to draw a distinction, as I understand it,
14 between the Senior Civil Service and yourself in terms
15 of exposure to public comment and criticism. Is that
16 correct?

17 A. I sought to draw a distinction between the expectation
18 of public exposure between senior, members of the
19 Senior Civil Service who I would expect to have the
20 exposure and members of the ordinary Civil Service that
21 I would not expect to have that exposure.

22 Q. You said you expect, in effect, protection for you and
23 your team from that sort of glare?

24 A. I think that is inherent in the exposure of
25 Senior Civil Service and non-exposure of more junior

1 members of the team.

2 Q. I would like to suggest to you, that is where these
3 questions are going, that the line is not quite that
4 clear, particularly in the case of the ECGD. If I can
5 ask you to turn to page 354 of bundle 1. This is the
6 Trade and Industry Select Committee report that has been
7 discussed several times previously in this hearing. Do
8 you recognise it?

9 A. Yes.

10 Q. You gave evidence, did you not, to that
11 Select Commitment?

12 A. I did.

13 Q. You have given evidence to other Select Committees in
14 the past?

15 A. I believe that is correct, but I believe it is unusual
16 that members below the Senior Civil Service would give
17 evidence.

18 Q. Whether or not that is the case, you have given evidence
19 to the Select Committees on more than one occasion in
20 relation to the work of the BPU?

21 A. That's correct.

22 Q. Could you say on how many occasions?

23 A. At least two. I am trying to remember if the third one
24 I actually gave evidence directly or supported.

25 Q. In this case, not only did you give evidence but you

1 gave evidence on an extremely controversial project. Is
2 that the case?

3 A. I gave evidence on the BTC project, yes.

4 Q. You gave evidence not merely on the BPU's overall
5 processes, but the way in particular in which the BPU
6 handled the BTC project. Is that correct?

7 A. Yes.

8 Q. If I can ask you to turn to page 363. Paragraph 31,
9 five lines from the bottom, reads:

10 "ECGD's business principle adviser, David Allwood,
11 was satisfied that the construction defects identified
12 by BCC --"

13 That is Baccu (?) (indistinct) Campaign, is it?

14 A. I believe so.

15 Q. "Had been remedied by the company which had discovered
16 the problem with defective welding during its own
17 quality assurance procedures."

18 Now, that is a case in which you are both expressing
19 an opinion about your assessment of an aspect of the BTC
20 report, is that correct?

21 A. Not quite. I am expressing an opinion that is informed
22 by others rather than by my own due diligence.

23 Q. Well, you are saying that you, assuming this is
24 a correct summary of your evidence, it says that you,
25 David Allwood, were satisfied that the construction

1 defects had been remedied?

2 A. Yes, that is not because I had personally been out and
3 checked them, it is based on evidence that has been
4 provided to me.

5 Q. Indeed. But your opinion on the basis of evidence
6 provided to you was that you were satisfied in this
7 regard?

8 A. Yes.

9 Q. Now, it seems to me that is a clear example of two
10 things. The first is of you very publicly putting your
11 head above the parapet in relation to the precise issues
12 and the precise subject matter that is the subject of
13 this tribunal. Is that correct?

14 A. Yes.

15 Q. The second is that it is you providing the public,
16 through Parliament in this case, with your assessment in
17 respect of one particular aspect of that project, albeit
18 based on the evidence given to you?

19 A. That's correct.

20 Q. Can you explain, therefore, what the difference is
21 between you giving your opinion in this way and putting
22 your head above the radar in this way and your opinion
23 being given through publication of your assessment in
24 the final BPU report?

25 A. The difference is that one giving evidence to the

1 Parliamentary Committee of those -- the panel of ECGD
2 and I cannot remember if the Minister was there or not,
3 before the Committee I was best placed to provide the
4 information and did so upon a direct request from the
5 Committee. The (indistinct) was there to provide as
6 much explanation of my reasoning as they decided to
7 enquire about. The difference, well, the BPU reports,
8 the BPU assessments, similarly is a written for the, in
9 this case, Underwriting Committee, now Risk Committee,
10 with a view to providing, effectively, a summary of the
11 due diligence that we have carried out in the
12 expectation that if they have further enquiries to drill
13 down below that, then they are able to do so at the
14 meeting on a face to face basis.

15 Disclosure of the written text of BPU's assessment
16 potentially puts that text into the public domain where
17 it may be used in public against members of the BPU, and
18 in this case me, in a situation in which I could not
19 explain further. And so, the problem with providing BPU
20 assessment in the BPU report is that it does not
21 necessarily cover all the detail that would potentially
22 be required for a reader of it to fully understand the
23 justification of the conclusion.

24 Q. But surely in this case precisely the same issues, in
25 fact, that you raise in respect of the BPU report arise

1 here? You have been quoted here, and it is perfectly
2 possible that you could subsequently be quoted out of
3 context, is that not the case?

4 A. But --

5 Q. It is a relatively --

6 A. -- the context is very clear here and in the public
7 domain and was the evidence -- the evidence was provided
8 as oral evidence during the Select Committee enquiry.

9 Q. Indeed it was, but it then gives rise to a published
10 statement in the form of this report to which you have
11 made no objection, to which you and your employers
12 volunteered you be put, which leaves you open to
13 precisely the criticism about which you expressed
14 concern earlier. I see no distinction.

15 A. In that this is a report of my views and the BPU
16 assessment is a report of my views, yes there is no
17 distinction.

18 Q. Thank you. Similarly, you have given evidence in
19 respect of other aspects of the same project in 2004 and
20 the reference for that is at page 1048 which is in
21 bundle 3. In this context, once again, your employers
22 invited you to give evidence to the Select Committee in
23 relation to your consideration of aspects of the
24 BTC pipeline. Is that correct?

25 A. I don't think I was given too much choice, but yes.

1 Q. Indeed, your employers thrust you into the limelight in
2 that case. Now, in that particular evidence session you
3 were giving evidence principally upon the issue of
4 pipeline coating. Is that your recollection or would
5 you rather I took you to a specific element?

6 A. Having just quickly glanced at page 1015 it has
7 confirmed your comment that particular line of
8 questioning was about pipeline coating, yes.

9 Q. Indeed. That was the area that you were invited to give
10 evidence on. Now, was that something that you had
11 considered in your assessment of the BTC project?

12 A. No, it was not.

13 Q. So on the basis that you had not considered the pipeline
14 coating in the context of the BTC project, why were you
15 giving evidence about it to this
16 Parliamentary Committee?

17 A. Because the member of ECGD's staff whose responsibility
18 it was to consider the technical issues had prior to
19 this Committee evidence session left the department and
20 I was considered to be the best person within ECGD to
21 provide the evidence.

22 Q. That person who had left the department was not a member
23 of the BPU?

24 A. That's correct.

25 Q. You were though, in this case, being asked to give

1 evidence on what was a highly controversial issue at
2 this stage, having just been the subject and you will
3 correct me if this is wrong, of a major piece of Sunday
4 newspaper media coverage?

5 A. Yes, it had.

6 Q. Similarly, the example that we looked at previously in
7 which you were giving evidence in respect of the
8 welding, that was also a situation in which there had
9 recently been a major piece of media coverage?

10 A. That's correct.

11 Q. Have you, as a result of your evidence to the
12 Select Committee in either of those cases on those
13 controversial issues, faced any particular personal
14 criticism or personal challenges about your conduct or
15 views?

16 A. No, I haven't.

17 Q. Does that not give an indication that contrary to your
18 suggestions and your evidence it is, in fact, perfectly
19 possible for you to give your views on extremely
20 controversial elements of extremely controversial
21 projects in the public domain and not face any serious
22 risk of personal criticism?

23 A. The two examples demonstrate that it is possible that I
24 can give evidence about sensitive issues and not be
25 challenged, but it does not provide conclusive evidence

1 that I would not ever be challenged.

2 Q. But it certainly does not support your speculation that
3 you might be challenged if in cases, the very rare
4 cases, where you are publicly giving your views on
5 controversial issues on a controversial project you do
6 not, in fact, receive any such personal criticism?

7 A. I would speculate that the reason I was not challenged
8 here was because it was recognised that they were not
9 issues on which the BPU had responsibility. That would
10 be speculation, but I am aware that what I have said in
11 public has been taken out of context and so I remain of
12 the view that because it has not happened so far on BTC
13 would not mean it would never happen.

14 Q. Moving to a different topic. The issue of recruitment
15 has been covered and you have given some further
16 evidence, I wish to touch on it very briefly. At the
17 time you took up your post, you will remember that there
18 will have been one particularly controversial ECGD
19 project at that time?

20 A. Can I volunteer it was the Illisudam (?).

21 Q. It was. That would have been equivalent, roughly
22 equivalent in terms of complexity and controversy to,
23 say, this project or Saklin?

24 A. Possibly higher in terms of complexity and controversy
25 than BTC.

1 Q. Higher? At the time you took up this job, you were
2 aware of the huge public controversy that surrounded the
3 issues on which you would be working?

4 A. Yes.

5 Q. Presumably you were aware that you were taking on
6 an extremely public facing role in terms of dealing with
7 the stakeholders who would be likely to engage with you
8 on such controversial projects?

9 A. I don't think, actually, I was as aware as you are
10 implying on the basis that I was taking on a role within
11 the troops section of the Civil Service rather than the
12 Senior Civil Service grades and I was taken on overall
13 to provide advice to members of the Senior Civil Service
14 and ministers. I was not aware of the potentially
15 public facing nature of the role.

16 Q. Presumably your role, even at that time, would have been
17 the person with whom stakeholders, had they wished to
18 engage on a particular project, would have engaged?

19 A. Not initially, no.

20 Q. So that would only have been after you drafted the
21 Business Principles Unit report?

22 A. Well --

23 Q. Business principles?

24 A. I joined the department in October 2000. My first role,
25 or my first target, was to complete the drafting of the

1 statement of business principles by the year end and so
2 that was what I focused on and we achieved that with its
3 publication on 14th December. Then alongside that I was
4 developing the case impact analysis process to implement
5 those principles and it was only once we had that in
6 place that I started to consider individual cases.

7 Q. So, in fact, it was the drafting of the business
8 principles that would have, in a sense, put you above
9 the radar? It would have made you the named contact for
10 the ECGD on controversial issues?

11 A. No, the drafting of the business principles was led by
12 a member of the Senior Civil Service, I did the
13 document.

14 Q. The result of that was that there then became a process
15 of prior disclosure and a named individual who would be
16 the contact point for NGOs wishing to --

17 A. The contact point is the Business Principles Unit, not
18 a named individual.

19 Q. Are you suggesting that your e-mail address is not the
20 one that is given?

21 A. I think it says please send your written information to
22 BPU@ECGD.gsi.gov.uk. I believe we could check, it is in
23 the open evidence.

24 Q. Is it not the case that the creation of a process
25 whereby members of the public are invited to engage with

1 the Business Principles Unit is always going to result
2 in that unit and its senior person being -- let us put
3 them one stage at a time. Firstly, being known to the
4 relevant community of interested stakeholders,
5 personally known to them?

6 A. First of all, the notice does not invite, it provides
7 an opportunity to provide copies. But, yes, the person
8 who is head of the Business Principles Unit is
9 well-known.

10 Q. Also, that person then will be the focus for engagement
11 on a range of controversial issues, including in public
12 meetings?

13 A. Yes, I would accept that.

14 Q. I would like to move on to a different issue, which is
15 to look at the flash report, taking you back to that
16 flash report that we have looked at previously.

17 Page 1041, bundle 3. I do not wish to go over the same
18 issues that have been put to you previously, I wish to
19 raise first of all a more general issue and then one or
20 two specific points. The general issue is this. This
21 is a report, is it not, that is full of your opinions
22 and of your assessment of the project as at the date of
23 that report?

24 A. It is.

25 Q. It is. Working on the assumption, as we do currently,

1 that the FCO intended to publish this, what is the
2 difference in your view, if any, between the publication
3 of these assessments and the assessments in your final
4 report in terms of the harms that you are concerned
5 with?

6 A. Well, I am afraid I have to preface my answer by saying
7 I was not consulted about the release, the disclosure of
8 this report, apart from on the understanding that it
9 could not be disclosed. So I have not made any comments
10 to any other department about whether or not it should
11 be disclosed or partly disclosed.

12 Q. Let me check that. I had understood previously that you
13 were consulted and you had expressed your view that it
14 ought not to be disclosed?

15 MS CALIGHAN: That is not the way I put the question, in
16 fact.

17 A. Shall I explain?

18 MS CALIGHAN: To the extent that it does not take you into
19 closed evidence.

20 A. It was within a large number of documents which were
21 potentially -- were the subject of a request for
22 information. When I saw the list of those documents,
23 I understood from that the FCO did not intend to
24 disclose it. I therefore did not review it myself.
25 I only reviewed the documents that the FCO were

1 considering disclosing that potentially had involvement
2 of the ECGD and, therefore, I limited my review to those
3 documents. So at that time when I had the possibility
4 to review this document, my understanding that the whole
5 document would not be disclosed and, therefore, I did
6 not review it.

7 Q. Nonetheless, for whatever reason we have no further
8 evidence at that stage, the Government did decide to
9 release this report. Are you aware that this report was
10 submitted to a Parliamentary Select Committee in 2008?
11 Was referenced in a submission to
12 a Parliamentary Select Committee in 2008?

13 A. I have only become aware of that through the evidence of
14 this tribunal.

15 Q. Are you aware that this report would also have been made
16 available to BTC or BP?

17 MS CALIGHAN: Sorry, can I clarify, is the question being
18 posed that it was in fact made available or could have
19 been made available?

20 MR MICHAELS: It was in fact made available.

21 A. I am not aware of that, no.

22 Q. Have you had any comments made to you by anybody prior
23 to this tribunal hearing about the contents of this
24 report?

25 A. No, otherwise I would have been aware they had received

1 a copy of it.

2 Q. You have not received any comments from BTC or BP or
3 anybody else?

4 A. No.

5 Q. One of the aspects, one of the reasons we say that the
6 flash report is important, is because it gives, it sets
7 out a snapshot in terms of your assessment of the
8 project as a particular point in time and then leaves
9 the public, later on at the stage at which you give your
10 final assessment, not knowing how those concerns were
11 resolved. Would you accept that is the case?

12 A. I think that might get me into closed information, but
13 in general I think that is correct.

14 Q. I will leave that as an issue for the Tribunal and the
15 Commissioner to probe further in closed. If I can put
16 an example to you. You say at page 1043, at the top,
17 you refer to:

18 "The lack of sophistication of the
19 Georgian legislation [that is your comment] relating to
20 land ownership and the current inability of non-owners
21 to impose restrictions on use on owners means that BTC
22 Georgia has not yet identified the mechanism for
23 returning ownership or formal usage rights of land
24 acquired for the rights of way to the previous owners."

25 You identify, therefore, a problem at that stage?

1 A. Correct.

2 Q. Yet, are you able to point in the open elements of the
3 BPU report, the non-redacted, to how that problem has
4 been resolved?

5 A. I don't think so.

6 Q. No. Similarly, and this was an issue that you were
7 taken to before but I would like to raise it in
8 a slightly different context which is this context. Two
9 pages on, which is 1045, this is the issue of the
10 Rural Urban Development Foundation attending only some
11 of the meetings. You say:

12 "I believe this is a major flaw in the process and
13 BTC should be requested to take immediate action to
14 address this."

15 Now, in the BPU report, if we go back to page 104 of
16 bundle 1. You have already noted, and it has already
17 been noted on several occasions, that that concern is
18 set out in identical, almost identical, language in this
19 second paragraph from the bottom, second sentence:

20 "However, unlike in Azerbaijan and Georgia RUDF was
21 only contracted to attend a sample of all the
22 negotiation meetings and not required to provide any
23 assistance to the people whose land was being acquired."

24 That is the same language as in your report?

25 A. Yes.

1 Q. It then goes on to set out another view which is the
2 view of the IFC?

3 A. It does not set out a view, it sets out a comment.

4 Q. It is, with respect, it is competing evidence, is it
5 not? Is it your position that it is implicit from that
6 the ECGD accepted that evidence in preference to other
7 evidence given? Is that your assessment?

8 A. What it says is that the IFC specialist said that he had
9 observed RUDF providing advice.

10 Q. Indeed. Did the BPU prefer that, accept that evidence,
11 to evidence that was being given by other NGOs to the
12 contrary?

13 A. Sorry, can you take me to where there is evidence that
14 other NGOs have alternative views?

15 Q. Well, put it differently, is it the case that then BPU's
16 assessment was --

17 MS PROOPS: I am sorry, I am being told that people cannot
18 hear the witness again. Sorry, I apologise for
19 interrupting.

20 THE CHAIRMAN: Can you keep your voice up.

21 MR MICHAELS: I may be taking you into closed session in
22 which case I will leave it for the Tribunal or the
23 Commissioner to probe this further, but is it the case
24 that the BPU's assessment then was that RUDF did, in
25 fact, provide advice directly to landowners?

1 A. The BPU's assessment was that the terms of reference for
2 RUDF did not include providing assistance, but that RUDF
3 had been observed to provide some assistance and the
4 final sentence of that paragraph indicates that
5 following the intervention by the specialists of these
6 ECAs, the terms of reference for RUDF were changed so
7 that they explicitly would provide that assistance.

8 Q. If I can move on, bearing in mind the time limit I have
9 tried to set myself. You received lots of submissions
10 from civil society stakeholders in this case which made
11 detailed and serious allegations about non-compliance
12 with various (indistinct) and other international
13 standards?

14 A. I did.

15 Q. It was your role then to assess whether or not those
16 allegations were correct?

17 A. On behalf of ECGD, yes.

18 Q. Of course. The BPU's role and your responsibility as
19 head of BPU?

20 A. Those allegations were sent to most, if not all, of the
21 lender group and we worked as a team to address them.
22 So we considered them both individually and as a group
23 of specialists.

24 Q. Now, to the extent that you ultimately concluded that
25 there were, in the final analysis, no breaches or

1 violations of the international standards, that is
2 correct? The relevant --

3 A. No material breaches.

4 Q. No material breaches of the relevant international
5 standards. There were three bases on which you could
6 have reached that conclusion, I would suggest. The
7 first is that the allegations were not relevant, they
8 did not relate, they were not relevant and did not
9 relate to relevant international guidelines or
10 standards. The second was that you investigated and
11 reached a different analysis on either the facts or the
12 law so that there was compliance. The third was that
13 although there was an issue, subsequent events and
14 intervention have brought it into compliance?

15 A. Those are three valid options, yes.

16 Q. I cannot think of a fourth at the moment but it may
17 emerge. Looking at each of those in turn, if the
18 matter, the alleged violation, was not relevant, first
19 of all, what would be the harm in telling the relevant
20 NGO who had made it that was not a relevant submission?

21 A. At the moment I cannot think of one.

22 Q. Do you think there would have been a benefit to telling
23 them that in the sense that it would allow them in
24 future to better target their representations to you and
25 therefore, perhaps, not to waste your time?

1 A. It could have had that effect.

2 Q. If the alleged violation was determined by you to have
3 some substance and yet you and the rest of the lender
4 group took action with the ETC so as to bring the issue
5 into compliance, again, what would be the harm in
6 telling the stakeholder who made that assertion that
7 their representation had triggered action and the issue
8 had now been resolved?

9 A. We may be able to short circuit these questions by me
10 pointing out that both IFC and EBRD provided a detailed
11 response to stakeholders about their allegations at the
12 time of making their decisions. So those two
13 organisations obviously thought there was value in doing
14 that and that was part of their process. ECGD has now
15 committed to do something similar to that for future
16 projects.

17 Q. I will come back to the issue of the IFC --

18 THE CHAIRMAN: I am not sure the witness has finished his
19 answer. Had you finished your answer?

20 A. So what would be the harm, no, I do not think there
21 necessarily is one but those responses are significantly
22 longer and more detailed than the BPU assessment
23 sections within the BPU report because those sections
24 only provide the summary headlines and
25 Underwriting Committee members were able to, and did,

1 probe deeper about the details. So as and when we
2 support another high potential impact case, I would
3 anticipate that the response we give, the information we
4 give, will be more substantial than that contained in
5 the BPU report.

6 Q. I understand that. But your answer to my specific
7 question was that you could not identify any harm in the
8 disclosure that I --

9 A. In providing a full response, no.

10 Q. No. Do you accept that there would be benefit to doing
11 so in the sense that it would better allow stakeholders
12 to engage with you?

13 A. In that it would provide them with confirmation that we
14 had addressed their issues, taken account of them and
15 then come to a conclusion that we shared with them, yes.

16 Q. Similarly with the third category that I apply to you
17 which is you had reached a different view ultimately,
18 having investigated you had reached a different view of
19 the facts or the terms of the guidance. What in general
20 terms would be the harm of explaining to the relevant
21 stakeholder that was the case and the basis on which you
22 had done so, if there would be any harm?

23 A. The only harm I can immediately think of is that might
24 develop into a protracted discussion rather than being
25 a simple exchange of allegations, response and

1 (indistinct).

2 Q. It may develop, so it may have resource implications for
3 you?

4 A. Absolutely.

5 Q. Merely providing a response itself in the sense of the
6 sorts of harms that we have talked about previously and
7 that are identified in your witness statement, you are
8 not identifying any particular harm now. Presumably you
9 could opt at any time not to engage in further
10 discussions having published that sort of statement?

11 A. Presumably.

12 Q. I put those questions to you because although I have not
13 seen, of course, any of the redacted material, my
14 understanding is that your assessment and -- if this
15 requires you to answer in a closed way I am sure you can
16 answer it in closed when I leave -- your assessment, in
17 effect, will provide responses of that type,
18 an assessment, in respect of the various assertions that
19 have been made. Therefore, what is puzzling is that you
20 are not able to identify any general harm from providing
21 those sorts of responses.

22 A. I think I have alluded to the harm because of the
23 distinction between the extensive response that IFC and
24 EBRD have provided and the short summaries that there
25 are within the BPU assessment of that work.

1 Q. Surely, if I understand you correctly there, your
2 concern is that the harm would arise because you have
3 not been able to fully explain your conclusions in the
4 short report for the Underwriting Committee report.
5 They are much shorter than, say, the responses in the
6 IFC or EBRD report. Is that the concern you are
7 identifying?

8 A. That is one of the concerns, yes.

9 Q. Would not the answer to that concern simply be when you
10 provide a copy of the BPU report to at the same time
11 provide further contextual analysis so that members of
12 the public can understand what the issues were? Or --
13 well, I will leave it there first.

14 A. That would be a resource intensive way of responding.

15 Q. Indeed.

16 THE CHAIRMAN: It would be a bit different from normal EIR
17 (?) or Freedom of Information requests?

18 MR MICHAELS: To an extent, sir.

19 THE CHAIRMAN: You are asking for the information they hold.

20 MR MICHAELS: To an extent, sir. But there are authorities,
21 I cannot take you to them immediately but perhaps I will
22 need to tomorrow in which the Tribunal has recognised
23 that if a concern is that information may be
24 misunderstood because, for instance, it is too brief
25 then the appropriate course, or an appropriate answer to

1 that, is to provide supporting information to explain
2 that. We would suggest that is one appropriate response
3 here. I am being assisted, I am grateful.

4 An alternative way of doing it, there may be two
5 alternatives I would like to put to you. One, if the
6 ECGD agreed with all of the analysis in the IFC report,
7 and it is a very detailed set of responses to the public
8 consultation in that report, simply to say we agree with
9 the analysis in the IFC report, all of it. Now, that
10 would presumably be open to you, if that were the case?

11 A. I cannot see any reason at the moment why we could not
12 do that.

13 Q. Would a further option be for you to say here we are
14 giving you our assessment, please understand that this
15 is a short assessment provided for the benefit of the
16 Underwriting Committee and does not represent the full
17 scope of our analysis. Would that not deal with the
18 particular problem that you are identifying?

19 A. It sounds a reasonable option at the moment.

20 Q. Moving on slightly. You were taken previously --
21 I apologise, even you or Mr Dodgson, I believe you were
22 taken previously by Miss Calighan to a number of
23 accidental inadvertent disclosures in the VPE (?)
24 report. If I could just take you to them briefly again.
25 The first one is on page 114, towards the bottom. It is

1 the item in black halfway through what appears to be the
2 BPU's assessment. Is it your understanding that was
3 inadvertent?

4 A. That is the only explanation I can think of as to why it
5 is still there.

6 Q. Could you explain, has the benefit of seeing a little
7 bit of it so I can ask this in open session. Could you
8 explain what the specific harm is in disclosure of that
9 paragraph?

10 A. I am having difficulty identifying any particular harm
11 with that specific paragraph and potentially that is why
12 it was disclosed. But my recollection is that the ECGD
13 decision was to withhold all BPU assessment.

14 Q. It raises an important issue, does it not, because you
15 are identifying here a situation in which you believe
16 that the ECGD decided to withhold, as a matter of
17 principle, all BPU's assessments and yet there is
18 an element of that assessment which had been
19 inadvertently disclosed and in respect of which you say
20 there is no public interest in maintaining the
21 exception. Our concern --

22 A. No. I didn't say there was no public interest in
23 maintaining the exception, what I said is I could not
24 identify any harm by its disclosure.

25 Q. I will leave it to the Tribunal as to whether there is

1 a difference between those two. If I could ask you to
2 look similarly at page 121. This was a passage brought
3 to your attention by Mr Taylor earlier. I apologise,
4 the earlier passage was brought to your attention by
5 Mrs Chafer. This passage at the top of page 121 appears
6 to be part of the BPU's assessment.

7 A. I agree.

8 Q. Now, looking at those three paragraphs, or the two and
9 a half paragraphs, are you able to identify in respect
10 of each of them what the particular harm is caused by
11 disclosure of any of them?

12 A. The first is a part paragraph so I am not sure it is --

13 Q. I accept it is difficult for you to comment on that
14 first one, although you may be able to in closed session
15 because you will then have the full paragraph.

16 A. The second paragraph potentially would cause difficulty
17 if some parties specifically did consider the ceremonies
18 to be the start of construction. Clearly there would be
19 some clearing of land for that and access to it and so
20 it may well be considered by some parties to be the
21 start of construction that the BPU did not might be
22 sensitive.

23 Q. Can it really be suggested that sentence, "The BPU does
24 not consider these ceremonies to be the start of
25 construction", would cause harm to relations with, as

1 I understand your position, the project sponsor?

2 A. I don't know, I am not identifying any particular party

3 that would take issue with that but there might be some.

4 Q. But the highest you are able to put it is there might be

5 some harm in terms, as I understand it, of your

6 relationship with a party not yet identified?

7 A. But for some parties the start of construction prior to

8 approval of an EIA is a very important issue and so that

9 there was something that some people might consider

10 construction beforehand is potentially sensitive.

11 Q. But all you are saying there is -- in fact, you are

12 doing quite the opposite. You are saying that

13 sensitivity does not exist because nothing took place

14 beforehand, as I understand it?

15 A. But other people, other parties, may have different

16 opinions to those of the BPU.

17 Q. How serious do you think the harm to these unspecified

18 relationships would be?

19 A. On the basis that this has been put in the public domain

20 and we have not had any feedback on it whatsoever, it is

21 obvious that it was quite slight.

22 Q. That would have been my next question. If I can ask you

23 to look, finally, at page 123. I assume, to be clear,

24 just to be quite clear, you have considered there

25 paragraph 3 as well, you do not have any particular

1 comments on the third paragraph?

2 A. I don't have any further ones.

3 Q. Page 123, you publish the BPU's assessment in respect of
4 the rights guaranteed by the European Convention on
5 Human Rights and your assessment, or the BPU's
6 assessment, was the rights guaranteed by ECHR are
7 sufficiently safeguarded in connection with the BTC
8 project. I would ask again the same question. Are you
9 able to identify any particular harm that arises from
10 disclosure of that assessment?

11 A. The potential harm, once again, is that other parties
12 might have a different view to that of the BPU.

13 Q. Which parties?

14 A. Parties that consider that there are some aspects of the
15 BTC project that does breach parts of the
16 Human Rights Convention.

17 Q. Most parties presumably, I do not know which NGOs raised
18 that issue, if any, those parties would presumably be
19 civil society stakeholders of one sort or another,
20 whether it is (indistinct) or Corner House or --

21 A. If you look at the paragraph above, it actually
22 identifies --

23 Q. Friends of the Earth, I apologise. So
24 Friends of the Earth, in which case -- I am instructed
25 from behind me that it probably was not

1 Friends of the Earth, but leaving that aside, several
2 NGOs including the Friends of the Earth apparently
3 raised this issue. So it is an issue raised by NGOs.
4 What is the harm you are suggesting would be caused in
5 light of the publication of that information. Is it
6 harm to your relationship with us, with Friends of the
7 Earth, with Corner House?

8 A. The potential harm is the --

9 THE CHAIRMAN: Sorry, you are going to have to speak up.

10 A. If I may stop for a second, if you do not mind.

11 THE CHAIRMAN: Yes.

12 A. The potential harm is the challenge by third parties
13 that do not agree with the BPU's opinion and the
14 repercussions of that on either the BPU, ECGD or
15 individual members of the BPU. But I accept that none
16 have materialised.

17 Q. None have materialised. Is that speculative harm not
18 exactly the same in respect of the harm that could arise
19 from publication of the overall conclusion, that you
20 complied in all material respects with presumably
21 including, therefore, the ECHR? What additional harm is
22 there from publication of this?

23 A. We talking shades of grey and here this is specific
24 about an individual issue and it is more specific text
25 that could be attributed to the author of this report.

1 Q. But the reality is that all of the guidelines and
2 standards and so on with which the project is expected
3 to comply would include compliance with
4 European Convention on Human Rights, is that not the
5 case? If the project did not comply with the ECHR you
6 would normally --

7 A. We would have been working with them to bring it into
8 compliance.

9 Q. Therefore is it not implicit that once you said it
10 complies in all material respects with relevant --

11 A. Yes.

12 Q. It is. Therefore, it is hard to see what harm
13 disclosure of this sentence could possibly cause?

14 A. As I said, this is only slightly, I believe, more
15 harmful than the overall conclusion.

16 Q. If I could ask you to look then at -- I want to deal
17 with one further issue here briefly which is just to
18 raise one small point that was raised -- this is not my
19 final area I am afraid, I am going slightly beyond my
20 45 minutes.

21 THE CHAIRMAN: Do not waste time explaining it.

22 MR MICHAELS: It was put to you previously that the
23 transparency provisions in the business principles
24 implied that there was an expectation that the BPU would
25 engage and respond to stakeholders and you have already

1 been asked about that and given your view about that and
2 I will not go there further. I would like to take you
3 to page 706 of bundle 2 which is the OECD (?)
4 recommendation. Draft recommendation at that stage, but
5 with which -- I will let the parties find the page.
6 Page 706. This is within the body of rev 6 at the OECD
7 recommendations. Do you recognise that?

8 A. I do.

9 Q. This was the relevant iteration of those recommendations
10 that was effectively in force at the time?

11 A. Correct.

12 Q. It is this, in effect, that gave rise to the case impact
13 analysis process and so on?

14 A. That is not correct.

15 Q. Not correct?

16 A. The case impact analysis arose out of the need, having
17 established through business principles to implement
18 them, so the case impact analysis process was developed
19 in November and December of 2000 for us to start using
20 it in January 2001.

21 Q. Well, I do not need to make that point but I would
22 suggest if one looks at paragraph 18 on page 706 it
23 says:

24 "Taking into account the competitive context in
25 which they operate and the constraints of business

1 confidentiality, members are expected to, first, publish
2 national ECA export credit agency environmental policy
3 statements principles and procedural guidance."

4 Now, this is not why I was taking you there but it
5 seems to me the procedural guidance that the ECGD did
6 eventually publish is consistent with at least that
7 expectation?

8 A. Yes.

9 Q. Now, the bulletpoint --

10 A. Just pointing out that our SEEAT (?) was in place well
11 before this requirement.

12 Q. Yes. The bulletpoint -- well, you say well before, this
13 was published in 2000, the same year --

14 A. No, I think this is revision six of a document that was
15 originally drafted in 2000.

16 Q. Yes, so this was published in 2001. I apologise. The
17 bulletpoint I wish to take you to was the one underneath
18 --

19 A. I think it was 2003 but nevermind, yes.

20 Q. The bulletpoint I wish to take you to is the one
21 underneath which is, "When appropriate exchange views
22 with stakeholders"?

23 A. Yes.

24 Q. Now, we say that there is an expectation that in these
25 sorts of projects members are expected to, when

1 appropriate, exchange views with stakeholders. Now,
2 this was a situation in this project when at no stage at
3 all did ECGD exchange any views with stakeholders, did
4 they?

5 A. On this project, no.

6 Q. No, on this project. So on this project, contrary to
7 the OECD recommendation which is --

8 A. Sorry. The OECD recommendation says that members should
9 exchange views with stakeholders when they consider it
10 to be appropriate and ECGD considered it to be
11 appropriate determining, according to its business
12 principles, in determining policies, procedures and
13 practice, not on individual cases.

14 Q. So it is your view --

15 A. I am sure my view is held by a lot of other people that
16 were negotiating this.

17 Q. So it is your view that expectation to exchange views
18 with stakeholders when appropriate does not apply to
19 highly complex, controversial projects which are at the
20 very heart of this OECD recommendation?

21 A. No, this OECD recommendation is setting out a framework
22 for addressing projects and it is not setting out which
23 our case impact analysis process complies with, and it
24 says that when appropriate members should exchange views
25 with stakeholders. I believe most members that were

1 present at that negotiation considered that when
2 appropriate meant in the formulation of their individual
3 ECA procedures.

4 Q. But this project, this recommendation, is concerned to
5 a very large extent, would you accept, with the way in
6 which projects, applications for support for ECAs, ought
7 to be processed by the respective member ECAs. That is
8 what this recommendation is essentially about?

9 A. What ECGD did beforehand, amended in the light of
10 subsequent versions of this, to produce and publish its
11 case impact analysis process on which there was full
12 public consultation.

13 Q. So it is your view, just to be quite clear, that it is
14 not normally appropriate or that this recommendation is
15 not aimed at securing an exchange of views with
16 stakeholders on controversial, what they call category A
17 projects?

18 A. That's correct.

19 Q. Suffice it to say, we disagree strongly with the ECGD's
20 interpretation of that.

21 A. I think there are probably 27 other export credit
22 agencies that agree with ECGD's view.

23 Q. If I can take you briefly to the views of expressed by
24 other Government departments in response to your
25 notification. If I take you first to page 874, that is

1 towards the end of bundle 2. That is the information of
2 a potentially sensitive case?

3 A. It is.

4 Q. Beyond that on the pages that follow are the responses
5 from the various Government departments?

6 A. Yes, that is correct.

7 Q. One of them, I will just take one example, 879 is the
8 response from DEFRA (?). In this case DEFRA raises
9 a number of significant concerns and say they would, in
10 the second paragraph, would like to be included in this
11 process.

12 A. Mm-hm.

13 Q. They first of all raise concerns about possible climate
14 change impacts. They then raise concerns about the host
15 government agreement and, over the page in the second
16 paragraph on 880, they say:

17 "There have been transnational pipelines in the
18 past, yet as far as we have been able to ascertain this
19 type of host government agreement is unprecedented. It
20 would be useful to know what the normal arrangement is
21 for transnational pipelines and why this particular
22 project is not keeping them."

23 Then there is set out concerns about the effect of
24 the legislation and the pipeline on the Kurdish
25 minority.

1 MS CALIGHAN: Sorry, sir, can I object. I think Mr Michaels
2 is not accurately describing this letter. It states in
3 terms in the third paragraph:

4 "We have so far identified the following areas where
5 we require more information about project
6 design/impacts."

7 They are not identifying, as Mr Michaels put it,
8 concerns but they are identifying areas where they
9 require more information. I wonder if the premise of
10 the question could be put accurately.

11 MR MICHAELS: I am quite content --

12 THE CHAIRMAN: Sufficiently concerned to require further
13 information.

14 MR MICHAELS: They are expressing their comments. I mean,
15 it appears, I would suggest, clear that there are
16 concerns being expressed by this government department
17 but I will leave it more neutrally at comments requiring
18 further explanation from another part of the UK
19 Government.

20 Now, there are a whole series of other comments put
21 in that letter and also from the
22 Foreign and Commonwealth Office.

23 A. That's correct.

24 Q. The point I wish to put is simply this. It has already
25 been raised with you the difficulties that might arise

1 from not explaining to stakeholders, civil society
2 stakeholders, what has happened to their views. But of
3 equal concern, I would suggest, is that those with
4 an interest in this particular project see the
5 expression of significant comments by one branch of the
6 executive and yet have no idea ultimately of what the
7 executive's ultimate conclusion is on those comments or
8 concerns?

9 A. Why do you think the other government departments did
10 not know what our conclusions were?

11 Q. No, I am not for a moment suggesting they do not know
12 what your conclusions are. I am suggesting that members
13 of the public who will note these concerns and comments
14 from DEFRA or the FCO will be given no information by
15 ECGD as to why the Government ultimately, or how the
16 Government ultimately, has addressed those comments and
17 concerns?

18 A. But all members of the public are aware that ECGD,
19 acting on behalf of the UK Government, did provide
20 support and so they can infer from that all the issues
21 that have been raised by other Government departments
22 were all addressed to the satisfaction of those
23 departments.

24 Q. With respect, one cannot make that assumption at all.
25 Not only can one not make that assumption, I would

1 suggest, but more to the point what one does not know is
2 how if they were addressed they were addressed. There
3 are serious questions put here by the Government and yet
4 one has no idea of what the answers to those serious
5 questions were?

6 A. I would agree with what we have put in the public domain
7 so far, that how they were addressed has not been
8 disclosed. That they were addressed, I would suggest is
9 implicit in the fact that the UK Government through ECGD
10 did provide support.

11 Q. I am going to deal with two more issues, one of them is
12 a very short point and then one final relatively short
13 chunk. If I could take you back to the BPU report.
14 I will ask you to turn to page, well, let me do this
15 slightly differently. If I ask you to turn first to the
16 flash report, I apologise, page 1047. The final
17 sentence there refers to a meeting with Mr Ferhat Kaya,
18 a member of the Kurdish DEHAP party?

19 A. Yes.

20 Q. Now, you are aware that there were allegations made that
21 as a result of his involvement in the BTC project,
22 Mr Kaya had suffered significantly at the hands of the
23 Turkish state. I put it no higher than that.

24 A. I remember that those assertions were made, yes.

25 Q. Was this meeting with Mr Kaya a public meeting?

1 A. No, it was not. It was a private meeting.

2 Q. Would you, therefore, had you commented on this
3 paragraph when the FCO sought your views, would you have
4 allowed this paragraph to be released into the public
5 domain?

6 A. I would certainly have wanted to redact any reference to
7 Mr Kaya through which he could be identified.

8 Q. If I can take you to page 105 of the assessment report
9 and ask you to look at the final paragraph. You say

10 That you would not wish to redact Mr Kaya's
11 identity, I suspect for the reasons I put to you in, in
12 part.

13 A. Given the circumstances of the request given to me now,
14 then maybe we erred in disclosing that.

15 Q. Did you write to Mr Kaya and ask him whether when you
16 were disclosing extracts of this report he would be
17 content for you to disclose his identity and the nature
18 of that meeting?

19 A. I don't think so, no.

20 Q. But you did, or you have at certain points, written to
21 the members of the lender group and, as I understand it,
22 to BPU inviting their views on whether it is acceptable
23 to disclose parts of the report that refer to them?

24 A. That's correct.

25 Q. Can you explain the difference between your treatment of

1 those two different groups of stakeholder?

2 A. Only with the statement that with 20-20 hindsight we
3 should have either redacted references to Mr Kaya, or
4 written to him. Following on one of your questions to
5 me about harm, I am not aware that the disclosure of
6 that has caused Mr Kaya any harm.

7 Q. Nor do I seek to suggest it has. The point I merely
8 make --

9 A. I just have to check there is no information about that,
10 because I am now embarrassed by what we have done.

11 Q. Indeed. I have no information or evidence to that
12 effect, and I am not suggesting that that harm has
13 arisen. Can I attack you back to your statement for the
14 final set of questions: If I can ask you to turn to
15 page 425.

16 If we start first of all, this is the section of
17 your statement where you are talking about the effects
18 of disclosure of your assessment on project
19 participants. You say that UK Export, paragraph 51:

20 "UK Export is providing goods and services to
21 overseas projects with support from ECGD. Would each be
22 aware that BPU use analysis from each project?
23 Compliance with standards could be disclosed after ECGD
24 had made its decision. This may have reputational
25 impacts for them, even though they might not have any

1 influence or control over the activities of the
2 project."

3 Just to be clear, you are not here talking about the
4 BTC code; you are talking about the individual exports,
5 such as Salzer pumps and -- I cannot remember the names
6 of the others?

7 A. Individual exporters from the UK to overseas projects,
8 yes. In general.

9 Q. Now, is it not the case that, even accepting the overall
10 premise, which for the record we do not do, is it not
11 the case that that effect would only arise in situations
12 where you, the BPU, determined that the project did not
13 meet international standards?

14 A. Not -- well, it would arise should we have concerns
15 about particular aspects, which may be all or none of
16 the aspects. If the project did not meet all the
17 relevant standards in all material respects, it is
18 unlikely they would occur because we would not have
19 provided support to the export.

20 Q. Indeed.

21 A. But if there were issues that were addressed within the
22 BPU report that ultimately we considered was acceptable,
23 but implied some degree of criticism of the project,
24 that criticism may reflect back on the United Kingdom
25 exporter, even though the United Kingdom exporter had

1 nothing to do with that aspect of the project, or the
2 project in general.

3 Q. I find that difficult to understand. If the conclusion
4 that you would have reached is that the project
5 ultimately complied with the relevant guidelines and
6 standards, notwithstanding that you may have had some
7 concerns say earlier in the process about that, or you
8 may have had some concerns about an issue, but
9 nonetheless it come complies with the relevant standards
10 and guidelines, I find it difficult to see how there
11 could be a reputational effect on an exporter,
12 particularly in the context where you say that exporter
13 would not be responsible for the overall project?

14 A. Even though ECGD considered that it did meet all the
15 relevant standards in all material respects, it could
16 still have highlighted the fact that this was
17 a controversial project, that some parties considered
18 did not meet those standards, and take for example the
19 BTC project: An exporter thinking, "Do I use ECDG
20 support for that export, knowing that the sensitivity of
21 that project was going to be exposed through this
22 system?" He might think twice about asking for our
23 support, and that might impact on his ability to supply
24 those goods, because an exporter from a competing
25 country, which was not going to have this level of

1 disclosure, would be more than happy to provide them.

2 Q. With respect, that simply does not make sense, we would
3 suggest. The level of criticism that is likely to arise
4 of a project will come from Baku-Chehan Campaign,
5 Friends of the Earth, Cornerhouse and on. They are the
6 ones that will be making the vocal criticism of the
7 project. In fact, one would have thought that
8 ultimately an exporter would be grateful if at the end
9 of the day there was a published definitive view from
10 the relevant export credit agent that it had considered
11 all of those criticisms and concerns, and found them to
12 be without substance?

13 A. In the event that they did ultimately DECIDE they wanted
14 to make that export, I am sure they would be grateful
15 for that. BUT at the time of deciding, "Do we bid for
16 that contract", if they knew that ECGD's impact analysis
17 and conclusions were going to be disclosed, they
18 might -- to what they thought might be a contentious
19 project, they may think that is an export that's not
20 worth chasing.

21 Q. Do you really think the publication of the assessment in
22 any of these respects would be of more concern to those
23 exporters than would be the enormous wave of media
24 coverage that comes from a campaign such as the
25 Baku-Chehan campaign, or Cornerhouse, or Friends of the

1 Earth? Is the publication of these final assessments
2 really the thing that would tip the balance against an
3 exporter wishing to be involved in a major project such
4 as this?

5 A. In that I think it would be part of their assessment, it
6 could well be the tipping of the balance.

7 Q. But the reality is that, in addition to the point I put,
8 is it not also the case that the mere fact that somebody
9 applies to you for export credit in this sort of case,
10 means that where the project is sensitive or potentially
11 contrary to other government policies, then that will
12 come to light as a result of the ECGD's prior disclosure
13 mechanism?

14 A. The sensitivity of the project will come to light at
15 that stage, but I am talking about when exporters are
16 considering searching for business, and I believe that
17 if the BPU conclusions section by section are disclosed,
18 then it will be a factor in the exporter's analysis of
19 "Is that business worth chasing?"

20 Q. But one might put to you that precisely the opposite is
21 the case: The exporter now knows if he applies to you
22 in respect of one of these controversial cases, there
23 will be an investigation and a due diligence analysis by
24 the BPU.

25 A. Yes.

1 Q. The existence of that will be public knowledge.

2 A. Yes.

3 Q. That it will be known that this involves consideration
4 of whether the project is compatible with human rights,
5 international standards and so on. Is it not the case
6 therefore that the exporter would wish in a sense to
7 know ultimately that their export has been cleared in
8 all material respects, and why that is the case, so they
9 can then defend themselves against the like of Friends
10 of the Earth.

11 A. That is all correct on the assumption that the exporter
12 thinks that that process is worth entering into. What
13 I am saying here is that it may dissuade them from even
14 attempting to win that export contract.

15 Q. It is your view, just to be quite clear, that the
16 publication of your assessment is the factor?

17 A. Is a factor.

18 Q. Do you think it is a significant factor? I raise that
19 because there are going to be many other factors such as
20 the existence of a usually very vociferous public
21 campaign, the knowledge of a significant due diligence
22 process by a range of ECAs and so on: Is it the
23 publication of your assessment that you think would tip
24 the balance?

25 A. All I am saying is that it is a factor, and when the

1 exporter stacks them up, it could be the factor that
2 tips the balance and makes them determine that it is not
3 worth them chasing that particular contract, and
4 therefore that piece of business is not available to
5 them.

6 Q. Now, you make the same point at paragraph 53, at the
7 very top of page 46. You say:

8 "Project sponsors may seek to avoid the potential
9 for adverse comments about their projects by excluding
10 ECGD from future lender groups, with a consequential
11 adverse effect on UK exporters."

12 Here you are talking about major groups such as BTC Co,
13 or Shell, major project sponsors, major international
14 corporations?

15 A. Yes.

16 Q. Major international corporations with significant public
17 relations and media department; correct?

18 A. Yes.

19 Q. Who are well used to dealing with extremely
20 controversial media issues around the projects that they
21 engage in?

22 A. That's correct.

23 Q. Are you really suggesting that in light of that, the
24 disclosure by the ECGD in the case of a positive BPU
25 report is likely to tip the balance against them

1 applying to ECGD for export support?

2 A. I think the short answer to that is yes, because project
3 sponsors at the outset determine which export credit
4 agencies to engage with, on the basis of where they
5 anticipate their procurement will be focused. The
6 export credit agencies from other countries do not have
7 the same disclosure requirements that ECGD has, and that
8 the Cornerhouse is requesting should be enhanced, and
9 that level of disclosure may well tempt or encourage,
10 and probably make other project sponsors decide, that
11 actually they are better procuring from other countries,
12 rather than from the UK. I believe we have had examples
13 of that where --

14 Q. You have had examples already?

15 A. We have had examples of where NGO interest through even
16 the -- through use of the EIRs to extract information
17 from ECDG has been a factor, I believe, in project
18 sponsors deciding not to procure from the UK.

19 Q. With respect, that would precisely make our point in one
20 regard, that already there is a range of concern about
21 NGO campaigns?

22 A. Yes, there is, but this is one further stage, one
23 further nail in the coffin.

24 THE CHAIRMAN: We are going to have to wrap this up fairly
25 quickly now. We are running out of time, so if it is

1 going on we are going to have to break. If you can
2 finish tonight that is fine, if not we will pick it up
3 in the morning.

4 MR MICHAELS: I believe I can finish in a couple of minutes.

5 MS PROOPS: Can I just raise one point before we move on, in
6 connection with the course of evidence that has just
7 been given. My understanding about the impact of
8 disclosure on the third parties is that evidence has
9 been given in support of the application are regulation
10 1.5A, the International Relations Exception. I have to
11 say I am struggling to see how evidence relating to
12 third party companies or consortia, in terms of concerns
13 that they may have as to disclosure, why that would fall
14 within the International Relations Exception.

15 I can see the argument in respect of members of the
16 lenders groups, because of their constitutional status,
17 but it does just occur to me because I had very much
18 read that evidence somewhat differently than as it
19 appears in the witness statement. The evidence that has
20 now emerged has in effect been evidence as to impact on
21 commercial interests, or information provided in
22 confidence, possibly, which might engage other
23 exceptions, but I cannot see that it engages the 12.5.
24 (a) exception. So I am wondering as to the relevant of
25 any of the evidence.

1 THE CHAIRMAN: Do we need to get into submissions on that at
2 this stage? Do you want to expand on that later?

3 MS PROOPS: I want to know which submissions I need to make
4 on it, because I am unclear as to the status of this
5 evidence in terms of its place within the issues that we
6 are supposed to be addressing.

7 MS CALIGHAN: This particular evidence given about exporters
8 is not relevant to the international relations
9 exception.

10 MS PROOPS: So what is it relevant to?

11 MS CALIGHAN: I believe it is being given in relation to the
12 12.4. (e) exception.

13 MS PROOPS: My understanding that the central thrust of the
14 case on 12.4. (e) was the need to preserve a safe place
15 for deliberations and protect civil servants against
16 approbia and unjust criticism.

17 THE CHAIRMAN: I think it may be that following Offcom, both
18 other public interests which we are required to take
19 into account, even if we are looking at -- we really are
20 getting into submissions. I am going to say something
21 at the end about where we go on submissions. Let us
22 finish now because I am conscious the stenographer has
23 been going for a long time as well, so let us finish now
24 and we may need a separate debate at some stage as to
25 what we are going to do next.

1 MR MICHAELS: I think I had finished that line of
2 questioning. I just want to be clear though to make
3 sure we are understanding each other here. Miss Proops
4 has already put to you the fact that over case has to be
5 dealt with on a case by case basis, so that the same
6 issues would apply here; project sponsors et cetera
7 would know case by case. But leaving that aside, we are
8 talking here only at the moment about an example of
9 a case where what is being sought is publication of
10 a report that does, by its very nature, conclude that
11 the project complies in all material respects.

12 Now, with that in mind I do wish to clarify with you
13 whether it remains your position that a project sponsor
14 would be put off applying to the UK, in a context where
15 it knows the BPU's assessment might be provided where
16 that assessment exonerates in effect the project of any
17 violations of international standards: Is that your
18 position?

19 A. That is my position because the BPU assessments section
20 does not simply say in each of the sections -- and
21 I accept you have not seen it -- everything was
22 hunky-dory.

23 Q. If everything was hunky-dory, there would not have been
24 a massive public campaign, and BPU would not have been
25 forced to engage in a very significant media public

1 relations initiative on this?

2 A. No, but as you have put it to me, the overall conclusion
3 is that the project did meet all the requirements of the
4 relevant international standards in all material
5 respects. The BPU assessment sections go much further
6 into detail, and it is that detail that I think project
7 sponsors would not wish to have disclosed.

8 Q. Notwithstanding that the detail in that section in
9 effect is going to be -- well, without having seen it,
10 the project sponsors would already have been faced with
11 the publication of very serious allegations about their
12 project by a range of other bodies?

13 A. Once again, we are talking about the option to project
14 sponsors to procure from the UK with ECGD's support, in
15 the knowledge that if this is disclosed, a BPU report in
16 its entirety has been disclosed, and they would compare
17 that to the situation in other countries, where that is
18 not the case.

19 Q. Finally --

20 THE CHAIRMAN: Can I just make sure I understand the answer
21 myself. So the impact now that ECGD, or the Government,
22 has undertaken in future to provide a fuller assessment
23 publicly will have the same effect?

24 A. It will have some of that effect, yes.

25 THE CHAIRMAN: Sorry, I just wanted to clarify matters.

1 MR MICHAELS: Finally, paragraph 55 of your statement. You
2 say:

3 "If the opinions [and this is dealing with other
4 members of the lender group, I will not address this
5 other than to raise one particular question] if they are
6 made public before that party had made them public
7 itself then I believe it is almost certain that the
8 party would not share its advice with ECGD again."

9 I apologise, there are two questions arising out of
10 that. The first is do you think there would be a
11 difference if the identities of those individual parties
12 were redacted? I.e. if the BPU report were published
13 saying that XXXX -- can the stenographer still hear me?
14 Saying XXXX had expressed a view rather than say SACE or
15 COFAZ or Hermes or IFC?

16 A. I think that takes us into closed evidence.

17 Q. Well, I think, I would hope you would be able to answer
18 that at least generally?

19 A. If the identity was completely removed and the ability
20 of anybody to make an educated guess was also removed,
21 then it might be possible to disclose that information.
22 But we have to remember that we are frequently talking
23 about a relatively small number of members of the
24 lender group and interested parties can be very clever
25 in the way they extract information that may well allow

1 them to identify, even if we had attempted to not
2 disclose that information.

3 Q. I had not wished to follow that up, but surely if the
4 identity is redacted then the identity is redacted?

5 THE CHAIRMAN: I think he is saying there may be other
6 information which people can patch together and work it
7 out.

8 A. Correct.

9 THE CHAIRMAN: That is the qualification I heard the witness
10 making to your question.

11 MR MICHAELS: That may be something the Tribunal goes into
12 further in closed session. You also raise this further
13 point, you said, "Before that party had made them public
14 itself." I would just like to raise one final issue
15 with you which is about timing. It was the ECGD's view,
16 at least at the time it refused this request for
17 information, that the report ought not to be disclosed.
18 Do you think there comes a stage after which the passage
19 of time means that it is appropriate to disclose this
20 report?

21 A. I think there is certainly a stage when any potential
22 harm done by the disclosure may be reduced down to
23 a level at which disclosure will be appropriate.

24 Q. Do you think that stage has come now, for example?

25 A. No.

1 Q. I have no further questions.

2 THE CHAIRMAN: By now you mean today, not the date when the
3 decision is made?

4 MR MICHAELS: No, I mean today, the date of the question.

5 A. That was my meaning as well.

6 MR MICHAELS: Would the ECGD's position be exactly the same
7 today as it was three years ago. The answer is yes, it
8 would.

9 THE CHAIRMAN: Okay.

10 MR MICHAELS: No further questions. I apologise.

11 THE CHAIRMAN: Thank you very much. Right, I think if we
12 are going to have a quick business discussion about the
13 schedule tomorrow I think we can invite the stenographer
14 to stop. We do not need you to record our discussion on
15 what we are going to do tomorrow.

16 (5.07 pm)

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