

Public Accounts Committee

Oral evidence: Defra's oversight of three PFI waste projects, HC 106-i

Wednesday 25 June 2014

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Members present: Margaret Hodge (Chair); Mr Richard Bacon; Guto Bebb; Chris Heaton-Harris;

Meg Hillier; Mr Stewart Jackson; Austin Mitchell; Nick Smith; Ian Swales; Justin Tomlinson

Sir Amyas Morse, Comptroller and Auditor General, Gabrielle Cohen, Assistant Auditor General, Vikki Keilthy, Director, National Audit Office, and Marius Gallaher, Alternate Treasury Officer of Accounts, were in attendance.

Witnesses: Bronwyn Hill CBE, Permanent Secretary, Department for Environment, Food and Rural Affairs, and Dr Colin Church, Director, Resource, Atmosphere and Sustainability, Defra, and Senior Responsible Owner for the Waste Infrastructure Delivery Programme, gave evidence.

Q1 Chair: Welcome. Sorry we are a little late in starting. I know this policy for these large incinerators has travelled across Government to various Departments, but when was it set?

Bronwyn Hill: I would not describe it as a policy just for incinerators. I think it is driven by the need to reduce the amount of waste going to landfill.

Q2 Chair: I understand that. When was it set? Do I go to 2006, when you established the Waste Infrastructure Delivery Programme? Is that when it was set?

Bronwyn Hill: No, I think it is a much more long-standing programme that started under the previous Government. Some of the contracts go back to 1997-98. I think the Isle of Wight is probably the oldest.

Q3 Chair: And that is when the PFI was brought in?

Bronwyn Hill: That is when the original PFI was brought in.

Q4 Chair: What is your focus now on the need for waste facilities? How has that changed since you did the modelling in the 1990s and set up the programme?

Bronwyn Hill: Using a 1995 benchmark, we need to reduce to 35%. The target is to hit 35% of what we used to send to landfill in 1995.

Q5 Chair: Sorry, but I don't get that. Given that we are all recycling more and wasting less—this is where my question is going—has the need for large incinerators to dispose of waste changed from when you first set the programme in the mid to late 1990s?

Bronwyn Hill: Yes, because we are now confident that we are on target to meet the 2020 reductions.

Q6 Chair: This question is really for you, Bronwyn. The predictions on waste have altered since the programme was set in the late 1990s, and technology in this environment moves very fast, so there is new and better technology, rather than these large incinerators that spurt out masses of CO₂ emissions. How do you justify, today, the idea of having contracts such as the ones that we are considering, in which you enter into a PFI for 25 years on big incinerators?

Bronwyn Hill: We would not be on course to meet the 2020 target if we didn't have some incinerators, lots of recycling and lots of other facilities that sort waste.

Q7 Chair: Is it a sensible policy today?

Bronwyn Hill: It is. It is a package of different types of facility.

Q8 Chair: Is it sensible to have these large incinerators, spurting out all these CO₂ emissions, on a long, 25-year PFI contract? Maybe that is a partisan question.

Bronwyn Hill: I should stress that they are quite heavily regulated by the Environment Agency on their emissions.

Q9 Chair: Is it a sensible policy?

Bronwyn Hill: I believe it is a sensible policy.

Q10 Chair: How many have you cancelled?

Bronwyn Hill: Remember that the local authorities are the people who have the projects. What the Department does is offer credits.

Q11 Chair: It is your policy. How many have you cancelled?

Bronwyn Hill: We withdrew provisional credits from seven schemes in the 2010 spending review. Some of those have gone ahead without our credits. For example, Merseyside is still going ahead. We then reviewed a number and withdrew credits from a further three—I am just checking with Colin that I have the numbers right—and I cannot remember whether any of those went ahead¹.

Dr Church: Yes, two of them did.

Bronwyn Hill: Two of those went ahead. Even if we withdraw our credits, some projects will go ahead to fruition.

Q12 Chair: It is your policy, owned by your Department. I accept that, in the end, the contract is signed by the local authority, but it is your policy. Do you think it is still a sensible policy? I was giving you the opportunity to say that actually, in today's world, given that the technology is moving so fast and that the current predictions around waste are so different from 15 or 20 years ago, it would not be sensible to lock yourselves into these large projects with massive financial commitments over 25 years; but you are not saying that.

Bronwyn Hill: No.

Q13 Chris Heaton-Harris: You said that a couple of the projects had gone ahead without your credits. Does that mean that some of these schemes did not need the added help of Government investment to get them off the ground?

Bronwyn Hill: Yes. There are 35 other projects happening without DEFRA's contribution, and that is just the local authority contracts. Of course, private sector waste companies could set up their own schemes. I should stress that they are not all energy-from-waste projects. Some of them are different types of facility, such as sorting. They are a very different range of projects. I do not know whether Colin wants to say something, but some of them are what we call integrated facilities. I do not know if you have ever visited a waste recycling plant, but they are fascinating places. I would recommend a visit. There is one in Southwark, not far from here, where there is an awful lot of sorting. They take the paper out, they have massive magnets to get rid of the metal and they sort all the waste to get a residual amount. It is that residual amount that sometimes goes into waste incinerators as an alternative to going to landfill. The justification for the policy is that it is worse going to landfill.

Q14 Chris Heaton-Harris: I just wondered why central Government was in this space if it is operating reasonably well without central Government intervention.

Bronwyn Hill: When it first started, it was not. There were problems for local authorities in trying to raise the finance, in understanding the technology and, indeed, as we know—it is half the reason for this meeting today—there were significant problems around getting planning permission

¹ Note from witness: To clarify and correct a factual inaccuracy, this statement should read "We withdrew provisional credits from seven schemes in the 2010 spending review. We then reviewed and withdrew credits from a further three in 2013. Some of those have gone ahead without our credits. For example, Merseyside is still going ahead."

for facilities. In the 1990s, the programme was started to try to stimulate the market in not just PFI but other types of deal that would enable us to meet the landfill diversion targets.

Q15 Ian Swales: On plants, I should perhaps declare an interest: there is one in my constituency, and I think there are two more nearby, at Billingham. The Sembcorp project at Wilton, in my constituency, is not, as I understand it, in receipt of the credits you are talking about.

Bronwyn Hill: Sorry, we do not recognise the name. What is the location?

Q16 Ian Swales: It is about to start processing Merseyside waste. The plant is being built at the moment. There was a very competitive auction for the waste and, as far as I know, they are not getting the credits you are talking about. This builds on the Chair's and Mr Heaton-Harris's comments about setting this kind of policy for such a long period of time. If there is now such a competitive world for processing waste—as I say, Air Products are now building their second plant at Billingham—does that not call into question some of the amounts of money you have allocated to projects in the past?

Bronwyn Hill: No, I don't think so. The difference is that we are saying we have no plans to allocate further PFI credits to such schemes in the future because we are confident about meeting the 2020 targets without them. However, we need the existing projects to deliver. In our programme of 28 PFI schemes, 18 are in operation, a further eight are in construction or are starting commissioning, and two are outstanding and have not quite got there. We need them to deliver to hit the target.

Q17 Mr Bacon: You mentioned earlier that the Department has withdrawn credits from seven different projects. Would it be fair to say—this might be a truism, but I want to get your view on it—that the value for money of a project, from the point of view of taxpayers as a whole, should not depend on whether your Department has put in a credit or not? That is correct, isn't it?

Bronwyn Hill: Yes, absolutely.

Q18 Mr Bacon: I do not want to put words into your mouth, but is it fair to say that by definition the value for money for the taxpayer cannot change, because it is either there or not? Is it not merely a question of where the different funding streams have come from? Is that accurate?

Bronwyn Hill: Yes. That is an accurate description of our policy, as set out in the NAO Report.

Q19 Mr Bacon: In the case of the Herefordshire scheme, they decided to go ahead with what they called prudential borrowing after you withdrew your credit. By doing that, rather than pursuing the original approach, they reckoned they would generate a saving sufficient to offset the majority of the reduction in the Department's funding—this is paragraph 2.35. That makes it sound like the route that they are now going to take is cheaper than the one they would have taken, which gives rise to the question of why were they thinking about going down a more expensive route—I can see why they might; it is because you were giving them money—and why you were offering the money if a cheaper route was available. Presumably, the modelling would have shown that.

Bronwyn Hill: We did not withdraw our credits, per se. We started to talk to them, because we had been paying them under what we call one of the legacy projects—it was one of the very early ones. We had been paying them for their services, but they had not built the infrastructure that was envisaged at the start. We started to discuss with them the need to realign that problem, and they came to us with a proposal, saying that they wished to become the sole lender to the project that they were involved in. They took the initiative to say they would prefer to do it that way round.

You asked why they would do that, but that is for them to determine. We reduced our credits to them to reflect the fact that they are now the sole lender. Bear in mind that being the sole lender means they have now taken back some of the risk from their contractor.

Q20 Mr Bacon: Yes, but they are saving quite a lot of money by doing so. There was a model available that said that one could do this and it would save money, yet you, as accounting officer, were prepared to countenance a different route that would have cost more. That is my point.

Bronwyn Hill: No, I think both were value for money. The issue about value for money is: what are you paying to transfer the risk out to the private sector, given that that might get a better product and a better result? We would say that they made a judgment to bring that risk back in-house, but clearly they face a higher risk. Whether they deliver better value as a whole depends on their ability to manage the construction risk.

Q21 Mr Bacon: Okay, fair enough. You mentioned legacy projects—the Herefordshire, Worcestershire and Surrey ones. The Report says they were inherited from the old DETR. The clear statement in the Report is that once some services were being provided, the annual unitary charge payments kicked in—the full payment kicked in, in fact. What interests me is that although you inherited these projects, a central Government Department at the time must have sanctioned them. The arrangement was always going to be in the interest of the central Government Department, whatever name it happened to have, because at the end of the day there would be an asset, rather than just a payment of an annual unitary charge for services. Are we to suppose that the contract did not provide for ensuring that the planned infrastructure happened by a certain time, and for certain milestones, so you did not end up, as both these examples appear to have done, with the full amount being paid without the infrastructure being delivered?

Bronwyn Hill: Yes.

Q22 Mr Bacon: How could that happen? How did central Government allow that to happen?

Bronwyn Hill: The reason they did it—I'm not saying it was the best outcome; we have changed the approach since then—was that the projects were based on outcomes, such as whether they were delivering the recycling targets and the recovery targets. To give you a flavour, in the case of Surrey the target for waste recycling was 25% recycled in a given year; the contractor exceeded that and got up to about 50% over a period of years. In effect, because it was an outcome-based PFI and because they were hitting their targets—I can see why you might be concerned about that—the payments had to be made. When we inherited them, we said, "Let's have a look at this." We were

contractually committed—clearly you have to think carefully about what you can do at that stage—to paying the money to the authority who then had a contract with the contractor.

Q23 Mr Bacon: Wouldn't the question for the central Government Department and indeed the Treasury have been: outcome for whom? The outcome the central Government Department that is chipping in, big time, wanted was an asset. We employ all these expensive lawyers to draw up these PFI contracts and I know it was an early one, but even the early ones cost millions and millions of pounds. Are we seriously being told that no one thought that making sure that central Government had some assets at the end of it was a factor that should be taken into account?

Bronwyn Hill: I think they did. Remember, what we are trying to do is reduce landfill diversion. Surrey was what we call an integrated project, so there was an infrastructure part—I think there were two energy-from-waste incinerators planned, which for various reasons did not happen—but they were delivering a lot of the other outcomes that they had been contracted to do. We have now changed that approach, as the Report says. My concern as the accounting officer when I arrived in 2011 was, “What is going to happen when the contractor does eventually find a solution to the infrastructure part of the equation?”—because they were looking at it—“How are Surrey going to pay them?” So what we did was embark on a series of conversations with Surrey, saying, “Look, we think this is a problem. Where are you going to get the money?” because you would expect the payments to increase slightly once the infrastructure comes online. We had a series of conversations with Surrey to help them fix that problem. The solution that we agreed was that we would reduce our payments to Surrey until such time as the infrastructure appeared, and then increase them to enable them to buy that asset. So we have regularised the situation.

Q24 Mr Bacon: That is the re-profiling that the Report talks about?

Bronwyn Hill: The net impact should be the same; we have just re-profiled the cash flows from us to Surrey. I understand—it is the Report—from Surrey that they have created sinking fund, so that when the infrastructure does come on stream, they have the ability to pay for it.

Q25 Chair: My question there would be: do we need that infrastructure, given the changes in technology? Do we need something that big? The thing in Southwark that you described is a very different animal, because that is presumably a cheaper capital investment. It does sorting, so it sorts out—

Bronwyn Hill: Yes.

Q26 Chair: It is about a third of the price—*[Interruption.]* Say it to me, Dr Church.

Dr Church: It would be millions of pounds, rather than tens or hundreds of millions to build the kind of facilities—

Chair: Say that again?

Dr Church: Millions of pounds rather than tens or hundreds of millions of pounds to build the facilities—

Q27 Chair: Yes, it is much, much cheaper, and that is the whole point. These big infrastructure incinerators do not do the sorting, which you quite sensibly said Southwark's now does and I think we would all buy into that, and therefore you need less. I do not understand for the life of me how you, owning the policy, are letting Surrey even think about developing a hulking great incinerator at a massive capital cost somewhere to the taxpayer when it is not needed?

Bronwyn Hill: I think our argument is that we need a mixture of facilities.

Q28 Chair: But why? Your own predictions say we have got enough now to fulfil our landfill obligations.

Bronwyn Hill: In that, we have assumed that Surrey will go ahead and deliver the infrastructure—I think it is now a gasifier plant in an eco-park in Surrey. Our assumptions about hitting the 2020 target take account of all of the programmed plans from now until 2020. We still need that plant.

Q29 Chair: Your assessments on waste have been dead out, haven't they? It is very difficult to predict what waste levels will—

Bronwyn Hill: It is very difficult to predict. Actually, the good news is that we are all doing better at recycling, so if we can keep that up—

Q30 Chair: Yes, quite. That is why it seems daft to put that up. I will tell you what it feels like to me, sitting here in PAC. We see a lot of these big PFI—we have done the PFI on hospitals and we have looked at other big PFIs. For the Government, it is a nice big project, PFI is the fashionable thing to do, and you commit yourself to a 25-year contract for a facility which does have massive emissions—if you don't do the sorting, your CO₂ emissions are enormous—and you don't need it. We end up paying for something down the line that we don't need.

Bronwyn Hill: Can I add a short bit? We do need the projects in the programme to deliver up to 2020 because we need a package, and individual authorities may need them. What about the authorities that still haven't found a way of disposing of their residual waste? There are some of them. They need to find spare capacity somewhere else to deal with it. What I am trying to say is that we have to look at the programme as a sort of portfolio of projects that will keep us on course for 2020.

Q31 Chair: My understanding is that in France and Holland, for example, they have built a lot of these incinerators, which feed into their district heating schemes. Right? We have done a bit of that, but they have done lots of it. Everybody has got less waste because everybody is now recycling much more, so they are short of waste to keep their district heating systems going, so they are buying the stuff. Looking at the policy in the round, it just seems daft that we are building horrible incinerators that give out CO₂ at a huge cost when we could be selling waste to, I think, France, Germany and Holland—I may be wrong on my countries, but Germany is certainly one—and making a profit for the local authorities. It does not seem logical. We are stuck in a decision we took 20 years ago that we are finding it very difficult to revisit with a value-for-money perspective that makes

sense in a different world where we can recycle, there are cheaper ways of doing it and there isn't as much waste as we thought.

Bronwyn Hill: Recycling has gone up, but it has gone up because of all the things that we are doing and that other people are doing outside the PFI programme. The only issue about sending our waste abroad or, indeed, any long distance, is that that generates traffic movements and so on—

Chair: I accept that, but it still means you can make money rather than spend money. In that totality—

Q32 Mr Bacon: We are importing biomass from north America. That generates traffic movement. We are bringing it here and burning it to meet some ludicrous target, are we not? That is correct, isn't it?

Bronwyn Hill: I am not sure that I know about biomass from America—

Q33 Chair: Explain to me why we are going for this traditional solution that somebody dreamt up 20 years ago when we got this EU target on landfill, and you are not moving it although times have changed.

Chris Heaton-Harris: That was going to be my line as well. It is more the kind of flexibility within the policy and getting the value for money. For example, when we initially recycled food waste, you were not allowed to use ordinary plastic bags. You had to get a special disposable bag to put your food waste in and that then went to recycling. Then, my local authority decided that ordinary plastic bags were fine because they were going to shred them and do something with them when they got there. Now there is technology out there that means you can get proper disposable plastic bags that will disappear within a few months, yet we are still stuck with a plant that can't deal with these changes. How do you future-proof to these projects? That is what we are trying to ask.

Dr Church: One of the things to bear in mind is that we set up the programme, the activity, to deliver these things in a context where if we didn't do that, we could see no way, at that time, of meeting our targets. In order to get a marketplace to deliver these things, we had to give a degree of certainty. That is one of the reasons why you have 20-ish-year contracts. Otherwise, local authorities and contractors cannot get the finance together to deal with it.

All of these contracts have some elements of negotiation in them, so that over time you can change some of the things as you go along. We have a programme of activities looking at, for example, helping local authorities realise efficiency savings because of some of the changes that the chair has pointed out. For example, can they sell some of the material—some of the recycle or the refuse-derived fuel—that is coming out of these projects and therefore reduce the overall cost to the local taxpayer in the system? If we had not given the market, the construction firms and the waste operating firms the kind of certainty that we did, it would not have been built. Before we started this process, you were getting about one plant a year, and we were not going to meet our targets. Our targets for 2020 are 50% recycling and 35% of 1995 levels going to landfill. There is still a gap, and that is the gap that we have to fill with—at the moment—forms of energy from waste.

Q34 Mr Bacon: May I pursue the earlier line of questioning about the three plants mentioned in the Report? You described the Herefordshire, Worcestershire and Surrey ones as legacy projects. The Norfolk project was much more recent. According to paragraph 2.36, the terms and conditions were stricter than the earlier agreements. That was signed in 2012, but you had said—paragraph 2.5 refers to this—“From 2010, the Department raised specific concerns with Norfolk that its proposed timetable might not be achievable.” In the light of that, why did you sign the funding agreement?

Bronwyn Hill: Because that was a question for them to assess the risks on. The risk we were pointing out was not that the project would not work, but that they had signed this compensation clause linked to the planning timetable, which we thought was over-optimistic.

Mr Bacon: You thought—

Bronwyn Hill: We thought there was a risk in relation to the compensation clause, which is standard in PFI contracts. Because it is not in Norfolk’s gift to guarantee planning permission, we thought they had underestimated the time scale within which they would get the project. We had an exchange with them about that risk. We wrote to their chief executive officer at the time, and he wrote back saying very firmly and very clearly that they had looked carefully at the risks and considered the alternatives that we had suggested to them, but they were confident that they could mitigate those risks. So we did challenge them at the time, but this is the contract that they are going to sign with the developer, and at some stage we have to say, “You are a local, democratically elected independent authority. If you and your members wish to proceed, we do not have grounds on which to prevent you, other than to point out that you are bearing that risk.”

Q35 Mr Bacon: You could have withheld your signature from the funding agreement. You are the ones who are, at the end of day, spending that portion of the taxpayers’ money. You could have said, “This is not a risk that we are prepared to back financially.”

Bronwyn Hill: They met the criteria for us to award the PFI credits.

Q36 Mr Bacon: Are you saying you tied your own arm behind your back? You listed some criteria, they met them; ergo, you had no choice in the matter?

Bronwyn Hill: No. This is the outcome of a long process of DEFRA scrutinising Norfolk’s plans, from outline business case through to full business case. There is an awful lot to scrutinise and challenge, and that is what we have done. Ultimately, they met our criteria. All these projects bear some risk; the question is who bears it. Our experience of planning risk in other cases was that it tended to take longer than most authorities thought it would, but at the end of the day that was not sufficient reason for us not to grant the PFI credits.

Q37 Mr Bacon: You used a phrase earlier in relation to the compensation clause, which you said you were worried about. You said that compensation of this kind was standard practice. I raised this issue with the National Audit Office four years ago, because our local newspaper ran a story based on a well-sourced document, which said that the compensation, were the incinerator not to go ahead, would be in the region of £20 million. This was before you signed the funding agreement.

I had an e-mail from the head of PFI at the National Audit Office on 25 November 2010 in which the NAO's David Finlay, who was then the head of PFI, wrote: "There is no standard practice, but it is not unusual for contracts to include some agreement that the authority will pay some compensation to the contractor if the project is abandoned as a result of failure to get planning permission. I understand that where these amounts are paid, they are usually modest amounts. We have no detailed knowledge of the project in Norfolk, but the £20 million potential compensation you mentioned"—I sent them the article from the local newspaper, the *Eastern Daily Press*—"on the face of it sounds very high." It is now considerably higher than that. As it says in the Report, it is now £33.7 million. Do you think that the Department should bear in mind the impact of its decisions on local taxpayers when taking those decisions?

Bronwyn Hill: We should certainly bear in mind the impact of our decisions on the affordability to Norfolk, which we did when we took the decision in October 2013 to withdraw credits.

Chair: Can you speak up, Bronwyn?

Bronwyn Hill: Yes. We should certainly take account of the impact. For example, we took a decision to withdraw credits, as you know, from the project in October 2013 because they had missed the planning timetable that they had set.

To go back to your question about whether these clauses were standard or not, I think that it is probably more accurate to describe them as principles. They reflected the Treasury's guidance that when there are what they call "no fault matters", which is a failure to get planning—provided both the contractor and the authority have used their best endeavours, if it is outside their control it is known as a no fault compensation—it is good practice to cap the compensation costs and to have a clause so that when bidders put in their bids, they bid for what sort of compensation clauses, capped, they would like so that the authority has competed them. It is important to bear in mind that these are competed clauses in most PFI contracts.

Q38 Mr Bacon: Did your guidance state that these caps should be in place?

Bronwyn Hill: I have not got the guidance in front of me but my understanding is that that would be best practice. You have to think what the alternative would be—what if the contract said nothing? You would then probably be faced with a long-drawn-out court case to decide who owed what to whom. It is a series of principles, which then need to be negotiated in detail in relation to the individual project.

Q39 Ian Swales: May I ask a clarification question? Paragraph 2.41 talks about the compensation amounts that were paid and paragraph 2.42 mentions that nearly £15 million is still going to have to be paid, basically by council tax payers. I guess the point is the extent to which the Department gets involved in what the financing arrangements are—remembering this is for a project that did not happen and for which planning permission basically never occurred. We are led to believe that the contractor incurred, well, the Report says that the first item—£20.3 million—is "mainly fees paid by the contractor to secure bank financing". That is a heck of a lot of money.

Mr Bacon: For a loan that didn't happen.

Ian Swales: Exactly. Are you satisfied that that money was actually paid out because, presumably, they never drew down the loan? Did they pay the best part of £20 million for a loan they never took? Even more ludicrous is nearly £12 million for hedging arrangements “against long-term changes in foreign exchange and interest rates”.

Chair: Ian, there is a letter from the county council.

Bronwyn Hill: There is a helpful letter from Norfolk county council explaining some of the background to those choices. It might be helpful to the Committee if I explain what DEFRA’s role was when they, as it were, put that arrangement in. This is something that they have negotiated with their preferred bidder, along the lines of the principles set down by the Treasury.

What we would normally say, and did, in this case, was: given our concerns about planning risk, which are common to a lot of projects and we knew the strength of the local opposition, particularly in Norfolk, to the site they had chosen for their waste facility, we invited Norfolk to consider—this is their choice—whether there were alternative ways of having a financial close but knowing that you have not got planning. There are pros and cons with those options as well, if you are interested in what the options are. Instead of having the banking facilities ready to go or put in place with a firm price, they could have done something called a split close, which says, “Don’t get those in place at that stage. Wait until you have planning permission and then go back to the banks and the finance companies.”

Q40 Mr Bacon: Other things equal, something with planning permission is going to be a lower risk than something without, so it should be cheaper, shouldn’t it?

Bronwyn Hill: Yes, so we suggested that they looked at the pros and cons of doing one or the other. The problem is that if you do that and you do not know when you are going to get planning and, as Mr Swales pointed out, they have not got it yet—

Q41 Chair: The Secretary of State did say to them they would get it by January.

Bronwyn Hill: I understand. You then need to ask what is going to happen to the markets between now and the date, which I don’t know, when I have planning permission. I am taking a risk that the market might move in the wrong way. Similarly, on hedging, you can either hedge when you close the deal or you could defer hedging. I certainly think from the letter that Norfolk has written to the Chairman, they said they were particularly worried about hedging. They had some exposure to foreign exchange because some of the equipment they were using was coming from—

Dr Church: Switzerland.

Bronwyn Hill: Switzerland.

Q42 Mr Bacon: But this is the contractors. It ought to be the contractor’s risk in a sensible contract. It is not normal for clients to indemnify their suppliers for foreign exchange risk. It is quite routine, when you pick up an annual report of a publicly quoted company, that it says, “Due to foreign exchange movements our operations in Europe, South America or Australasia, produced less income than we would have expected.” I don’t understand why you, advising authorities such as this

one, Norfolk, on its negotiations did not say, “Well, you are not going to indemnify them for that, are you? Surely that is on their ticket if they want to take this contract.”

Bronwyn Hill: Sorry, no. The hedging is on the back of the price that they want for the contract with the developer to build the plant, or whatever they were doing. The issue is not who is at fault or who is taking the risk at that stage; it is the risk that the planning timetable, over which neither Norfolk nor the contractor had control, would push them to a point where the prices would go up, so that when they did get planning, Norfolk would be faced with that choice that you have. Either you fix the price before you get planning, so you know what it is and there is hedging. Or you say, “I won’t fix it because I don’t know when I am going to get planning.” Then, when you get the planning, prices may have changed and the developer, because he has not closed the deal, will then say, “It will cost you more.” It is a balance; it’s a judgment.

Q43 Mr Bacon: I go back to my earlier question. Given all this uncertainty, and the fact that you were flagging up two years prior to signing the funding agreement, that you thought that the timetable was far too optimistic, why did you sign the funding agreement?

Bronwyn Hill: Because it met our PFI criteria. There are certain issues in these deals that are for the local authority to determine. We are talking about independent legal entities.

Q44 Mr Bacon: Yes, but they don’t have any legal rights over you. For all Government programmes, Government issues a policy, announces a policy and says, “Here is some money if you meet the following criteria.” Then you see what interest there is. If it turns out there is too much you can always revise them. It is not like they could have sued you, saying, “We met the criteria and you have decided not to fund us.” Could they? They had no legal standing to do that, did they?

Dr Church: They could have.

Q45 Mr Bacon: You could always try your luck in court.

Bronwyn Hill: They could have taken us to judicial review.

Q46 Mr Bacon: You are not seriously saying that the Government was legally tied into this. Are you saying that you had no legal option but to sign the funding agreement? I find that very difficult to believe.

Bronwyn Hill: We assessed.

Q47 Chair: Are you saying yes or no to that? Did you have a legal obligation?

Bronwyn Hill: I said if it met our criteria, which we had pre-published, and we had gone through a long process of scrutiny and challenge—

Q48 Chair: You had a legal obligation?

Bronwyn Hill: No.

Q49 Mr Bacon: You had a legal obligation to sign the funding agreement?

Bronwyn Hill: It is a reasonableness test.

Q50 Chair: Did you have a legal obligation to sign? All of us here think it is daft that you gave them the agreement in 2012. Did you have a legal obligation to do so or did you choose to do so?

Bronwyn Hill: It was a reasonable decision.

Q51 Chair: Did you choose to do so or did you have a legal obligation?

Bronwyn Hill: Of course we chose. Of course, our Ministers chose.

Q52 Mr Bacon: When you use the word reasonableness you make it sound like you were scared that if you had decided not to sign the funding agreement they would have JRed you on the basis that they had met the criteria. Is that really what you are saying?

Bronwyn Hill: No. This was not our project. This was us making a contribution to a local authority-led project. That is what I am trying to do.

Q53 Chair: This is your policy. Bronwyn, I have got a real problem with this. Local authorities only do this once. You have an overarching view. One thing the Report is quite complimentary to you about is that you were trying to share experience. You can't expect a local authority to do this alone when they do it once in a generation, whereas you are overseeing 28, which is what you told us. You have got to use your expertise. If you thought in 2012—

Mr Bacon: 2010.

Chair: 2012 was when they got permission.

Mr Bacon: 2010 is when the Report says that you had concerns about the optimistic timetable. Two years later you still signed the agreement.

Chair: If you thought it was daft—it is public money, whether taxpayers' money or council tax payers' money—you should have exerted your influence in a much more direct way, rather than just say, "They meet our rules, we'll give it a tick," but two years later remove the funding, which they say to us is unprecedented.

Bronwyn Hill: I hear your views but I do not agree with that assessment.

Q54 Chair: Why not?

Bronwyn Hill: For the reasons I have set out. This is a local authority coming to us with a very complex business case, which we scrutinise and challenge. We point out to them alternative options for dealing with the risk. I am not saying that Norfolk were wrong to go ahead; I am saying they were taking considered risks on what might or might not happen with something that is outside their control.

Q55 Chair: But you felt you didn't even need it to meet the targets. That is why you withdrew the funding. You withdrew the funding on a technical issue because they hadn't yet got planning permission. We all know that planning permissions, particularly on controversial things like that, run over. You know that. I know that. Anybody who is in this world knows that. On that technical point you withdraw it, but it is but actually because you don't need it. Yet you gave permission two years previously. It is just daft.

Bronwyn Hill: Can I come back to the criticism that Mr Bacon made of the early legacy projects? The reason we inserted the planning timetable condition and linked it to a review by us was to give us the option to assess the progress of the project against all the other projects in the portfolio. Remember we have to manage this whole portfolio of 28 projects and we need to get—

Q56 Chair: You just said you don't. Do you or don't you? Is it a local authority decision or your decision?

Bronwyn Hill: No, my apologies. We manage the overall portfolio. The local authorities have to take their own judgments about the contracts that they are entering into with contractors and for the credits that they get from us. We insert review clauses so that we will have the opportunity to review them. Norfolk was fully aware of that because of all the conversations that we had had throughout 2011 about our concerns. So we—

Q57 Mr Bacon: Including your concerns about the optimistic timetable?

Bronwyn Hill: Yes.

Q58 Mr Bacon: But you then went ahead and signed the funding agreement which committed you to supplying taxpayers' money. It is not as if planning permission being delayed is unusual. One of these projects in south London sat on the Secretary of State's desk for two and a half years. These things happen. It is quite normal, actually.

Bronwyn Hill: What I am trying to say is that we were very clear in our letters, correspondence and discussions with Norfolk where the risk lay if they failed to meet the planning longstop date.

Q59 Chair: I need to put this on the record. In their letter to us they say, "The scrutiny was very detailed and precise. Whilst led by DEFRA it also involved Treasury"—I don't know whether Treasury wants to comment—"The nature of the Department's involvement was such that dialogue with bidders could not close until DEFRA had accepted the positions reached, for example in relation to compensation payments for termination scenarios. In addition DEFRA also had to approve the

appointment of a preferred bidder and a final business case before the county council could award the contract.” Then they go on to say: “The grant would have been worth £169 million over the life...the removal of this grant after a contract had been awarded was unprecedented and whilst legitimised by the strict terms of its award we consider it very questionable on many grounds.”

Bronwyn Hill: We removed the credits in October 2013. Their full council, I understand, considered a revised project plan from the contractor and decided that it would still represent value for money for the authority at that stage—this is 29 October 2013—to proceed without our credits. So I go back to the point that even when DEFRA chooses, I would believe quite legitimately for wider portfolio reasons, that a project is getting to the stage where we don’t need it to fulfil our national requirements, there is nothing to stop that authority going away, doing a slightly different deal, looking for savings, finding new sources of funding with the contractor that it has entered into an agreement with. That is what Norfolk did in this case. At that stage they obviously satisfied themselves that they would get planning permission within the time scale that they envisaged.

Chair: They thought that they were completely closely controlled by you. That is what their letter says to us.

Q60 Guto Bebb: I want to be a bit of an anorak and ask you to what extent the Department would have any overview of the financial decisions made to underpin the proposed borrowing. I am fascinated that Norfolk appears to take out an interest rate hedging product. Would the Department or the Treasury have given any advice on that issue?

Bronwyn Hill: On hedging?

Q61 Guto Bebb: Yes. It says in the letter that the Department and Treasury were both offering advice. I am just wondering whether advice was given on the interest rate hedging project.

Bronwyn Hill: We asked Norfolk to consider whether they would want to defer hedging or not. There are pros and cons with both options. That was ultimately a choice for Norfolk to take.

Q62 Guto Bebb: In terms of the pros and cons, who was offering that advice? I would be amazed if a local authority’s finance department would have the expertise to take on an interest rate hedging project without advice from outside.

Dr Church: As part of the process of working with the council, one thing we would do is try to help them understand what skills they would need. We would advise them on the sorts of adviser they would need and, if they did not have that kind of expertise within their own local finance, how they might acquire that through some form of external advice. We would then say, “These are the sorts of thing you need to think about,” but it was never a case of us just substituting our judgment for the local authority’s. We would point out what we thought the issues were and help them to find expert, hands-dirty kinds of advisers. They would then have to take a view on that and come back to us. Only where what they were saying to us was not on-market—was not comparable to the other things we were seeing—would we say, “No. That is not on-market. You should try again, because you might get a better deal with your contractor.”

Q63 Ian Swales: Do you know what advice they took?

Dr Church: Not off the top of my head.

Mr Bacon: Why does the Treasury not have some sort of policies in this area?

Q64 Chair: What did the Treasury do on this?

Marius Gallaheer: I think the Treasury would only signpost local authorities through the Department to get the best advice. We would not give them detailed advice on this sort of arrangement. That would be for them—

Q65 Chair: “The scrutiny was very detailed and precise. It also involved Treasury.” I do not know why they would lie.

Dr Church: The way that the programme works is that DEFRA pay an organisation called Local Partnerships, which is jointly owned by Government and the Local Government Association.

Q66 Mr Bacon: Could you speak a bit more slowly and just say that again?

Dr Church: Okay. We pay an organisation called Local Partnerships, which is owned by Treasury and the Local Government Association. It contains a number of people with different expertise—commercial, technical, legal—in these kinds of deal. We allocate one of them as the lead transactor in a particular project—in this case, Norfolk. They will work with them, and if they say to us, “How do we approach hedging?” or another financial thing, we will first provide them with the guidance we have for all projects. If they have more detailed questions, we will discuss with them. In terms of working through exactly how they will do it, they then acquire their own advice, whether internally or paid for externally—however they wish to do it. We will help them and say, “Here is a list of the sorts of organisations, or the sorts of skills, you need in order to understand, for example, the interest rate hedging. Here are the pros and cons and the different kinds of thing you need to think about.” In the end, though, we do not substitute our judgment for that of—

Q67 Mr Bacon: You said that you or these transactors would indicate if something was not on-market, or was adrift.

Dr Church: Yes.

Q68 Mr Bacon: How many other projects are there where there has been £32 million of compensation for financial fees, bank loans and foreign exchange hedging in a £500 million project that has not gone ahead and where the finance was not required?

Dr Church: I do not have the exact number in front of me, but it was the judgment of the team at the time that that was comparable to the other PFIs we were involved in looking at.

Q69 Mr Bacon: The compensation arrangements were similar in the other ones?

Dr Church: Comparable, yes.

Bronwyn Hill: I think the question was whether any other cases where the deal has been signed and reached financial close have triggered the compensation claim because planning was not achieved. No; Norfolk is unique.

Q70 Mr Bacon: I still do not understand how you could have got anywhere near this quantum of financial compensation for a project that has not happened and for which the finance was not required. I simply do not understand how you could get to that point.

Bronwyn Hill: I think we are saying that that is not atypical.

Q71 Mr Bacon: You said a moment ago that one of your jobs, and the jobs of the transactors in Local Partnerships and Infrastructure UK, was to flag up whether something was on-market or adrift of the normal position. I have asked you to identify other projects where this type of compensation arrangement existed on this scale, because if others were as egregious as this, you would presumably know about them.

Dr Church: I do not have the numbers in front of me. If you want us to provide you with a note, we are happy to do that.

Q72 Mr Bacon: How can you know whether it is on-market or off-market if you cannot think of other examples?

Bronwyn Hill: I think he is saying that there are a lot of PFI deals. All of them will be different. Some may have different compensation, but most will have some form of capped compensation agreement in the event of a planning failure that is no one's fault. We could look at the other projects and say, "Are there any that look a bit like this?"

Q73 Chair: You have cancelled your PFI credits for 11 projects, have you not? Have I got my figures right?

Dr Church: Seven plus three plus one, yes.

Q74 Chair: Have any of those cancellations triggered compensation payments?

Dr Church: Only Norfolk.

Bronwyn Hill: Compensation on financing?

Q75 Mr Bacon: Compensation of any kind, including finance.

Dr Church: We withdrew our offer for 10 of the projects before financial close, so there wasn't a binding contract covering everything. One of the authorities had what is called a split close—we talked about that earlier—so there was some discussion between them and the contractor about exactly who pays what because of that. For the remaining nine, we are not aware of there being any compensation between the local authority and the contractor. There may have been some that they did not tell us about, but not that we are aware of.

Q76 Mr Bacon: So far from this being on-market, this was the one that was adrift.

Dr Church: No, because those contracts were in a very different position from that of Norfolk. Norfolk had signed, financial close—

Q77 Mr Bacon: But I am saying that what they signed was adrift, and your advice did not appear to stop them, or help them to stop themselves.

Dr Church: No, it was not adrift.

Q78 Mr Bacon: If it was not adrift, why were the other 10 different?

Bronwyn Hill: They had not got to financial close.

Q79 Mr Bacon: I understand that one had financial close and the others had not, but your whole point was that in the period leading up to this, before you sign anything, you give advice through the transactors from Local Partnerships and Infrastructure UK about what is and is not, to use your expression, on-market. Yet here we have this compensation arrangement that seems out of all proportion, given what actually happened and how much loan had to be drawn down—i.e. none. You are saying that it was not adrift, and that it was perfectly mainstream and normal, yet in none of the other cases were compensation arrangements of this order extant. I am just not with you.

Dr Church: No, I did not say that, sorry. What I said was that none of the compensation clauses were triggered, because the contracts that contained them were not signed.

Q80 Mr Bacon: Right. Okay, fair enough, but my point is that you positioned yourselves, with your partners—you mentioned Local Partnerships, and the Report refers to Infrastructure UK—as advisers to those local authorities. As Mr Bebb said, it is highly unlikely that an individual local authority has the expertise to do one of these projects by itself, because it does it only once. You were looking at an overview of a whole portfolio of them, so you were positioning yourselves, with your partners, as expert advisers. How did you allow this to go ahead? What I am really asking is, why was your advice so inadequate?

Dr Church: We didn't consider that it was.

Q81 Mr Bacon: So you think this is an acceptable outcome, do you?

Bronwyn Hill: We advised Norfolk about the nature of the planning risk and our view that they were over-optimistic—that is the best way I can put it—about the planning timetable.

Q82 Mr Bacon: I feel that this is a bit like the story of “There’s a hole in my bucket”, which is why I am going back to the original question. Why did you sign the finance agreement two years after you warned them that you thought the planning timetable was over-optimistic, based on your expert advice?

Bronwyn Hill: That was not a basis on which we could have refused to sign it.

Mr Bacon: So you were legally committed?

Q83 Guto Bebb: Can I clarify one other thing? Was the funding package that was in place actually ever drawn down? It looks as if the best part of £7 million was paid out on the cancellation of an interest rate derivative product. Was the funding relating to that derivative product ever drawn down?

Bronwyn Hill: I assume it cannot have been. You would have to ask Norfolk, but I am assuming it was not. It is a cancellation fee.

Chair: It is your money. You ought to know whether it was drawn down.

Q84 Guto Bebb: Just to get this right, what we are looking at is a cancellation fee in relation to money that was never drawn down.

Vikki Keilthy: May I come in on that? My understanding is that if the funds are available—

Guto Bebb: They must have been drawn down.

Vikki Keilthy: They haven’t been drawn down, but there were fees involved in having the financing available and ready to go.

Q85 Guto Bebb: Therefore the timing is important. In effect, the advisers were informing the county council that they should be taking out an interest rate hedging product, when the Bank of England was saying pretty clearly that there was no likelihood of interest rate increases for the next four years.

Vikki Keilthy: May I also come in on that? I think the letter says that the financiers required the hedges to be in place. They would not have issued the finance without them.

Guto Bebb: If the finance is required, that is technically a mis-sale. The Financial Conduct Authority has agreed that to require a hedging product in relation to a loan is technically a mis-sale. I think Norfolk county council should be looking for compensation from the advisers. That is an aside, perhaps, but £7 million of taxpayers’ money, in relation to money that was never made available, is shocking.

Q86 Chair: Can I just get clear in my brain that you cancelled it because you thought we did not need that additional waste facility in that area?

Bronwyn Hill: No. That is not quite correct.

Q87 Chair: What is correct?

Bronwyn Hill: We withdrew our credits, which were a contribution to the way that Norfolk was going to finance the project. It was not a view of whether it was needed in Norfolk or not, because we take a view of what is needed for England as a whole, given that local authorities have choices about sending their waste to another authority or sending it abroad, as you were saying earlier. We take a national view of what is needed as a whole to meet a target that is in 2020.

Q88 Chair: What have you just said that contradicts what I said? I said that you cancelled it because you took the view that we did not need this additional incinerator.

Bronwyn Hill: I thought you said “in this area”, in Norfolk.

Q89 Chair: So you led them slightly up the mountain and down again.

Bronwyn Hill: I need to distinguish what Norfolk needs, to help the Committee. Norfolk still needs to decide what to do with its residual waste. It needs to decide whether it can send it to another local authority, and whether it needs a facility or not. That is a matter for Norfolk county council to consider.

Q90 Chair: No. You have the national policy. Norfolk implements the national policy, taking advantage of Government funding for PFI credits. You chose—in an unprecedented way, according to Norfolk—to cancel because you took a view that there were sufficient incinerators nationwide. Norfolk suffered. That is an additional point to Guto’s point that they had never drawn down any money anyway. It is not a good way of running a policy from a Department.

Bronwyn Hill: I think the issue is that we need a national policy to meet the landfill diversion targets in 2020. Local waste authorities such as Norfolk need to decide what they are going to do with their waste. We both need—

Chair: I think you are trying to pass the buck, with the greatest respect, Bronwyn. This is a national policy. We are going over the same ground. I am going to pass you to Austin, but I will say once more that it is a national policy, with national funding and national expertise. Places such as Norfolk, clearly from their letter, depend on you to advise them. What you did was change your mind, and Norfolk council tax payers—Richard’s constituents—are picking up the bill for your change of mind. That is what is happening.

Q91 Austin Mitchell: Just to reinforce that, you were effectively in loco parentis to Norfolk county council. You were advising them, doing the contract. You were supervising the contract. You

are a big influence on the contract, and it is your responsibility to tell them if there is something wrong with that contract, because you authorised it. In that situation, you have been very unhelpful, and you allowed them to be financially penalised substantially.

Paragraph 2.36 says the contract was signed in 2012. There was a planning deadline of 10 June 2013, which you agreed to, even though you had doubts about it, according to paragraph 2.44. I would have thought there might have been some co-ordination between Government Departments. The Secretary of State for Communities and Local Government undertook to issue his decision on or before 14 January 2014. That was another Department. You could have co-ordinated to some degree and found out what they were delaying it for. You cancelled the contract. Why, if the contract was that dicey, particularly on timing, did you allow it to be subjected to such substantial compensation clauses?

Bronwyn Hill: There are two things I need to put on the record. One, we did not cancel Norfolk's contract. They chose to proceed with it in October when we withdrew the credits that we had previously agreed.

Q92 Chair: You cancelled how much money? Let's just put that on the record. How much money was Norfolk expecting to get from you?

Bronwyn Hill: It was £91 million in PFI credits.

Q93 Chair: No. It was £169 million over the life of the contract.

Bronwyn Hill: It is equivalent to £169 million. The second thing I must get on record to answer Mr Mitchell's question is that DEFRA is prohibited from intervening in the planning process that is run by CLG Ministers, because it is a quasi judicial process, so any suggestion that DEFRA could have an influence over that process, I really have to correct. I have to put that on the record.

Chair: Nobody is suggesting that.

Q94 Austin Mitchell: But you did not allow such hefty compensation clauses to be put into other contracts. We had the evidence from Richard Bacon earlier that they were optional and usually minimal.

Bronwyn Hill: Could I just read out the letter we sent to Norfolk in 2011, since this is obviously of interest?

Q95 Austin Mitchell: Why were they so heavy in the case of Norfolk?

Bronwyn Hill: We wrote to them on 6 September 2011—we can provide a copy, we have given copies to the NAO—saying various things: "I understand that the Council is confident that it will achieve a successful planning outcome within a period of time that is consistent with the assumptions made in the project's "base case"". Whilst this is your view—of achieving it— it "is ultimately something for the Council to take". To assist their view we attached a very detailed scrutiny note about the risks that we wanted to alert them to; about the risks on planning. It goes on to

say, “I also would seek your confirmation”—this is to Norfolk—“that your view on the likelihood of obtaining planning is made in recognition of the costs to the Council were the proposed contract to be terminated. I understand that such costs could amount to £20.3 million in addition to any interest or foreign exchange...” This is us very clearly saying, “This is your choice, you are taking these risks.” We got a letter back saying we are confident that we will achieve the planning timetable. All I am saying is that our view is that we warned them of the risks, but they are a legally separate entity to DEFRA and they chose, as a full council, to enter into this deal with the contractor.

Q96 Mr Bacon: This whole approach doesn’t really help Mr and Mrs Taxpayer though, does it? Going back to the Chair’s first question, is this a sensible policy if you can have these sorts of results? The whole point about PFI is, supposedly, to manage the risks and to get things delivered on budget and on time. All that this has ended up with is a train wreck. It is your policy.

Bronwyn Hill: I think the thing that led to the cancellation by Norfolk of its contract was their failure to obtain planning permission, over which DEFRA has no control.

Q97 Mr Bacon: No, they don’t have any control, but you did flag up that risk with them in 2010 and then signed the funding agreement two years later. I’m afraid a shrug won’t show on the transcript.

Bronwyn Hill: I can say something else if you wish, but I would only repeat what I have said earlier. We were very clear with Norfolk that this was their decision and they were at risk as a council. I regret that that money has been wasted and we have not got a result for it. They were aware of the very significant local opposition, led by local MPs and others, to that project. They went into this with their eyes open. I am not trying to blame them; they had some difficult choices. They still need to decide what to do with their waste and we would like to help them with that.

Q98 Chair: That’s all true, but you withdrew the PFI credits. They didn’t know that you were going to take a different view on what was required nationally in terms of these incinerators. You withdrew £90 million, or whatever it is, from them on the basis of your assessment of national need.

Bronwyn Hill: We did.

Q99 Chair: How on earth could they ever be expected to think about that? No local authority can come to that view.

Bronwyn Hill: But after we withdrew it, they nevertheless had a further meeting of the council, or whatever committee, and decided to go ahead. So they must have been confident at that stage that they could still deliver the project, as other local authorities have done, without our PFI credits.

Q100 Chair: Had they signed the contract before you withdrew the PFI?

Bronwyn Hill: Yes.

Q101 Chair: Yes. They signed the contract; you then withdrew the PFI because you thought we didn't need it nationally. There is no way that even the most brilliant Norfolk county council could have come to a sensible view on the national need from their local need. You actually lost them money—

Bronwyn Hill: They didn't need to take a view on national need. They signed a contract that they knew, because we had been writing to them—

Q102 Chair: You withdrew the money on the view of national need.

Bronwyn Hill: We said, "If you don't achieve planning to the timetable you have assured us you will reach, we will review it." There was a very explicit condition. Despite that review, they nevertheless went ahead.

Q103 Chair: We are going round the houses. Don't be unfair; they did have a planning problem, there is always a planning problem with these issues. They still don't know whether they have got planning permission on not because that has never been determined by the Secretary of State. You withdrew the PFI—nothing to do with planning—because of your view of the national need. It was nothing to do with the planning.

Bronwyn Hill: It was triggered by their failure to achieve the planning in the date they had set in the contract.

Q104 Austin Mitchell: They must be a very smiling, friendly people in Norfolk, judging by Mr Bacon and by the fact that they put up with this rubbish. There is another problem, which Richard Bacon raised, about the residual value of the asset. Was it the Department's policy that the asset should be retained by the council at the end? The council tell us that the withdrawal of your support left the county council with limited opportunity to pursue the substantial savings that could have been gained had it adopted different contract terms from those that are standard—you made them standard—in PFI contracts, such as opting not to retain the residual value of the asset. Had it not been for you, they could have negotiated a cheaper contract by not retaining the residual value of the asset. You made them. Was that your policy?

Bronwyn Hill: My understanding is that it is an option. They can either retain it or not. Presumably, they came to us with a business case—

Q105 Austin Mitchell: But would it have been cheaper not to retain it?

Bronwyn Hill: I don't know. There is an option for any local authority. I think most of them retain the assets, so, after the 20 to 25 years, the asset reverts to the local authority, presumably because that is what they want it to do. I understand that there is always an option not to have that

contractual clause when it is a choice for the local authority. I am not sure why they imply that we made them do it. I can look into it.

Q106 Austin Mitchell: Okay. One final point. I'd like to drag us out of lovely Norfolk and go to other parts of the country. Paragraphs 1.14 and 2.27 say that the projects in Herefordshire and Worcestershire have been running for 15 years—you were obviously much more lax with other authorities than you were with poor old Norfolk—without construction of the main asset that you were part funding, so how much taxpayers' money has been wasted on funding contractors for non-existent assets through contracts that you have authorised?

Bronwyn Hill: No money has been wasted. As I said earlier—

Q107 Austin Mitchell: But you continued payments, even though the asset had not been created.

Bronwyn Hill: Presumably, they were delivering the outcomes that they had been contracted to deliver. Hereford and Worcestershire have now decided to deliver that asset in a different way with them becoming the sole lender, and we have reduced our payments by agreement with Hereford and Worcestershire by roughly £30 million over the remaining lifetime of the contract.

Q108 Austin Mitchell: Paragraph 1.14 states, "the Department and its predecessors paid each of the planned grant payments in full even though the planned energy-from-waste facility had not been built." That seems extraordinarily lax.

Bronwyn Hill: It is because of the way the contracts were structured, which I am not trying to defend. I am saying we have improved since then. We have tightened up our scrutiny and the contracts, but our advice was that the contracts required us to do that. The contract was not just for the delivery of an energy-from-waste infrastructure project; I am guessing it was for the delivery of recycling, recovery and other facilities. So they were meeting the outcomes and therefore we had to pay, but, because I was not happy about paying in advance of the asset being delivered, we embarked on negotiations with those authorities to say, "We are not happy with this; contractually we are obliged to pay. Can we come to some sort of renegotiation to change those arrangements so that we get a better alignment?"

Q109 Chair: Why did you interfere there, but not in Norfolk?

Bronwyn Hill: They're very different cases.

Q110 Chair: They're not. I would suggest that you have chosen to distance yourself in Norfolk so that the Norfolk taxpayers pick up the tab of a ridiculous situation, whereas in Surrey you do interfere. It took you a long time. I don't know how long they have been renegotiating—18 months or something ridiculous. But you do interfere.

Bronwyn Hill: I think the authorities might, to use your words, Chair, say that we had interfered in all those projects. We intervened in all those projects, because there were things that were not going according to plan.

Q111 Mr Bacon: On that point, in relation to the project that Mr Mitchell was talking about where you paid £89.5 million because you were contractually obliged to, even though the facility had not been built, paragraph 2.17 states, “The Department does not hold an original business case for the Herefordshire and Worcestershire contract. Herefordshire and Worcestershire told us that they do not believe a business case document was produced.” So you ended up paying the authority £89.5 million to compensate them for this contract that you had agreed you would help pay for, when they did not get an energy-from-waste facility and you did not have a business case. Isn’t that extraordinary?

Bronwyn Hill: Shall I respond to that?

Mr Bacon: Yes, please.

Bronwyn Hill: It is true—

Mr Bacon: I mean, actually, it isn’t extraordinary. You might say it is par for the course, but if you want to answer my question directly—

Bronwyn Hill: It is true that the original business case cannot be found, and we have had a very thorough search of the archives that we inherited from DETR and neither can Hereford and Worcester find them, but we are pretty sure that a business case would have gone to a project approval group, which was known in those days as PRG—project review group—for approval. What we then had, I understand, I am just checking my notes, in August of the same year—so this business case that I do regret; it is not good that we can’t find it—was an outline business case. It went to the project review group in March 1998, but in August that same year Hereford and Worcestershire applied for an increase in PFI credits to support a higher outcome—or something. They produced a briefing note at that time which addressed the issues that we needed to be satisfied on to assure the Department at that time, DETR, that it met our criteria for PFI credits. So we do have that document and we have documents that were, if you like, the agreement between us and Hereford and Worcester that say, this is the credits that we will pay you. I will say that we have learnt our lessons. A, we will look after the paperwork and B, we have changed the way that we do these contracts, so there are much tighter conditions on the local authority about what happens to the money and what triggers penalties or payments.

Mr Bacon: As Norfolk has discovered.

Bronwyn Hill: As Norfolk has discovered.

Q112 Mr Bacon: It just seems extraordinary. The spectrum is, from one end you hose money over them, whether they have got the details or not, whether they have got the business case or not, whether they get the facilities or not, and at the other end of the spectrum, you penalise them—even after the contract has been signed and you have agreed the funding agreement. It does seem rather an extreme variation, doesn’t it?

Bronwyn Hill: I think that is a bit of a caricature, if I may say so?

Mr Bacon: A characterisation, I think.

Bronwyn Hill: A characterisation, but I would say we have improved significantly our scrutiny, our support and our challenge to these projects over a long period of time.

Q113 Chair: Can I ask why it took you two years to support the renegotiation of the contract that Surrey county council had? Why did that take two years if you are so greatly efficient?

Bronwyn Hill: It's not about efficiency; I suspect it is because they wanted to have a debate about the renegotiation. If I was sitting in Surrey's shoes—I am guessing as it wasn't me—I imagine they would want to hang on to the money.

Q114 Chair: One of the things that the Report says is that it sat in your Department for six months.

Dr Church: There was a complaint against the way that Surrey had gone about the procurement which was referred to the European Commission, so we had to wait until that was resolved. There was also some technical information that they needed to give us from their contractor that they could not give us until late in 2012, so they could not finalise what they were putting in front of us until quite late—

Q115 Chair: They say it sat in your Department for six months, even accepting those; it sat with you for six months.

Bronwyn Hill: I think we disagree. We can't do the scrutiny if we have not got the information that we have asked for.

Q116 Chair: Did it take you six months to do the scrutiny?

Bronwyn Hill: In that case—

Dr Church: I don't remember.

Chair: According to the Report, it did.

Bronwyn Hill: No, I think six months was the other authority. This is Hereford and Worcester.

Chair: Somewhere I read, it did. Here we are. Page 19, paragraph 2.20.

Bronwyn Hill: It says—I'm sorry—"The Department's review of Herefordshire and Worcestershire...for making changes...took approximately six months."

Chair: I think that is a lot.

Bronwyn Hill: That is how long it took.

Q117 Chair: I cannot imagine any private sector organisation taking—when you know you are giving out money for things that you are not getting in the way that we have described. It took you six months to come to a view?

Dr Church: In the case of Hereford and Worcester, this was where they were proposing this novel approach to paying for the energy-from-waste facility. We needed to discuss internally and with Treasury colleagues and others.

Q118 Chair: Six months?

Dr Church: Yes.

Chair: I think that is an inordinately long time for when we know that taxpayer's money was not being spent effectively.

Bronwyn Hill: I think what Colin is trying to say, in case you have missed the point, is that it was a very unusual proposition so it was important that we took appropriate time to scrutinise it. And we were contractually committed to making the payments.

Q119 Chair: I'll just go back to a few other things. I think we have covered most things. It was Denmark and Germany that are buying waste. Are we encouraging anybody to sell their waste rather than to build facilities to get rid of it?

Dr Church: It is one of the options for a local authority.

Q120 Chair: Are you encouraging it?

Dr Church: We don't encourage or discourage.

Q121 Chair: You do encourage and discourage. It is simply the use of the PFI. You do encourage and discourage. You have this unit that supports them and you do have advice. Are you encouraging it?

Dr Church: We are not encouraging or discouraging the exports of what is called RDF, waste for use in incinerators.

Q122 Chair: If Worcestershire cannot raise the finance for the proposition they have, doesn't that suggest it is not good value for money for council tax payers?

Bronwyn Hill: Hereford and Worcester went to the Public Works Loan Board.

Q123 Chair: They can't raise the money—

Bronwyn Hill: Oh, privately you mean. I think it was their choice to go to the Public Works Loan Board. I don't know what their reasons for that were.

Dr Church: My understanding is that because of the short period of time left to repay the loan, they couldn't get a deal that was affordable for them in that period of time from a private lender.

Chair: Say that again.

Dr Church: There was only seven years left on the contract, or nine—I forget which. A private lender would have required repayment in equal instalments over those nine years and Hereford and Worcester did not want to repay in equal instalments over those nine years.

Q124 Chair: Do you think the taxpayer and council tax payer should be happy that it took you 13 years to renegotiate the contract? If I go to appendix 2, let us take the Surrey one or the Worcester one. Let us take the Worcester one. In December 1998—have I got the right one? It is longer than 13 years. I must have been looking at the other one.

Vikki Keilthy: They were both 15 years: Surrey and Hereford and Worcestershire.

Q125 Chair: Fifteen years. And for the Surrey one, 13?

Vikki Keilthy: Fifteen.

Q126 Chair: And for the Worcester one?

Vikki Keilthy: Hereford and Worcestershire is one project which was 15 years, paid for 15 years.

Q127 Chair: And Surrey?

Vikki Keilthy: And Surrey was 15 years as well.

Q128 Chair: Is that satisfactory for the taxpayer or the council tax payer?

Bronwyn Hill: Some of this is before my time so I don't know. I think what we have said is that we have—

Q129 Chair: On behalf of the Government as accounting officer you have a responsibility. That is the time it has taken us—

Bronwyn Hill: I think there is nothing improper or irregular about the Department for Environment, Transport and the Regions making those payments—

Q130 Chair: It is not quite the question I asked. I asked: is it satisfactory that it has taken 15 years to come out of a contract which we all think is inappropriate? You accepted that.

Bronwyn Hill: The outcomes were being delivered for the grant. That is the point.

Chair: That is not what I was asking, with respect.

Bronwyn Hill: I think that is why I am saying—

Q131 Chair: I think you accept and we accept that the original contract was not a particularly sensible contract whenever it was signed in the mid-late 1990s. But it has taken you 15 years; it has taken the public world—you and the local authority—15 years to get us out of it. Is that satisfactory?

Dr Church: One of the issues for us is that these projects for building energy from waste facilities take a very long time to come to fruition. A previous NAO Report suggested that it is five to nine years for one of these projects to start to be operational. It is really hard to say within that period that this is not going to deliver the infrastructure. So at what point do you decide that it isn't going to deliver and that you need to re-enter that negotiation? You could argue that it is as late as 2007. You could argue that it is later still, depending on what you think the trigger is.

When we had the transfer to us of responsibility for paying the credits directly rather than via DCLG, we had a look immediately and that is when we started the process. That for us was an important trigger to go and look at it. Had we looked at it earlier would we have come to a different conclusion? They were still in a process of seeking different forms of infrastructure. So I don't know because that didn't happen.

Q132 Chair: Just let me get it clear. My knowledge of Government is that when you get a transfer of responsibilities the staff come with that transfer. You don't leave the staff behind. So you have the same group, given that people always change their jobs. People move with responsibilities. So it is a bureaucratic change, but the group that were working on it in DCLG will have moved to you in DEFRA.

Dr Church: I don't know whether that is true or not.

Chair: It is always true, I can tell you.

Dr Church: In this particular instance there was a unit in DCLG that administered PFI for all of Government. I do not know how many people were in it. There may not have been enough to transfer to all the Departments that then took a responsibility. I do not know.

Q133 Chris Heaton-Harris: A lot of this comes down to a bit of confusion about defining goals and not being able to stare forward and future-proof some of the projects. I have a specific concern, which has been drawn to my attention recently about—it's slightly outside the remit of the

Committee but, hey, Margaret, we don't mind that do we?—the 5p tax on plastic bags, which has already been implemented in the Welsh Assembly and is possibly coming here next year. It is about the definition of biodegradable, which would mean that you charge for plastic bags but you do not charge for biodegradable bags because they do what they say and biodegrade. Your Department has seen this coming for quite some time, yet there seems to be no chance of a definition of biodegradable for this, which means that businesses that have the money to do research and development into this to produce the perfect biodegradable bag that we can use in food composting and recycling are set back, waiting for you to define things. Is there something slightly wrong with the priorities in the Department? It is about getting sensible information out there so that people can make the right choices.

Dr Church: In terms of setting the standard for biodegradable bags under the plastic bag charge, we are working with industry at the moment and with the standards setting organisations. It is not—you will expect me to say this—it is not straightforward. On the one hand, you have the issue that it is degradation in the environment, but into what? On the other hand, the issue is: if you mix a biodegradable bag with other sorts of bags in the recycling process, do you reduce the quality of the material that you can get out and reuse?

We have to talk to people who are involved in the whole chain to find out what the right set of issues to worry about is, and how we are going to structure that. That is the process we are undergoing at the moment. At the same time we have funded some activity, through the Technology Strategy Board's small business research innovative, to look at things such as separation in mechanical resorting and biodegradability. We have tried to encourage people in the marketplace to start thinking about these issues.

Q134 Chris Heaton-Harris: Going back to my original point and some of the points behind this Report, there are establishments being built now and that have been built in the past that can deal with the changes that policy might drive in the future, but we are not helping them to future-proof their businesses without doing some really simple stuff behind the scenes. It seems like the Department is almost a drag on the future-proofing of recycling for the purposes of this Report and, indeed, on general recycling and hitting our targets.

Bronwyn Hill: Colin's going to get very defensive now, because his whole life is spent thinking about how to improve recycling and how to get people to reuse their plastic bags. I think he is slightly astounded that we are not doing enough. Perhaps I can defend him by saying that we think we do a hell of a lot. I know that may never enough for people who think we should be even further ahead. It is an incredibly detailed and technical issue, and in my experience everybody has their own view about what the right answer is for these difficult technological problems. I would defend my colleagues, who do a hell of a lot of good work, but they do it with the industry, because if we did it to industry, they would reject that approach. It is very important that we take the industry with us, but I fear that there are as many views about the topic of biodegradable plastic bags as there are people who are capable of manufacturing or using them.

Q135 Chair: I have one final question, and then I think we are there. Do you talk to DECC?

Dr Church: Yes.

Bronwyn Hill: Yes.

Q136 Chair: So on incinerators, do you think about CO₂ emissions?

Dr Church: Yes.

Bronwyn Hill: Yes. We had a ministerial round table to talk about how we might improve the take-up of the products—the by-products, if you like—of energy from waste, and link it to other uses by getting it into industry or combined heat and power.

Q137 Chair: There is a hierarchy of waste, isn't there? You don't want to put aluminium into these incinerators.

Bronwyn Hill: Yes.

Q138 Chair: So there is a national policy that says old-style incinerators are no longer appropriate.

Dr Church: What our policy says is that over their lifetime they will be environmentally beneficial, and that includes the ones that are currently in construction. On current projections, in 10 or 15 years' time you wouldn't want to build more of them unless they were what we call combined heat and power, capturing both electricity and heat. If you can do both, they will probably still be environmentally sensible. If they are electricity only, building them from scratch 10 years out from now is probably not the right environmental outcome.

Chair: Thank you.