

HARBOROUGH DISTRICT COUNCIL

MEETING OF THE SCRUTINY PANEL FOR RESOURCE DEVELOPMENT

held on 9<sup>th</sup> September 2010, in the Council Chamber,  
Council Offices, Adam and Eve Street, Market Harborough

commencing at 6.30p.m.

Item debated: FOCSA WASTE CONTRACT

**MEETING TRANSCRIPT**

To the reader,

Please note:

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(ii) that as this document is a transcript of speech, phonetic spelling of words is used in some instances.

(iii) that numbers are used at the beginning of each 'paragraph' to denote time elapsed (minutes).

(iv) that the following abbreviations are used to denote speakers:

BP: Councillor Pain  
BS: Councillor B. Smith  
MR: Councillor Rook  
GH: Councillor Hart  
PK: Councillor Knowles  
BJ: Councillor Johnson  
PF: Councillor Fuchs  
PhK: Councillor King  
DE: Councillor Evans  
SP: Stephen Pearson of Freeth-Cartwright Solicitors  
EON: Edward O'Neill, Democratic (Scrutiny) Officer  
SM: Sheena Mortimer, Meeting Support Officer  
VW: Verina Wenham, Head of Legal Services  
KM: Kamal Mehta, Deputy Chief Executive

(v) the key:

- (.) indicates a pause of about one second, or less, between utterances.
- (+) indicates a pause of more than one second between utterances.
- [ indicates overlapping speech.
- [ ] transcriber's comments.

Edward O'Neill  
Democratic (Scrutiny) Officer

0 (Minutes)

BP: Well good evening Members, ladies and gentlemen in the gallery. My name's Blake Pain. I'm the Member for Lubenham Ward here at Harborough District Council and I Chair the Scrutiny Resource Panel here at the Council too. I think the first thing to do is to welcome you and also do a little bit of house-keeping; to inform you that the toilets are out through the main door to the right and also that is the fire exit in the event that the fire alarms should go off. The date is the ninth of September and the time is six thirty and may I remind everyone that this meeting is being recorded. And may I also remind the public that this meeting is being recorded too. I think that covers all the house-keeping so if we could move on to item two, or one of the agenda which is the apologies for absence and notifications of substitutes. I'd like to report that Councillor Page has already submitted her apologies and her substitute this evening is Councillor King.

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BP: Councillor Smith

BS: Thank you Chairmen. Do you think it would be appropriate to, to lots of strange faces on your side of the table.

BP: I will, I will get to that Councillor Smith and we'll all introduce ourselves. I will also ask all Members to introduce themselves whilst the microphone is switched on (.) So is everyone clear about the apologies and the substitutes. That's fine. May I ask each Member in turn to introduce themselves and then after we've done that I'll introduce our colleagues, Officers and guests. Thank you (.) Councillor Rook, can we start with you?

MR: Thank you. Yes: Councillor Mike Rook, Leader of Harborough District Council.

GH: Councillor Hart, Chairman of Scrutiny.

PK: Councillor Phil Knowles, Great Bowden and Arden Ward.

BJ: Councillor Barbara Johnson, Great Bowden and Arden Ward.

PF: Councillor Peter Fuchs, Dunton Ward.

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BS: Councillor Brian Smith, Bosworth Ward.

PhK: Councillor Phil King, Kibworth Ward.

DE: Councillor Derek Evans, Little Bowden.

BP: Thank you very much Members. May I now ask the Officers and guests to introduce themselves?

KM: Kamal Mehta, Deputy Chief Executive.

SP: My name is Stephen Pearson, Partner with Freeth-Cartwright Solicitors, here to advise on legal issues tonight in connection with the contract.

VW: Verina Wenham, Head of Legal Services.

EON: Ed O'Neill, Democratic Officer for Scrutiny.

SM: Sheena Mortimer, Meeting Support Officer.

BP: Thank you very much. With that can we move to item two of the agenda which is to take the Minutes of the Meeting of the Scrutiny Panel for Resources held on the twenty-second of July two thousand and ten.

BS: Councillor Smith. I will move the Minutes.

BP: Thank you Councillor Smith.

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PK: Councillor Knowles, I'll second it Chairman.

BP: Thank you. Councillor Johnson?

BJ: [inaudible] Can I propose an amendment please? (.) Under Portfolio Holders' end of Year Performance on page three, little four. It was actually my question about obtaining a list of assets and I am not sure that it was agreed that a list be circulated subsequent to the meeting. I think it really should read: it was noted that a list of Council assets had been previously circulated because I was told that we'd had the list albeit it was just a list with

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very few details on that we had had it.

BP: that's noted Councillor Johnson. Is that okay Ed, have you got that down? Okay that's noted. Councillor Knowles?

PK: just one point Chairman. On your copy it actually has my name listed as being at the meeting. On the one that was circulated I was missed off but I was here.

BP: for the record Councillor Knowles was present at meeting on the twenty-second of July. (+) And I believe, Councillor Knowles, that the copy of the Minutes that will be signed today will have your name on it too (.) Okay, with that I shall sign the Minutes. (+) We'll move swiftly on to item three of the agenda which is to receive any Declarations of Members' Interests. (+) Councillor Fuchs.

PF: Councillor Fuchs. I'd, it's not really

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a Member's interest but just to make the meeting aware, I was member of the task panel dealing with the item for the waste contract.

BP: thank you and I think all members would have an interest by virtue of our interaction with Full Council and other meetings that have taken place regarding this issue. So that should be a general note.

BS: Chairman, we have our rubbish collected by FOCSA.

BP: thank you for reminding us Councillor Smith. Councillor Hart?

GH: I was Leader of the Council when the initial contract was being discussed.

BP: thank you Councillor Hart, that's noted. Any further Declarations of Interest? No. Okay. Well this brings us on to item four of the agenda. It's the report one FOCSA waste contract. I'd just like to, from the chair, give a brief preamble as to why we're here. Full Council

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resolved I believe it was April the nineteenth. February. Councillor Knowles made a recommendation, it resolved that this should come to this Scrutiny Resource Panel to be scrutinised further, specifically in relation to the implementation of the new waste contract. Now the waste contract renewal, a huge amount of work went into this and it accumulated in November two thousand and eight with Full Council awarding the contract to FOCSA. Now, the Council has done a huge amount of work over the past years to support, improve and strengthen its operational practices and it matters to Members, the public and to all that work for and in the Harborough District that the processes and systems that the Council employ are transparent, robust and, more than anything, treated with respect. Okay, so that's why we're here. And what I'd like to do is to try and keep to the objective of the report as far as possible and

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let's not try and go off piste and deviate to do with other issues in relation to the waste contract. If we can keep to the clear terms of reference that would be most appreciated. I'd like to invite Verina just to run us through the report and I reserve my right just to briefly come back in after that. If that's okay.

VW: thank you Chairman, Verina Wenham speaking. I think the report focuses on the resolution passed on the twenty-fifth of February and specifically relates to the objectives set out in the first part of the report, focusing in on Council resolution four three nine d two which relates to the performance bond and Council's resolution that a performance bond be put in place (.) from the commencement of the contract on the first of April. Obviously Members are aware of the history of this, of the resolution to award the contract

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to FOCSA was passed on the seventeenth of November two thousand and eight, at Full Council. Following on from that, negotiations continued with FOCSA. I say, I'll give a very brief time-line to this. External solicitors were appointed in March two thousand and nine to advise the Council in respect of contract provisions which included the performance bond. And the time-line clearly sets out that on the thirtieth of March two thousand and nine a letter was sent to FOCSA setting out the conditions upon which the Council would be happy for these services to be provided from the first of April. On the fourteenth of July two thousand and nine a letter was received from FOCSA agreeing to those conditions and including, within the letter, a surety bond that was signed by themselves.

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Negotiations continued from there on in. The services contract itself was executed by the Council in March two thousand and ten and was dated the eighth of March two thousand and ten which is when the services contract itself came into effect (.) Supporting that was a performance bond, again which was dated the same date, eighth of March two thousand and nine, was sealed by the Council on the first of February. However my report does go in to some detail regarding the undertaking given by the surety prior to that to enter in to searches surety. Obviously Stephen Pearson is here this evening to answer any questions from Members as it was Stephen that provided the legal advice as part of those negotiations. As I say, hopefully the report sets out in detail the facts on the matter. And obviously I'm happy to answer any questions. As I say Stephen is here to answer

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any specific questions you may have. Thank you Chair.

BP: I think, I said I reserve my right to briefly step in after Verina but I think Members are quite keen to get on and debate the issue. All are familiar, I think, with the report and I note that Councillor Knowles would like to speak first so, Councillor Knowles...

PK: Thank you Chairman. (.) First of all could I thank the Officers for preparing this report. I'm sure it's been a difficult task, there's been a lot of work involved. I raised this and pointed out to Members back in February that the contract was unsigned and at that time, as we all recall, there were a lot of Members around that table who knew nothing about it. And this report confirms that that information was absolutely

correct, that the contract was unsigned, it was unsealed, and there was no contract in place (.) I should be feeling pleased with the contents of the

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report but I have to say I'm rather more worried having read it than I was before I received it. Because one of the things that was said quite clearly on a number of occasions to the Council, and to myself particularly because I raised them in question form, was that this Council had a letter of intent in place with a surety bond there to support it. And that the Council was covered. When I started to read through the documentation I found that – and this is all in the documents – that on thirtieth of March the Deputy Chief Executive wrote to to FOCSA to confirm that the contract would commence on the first of April two thousand and nine. Now why it took us until the thirtieth of March to write a letter for a contract that was starting the next day I think in itself requires some comment because clearly one day's notice, one day's formal notice, that you're starting a new contract is a little bit tight for time to put it

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mildly. The letter was effectively asking for a letter of intent and a bond and that this should be received back within seven days. Now, we've been told, and I repeat this again because I think this needs some answering, that there was a letter of intent in place, there was a bond sealed and that this Council had a surety bond and we were covered. Three and a half months later on the fourteenth of July we finally got the much-heralded letter of intent. The dates are in here. Our legal Officers confirmed it. For three and half months we had nothing on file as far as I can see it by way of a contract or a letter of intent or a bond or anything. So, for three and a half months it begs the questions how much of a problem would we have had, and thank goodness it didn't, if something had gone wrong. That's the first

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thing. The procurement bond which was included with a letter, received on the seventeenth, was indeed signed by, and then that was blank. But interestingly enough when you look at the document, that's in there under appendix two, it is undated (.) on page nine, it says this bond is made on and the date is blank. Two thousand day of blank. Two thousand and nine and it goes down all the way down again, the authority and FOCSA limited have entered into a binding agreement on and the date is blank again. We then turn over to page eleven, having gone all the way through it, and it says in the witness whereof this bond has been executed as a deed on the date set out above. But there is no date on it. And the common seal of the District Council of Harborough, Chairman of the Council. Unsigned. Chief Executive. Unsigned. Now admittedly it's down in there that it was signed as a deed by

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Julie Clay, the team manager at Leeds Trades Services, in the presence of, I think it's something Webb. But it certainly begs the question to me of how much of a legal and binding document that is because if you're buying a house, until both sides have signed the contracts, and they are exchanged or the document is exchanged it is not a legal and binding document. Now I have long held the belief on this Council since I got on here that a letter of intent is nothing more than that it is a letter of

intent, good intent, but intent nevertheless. It is neither a promise nor a contract. And I know that legal minds far more astute than mine will argue it one way or another in a court of law. But the one thing that I've not been able to establish, from anybody I've spoken to, is how you can have nothing in place for three and a half months and then have a document which is unsigned and undated. And I think that to tell the Council that we have a letter of intent

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and we are that we are protected, that is the first and primary cause for concern to me. I don't understand why this Council allowed this to run for three and a half months, Chairman, on a letter of intent not having been received. Were we chasing it? Why? What was happening? Who was chasing it? Who was responsible for chasing it? Who was telling who what was going on? Why wasn't it reported to Council that with three and half months we'd not received anything back? What would have happened if something had gone wrong?

BP: Councillor Knowles, can I just stop you there to cover a few of the points that you've actually raised whilst we have our solicitor with us, because I think you raise some very, very significant points. And I do actually want to get other Members –

PK: Could I just add two more things here, Chairman? It's all to do with this letter from FOCSA which might be of assistance to our, our solicitor, if I may.

BP: Well could I just ask our solicitor Stephen Pearson, welcome to this meeting and thank you for your attendance. Councillor

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Knowles raises the surety issued by the National Westminster bank in February two thousand and nine. Could you explain to us what weight and significance that document actually had at that point in time? And the consequences of that not being signed at that point in time?

SP: Yes certainly. I think there are a few points to make in terms of, I know Councillor Knowles made a number of points and I hope I'm able to deal with most of them. The letter of intent, as you say, was issued on the thirtieth of March and in my opinion that is capable of being something which is a letter of intent which FOCSA acted in accordance with. They commenced providing the services in reliance on that letter of intent by their provision of the services themselves. However, I would have to say that the performance bond was certainly not made available at or within seven days of the commencement of the provision of the services on the first of April. That clearly is a fact because, although a form of bond had been discussed,

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we only saw a version of the bond signed by the bank on the fourteenth of July, as you indicate. And as Members will see on page eight, there was a letter from FOCSA to Mister Mehta, which says on paragraph one, a performance bond in the agreed form has been procured. What I would say, however, is that a bond is a particular sort of legal document in that it represents only the obligations that the surety is making to the Council, it's very much a one-way document. The bank is saying that it will guarantee the performance of FOCSA in all sorts of scenarios. And in my view it is capable of being enforced from the date that we receive a document which is properly signed in accordance with the bank's procedures. But banks certainly will not give such things as bonds, which make them liable for a large amount of money, without expecting to be liable for them. And even though it's not

dated at the time, as it accompanies a letter of the fourteenth of July, clearly if there had been a query at that point then one would say, what is the date, well, the date

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must be the fourteenth of July or thereabouts because that's the day on which the letter has been supplied. So I would be comparatively comfortable with that situation. That's not to say that clearly there wasn't a gap of three and half months during which there was not a bond available for the Council's benefit.

PK: so therefore, you would concur with the point that even if we accept that in July this Council had the surety and a bond, for three and a half months we did not have the benefit of a surety or bond in place?

SP: yes, through the Chair, that's certainly factually correct.

PK: well, can I just say Chairman I think that first and foremost that is a very, very serious situation. This Council received assurances at Full Council, to every Member round that table, that a bond was in place, this Council was covered. That's what we were told and I think that the Leader of the Council, who is here tonight, should please explain because I think that that is a serious situation.

BP: thank you Councillor Knowles. There are two objectives to this report. The first is to determine the reason why

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the resolution of Council Minute four three nine d two has been breached without reporting back to Full Council. I think it's categoric and unequivocal through our legal representative here this evening that that is actually the case. Can you just confirm that that is the case for the record?

SP: yes, I can.

BP: it is, okay. I think during the course of this debate Councillor Knowles we will look at the rationale as to why that occurred. That's notwithstanding that Councillor Rook, as Portfolio Holder at the time, will come in in a brief moment or two, to answer your direct question. The other aspect and objective of this report is to understand better, therefore, the risks that this Council were exposed to for three and a half months whilst that bond was not in place. So, we'll do all that in an orderly manner. I think the report brings out ten or so key points in relation to this issue and I think all Members will wish to discuss. Would you like, Councillor Rook, to respond to Councillor Knowles at this point or do you reserve your right to come in at a later stage?

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MR: No, no, I'll do my best. At the time the contracts were procured, the committee will know that I was Portfolio holder at the time. My main objectives at the time was the smooth procurement of that contract, that there be no dip in quality and that the months from November, when the Full Council placed the contract through to the first of April when it was due to start, were full of activity that I was monitoring in terms of the procurement of the vans and the routes, and all the detail that I was interested in. And that was my role, I felt, as Portfolio Holder. I wasn't at that time,

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and didn't feel it was my point to be involved in the legal situation. Having been involved on the Task Panel, having got to know the people concerned and being in touch with them, through the department, on a regular basis making sure that



everything was moving forward. In September of last year I became Leader of the Council for reasons that we know and I as asked, at that time, what my view was about the FOCSA contract. And I asked the question, I went to a lot of trouble to make sure that I was right. I asked the right people as to whether or not a letter of intent was something that you could procure a contract on and that it was right that we did so given that the contract itself was

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subject to still some changes and alterations and improvements. And that seemed to me to be perfectly right and I gave that answer. And it is still my view. And I was informed when I became Leader that the bond was in place and I made that point clear. I was told that that letter that we had was sufficient surety that the bank would pay if there was a problem and I asked senior Officers at the time that I made my responses to Full Council. And that is the situation that I stand by.

BP: Councillor Rook, the pertinent part of your response was you were informed that a bond was in place.

MR: I hadn't asked that as a Portfolio Holder. I have to admit. I hadn't asked that, it wasn't part of my remit. You might say that it should have been. But as far as I was concerned,

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as a Member of the Executive at that time with the responsibility for the Portfolio and its implementation, my whole effort was on the process and that it was moving forward and that residents were going to get a service under the new arrangements, or better, that they'd had before. And that was actually the main thing, that we improved the performance of it.

BP: just before I bring Councillor Fuchs in, whilst as Portfolio Holder were you informed that the bond was not in place?

MR: in all seriousness no, I can't, I didn't ask the question and nor was I informed.

BP: thank you. Councillor Fuchs, then Councillor Johnson.

PF: [inaudible] I'll start again. A

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point for clarification. Paragraph two ten. The last sentence reads, to be noted however, the bank had formally sealed this document in July two thousand and nine, okay. And that the bond refers to an undertaking given by the surety, the National Westminster Bank to the authority on the ninth of February two thousand and nine, to enter into a bond on those terms and conditions. Now, is my interpretation that that shows the clear intent (.) told in form which was given as information to this authority, that the Nat' West' was prepared to prepared to meet any liability under a performance bond. Is that correct?

BP: Stephen Pearson, could I ask you to respond to that?

SP: Yes. I mean the first thing I should say is that I personally

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was only involved in the matter from March of two thousand and nine and I haven't seen the undertaking that's referred to. But I have to say that, in my opinion, although the bank may have accepted an obligation to issue a bond, until the bond is actually received it's impossible to understand what the terms of that bond were. There are various conditions in terms of how one demands payment that's due

under the bond. So, I think, although it's an expression of willingness to issue a bond, in my legal opinion, the bond is only there and validly in place once you receive a complete document, which is properly signed by the bank.

BP: does that clarify your question Councillor Fuchs? Councillor Johnson, then Councillor King.

BJ: Thank you. Yes. I'd like to refer to the performance bond. During the eleven month period before the performance bond was in place the Council was at risk while FOCSA was making a saving of around five thousand. From the first of April two thousand and nine

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up to the eighth of March two thousand and ten, when a performance bond was eventually completed, the time-line shows Freeth-Cartwright making contact with FOCSA on three occasions and the DCEO make it being involved in a meeting with FOCSA and a telephone conference in November two thousand and nine. These are of course events when which action was taken, quite obviously. And one would hope that the Council and FOCSA were jointly working towards a goal. But actions seems to be sporadic, to say the least, mostly between one and two actions per month. And in May and September two thousand and nine, no action at all is recorded. Given the situation, one would assume that resolving difficulties with the performance bond should have had the highest priority. Was there no check on its progress at all? Every effort should have been made to push forward. Do we assume that the

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difficulties and delays encountered were reported to the Leader, the Executive and the Chief Executive Officer by the Deputy Chief Executive, Executive Officer? Did the Leader, the Executive and the Chief Executive Officer independently check on the progress of this contract?

BP: thank you Councillor Johnson. I just think for clarity our legal guest here Stephen Pearson, the bond actually was enforceable from July, not eleven months after. So, there was a three-and-half month exposure but it certainly wasn't eleven months. I think that we've just clarified that at the earlier part of this meeting. No, that's fine, you've raised some very relevant points. Councillor King, can I bring you in?

PhK: Thank you Chairman. I think what I'd like to do is just concentrate on objective one which is to determine the reasons why

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the resolution of the Council Minute four three nine d two had been breached without reporting back to Full Council. And the first question I have is, well, who decided that? Who decided that there would be no report back the Council or even to the Executive to inform them that there was a delay of this three and half months? So, someone somewhere authorized that, clearly, or they didn't authorize it. If they didn't authorize it then that means that something has gone on which shouldn't have gone on. And the rules have been broken of this authority, the constitution, the financial regulations and standing orders have clearly not been adhered to and, also, that a resolution of Council has been ignored (.) And who's authorised that?

BP: Councillor King, can I just stop you there because I think it's one of the primary issues relating to the reasons why we're in this position.

PhK: can I just... there are two little nuances about...

BP: are they in relation to your first question?

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PhK: No, they're not –

BP: can I ask you to bring them in after we've had a direct response to that?

PhK: Okay, yeah, okay.

BP: I'm wondering who best. Kamal, would you be able to respond to that first question?

KM: since the award of the contract, though you Chairman, thank you, since the award of the contract it was quite clear within the report that was made to you in November at which the Council decided to award the contract to FOCSA that the timescales for mobilization was very, very tight. Usually it's in the region of around about eight to nine months mobilization period, we were doing it in four months. And therefore the Officers, myself and the Head of Service at the time, with his team, concentrated on ensuring with FOCSA, through the mobilization aspects, to ensure that the contract was going to come in on time, in terms of the actual services on the ground to be delivered and that the

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handover of the contract, from the outgoing contractor to the new contractor was as smooth and as seamless as we could make it. And that's where the focus was. In the meantime I was also going through the tender document that had been submitted which was the prime documents from which the contract arises, effectively line by line to ensure that we had everything that we needed for a seven-year plus another seven-year contract with the possibility of extending for another seven years so it could potentially be a fourteen-year contract, that the terms within the contract were absolutely in favour of this Council in all sorts of respects. So, I went through the contract line by line whilst also managing and overseeing the mobilization period within that. During the mobilization period having not received the letter,

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the response to my letter of the thirtieth, it was raised in the mobilization meetings with the contract manager at the time, and a number of times about, and reminders were given, about the response that I was awaiting to my letter of the thirtieth and it was also raised at the first Core Group meeting, the Core Group which is the partnership board effectively with the FOCSA directors and the Council Members and Officers, that that letter was still being awaited, and their finance director took it on to respond quickly. And they were reminded about that again in June. So through the contract mobilization period as well as in June through the Core Group meeting, they were reminded that we had not received the response to my letter and it was urgent that they respond to it. With regard to the decision as to

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not meeting the first of April deadline for the contract and the bond, we were actively working towards it, and therefore it did not actually cross my mind to report back to Council because we were actually working towards meeting the outcomes of the award of the contract and to achieve contract documentation which we could all be agreed was the one that we all wanted to sign.

BP: may I just intercede. Would it therefore not have been prudent to report back to the

Portfolio Holder that that bond was not in place? If not Full Council, surely the Portfolio Holder. It is an important part, indeed the special task panel reported to the Executive and stressed the importance of this bond being in place. The Executive reported to Full Council in November and stressed that we should have a bond in place. I would have thought it would be extremely important to at least inform the Portfolio Holder for waste that that bond was

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not in place.

KM: I take your comment on board, Chairman, you making that comment, but at the time we were working towards achieving all the documentation and from my point of view, we had reminded, the, to FOCSA and number of times to ensure that the documentation was forwarded to us ASAP. With regard to the comment about actually ensuring that the Portfolio knew, that with hindsight I would agree with that..

BP: Councillor King, can I bring you back in with your second question?

PhK: yeah, thank you Chairman. Thank you Kamal for that. So I take that as a no then, that you didn't inform anybody, didn't inform, the, sorry, Portfolio Holder, or the Leader, or any Member of the Executive, or Council that there was a delay. Although you were working to it but there was a delay in things being put,

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you know, securely in place. So just a couple of questions though about the actual performance bond itself. Now, quite clearly it was stated by Executive, it was recommendation of Special Executive, a recommendation of Special Council, that there would be a ten per cent of the contract price as the value of this performance bond. Now, what I'd like to know, having read the bond, that it's, what I'd like to know, is that the value of the bond, is that ten per cent of the annual contract or ten per cent of the seven-year contract? Because obviously there's a big difference in the size of the bond. And also is it index linked? because obviously the value of the contract goes up because there's this inflation, there's a price increase every year as I understand from previous meetings and discussions we've had with you about it, that there's an in-built indexation of the cost. So, is the value of the bond actually increased

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to ensure that it stays at ten per cent of the contract price on an annualised basis or is it ten per cent of the initial contract price of the seven years, because if it's the seven years, then clearly as I understand from reading the bond that's been supplied with these documents that isn't ten per cent of the contract value and so I'd just like clarification of what ten per cent is meant to be of, please.

KM: the ten per cent was on the tendered price of the core items within the contract. Because the contractor had been asked to price on the core services that the Council required the contractor to perform. And there was some provisional items that the contractor had also priced. Within those, therefore, the actual bond was related to those items that were in the core pricing schedule and then any provisional items

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that were going to be taken on board by the Council and/or its partners. Members will know that some Parish Councils procure their grounds maintenance contract

through this (.) There is provision within the contract for indexation of the performance bond and the value of it.

BP: Councillor King, can I just clarify, are you trying to determine the size of the risk which is a part of part two of the objective, when asking those questions? Or are they for just general clarity?

PhK: Well, I'm, I mean it says ten per cent of the contract value. So, okay, the contract value is what, exactly? The contract is signed for seven years, so in my mind it's a seven-year contract, the contract value is, say it's four million pounds a year for seven years, that's twenty-eight million pounds. Okay, so then it should be ten per cent of twenty-eight million. That's, you know, rough, ballpark, but it doesn't appear to be that

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it appears to be ten per cent of, it's four hundred and something thousand pounds, according to the document –

BP: annually index linked.

PhK: yeah, so, therefore it's ten per cent of the annual cost –

BP: Okay. Thank you Councillor King

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Phk: not the total contract price.

BP: Councillor Knowles.

PK: Thank you Chairman, I just wanted to pick up on a couple of points if I may. I'm worried to know that mobilizing a contract seems to deflect us from actually sticking to what the Council rules, regulations, and requirements that are laid down by Council Minutes and resolutions seem to set down. That does worry me because it begs the question are we doing it in any other areas where we're so busy doing something that we're ignoring what the Council Minutes and regulations are? I just wanted to pick up on a couple, on another point. Our Deputy Chief Executive said that he actually reported this to the Core Group in June and that the Core Group included Councillors (.) So, which Councillors did it include and why didn't they know that this bond was in place because surely

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they must have heard that we were running for three and half months without a bond being in place. Because the bond, as our legal adviser has just said, the bond only actually, everything was only in place really from the seventeenth of July. We were in this three-and-a-half month limbo where we had nothing on file, no letter of intent, nothing at all. And Councillor Rook pointed out that he had not obviously as Portfolio Holder been told. So, I'm just wondering from the Councillors' group was actually at this Core meeting to refer back to what the Deputy Chief Executive has said, the meeting, I think you said was FOCSA, and Officers, and Councillors. So, I'd like to know which Councillors were at that Core meeting because surely they must have picked up on the fact that the Council had got a three-and-a-half month window with no coverage of any sort. The letter of intent wasn't even there. So, if I can ask that, Chairman, and then come back to what I originally wanted to ask?

BP: Sure, could you just clarify in what part of the report

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does it refer to that. I do actually remember the group

PK: it doesn't Chairman, sorry to interrupt you, our Deputy Chief Executive was just

commenting and said when he was asked by Councillor King about the process for reporting this, he said he didn't think to report it because he was heavily involved with the mobilization and then he referred to the Core Group which I'm not sure I've never heard of before, apologies for that. But–

BP: Councillor Knowles that is noted at the side of me. It's a valid question. Who makes up this Core Group that you refer to?

KM: the Core Group was made up of Councillor Officers, being myself and the Head of Service. It's in accordance with the contract, there is supposed to be a partnership board set up. And the Core Group is what the partnership board is. The two directors, the director of operations and director of finance, from FOCSA, with the contract manager. And it's the Leader of the Council,

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at the time, and the Portfolio Holder form the Core Group, in those terms.  
[inaudible]

BP: Certainly

PK: in that case, then, the Leader of the Council at the time I think would have been Councillor Swatridge, if I'm right. Councillor Swatridge, he's, obviously he's not here and can't respond. But the Portfolio Holder would have been the current Leader of the Council. Does he have any recollections of this Core Group Meeting at all? Because I think that would obviously be helpful, Chairman.

BP: thank you.

MR: Chair, through you, Councillor Rook, I have a recollection of the Core Group. I don't have a recollection of picking up on the bond business. It wasn't central to my role, it was a more strategic thing and I did not pick up on it there.

PK: Could I come back in with the rest of my question? In light of that, just finishing that off then, are there any Minutes of this Core Group,

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because that should therefore indicate what was said and when and how, which somebody should have picked up on. Because surely we're keeping Minutes of that Core Group.

BP: Noted. Kamal?  
[inaudible]

PK: well why isn't it in this report?

BP: well we're powerless to debate because we can't obviously debate something that we don't know anything about so certainly I think we should see a recommendation to this Scrutiny, those Minutes, and they should be attached to (+) the recommendation. Councillor King wants to come in –

PK: please, I'll give way to Councillor King quite happily.

PhK: Sorry, Chairman, could I just bring our attention to two point fifteen point two which is just saying there was a mobilization risk register and a contract risk register

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that had been draw up and maintained. And I'm just wondering if any lights would be thrown upon the assessment of risk and as part of the purpose of this report is to determine the risk. It's on page four Chairman at the bottom, carrying over to the top of page five.

BP: yeah.

PhK: And I just wonder if that would throw, shed any light on the risk that had been

assessed and whether all the risks had been actually taken account of. Again we haven't got that in front of us, it's a bit difficult to sort of determine that.

BP: Councillor King, you raise a good point. What we do have in front of us is the Minutes of the Special Executive Meeting and the full report. However, I too have looked at that document and it makes reference to the mobilization project plan and the contract mobilization risk register. However, it doesn't stipulate actually what was being monitored. What were the actual risks? And I have to say neither does the report. So your point is extremely valid

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especially in relation to part two of this report in determining what the risks were and in the absence of any written development of risks I was wondering whether someone could offer us a verbal explanation as to what those risks were and what's on that mobilization register?

KM: through you chair the risks that were considered were the actual getting the contract up and running on the first of April, in terms of the transfer from the outgoing contractor to the new contractor of the staff, teepee transfer issues that were quite prominent in terms of making sure that the outgoing contractor was being cooperative with the new contractor and it's always a fairly high risk and we spent some time in ensuring that the outgoing contractor would be cooperative with the incoming contractor to the point of having meetings with HR Officers of the

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two companies. With regard to the other aspects of the risks, were the vehicles and equipment being able to ordered in time for it to be delivered in time for the contract to be able to be delivered from first of April two thousand and nine, the depot facilities and the kitting out of the depot were quite quite key because FOCSA were negotiating at the time of the procuring the depot space, at that time it was the Theddingworth depot. The issues were of ensuring the training of staff in to FOCSA's way of working because teepee staff were being transferred from the contractor to the new contractor and FOCSA had to ensure that the staff were being inducted in to the new company that they were going to work for thoroughly and

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all that was set out. There was also issues regarding technology and working with the technology that we needed to put in place, namely the vee-tech system that's run from the vehicles for ensuring that we know where the vehicles are at any one point in time and the like and training regarding that. So it was a whole host of issues that were identified as a mobilization during the mobilization period there was a very comprehensive project plan drawn up and the risks were being addressed as we went along. And within that the issue of contract and the contract signature as well as the response, to the letter, my letter of the thirtieth, was part and parcel of the discussions on a number of occasions.

BP: thank you Kamal. The thing that I'm most concerned about in that response is the fact that two point one two of our report refers to the rationale as to why we need a bond

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and there are three distinct reasons that belong to our own contract procedures

identifying the rationale as to why we need the bond. The first one is the estimated additional cost of reestablishing a service. The second is the nature and the length of the contract is such the the risk of the failure is sufficiently high enough to need a bond and third is the financial and technical standing of the contractor is such that the risk of failure is sufficiently high enough. Now, in your response you refer to the mobilization of the vehicles et cetera which I would deem more of a risk to our preferred contractor than us. What I haven't heard a great deal about is the actual risks to us, this Council. And I hear no evidence of those risks being identified and protected throughout the discussions that you should have had regarding this mobilization of the risk register. That's my major concern in relation to that response.

KM: Chairman, the major risk to this Council was that

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the new contractor was not able to collect the... and perform the services under the contract from day one being the first of April. That was the major risk to the Council and in order for them to be able to do that they needed to make sure, we needed to make sure that they were ordering the vehicles within the timescales because of the delivers they were ordering the equipment within the timescales. So the risk to us was that the contractor would not be ready and the outgoing contractor would have completed their work on the thirty-first of March and gone away. And our new contractor would not have been ready to collect or cut the grass, collect... empty the bins or collect, cut grass or cleanse the streets from first of April. And the focus was on ensuring that happened. So the risk to us was not being in a position

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to deliver the statutory services effectively, and the risk on the contractor, in terms of financial risk there was no financial risks on this Council other than having to establish a collection service in the event that the contractor failed. So we were working towards that the contractor would not fail on day one to be able to provide the services.

BP: thank you Kamal for that answer. I beg to differ. I think there was a financial risk on this Council because the risk on us was having to spend a lot of money on getting an interim solution to our waste collection if in the event our contractor, our preferred contractor was unable to have provided that service. But can I bring Councillor Knowles in?

PK: thank you Chairman. That's the very point I was going to make: that fact that to say that there were no financial risks to this Council. You can argue, and I would argue, that for eleven months we hadn't got a contract in place. For three and a half months we haven't got as much as a signed letter of intent and all

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we're doing is head down and rushing towards making sure that we've got vans to go out. The fact of the matter is there are side issues, critical side issues on these contracts that needed to be addressed and this is a prime one because for that three and a half month period we had no cover and we were sitting there working hard, absolutely I accept that. But it worries me as to why it is that we seemed to have missed all these things going on round the edges, things that could have been critical to this Council. Goodness forbid if something had gone critically wrong here



and we'd found ourself a month in to this contract, it wasn't working, we got no bond, nothing, not even the letter of intent on file against which this Council could have made a claim. And it does worry me because when you look at the way things are set up here you've got things like the time-line with Freeth-Cartwright. You know we've got not appointed until March oh nine. What

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date was the actual that was when the meeting that was referred to. What date did you actually get the completion of the appointment? And you know March is too late to have somebody involved when you're looking at setting up a contract that's gonna start on April the first. You know because these things should be in place, they should be functional, operational, there should be checks and balances. We should be making sure that the Council is protected. I'm very, very worried about some of the things this has thrown up tonight, this whole report. Everything from us being told don't worry it's all there to these areas of concern and to be honest with you Chairman the risk that has just been referred to of getting is up and running fine. But as you you absolutely bang on with what you said there's more risk to this Council than that. And also it just strikes me as odd which is one of the points I was gonna bring up when all this started, you know in the middle of all these letters that are flying round, the letter from FOCSA (.) refers to an email, this letter of July actually refers to a email of

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June promising to revert with comments on the draft contract. You know I mean there's all sorts of things here which I find quite worrying because why are we still talking in terms of draft contracts when they've been running for three months?

BP: Councillor Knowles I'm quite happy for Members to bring up if you like the failures within the actual process that described within this report but I'd like Members also to be mindful that we need to produce some recommendations at the end of this report and I'd like us to be thoughtful as to what can be done in future to mitigate some of these issues and can I just being some other Councillors in and...

PK: I was just going to say Chairman to end this little piece of what I'm saying, we have in place the checks and balances allegedly within our system. What worries me is why these checks and balances didn't kick in. I mean one of the things we've got to find out as an authority is why they didn't kick in, why all these warning lights didn't go off and why Members are being told everything's okay.

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well you know we've got a letter of intent. Don't worry. But the fact is there were a lot of things that weren't right. We have had something to worry about. You know whether it's people overworked, overloaded, not able to follow things through, whatever the reason is we have to find out, we have to find out why these checks and balances didn't kick in and I think we have to have some fairly detailed work on that and we have to look and see what additional checks and balances need to be put in to make sure this doesn't happen again.

BP: thank you Councillor Knowles. We'll encapsulate that when we resolve our recommendations at the end. Councillor King. Excuse. Kamal.

KM: Chairman, just a comment to make, really is that in terms of the risk to the Council the contractor was appointed following a fairly extensive procurement exercise. We followed the competitive dialogue route in which we met with the

contractor three times before they actually submitted their final tender, completed and submitted their final tender. A lot of discussion within those competitive

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dialogues had been undertaken. And from the outset the ethos of the contractor's ethos came through quite clearly in terms of all the discussions and through to the submission of the final tender and in those terms I felt quite comfortable and I did feel quite comfortable in terms of writing the letter to them giving them authority to start on the first of April. In the mean time fully negotiating the finer details of the contract. An it was the finer details, as I say, line by line ensuring that the contract would be fit for purpose for seven plus seven years.

PK: [inaudible] It's Councillor Knowles. I've not had an answer to the question I raised about why this contract was still being talked about in draft form in June and now the Chief Executive is saying that when he wrote included

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the contract. Yeah I think we need, this is all, there's rather a lot of smoke here and I think we need to get to the bottom of it.

BP: quite happy for Kamal to answer that. I think what we should bear in mind, during the commencement of the contract there was still negotiations taking place in relation to our food waste collection and other possible services that FOCSA might well be offering, within the resolutions of Full Council in November two thousand and eight. Although we awarded this contract to FOCSA we were under the illusion, via those resolutions, that further discussions, even possibly at the beginning of the commencement of the contract would be still ongoing and that is more-specifically referred to in appendix six I believe it is, the report from the special task panel to the Executive. However you raise an extremely valid point in that on the thirtieth of March why is it we were communicating on the thirtieth of March when the commencement of the contract was due to take place on the first of April. And that is something I haven't had a categoric response over yet. So if I could ask for a response

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and an understanding as to why that was, that would be appreciated.

KM: the purpose was to ensure that the thirtieth of March because the work on the contract had not been able to be completed in line with also continuing to work on the mobilization so doing the two together, was not able to complete work on the contract documentation and therefore the course of action that was agreed with advice from our legal advisers was that we should at least have a letter of intent which gives them the authority to start work in the district. My, my concern at the time was that we were getting to a stage where first of April was approaching fast and the thirtieth of March. I had the letter from Stephen on the twenty-fifth of March and we

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sort of finalized it and sent it off on the thirtieth of March, was that FOCSA although we had awarded the contract had not had formal authority to undertake works within the boundaries of the district and that was give them that effect that they would have the formal authority to start work within the boundaries of the district although the formal contract notice according to OJEU had been issued.

BP: well it strikes me that the project plan or the formal strategy that we were employing

was flawed in at least its time-frames (.) Councillor Smith.

BS: thank you Chairman. Given the fact that sort of we were three and a half months out of without a performance bond, can you put a quant– , a value on as to how much that would have cost the Council if something had gone wrong? Would that sort of, would we have been sort of a pounds shillings and pence answer to how much that

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our risk would have been.

KM: In terms of payments to FOCSA, we would not because we only pay FOCSA on work carried out. So, FOCSA carry out the work and they invoice us and we pay them. So, we don't make any up-front payments to FOCSA. In terms of mobilization, if FOCSA failed and had to move away from the contract then it would have been a question of hiring vehicles and staff and there were step-in arrangements in place as part of the tender process.

BS: If you haven't got a tender how can it be in place as part of the tender? Would the performance bond have covered our costs if it had been in pace?

KM: The performance bond is designed to carry out

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exactly the items listed in the report so I would suggest that if three would have been satisfied under the performance bond.

BP: does that answer you question Councillor Smith?

BS: it does as sort of in part but I still want to know how much it would of a liability it would have been in pounds shillings and pence.

BP: I think that's a costing exercise that would need to take place independently to assess and give you a realistic figure. We have four speakers, we have King, Hart, Councillor King, Councillor Hart, Councillor Johnson and Councillor Fuchs on the list and in that order, so Councillor King.

PhK: Okay, thank you Chairman, just following on what Councillor Smith has just said, I think and going back to what I was talking about, asking about earlier, paragraph two point one two which you raised earlier, under item one the estimated additional cost of reestablishing a service after the contract failed would be relatively large. Well, we know it would be relatively large and I go back to what I said earlier,

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the bond was clearly stated by, required by Council and by Executive Members that it would be ten per cent of the contract value, contract price, sorry. The contract price, in my book, was for seven years. So what I don't, and if you think about this, four hundred and seventy-five thousand is the value of the bond. Okay? Something like that. So, if the contract's four million pounds a year for the core services, that's about two months worth of contract, you know if you have to hire the vehicles and everything. Are we seriously kidding ourselves that we could get another contractor in place in two months given that it took umpteen months, years to go through the tendering process and all the assessment because we'd have to go through things. So I don't, I'm not quite sure that that, I'm still not very comfortable with the size of the bond because I'm not entirely sure that that adequately protects us. And as Councillor Smith was just trying to elucidate, if it had gone wrong, because say FOCSA had gone into financial meltdown,

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you know, you know, we're not, we don't have a crystal ball, an obviously we're trying to deal with something that's historic, that's happened, it's occurred, and fortunately that they didn't go bust and they didn't go out of business, or anything like that, but what's obviously happened to a number of large organisations over the last year, year and a half, two years, is many much larger companies than FOCSA have gone bust and very quickly and who's to say that that may not have happened with them? And we could have then been seriously out of pocket as a Council, we would have seriously had to find some, you know, given this three and a half month window when the legal adviser has said that the bond would not have been able to have been drawn on although there was a letter of intent, so then it would have been all subject to some litigation issue which again would have cost us a fortune to actually sort out. So I do think the risk here was quite high for this three and a half months and I'll accept that what the legal adviser is saying that from the middle of July that that bond was valid it might not have been signed and sealed and all the niceties

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but I think you know he's an expert and I think we have to listen to him and his advice that from that but that three and half month period it appears to me now that we were put at serious risk, serious financial risk potentially, fortunately it didn't go wrong but, as Councillor Knowles indicated earlier, what's to say that in other areas of Council activity that other risks of a similar nature or perhaps smaller nature haven't been taken? And what I would draw Members' attention to is the actual report of the Special Executive, tenth of November two thousand and eight. And when it talks about impact on organisation. And it does talk in, and that's on page thirty-one, and it does talk about, and as the Deputy Chief Executive has alluded to, there's a significant amount of work to do in not a very long period of time, you know middle of November it you know Christmas and all the rest of it, so it's actually not got a very long period of time to actually do quite a lot of work. And as we all know, we're not a very big organisation. So,

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that's brings to my mind and this is this not the first time this has come up, Chairman, that when we have got large contracts or big pieces of work that need a lot of complicated things doing we are, we have been found, for various reasons to struggle with these things and I have a feeling this is a similar sort of situation. So what this, and it causes me concern, that you know, in terms of the oversight, the super, you know the sort of, who, who, who actually knew, apart from the people involved that there was actually any risk or any problem with this whatsoever? And, you know what did, and if the people involved knew there was a problem what did they actually do about it or not? And I think we got an indication that, of this. But clearly it was identified by the, in the Executive report so that then draws to my mind is well if it had been identified

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that that there was a resource, resourcing issue, that that you know obviously it's gonna be very difficult then what steps had been taken by the Head of Paid Service basically? I presume and the then Leader and the Portfolio Holder to ensure that sufficient resources, man-power, financial and legal resources had been put in to

ensure that this first of April deadline had actually been met. Because it is now clear to me that with the amount of work that was required perhaps insufficient resources were put in to that or that there were other competing demands on the key Officers involved and that's why they weren't able to deliver. But I think we need that explanation as to exactly what went on.

BP: I think you're absolutely right, with reference to the value of the actual bond, I don't think that is of any business to this Panel. I think the special task panel recommended to the Executive that it should be ten per cent for whatever reason we weren't privy to, Councillor King. So, I don't think we can discuss the issue of the value of the bond but your second point in relation to

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communication, who told what, we've identified that communication, certainly as far as the bond is concerned, wasn't communicated back to the Portfolio Holder prior to the commencement of the contract. In the absence of these Minutes of this special core meeting in June, we're unable to determine what type of communication took place there. So you make a very, very relevant point and I'm actually hoping, if someone can just answer Councillor King's second question in relation to who, who, who led on these issues, who made who aware of the resource, scarcity of resource – if that's what the problem was. Or was anyone made aware of any of the difficulties at all? Is anyone, anybody? Kamal?

KM: Chairman, yes effectively the discussions had happened as to who would lead on it. I led on the, on the, and it says so in the special task panel, what Councillor,

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the impact on the organisation section, that I would be leading and overseeing the implementation of the contract through mobilization and saying the contractual issues though. Effectively I do and I had regular meetings with my manager, the Head of Paid Service and would be discussing my workloads within that. We were going through a budgeting cycle at the same time in November, December two thousand and nine which was the beeper process as well. We were going through some quite difficult times at the time and it was through the process of continuous discussion in terms ensuring that the various balls in the air were able to be juggled on a continuous basis, various priorities were given to the workloads and at a effectively keeping the work-flow going on all sides but

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if impacting on the pace at which it was being able to be done.

BP: thank you Kamal. Can I bring Councillor Hart, who's been waiting patiently for about twenty-five minutes?

GH: it's not my normal thing to wait patiently. Listening to the comments that have come out, I think there's about three or four things that strike me. Very early on it was mentioned the timescale of this i.e. probably about four months to get the thing running rather than what anybody would have liked which was eight months and that is the problem in itself. And for anybody who's gone through the, and I never get the name right, the OJEU contract, whatever it's called, it's a so-and-so, you can't shortcut it, and there are holes on it where you have to follow it through and sometimes you appear to have to go backwards to go forwards again.

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There's two basic risks not counting the risk of time running out. One was not organising it well enough, not mobilizing it well enough for the contractor. So that there's a failure there to which, if we hadn't have put enough effort in, the contractor would have said you haven't provided us with enough information and all the rest to go with us, to manage our end of the contract when we're due to take it over. And unless a lot of time was spent doing that, and I know how complicated it is to just do waste disposal never mind the street cleaning and the others, the amount of mobilization that needed to be done was phenomenal. The more that is was done the less your financial risk, because if it hadn't had worked on time, on day one, the risk to this Council of its services not being performed, whatever the financial side were,

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were high. The headlines that would have been across the paper from not having a street cleaning service, and it doesn't matter how much money you had you could have organised it, rented in as many wagons as you wanted, but them for them to get round the villages and pick up them and know where they were gonna take it when they've done it and get organised, was phenomenally high. As I said, the more you did the mobilization the less the financial risk, the less of the service risk and I can understand why our financial Officer, although he was the financial Officer, because he was doing both things, spent time time on the first one knowing that the second one would lessen phenomenally. It would be nice to think that, and I'm sure it would have happened, if, and I'm not degrading his work on it, because he did a good job, it went in and all the rest of it, but if you have somebody doing mobilization and somebody else doing finance,

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the finance person will shout and the mobilization person will shout and probably in that way, doing the two things together is somewhat difficult to put it mildly. The, as I said, the four to eight months was very difficult. If FOCSA do go bust tomorrow, even with this bond in place, what would happen to this Council's service would be, not catastrophic, but would be phenomenal, because you, as I said earlier on, you just couldn't buy it in. And I'm sure that the Officer there was perfectly aware of that and knew that the risk of them going bust was probably very small. The risk to us if we didn't get it mobilized was wrong. Now I not saying that we shouldn't have come back to the Council and said we're working flat out to make sure there isn't a risk, financial, because the of the dialogue talks that were

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going on and the intent which was being shown by the contractors. And I mentioned earlier on that I was involved when I was Leader in some parts of the discussion very early on in the process, and you soon got a, I think we got seven contractors at the beginning and you soon saw the ones who had full intent to provide what we wanted quite early on. Okay, it needed specifying but you could see the intent. And I can see that that's why we didn't get the one in place because Kamal didn't see it as the number one setup. In retrospect, I'm sure that he would go through that system now. But that's hindsight. All we can be thankful for is we did actually get it in, it is running, and we're now in the position that we need to be. Regards bringing in other people, you either need to do that right at the beginning of the process so they can

be up to speed. To try and bring them in at the rear end of a process when you're struggling is very difficult. One, it's phenomenally expensive and two by the time they

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get up to speed, it's quite often too late. Because this contract had got a deadline, a very solid deadline. Because the other contractor was gonna walk away, totally. And in fact keeping them onside up to that last minute was a difficult thing to do anyway.

BP: thank you Councillor Hart and what I appreciate in your representation and your input into the meeting is exactly a balanced understanding as to we have been lucky but by and large this contract has had teething problems and just that teething problems but it does work pretty well by and large, notwithstanding the teething problems, and it's very easy here to scrutinize the, the performance bond and the technicalities but we should not lose sight of the actual functionality of the current service as well. So thank you for that input. Can I bring Councillor Johnson in next? Sorry that you've had to wait so long.

BJ: thank you, yes. To be quite honest we were very lucky, weren't we? I mean, you know, we have to make sure that this doesn't happen again, I think.

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Can I ask a question first? and then if you'll allow me to make my points then. My question is: what was the precise date of Freeth-Cartwright's engagement to work for the Council?

BP: thank you, Stephen.

SP: according to my file we were actually formally instructed and opened the file on the fifth of March.

BJ: thank you, yeah. Well, looking at the letter that was sent to mister Merideth of FOCSA, what comes over is incomplete work. We read in the papers that on the twenty-fifth of March the Freeth-Cartwright submitted a draft letter to FOCSA, that was three weeks after the appointment of Freeth-Cartwright. There might be various reasons for that, I wonder

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if you could probably give me some idea why—

SP: Yes, I mean I have my own [inaudible] which is slightly more detailed than the time-line which has come with the report. I, as I said, opened the file on the fifth on March, I received the draft contract which had been circulated with the tender from Kamal on the sixth of March and I made some comments on that contract and made some amendments to it on the twelfth of March for onward submission to FOCSA. From speaking to Kamal a week or two after that, it became very apparent that the contract was not going to be signed by the first of April and therefore Kamal instructed me to prepare a form of a letter of intent on the grounds that, as far as he was concerned, the service had to go live on the first of April and we need to have some sort of cover to deal with that situation.

BJ: so on the twenty-fifth of

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March you submitted a letter to the Council, a draft letter to the Council. Five days later the Deputy Executive Officer then wrote to FOCSA and this may be a letter of intent but there's so much here that is unfinished that just smacks of unfinished

work. The confirmation of insurances as required in the call for final tender the, apparently these had been requested but that's as far as it had got, that hadn't been sorted. If we look at the services agreement under point three of the letter on page seven, it talks about, based on a form previously circulated which is currently being updated and completed by our legal advisers.

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What sort of a document is that to send to people? And then in fact FOCSA reply back about that (.) and then FOCSA reply, maybe you can enlighten me on that in a minute, and then FOCSA reply back to that saying, I've got a note of it somewhere, that they will enter into the services agreement with the Council based on the form previously circulated and bid upon. Was this agreement then unfinished? Maybe you can enlighten me on—

SP: Yes, if I try and answer that as fully as I can based on my own timescale. Yes, as I mentioned to you I, I actually reviewed the contract in early March, sent Kamal my, my, my

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view of the updates, the changes that he had made to the contract on the twelfth of March. From that I understand that it was reviewed by Kamal and sent out to FOCSA. I understand and in fact if one looks at the letter from FOCSA which is appendix two on page eight, they refer to an email of the fifth of June from myself to John Harris at FOCSA. I think what that relates to is that Kamal reviewed the changes which I made and came back to me I believe some time within May and asked me to make some further changes and then send out the contract to FOCSA on the fifth of June. So certainly at, at the point of the fourteen of July, when FOCSA responded, they were still considering those changes and in fact I, according to my file, FOCSA only responded to those comments of the contract on the twelfth of

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August. So, so in effect they had the contract in front of them to review for about two months at that point.

BJ: So, during this time, then, that we were at risk?

SP: I think, I have to say that's quite a heavily-loaded question. But certainly the contract was not in a finalised form, we had issued, clearly, a letter of intent, much of the contract was in agreed form but some of it, and I think it's been mentioned earlier, some of the detailed material related to things like the method of delivery of a service within the schedules, thing like runs and issues about food waste have been touched, were not, certainly not finalised within the contract. So there were areas that were not covered at that point.

BP: Thank... Councillor Johnson, I we've established that there was an element of risk between the commencement of the contract in April and the fourteenth of July, that's for sure.

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BJ: the point I would like to make is that this wasn't a binding contract and we, we had an contractor in Great Bowden, without planning permission, at this stage.

BP: that is actually a separate issue that I'd prefer if we can, you know, focus on the objectives. So, but in terms of the actual question that Councillor Johnson raises in terms of not, was it the risk, or we had a contractor that, we've established there



was some risk, especially relating to our financial position, without that particular bond. I think that's... what concerns me out of this, it seems pretty apparent that there's... the scarcity of time, the time-line starts at the second of March zero nine, but what actually happened as far as the Council's concerned between the resolution on the seventeenth of November two thousand and eight where we awarded the contract and March two thousand and nine? That was valuable, valuable time that we could have

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used in order to ease the pressure on our mobilization of this contract, is it not?

KM: Chairman, that is exactly what we were doing in terms of the mobilization. We needed, and Councillor Hart has alluded to this in his comment, that we needed to, we needed to put in the effort and resources to ensure that the contract from first of April would be delivered by the new contractor. There was no going back, we couldn't ask the outgoing contractor to continue providing a service. The outgoing contractor was winding down. There were two aspects, from the date that we awarded the contract in November to FOCSA Services UK limited. The outgoing contractor had to be managed as well because the outgoing contractor effectively did not have any interest in the contract from then on and would just run the contract at the minimum levels. So, we did have to put in

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a fair amount of effort and focus on ensuring that the outgoing contractor was not going to allow things to slip, effectively because they didn't have any interest after the first of April. At the same time we needed to ensure that the incoming contractor was mobilizing with our help because the incoming contractor we needed to do quite a bit of work on the rounds, and we changed, I think two rounds changed as a result of the new contractor and those two rounds changed because we needed to ensure that the contractor's price that included the efficiency savings that we were making as part of the tender price, was able to be going to be delivered, the contractor had bid on a basis that said that we needed to configure the service in a different way, slightly to what is being covered.

BP: thank you Kamal, I think you've answered the question but my specific question was in relation to the legal appointment. I cannot understand why we decided to get our legal representatives involved in

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March when we had awarded the contract in November. The first the first reference to a legal appointment is a meeting between Kamal Mehta and Stephen Pearson, present today, of Freeth-Cartwright on the second of March. I just cannot understand why it was so long before we instructed legal representation to procure and finalise this contract award.

KM: we did go through a, I did go through with my manager, the Head of Paid Service or the Chief Executive, a discussion on whether the work would be done in-house or we need to go out, out of house in terms of external legal support and clearly the, as time progressed we came to the conclusion that we needed external legal support and that we undertook to procure in March.

BP: thank you Kamal. Can I, I'm aware that the meeting's now, well where are we, six thirty, seven thirty, an hour and a half...

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we've got a number of further speakers. Can I bring Councillor Fuchs in please?

PF: thank you. I've been sitting patiently as I always plan to do and I don't know where to begin because in my experience, having run contracts of considerable greater value than this, based on letters of intent, for at least six months after the, the work begun, I begin to wonder why we're here, especially when I look at the two objectives, because the third one, and I, is the most important, to my mind, which is lessons to be learned. I'm not denying that on the very narrow legal factual facts, that there are questions to be answered. I'm not denying that, I'm not denying that there were

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significant elements of risk during the three and a half months. But we have to think about the practicalities and what this contract was going to do for the people we represent. And this is really pursuing what aspects of what Councillor Hart said. That and what Kamal has also stated, that the prime purpose was to ensure the continuation of the most valued services to our residents. And I have a great deal of sympathy with Kamal in when he talks about the work being done to ensure the implementation of the contract, the launching of it, in the space of four months. And I will revert to a bit of history and that is one of the lessons I would take

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from this discussion, offer to the meeting to make note on (.) Well I don't know.

BP: would you like me to encapsulate where you're up to Councillor Fuchs?

PF: no, no that's all right. I am going to start remind people that this whole process started some, it was either in two thousand and five and two thousand and six. And we had an election in two thousand and seven, and all the faces didn't completely change but they changed. And in a sense we started again. We had gone at great lengths through the tender process, the European

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rules require us to, we had been particular in trying to find partners in this service, complete service from other councils and that in hindsight wasted an enormous amount of time. We went through the longer process of competitive dialogue, but a very productive one and during that time you got very, very clear feelings about the respective contracts and how they were treating the negotiations, the whole prospect of dealing with the Council. And one of the factors that made the task panel recommend FOCSA was that they were very dedicated

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to being in partnership with the Council in a genuine way and not in the way that we experience when we try and do something similar with the housing services. So, what I'm saying is your building up a relationship during this competitive dialogue and therefore inevitably are assessing, however unconsciously, whether there is a risk that this contract is not going to start. So, I support an awful lot of what Kamal has said and he was, in my opinion, quite right to concentrate on the practical means of implementing the contract (.) Of course with other duties with, shall we

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say, fewer support people because of actions that the Council has had to take in its

general funding situation, everyone was under a great deal of pressure and that is a factor also, that reflects into the time-line that we are seeing today. An I'm not for a moment suggesting that is ideal but I have to say that whether it be the value of the bond or assessing the risk that the Council incurred during the three and half months, one has to remember the risk is contained by cost and you have to decide the balance between those two words: risk and cost.

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If you had asked for a performance bond that was ten per cent of the seven-year, fourteen-year contract or you'd asked for a twenty-five per cent (.) performance bond, the cost to the Council will have gone up. And so, we have, here we are, okay, it may be of value to, if we concentrate on the lessons learned—

BP: Councillor Fuchs—

PF: to (.) raise the raise the question of this remarkable risk that we have incurred, but it hasn't happened. Is has not happened.

BP: we accept that Councillor Fuchs, we have been lucky, it isn't beyond the realms of possibility, as Councillor King referred to earlier on, that other institutions larger than FOCSA have gone down.

PF: you're not cutting me off yet mister

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Chairman.

BP: well I am conscious of... [inaudible]

PF: I want to turn to the third objective that should be on this paper which is simply lessons learned.

BP: quite.

PF: and we should have started earlier, we should not have had elections (.) Impossible.

BP: Forego the democratic process Councillor Fuchs? [laughter]

PF: we should not have involved other Councils. And we should have been probably much clearer about the balance of risk and cost, in any assessment that we did. And I will now shut up.

BP: thank you. And you make a very strong case as to with hindsight and the actual practicalities and the problems, indeed, that occurred throughout the process and the stresses on the various people involved. I do have to just call you up on one

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point, Councillor Fuchs, in that obviously the respect for the friendship between the personalities and individuals negotiating this contract, I do question because a letter was sent, so be it quite late in the day, but a specific letter was asking for a response in seven days. That response didn't come for three and half months. And I do question how much respect, therefore, was given to our Officers and this Council, in that instance. But I do accept your overall point of view.

PF: if I could just comment on that. That, what you have to realise what the effect of negotiating in detail the food, the waste food contract elements. And I think you'll find that that is a pretty important aspect of that delay. And I'm not saying it's justified. In the ideal world it should all happen as Councillor Knowles expected it to happen. That there should have been a performance bond in

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place. And there should have been a formal contract signed on the first of April.

BP: thank you. We have three speakers. Councillor Rook, Councillor Smith and Councillor King and then I think we should start to consider, as Councillor Fuchs has pointed out, what are we gonna do with our discussion and we should form some recommendations to cover both objectives. So, with that can I ask Councillor Rook, sorry you've had to wait so long to...

MR: that's quite all right Chair. I just want to go back to some comments that were made earlier about capacity and just to my recollection of time, was that the then Leader at the time and I had conversations about capacity. We had just received back our Head of Service on waste who again looking at the history of the thing had been taken off me at previously to this because he was away looking at

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whether other districts could work together on this as part of the process and if you remember we had to have Chinese walls and we weren't allowed to communicate and one thing and another. Because he was going to come along to the competitive dialogue process and present, which he did. His business case didn't match up and he was put back into the line and he then, with all the information, and all the knowledge and all his experience came back on board and started to drive the implementation process. And as far as I was concerned, at the time, I was, it's easy to be what's it with hindsight but, you know, at the time I was was quite comfortable with the fact that we would work through it from November through to February to April. And, indeed, from my point of view on the process of

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getting that installed that was, and we've heard it tonight, the prime requirement. We could not and we did not countenance the thought of any risk, of any risk I mean of not producing the goods on April the first. That was going to happen. If it didn't it would be over my dead body. And I was very focused on that. And the processes, [coughs] excuse me, the legal processes, as far as I was concerned, as Portfolio Holder, were in train. And when I became Leader and asked the questions that is the opinion I got and—

BP: I think you've already registered that, that Councillor Rook. Can I bring in Councillor Smith please?

BS: Chairman, given the complexity of the contract, at what stage should one obtain legal advice on it?

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Because it's all very well coming in with a month to go and sorting things out. So do you..., I think one of the things we have learned is that if there is that if there is any legal aspects, and no disrespect to our, our solicitor.

BP: Head of Legal Services.

BS: Head of Legal Services, I do beg your pardon, that we need to obtain legal advice, on this sort of thing, much earlier. And I don't know whether, sort of, it's one of those things we learn by hindsight. But I think we ought to, that's one of the lessons we ought to do is, given the complexity of the contract, how much it's worth and when we should bring in legal advice. Thank you.

BP: and finally, the last speaker: Councillor King.

PhK: thank you, Chairman. I think, having listened to Councillor Smith, and Councillor Fuchs and the Leader just now about things, and I think one of the things that's shouting out loud here is about having a proper project plan

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for the implementation. And this is an area that's been addressed in other areas of activity before. So, because if there was a project plan which hopefully there was, then the, the issue of the contract, the bond and all of this should have been part of the project plan. It should have been comprehensive and it should have been part of the contract plan. The risk registers and the mobilization risk register, that should have all been part of the project plan. And, so that's, I think a question that needs answering: was there a project plan for the implementation and did that include the, getting this bond in place by the first of April. Because if there was then there would have been clear steps that needed to be taken along the way to ensure that that actually happened. And we've been here before with other areas of Council activity where clearly that didn't happen. The other point that I wanted to raise. Two quick queries. Just on page twenty of the report which is actually the appendix of the Executive (.)

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is actually the report that came to Scrutiny in October two thousand and eight, I think. Two point one eight: it says that when the contract was awarded, was decision was made. Anyway. Seventeenth of November, that there's a ten-day cool-off period. So presumably during that ten-day cool-off period we don't do anything. And therefore the award notice will not be issued til twenty-seven November. So what is the legal standing of the award notice, just to be clear about this. That's not a letter of intent that's just a notice saying we've decided to give you, award the contract to you and will, I mean what does that actually mean? And then, secondly, just in, on the bond, which is on page (+) sixteen, cos that's the one that was actually signed and and and executed. I just wonder if I could ask the legal, the legal, Stephen Pearson, just at the bottom of that page, page sixteen, where is talks about National Westminster Bank has executed this

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deed. What does that actually mean? Does that mean that when they sent us the unsigned and unsealed bond (.) surety, does that mean that is a, I mean I don't know, I'm not a legal expert, but does that mean that actually if, because it hadn't been formally signed by all parties, that Nat' West' Bank wouldn't actually pay up? Or does that mean, because, you know, I just want to be clear about that, what that phraseology, actually means, in respect of the bond.

BP: is that clear Stephen?

SP: two points there I think. The first one, is what's the status of the November cooling-off period, the ten-day cooling-off period. And the short answer to that is, it's always subject to contract until a contract or something similar is signed it doesn't have any legal effect. So although it's an award you couldn't do anything about it. If the Council decided to walk away on the 28<sup>th</sup> of November. So, so the status of that is only, it's only a contract award, it's not a formal legal contract entered into until the contract

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is signed. The second, in terms of the wording at the bottom of the bond. My understanding is it is the expectation of the bank that, that well, until the last signatory to the deed has been executed, they won't deem it to be in force. That's

the bank's opinion, I, I have to say that I wouldn't necessarily accept that. If the bank have produced a document which is properly signed by their people, you know, I would regard that as being something that we could enforce.

PhK: sorry Chairman, could I just, just, clear, clear, clear that point then? So, on the bond, on the draft bond they sent back to us on the fourteenth of July, that statement's in, and so what you said earlier, correct me if I'm wrong, was that in your opinion, that the bond, the surety, would, would have been able to draw on that. But what you've just said now, in answer to my question, is: the bank is saying no. According to the terms on this document.

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SP: The, the bank are, are suggesting that. It's standard wording. My, my, my advice is that notwithstanding that, it still something which is a valid document and not only by the fact that the document is there but remember we do have a letter from FOCSA saying we have procured a bond and here's a copy of it.

PhK: so it's just a minutia detail, do you or...?

SP: I, I think it's a position that they're putting forward, that I don't think I would accept.

Phk: so it would be a matter for a court to decide, would it?

SP: it could be.

PhK: right, okay, thank you.

BP: Kamal, did you wish to speak at the end? I know you've requested to do so and I'll allow you if it's brief and I'd like to just (.) suggest—

KM: very briefly. Just to mention that we've gone through, we went through a very long period in terms of competitive dialogue and met with all the three final tenderers, three times each. And

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at every, an I remember at these competitive dialogue meetings I used to make the comment to the prospective tenderers that the most important thing for this Council is reputational risk and that we needed to make sure that qualitatively the contract, from day one, was up to standard and that people could see the difference out there in terms of from the outgoing contractor to the incoming contractor, the focus was always that the first of April two thousand and nine, you had to have the contract right cos the reputational risk on the Council would have been much greater in those terms if the contract hadn't been right in terms of an incoming contractor. From November two thousand and ten, sorry two thousand and nine, after the award of the contract, we were focused on ensuring that the, the equipment and the fleet, the equipment was ordered and would be delivered on time and would be up to standard. So we needed to make sure because there was an

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eighteen week, I was told in was eighteen to twenty-four week period in terms of manufacturing the, the vehicles with the correct bodies. We were getting brand new equipment throughout. All the equipment is brand new, when the contractor came in. And from the time that the contractor starting putting the orders in for the equipment, the vehicles, the grass-cutting equipment, the street-cleansing equipment, the equipment within the depots and the like, they were actually starting to rack up investments of up to around about a half a million pounds. So in terms of financial risk and the thought processes that I, I had in my mind and discussed with

the Head of Service at the time, and in our mobilization meetings, contract mobilization meetings, that the contractor was taking the financial risk because they didn't have a signed contract, they had a letter of

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intent, authorisation from me, on, dated the thirtieth of March, and they were actually investing in, in equipment in this Council's... to carry out works in this Council's area up to the tune of around about half a million pounds. And therefore I was quite sort of clear in my mind that the risk on the contractor walking away from the contract was quite minimal because the contractor had the larger risk of walking away from it, not just from this contract in terms of the investment but nationally reputational risk wise having gone through a large, a, large procurement exercise, tendering exercise and then walking away from it would have been much more damaging to them as a company nationally than, than one would imagine.

BP: Kamal, I totally understand where you're coming from and I,

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I do accept what you're saying, can, can I'd like to, I'd like to—

KM: just to make one point, to Councillor King: was there a project plan? Yes there was a mobilization project plan that we had every week that we went through and made notes on. Thank you.

BP: well what I'd like to say before, I am gonna give the final word to Councillor Knowles but before I do that, I'd just like to point out that, it has been established, I understand what you're saying Kamal, but it has been established and it's been reiterated to us from the independent legal advice we've got here this evening that there was an element of risk. So, I totally accept that you believe that the contract had a greater risk than probably we did. I'm not so sure we have no evidence before us to debate that particular issue but what we are sure of, there was a certain amount of risk to this Council, that is fact. I think we've clearly debated the size and the importance of the contract and the various risks, again we don't have direct reference to those risk. But the task for us now is to decide we do

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with the information that's been debated this evening. And as you can imagine I am not, you know, Harry Potter in any way. And I'm not able to recollect every single comment that's been made and Verina our Head of Legal Services has done a marvelous job, I've noticed pages and pages of notes have been made so, what I'm proposing to do, after I've let Councillor Knowles just speak for the last time, is to just take a couple of minute rest break, if that's okay, so that I can confer with our Officers here to see how best to treat this information and what to do with it next. But with that, Councillor Knowles.

PK: well thank you Chairman, nice to know I'm gonna get the last word but I bet you I don't. (+) I just, I have to just draw one or two comments if I may. I think that tonight's been worrying on a number of fronts. We've acknowledged that there have been problems, we have question marks about whether due to overwork these problems have occurred. We have question marks as to

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why Council Minutes have not been adhered to. We have question marks over why we were told that the letter of intent was in place, why we were told the Council was

protected, why we've had our Leader put in the position where he's stood up at Full Council and told us, categorically, that the letter of intent was there. And all these issues. And you do come back to a comment that was made a couple of minutes ago about the reputational risk to this Council. And the reputational risk to this Council is that the people out there who elect Councillors are gonna look at this and think what a mess. The Council had so many things that, on different levels, have been going wrong here and clearly they're gonna expect us in some way shape or form, not trying to apportion blame, but to make sure it doesn't happen again. I think we've had a very, very good debate. I think the report, and I want to thank the Officers for the report again because not an easy job drawing this

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up. And I wanna thank you for the way you've Chaired it because it's been a difficult one to Chair. I think we've had a real variety of points and questions and everything put forward. I think what I'm seeking, quite simply is that some way somehow, as a group of Councillors, we need to understand why these problems occurred and I don't think from this report we do. We can see that problems have occurred, we've had confirmation from our legal expert about certain aspects, we've had confirmation about things not being done and Council Minutes ignored and everything else but we haven't actually established the true reasons why. And until we know them we can't do what Councillor Fuchs absolutely was right about is learn the lessons. Now, I haven't, I'm not Harry Potter either and I'm not Dumbledore. So, I don't actually have a clue what I'm gonna put on the table and say this is what we should be doing. And I would draw on the expertise of our Officers and of you in the Chair to say we need to have something to take this to the next

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stage to establish what the problem is, establish why all this happened and to come up with some firm answers and the checks and balances to make sure it doesn't happen again. But also, Chairman, to understand why it was allowed to happen. Because the current checks and balances have failed. And I just wanna read you one point which is something that was given to me. And it says under the financial procedure rules of this Council, the strategic management team must uphold and maintain the highest standards in conduct of the Council's financial affairs and ensure that all members of staff et cetera comply with these standards and the Monitoring Officer must make sure, and this in a brief version, that the internal rules are followed. And I think that's obviously a prime, you know, a prime interest, that's what we have to do as a Council. And looking at all of this we've gotta be sure as to why things went wrong, how we're gonna stop it happening again and, concerningly, why all these checks and balances, for some reason, didn't kick in. Because clearly they didn't. And if they had done we wouldn't be having this debate today.

BP: thank you Councillor Knowles. I do share with you your, your

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concern regarding the, the specific failures that we've identified this evening. I think they're quite complicated and that's one of the reasons I want to take a break because I think within the subtleties and nuances of the various responses that have been given, I think there are reasons actually there. And whilst they are not shouting out at us, I think if we refer back to some of the notes that we might well find out the key reasons as we put it. Where I will disagree with you, I think the



public out there actually have, across the District, a very good waste contract service and the actual waste is being collected et cetera. I do agree there are certain issues in certain areas but as a District I think it's had teething problems but the public still have a service that is functional and, by and large, can be relied on; In fact, I believe, totally rely on. But I do think that we need to get to the bottom of the breaches of resolutions, and I think we need to get to the bottom of, if you like, the way in which

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Minutes might sometimes be ignored which is apparent from this and I'd like now to take a couple of minutes rest break.

PK: I do need to clarify something: I'm not criticising the way the contract is... there actually picking up the waste et cetera, I'm talking about the way this has been handled, the management of this contract. That's the important thing and the responsibility for that lies within these four walls. And that's why we have to be seen to sort this out.

BP: and I thank your for your compliment in thanking me in the way I've Chaired this particular part for the Meeting. Thank you Councillor Knowles. With that can I ask for a couple of minutes to discuss with Officers.

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BP: The time is eight thirty-five PM on the (.) ninth of September. Thank you Members for allowing us such a generous rest break to discuss where we should go with this discussion we've had tonight. Now, from my perspective it's been and extremely good debate, there's a lot that's come out – an awful lot. And I'm gonna ask Verina to read out from her notes some of the more, well all of – are you gonna to read all of the notes out? Is that okay or are you gonna to encapsulate the various pertinent bits that have been identified throughout the report? And what I'd like us to agree, obviously this meeting has been recorded, I've also asked for it to be transcribed and a Briefing Note drawn up. But I want Members to feel comfortable that some of the points that have been raised during the debate this

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evening (.) can be encapsulated into some form of document, a briefing note and I want to propose that this goes into the contracts standing orders review and the financial standing orders review and then I want it sent to the Constitutional Committee to be looked at, discussed, debated and amended accordingly. But before we get to that base I'd like Verina to read out her notes, verbatim, as to our meeting this evening.

VW: thank you chair, Verina Wenham speaking. What I've, obviously Members are aware, I've made this notes this evening, some in shorthand. If I can go through the points that I've underlined, if Members are happy with that. Obviously this is just (.) the the notes that I've made and are Members, obviously they've made their own notes but if I can go through, Chair (.) **First issue: how much of a problem was it during the three months, or three and a half months period vis-à-vis the fact that there was no bond in**

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place? (.) reference to the bond being undated (+) making sure we've got (+) issues around the checks that were made on progress (.) were any difficulties reported to the Leader, the Deputy Chief Executive, sorry by the Deputy Chief Executive or the Chief Executive? (.) was the the progress of the contract checked upon? (+) why were any delays not reported back to the Council or the Executive? (.) and why were they not informed of any delays? (+) Would it have been prudent to report the matter to the Portfolio Holder? This is referring back to the issue of the

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delay (+) a request was made for the Minutes of the Core Group that was referred to, that I've got a note of being the Partnership Group but I'll stand corrected on that. But the Core Group. Members requested copies of the Minutes and a request to see the contract mobilization register and the risk register (.) so they should be made available (+) reference was made to the checks and balances that are already in place, they should have 'kicked in' (+) need to find out why the checks and balances were perceived not to work and what

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needs to be done in the future to avoid any repetition of a similar situation (+) a request was made for the financial impact that any failure by FOCSA to comply with the contract within that three months period and it may be that Members would want some work doing around what that financial impact would have been (+) a lot of references around resource issues if (.) people – so Members, Officers – people were aware of a problem what action was taken (+) if there was a resource issue what did the Chief Executive Officer and the Leader do (.) to ensure that the

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deadlines were met (+) [inaudible] yeah it's fine. So yeah, through you chair as Councillor Knowles has just, reference made to Council resolutions being met (+) reference was made to what happened between the seventeenth of November, when the decision was taken to award the contract and March two thousand and nine (+) and probably what comes under the lessons to be learned aspect is reference to the legal advice, the need to obtain legal advice (.) at a much earlier stage in the process (+) and reference also made to a project

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plan being in place but obviously the Deputy Chief Executive did make reference to the fact that there was a project plan in place (.) thank you chair, I mean through you Chair they are the notes that I have made from this evening and obviously I'm not saying they are a comprehensive note, but they are the notes that I've made. Thank you chair.

BP: Councillor Knowles...

PK: only a brief one Chairman, I don't wanna labour this. One of the main points I think it might be covered under resources was there was a concern that one of the reasons why this had gone into the problems we had was a **sheer overload of work from the Officers involved and I think that's very important.** But also I would like to

have seen somewhere in this that we have, we should formally acknowledge that we have been told legally tonight that the Council had no (.) not even got a letter of intent in place for those three and half months and I think that does need reporting back to the other bodies formally.

BP: Councillor Knowles. What we're proposing is a complete transcription of this whole meeting (.) and I think it was put as a Briefing

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Note but I think a transcription would be better. Obviously our findings and our discussion needs to be referenced against various contract procedure rules and financial standing orders and contractual standing orders and a review of will need to take place with our finding against those particular orders. From that it will need to go to the Constitutional, any recommendations and findings, once that reviews taken place will then need to go to the Constitutional Review Committee to be looked at.

PK: Can I, it's Councillor Knowles, can I just pick your brains [inaudible] Chairman? What time-scale are we talking about here because let's be honest it's taken us from February until September to get this brought to this committee, because we've had three cancellations for people going on holiday and all sorts of things, which is, you know, accepted, I'm just wondering what sort of time-scale we're talking to get this now through all these other committees but what I am concerned about is that obviously in the middle of all of this, the workload, I know, on the committee is heavy. But we can't afford to have this one kicked in to the long

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grass because, as we've said earlier on tonight, there are a lot of lessons to be learned and we have be sure that this isn't happening in other areas of our responsibilities as a Council.

BP: the short answer to that: it's dependent on the Officers ability to draft and transcribe, that can be done pretty quickly I suspect, the transcription of tonight's meeting. When's the next, the review panel taking place for the contract standing orders [inaudible]

VW: through you Chair, there is a Constitutional Review Committee scheduled for the nineteenth of October (+) that's next month.

BP: and what is the agenda, is there space on the agenda at that particular meeting?

VW: I mean through you Chair, as far as I'm aware of, as far as I'm aware, there will be a report going on treasury management, but it's quite a light agenda at the moment. The agenda hasn't been set. I should imagine it would be perfectly

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possible to deal [inaudible]

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BS: could I formally move Chairman that this particular report goes on to that Constitutional Review Committee agenda?

BP: I'll accept that proposition. Do I have a seconder for that? (+) Councillor King, sorry.

PhK: could I just be clear about what you're actually suggesting Chairman? Because I'm sort of slightly (.) just wanna be clear about what you, what you've just said Chairman about what we're doing. So, what you're recom- , what the recommendation is that a transcription of this evening's meeting will be what? Sent to all Members of Council?

BP: No, no, what I'm proposing is a transcription be sent, transcribe the whole meeting, sent to us as Members for assurity that the information going to

[ PhK: all Members of this Panel?

BP: yeah unless you would propose otherwise Councillor King.

PhK: well I mean, you know, I just think that given that this request came from Full Council, I just think that, and it does affect all Members of Council, because if

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something had gone wrong, all Members of Council would have been equally affected and therefore I do think, okay this this report is gonna be, the Minutes of this meeting are gonna go back in to Full Council, but therefore is the briefing (.) or transcription of this meeting, is that gonna be made available as part of the Minutes of this meeting to all Members, I mean—

[ BP: I think, I think actually it should be

[ PhK: yes I know it is, I

appreciate that.

BP: I think it's a valid point and as it has come from Full Council I think you're quite right.

PhK: Constitutional Review Committee is only going to look at in respect of the financial regulations and standing orders. It's not going to look at the other issues.

BP: No, but the review, the contract standing orders review panel and the financial standing orders review panel will look at those issues based on the report that's produced.

PhK: sorry Chairman, I didn't even know there were such review panels in existence (+) I'm sure none of us

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did.

BP: [inaudible] Well in that case I think it needs to come back to the Panel to formalise, you know, the response to that, and then we'll have to send it somewhere else.

VW: I mean through you, just to clarify the role of the Constitutional Review group (.) The Constitutional Review group considers amendments to the Constitution, obviously, in the name. And the financial standing orders and contract standing orders are part of the Constitution (.) so obviously they

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they (.) it would be legitimate for that committee to consider any amendments to those standing orders.

PK: if I may Chairman, I think what we should be looking at, and I'm happy to move this, is that all this additional information that is now required should be put together, this report should be formalised from all the notes tonight, and I think it's gotta come back here because there's, I don't think the debate is finished and I think that if we do that and word it appropriately that the report and all additional information be brought back to this committee for recommendation from this committee, then to Full Council. I think that will then solve the problem. Because I don't think we're gonna get anywhere...

BP: my understanding is, my concern is encapsulating the discussion we've had tonight

and the various responses and the action that needs to be taken based on the responses. I was under the impression that the Constitutional Review Committee, [inaudible] there'd be a review took place before it went there

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but that isn't the case, so in that case I think we have to we have to have it back to ourselves to, with the, like you say, the answers to the various—

PK: I mean, for example Chairman, sorry to interrupt you, for example, we need to know about this Core Group. We need to know what was, there's a lot of information that's been requested tonight by all Members and I think the safest and surest way of doing it is to bring it back here and then from there we can try and make some recommendations because we'll then maybe have a bit more information as to what's gone wrong because we'll have all the details about the workloads [inaudible] and all these sorts of things encompassed within it, and we can get that brought back to us here.

BP: yes, well I'm

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PK: so, if you want me to move that Chairman I'll move it.

BP: Councillor Fuchs.

PF: just ask the Panel Members to remember one of my points which is the balance between risk and the balance between cost. All this is going to be very time-consuming. I agree some it should be done.

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Absolutely. But just remember (.) time consumed by producing what is going to be an extraordinarily-lengthy report, as I understand from the fourteen points that Verina has listed, is going to take Officer time away from other important matters. If a time-scale of some reasonableness is going to be met. And I come back to well, you know, if you're consuming Officer time be cost

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BP: Councillor Fuchs, but we need consensus on your point of view and I think the general consensus is that there have been certain points that have been raised that have left unanswered. And I think we need wrap those questions up to (.) to, to, to Councillor King.

PhK: just taking up what Councillor Fuchs said earlier, lessons need to be learned but I think at the moment, because we've got some incomplete

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information, about certain key things, I don't think we can actually draw fully the lessons that need to be learned, then make the recommendations that we need to make cos ideally we'd like to make the recommendations now but I don't think we can really—

BP: we're not in a position to do so.

PhK: And, and, unfortunately, and I accept what Councillor Fuchs said, I think, you know, we don't want to, you know, divert Officer time unnecessarily but what I do think that, is that a, you know, a level of risk was taken that if it had gone wrong would have had a very severe and serious financial legal and reputational damage to the Council. So therefore it is important that we do look at this very carefully because if it had gone wrong, and fortunately it didn't, and, you know, we're, we're all okay now, but if it had gone wrong, there would have been a very serious problem for us.

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BP: if Members would just bear with me, I'm asking our Head of Legal Services to check the Constitution (.) if it's at all possible to set up an independent task panel up, with limited Members, to look at the various—

PK: Chairman, through, point of order, or point of information, we can, I think we can set a task panel up but the information is that this whole committee really needs to see all the information back here first because otherwise people, you know, it may enable us to draw conclusions as a collective body, if it doesn't then we may have to set a task panel up. But I think the first place for it to come back to is back to this committee as a formal receiving body, if you like, and for an extension of what we've asked questions on tonight. Because it's been asked for by the committee and it should come back. So as I say I've moved it that it should come back and don't know whether there's any one who want's to second that.

BP: well I'm (.) if Councillor King, I mean I'm quite happy with each... my primary concern here is making sure that the

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discussion we've had tonight is encapsulated in such a way that we can learn our lessons and also put them in some form of formal context, so hopefully the issues that we've identified shall not happen in the future. That's my primary concern and I'm, how we get there—

VW: sorry, through you Chair, if it assists Members, obviously I've read out the notes that I have made, if Members are happy with that, with the inclusion of the comment made by Councillor Fuchs and obviously Councillor Knowles referred to the, the pressures. If it would assist Members, and Members are happy that can be formulated as a Briefing Note as it were. And the we can collate the answers to those questions in the same document, if that would assist Members to come back to another meeting of Scrutiny. Obviously it's a matter for Members but if that is a way forward.

BP: that sounds a fantastic idea, very good idea but I'm just conscious about the workload on this Panel (.) for the foreseeable future, frankly. I mean, I, as Chair, and

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we as all scrutiny, on the Scrutiny Commission have identified a full workload for this particular Panel and I'm just wondering when will be the first opportunity for it actually to come back (.) and that's something that will need to be discussed with the Scrutiny Commissioner.

PK: if we speak very nicely to the Scrutiny Commissioner I'm sure we might be able to find a date if needs be for a special meeting that we can actually get it brought back to because we don't want to lose time on this I agree but at the end of the day so much has come out of this meeting tonight, so much remains unanswered and as you rightly say we have to make decisions on this, notwithstanding all of that I think the easiest way to do it is to get it brought back to, I mean I'd like to see it come back to the next meeting or certainly a special meeting organised within a few weeks, so we can sit down and finalise this particularly while it's, importantly, still fresh in everyone's mind.

BP: well we have to allow the reports to be drawn up, and obviously Members' diaries are already quite full, I suspect. So there's a

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few issues that we need to take into consideration there but I'd like to see it come back soon, I'm not sure if it's gonna be in a couple of weeks, Councillor Knowles, but certainly if we can resolve to, out of session, speak with the Scrutiny Commissioner to identify the most suitable and most earliest opportunity to bring this back. I'm quite happy to do that. [inaudible] (+) But okay, so that's the recommendation: that the discussion this evening is transcribed, put into a formal Briefing Note, answers are collected in relation to the unanswered questions, and that will be brought back to us to further resolve what do with those answers at the most convenient, available Scrutiny meeting, Scrutiny Resource meeting. (+)

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[inaudible] yeah, once we've got (+) Okay, does, is everyone in favour? Okay we've got a proposer, a seconder and I think it's unanimous. (+) Oh, Councillor Fuchs [inaudible] it's noted, Councillor Fuchs. Okay, with that I close that particular report on the agenda (+) I'm gonna (+) I'm gonna (+) yes of course you can, I think I'm gonna suggest an adjournment of the next item on the agenda. It's been a lengthy evening and I think we'll adjourn that item and bring it back, well it's a quarterly budget,

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I think we might have to forego it because the next quarterly budget monitoring report will be, yeah (+) Councillor Fuchs.

PF: well it is the first quarter, and the first quarter in any financial year is, shall we say, less important than the later years. I'm not saying we shouldn't have it, or shouldn't consider it in the future but I think that's the case so I would propose that we forego this report completely.

BP: that's the proposition, if all Members are happy with that (+) okay. The time is five to nine, ninth of September (+) Thank you (.) meeting closed.