

# **REPORT OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL**

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**Douglas, Tuesday, 29th October 2002  
at 10.30 a.m.**

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Present:

The President (the Hon. N Q Cringle), Hon. C M Christian, Mr D F K Delaney, Mr D J Gelling CBE, Mr J R Kniveton, Mr E G Lowey and Mr G H Waft, with Mrs M Cullen, Clerk of the Council.

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*The Chaplain took the prayers.*

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## **Items Considered**

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<i>Solway Harvester</i> – Removal, Ownership, Fees and Legal Proceedings – Question by Mr Lowey	C28
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### Apologies for Absence

**The President:** Hon. members, we have apologies this morning from the Attorney-General, Mr Crowe and Dr Mann and, as already indicated, the Lord Bishop.

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### *Solway Harvester* – Removal, Ownership, Fees and Legal Proceedings – Question by Mr Lowey

Question 1. The hon. Member Mr Lowey to ask a member of the Council of Ministers (Mrs Christian):

- (a) *When will the Solway Harvester be removed from the entrance to Douglas Harbour;*
- (b) *who owns the vessel;*
- (c) *are harbour fees/dues being levied;*
- (d) *when will legal proceedings against individuals or companies be commenced; and*
- (e) *what is the normal timescale for such legal proceedings to be commenced and completed?*

**The President:** We turn then to our order paper and we have two questions. I call upon the hon. member Mr Lowey.

**Mr Lowey:** Thank you, Mr President, I beg leave to ask the question standing in my name.

**The President:** I call on the member of the Council, the minister Mrs Christian to respond.

**Mrs Christian:** Yes, Mr President. In answer to part (a) of the question, the *Solway Harvester* is evidence in a matter currently before the courts and as such cannot be removed until court proceedings have been completed.

To the question of who owns the vessel, the vessel is still owned by Jack Robinson Trawlers Limited.

Question part (c), 'Are harbour fees/dues being levied?' – the answer is 'no'.

Re the question part (d), legal proceedings have already commenced. Richard Gidney and Douglas White made their first appearance before the court of summary jurisdiction on 19th July this year, and Jack Robinson Trawlers Limited first appeared on 15th October.

The answer to part (e) of the question: this is a unique case and as such it is extremely difficult to estimate how long it will be before legal proceedings are complete. However, it is hoped that the case will conclude during next summer.

**The President:** Mr Lowey.

**Mr Lowey:** I thank the hon. minister and, recognising that this matter is now before the courts – it is a sensitive issue – would the minister not agree that the *Solway Harvester* is in a very prominent position and while it cannot be moved from the Island and from our jurisdiction, surely it can be placed in a less prominent spot than in the gateway to the major harbour of the Isle of Man? And secondly, while appreciating the length of time these legal cases take, would the minister also agree that it has taken a long time to commence proceedings? We were always brought up in the belief that justice delayed is justice denied and in particular for the families of the casualties in this particular case.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, my understanding is that options for storage of the *Solway Harvester* were considered and the position of the *Solway Harvester* as it presently stands was determined to be, shall I say, the best that could be achieved by the department.

In terms of the length of time it has taken for proceedings to begin, I do not think it is appropriate for me to comment on that. I am sure that if it has taken that length of time in the interest of justice then that is the length of time it needs to take.

**Mr Lowey:** I thank the minister for her reply, sir.

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### Traffic – Speed on Ballasalla to St Mark's Road – Records of Accidents – Question by Mr Lowey

Question 2. The hon. member Mr Lowey to ask a member of the Department of Transport (Mr Kniveton):

(a) *What proposals does your department have for limiting the speed of traffic on the Ballasalla to St. Mark's road; and*

(b) *does your department maintain records of traffic accidents on this road?*

**The President:** Again I call on Mr Lowey.

**Mr Lowey:** I beg leave to ask the question standing in my name.

**The President:** On this occasion I invite Mr Kniveton to reply.

**Mr Kniveton:** Yes, thank you, sir. The first part of the question: the Department of Transport has no proposals for limiting the speed of traffic on the Ballasalla to St. Mark's road.

As far as the second part is concerned, similar to all roads on the Island, the Department of Transport has an accident record of this particular road and as far as speed is concerned, speed surveys can be undertaken with specialised equipment normally as and when required.

I can advise the hon. member that we do have an accident record kept. It was a three-year accident record for the period 1st January 1999 to 31st December 2001. It shows that there were 14 accidents. The accident causes were: misjudging distance – one guy went in the ditch; misjudging speed – that was into the bends, it was not excessive speed; ice, snow and poor weather – there were three; entering a major road without care – there were two; colliding with a stationary vehicle – one; failure to keep to the nearside lane – three; drink driving – one; and excessive speed – one.

Mr President, we are convinced that the cause of most accidents on this Island is a lack of concentration, and I believe that that applies to this road as well.

**The President:** Mr Lowey.

**Mr Lowey:** Would the member be surprised to learn that the people living on or in the close proximity of this road would find very great difficulty in accepting the figures as produced by the member here this morning and which I read in the paper yesterday from the police? Would the member also not agree that the biggest road calming measure that has been introduced on that road in recent years has been what I would call a local initiative and not a sleeping policeman, but a stand-up policeman in the village of St. Mark's itself and perhaps the department might like to learn a lesson from that? And could he tell me when the speed trials were actually undertaken? I myself have asked and was told that there were speed trials – or these things going across the road which register the speed of motor cars – but no record has ever been made public of those, so that the people who have asked for it do not know what those results are.

Will he also be surprised to learn that the increased traffic on that road, which is almost inevitable because of the work being done on the Richmond Hill and the Kewague site, is used as an alternative route? I am sorry, there are many supplementaries there, Mr President, I am grateful for your forbearance – the message I am getting over is for those people who are living there and are having to deal with the results of the work of the Department of Transport, which does not seem to be alive to the problems, and the people round there want prevention rather than picking up the pieces of accidents that are bound to happen.

**Mr Kniveton:** Mr President, if I can remember all that lot I shall start; I can be prompted, sir. Can I say there have been two trials of speed limits on this particular road. It is quite amazing the amount of information that can be obtained from the equipment we use. For instance, a survey was taken during the week 18th to 24th February of this year and for a

sample day, being Wednesday 20th February, the maximum speeds on the A26 at the Ballacubbon Farm were: southbound – 48 miles per hour; northbound – 51 miles per hour. But – and this is the emphasis, Mr President – 85 per cent of traffic travels at less than these speeds.

It is also interesting to note that the traffic volume southbound averages 916 vehicles per day and northbound, 896 vehicles per day. Now, the peak hours of southbound traffic are between 5 p.m. and 6 p.m., with 131 southbound vehicles and 111 vehicles going northbound. Between 8 a.m. and 9 a.m. there were 177 vehicles going north and 137 vehicles going south. Now we can even break down the size of each vehicle, the number of axles, whether they are articulated or a rigid car, van and even down to whether it they are a bus or coach. We can also, through our equipment, advise whether the weather is sunny, dull, raining et cetera. As far as the road at Ballachrink is concerned, the speeds were slightly less, at 48 miles per hour northbound and down to 44 miles per hour southbound, but it is again emphasised that 85 per cent of the traffic travels at less than this speed. These readings were taken during the week of 3rd April to 6th May and the sample was Wednesday 2nd May.

Mr President, I could go on and on quoting all sorts of figures with the particulars of vehicles travelling in each direction at certain times of the day, size of vehicles et cetera, but I believe that, thanks to the technical equipment we have, I have been able to supply the information to show that really at this juncture a speed limit is not called for, although the Minister of Transport, and I do emphasise this to the hon. member, has advised me that, as the hon. member is obviously concerned about the speed along this road and the particular bends he will ensure that another check is made.

**The President:** Hon. member, Mr Gelling.

**Mr Gelling:** Mr President, taking advantage of a supplementary to my hon. friend, I am surprised again that the hon. transport member comes out with the statistic that 85 per cent of the people were driving carefully, and this has been my problem with transport for many, many years: if you put a 50-mph speed limit on that road you would inconvenience very, very few people, but I am afraid your Director of Highways comes on the assumption that, because only a few go 100 miles an hour, that is all right. I cannot understand his logic, in the fact that that would only be a very few who would be inconvenienced if there was a 50-mph speed limit.

The other question, Mr President, if I might: since the overlay has been put on the road at St. Mark's, in some places six inches deep, when a car now goes to the edge of the overlay of the tarmacadam they are in a railway track and they disappear over the hedge. That is the sole problem, in my opinion: speed, and the fact that now you do not hit the hedge and bounce out, you go off the road and you are over the hedge. Thank you, Mr President.

**The President:** Mr Kniveton.

**Mr Kniveton:** Well, a 50-mph speed limit! Can I say, Mr President, that there was one introduced just three years ago between St. Mark's and the Braaid – 50 miles per hour. It is still there. It has made no difference whatsoever on our counts. We do have a speed survey each year to prove just that, but it does not make a difference. As far as the tarmac road is concerned, I will take the point up, but I am not particularly aware of it myself because I do not use that road much, but I will take it back to Mr H.

**Mr Delaney:** A supplementary.

**The President:** Mr Waft.

**Mr Waft:** Yes, thank you. Could I just ask the member, considering his information with regard to the problem mainly being lack of concentration and 85 per cent drive at less than the speed limit, is he giving the impression that perhaps the department will not be proceeding with an all-Island speed limit?

**Mr Kniveton:** Mr President?

**The President:** Yes, Mr Kniveton, we are moving away from the question, but nevertheless, I am quite happy if you wish to respond.

**Mr Kniveton:** All I can say to that, Mr President, is that there is presently, of course, a study of a possibility of an all-Island speed limit being recommended, and I can assure the hon. member that this road has already received consideration in that study.

**The President:** Mr Delaney.

**Mr Delaney:** My question is on the supplementary answer given by the hon. member. If you put a limit on one section of the road and it made no difference, could it be the fact that it was not policed to make a difference?

**The President:** Mr Kniveton.

**Mr Kniveton:** It could, sir, there is no doubt about that. That is the trouble with many, many roads on this Island where we have regulations, speed limits and all sorts of things, but unless it is policed we are wasting our time putting poles and signs up.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, no, my question was the same as that just put by the hon. member.

**The President:** Mr Lowey.

**Mr Lowey:** Mr President, does the member of the department think, knowing Ballacubbon, which is one of the best S-bends in the Island, that approaching or

going out of that bend at 48 miles an hour is a correct speed? I would have thought not. However, would he also confirm that if it is a single vehicle accident and it does not involve anybody else, it is not reported? And would he also agree, following on from my colleague Mr Gelling's point, that these accidents are happening on a regular basis and many of them are single-vehicle accidents, which are not reported, but the end result is that the people in that vicinity are still having to go and pick up the pieces? In other words, they deal with the incident, you cannot refuse to – well, they do not; that is the nature of the Manx psyche, we deal with it. If they are not involved and they are prepared to pay for damage, then they do not call the police. So these figures are rather meaningless if they are single-vehicle accidents, and the scars on the hedges are living testimony that your figures do not add up to what the reality is.

**The President:** Mr Kniveton.

**Mr Kniveton:** I have to agree with much of what the questioner has put to me, but I would say, Mr President, that it is not just one road in the Isle of Man; it is so many roads in the Isle of Man, 48 miles an hour being an acknowledged speed – it is not far off that in this day and age, with a modern motor car with a modern braking system. It is pretty well on it. I agree many are not reported – but again that applies throughout the whole survey we do, these are not reported. There is little I can add to what has been said, Mr President – it is the sad story of motoring in the Isle of Man. With the increased population we must be getting more and more motor cars on our roads and more and more scars on our hedges.

**The President:** That, hon. members, draws to a conclusion our question period which almost became a debate, but there we are –

**Mr Gelling:** Interesting, though!

### **Transfer of Deemsters' Functions Bill – First Reading Approved**

**The President:** We will then turn to item 2 on our order paper which is the Transfer of Deemsters' Functions Bill. It is down for first reading and in the hands of Mr Gelling. Mr Gelling, please.

**Mr Gelling:** Yes, thank you, Mr President. The Transfer of Deemsters' Functions Bill which we have before us for first reading this morning – basically it was in November in the year 2000 when the then Clerk of Tynwald raised with the Treasury the question whether the deemsters were the appropriate authority to make orders setting fees for witnesses' allowances and to exercise other legislative functions, and at that time the Council of Ministers referred the question to its Constitutional and External Relations Committee. In April 2001 the committee recommended that although there was no case for divesting the deemsters

of legislative functions in general, there certainly was for fixing of fees, interests and other financial amounts. So basically this Bill is the product of the deliberations of the Constitutional and External Relations Committee. I beg to move the first reading, Mr President.

**The President:** Mr Lowey.

**Mr Lowey:** I beg to second, sir. Can I just ask one little query, and I think it shows that it is right that the Treasury should be dealing with many of these matters, but 8 per cent interest – that is another era and another time, isn't it? And that has been the case for a few years. What is the reason it has remained at 8 per cent for the surcharges?

**The President:** I am sorry, Mr Lowey, but I think the Keys have actually amended that to 4 per cent.

**Mr Lowey:** Have they? I beg your pardon.

**The President:** Sorry about that, I am jumping the gun.

**Mr Gelling:** And, Mr President, it also gives the Treasury the power to actually alter that rate. They could alter it, whereas before it was a straight 8 per cent.

**Mr Lowey:** I appreciate that.

**Mr Kniveton:** Mr President, unless some hon. member is going to convince me otherwise, I find that this is rather a simple straightforward Bill – a sensible Bill and one in which I can find no real problem. I can quite understand and agree that the Treasury should be the authority to fix these rates of interest et cetera and other financial matters. It appears that all these powers were quite rightly vested, as the hon. mover has said, in the deemsters many years ago, before the creation of Treasury in 1985. It is surprising that these transfers, of course, of authority were not appreciably or officially considered before today. The Constitutional and External Relations Committee brought this to our attention, resulting in this Bill and as I say, Mr President, I have no problem supporting the Bill.

**The President:** Mr Waft.

**Mr Waft:** Just a small one you might be able to clarify for the future: with regard to the present situation with the coroner's duties and public indemnity or public liability, they are not coming under the government overall cover and Treasury taking some responsibility away – will that be changed in the future?

**The President:** Mr Gelling.

**Mr Gelling:** Yes, thank you, Mr President. Certainly if I, first of all, thank Mr Kniveton for his support and just comment: absolutely right, of course,

Treasury did not exist and therefore it was the appropriate place for it to be at that time. Now, it probably has worked fine, no problem at all, but certainly this was brought to the attention of the Council by the Clerk and, as we have this Bill before us today, this is the result. Now, the coroners are a different issue altogether. In fact, the coroners' situation has been going to be addressed, let us put it that way, for many, many years, and it has been addressed by select committees and all kinds of committees, but actually nothing has been done. Now the hon. member Mr Waft poses the question: 'Will it be addressed?' Well, I am probably in the same situation as yourself, sir, I do not know whether it will be addressed or not. I think if you were asking me personally, 'Should it be addressed?', the answer would be 'Yes', because we are finding an awful lot of write-offs of fines, mounting to quite a lot of thousands of pounds, and of course they are all very small ones. When you are paid on the result of the percentage of the amount you bring in, you do not go after the little ones; you go after the big ones – it is a normal thing. So I think it is something that again will be brought to a head and addressed.

**The President:** Hon. members, that appears to be all the questions and discussion which you are looking for in the first reading of the Transfer of Deemsters' Functions Bill. Are we content that it be given its first reading? Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

If I just could make a comment, as is my inclination at times: I would be interested, Mr Gelling, when we come back to a second reading if, when looking at clause 4, you would give us some explanation as to 4(1), where it appears that a deemster in maintenance orders or interest can override what the Treasury actually fix as the rate of interest.

Hon. members, that concludes our business for this morning. We will adjourn until Tuesday, 5th November 2002. Thank you, hon. members.

*The Council adjourned.*

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