



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

P R O C E E D I N G S

D A A L T Y N

(HANSARD)

Douglas, Tuesday, 12th April 2005

Present:**The President of the Council (The Hon. N Q Cringle)**

The Attorney General (Mr W J H Corlett QC), The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles),
Mr D M W Butt, Mrs C M Christian, Mrs P M Crowe,
The Chief Minister (Hon. D J Gelling CBE), Mr E G Lowey, Mr L I Singer and Mr G H Waft,
with Mr P Lo Bao, Acting Clerk of the Council.

Business transacted*Page***Orders of the Day**

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The Council adjourned at 11.25 a.m.

Legislative Council

The Council met at 10.30 a.m.

PRAYERS

The Lord Bishop

[MR PRESIDENT *in the Chair*]

Orders of the Day

BILL FOR THIRD READING

Tribunals Bill

Amendments made

Third Reading approved

1. Mr Singer to move:

that this Bill be now read a third time and do pass.

The President: Right, well, Hon. Members, we do not have any Questions this morning, so we turn straight on to the Tribunals Bill, which is down for Third Reading.

Now, Hon. Members, I think, by now, you will have had circulated to you both a new clause in the name of the Hon. Member, Mr Lowey, and a suggested amendment in the name of the Hon. Member, Mrs Christian. Perhaps, before we get to the amendment, we could take the new clause, which would be in the hands of Mr Lowey.

Now, as we are dealing with the Third Reading of this particular measure, I do not know whether the Hon. Member, Mr Singer, wishes to make any comment or not?

Mr Singer: Only that I have not had time to take any advice on either of these, because, as you know, I have been away, and this is the first time I have seen, in fact, on the table this morning, these two amendments. I am not quite sure that I can fully contribute.

The President: Right, well, if we deal with them as they come, and if it creates a problem, we can always defer or adjourn, or take time to give the Hon. Member a chance to consider.

Nevertheless, I think, in both cases, they were comments which were made at the previous sitting stage, when we were dealing with the Second Reading and clauses, before. So, Mr Lowey, your new clause, sir.

Mr Lowey: Thank you, Mr –

The President: Perhaps we could suggest that – and I do not know – the right place, possibly, for it would be... it would probably come in about number 6, I would suggest.

Mr Lowey: Yes, number 6 seems round about the correct place, because the one before is to deal with appeals.

Mr President, Hon. Members, I apologise for putting a clause down on the Third Reading. However, at the clauses stages, I did comment about the right to appeal against a member of the Tribunal, and I did get a point answered. Then, on summary, I remember the Attorney saying it was a valid point that needed further discussion.

I did raise it with the Attorney General's Chambers, and if I can quote a letter which accompanied the clause, which was written, very kindly, by the Attorney's Chambers:

'Just as with the Law Courts, there is no specific provision that gives such a right, but it is taken that it is a submission that can always be made. It is up to the courts and the tribunals as to whether the submission is accepted. In the case of a tribunal, the High Court remedy of a petition of dolance would always be available against the tribunal, if it is shown to be biased by reason of conflict of interest or duty.'

I must be fair and finish this paragraph:

'I do not believe that the provision is strictly necessary.'

The reason why I believe it is now necessary is – and I think I may have referred to it at the clauses stage – in the light of the Electricity Bill 2001, which was not specific, it was silent on the matter, people have interpreted it, and, because it was *not* specified in the legislation –

Mrs Crowe: That's right.

Mr Lowey: – they were able to do certain things.

As this is not specifically identified that you can appeal, there could be an interpretation that you may not, you could go to a dolance. I think we have to make sure that, now, until we have clarified that matter further – and I am sure it will be clarified later on, in, maybe, the parliamentary session – we need to be 'belt and braces'.

Therefore, I believe the amendment of the clause, which allows to appeal against a member of the tribunal, is legitimate and sensible, and I have no hesitation in moving the amendment standing in my name:

New Clause 7 moved –

'Objections to membership of tribunals

[7] (1) A party to any proceedings before a tribunal may object to any member of the tribunal continuing as such on the ground that the member has or will have a material conflict of interest or duty in respect of the proceedings.

(2) Rules under section 8 may include provision for –

(a) the hearing of objections under subsection (1)

(b) the manner in which such objections shall be determined; and

(c) the powers of the tribunal to continue the proceedings on the determination of such an objection.'

and re-number the subsequent clauses.

[N.B. This clause was originally put before Council without a specific number and referred to section 6 in subclause (2). Accordingly, the numbering was later amended, as above.]

Mrs Christian: I beg to second, Mr President.

I think it does add to the Bill, in making it quite specific.

There is just one small point in terms of the drafting: it does refer, in subclause (2), to section 6 – ‘Rules under section 6’ – when we have put in a new clause 6, and the rules are now clause 7, so, I take it, Mr President, that when this is –

The President: I am sure we will get the numbering right –

Mrs Christian: Yes.

The President: – and I accept that we do need –

Mrs Christian: Or, indeed, this clause might be clause 7, and ‘7’ become ‘8’ now – whatever!

The President: Yes, we will need to get the numbering right, and –

Mrs Christian: They will need a cross reference from this new clause to the clause we have already approved, with respect to rules.

The President: Right, well, with the new clause before Council, does any other Hon. Member...? Mr Waft.

Mr Waft: Just to say that the petition of dolence is always a choice, to try and get over the problem, if it does arise. It does seem to be taking a sledge hammer to crack a very small nut, and if there is written in a small clause to make that observation, at the outset, it certainly cuts down on the bureaucracy.

Mr Singer: Can I briefly – ?

The President: Mr Singer.

Mr Singer: I took note of what the learned Attorney said in his letter. I am just wondering whether he could comment on what sort of precedent we are actually going to be setting, to make things so specific, because the Attorney General seemed to be satisfied that there was adequate protection, for anybody who was appearing before a tribunal, as far as I read from the letter.

Now, I cannot see, personally, that there is a parallel with the Electricity Bill. We know what has been happening, but I do not see a direct parallel there. So, I have no objection to this, but I am just wondering whether it is going to set a precedent in other Bills of making things so specific that that could even cause, then, its own problems.

I wonder whether the learned Attorney could comment on what I have said?

The President: Mr Attorney.

The Lord Bishop: Can I add to that, Mr President.

The President: Ah, the Lord Bishop.

The Lord Bishop: I would ask whether the Attorney General sees that this might do *harm*, rather than good – which I think is what Mr Singer is asking.

The President: Right, Mr Attorney.

The Attorney General: Well, Mr President, I think I did indicate at the Second Reading that if there were to be an objection by a party, that a member of the tribunal had a conflict of interest, then it would be open to that party to make an application.

Generally speaking, Mr President, certainly in relation to court proceedings, judges are very aware of conflicts of interest and, in extreme cases – I use the word ‘extreme’ advisedly – the judge will, as they say, recuse himself, will not sit.

In a small community, as we have, Mr President, I think sometimes judges and members of tribunals have got to be very careful that their position is not *always* challenged, because of an alleged conflict of interest. In other words, it is very easy – or easier – to make an application that there is a conflict of interest in a small jurisdiction such as ours, where, inevitably, you know someone who knows someone else.

The Court of Appeal here has warned judges and tribunal chairmen that they must not be too sensitive about these sorts of applications. In other words, they must be robust to resist applications that they recuse themselves, because of alleged conflicts of interest.

So, I suppose that there could be a danger that this will encourage applications to be made where there is no real ground for the application, and it will, really, concentrate the minds of judges and tribunal chairmen, as to whether there truly is a conflict of interest.

But as I understand it, on the other hand, Mr President, the hon. mover of the amendment simply wants to state in explicit terms what is implied in the general law (**Mrs Crowe:** Yes.) and, really, I think, it is for Hon. Members of Council to decide whether they feel that this is a suitable thing to do – in other words, to state explicitly that which would be implied, anyway.

But as I say, the danger is, in terms of setting a precedent, that it will encourage applications which really do not have any merit, and which might very well discomfort the chairman or the judge, and, perhaps, just lend a tinge of uncertainty, when it should not have arisen in the first place.

The President: Mr Gelling.

Mr Gelling: Could I just ask, perhaps the mover could... when it says, in 2(b), ‘the manner in which such objections shall be determined’, could that be by the court, indeed, that would do that?

I am just trying to... at first sight, there does not appear to be anything wrong with this, it draws it to attention, but would it actually change the system? Would not the system be exactly the same? Who would hear the objection and who would determine whether there was a conflict?

So, in other words, to me, this only highlights that specific point. Who else would determine the objection as being correct or otherwise?

The President: It would be subject to the rules, would it not?

Mr Lowey: That is right. At the start: rules under subsection (6) and (7) –

The President: It would be in the rules, I think, would it not?

Mr Lowey: Yes.

The Attorney General: Yes.

The President: I am pretty sure it was.

Mr Lowey: 'Rules under section 6' – as written, or it could be 7 – 'may include provisions for' (a), (b) and (c). So, the rules would cover the point.

The President: Yes, Mr Attorney, it does say – I am sorry:

'The Council of Ministers, after consultation with the Deemsters, may make rules for regulating the practice and procedure of a Part 1 tribunal or a Part 2...'

and, presumably, in this new clause, '(2) Rules under section 6 may include' those specific provisions.

The Attorney General: Yes, I think – if I may, Mr President – that the Question which was raised by the Hon. Member, Mr Gelling, is: are we going to have another hearing and, if so, by whom, to determine whether there is a conflict of interest?

But the practice, which is followed, certainly, in the courts, is that it is for the judge himself or herself, to determine whether there is a conflict of interest. So, presumably, (2)(b) will say something along the lines that it will be for the tribunal chairman or member to take due account of any representations which are made, and, in the meanwhile, the proceedings are adjourned until that is determined.

That is the way I would anticipate it, Mr President.

Mr Gelling: I am concerned, Mr President: whilst it would go through one regime and then go through the other regime, so we would have done it twice, or –

The President: Sorry, is the question, Mr Gelling, that if, in fact, this procedure is followed under Mr Lowey's new clause, are you envisaging that somebody still being aggrieved, as a result of a ruling at that level, would then go to dolance?

Mr Gelling: Yes.

The President: Ah, well now.

The Attorney General: Well, I think that must be so.

The President: That must be so.

The Attorney General: You cannot really exclude someone from taking the matter further if he still feels –

Mr Lowey: Dissatisfied.

The Attorney General: – dissatisfied.

The President: It is almost following, is it not, the rules which could not be applied under planning law?

The Attorney General: That is right.

The President: Right –

Mr Butt: Just to clarify, Mr Attorney, if this new clause was not to be included, the only alternative would be a petition of dolance. That is the only alternative.

The Attorney General: Mr President, thank you.

Yes, if a party felt that a member of the tribunal had a conflict of interest, the party could raise that, at the beginning of the proceedings, and say, 'I feel that you have a conflict of interest, because of certain facts', and the chairman or the member would have to determine whether that was so.

If the person still felt aggrieved, then he could go to the court, on a petition of dolance, and seek relief, if the decision went against him.

So, if this new amendment, Mr President, is not passed, that will always be the case. There will always be that safety net that the person can go by way of dolance, but it will...

As I say, what we are doing here is stating explicitly what would apply, anyway.

The President: Yes, Mr Lowey, do you wish to add anything further?

Mr Lowey: No, it is for clarity that I am raising this, and I think Hon. Members know the reason, really.

Although my good friend from Ramsey, the mover of the Bill, says there is no comparison, there is a comparison in primary law to have things as clear and as concise as can be, so there is no deviation and no misinterpretation.

I believe, in this instance, we would be doing a service to the Bill and not affecting the tribunal, in my view, at all, and I just think it is a course of action that I think is belt and braces. I accept, absolutely, that you can go for dolance, at the end of the day, but as my hon. colleague, Mr Waft said, that always seems to be a sledgehammer to crack a nut, and it is expensive.

We know going to court – and especially for the High Court – is an expensive business, and it will be alright for what I would call the big corporations to deal with this, but it would not be, in my view, if they have an objection to an individual; it would be for an individual to object that would actually find that a burden.

I just think that it is a move to get clarity, Mr President, and I beg to move.

The President: Right, now, Hon. Members, what I will put to Council is the new clause in the name of the Hon. Member, Mr Lowey. We will accept, Hon. Members, the point raised by Mrs Christian that we will get the numbering in proper order, but the new clause, then, Hon. Members: those in favour of the clause moved by Mr Lowey, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, so we then turn, if we will, to Mrs Christian's new clause and amendment. So, dealing with it in the same manner and acknowledging that Mr Singer, as it unfolds, will decide how he feels we need to handle it, or whether he needs to take further advice.

Mrs Christian.

Mrs Christian: Thank you, Mr President.

Although it does say on the sheet that has been circulated, 'new clause', it is not actually a new clause; it is an amendment to clause 11, which introduced schedule 3, which specifies amendments to various pieces of legislation, as a

consequence of the introduction of this Bill:

CLAUSE 11 and SCHEDULE 3

Page 12: After paragraph 7 insert –

'The Payment of Members' Expenses Act 1989(c.4)

8. (1) In section 4 –

(a) after subsection (2) insert –

“(2A) If a body specified in an order under subsection (1)(a) is also a tribunal specified in Schedule 2 to the Tribunals Act 2005, the Treasury shall, in addition to any allowance payable under subsection (1) (attendance allowance), pay to each member of the tribunal such sum as may be prescribed in respect of or connected with membership or the functions of such membership.

(2B) Except in respect of any sum to which a person is entitled to be paid under this Act, a member of a tribunal mentioned in subsection (2A) shall not be entitled to be paid any further sum out of the General Revenue of the Island in respect of or connected with –

(a) attendance at meetings of the tribunal; or

(b) membership of the tribunal; or

(c) any function of such membership.”;

(b) at the end of subsection (3) add “and as respects the chairperson, deputy chairperson and other members of a tribunal mentioned in subsection (2A)”.

(2) In section 7 –

(a) in subsection (2) (sums excluded from tax exemption) after “section 1 or 2” insert “or any person under section 4(2A)”;

(b) in subsection (5) (Tynwald procedure for orders) after “section 4(1)” insert “and (2A)”.

(3) Sub-paragraph (1) shall not affect any legally binding agreement or arrangement entered into before the commencement of this paragraph.”
and re-number the subsequent paragraphs.

Members will recall that concern was expressed, in the debate on the Bill, about the manner in which tribunals are paid, and there is nothing specific in the Bill about payment of tribunals, which led me to enquire whether or not there should be reference to the way in which tribunals are paid.

Those enquiries have led to the acknowledgement that the Payment of Members' Expenses Act 1989 deals with the payment of tribunal members, amongst other things. But one of the issues which was talked about, before, was the fact that, notwithstanding that members are paid for tribunal work, either as a member or as a chairman, under the Payment of Members' Expenses Act, some of us have become aware of circumstances where chairmen of those tribunals, who are legally qualified, have submitted bills for fees in addition to their role as the chairman.

Now, as far as I am aware, that has been by negotiation and agreement with the Treasury, but there is nothing specified legally as to how that should, or should not, be done.

So, the amendment before you today proposes to change the Payment of Members' Expenses Act. It will allow an additional fee to be paid, but it will not be done without a framework under which it can be done.

So, if we look at the amendment: amendment 8(1)(a) provides a specific power, under the Payment of Members' Expenses Act 1989, to make payments to tribunal members over and above the current attendance allowance. This could cover the cost of employing a specialist or a professional as

a member, but would be limited to the amount prescribed.

In prescribing the amount, the Treasury can take into account any relevant factor and could, if necessary, allow for payment on a prescribed hourly basis. So, we are putting into the legislation, subject to your agreement, a proper mechanism for making these payments, should they be expected or sought.

New subsection (2)(b) prohibits payments out of general revenue to tribunal members, except where the member is entitled to the payment under the 1989 Act. In other words, there will not be any random fees paid in the future.

However, just for the avoidance of doubt, amendment 8(1)(b) allows for different payments as between chairpersons and ordinary members, because there are circumstances when a legal chairman is required, and we have all accepted that a legal chairman is remunerated on a different basis.

Amendment 8(2)(a) ensures that the payments are subject to income tax.

Amendment 8(2)(b) requires the same Tynwald procedure in relation to this matter as it does for Orders relating to attendance allowance. So, Tynwald will have to approve the Orders dealing with these prescribed payments.

Amendment 8(3) is intended to save any existing agreements for payments – a transitional provision, effectively. This new provision would apply to appointments made after commencement.

Mr President, that covers all the points in the actual amendment. Members will note that this is being inserted as a new paragraph 8, and all the following paragraphs will be re-numbered. This is on page 12 of the schedule. The reason for that is that these Acts which are being amended are listed chronologically and, therefore, the Payment of Members' Expenses amendment slots in between 7 and 8, as they are set out currently.

I beg to move, Mr President.

Mrs Crowe: I beg to second, Mr President.

The President: Mr Waft.

Mr Waft: I would just ask a point of clarification. The mover mentioned Treasury involved in this, in some way, and the prescribed hourly basis. Is there a precedent for this somewhere in the Payment of Members' Expenses Act?

Mrs Christian: As I understand it, Mr President, no; that is why we are putting it in, because people have sought these payments in the past.

There has not been under the Payment of Members' Expenses legislation a mechanism for paying it, as far as I understand. Perhaps Mr Attorney will correct me, if I am wrong, but they have claimed fees and been paid them, exceptionally, I think. It has not been the normal practice, as I understand, of legal chairmen to do that, but there have been circumstances where it has happened.

Mr Waft: Are we, perhaps, opening a door that... making it easier for people to claim expenses where, perhaps, they might not have done?

Mrs Christian: Mr President, you could argue that. You could argue that this is a change which might encourage that. On the other hand, it does make it clear that it can only be the level of payment specified in the Order, which is approved by Tynwald –

Mr Lowey: Tynwald.

Mrs Christian: – and so it is, in my mind, a rather more appropriate framework for any such payments. It does not say they have to be paid; it would have to be by agreement with Treasury, and Treasury would have to move an Order, and Tynwald would have to approve it.

The President: Just reversing the process then, would it be restrictive on Treasury or the Council of Ministers setting up a tribunal? Would it be seen to be restrictive?

Mrs Christian: I would not think so, Mr President. I think it is... from the point of view of anyone who might want to act on a tribunal who has special skills, they would see it as an advantage, because there is clearly a mechanism there by which they might make a claim and be paid, whereas, currently, there is not a proper one –

Mr Lowey: It is ad hoc.

Mrs Christian: It is ad hoc, as I understand it.

Mrs Crowe: Yes.

The President: Just take it steady now, because we are flowing a little bit quick. Mr Gelling.

Mr Gelling: I think I follow Mr Waft, inasmuch as, at the moment, it is exceptional. Claims could be made which are exceptional, or out of the ordinary, and discretion is used to do that on an individual basis.

What is being suggested – certainly, I follow the line of the proposer – is that it puts it on a proper basis, but I think it, probably, would give people more of a thought of entitlement, depending on how that Order came.

I can see the double edge, as it were, here, that that puts it on a proper basis. However, at the moment, it is purely and simply, if they put forward a case for exceptional reasons, it gives that flexibility to be able to do it.

This gives them more of a right to be able to apply. I do not say that they would be any better in what they come out with, but it, certainly, puts it on a footing that it is something that Government will readily accept, whereas, at the moment, it is not readily accepted, it is purely and simply if a good case is put forward.

The President: The Lord Bishop.

The Lord Bishop: Following on from that, though, does it not also give Treasury and, therefore, Government the opportunity of saying, ‘We do not want you to do it; we want you to do it’ – actually of choosing who it is does the work?

So, there is a certain amount of safeguard in it, that the tribunal member happens to be a lawyer, sees the chance of having, perhaps, some fee income, but the Treasury can actually say, ‘One of our lawyers can, actually, do that bit of work’, or, ‘We will employ who we want to do that bit of work’.

So there is a certain amount of... I think, putting this in, at least, means that somebody does the checking and balancing, in the process.

The President: Right, Mr Singer.

Mr Singer: When this was raised by Mrs Christian, last time, it was a matter that was picked up by the Chief Minister’s Office. I have got some notes this morning, which also refer not only to the Payment of Members’ Expenses Act 1989, but also the Payment of Members’ Expenses Specified Bodies Order 1997 and the Attendance Allowances Order 2002.

I do not know if it would be helpful, Mr President, if I could just read the notes that I have got. It says:

‘The Payment of Members Expenses’ Act 1989 generally applies to Members of Tynwald, Departments and Statutory Bodies, but sections 4 and 5 of the Act enable the Treasury to specify in an Order other bodies whose members are entitled to attendance allowances et cetera under the Act.

‘Tribunals are dealt with in this way, and are included in part 1 of schedule 1 to the Payments of Members’ Expenses (Specified Bodies) Order 1997. The rate of allowances to which their respective members are entitled is specified in the Attendance Allowances Order 2002, and it is to be noted that a chairman is entitled to a higher rate than an ordinary member, reflecting the fact that it is a requirement for the chairman to be legally qualified.

‘The Order caps the maximum amount which a member can claim, if two or more meetings of the tribunal are attended in any one session. The amounts vary, depending on the body, from £60 to £81.50.’

I also asked, this morning, the point Mrs Christian was making about extra fee income, and, as I understand, from what I was told, that is not permissible, from a chairman of a tribunal.

So, I know Mrs Christian said there have been examples of this happening, and, if so, I would, perhaps, like some evidence of that, and then get further advice on this particular point. I was told this morning that the chairman is paid extra, anyway, because they have got that legal qualification, but he should not be using that as part of his business for extra fee income.

So, does the Attorney General wish to comment on that?

The President: I am just allowing you to finish, sir.

Mr Singer: Yes, because, if, as we have got this conflict here, I would, necessarily, like to take extra advice on that before we made any decision.

The President: Right, Mr Attorney.

The Attorney General: Yes, thank you, Mr President.

I think, in many ways, this proposed amendment, again, is stating explicitly what has been mentioned just now by the Hon. Member, Mr Singer.

In other words, making it clear that, although you could have a legally qualified chairman who gets an additional rate for attending a meeting – and that, of course, is entirely understandable – he or she cannot go on and charge professional fees, at an hourly rate, without a limitation of the hours charged, unless Treasury, previously to that, has set out a regime which has been approved by Tynwald.

To that extent, it is really putting on a clear and a statutory basis that which the mover of the Bill has just stated. In fact, it gives protection to the public. It gives protection to the chairman, because it puts his income on an entirely legitimate basis, and renders it liable to income tax, and so on and so forth. I would have thought that it was, really, for the benefit of everyone.

The fact is, Mr President, that we are not going to get legally, accountancy, or medically qualified chairmen to do these very onerous tasks as chairmen, unless they are paid properly, and I think that we have to be realistic about that, but what this proposed new regime will enable is to have it entirely transparent, and to put everything beyond doubt.

To that extent, I think that it is a very worthwhile amendment. That would be my respectful view.

The President: Yes, could I just check Mr Singer's point, because the amendment introduces a new section 4 to the Payment of Members' Expenses Act of 1989, which you referred to, I think, in your correspondence, Mr Singer, and then you referred to the 2002 allowances.

Mr Singer: There were two, Mr President: part 1, schedule 1 to the Payment of Members' Expenses (Specified Bodies) Order 1997; and the Attendance Allowances Order 2002.

The President: The Attendance Allowance is one which... right, okay. Mr Waft.

Mr Waft: Could I just clarify for my own benefit: the circumstances in which a tribunal takes place and the qualified chairman quite rightly does get paid, if the circumstances are such that the chairman would have to do some homework, as it were, and use his good offices to clarify a point or whatever. What has been suggested is, perhaps, that needs to be checked first by Treasury, to see whether there is another lawyer able to do that in-house.

I think the difficulty is... I took on board what the Lord Bishop said about contacting the Treasury, but often it is retrospectively that they find they have had to do this, and they come there the following day and say, 'I have had to work all weekend on this – I didn't realise how involved it was.' Just a bit of balance, that we have to decide on the right way forward here.

Mr Lowey: But, isn't – ?

The President: Mr Lowey.

Mr Lowey: I have a lot of sympathy for the amendment, because I think it does get rid of an 'ad hoc'.

What happens at the moment, the mover of the Bill has read out what I would call the 'general rules'. I have heard today, from the mover of the amendment, that there have been, in the past, occasional reasons where legal people – and I use the words 'legal people', it could have been accountants – but the professional person who has been chairman, which we all recognise has the special fee for being chairman – and there is nobody arguing on that one – but then they add fees for an hourly rate, or what have you. If that is the case, and payments have been made as an exceptional one-off, and we know that, perhaps, there are going to be more of those, surely it is right and proper that there is a framework in which both sides know how they operate.

To my way of thinking, I think we have got to get some order and transparency into this, because I do not think you can allow what I would call 'ad hoc arrangements', however well they have operated in the past, to be...

And here is an opportunity: we are setting up tribunal legislation, laying the ground works, laying the ground rules,

at the start. Therefore, I think we should have the legislation right and in place, at the start, and I think the amendment does move along those lines.

So, I am tempted... not tempted, I think logic tells me that I should support the amendment on this occasion, because the mover of the resolution says he has been given notes which say, 'No, it does not happen, they do not get paid, that is the case.' Now, there is a contradiction there, and I am sure the mover of the amendment may be able to highlight...

You see, I am very fortunate, I have a legal person working with me, on a Government Department, who neither gets attendance allowance nor chairmanship's allowance, or anything else; he does it for free. I should be so lucky!

But we have a framework and, as we are setting up this tribunal independent thing, it should be... the rules should be clear to all sides, when we start it: 'this is what you are paid; this is what you are able to claim', and it should be in place at the start.

The President: Mr Singer.

Mr Singer: Just briefly, to come back. I was told that this was not permissible; that is why the extra knowledge of the chairman was... that is why the chairman was getting extra payment.

But having listened to the Attorney General and having heard that he is happy with this, and believes it is helpful, this amendment, then I, certainly, will not object to it.

The President: Mr Butt.

Mr Butt: Yes, sir, could I ask the Attorney, again, if this clause goes through, would it be more likely to encourage or deter experts from sitting on tribunals? I presume from your previous comment, it would encourage them to sit.

The Attorney General: Yes, Mr President, I think that that must be so. I think that professional chairmen need to be seen to be acting entirely in accordance with the law, and if there is some informal provision as to payment of their fees, they might be unsettled by it. So, I think it is all to the good.

Mr Butt: Thank you.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

I accept the point that the Hon. Member, Mr Singer, has made, about what it actually says in the Payment of Expenses Act, in terms of the attendance allowances, and there are regulations there, as he says, under clause 4, about the number of attendance sessions, and so on, that can be paid for. I do take the point that there is nothing in here which allows for fees to be paid.

Nevertheless, it is my understanding – and I will stand correction, or I could go and research it further – but I have a clear recollection of an issue coming to the Council of Ministers, in respect of a claim for fees for a chairman for work over and above that done actually at the sessions for which he was paid.

Now, my reaction to that initially was: he is paid extra for being a chairman, anyway; why should he expect to be paid any more?

However, in speaking to the draftsman about this, it has been suggested that it is better to put in a provision which allows a payment, subject to, as you say, the transparency of having a structure under which prescribed amounts would be set by the Treasury and approved by Tynwald. Now, having listened to the conversation of the debate, Mr President, I will be concerned, perhaps, as to how such claims can be made, looking at any Order that came forward which might control how...

It has not been my intention, in moving an amendment of this nature, to allow tribunal members just to come along and submit accounts for extra fees. I would certainly expect that the Order will control the manner in which it is determined whether they should be entitled to extra fees or not. But it seems to me that I have had the argument put, and Mr Attorney has argued it, again, this morning, that if we are to get people to act on these tribunals, who have specific skills, then it is probably better to have this clearly set out in the legislation, at this point, rather than operating on an ad hoc basis, when people make claims which we get into high dudgeon about – or I did! – and so we all know exactly where we stand.

So, I seek Members' support for this amendment.

The President: Now, Hon. Members, are we all content? In that case, Hon. Members, what I will put to Council is the amendment circulated to you in the name of Mrs Christian, which deals with clause 11 and schedule 3 and introduces a new part on page 12. Hon. Members, those in favour of the amendment, please say aye; and against, no. The ayes have it. The ayes have it.

Now, Hon. Members, having had now an elongated clause stage of our Tribunals Bill, perhaps we have reached a stage where I can invite Mr Singer to take, formally, the Third Reading of the Tribunals Bill.

Mr Singer: Thank you, Mr President.

Well, I would like to thank Members for their interest and their contributions over the previous stages, and also this morning, and I do thank them for that. I would like to now summarise the purpose of the Bill, and the issues that have been addressed by it.

The principal purpose of the Bill is to ensure that Manx tribunals are constituted in compliance with the European Convention on Human Rights, and, in particular, article 6.1 of the Convention, which gives all individuals the right to a fair trial.

The enactment of this legislation will also facilitate the eventual bringing into force of the Human Rights Act 2001.

In order for proceedings before a court or tribunal, in which the civil rights and obligations of a person are an issue, to be fair, two conditions must be fulfilled. Firstly, the court of a tribunal must be independent and impartial, and secondly, as a general rule, the hearing and judgement must be in public and within a reasonable time. If these conditions are not fulfilled, the proceedings may be held to be unlawful, under section 6 of the Human Rights Act 2001.

The Bill ensures that the 19 administrative appeals tribunals are independent and impartial in the following ways: firstly, each tribunal will now be appointed by a central independent body, the Appointments Commission. The Commission will be established by the Council of Ministers and will consist of five Members appointed for a fixed term of five years.

The appointments will have to be approved by Tynwald and Members of Tynwald would be excluded from being

members of the Commission.

Secondly, in addition to the tribunal being appointed by an independent body, its members must also be independent – not only the legislature and the executive, but also the parties to the proceedings before the tribunal – otherwise there is a significant danger that the tribunal could be accused of bias.

The House of Keys agreed the inclusion of an additional clause which provides that a tribunal member who has a material conflict of interest or duty must declare it and, if appropriate, withdraw from the proceedings. Procedural rules will additionally specify when such declarations are to be made, how they are to be made, and the circumstances in which tribunal members are to be regarded as having a conflict of interest or duty.

Members of tribunals must also have security of tenure, during their period of office, to ensure that they are not summarily removed or sidelined. The Bill, therefore, provides that tribunal members will be appointed for a minimum period of three years.

Article 6 of the Human Rights Convention requires the proceedings of a tribunal to be held in public, unless a tribunal in its discretion decides to sit in private. The Bill, therefore, provides that tribunal members will be appointed for a minimum period of three years.

Article 6 of the Human Rights Convention requires the proceedings of the tribunal... I am sorry, I have already been through that, but...

Article 6 of the Human Rights Convention requires the proceedings of a tribunal to be held in public, unless the tribunal, in its discretion, decides to sit in private, and any such discretion must be exercised by the tribunal, in compatibility with the Convention.

The Convention also requires that an appellant has a right to a hearing within a reasonable period of time, so that justice is rendered with a minimum delay, so that its effectiveness and credulity are not jeopardised. The procedural rules will specify the periods within which the proceedings must be commenced.

Although the Bill does not make it mandatory for members to go on training courses, it is recognised that appropriate training will be necessary, from time to time, to ensure that the members of tribunals keep their knowledge up to date.

It is particularly important that members are familiar with the requirements of the Human Rights Convention, so that the tribunal's proceedings are compliant with Article 6 of the Convention, so that situations giving rise to concerns regarding impartiality can be avoided.

Also, the chairman of the tribunal must be an experienced legal practitioner of at least seven years' standing. Where training is required, Treasury is empowered to make payments, including attendance allowances to tribunal members. This has been included in the Bill, as the Payment of Members Expenses Act 1989 does not contain a provision covering this.

The Bill makes a number of consequential amendments to other legislation under which existing tribunals are appointed. In particular, the number of Income Tax Commissioners has been increased to eight, to facilitate the scheduling of meetings of the Commissioners.

The opportunity has been taken to adopt recommendations in the Hutton Report into the death of Dr. Kelly, so that the principles of fairness are applied to persons called as witnesses before commissions of inquiry.

Mr Waft moved an amendment to provide that the

Mental Health Review Tribunal shall include at least one person having experience in psychiatric medicine, and that was adopted.

Mr President, a couple of matters were raised by Hon. Members at the clauses stage, that we took last time, and I would like to take the opportunity to answer at this point.

A point was raised regarding the Chief Secretary's role in selecting panel members for the Employment Tribunal. The Employment Tribunal and the Work Permit Tribunal each consist of a chairman, one member drawn from an employers' panel and one member drawn from an employees' panel. The selection from the panel has to be made ad hoc, according to the suitability and availability of members, and needs to be done speedily and informally. For this reason, the Chief Secretary was chosen.

The panel itself will, of course, be chosen independently by the Commission. The ability of the tribunal to act speedily is a requirement of the Human Rights Convention.

Mrs Christian requested clarification as to whether the tribunals are standing tribunals or just ad hoc appointments. The position is that the Bill provides that the members of a tribunal hold office for a fixed period of three years, and I would refer Members to clauses 3, 4 and 4(1)(b). The tribunal thus constituted will consider any matters referred to it from time to time.

Hon. Members will note that some of the tribunals meet very frequently, and have a heavy work load, whilst others meet very infrequently and, indeed, there are one or two – for example, the Independent Schools Tribunal – which has never met, as no appeals have ever been referred to them.

So, Mr President, I beg to move the Third Reading of the Tribunals Bill, as amended, and with the added clause, as has happened this morning.

Thank you, Mr President.

Mr Waft: I beg to second, Mr President.

The President: Now, Hon. Members, no Hon. Member wishing to add further to the Tribunals Bill, bearing in mind that there will be a need to make sure that the numbering of the new clause in the name of Mr Lowey is put in the right place, and that, following the additional bit into page 12, as moved by Mrs Christian, the re-numbering will have to follow on that, accepting all the re-numbering, Hon. Members, I put to you, formally, that the Tribunals Bill be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

BILL FOR FIRST READING

Mental Health (Amendment) Bill First Reading approved

2. Mr Waft to move:

that the Mental Health (Amendment) Bill be now read a first time.

The President: Having completed our passage then, Hon. Members, with the Tribunals Bill, we turn to the Mental Health (Amendment) Bill in the name of the Hon. Member,

Mr Waft, down for First Reading. Mr Waft, please.

Mr Waft: Thank you, Mr President.

The Bill makes various amendments to the Mental Health Act 1988, which is the principal legislation covering mental health.

Mainly, the Bill seeks to re-enact part 6 of the 1988 Act, which enables patients to be transferred from the Isle of Man to other jurisdictions and vice versa, in a form which reflects recent changes in mental health legislation in the UK.

It also seeks to ensure that the 1998 Act accords with the European Convention on Human Rights.

Briefly, Mr President, clause 1 is the principal amendment, which is to re-enact part 6 of the 1998 Act, to allow patients subject to detention in the Isle of Man to be transferred to other relevant territories, and vice versa.

Clause 2 makes it an offence to assist or harbour a mental patient who is absent without leave in another part of the British Islands.

Clause 3 removes the procedure where a defendant is ordered to be detained on Her Majesty's pleasure when found not guilty by a reason of insanity, by jury or an appeal.

Clause 4 ensures compliance with article 8 of the European Convention on Human Rights by allowing patients to apply to court for the appointment of an acting nearest relative.

Clause 5 ensures compliance with article 5 of the European Convention on Human Rights by reversing the burden of proof, in proceedings before the Mental Health Review Tribunal.

Clause 6 increases the number of medical and lay members on the Mental Health Review Tribunal.

Clause 7 corrects a missed consequential in the Limitation Act 1984.

Clause 8 gives the Bill its title to allow for clauses 1 to 3 and schedule to be brought into force by one or more Appointed Day Orders. The rest of the Bill will come into force on the day Royal Assent is announced to Tynwald.

Mr President, I beg to move that the Mental Health (Amendment) Bill be read for a first time.

Mr Lowey: I beg to second, sir, and reserve my remarks.

The President: Mrs Christian.

Mrs Christian: Mr President, just... I speak in support of the First Reading.

The only slight issue I have asked the mover about is his reference to some changes being made, because of 'recent and forthcoming' changes, as it says in the explanatory notes, to changes in the United Kingdom. Have those changes now taken place or are they still in the pipeline? And are we ahead of the game, then, in changing our legislation to be in line with something which has not yet been enacted?

I do support the principle of some of these changes: the reversal of the burden of proof provisions – particularly in clause 5. It is always difficult, I think, in determining whether a person should be detained or not, but I think that is a useful provision.

I am happy to support the First Reading, Mr President.

The President: Does any other Hon. Member wish to speak to the First Reading?

In that case, Hon. Members, what I formally put to... or, Mr Waft, did you want to reply to Mrs Christian at all?

Mr Waft: Only as much as I am not aware of the full effects of the recent changes in the Mental Health Act UK. This is purely to keep us up to date with the existing legislation.

Mrs Christian: Not according to the explanatory memorandum!

Mr Lowey: We can ask after the Second Reading, but any legislation that is not passed, Mr President, surely, will fall in with the general election in another place, in the United Kingdom, which means any legislation that has not been approved fails, and has to be reintroduced, from ground one, in the next session.

The President: We need to consider that point, I think, at a later sitting, but, at this particular stage, Hon. Members,

what I formally put to Council is that the Mental Health (Amendment) Bill 2005 be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**IN COMMITTEE OF THE WHOLE COUNCIL
(IN PRIVATE)**

**Summaries of Proceedings in the
Council of Ministers (February 2005) considered**

The President: Now, Hon. Members, that brings to a conclusion our Order Paper for this morning. The Council will now sit in private.

The Council sat in private at 11.25 a.m.