



**LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH**

**PROCEEDINGS**

**DAALTYN**

**(HANSARD)**

**Douglas, Tuesday, 1st May 2007**

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

The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles), The Attorney General (Mr W J H Corlett QC), Mr D Butt, Mrs. C M Christian, Mr E A Crowe, Mrs. P M Crowe, Mr. A F Downie, Mr E G Lowey and Mr G H Waft, with Mrs M Cullen, Clerk of the Council.

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**Order of the Day**

1. Personal Liability (Ministers, Members and Officers) Bill – First Reading approved..... 62

*The Council adjourned at 11.03 a.m.*

## Legislative Council

*The Council met at 10.30 a.m.*

[MR PRESIDENT *in the Chair*]

### PRAYERS

*The Lord Bishop*

## Questions for Oral Answer

### TREASURY

#### Government telephone systems Costs and performance

1.1. The Hon. Member (Mr Lowey) to ask the Member of the Treasury:

*(a) How much has been spent by Government Departments on installing new telephone systems in the past two years;*

*(b) why did the system installed at Ronaldsway Airport 'go down for 2½ hours' on 23rd April 2007;*

*(c) who audits the performance of new installations of telephones and IT generally; and*

*(d) do we consult the people who operate these systems before commissioning them?*

**The President:** Hon. Members, if we move on to our Order Paper, we have the Questions for Oral Answer first. I call on 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 understand that, Mr Downie, you are answering on behalf of the Treasury this morning.

**The Member of the Treasury (Mr Downie):** Correct, Mr President.

Mr President, the Hon. Member will be aware that, as well as its traditional role in the provision and support of ICT applications for departmental business processes, the Information Systems Division (ISD) has focused over the last three years or so on putting in place a modern, fit for purpose technology foundation to underpin the development of joined-up public services.

One of the key elements of the technology foundation has been the work on the Connect Mann project, providing a single integrated network for Government's telephone, data and video requirements across over 180 Government sites from here in the Central Government Office complex down to, for example, places like the Harbourmaster's Offices. This project had a three-year implementation cost of £4, 048,000 and generates annual cost savings in the Departments of over £1,400,000.

The implementation of the Connect Mann project at Ronaldsway Airport was commissioned into live service in the week commencing 9th April this year. Over the following two weeks, the Airport Division migrated to telephony on the integrated network, with a specific exception of the Airport's key operational telephone lines that cannot go to the new technology, due to the regulatory approval requirements. In other words, the Civil Aviation Authority (CAA) insists that there must be alternative systems for the key operations within the Airport itself, and this is laid down in the CAA rules.

On 23rd April, the Airport was in the first week of user acceptance testing. A problem occurred when a faulty personal computer meant the Airport could not bring the main switchboard number out of night service. This fault was raised at 7.22 a.m. and confirmed fixed by Manx Telecom at 9.41 a.m. – in other words, two hours and 19 minutes later.

Service level agreement targets for faults of this type are two hours. New processes are now in place to improve this response in future. Further modifications have also been carried out to reduce the possibility of this reoccurring in the future.

Government premises on the Connect Mann network are categorised according to their business needs, with sites like the hospital, prison, police headquarters and emergency services joint control room being identified as category 'A' sites, with a service level achievement targeted at 99.97 per cent availability on a 24-hour, seven-day-a-week basis.

With its full agreement, Ronaldsway Airport is defined as a category 'C' site, not requiring a 24-hour, seven-day-a-week basis, and targeted at 99.94 up time.

With specific regard to the Connect Mann's network, there are a variety of audit mechanisms carried out on a regular basis – for instance, information security management with both Internal Audit Division and external independent audit involvement – and in addition, there are regular penetration tests, for example, to check whether the network is vulnerable to hackers or people listening in illegally.

As the Hon. Member may also be aware, Government requires network connections to UK services such as the National Health Services Net and the Criminal Justice Extranet. These connections are audited from time to time by those organisations to ensure compliance with their demanding standards.

In terms of performance to service level agreements and targets, monthly reports are produced by the managed services provider – that is, Manx Telecom – and reviewed with the ISD. The most recent report showed categories A, B and C all exceeding their service level availability target.

In broader terms of IT performance, Internal Audit is regularly involved in reviewing performance of major projects etc. ISD also commissions external benchmarking where appropriate.

The process of implementation of Connect Mann at a site level has consistently had detailed consultation and design acceptance with key local personnel. In the context of Ronaldsway Airport and recognising the communications specification required to sustain Civil Aviation Authority approval, considerable effort was put in by Airport technical services and communications staff to design a local implementation, with a high degree of resilience, particularly with regard to areas such as Air Traffic Control.

This effort was reflected in the incident on 23rd April, when the problem was restricted entirely to the Airport's

ability to receive telephone calls on its main customer facing number at the information desk. No telephone service was lost anywhere else in the Airport and facilities such as Air Traffic Control, lines to the various airlines etc carried on as normal and the computer facilities were not impacted.

Thank you, Mr President.

**The President:** Mr Lowey.

**Mr Lowey:** Thank you, Mr President.

Would the Hon. Member for the Treasury not agree it was an amazing coincidence that this telephone system should go down at the very time that there was a need for the service, i.e. very foggy weather and a lot of postponements and people wishing to notify?

It gives me no confidence to say that the Airport has been categorised 'C'. I thought the travelling public would have been given a higher priority than a category C.

Would he also not agree, with his remarks at the end about key personnel being involved in the systems being installed, the question I asked was: were the users, the people who actually operate it, consulted? The answer, I have to inform him, is no, they were not. I think sometimes the people at the sharp end should be the ones... They should be the key personnel and not maybe the managers who think it would be a nice idea.

Coming to the financial points, they do not come cheap at £4 million – although the savings I do take on board, if they are correct. I hope they are correct and I am sure they are, if they are presented by the Treasury, of £1.4 million a year being saved. It seems to me that we should be reaping this in three years.

But would he then not assure me that this system will not be replaced in another three years? What I am really getting at is that the savings should not be used to offset the installation costs, because it seems to me that every third year, we are changing the system when it comes to telephones.

Sorry about the long supplementary list.

**The President:** I think there might have been a question in there. Mr Downie.

**Mr Downie:** Right, Mr President.

I would agree with the questioner's comment about if there could ever have been a worse time, it was one of the few days in the year when the Airport was socked out by fog and this number is the one used to get information from the information desk.

What normally happens under the old system is just a manual operation and at night time, this system is closed down. In the morning at half past six, seven o'clock, the system is activated and that is generally used by the public to check up.

However, the public could have checked up with the airlines to see what the status was, because all Airport tickets, and even e-tickets now, usually have a number on them. So, it is quite easy for people to find out.

But I accept entirely what the Hon. Member is saying. There was a glitch in the system. That has been identified. A backup system has been put in to make sure that that does not happen again, so that when the operators come in in the morning, they know that the system is live and working and the public have proper access to it.

As far as the savings are concerned and the other matters, this telephone system now is fairly standard

within Government. All the Government Departments, to my knowledge, are on it. It does provide a whole range of opportunities for further development and as the Hon. Member quite rightly says, we will recoup the savings in the investment within a three- or four-year period.

I understand that there are no plans at all to change or modify the system. This now being in place, it should stand us in good stead for many years to come. In fact, when building on the system, we would be looking through the telephone or through the computer system, the voice over internet protocol (voice over IP) system, to give us access to other important things, for example, from a health point of view, medical records, information that may be available to restricted people within the system and for the use for the courts and Police and other people.

By and large, there have been odd problems in other Departments, but I think the system has bedded in quite well and most people are familiar with it.

The final point that the staff really should be properly trained to use it. I understand that there is a process now of making people more familiar and accustomed to the system. They are going to be instructed on, if there is a failure, how to transfer over to another system or, in fact, go back to use a land line.

Thank you.

**The President:** Mrs Crowe.

**Mrs Crowe:** Thank you, Mr President.

Actually, the Hon. Member has answered the question I was going to ask about the fact that the system had changed completely from what was an external telephone system to a voice over a PC-computerised system. I do not very often congratulate ISD, but I do think the way that it was implemented throughout the whole of Government Offices went virtually without a hitch, and it is a new way of using a telephone.

The cost saving of using this system, of course, will continue as long as we continue to use computers. I think it is essential, when we are looking at the way in which we work within Government, that we are continually looking at cost savings regarding the technology. It was an extraordinary set of coincidences that led to the breakdown at the Airport being on such a particularly bad day for the travelling public, but I do think that we should be striving within Government to implement cost-saving measures, utilising technology most of the time. I am not sure that we are doing that often enough.

**Mr Waft:** Was that a question?

**The President:** No, I do not think so.

## AGRICULTURE, FISHERIES AND FORESTRY

### Silverdale historic roundabout Closure and reopening

2. The Hon. Member (Mr Lowey) to ask the Member of the Department of Agriculture, Fisheries and Forestry:

(a) When will the historic roundabout at Silverdale be

*available again for use by the general public; and  
(b) why, when and by whom was it closed?*

**The President:** Nevertheless, I think we will go on to Question 2, Hon. Members. Hon. Member, Mr Lowey.

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

**The President:** Now, on this occasion, I think Mr Butt, you are answering on behalf of the Department of Agriculture.

**The Member of the Department of Agriculture, Fisheries and Forestry (Mr Butt):** Yes, Mr President.

I would advise the Hon. Member that the Department is acutely aware of the popularity of the water driven carousel at Silverdale and is making every effort to secure that it is available for public use at the earliest possible time.

However, following the refusal of the independent specialist to complete an inspection of the carousel earlier this year, it was decided that work was necessary both to the design of the feature and also to the actual structure itself, in order to comply with current safety standards.

Instructions to commence the necessary remedial works were given as soon as the extent of the problems was identified and it is anticipated that, subject to the satisfactory resolution of both the design and the structural issues, the carousel should be in operation again in early July this year.

In respect of the second part of the Question, I would advise that the carousel was closed at the end of September 2006, as it is normally, following the summer season. A playground safety inspection was carried out by an independent company in March, and they refused to complete the inspection, as the carousel did not comply with any required legislation, particularly with there being no way of stopping the carousel quickly in the event of an accident occurring.

Upon receipt of this information and in the light of the concerns regarding the potential impact upon existing public liability insurance cover, it was reluctantly decided by the Department that there was no other option than to close the carousel until the refurbishment works could be carried out.

**The President:** Mr Lowey? There was another one.

**Mr Lowey:** Yes, there will be a supplementary.

I am sure the Hon. Member shares my disappointment. Silverdale Glen is one of the few –

**The President:** This will be a question?

**Mr Lowey:** Yes, it will be a question, but I really do think it is right to put it in context, Mr President.

Would he not agree that the carousel has been operated for long decades without any serious mishap to anybody who was on it?

Would it not be a correct interpretation to say we have gone overboard with this unique form of young persons' entertainment? Of course it is unique; there are no water driven carousels now. It was introduced by the Victorians and, therefore, of course it does not fit into any neat modern

Health and Safety regulation.

Would he not agree with me that generations of families' children have used this carousel in complete safety and that we are really overreacting to a set of regulations that seem to be out of touch with reality?

**Mr Butt:** I would agree it is a unique facility. Having spent an hour there last September, operating the dead man's handle, I did on occasions see moments where young children were trying to get off when it was moving. There was a risk they would be hit by the oncoming horses behind them.

The new design, I understand, will actually incorporate a platform under the boats and the horses, so that when they fall off now, they will fall onto a moving surface which goes with the horses, which will take away the risk of them being hit by the oncoming horses as they come round.

The reason they have had to go this far is basically because there is a possibility they could not get insurance. That would be a severe imposition on actually running the feature in the future.

**The President:** Mrs Crowe.

**Mrs Crowe:** As we now have, instead of the children falling on to the floor, where they lie as the horses go over them... at a snail's pace I might add, so they are hardly knocked down. They may be tapped, but they are hardly knocked down by a horse.

However, does the Hon. Member have any other design features that are going to be incorporated? Are we going to put the children in cages on the...?

**Mr Lowey:** Yes – harnesses?

**Mrs Crowe:** I just wonder, we are now going to have a platform to turn it into a more modern design – like, presumably, they have in electronically driven affairs.

Also, if he could tell us what other parts of design and remedial works are going to take place, and if there was no legislation in place, why would it have to be closed? There would be no legislation to enforce a prosecution under public liability.

Anyway, I would be interested to know what other design features by way of safety are going to be applied.

**The President:** Mr Butt.

**Mr Butt:** Yes sir. The only change would be the revolving floor that goes with the boats and the horses.

The other design changes are, which are regretful in my opinion, that the horses will be made of fibreglass instead of wood. An exact mould will be taken from the wooden horses, and the horses will be made of fibreglass and decorated in exactly the same way. The original wooden horses are going to be restored as best as they can be, to be kept as museum pieces – although I have expressed my concerns about that with the Department. The long-term aim is to eventually replace them with wooden horses, but that is a very costly option.

**The President:** Mr Lowey.

**Mr Lowey:** Final question. Are the same Health and

Safety inspectors looking at the Laxey Wheel, because that is a unique experience, too? I cannot think of another structure anywhere comparable. The Wheel does turn. Is the Health and Safety giving that a free health... or are we to close that down to have a moving platform?

I am being tongue in cheek, obviously, but I think it has got to be asked.

**The President:** Mr Butt.

**Mr Butt:** My knowledge of Laxey Wheel is that the platform you are standing on does not move at all, so –

**Mr Lowey:** The ground does not move up at Silverdale either!

**The President:** Okay, Hon. Members. It does seem a shame sometimes that all the risk and fun is taken out of a child's life –

**Mr Lowey:** Taken out of life – absolutely.

## Orders of the Day

### Personal Liability (Ministers, Members and Officers) Bill First Reading approved

2. Mr Butt to move:

*That the Personal Liability (Ministers, Members and Officers) Bill be now read a first time.*

**The President:** We turn, Hon. Members, to Item 2 on our Order Paper which is the Personal Liability (Ministers, Members and Officers) Bill. Now, this is in the hands of the Hon. Member, Mr Butt. First Reading, sir.

**Mr Butt:** Thank you, Mr President.

The Personal Liability (Ministers, Members and Officers) Bill 2007 is a Bill designed to address the personal liability of political Members of Departments, members of Statutory Boards and certain other public offices.

The Bill amends the Government Departments Act 1987 to amend the limitation of liability on members acting in good faith. It also amends the Statutory Boards Act 1987 to amend the limitation of members and officers of Statutory Boards acting in good faith. It also provides for the limitation of liability for public offices holding positions not presently so indemnified.

Mr President, the Tynwald Management Committee raised with the Government, some time ago, concerns regarding the position of Members of Tynwald exercising governmental functions and perhaps subject to legal action in respect of decisions taken.

The Committee argued that Members were particularly vulnerable in relation to legal costs during litigation, even though they may have acted in good faith or in accordance with advice. The view was that Members should have the same protection as officers are given in schedule 1 of the

Government Departments Act 1987 and schedule 2 of the Statutory Boards Act 1987. Those Acts provide that an officer of a Department shall not be personally liable in respect of any act done by him in the performance, or purported performance, of his functions, if he acted reasonably and in the honest belief that his duty required or empowered him to do it.

The Acts also enable officers to be indemnified against damages or costs, if the Department is satisfied that an officer honestly believed that the act complained of was within the scope of his functions and that his duty required or empowered him to do it.

The Government Departments Act and the Statutory Boards Act also include provision that the Department or Board may apply any money in its hands for the purposes of indemnifying itself against any costs or damages which it may occur in, or in consequence of, the exercise of its functions.

This is achieved through the purchase of indemnity insurance which covers claims from third parties which arise from accidental errors or omissions. This cover extends to employees, political Members and lay members of Departments, Boards and offices, subject to various conditions, including that no indemnity will be provided to persons in respect of their own fraud, dishonesty or criminal act.

However, cover for political Members of Departments relates only to action taken by the Member as part of the Department's business and does not cover any other actions.

The insurance provides for payment of damages and claimants costs and expenses for the financial loss arising as a result of a negligent act or acts in accidental error or accidental omission. In addition, the insurer will pay all costs and expenses incurred with its written consent in defending any claim which may be subject of indemnity.

The provisions of the Government Departments Act and Statutory Boards Act ensure that the officers covered by those Acts will, unless they have acted in bad faith, have their costs met in defending an action. However, it cannot be guaranteed that the insurance policy would provide this cover for Members. Therefore, there is a degree of vulnerability for Members of Tynwald and others who are not covered by the statutory provisions.

It is also important to note that the Government Departments and Statutory Boards Acts apply only to officers of Departments and Boards. Officers employed within Offices of Government, including the Chief Secretary's Office, the Personnel Office, Attorney General's Chambers and General Registry, as well as the Office of the Clerk of Tynwald, do not presently benefit from the statutory provisions, and are therefore in the same position as Members of Tynwald and lay members of Statutory Boards.

It has been concluded that the only means by which the situation can be rectified is through amendment to primary legislation, in order to provide to relevant officers, Members of Tynwald and lay members of Statutory Boards, the same protection as given to departmental and board officers under the relevant Acts.

It is important to note, however, that such indemnity will not be provided if it is found the person concerned acted outside the functions of the Department, Board or Office concerned or outside their level of authority.

In producing this Bill, the opportunity has been taken

to modernise the existing provisions contained within the relevant Acts, which I will explain more fully at the Second Reading of the Bill.

Mr President, I beg to move the First Reading of this Bill.

**The President:** Mr Waft.

**Mr Waft:** I beg to second, Mr President.

I wonder if the Member might clarify for me a couple of points, with regard to the certificate which needs to be signed by the Governor, and the reason why he has given retrospective situations with regard to some forms and noting; and to the reason why we use 'may' in clause 4(2). If he could clarify that for me, as well.

Thank you, Mr President.

**The President:** Mr Lowey.

**Mr Lowey:** Yes I think this is a reasonable Bill. It is not a new phenomenon; it was raised over three years ago. We had special meetings over in the Millennium Room to highlight the differences between Ministers and backbenchers, so I think the Bill is attempting to be reasonable.

It is not a green light to act irresponsibly. It means you have to have acted with good faith and within reasonable bounds. I think it is quite right that Members of Tynwald in particular, and particular members of Statutory Boards should be protected the same as a Minister. I think it is only reasonable and I think it is a fair Bill. It is trying to strike the right balance.

I will support the Bill.

**The President:** Mr Crowe.

**Mr Crowe:** I agree with Mr Lowey. I fully support this Bill as it does give protection to Members and officers of Departments, Statutory Boards and certain designated persons when carrying out their duties acting in good faith.

The Statutory Boards Act does state that there are certain Boards: the Isle of Man Office of Fair Trading; the Financial Supervision Commission; the Insurance and Pensions Authority; the Isle of Man Post Office; the Isle of Man Water Authority; the Manx Electricity Authority; and the Communications Commission. But I think there are some other boards or committees that, maybe, are not yet covered by this Bill. I can think, for instance, of the Road Transport Licensing Committee and possibly the Gaming Commission.

So I just wondered would the mover mention how these other bodies would be suitably covered.

**The President:** Hon. Member, Mrs Crowe.

**Mrs Crowe:** Thank you. Two specific questions really, please, Mr President.

I wonder, could the mover clarify at some stage for me whether the chairman and members of the Isle of Man Post Office, when they are acting as pension trustees, if they are indemnified by this personal liability.

Also, I wonder, would he be able to find out which Statutory Boards and Departments now take out separate insurance, which is quite costly? Will this still be required if this Bill completes its passage through the branches?

**The President:** Mr Butt, reply sir.

**Mr Butt:** Thank you sir.

To Mr Waft, he mentions, I think it is, clause 4(2):

'The Treasury may indemnify a designated person against the whole or any part of any liability, damages, loss...'

I might need clarification on that, but I presume it means that if the Treasury discovered or found that the person had not acted in good faith, they would then have the option of not indemnifying, so it leaves it open for them to 'may indemnify' if they fit all the criteria.

With regard to clause 6, there are two elements to that, one which says that... Clause 6(2) applies to acts done before, on or after a date. I think, again, that refers to the ability of the Treasury to indemnify whereas the ones that say at 6(3) acts done, on or after the date, actually refer to the liability of the member or the officer.

In response to Mr Crowe's question about other quasi-official boards, I think under clause 3(2)(1), the Council of Ministers have the option, by order approved by Tynwald, of designating any other office or person to be listed as an inclusion in the list of Offices and Departments that can be indemnified, that is 3(2)(1).

Mrs Crowe: members of the Post Office acting as insurance pension fund trustees – again that may be an option that could be exercised under section 3(2)(1), but I will have to look into that.

As to what other Departments or Boards have separate insurance, I do not know at this stage. I will endeavour to find out and come back to you.

Thank you, Mr President.

**The President:** Hon. Members, the motion that I put to Council is that the Personal Liability (Ministers, Members and Officers) Bill 2007 be read for a first time. Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Member, if I may just put in a comment, in a relation to page 2, and section 8, where it says:

“‘member’ includes a former member and the estate of a former member but only in respect of acts done while he or she was a member.”

Now that is fair, but the claim would be against the estate of a member. Whilst I know the Statute of Limitations Act does apply, I would think, I wonder if there should be some clearance against the estate in relation to a claim, because the beneficiaries of the estate, of course, have not been involved at all. Will the Statute of Limitations Act be sufficient to cover the estate, or is it open ended?

So if that could be looked at by the Member for Second Reading, it might be that we have to raise it at that stage.

**Mr Butt:** Thank you, sir.

**The President:** Hon. Members, that actually concludes the business before Council this morning. Our adjournment is to next week, 8th May.

Thank you, Hon. Members.

*The Council adjourned at 11.03 a.m.*