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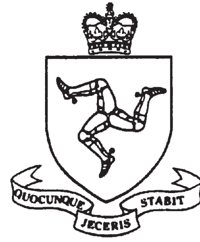

LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

(HANSARD)

Douglas, Tuesday, 12th May 2009

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Present:

The President of the Council (The Hon. N Q Cringle, OBE)

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

Business transacted

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Legislative Buildings, Douglas, Isle of Man IM1 3PW.

Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS
The Lord Bishop

Orders of the Day

Advocates (Amendment) Bill
Second Reading approved

1. HM Attorney General to move:

That the Advocates (Amendment) Bill be now read a second time.

The President: Good morning, Hon. Members.

We have got a full house and we have no Questions on our Order Paper for today, so we go straight on with the legislation, Hon. Members. We are dealing today first with the Advocates (Amendment) Bill. This Bill is here for Second Reading at this particular stage.

Hon. Members, I call upon Mr Attorney.

The Attorney General: Thank you, Mr President.

At the First Reading of the Bill, I explained that its purpose is to enable the Council of the Isle of Man Law Society to obtain information or documents to assist in the investigation of allegations of professional misconduct on the part of advocates, breaches of practice rules and other contraventions, including anti-money laundering codes. The Bill will supplement the existing powers which are available to the Law Society to intervene in the practice of an advocate in certain specified circumstances, and to that extent will further enhance the reputation of the Island as a well-regulated jurisdiction.

I believe that in these increasingly challenging times it is of particular importance that the Island has an independent Bar who fearlessly uphold the rule of law without fear or favour so that alleged wrongdoing, wherever found, can be challenged in proceedings before our courts. Equally, however, the public must be confident that where wrongdoing is alleged against a member of the Manx Bar or his or her staff, on good grounds, the Council of the Law Society has the full panoply of necessary and appropriate investigatory powers.

Hon. Members were rightly concerned that this legislation might be regarded as perpetuating a regime of self-regulation, but it has long been the case that a person wishing to make a complaint in respect of an advocate's professional conduct is able to make that complaint to the Advocates' Disciplinary Tribunal. The Tribunal consists of a chairman who shall be an advocate, barrister or solicitor of not less than 10 years' standing, appointed by the Governor, and who must not be carrying on practice as a lawyer in the Isle of Man. The chairman is supported by two persons nominated by the Council of the Law Society, and two persons, not being Members of Tynwald, nominated by the Office of Fair Trading. The Tribunal has power to reprimand an advocate or order the advocate to pay a penalty not exceeding £5,000. If it is considered that the Tribunal's powers are inadequate in the circumstances of the complaint, the matter may be referred to the Governor, who sits with the Deemsters. I would suggest that the structure of this regime is similar to that which applies to other professions where there are allegations of professional misconduct.

Mr President, the setting for this Bill, therefore, is the Advocates Act 1976 and the Advocates Act 1995. The Bill, if passed, will bring our regulatory regime up to the same level as that which applies in England and Wales.

In the circumstances, therefore, Mr President, I move that the Bill be read a second time.

The President: Mrs Christian.

Mrs Christian: I beg to second and reserve my remarks.

The President: Mr Lowey, Hon. Member.

Mr Lowey: There is only one query that I may have on the Second Reading. It is on penalties for not producing the documents. I notice it is for £1,000 in the first part and £5,000 if they are accused of falsifying them, and £1,000 seems to me on the low side, because it is the requirement for investigation. I presume – and I look to the Attorney to tell me – that this is a standard fee, a fine that is applicable, because if we are looking at a serious charge, the fine of £1,000 seems to me to be of minor consequence to an offender in not producing it. Is there a particular case for why it has been pitched at £1,000? That is really what I am asking. That is the only query that I may have.

The President: Mr Butt, Hon. Member.

Mr Butt: Thank you, sir.

I was going to ask a similar question, actually, because it appears that when the Law Society itself makes an application and it is not acceded to, the fine is £1,000, and then the High Court, when the application is made to them, the fine is £5,000 for a High Court application. I just wonder what triggers the difference between the application being made by the Society itself… why they would then need to go the High Court. What is the difference – the different factor that makes it necessary to go to get a High Court Order, as opposed to the basic one from the Society itself?

The President: Mr Waft.

Mr Waft: Mr President, according to Manx Radio this morning, there was talk about the Legal Aid situation and it will enforce lawyers to take up the Legal Aid provisions within their business section. I do not see that in the Bill anywhere, but that is what came over on the radio this morning. You might be able to clarify that.

The President: Mr Downie.

Mr Downie: In a similar vein, Mr President, I would have thought that Manx Radio, as a public-service broadcaster, would have checked its facts out more carefully. I concur with the views of Mr Waft: Manx Radio stated that the Bill was to do with providing a framework to compulsorily provide Legal Aid, and that is not even mentioned in the Bill. I am aware that there was an attempt to move an amendment in another place, which failed; however, if we are going to have reports about legislation, I think that there is a requirement there for Manx Radio, in particular, to be accurate about that.

I want to take issue about the fines. In my opinion, if you make a comparison to the £1,000 fine and the subsequent £5,000 fine, we provide a £1,000 fine today for littering or allowing a dog to be at large. When you look at the advocates in general, what is £1,000 in this day and age to an advocate? (**A Member:** Absolutely.) It is hardly an opportunity to make them think twice about certain things, and I am not too sure whether the fines or the penalties in the legislation need to be amended in some way and brought into line with what is applied in some other areas.

When you look at what can happen to a company director or somebody putting returns in, who falsifies documents or fails to fulfil a legal requirement, the penalties there are very, onerous. As the mover has said, we are trying to be more open and honest with the way advocates operate and also look at them in the context of money laundering and having a proper jurisdiction.

I would need to be convinced that the fines are of a suitable enough level.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

I think the biggest damage to a solicitor or an advocate would be the reputational damage. I think if any of this was brought into court and they were found not to comply with the statute, the damage to their business and professional reputation would be far in excess of £1,000. So I think it is not the level of the fine that is the issue; it is bringing it within the law and bringing in, clearly, that they have to comply with the law.

The President: Mr Turner.

Mr Turner: Yes, thank you, Mr President.

I do not entirely agree with Mr Crowe using the reputation argument. I am more inclined to agree with the comments of the Hon. Member, Mr Downie. I think we have got to put these into perspective. We are looking at what is, in effect, self-regulation.

I understand the comments that the Attorney made in his opening speech. I think it does not really send out the right signal when we have fines that are substantially more for the other things that Mr Downie mentioned – littering and trees and cutting down foliage and things – and then, when we have advocates, who are renowned to be on good money in the scale of things… To see small fines like this I do not think sends out the right signal. I would be interested to hear the reasons why these are set at the level they are.

The President: Mrs Christian.

Mrs Christian: I would just make perhaps a comment on the issue of fines. There has been comment about fines set at £1,000 for littering or dog fouling or whatever. The important thing is whether or not they are applied, and I have yet to read of any fine of that level being applied for any of those offences.

So I think that we need to bear in mind too that this measure is, in the first instance, about the production of information to the Law Society Tribunal, or whatever it may be – to the Law Society – to investigate misdemeanours, or whatever else, for which there will be further action taken. This is one step in the process, and to that extent I think that, at this level… Members may take a view that it is not high enough. We will see whether they seek to amend it, but I think we need to remember that it is one step in the process; it is not the ultimate outcome.

The President: Mr Callister.

Mr Callister: Thank you, Mr President.

I suppose you could say that to some lawyers £1,000 is a couple of bottles of wine, but I would have to now agree with Mrs Christian – and this is what I was going to say – that we are talking here about the production of documents, in the first instance, or else information that is called for. Presumably, I take it, at that point, this would then, if they had not produced, move on to the High Court, where the fine would become £5,000.

The President: I think we have been round the Council, Mr Attorney, but perhaps, because it is me… When going through the Bill, my original side note was, in relation to schedule 1A:

> '1.(1) If the Council is satisfied that it is necessary to do so for a purpose mentioned in section 26A, it may by notice require a person to whom this paragraph applies –'

That is fine, apart from in the Advocates Act 1976 I cannot find a 26A, and I think… I am struggling to find it, anyway, and whilst we are talking about provision of documents, part II of 26 actually refers to holding and payments of moneys. It is possibly me, but I am having difficulty following that little section.

Mr Attorney.

The Attorney General: Thank you, Mr President, and I am grateful to Hon. Members for their interesting questions.

Could I deal, first of all, Mr President, with the point you have raised. The Bill, if passed, will actually insert a new section 26A by virtue of subclause 1(2), so that the schedule will be inserted in the Advocates Act and will take effect accordingly.

Mr President, Hon. Members have expressed general concern about the level of fines. The first point I make is – and perhaps this is not a good point, but I make it nonetheless – that, to the best of my knowledge, the level of fines imposed by this Bill is the same level imposed by the equivalent legislation in the UK. Accepting that that is not a good point in principle, nonetheless I think it is. As I introduced the Bill, the purpose of this is to put us on the same footing as the Law Society in England.

I do think, though, Mr President, that the Hon. Member, Mr Crowe, in particular put his finger on the main point, which is that a fine is not really the damage that can be done

to an advocate who is found guilty of a breach of one of these provisions. There is undoubtedly damage to reputation which can lower the reputation of the advocate in the mind of the public, who are therefore less likely to go to an advocate who is found to be in breach of legislation.

Furthermore, Mr President – I think this is an important point – if someone is found to be guilty of an offence under this Bill, it could very well lead to a reference to the Advocates' Disciplinary Tribunal, because that would undoubtedly constitute professional misconduct and then he or she would be exposed to the far greater penalties which are available to the Advocates' Disciplinary Tribunal.

As I said in my introduction, there is power there in the Tribunal to reprimand an advocate or order the advocate to pay a penalty not exceeding £5,000, but again, more importantly, the advocate can be referred to His Excellency, who ultimately has the power to remove the advocate's licence to practice.

When we look at the schedule, Mr President, we can see that the fines are triggered first of all, I think, in paragraph 2 of the new schedule:

> '… if any person having possession or control of any information or documents to which a notice… applies refuses, neglects or otherwise fails to comply with a requirement under the notice…'

then there is a fine not exceeding £1,000.

Again, under paragraph 4 – 'Failure to provide an explanation' – the £1,000 is triggered.

I think what is significant is, if we look at paragraph 11, if the advocate knows or suspects that an investigation is being, or is likely to be, conducted and nonetheless falsifies or conceals documents and so on, then in that case the level of the fines is increased, as we see on 11(4)(a) and (b), to six months' imprisonment or a fine not exceeding £5,000, or both, and on conviction on information, to custody for a term not exceeding two years or a fine, or both. So an unlimited fine there if there is a trial on information.

In other words – again, to take one or two things raised by Hon. Members – the advocate, at level 1, is being asked to provide information. If he or she fails to do that, then it seems to me that £1,000 is about the right level, although I take on board what Hon. Members say, but, if the person knows or suspects that an investigation is ongoing and nonetheless commits the offence under paragraph 11, then there is not only a £5,000 fine on summary conviction, but also an imprisonment term not exceeding six months, and as I say, if it is a very serious matter and the matter comes to the Court of General Gaol, then the advocate is exposed to imprisonment for a term not exceeding two years or an unlimited fine, or both. So I would respectfully submit, Mr President, that, given that approach of the legislation, the level of the fines is right.

Mr Lowey: Could I, just for clarity… I thank the learned Attorney for answering my query, where was it set at: at the UK level. Fine; I have no difficulty with that.

Can he confirm to me that, if I refuse… I am a lawyer and I have got some documents I do not want to disclose, and refuse to disclose them, and say I am fined £1,000. Is there any requirement on me to disclose those documents again? In other words, will I be charged twice for the same offence? I do not think you can be, and I would have thought that maybe there is, in a serious case… and I can think of some mythical thing in my imagination of a serious offence being… saying, 'Well, that's a brush-by. I can afford that, as opposed to disclosing these incriminating pieces of literature.

The Attorney General: Yes.

The President: Mr Attorney.

The Attorney General: Mr President, I think the answer lies in paragraph 5 of the schedule, which enables the Law Society to apply to the High Court and the High Court then has power to order a person required to provide information to provide the information to any person appointed by the Society. Again, paragraph 5(2):

> 'The High Court, on the application of the Society, may order a person required to produce documents by a notice given to him… to produce or deliver them to any person appointed by the Society…'

So, Mr President, if the High Court makes an order that someone should do something and there is then a failure to comply, then the person would be in contempt of court and would be then liable to imprisonment and, again, fines. So, that, I think, is the ultimate penalty.

The President: Hon. Members, with Mr Attorney's explanations then, to wind up the Second Reading, the motion that I put to Council is that the Advocates (Amendment) Bill 2008 be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Advocates (Amendment) Bill

Clauses considered

The President: Taking the clauses stage, Mr Attorney, clause 1, please.

The Attorney General: Thank you very much, Mr President.

Clause 1 is the only substantive clause of the Bill and gives effect to the new schedule.

Subclause (1) introduces the amendment to the Advocates Act 1976.

Subclause (2) inserts a new section 26A into that Act. The new section 26A gives effect to a new schedule to the 1976 Act, namely schedule 1A. This is to enable the Council of the Law Society to obtain information or documents for the purpose of investigating whether there has been professional misconduct or breaches of statutory requirements, rules of practice, byelaws or the Anti-Money Laundering Code.

The granting of these additional powers to the Law Society will facilitate their investigatory capabilities in the event of suspected malpractice and thus provide for a greater degree of openness and transparency, thereby improving confidence in the profession amongst the public and the wider community. Mr President, the powers apply to advocates and their employees and also recognised bodies and their employees or directors. A recognised body is an incorporated practice of advocates that is recognised by the Law Society, and that appears, Mr President, in the definition in paragraph 12(7) of the proposed new schedule.

Subclause (3) of the Bill is the provision that inserts the new schedule 1A, which is set out in the schedule to the Bill. In broad overview, the schedule enables the Council of the Law Society, by notice, to require from advocates and others the protection of the information or documents for the purpose of an investigation. Failure to comply is an offence punishable by a £1,000 fine. The Council may also, by notice, require an explanation of any information or document; failure to comply also attracting a £1,000 fine.

In addition, Mr President, there is power for the High Court, on the application of the Law Society, to stipulate a time and place of production, including by third parties in the case of documents. These provisions may be backed by a power to enter and search premises and seize documents.

There is also a general power for the High Court to require information or documents from other persons in connection with an investigation. Along with other provisions about documents and other supplemental matters, there are offences of giving false information, falsifying documents etc, which attract penalties of six months' imprisonment and/or a fine of £5,000 on summary conviction and two years imprisonment and/or an unlimited fine on information.

Mr President, I now propose to explain the individual paragraphs of schedule 1A.

Paragraph 1 sets out that documentation can be requested, confirms who must provide that information – namely an advocate, an employee, a recognised body etc – and indicates the time period for compliance and nominates a person on behalf of the Law Society who will take possession of the requested information.

Paragraph 2 states that failure to comply with a requirement of paragraph 1 can lead to summary conviction and a fine not exceeding £1,000. This provision was taken directly from the English equivalent, namely the Solicitors Act 1974. It is recognised that it is not the amount of the fine that would have the impact, but more the significant effect that a conviction would have upon the advocate's professional status. It would amount to serious professional misconduct and would result in proceedings before the Advocates' Disciplinary Tribunal.

Paragraph 3, Mr President, enables the Law Society Council to request the attendance of the person to whom a notice has been issued, or a representative, to attend a meeting personally to provide an explanation in relation to any information provided.

Paragraph 4: again, the failure to comply with paragraph 3 can lead to a summary conviction and a fine not exceeding £1,000. As I have mentioned, Mr President, in my view, it is not the level of the fine that is important so much as the impact on the advocate's professional standing.

Paragraph 5 sets out the powers of the High Court upon an application of the Society to order a person or a relevant third party to provide disclosure of information or documentation or to enable the Society to enter premises, using reasonable force, to search for and take possession of documentation, property or information.

Paragraph 6, Mr President, provides power to the High Court to make a disclosure order against a relevant third party who is not actually the named person on the original Law Society disclosure notice.

Paragraph 7 sets out a requirement for any information stored in electronic form to be produced or delivered in a legible form.

Paragraph 8 states that the Society shall provide notification of seizure to the person named in the original notice upon taking possession of documents or property.

Paragraph 9: following seizure of documents or other property by the Society, paragraph 9 provides the practitioner, his or her advisers, or any other relevant third party, with the option of applying to the court to obtain the return of the documents or property. By way of example, the advocate may feel that the Society should not have taken the entirety of his client files. Paragraph 9 would allow the advocate to apply to the court for the return of some of those files.

Paragraph 10 provides the Society or a specified person with the right to take copies of, or extracts from, any documents obtained.

Paragraph 11 sets out the circumstances in which a person commits offences, knowing or suspecting that an investigation is being or is likely to be conducted and prescribes the penalty, on summary conviction, to custody for a term not exceeding six months or a fine not exceeding £5,000 or, on conviction on information, to custody for a term not exceeding two years or a fine or both. Hon. Members will note the higher penalty for these offences which reflects the seriousness of them.

Under paragraph 11(1), it must be proved that the person has falsified, concealed, destroyed or disposed of relevant documents, rather than simply failed to provide them which may simply be due to inefficiency or oversight.

There is a defence at paragraph 11(2) if the accused can show that there was no requisite intent. Similarly, if a person provides information that he or she knew was false or misleading in a material particular or was reckless in providing information that was false or misleading, an offence will be committed.

Turning to paragraph 12, this sets out supplementary matters. The powers are exercisable despite any rights of possession in respect of the documents or property, that is subparagraph (1).

Moreover, the powers continue to be exercisable even after the person concerned ceases to be an advocate, or an employee of an advocate, or an employee or director of a recognised body, or if the recognised body itself ceases to be a recognised body, that is subparagraph (2).

The Law Society may pay reasonable costs incurred by a person for the provision of information or documentation, subparagraph (3); and there is provision for the High Court to award the Law Society costs against the person to whom a notice has been given or a protection order is made, subparagraph (4).

Subparagraph (5) allows any application to the High Court to be dealt with in Chambers.

Subparagraph (6) gives the Law Society power to do all things reasonably necessary to facilitate the exercise of its powers and subparagraph (7) contains definitions of 'director' and 'recognised body'.

So, Mr President, I beg to move that clause 1 and the schedule do stand part of the Bill.

Mr Waft: I beg to second and reserve my remarks.

The President: Seconded by Mr Waft.
Mr Crowe.

Mr Crowe: Thank you, Mr President.

Can I just clarify with the hon. mover, the situation… I can see it clearly refers to an advocate, an employee of an

advocate, a recognised body, an employee or director of a recognised body. If, for instance, I was an advocate in a practice which had incorporated the partnership and I was an innocent partner… shall we say, one of the partners was guilty. Is the recognised body also being charged or is it solely the guilty individual of that incorporated partnership?

The President: Mr Butt, Hon. Member.

Mr Butt: Thank you, sir.

I just have a couple of queries, Mr President. In paragraph 1 of the schedule, it says that the Council can require the production of documents. I wonder does that mean that paragraph 5, the use of the High Court, is only used when that has failed to be carried out or could paragraph 5 be used if it, say, was a serious case and they needed immediately to enter and seize documents etc? I just wonder again what triggers off paragraph 5 being used rather than paragraph 1. Is it only used when paragraph 1 has failed to produce a result?

Secondly, on the offences in paragraph 11, often in this sort of legislation you see requirements or offences of tipping off, so that if somebody tips off an organisation or a person that there may be good reason to dispose of documents before the Police or, in this case, the Council arrive, often there are tipping-off offences and some of this may relate to money-laundering legislation as well, which always has tipping-off offences. I wonder from the Attorney, would 11(b) cover that, 'to cause or permit the falsification, concealment destruction…' etc? So I just wondered, was tipping off covered in this list of offences on information? Thank you.

The President: Mr Waft.

Mr Waft: Similar to my colleague, Mr Crowe, with regard to partnerships, the fact that one of the partners may, perhaps, come under this jurisdiction at some stage or other and whether the profits of whatever was done comes into the general business account and to what degree is there vicarious responsibility brought into play with regard to the disciplinary action?

The President: Mr Downie.

Mr Downie: I would just like the Attorney to explain in the supplemental paragraph 12(3):

> '(3) The Society may pay to any person such reasonable costs as may be incurred by that person in connection with –
> (a) the provision of any information, or production of any document, by that person pursuant to a notice under paragraph 1, or…'

What I want to make sure that is not going to happen here is what we have seen recently in Liechtenstein, where the German Republic wanted to find information about people who held bank accounts in Liechtenstein and actually paid somebody for a list and that list was then used against several people. I am just mindful that where these powers are extended and the person can be paid money, that this is not just going to open some sort of a Pandora's Box somewhere.

I am aware that, in this day and age, where we put whistle-blowing terminology and all the rest of it into our legislation, this could not be used as an exercise for one advocate's practice who is at variance with another to try and cause some problems for them. So could you clarify that for me?

The President: Mr Lowey.

Mr Lowey: Yes, mine is just one little query and it is in the same clause actually, 12 of the schedule:

> '(2) Where powers conferred by this Schedule are exercisable in relation to a person within paragraph 1(2)(a), (b), (c) or (d), they continue to be so exercisable after the person has ceased to be within that provision.'

So you cannot just leave the firm and say, 'Well, it's nothing to do with me, I'm not there any more.' How long does that power… are they able to be called. Is there a power of six years or five years or two years? Just when… or maybe that will be provided for in rules, I do not know – just for clarification, if it is possible to clarify, sir.

The President: Mr Callister, Hon. Member.

Mr Callister: Thank you, Mr President.

Noting on the explanatory memorandum that the provisions are compatible with the Convention of Human Rights, I just wonder – as this is dealing with personal documents in many cases, and probably all cases perhaps – how this relates to data protection and whether there could be any conflicts with data protection or whether it fully complies with?

The President: Mr Attorney to reply, sir.

The Attorney General: Mr President, I thank Hon. Members for their questions. I will try to deal with them.

I think the first point that was raised was from the Hon. Member, Mr Crowe, and the question of whether individual advocates within an incorporated body were exposed personally to penalties under this legislation or whether the penalties would remain with the incorporated body. I think that is the point that was raised.

Mr President, it is clear or at least my interpretation of it is that the penalty would be payable by the incorporated body and that individual lawyers as such within that body would not be exposed to penalties under this particular legislation. It has to be said though, Mr President, that if, within a partnership or within an incorporated body, it could be shown that an individual advocate had acted improperly, unprofessionally, then the individual advocate could be summoned to the Advocates Disciplinary Tribunal. The Advocates Disciplinary Tribunal is concerned with individual lawyers and their practice of law so you cannot avoid individual responsibility by incorporating a company to do your legal work. So I hope that deals with that point.

The Hon. Member, Mr Butt, then raises an issue as to when the powers under paragraph 5 of the schedule are likely to be engaged and paragraph 5 itself makes it clear, Mr President, that the Society has to apply to the High Court for an order that a person who was required to provide information, pursuant to a notice under 1(1)(a) should provide it to a person appointed by the Society.

So the way I envisage it working, is that paragraph 5 powers, the High Court powers, would be engaged if the Council of the Society had not been successful in getting the information by serving a notice. So in other words it is the new clear option if the individual advocate failed to respond to a notice from the Council, the Law Society itself can then apply to the High Court.

Then there was an interesting point raised about tipping off: did paragraph 11 of the schedule engage the tipping-off provisions or ought it to have tipping-off provisions? I think we have to look at the wording of clause 11 carefully, Mr President, if I may just read it:

> '11.(1) It is an offence for a person who knows or suspects an investigation into any of the matters mentioned in section 26A is being or is likely to be conducted –
> (a) to falsify, conceal, destroy or otherwise dispose of a document which he or she knows or suspects is or would be relevant to the investigation, or…'

And this I think was the point emphasised by the Hon. Member:

> '(b) to cause or permit the falsification, concealment, destruction or disposal of such a document.'

So, I think it could be the case that, shall we say, the managing clerk of the firm knew or suspected that the Police were about to investigate an offence by the advocate and if the managing clerk goes to the advocate and says, 'Look, I think that we're in trouble here. I suggest that you put that file through the shredder.' The managing clerk in those circumstances would be guilty of an offence under 11(1)(b).

Mr President, I do not think that the money-laundering provisions are triggered by this, but I think the person could be guilty, of course, of an offence under the Criminal Justice Act of money laundering if the evidence justified it. So this is a supplementary offence on top of the money-laundering offences under the Criminal Justice Act.

A point was then raised, I think by the Hon. Member, Mr Waft, in relation to partners and partnerships. Again, whilst a partnership can be subjected to notices under the legislation, it is actually the individual lawyer who always is going to be exposed to professional misconduct proceedings before the tribunal.

The Hon. Member, Mr Downie, raises a question about paragraph 12(3) and are we going to be troubled with notices of the kind which were used in Liechtenstein. As I understand it, Mr President, there was a whistle-blower within a banking institution who sold privileged and confidential information to Police authorities in Germany. That situation has no relevance at all, it seems to me, to paragraph 12(3) of the schedule. Paragraph 12(3) of the schedule is concerned with the discretion which the Society has to pay reasonable costs to someone who has actually complied with a notice.

So in other words if the Law Society had gone to an advocate's practice and asked for the provision of information and the advocate fully complied with the notice but had to go to his bank to get information from the safe there and the bank charged the advocate for getting the information, the advocate could then say to the Society, 'Look, I've complied with the order but I've been charged £100 by the bank.' The Society in a proper case can then reimburse the advocate for that expenditure.

We contrast that, Mr President, with the position which applies in paragraph 12(4) which envisages that if there has been a lawyer who has been served with a notice and has not complied, the Society have had to take him to the High Court because he has been thoroughly unco-operative, then in those circumstances the High Court can order that the advocate, who failed to comply, should pay the costs of the Law Society.

The Hon. Member, Mr Lowey, raised a point under clause 12(2): how long does the liability to provide information exist after you have ceased to be an advocate, for example? There is not a limit under the legislation, so in theory you could be exposed to that obligation indefinitely.

Finally, I think, Mr President, the point raised by the Hon. Member, Mr Callister, provision of documents and data protection. There is a provision, I think, in the Data Protection Act which makes it clear that if a person who holds data provides data in response to a court order or an order of this kind, in other words in compliance with the law, then the Data Protection Act allows the submission of the information but it all has to be proportionate.

Mr President, I hope that I have dealt with the questions raised by the Hon. Members.

The President: In that case, Hon. Members, the motion that I put to Council is that clause 1 and the schedule of the Bill, do pass. Clause 1 and the schedule. Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Very simply, Mr Attorney, the short title of clause 2.

The Attorney General: I think, Mr President, I may have just misled you. I think I have to deal with subclause (4) as well separately.

The President: Subclause (4) of clause 1. Okay, sir. Can we deal with that? Is it alright? If we deal with that then, I will put the motion again, to the Council, in the complete terms of clause 1 and the schedule.

The Attorney General: Thank you very much, Mr President, and then we would have subclause (5) as well.

The President: Right. So deal with those.

The Attorney General: So if I can deal with those two, sir.

Subclause (4) is a transitional provision. The Proceeds of Crime Act is being brought into operation in stages as the secondary legislation made under it is introduced. Section 157 of the Proceeds of Crime Act empowers the Department of Home Affairs to make such codes as it considers appropriate for the purposes of preventing and detecting money laundering. Subclause (4) therefore enables the reference in section 26A to section 157 of the Proceeds of Crime Act 2008 to be construed as a reference to section 17F of the Criminal Justice Act 1990 such as the current provision under which the current anti-money laundering code is made. It follows that the power in section 26A insofar as it relates to a breach of the anti-money laundering code will relate to the code made under whichever piece of legislation is in operation at the relevant time.

Mr President, subclause (5) makes it clear that the new powers apply not just to matters occurring and investigation started after the Bill becomes law. Once it is in operation the Law Society may use their enhanced powers of investigation in relation to earlier allegations and if a matter is already under investigation, the new provisions will apply to that as well.

So, Mr President, I think probably the composite motion I would put is that clause 1 with its schedule do stand part of the Bill.

The President: I do not think any Hon. Member is finding that difficult. Hon. Members, we dealt with paragraphs (1), (2) and (3) of clause 1 and the schedule at that stage and after dealing with paragraphs (1), (2), (3) and the schedule we now add to that paragraphs (4) and (5). It does actually give me the opportunity, Mr Attorney, to comment again.

Your comment about the Proceeds of Crime Act 2008, I think everybody will largely say, 'Well yes, this Bill is fine and there is nothing wrong with the Bill.' Where I am getting the difficulty, as I said earlier, is when I go through and read in the new schedule which is being introduced by this particular Bill and it says:

'for a purpose mentioned in section 26A'

What were the purposes? I go through that because if you read the original Bill – I am still finding that difficult, Mr Attorney – the circumstances in part 1 of schedule 1 there which have been 'the Society may intervene' and it refers to the money, it refers to documents, it refers to mail, it refers to trusts, it refers to general. We are not repealing this –

The Attorney General: No.

The President: We are not repealing this. So really this Bill is belt and braces adding on, in effect, a schedule which is already covered as far as I can see in the provision of documents that have to be produced now under the existing law, but maybe that is where I am getting confused and not getting it read correctly.

The Attorney General: Can I just –

The President: It refers to part II. Section 26 refers to part II of the schedule. I would rather have it right because – Hon. Members, I apologise for holding you up – in fact it was the one thing which I picked up when I went through the Bill in honesty and I know there is a new schedule being added but we are leaving the old schedule in which refers to the provision of money and documentation.

The Attorney General: Yes, Mr President, the point you make is a very good point, but the way I introduced the Bill, I endeavoured to explain that the new Bill will provide supplementary powers for the Law Society.

The President: They are additional powers.

The Attorney General: They are additional powers. Section 26 as it presently appears in the Advocates Act 1976 gives the Law Society the power to intervene in an advocate's practice, in other words to actually take it over, and whilst it is taking it over and running the advocate's practice, then it has various powers to obtain documents and to require co-operation from the advocate.

We are not talking in this Bill, Mr President, about the drastic power to intervene in an advocate's practice. What we are doing is enabling the Law Society to obtain information or documents which might be relevant in connection with, say, an anti-money laundering investigation which the advocate has become involved in and the Law Society needs to get information from the advocate without intervening in his practice. So they do not actually have to take over the practice. What they are doing is getting information from the lawyer so that they can help the Police or carry out their own investigations and up until now the advocate has been able to say, 'Well, no. I'm not going to co-operate with that because all of my documentation is covered by legal and professional privilege.'

The President: So, my reading there – where I have got confused then – is that I am saying that that allows them to… part II of the schedule there, allows the organisation to apply for the documents. What you are saying is that that is not right because to apply for the documents they have to intervene, they have to take over the practice?

The Attorney General: That is right sir, yes. That is right.

The President: Right, thank you.

Hon. Members, with the explanations then given by Mr Attorney and accepting that originally we dealt with paragraphs (1), (2) and (3) of clause 1 and the schedule, we have now added to that paragraphs (4) and (5) of clause 1.

Hon. Members, I put to the Council that clause 1 and the schedule do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Again, Mr Attorney, very quickly.

The Attorney General: Thank you Mr President.

Clause 2 gives the Bill its short title and I move that clause 2 do stand part of the Bill.

Mr Waft: I beg to second, Mr President.

The President: Hon. Members, Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That completes our Second Reading of the clauses stage of the Advocates (Amendment) Bill.

Terrorism (Finance) Bill
First Reading approved

2. Mr Waft to move:

That the Terrorism (Finance) Bill be now read a first time.

The President: We move on, Hon. Members, to the Terrorism (Finance) Bill and this time I call on the Hon. Member, Mr Waft, to move.

Mr Waft: Thank you Mr President.

The main purpose of the Terrorism (Finance) Bill is to enable the Treasury to act in relation to a person or persons engaged in regulated business, where one of three conditions is met.

The first condition is that the Financial Action Task Force is called for action to be taken against a country because of the risk of money laundering or terrorist financing.

The second condition is that Treasury reasonably believes that a particular country poses a significant risk to the Island's national interest because of the risk of money laundering and terrorist financing.

The third condition is that Treasury reasonably believes the country poses a risk to the Island's interests because of the production of nuclear, radiological, biological or chemical weapons or the facilitation of such development.

If the Treasury is satisfied that one of the conditions is met, it may issue a direction to a person or business or class of regulated business requiring them to carry out additional precautions, monitoring or reporting or to limit or cease transactions with a certain person, business or country. The Bill establishes a procedure by which a direction can be challenged in court where a person or business considers the restrictions against them are unwarranted or unjust. This appeals process will also apply to other terrorism-related financial restrictive measures that the Treasury already has the power to impose.

In addition, the Bill provides that offences committed wholly or partly outside of the Isle of Man by a Manx person or business, may be prosecuted as if they had been committed in the Island. This is increasingly the practice internationally in relation to serious offences and it is to ensure that a person cannot commit an offence in one jurisdiction and then avoid justice by returning to their home jurisdiction.

Finally, the Bill provides for two minor amendments to be made in the Anti-Terrorism and Crime Act 2003.

The first amends section 1 of the Act so that extreme actions committed with a racial motive may be considered to be terrorism in the same way as actions carried out in the name of religion, ideology or politics.

The second amendment to the 2003 Act brings the requirement for the disclosure of sensitive information in relation to a freezing order into line with the procedure for a direction under this Bill.

Mr President, the Bill was amended in the clauses stage in another place to insert a sunset clause as a new clause 2, so the current clause 2 and all subsequent clauses in the Bill before you will need to be renumbered.

Added at the end of the Bill were two further clauses providing statutory indemnity to the Financial Supervision Commission and the Insurance and Pensions Authority respectively.

Mr President, in bringing this Bill for First Reading, it is important for me to address the background to the Bill. The background to this Bill lies in the concerns of the international community, and in particular those of the United Kingdom, where the threat of terrorism is rated as severe with a future attack considered highly likely. The United Kingdom Government has indicated that there is a real and present threat from persons using all possible means to finance hostile activities.

Mr President, Hon. Members will be aware that the Government's legislative programme included a Bill to update the Island's anti-terrorism legislation. It is the practice of the Department to try and keep abreast of developments in other jurisdictions, as it is important to ensure that our legislation, particularly in such significant matters as terrorism, is compatible with neighbouring jurisdictions.

The Department has therefore examined recent UK anti-terrorism legislation, including the Counter-Terrorism Act 2008, to determine which provisions it was appropriate to adapt to the Island's circumstances. Drafting instructions were also sent to the Attorney General's Chambers in February. Early in March 2009, the United Kingdom Treasury approached the Isle of Man Government to discuss the risk to the Island from those who might wish to circumvent the money-laundering and terrorist financing provisions of schedule 7 of the 2008 Act by conducting their business here instead of in the United Kingdom.

The United Kingdom acknowledged that the Island had robust anti-money-laundering, counter-terrorism financing, but advised schedule 7 of the 2008 Act contained important additional powers, particularly where the Financial Action Task Force has concerns about a country or where there are concerns over weapons proliferation.

The Isle of Man Government was asked by the United Kingdom to consider agreeing to the extension of the operation of the powers in schedule 7 of their Act by Order of Council to cover regulated businesses based on the Island.

Mr President, the Island has a long-established practice of legislating for itself and the view of the Council of Ministers was this matter should be subject to Manx legislation tailored to the Island's situation. The Council of Ministers therefore decided the United Kingdom's powers should not be extended, but instead agreed that the provisions were already included in the Terrorism Bill being drafted. These should be progressed as a matter of urgency with the main substance of the Island's proposed Terrorism Bill progressed later.

Given the urgency for introduction of a Terrorism (Finance) Bill, the Council of Ministers agreed the requirement to consult under the Code of Practice on Consultation should be waived. However, the Island's supervisory authorities were asked for their views on the Bill and, where possible, the comments received have been taken into account. Although based on the United Kingdom provisions, the Bill before you has been completely recast by the Attorney General's Chambers and is not simply a copy of the United Kingdom legislation. That is both for legal drafting presentation reasons and to adopt as near as possible legislation that fits in with and works well in the Island context.

Mr President, the Isle of Man Government's policy has always been to protect the Island's reputation as a well-regulated, transparent and co-operative jurisdiction, determined to play its part in preventing terrorism and financial crime. Such matters remain very high on the international agenda, particularly with the follow-up from G20 and the United Kingdom Foot Review.

Consequently, the Council of Ministers has agreed that it is of vital importance to the Island's national and economic interest for the Bill to be progressed expeditiously. Indeed, to do otherwise would leave the Island vulnerable and in danger of having less robust measures than any other countries.

Mr President, I move the First Reading of the Terrorism (Finance) Bill 2009.

Mr Downie: I beg to second, Mr President, and reserve my remarks.

The President: Mrs Christian.

Mrs Christian: Mr President, we live in a fairly secluded corner of the world, where we are perhaps not as conscious of the threat of terrorism as they are in other places. However, we have seen terrorist practices in neighbouring countries and must be concerned, and to that extent I would not wish the Isle of Man to be seen as a loophole jurisdiction in any

sense. And so I would support the principle of the Bill.

I hope when we go forward, we may get some information from the mover about the intelligence available to Treasury, how they would glean intelligence before acting on the provision which allows them to give directions. I think it is important that we have an understanding that they are properly informed before they can take the actions provided for in the Bill.

The President: Hon. Member, Mr Butt.

Mr Butt: Thank you, sir.

I would just like to say, Mr President, that I think far from being a backwater, we actually physically are at the hub of the British Isles, and we have been recognised as such for many years, from the Irish situation onwards, as being an area where we could be used for terrorism, and in view of our finance sector as well – this is a finance Bill, in effect – again, we could be at the centre of things, so it is important we have this legislation.

I just have a particular query for the mover for when he comes back to us with the clauses. In clause 2 there are various definitions and the one I find a bit strange is 'enforcement authority' and 'enforcement officer'. It says:

> '"enforcement authority" means the Financial Crime Unit of the Isle of Man Constabulary'

and

> '"enforcement officer" means a constable or customs officer serving with the enforcement authority'.

I think it is a fact that every constable, from the Chief Constable down to the newest recruit, has exactly the same powers, and this would actually differentiate a certain section, a small part of the Isle of Man Constabulary, to have different powers from the rest of the Police Force.

I think also, just on a technical matter, naming the Financial Crime Unit, should that name be changed at some time in the future, this would almost need to be an amendment of the Bill. I think the mover should investigate, should it not just be the Isle of Man Constabulary or a customs officer or constable serving with the enforcement authority being the officer, because it seems wrong to me to differentiate the powers between various police officers. A police officer… they have the same powers, and you would perhaps need to prove they are working for that unit before they could take action. It seems an unnecessary addition.

The President: Mr Lowey.

Mr Lowey: Talk about great minds thinking alike, that is the only specific that I had actually picked up on: were we circumscribing too little? A lot of the information we get, of course, will come from what I would call the secret services. To the best of my knowledge, we do not have an MI5, but we will obviously have to take information from those and I just wondered whether we were circumscribing too narrowly, and the very point that you have made about it.

Mr Butt: Special Branch.

Mr Lowey: I am a great believer that when things are going nicely, we drop our guard, and terrorism has been proven to be… that is exactly when they are working hard. They are laying the foundations for the next wave, wherever that may be. The Isle of Man is well regulated and those are the very centres that they will use, where they think that they can get away, and therefore it is very important that we have this legislation. That is why I disagree with some of my colleagues who say it does not matter, it will not happen here. Well, it may not happen here but it can be planned from here and therefore we have got to take our responsibilities very seriously indeed.

As Mr Butt has said, we have been very close physically to the Northern Ireland conflict and I have not the slightest doubt that the Isle of Man could and may have been used in the past in that context, without again frightening the dogs in the street, but the reality is we are geographically interposed and placed like that – apart from which, the Isle of Man now is a world player and we have got to be seen to be making our defences as watertight as we can.

I think this Bill is necessary, regrettably, in the world we live in, and I think it is desirable that we should be, as a jurisdiction, doing just that.

Again, coming back to the point of the changing role of the Treasury, the Treasury are going to have to advise on this, and this is again the point I am making repeatedly, almost like a lone voice, I sometimes feel. The face of Government is changing in the Isle of Man and we have got to be able to change with it. In doing that, I think the Treasury have got to take on, and some of the senior officers of the Treasury have got to take on roles that were not envisaged when they were first formulated, and the pace of change is there for all to see.

This Bill is an important piece of legislation. I am glad that we are moving as quickly as we can on it, because I think it is necessary, and we cannot take for granted the fact that nothing is apparent on the surface. This is a preventative measure and should be supported in that light.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

I am fully supportive of the Bill before us. Just a couple of points. Obviously I appreciate the urgency and the work that has been going on to bring this through. I notice that it was said that the Code on Consultation had been waived in this instance. I just wondered if there had been any comments about that from any interested parties.

Mr Lowey is quite right: things are relatively quiet at the moment and that is the time when the plots are being cooked up, so I think we do need to be fully aware of that. Although this is dealing with the financing of terrorism, thankfully we have not seen such activities in the Isle of Man, although only recently we did, of course, have that suspect package that the press were reporting had come from Algeria, I think it was, only down the road, so there are things going on.

But in terms of the financing, places like the Isle of Man undoubtedly attract – and other offshore centres – people to try and channel the funds, launder the funds, and if we can close the door to those activities then all the better, and the Bill that is before us should go a long way to giving extra powers to the authorities to help do that.

It is interesting that in some of the notes I read somewhere about the attack level. It is classed as severe and this is an interesting point that I read in the Airport notes every month, that the current status is severe attack highly likely. Of course,

this is a national level of alert and places like Britain – and the Isle of Man is not immune either – are targets for people, so it is quite ironic that they are targets for people, but they are quite happy to try and use the jurisdictions to launder their money.

I just wondered about non-regulated businesses. An interesting fact I was told – I think it was quite a few years ago – is that years ago, pop concerts were often used to launder money for various activities because there was no real check on how many people were actually there, so the money could go into the bank from however many people were there, but the thing is, who is going to count them? I know there is the know-your-customer from the bank, but it is a case of whether there are any powers hidden in here that can target non-regulated businesses to investigate and provide for them to play by these rules as well, if there is anything.

I have not managed to read the *Hansard* from the other place, but I wonder if we have just a little bit of detail about the clause that was added in, the duration, about the dates in there, the sunset clause, as to the relevance of the dates. I apologise, I have not managed to read that, and if we could maybe have a little bit of information about what the relevance of those dates is and the reasons behind that, I would appreciate that.

I think the other points I was going to make have been made by other Members. Thank you.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

Just to support the Bill, but it is an extra responsibility on the regulated sector now. We all know the banks, insurance companies, corporate service providers have to go through very stringent know-your-customer rules. I would like to think that people who have taken on clients believing them to be *bona fide* and honest clients at the time of taking on the business are looked on differently from people who would deliberately take on clients who are suspect. So I think there are two levels: the client who is *bona fide* at the point of taking on, and then later gets involved in criminal or terrorism financing; or the one who is taking it on at the beginning, suspecting that there may be something wrong. So I think there has to be protection for the innocent bank or insurance company or employees of those organisations where the relationship, shall we say, changes after a period of time.

The President: Mr Waft to reply, sir.

Mr Waft: Thank you, Mr President and I thank the Members who have spoken. They are generally in favour of the Bill.

I appreciate the comments of Mrs Christian with regard to we cannot be seen as a loophole and the importance that the best information available is given to Treasury to put them in the right direction, and it should be made available and certainly be correct at the time that they take action and they should be made aware of what is happening with regard to where the information comes from and make sure it is correct.

With regard to Mr Butt and his comments, I thank him for his favourable comments. The clause 1 definition… He asked about the regulation of the Financial Crime Unit. As I understand it, the Financial Crime Unit does incorporate customs officers as well and the powers given to the Financial Crime Unit rather than separate from the powers of each and every individual constable. I think this is a particular case where the situation had to be clarified for the sake of the Bill, but I do appreciate the powers within the Police themselves do allow them certain possibilities to investigate situations with financial crime.

But as a directive, if it does come from the one Financial Crime Unit, if there are certain concerns, it certainly does zero in on the need for having a unified front and the name of the Financial Crime Unit seemed to be the obvious one to progress the situation, so they were not going off in all directions, you might say. So information would be, I would think, directed through the Financial Crime Unit if there was a need to invoke this Bill.

With regard to the change of the name of the Financial Crime Unit, I am not aware of anything in that situation as to the change of name.

Mr Lowey, with regard to information and circumscribing too narrowly, the Isle of Man, as he does correctly state, is well regulated and it is important that we have this legislation, particularly with regard to the geography of the Island corresponding to the rest of the British Isles. The possibility of changing the role of the Treasury… I think the Treasury is involved with it being a financial situation arising from this.

It also has been mentioned with regard to the mention by Mr Crowe of the regulated sector and the know-your-customer. Most of the banks and financial houses now do have specified officers who are trained to look out for certain situations where the money moves around and make sure there are not any unsatisfactory changes of financing arising within their certain jurisdiction, and if it does come to their notice, they are obliged to report it to, as I understand it, the Financial Crime Unit just to correct anything that might possibly lead to financial money laundering or something similar.

Mr Turner fully supported the Bill and he did ask about the concerns about the waiving of comments. The information I have is that there have been no adverse comments. With regard to the others, the regulators have been fully consulted, so that is as much as I know. He mentioned that the Isle of Man could attract money laundering and terrorism possibly and so we must make ourselves as watertight as we can be in that area.

He mentioned the rate of the level of the UK is severe and highly likely. That rate is changed from time to time as they see it from the information they get from varying directions with regard to whether they raise it up or lower it down.

With regard to his comment on non-regulated business – pop concerts and the like – these have been… the possibility of them having anywhere where there is lots of money passing hands, especially in casinos and different areas where money flows freely, and to keep a track of it is sometimes very difficult and I do appreciate that he is aware of the situation with that.

With regard to the sunset clause which was moved by the Chief Minister in another place, the details of that I can certainly provide for him and the need for it at Second Reading.

Mr President, with that, I move the First Reading and would request that, as most Members are in favour, we think about allowing us to move the Second Reading and the clauses and Third Reading the week after next, after Tynwald,

in order to keep the progress on this Bill and make sure that it is moved expeditiously by the Legislative Council to make sure that we are on top of things.

The President: Hon. Members, the motion that I put to Council is that the Terrorism (Finance) Bill 2009 be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Procedural

The President: Hon. Members, I think we need to take recognition of the comments made by Mr Waft and by Mrs Christian that in fact the question of a loophole, or the Isle of Man being used as a loophole has been commented on. We are aware that Mr Waft says that there is an urgency on this matter.

Next week is Tynwald. If he brings it back the week after, we are into the position… Why there is urgency… We need to comply with international standards – anyway, I think the Island does. Then, because after the next sitting there are no more sittings until 23rd June – TT intervenes and so we would not be sitting until 23rd June, Hon. Members – and then, to get it back to Tynwald to get it signed, to get it moved on.

So I think if Council is happy I will be happy to have on the Order Paper, and certainly, as a result of the debate which will take place at the Second Reading stage, and in going through the clauses, we will put on the request for suspension of Standing Orders at that stage to take the Third Reading, but it will go on the Order Paper so that Members are aware that we will probably be taking the Third Reading on the 26th, subject to what evolves in our discussions on the second and clause stages.

If you are happy with that, Hon. Members, that is fine.

Members: Agreed.

Constitution Bill 2007
For First Reading
Motion deferred

3. Mr Callister to move:

That the Constitution Bill 2007 be now read a first time.

The President: So, Hon. Members, the remaining Item on our Order Paper this morning to deal with is the Constitution Bill 2007. Hon. Members, this, as I think we have talked about previously, is something of a difficulty. It leaves the Council in a difficult position and I understand that Mr Callister, who is the Member going to move it anyway, wishes to comment at this stage.

Mr Callister: Yes, Mr President.

The fact that I do not want to move it today results from a very last-minute intervention, I suppose you might say, from the mover in the other place last night at I think about 10 o'clock and a telephone call. He gave me some information that I was not aware of, which means that I need to make some further investigations into the background of the Bill and previous Bills, and after examining that, it might be necessary to perhaps distribute some documents to Members as well. So on that basis I would like to set this back to the sitting on 26th May, if I can do so.

The President: I think, Hon. Members, I do not particularly want to get into a position of debating this at this particular stage, if we can avoid it. There are difficulties. I think our Clerk has, in response to a request from the Hon. Member, Mr Crowe, set out some details as to why the Bill itself, coming from the other place, is in fact unworkable in its current form. So it appears as if that is the case.

I do not know, Mr Attorney, whether you have got any comment you would wish to make, but I think at this stage we are in a difficulty, because Mr Callister, who is the Member in charge, is saying he is not prepared or does not wish to move it this morning.

Mr Downie: Could I just ask a question, Mr President?

The President: Yes, Mr Downie.

Mr Downie: As what has apparently come to light, that the Bill in its present form is unworkable, I wonder whether this has actually been communicated to the House of Keys. Are they fully understanding of the situation that we are in? We have been presented with a piece of legislation which, quite honestly, in its present form should really never have got this far.

Mr Lowey: Could I also ask a question? Regularly we are accused when we deal with Constitutional Bills from another place of delaying matters. I hope this will not be used along those lines: today the Council once again is delaying matters.

Mr Callister is making a request today, I presume, not to pursue it at the behest of the mover of the Bill in another place because of various things which I am sure he will explain later. We have no option but to accept that, but I do think that the legislation this Council tries to implement what are the wishes of the House of Keys. I would defy anybody to know what the wishes of the House of Keys are in this particular piece of legislation. Anyway, that is by the by. That is just an aside.

The President: Mrs Christian.

Mrs Christian: Mr President, may I just make a comment? Whilst the mover has expressed a wish not to move the First Reading – and I am sure we accept that if he does not want to move it today, so be it – from what information we have had though, it seems to me that unless it is going to be withdrawn, this is the format in which it has been approved by the Keys and the format in which we will be considering it.

The President: That is the difficulty.

Mrs Christian: Therefore, if it is flawed – and it is flawed – it will be for us to determine whether or not it needs considerable amendment, so I am not quite clear what

the purpose of deferring is. However, if the Hon. Member wishes to clarify the position with the mover, I do not think that anything can actually be changed in what is before us, can it?

The President: Yes, we are in that difficulty, Hon. Members, that in fact Mr Callister needs further time to do research, which is perfectly acceptable that that should happen and it does not come before us. I particularly do not want to get into the position of debating the niceties of the Bill because Mrs Christian is perfectly correct: the Bill has been passed in the House of Keys and it is the duty and responsibility of the Legislative Council therefore to consider this particular piece of legislation.

There is a procedure, Hon. Members, which follows from that. Mr Callister is prepared to accept the Bill and put it before Council. If at that stage it receives a seconder, well then we are into the whole business of moving forward with that particular piece of legislation and, as Mrs Christian rightly points out, it may need, or could be that we would be faced with the position of having to put substantial amendment to it, in order to make it even workable, and then of course it goes back to the other place for them to deal with. So it is a problem and I am certain that there is a problem there.

If, in fact, we defeat this particular Bill, either at its First Reading or at a later stage, Hon. Members, then, if by 12th November 2010 – and this is a consequence of Mr Lowey's bit, I think, about sometimes the Council have been… (**Mr Lowey:** Accused.) Accused is probably not the right word, but accused of delaying tactics, but there we are. If we have not completed our deliberations on the Bill by 12th November 2010, then the Keys would have the option of putting the Bill to Tynwald for signature as a Keys-only Bill – that comes under the Constitution Act 2006 – and the Keys would have up until 12th May 2011, the six-month period, to decide whether or not they exercise that option of treating it as a Keys-only Bill and that would be in the form in which it is now.

A resolution to do that would require 17 votes in the Keys, and of course the Bill would require to be signed in Tynwald as well and would require 17 signatures. So this whole thing, at the present time, in the form it is, is a bit of a minefield, and Mr Callister is asking effectively this morning… saying that we are not going to take it any further. I think Members will have to take this step by step, very carefully, and in fact I am just alerting you that there is a problem on this one facing the Legislative Council and we have to balance the fact that we have to deal with this legislation because it comes from the Keys to us, along with the comments which Mrs Christian is making, that in fact, if necessary, to keep this Bill alive, we may need to put substantial amendments to it.

Mr Callister: Well, we are here to solve problems, Mr President.

The President: We are here to solve problems.

Mr Lowey: Could I just ask for clarification, Mr President? It has never happened in my time, but there is always a first time. Is it within the remit of Council to say that a piece of legislation passed by the Keys for our consideration, could be referred back to the Keys just for a… are they aware that *x*, *y* and *z* of this particular piece of legislation, as approved by the Keys, makes it impractical without a substantial amendment, and would they prefer to reconsider their position? Is there such a thing in the Constitution that allows us, through you, sir, to do that, or not?

The President: To my knowledge there is not, but I imagine that the position would be that at any time we could go back to the Speaker or back to the House of Keys and point out to the Secretary to the House of Keys that in fact there are errors within this Bill which make it incompatible with other legislation so that it becomes unworkable. There is nothing to stop that happening. The problem is that the Council have to take this Bill from the Keys. It has passed its three Readings in the Keys and it is therefore the duty of the Council to take First, Second and Third Readings in our normal procedure here.

What you are really asking, Mr Lowey, is that we go back to the Keys before we even start it this session, because if Mr Callister moves it and it gets a seconder, we are in the business of debating. If Mr Callister moves it and it does not get a seconder, then effectively it is defeated and after, as I indicated, November 2010, the Keys could pick it up and take it on as a Keys-only Bill. That is my understanding of how the Constitution will work. I think I have to take advice from probably our Clerk and from Mr Attorney as well as to whether or not it is sensible or any right at all to go back. At this stage, I would prefer not to go back to the Keys.

Mrs Christian: Mr President, I do not think there is any precedent for going back, and I personally, if we are allowed to express a view, would not like to go back. I think our function is to revise (**Mr Crowe:** Yes.) and it is not for us to refer back their mistakes; it is for us to change them and that is the view that I would take on it. We should plough through it, whatever its faults, and seek to amend to make it more –

Mr Lowey: My point is that I was looking for… Is there a constitutional position that could arise, and if there is then it is a consideration that we should do. My only point with Mr Callister was… a question, like you, sir, of déjà vu, and every time we are accused of… 'They're at it again, delaying it,' and here we are at the very first hurdle being told… and this Bill has had a gestation period in the other place that is longer than that of an elephant. It is not an elephant Bill, but a Constitution Bill.

The President: Hon. Members, I think, as I said, we are going to go round in circles on this and I think it is unnecessary.

Mr Callister: A final word, Mr President?

The President: Yes, a final word to Mr Callister because in fact it is his request that we are not going to deal with it today. Mr Callister.

Mr Callister: The main reason that I am not moving it today is as a result of my conversation with Mr Quayle last evening, where a number of items now need to be looked at again, but it will not stop the process that I am in now of bringing it back to the Legislative Council, hopefully finding a seconder, hopefully debating it.

The outcome of that… Well, we have to wait and see.

The President: Hon. Members, we will not deal with the Constitution Bill today, and when Mr Callister is ready – presumably for the next sitting on 26th May – we will deal with the First Reading of the Constitution Bill at that particular stage.

That draws to a conclusion the business before Council this morning. Thank you very much, Hon. Members, for your attendance and attention and what we are dealing with now, as I understand it, is a meeting about the Standing Orders Committee.

Mrs Christian: Mr President, might I ask if we could just raise something in private, please?

The President: Yes. In that case, Hon. Members, we will briefly go into private.

The Council sat in private at 12.05 p.m.