



# **HOUSE OF KEYS**

**REPORT BY MR SPEAKER**

**PURSUANT TO THE RESOLUTION OF THE  
HOUSE**

**OF 11<sup>TH</sup> JULY 2002**



## **Report by Mr Speaker pursuant to the Resolution of the House of 11<sup>th</sup> July 2002**

### **Terms of Reference**

1. The Resolution passed by the House on 11<sup>th</sup> July 2002, was as follows -

**That Mr Speaker be requested in line with Standing Order 49(3) to seek proof of the comments made by the Hon Member for Onchan, Mr Karran, by way of supplementary questioning raised on 25<sup>th</sup> June 2002 under Question 8 referred to in this Hon House on Thursday 11th July 2002, and report to a special sitting of the House of Keys convened as soon as possible.**

2. The Hansard Report of the supplementary question referred to is as follows -

**“Mr Karran:** Vainstyr Loayreyder, a supplementary. Is the Chief Minister aware that the police were recently called out to the new film studio because of an altercation over a dishonoured cheque? Has the Chief Minister been advised by the Minister for Trade and Industry if the company building the film studio is insolvent? If he has, when was he told that that was the case?”

The full text of Hansard, pages KQ 204 and KQ 205, in relation to question 8 is attached to the printed copy of my Report at Appendix 1.

3. Standing Order 49(3) provides -

“The right to ask Questions shall be governed by the following rules, as to the interpretation of which Mr Speaker shall be the sole judge -

- (3) If a Question contains a statement, the Member asking it shall personally be responsible for the accuracy of the statement, *prima facie* proof of which may be required by Mr Speaker.”

### **Procedure**

4. Clearly the matter raised in the House is of considerable importance to everyone and not least to the Hon Member for Onchan, Mr Karran. Therefore in the circumstances, I decided that the most convenient and expeditious way of proceeding would be to hold hearings as soon as possible at which all evidence of relevance, whether written or oral, could be presented. I accordingly instructed the Secretary of the House (whom I shall refer to hereafter as 'the Secretary') to write to the two Hon Members who had principally been concerned with regard to the supplementary questioning, that is the Hon Member for Onchan Mr Karran and the Hon Member for Douglas West Mr Downie, inviting them to attend before me in the Millennium Conference Room on Tuesday 16<sup>th</sup> July. The Secretary's letter explained the procedure to be adopted, that is that they could bring any evidence and witnesses they felt appropriate and the letter also advised that I had no objection to legal representation if that was desired. The Secretary's letters of 12<sup>th</sup> July, delivered that day, are at Appendix 2 of the printed copy of my Report. Appendix 2 also contains all the correspondence relating to this Inquiry that has passed between the Secretary of the House and Mr Karran, Mr Downie and the Chief Constable.

5. Hon Members will note that the wording in Standing Order 49(3) relating to proof and the wording used in the House's Resolution about proof is not the same. The Standing Order refers to "*prima facie* proof", whereas the Resolution refers only to "proof". A question for consideration therefore was:

does the Resolution alter the standard of proof to be required in this case, or does it remain at “*prima facie* proof”? Is the requirement for evidence, which shows only - in legal terms - a case to answer, or is it for evidence, which establishes facts according to the ‘balance of probabilities’ test used in civil proceedings?

6. At the outset of my Inquiry the answer could have made a difference, and Members giving evidence might with some justification have objected if they had not been alerted to the issue. The Secretary therefore wrote a further letter to the two Hon Members concerned on 15<sup>th</sup> July, drawing attention to the possible problem and offering the opportunity for them to comment on it. In addition in my introduction at the hearings I specifically invited each Hon Member to comment on this matter. In view of the evidence I received, I did not in the event need to decide the question and, for the sake of simplicity and to give the Hon Member for Onchan the benefit of the doubt, I have reached my conclusions on the less exacting basis of “*prima facie* proof”.

## **Evidence**

7. I was assisted at the hearings by the Secretary, who is also Counsel to the Speaker of the House, and by Mr Lo Bao from the Clerk of Tynwald’s Office who took notes, and the Senior Hansard Clerk who recorded the proceedings; the transcript is at Appendix 3 of the printed copy of my Report. The first hearing took place at 2.00 pm on 16<sup>th</sup> July 2002, at which Mr Karran gave evidence. I also gave permission for Mr Karran to be accompanied by Mrs E Christian whom he had requested to have in attendance to take notes for him.

### ***The hearing of Mr Karran’s evidence***

8. At the outset Mr Karran complained that the Secretary had not given him “full procedural details on the format of this meeting”. I am not sure what further detail could have been provided, given that it was very much for Mr Karran to decide how he wished to put forward his evidence. It is also worth noting that Mr Karran is well versed in how such Parliamentary hearings are undertaken when witnesses are called to give evidence.

Mr Karran, if he had concerns, made no enquiries of the Secretary prior to attending the hearing beyond those in his letter of 14<sup>th</sup> July. However, to avoid any doubt about it, I instructed the Secretary to write to Mr Karran immediately after the hearing of 16<sup>th</sup> July inviting him to give me the names and addresses of the persons on whose Reports he had relied in saying what he had said at Question Time. Mr Karran subsequently confirmed that he would not do so; the proceedings at this hearing would therefore have been no different had the procedure been spelled out beforehand to any greater extent than it was.

9. It will be seen that, in terms of what was said, the evidence was brief. When Mr Karran attended the hearing he presented me with a large sealed envelope without any explanation and, when I opened it, it contained a letter to me from Mr Karran dated 16<sup>th</sup> July 2002 headed 'Introductory Statement', along with papers later described by Mr Karran as a "sworn affidavit", none of which I had seen or been advised of previously. There was uncertainty as to the official status of the document, that is as to whether it was in fact sworn. I subsequently instructed the Secretary to seek confirmation as to the official status of the affidavit as there were no official markings to certify that it had in fact been duly sworn. The Secretary was then given confirmation of its status by the advocate, Miss Hannan, that she had in fact had it sworn and her letter of confirmation is attached at Appendix 2; and Mr Karran's letter to me and his accompanying affidavit and its exhibits are at Appendix 4 of the printed copy of my Report.

10. The affidavit raises, in essence, two issues:

- (i) what places or events Mr Karran was actually referring to in his supplementary question;
- (ii) whether there is *prima facie* evidence about those places or events.

***What did Mr Karran's supplementary questions refer to?***

- 11.** It will be seen that Mr Karran's affidavit argues that he made no reference to Island Studios Ltd, and that the only direct references to it in the House have been made by the Hon Member for Douglas West, Mr Downie, or by myself. This is of course correct; but such references were made only after the sitting of the 25<sup>th</sup> June and, in my case, only after I had viewed the Hansard record of the sitting of the 25<sup>th</sup> to enable me to make the statement in the House on the 11<sup>th</sup> July in response to a letter I had received from the Hon Member for Onchan, Mr Karran.
- 12.** However in Mr Karran's short supplementary question, there are references both to "the new film studio" and to "the company building the film studio". It is beyond debate that there is only one place in the island which could be described as "the new film studio", namely the studio officially opened on 13<sup>th</sup> July 2002 at Jurby Road in Ramsey. The venture is very well known, and it must be almost as well known that it is run by Island Studios Ltd, whose name is prominently displayed in connection with it. The public record exhibited to Mr Karran's affidavit shows that the same company received a DTI grant. Moreover, much publicity has recently surrounded the development of the island's film industry and the subject is clearly in the public domain and has been so for some considerable time.
- 13.** The question therefore is - is the fact that Mr Karran did not name Island Studios Ltd in his supplementary question sufficient to justify the conclusion that he did not refer in the House to that company? In my opinion it is not.

Not every reference in speech or in writing is complete and explicit and, if it were, communication would become unnecessarily lengthy and cumbersome. We often speak in abbreviated terms when our listeners know well enough what we are referring to.

- 14.** Mr Karran then made reference to the police being called out recently to the new film studios about an altercation over a dishonoured cheque. To put it at its lowest this is very likely to convey the meaning that a serious financial irregularity involving criminal conduct might have occurred at Island Studios. This is because for the police to be involved implies that a criminal offence may have been committed. That is even more the case when the context of the supplementary question is considered: the main Question, it will be recalled, related to companies receiving government grants being “in serious financial difficulties”, and it asked what procedures were in place to safeguard public monies.
- 15.** The same, I consider, is true of the second part of Mr Karran’s supplementary question, which referred to the solvency of the company building the film studio. It does not require any great research to discover which company has in fact been building the film studio, and the information would be known or soon discovered in the sections of the business community concerned with construction work. Especially in the context of the main Question the supplementary question bears a clear implication that the company in question was indeed insolvent, with all that that in commercial terms implies for the business and its directors, and for public funds.
- 16.** The concept of innuendo is well known. The Concise Oxford English Dictionary, to go no further, defines it as:  
“1. An allusive or oblique remark or hint, usually disparaging. 2. A remark with a double meaning, usually suggestive.”
- 17.** The supplementary questions did, in my opinion, refer to Island Studios Ltd and to the company building the studio: Mr Karran identifies the latter company himself as Stonegate Properties (it appears from the company searches exhibited to the affidavit that the correct word is “Property”) and there is every reason, as I have said, why others could be expected to do the same. What was said in the questions therefore bore the natural and probable meaning that Island Studios Ltd were or had been under suspicion of financial malpractice of a criminal nature, and that Stonegate Property Ltd was insolvent; and that in both cases public money had been, or was likely to be, lost.

***Is there prima facie proof of the statements made?***

18. I then turn to the question “is there *prima facie* proof”? The test in Standing Order 49(3) is objective: it is not whether the Hon Member asking the question reasonably believed that what he was saying was supported by *prima facie* proof; the test is rather whether or not, as a matter of fact, there is such proof. A Member may thus act honestly and in good faith, but if the *prima facie* proof required by the Standing Order does not exist the Member is nonetheless in breach.
19. Here I have noted that the term “evidence” implies much less than does the term “proof”; evidence may be of various kinds and having varying degrees of credibility, depending upon a number of circumstances, but proof is the product of clear evidence. But as a practical matter, and since it is the less exacting test, I have on this occasion treated the two as having the same meaning for the purpose of Standing Order 49(3).
20. The Reports on which Mr Karran relies are entirely from third parties who are not named and whom Mr Karran has continued to refuse to name. Section (iii) of the affidavit, at page 4, makes it plain that as far as the Hon Member is concerned the facts have yet to be established, and that he has no more than an encouragement to make further enquiries. It may be that the credibility of the Reports Mr Karran has received is such that there is, in the terms of the definitions cited at page 6 of his affidavit, “evidence ... sufficient to call for an answer”, but we do not know.
21. The Hon Member has declined, both in his affidavit and in later correspondence with the Secretary, to bring the witnesses to be seen and heard. As the case stands, there is nothing more put forward than anonymous hearsay. The quality of that evidence could be anything ranging from mere rumour to well-informed Reports. I repeat that it is not here a question of establishing what the Hon Member honestly believed, but what was in fact likely to be the case; and, in the absence of knowing where on that wide spectrum this evidence is to be located, I can in no way describe it as *prima facie* proof.

22. I should add that I am not impressed by the claim, at paragraph (v) of Mr Karran's affidavit, that the businesses of the anonymous witnesses "might suffer a backlash" if they were identified. Certainly Mr Karran did not seem to consider this to be a matter for consideration when asking his supplementary in reference to this matter. I do not accept, subject as it is to the control of strict financial regulations and the scrutiny of both the Public Accounts Committee and of external auditors, that the allocation of Government business in the Isle of Man can be used as a means of exercising improper pressure to suppress information - especially information which could inevitably enter the public domain in any event.
23. Whilst not questioning Mr Karran's integrity and honesty, the affidavit in itself cannot be taken as absolute evidence or *prima facie* proof. The exhibits to the affidavit show indeed various pieces of circumstantial evidence: - that Stonegate Property Ltd was struck off the Companies Register in March this year, but not why; - that various companies have largely common directors and shareholders, which is hardly unusual in commercial life, especially in our small community and therefore cannot in itself be taken as sinister; - that Island Studios has evidently received £705,600 from the DTI and gave security for it; - and that in June 2001 the then Minister for the Department of Trade and Industry, Minister North, wrote in respect of Island Studios as follows: "all our requirements have been met and we are pleased to support this much needed facility". But I can find no *prima facie* proof of the matters referred to in questioning.
24. It is worth at this point clarifying the status of an affidavit. An affidavit is a means of providing evidence of facts; it is the written equivalent of oral evidence given on oath in the witness box, which is why it has to be sworn. However the making of an affidavit in itself does not close the matter, it may need to be tested or probed in cross-examination. The essential point is that an affidavit in itself is not evidence of anything; the mere fact of the affidavit being on oath is not enough in itself to establish statements for which there is otherwise no basis. Therefore if the basis of the affidavit is based on anonymous hearsay then there is no way to tell whether it is a well-founded belief or a fantasy, or something in between, especially if those who have

made the original statements are unwilling to substantiate their statements, as in this case. In other words such an affidavit is 'written words without any substance'.

When attending the hearing Mr Karran refused to answer questions in relation to the detail of his affidavit and has refused to identify those whom he says provided him with information regarding this matter.

As Speaker I have no powers to summons witnesses and therefore I am unable to ascertain any further facts than those provided in my Report. However had I had powers to summons witnesses then I would certainly have summonsed those whom Mr Karran stated provided him with information regarding this whole matter which may well have provided the status of the evidence in relation to this matter.

***The hearing of Mr Downie's evidence and the evidence of his witnesses.***

- 25.** The evidence of Mr Downie and his witnesses was taken at 4.00 pm, also on 16<sup>th</sup> July 2002. I noted that all these witnesses were prepared to be identified and to answer the questions put to them. The Hansard transcript at Appendix 3 of the printed copy of my Report shows the evidence which I received from Mr Downie, the Chief Executive of DTI, Mr K Bawden, and from Messrs Westacott and Slattery. Mr Westacott is the Chairman of Island Studios Ltd, owner of Stonegate Property Ltd and principal shareholder of Lough House Animations; Mr Slattery is a director of Island Studios Ltd and Lough House Animations. The documents which they put forward are at Appendix 5 of the printed copy of my Report.
  
- 26.** After hearing all the evidence from all parties I further instructed the Secretary to write to the Chief Constable in relation to the point made by Mr Karran in the House on the 25<sup>th</sup> June 2002 where he stated "that the police were recently called out to the new film studio because of an altercation over a dishonoured cheque". The Chief Constable replied by letter as follows: "On the information provided, no record of any such instance can be traced on our systems dating back to January 2002."

27. I reach the following conclusions on the basis of all the further evidence -
- no police visit has been made to Island Studios in connection with a dishonoured cheque, and it even appears that none has been made otherwise at least this year;
  - the studio was constructed largely by Stonegate Property Ltd, which was struck off the Companies Register because of an error in instructing the company's advocates, and it is now being restored to the Register;
  - Stonegate Property Ltd was not insolvent when it was inadvertently struck off, and will not be insolvent when it is restored;
  - there is no evidence that Stonegate Property Ltd has at any time been insolvent, or that there was any basis for suggesting it.

## **Conclusion**

28. As I have previously indicated, the right of a Member to ask a question in the House that complies with Standing Orders is not in question. Members are able to, and must continue to be able to, ask any questions without fear of intimidation. All Members are in a special and privileged position when they are within the House; however, with that special and privileged position comes a grave responsibility for a Member: Members must ensure that they always act with reasonable care, always being conscious of any consequences when stating facts, or when they put questions, ensuring that they have adequate proof or *prima facie* proof in relation to the matter; this is even more essential where it concerns individuals and/or private businesses.
29. The Hon Member for Onchan Mr Karran says he has proof but cannot and has not provided me with any proof of substance to substantiate the allegation made and has only provided me with hearsay, via his affidavit, therefore the proof provided does not provide *prima facie* proof as required by Standing Order 49(3), and certainly does not provide proof as termed under the Resolution of the House dated 11<sup>th</sup> July 2000 which required me to seek proof.

- 30.** In making this Report, I am conscious that a meticulous attention to the requirements of Standing Orders has not always characterised our proceedings in every respect. In some measure, that lack of formality may seem to assist the sensible and effective dispatch of business. But, as Hon Members know, I see these Standing Orders as having an important function and I am to review during the Recess areas in which there may be room for giving them fuller effect. Hon Members will be advised of the outcome of my deliberations.
- 31.** Clearly this matter is of considerable public importance and interest; as there is no precedent in relation to procedures when dealing with such a matter as this, I have taken the view that transparency and openness is of paramount importance in such a matter and I have therefore instructed that written copies of my Report along with all the written evidence presented to me, the Hansard of the proceedings of the evidence taken at the hearings, and all correspondence relating to this matter are to be available in a written Report which will be available to the public from the Reference Library on the third floor of Government Office from 12 noon today.
- 32.** In conclusion therefore, I am obliged to Report to the House that *prima facie* proof of what was said by Mr Karran in his supplementary question to Question 8 on 25<sup>th</sup> June 2002, has not been provided to me by the Hon Member for Onchan, Mr Karran.

The Hon James Anthony Brown  
Speaker of the House of Keys  
30<sup>th</sup> July 2002

**Appendix 1**  
**(The Text of KQ 204-205)**

## **Appendix 2**

**(correspondence to and from the Secretary relating to the Inquiry)**

(Note: The letter to Mr Speaker referred to at 4 of Mr Karran's letter of 14<sup>th</sup> July to the Secretary does not relate to this Inquiry and was answered separately.)

## **Appendix 3**

**(transcript of the evidence given to Mr Speaker on 16<sup>th</sup> July 2002)**

**Appendix 4**  
**(documentary evidence submitted by Mr Karran)**

**Appendix 5**  
**(documents submitted by Messrs Westacott and Slattery)**

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