

Dear Michelle,

Your letter dated 28 April 2016 was considered at the last meeting of Peel Town Commissioners and my Board have requested I provided the following response to your consultation:

Tynwald should be elected from 11 constituencies each electing 3 members using the STV system of voting ( Single Transferable Vote ) as described by David Kermode in an book entitled "Devolution at Work" (page 84) A Case Study into the Isle of Man . Both the 1986 and 1991 Elections used this system for electing Members of the House of Keys.

This meant that each member was elected on a preferential vote, instead of the undemocratic method used at present "first past the post" even if in the Election in September 2016 will allow equal voting for the first time but it is still undemocratic.

Following the General Election Tynwald sits to elect the Chief Minister at its first sitting.

The Chief Minister then appoints members to the Council of Ministers

There would be no Legislative Council, as all Members would be elected by the Public.

All other members would form the House of Keys

Tynwald (all members siting together ) would consider policy and legislation

All legislation after the second reading to go to a committee of 5 members of the House of Keys, to investigate and advise Members of Tynwald of the details and if the Bill complies with other Legislation and if satisfactory advise if it should proceed to Third reading and become Law.

Members of the House of Keys would form any other Standing Committees of the House of Keys.

All Boards of Tynwald to be Chaired by members of the House of Keys with Lay Members, unless the Boards of Tynwald can be absorbed into Departments of Government.

Scrutiny of Tynwald, Chief Minister, Ministers and their Department officers would require an independent body which sits outside these organisations through an ombudsman.

Thank you for providing this opportunity for Peel Town Commissioners to provide comments for this review.

Yours sincerely

Derek Sewell  
Town Clerk  
Peel Town Commissioners

000275

# Positive Action Group (PAG)

## Submission for the Independent Review of the Functioning of Tynwald

### "The Democratic Imperative"

#### Introduction

a) Positive Action Group (P A G) is a political lobby group, not a political party. It is a 'not for profit' Association the objectives of which are to promote an awareness and understanding of politics and citizenship.

PAG encourages members of the public to participate actively in politics by taking part in discussions [8], making their views known, voting, standing for office and holding public office.

b) The objectives are stated in Appendix 1

c) The Association is funded by membership subscription and donations.

d) The perspective of this submission is that of a public group. We note that of the numerous oral sessions of evidence 27 are with serving parliamentarians or former members of Tynwald, and only 3 with members of the general public.

e) In a recently published Government leaflet [1], encouraging young persons to vote, it proudly states:

"Home to Democracy since \*979"

But the reality is that the Isle of Man has a curtailed democratic system.

This is apparent in the method of electing the Chief Minister (CM) and Members of the Legislative Council (LegCo)

#### A. Election of Chief Minister

1. The Isle of Man parliamentary system provides, as a rule, the opportunity for the citizen to exercise a right to vote once every 5 years, in a General Election. The vote, in 2016, is restricted to 2 constituency representatives. No consideration is given to governmental representation or policy. At the point of putting crosses on the ballot paper no one knows who will be the Chief Minister (subsequently elected by Tynwald Members), or what the policy of the 8 Ministers then appointed by the Chief Minister will be. In voting the citizen has no more than a parochial involvement.

2. PAG advocates that the Chief Minister be popularly elected as part of the General Election process.

A candidate would declare an intention to be Chief Minister along with a policy programme for the coming 5 years.

Such policies would be explained to and questioned by voters by all available means.

The parallel election processes would be a) for 2 constituency representatives and b) for a

000276

Chief Minister.

Adopting this system could generate Island-wide interest and stimulate a renewed enthusiasm for politics.

Any Chief Minister so elected would have the mandate of the people to govern and would then appoint a Council of Ministers.

3. There is evidence of widespread support for this process.

Prior to the 2011 General Election, the Manx People Power Survey [2], which was carried out by independent research company HPI Research, interviewed a representative sample of 1055 IOM residents.

The results revealed:

- 9 out of 10 respondents knew that the Chief Minister (CM) is appointed following a vote in Tynwald 63% thought the CM should be selected by the IOM electorate, versus 27% who favoured a Tynwald vote An overwhelming 93% thought CM prospects should declare their interests before the General Election, and 90% that they should be required to take part in public debates. In a properly conducted survey like this it is unusual to have such strong support. The findings appear to have been ignored.

## **B. Election to the Legislative Council (LegCo)**

4. The Legislative Council (LegCo) is described in the Tynwald Companion (TC) [3] as being "largely concerned with the consideration of draft primary legislation, Bills"

That may be true of the Council sitting as a corporate body but it does not describe the actual work of an individual member of the LegCo (MLC).

5. PAG has analysed the number of hours that LegCo convened as a separate body to consider legislation:

In the calendar year 2013 = 22 hours (21 sittings)  
2014 = 21 hours (17 sittings)  
2015 = 17 hours (15 sittings)

[figures do not include sittings of Tynwald]

6. As the Tynwald Companion continues "Most Members have one or more roles within the Isle of Man Government and serve on Committees of Tynwald"

Any MLC will tell you that their time is fully occupied in being a politician.

It seems from these simple statistics that considering legislation is a very minor part of the role of being an MLC.

The majority of their time is spent serving in government departments and to a lesser extent serving on parliamentary and governmental committees.

7. An MLC is elected by the House of Keys to the exclusion of any public vote.

The local newspaper headline for a LegCo Election (05.03.13) declared "Potential Lawmakers who won't face Voters" [4]

Of the 7 candidates only one had ever won a public vote. Two MLCs were seeking re-election neither of whom had ever been directly elected by the public. The other 4 nominees had all stood unsuccessfully for election to the House of Keys.

In February 2015, one MLC candidate was finally elected after 19 attempts over a period of

3 months [5]

8. Because of their widespread involvement in government decision making, PAG wishes to see voting MLCs elected by the people.

LegCo candidates, when standing for popular election, would need to have the role clearly stipulated.

The opportunity could then be taken to assess the how many members from LegCo and Keys need to be in Departments and sit on the various committees, deemed essential for efficient government and parliamentary process.

9. Having popularly elected MLC's would enable a Chief Minister to justifiably appoint Ministers from a wider pool of politicians. It has been the practice in recent years not to allocate such roles to MLCs.

### **C. Departments**

10. The present system of a Minister allocating an undefined number of Departmental roles, can be a distorting factor in Tynwald voting procedure.

It is illustrated in a PAG BLOCK VOTE DIAGRAM from August 2012 [6]

The diagram shows:

1. That every MLC served in a Department, apart from the Bishop (who possesses a vote)
2. Apart from Hall & Cannan, every MHK served in a Department.
3. Every Department already had a considerable advantage in voting numbers in Keys.
4. In allocating Departmental members it is easy to see the inbuilt majority that 5 Departments have in Keys when the supporting vote of the Chief Minister is added.

[Note that one Ministerial position has been dropped since this diagram was drawn, so the current situation is marginally improved].

11. Should a Minister have a controversial or extensive set of policies for Tynwald approval it is possible to ensure success by packing the Department with Ministerial appointments.

12. Doing so could reduce on the number of unconflicted members available for other important roles in parliament e.g. committee membership. PAG recommends that the number of Departmental appointments be restricted to one in each Department

### **D. Committees**

13. PAG believes, as stated in its Charter, in open accountable government and that there needs to be rigorous control of public finances. In our system one essential component of achieving these aims is via investigative Committees.

14. Select Committees, with particular emphasis on the long established Petition for Redress procedure, are an established component of the IOM parliamentary system

15. A number of Standing Committees have been established in recent years. They are:

- a) Policy Review: i) Social Affairs - Departments of: Health and Social Care; Education and



Children; Home Affairs. ii) Environment & Infrastructure - Departments of: Environment, Food and Agriculture; Infrastructure; iii) Economic - Departments of: Treasury, Economic Development and the Cabinet Office (including constitutional matters)

b) The Public Accounts Committee has for some time been a vital component of parliamentary scrutiny

16. The proliferation of these Standing Committees has led to criticism. Some, especially the Public Accounts Committee, have not been able to operate as effectively as planned. There have been difficulties in achieving a quorum, with certain members being conflicted. This is because of the broad cross- governmental involvement of Tynwald members in Departments.

17. This situation is inferred in section C above and is easily addressed by Ministers exerting restraint in the allocation of Departmental roles.

18. If MLCs were popularly elected one of their stipulated functions could be to Chair Standing and Select Committees.

19. PAG has previously been critical of the remit of Policy Review Committees [7], believing it to be too vague. Overall the purpose is 'to scrutinise the implemented policies, as deemed necessary by each Committee'. Each Committee needs to expand on that by clearly stating what it is attempting to achieve. Is it just to review both successes and failures in prior months? Is consideration given to future aspirations of the Departments? What is the context of the work of Departments within an overall government strategy?

20. The remit and purpose of the Public Accounts Committee (PAC) provides better direction:-

The Committee shall –

(i) consider any papers on public expenditure and estimates presented to Tynwald as may seem fit to the Committee; (ii) examine the form of any papers on public expenditure and estimates presented to Tynwald as may seem fit to the Committee; (iii) consider any financial matter relating to a Government Department or statutory body as may seem fit to the Committee; (iv) consider such matters as the Committee may think fit in order to scrutinise the efficiency and effectiveness of the implementation of Government policy; and (v) lay an Annual Report before Tynwald at each December sitting and any other reports as the Committee may think fit.

Note the phrase 'scrutinise the efficiency and effectiveness of the implementation of Government policy'. This implies a more forensic approach in the work of the Committee. PAG encourages the Policy Review Committees to adopt a similar approach.

Summary

1. PAG advocates that the Chief Minister and all voting Members of the Legislative Council be popularly elected.

2. The number of Departmental members be restricted.

3. The role of MLCs be clearly defined to reflect a popular mandate including serving as Ministers, but as a body LegCo is not given supremacy, either actual or perceived, over the House of Keys.

4. MLCs serve as Chairs of the various Select and Standing Committees
5. The remit of the Committees be made more explicit to ensure effective scrutiny of government.

## KEY

\* This is an alternative hearsay version!

Sir Charles Kerruish, Speaker of the House of Keys, thought it would be a good idea to celebrate a millennium in 1979.

A well-known historian he consulted told him there was no proof that Tynwald was started in 979. The Speaker's rejoinder: 'Can you prove that it wasn't?'

And so the scheme went ahead.

[1] THE ISLAND'S FUTURE "It's in YOUR hands September 22 2016"  
<http://bit.ly/1XUBUW3>

[2] Manx People Power Survey July 2011 <http://bit.ly/1UhtbKr>

[3] The Tynwald Companion <http://bit.ly/1WpbwEi>

[4] "Potential Lawmakers who won't face Voters" <http://bit.ly/1XBNvZI>

[5] If at first you don't succeed... <http://bit.ly/1NlvEzu>

[6] PAG BLOCK VOTE DIAGRAM August 2012 <http://bit.ly/1P31OVw>

[7] PAG Submission to the Select Committee Reviewing the Committee System 2015  
<http://bit.ly/1Z9PpiT>

[8] PAG Previous Events <http://bit.ly/1sYq4i3>

## **PAG Objectives and Charter**

### **APPENDIX 1**

#### **Objectives**

- a To promote awareness and understanding of politics and citizenship
- b To encourage members of the public to participate actively in politics by taking part in discussions, making their views known, voting, standing for office and holding public office.
- c To encourage an increase in the percentage turnout of the electorate, by raising awareness of the importance to the electorate of exercising their democratic right to vote - a consequence of which will be that they can help to shape and secure the future of the Isle of Man.
- d To bring to the attention of Tynwald Members, the Government of the Isle of Man, or any other appropriate bodies, issues or matters of public interest raised by members of P A G; and which may include submissions in response to public consultation exercises.

#### **Charter**

Positive Action Group (PAG) believes that three 'core principles' should apply to the system of Government in the Isle of Man.

OPEN, ACCOUNTABLE GOVERNMENT  
RIGOROUS CONTROL OF PUBLIC FINANCES; and  
A FAIRER SOCIETY FOR ALL

Towards this end we RESOLVE that these steps be taken to implement the 'core principles':

The people to have the right to elect Members of the Legislative Council: - before this is implemented, no MLC may become a Minister.

The Chief Minister be popularly elected

The number of Ministries to be reduced.

The number of Departmental members to be reduced.

Equality of representation in each constituency be introduced\*

Appoint a Tynwald Commissioner for Administration in accordance with the Act 2011\*\*

The Freedom of Information Act 2015<sup>^</sup> is broadened as soon as possible to embrace all public authorities

That Tynwald should introduce legislation to:

**PASS A CONFLICTS OF INTERESTS ACT**

\* introduced for General Election 2016

\*\* Tynwald Commissioner for Administration Act 2011 received Royal assent in October 2011 but is inoperative as no appointed day order has been issued

The general functions of the Commissioner are to conduct investigations into the actions and service failures of listed public authorities. The Commissioner is an Ombudsman.

<sup>^</sup> The Freedom of Information Act 2015 was made operational in a very limited form in February 2016

**W R Tomlinson**

(on behalf of the PAG Committee)

[www.positiveactiongroup.org](http://www.positiveactiongroup.org)

**May 2016**

## Isle of Man Government Reform

**Tynwald:** Because of the conflict between the House of Keys and Legco is dysfunctional and makes it impossible to introduce the reform of Tynwald, government, local government, public services public service pension scheme, monopolies.

**Tynwald:** Should be changed into a legal single entity, incorporating the Keys and Legco into a single chamber and reducing the number politicians.

**Government:** The current ministerial form of government has created a fiefdom for each minister which is inefficient and biased almost to the point of corruption.

E.g. the minister with responsibility for the reconstruction of the much damaged promenade has been replaced numerous times during the past 15 years and each minister dumps the plans by his predecessor and develops his own. The latest plan was rightly rejected by Tynwald as not being fit for purpose. The very first plan proposed was the most suitable.

Another inefficient area is the planning application system.

**Local Government:** The Island has more than twenty local authorities with about 150 councillors (commissioners). This is totally absurd for a population of 85,000. Various attempts at reform have failed in Tynwald and in the past has cost the minister in charge his seat in the Keys.

**Public Services:** Some of these are in urgent need of reform. A recent attempt to incorporate the Post Office failed in Tynwald. We have a comprehensive all island bus network with most buses underutilised. It is believed we have the highest paid bus drivers in Great Britain. The cost on the public purse runs into tens of millions of pounds. Other areas include the airport and the harbours.



**Public Service Pension Scheme:** This is totally unsustainable in its present form, the government and Tynwald are at a loss regarding reforming it and the latest effort is wishful thinking.

**Monopolies:** The classic case of a government protected monopoly is Manx Telecom (look how many ex ministers and MHKs have sat on the Board). This has cost consumers dear over the last three decades. When the fibre optic cable with the mainland was installed the MEA had the ability to connect every home on the island to a state of the art phone and internet system, which would have been a world beater. This was blocked through the government by Manx Telecom.

**Conclusion:** The Isle of Man government and the economy has enjoyed hubris ever since the introduction of ministerial government three decades ago. In the mid-eighties we had several hundred public servants, now we have several thousand, some of them grossly overpaid.

Without reform of the public purse the island's economy will hit a brick wall in the near future. For the government to claim it will develop the economy to avoid this is shear fantasy.

## Review of the Functioning of Tynwald

Her Majesty's Acting Attorney General for the Island is a Member of the Legislative Council and is the Isle of Man Government's senior legal adviser to Executive, Government Departments and Offices.

The Acting Attorney is the principal officer of the Attorney General's Chambers, which office contains the Prosecution Division, Civil Litigation and Advisory Team and the Legislative Drafting Division.

As a Member of the Legislative Council, the Acting Attorney is a Member of Tynwald Court and at its sittings is available to advise Madam President and Tynwald members in the consideration of Tynwald Business.

The Clerk to Tynwald advises Mr Speaker and Tynwald Court on matters of procedure before the Court and its Standing Orders.

The Acting Attorney is happy to respond to the invitation of Lord Lisvane who is conducting the Review of the Functioning of Tynwald and to express his views of certain aspects relating to the functions of Tynwald. However, it would not be appropriate for Mr Attorney to enter into any discussions concerning any political considerations as to the efficiency or structure of Tynwald Court or its Committees or any proposals for their reform.

This paper accordingly addresses Mr Attorney's comments on the Island's Legislative processes and also comments on one aspect of procedure concerning Tynwald Committees. In relation to legislation, it is part of Mr Attorney's role to provide for the drafting of the Island's primary legislation based on the policies and priorities of the Government and also for the drafting of Bills promoted by Private Members. The Attorney is mindful of the procedures of Tynwald Committees in the context of the public interest in the matters such Committees address.

## Legislative processes

### Amending Bills and consequential amendment of long titles

On the Island it is the accepted practice that the drafter in the Attorney's Chambers in charge of the drafting of a relevant Bill is available to frame amendments for private Members as required. Of itself, this may be no bad thing as it does at least ensure that amendments do not fail merely because they are defectively drafted. However, this practice means that the Legislative Drafting Division in Chambers can come under severe pressure on occasions and as a consequence delays can be caused. By way of comparison, at Westminster, Stormont and indeed at Holyrood, a private Member who wishes to move an amendment to a Bill cannot use the services of Parliamentary Counsel to draft it.

Delays to the drafting process sometimes occur when a Private member wishes to move an amendment to a Bill which is outside the scope of the Bill's long title. Whilst Standing Order 4.7(3) of the Keys stipulates that amendments must be within the scope of the Bill's long title, Standing Order 4.9 enables the Speaker to sanction the amendment of a long title where appropriate. The interplay of these Standing Orders has resulted in the Legislative Drafting Division having to draft amendments which are outside the scope of the long title on the basis that the Speaker may agree to the amendment of the long title as well.

A recent extreme example of the sort of delay was the Representation of the People (Amendment) Bill 2013 (see PP2014/0032 which sets out the votes and proceedings on the Clauses stage of this Bill). The Bill's purpose was to constitute new constituencies for the election of the Keys. There were no less than three amendments moved to the long title itself in an attempt to frank proposed amendments. Those amendments were clearly outside the original scope of the Bill. All the attempts to amend and so broaden the long title failed, yet all the amendments, which could potentially have been franked if those attempts had succeeded, had to be drafted on a contingent basis because amendments to the long title are normally considered at the start of the Clauses stage.

Of course, limiting the extent to which amendments can be proposed will not always improve matters. For example, in the context of the 2013 Bill, Mr Watterson MHK tabled a

series of amendments in the alternative giving every permutation ranging from 1 all-Island constituency returning 24 members, 24 single-member constituencies and every mathematical permutation in between. All permutations had to be drafted because all were clearly within scope.

A previous recommendation of the Tynwald Standing Orders Committee to deal with the problem of attempts to expand a Bill's scope by amending the long title is set out in the Committee's Second Report for the 2010-11 Session<sup>1</sup>. That proposed that amendments to the long title be moved at Second Reading, but with power for the Speaker to permit further amendment to it at Third Reading if, by the end of the Clauses stage, the long title did not accurately reflect the amended content. Such a back-stop is clearly necessary, because the Bill which became the Representation of the People (Amendment) Act 2016 had its long title changed at the beginning of Clauses in the Keys, only for the amendments which that change was intended to frank to be disagreed by the House. The Bill therefore required an amendment in the Legislative Council to ensure that the long title accorded with the content.

Lord Lisvane is invited to consider whether the present position is satisfactory and whether the solution advocated in 2011 but then rejected by the Keys might improve matters.

#### *Leave to introduce a Bill*

On a linked matter, the Keys Standing Order on leave to introduce a Bill (Standing Order 4.4) envisages the long title being approved by the House when leave to introduce is granted. The long title is an integral part of the Bill and, unless there has been prior consultation with the Legislative Drafting Division, there is a risk that the approved long title may not cover all that is found to be needed when the detailed drafting commences. A solution to this might be for the Keys to approve the proposed topic of the Bill, which will always be clear in political terms. The long title can then be settled as part of the process of drafting the Bill.

---

<sup>1</sup> <http://www.tynwald.org.im/business/pp/Reports/2011-PP-0095.pdf>

*Tynwald Committee procedures where an individual is likely to be criticised*

The other area that has raised concern is that on several occasions, Tynwald Committees have in their Report and Recommendations criticised officers and others without informing those intended to be criticised that this was the case or affording them the opportunity to provide evidence about the conduct which was the subject of the proposed criticism. Two instances where this occurred were in relation to the Second Report of the Select Committee on the Kirk Michael School Land Exchange Agreement (PP 2014/0226) where a Mr Charles Lewin was criticised, and a Report of the Standards and Members' Interests Committee (PP 2014/0003) which criticised both the Minister of Health and his Chief Executive. Although it may be going too far to suggest that a Committee ought to undertake a "Maxwellisation" procedure before reporting, the public interest in considering the rights of those criticised needs to be addressed. In view of the privilege attaching to a Tynwald report, perhaps an option to consider is something akin to a Salmon letter being sent to persons likely to be criticised by a Committee. At the present time and in the two instances referred to, the Tynwald Reports in question were published with the Tynwald Agenda enabling witnesses to report on the Committee's findings and recommendations before the Report is actually debated by Tynwald.

John L M Quinn  
H M Acting Attorney General

16<sup>th</sup> May 2016



Submission to review of Tynwald by Lord Lisvane

Sent by Roger C Rawcliffe MA(Cantab) FCA

I have for many years studied constitutions and taught on the subject. Tynwald is not only an ancient parliament, but also the House of Keys has retained many elements which are in essence unchanged for centuries apart from the change to popular election in the nineteenth century. The council, on the other hand, has changed a great deal more and more often, the principal survival being that of the bishop.

I should like to set out my thoughts;

1. I wholly disagree with the idea of a single chamber. Such an arrangement can lead to misgovernment without recourse to any form of longstop, other than the intervention of the British Government which we would prefer to avoid. It is quite widely felt, both within Tynwald and outside, that the Chief Minister and Council of Ministers already exercise too much power through patronage and the proportion of CoM to the rest of the Keys.

2. The introduction of a Council of Ministers and a Chief Minister in the 1980s was a great and necessary improvement on the Boards of Tynwald without overriding leadership. (I was in those days one of the government auditors and could see the defects at close hand) There may be improvements in the details of the ministerial system which could be suggested, but I make no suggestion except to say that, in a chamber of 24, the number of ministers should not exceed 7 to prevent undue dominance referred to above.

3. I believe that the historic membership of the Keys of 24 is appropriate, now more democratically elected in constituencies of equal size and representation. I would not oppose the reintroduction of STV, though this is less necessary with equal constituencies, and the system was not widely understood by voters.

4. I direct most of my suggestions to the council, whose functions are unclear, whose elections by the Keys have recently been an embarrassing shambles, whose elections are essentially undemocratic and have been used largely to park superannuated members of the Keys who have not shown much value to the parliamentary process. My suggestions here are in two equally important parts;  
A Function Members of the council should have a carefully defined role. This should exclude any departmental responsibility whatsoever, to separate councillors from conflict of interest in routine matters which are the proper business of members of the Keys.

Their principal function should be scrutiny of legislation proposed by the Keys (without removing the council's ability to initiate legislation) chairmanship and perhaps all the membership of the public accounts committee, chairmanship and membership of other committees of Tynwald, membership of statutory boards of Tynwald and possibly of boards of the new corporate entities. In addition to these functions, they should continue to sit in Tynwald as at present, but without a vote in the appointment of the Chief Minister.

**B Composition**

There should be popular elections for membership of the council held every 4 years, I would suggest, at the time of the Commissioners elections, in this case by STV. No councillor could be reelected more than once, giving a maximum of 8 years' service. The number would be reduced to 6, each being elected by the electors of 2 Keys constituencies. They would receive their current salaries ( without the addition of departmental sums) in view of the limitation of their functions. The bishop could continue to be a member of the council.

Direct election to the council has often been opposed on the grounds that an elected council would have

a greater electoral mandate. With the careful division of functions as proposed, I do not believe that this should be a problem. The reluctance to cede any element of power by the Keys could be a much greater problem.

5 Direct election of a chief minister. This has been strongly proposed several times, but I believe it to be mistaken and unworkable in a parliamentary system, as such a chief minister would require the support of a majority of the Keys to govern. If the electorate wishes to influence the policies proposed at an election, the way to achieve this is for groups of candidates, or parties, to set out their proposed policies in a manifesto; however, up to now, this has not really been successful.

## 6 Summary

No constitution can be perfect; I believe that the suggestions made above provide a useful and practical improvement on what we have inherited.

24 May 2016

Dear Ms Norman

### **Review of the functioning of Tynwald**

We write to express our views on the constitution of Tynwald. We do not agree with Members of the Legislative Council being elected by members of the House of Keys. We do not consider that our parliament is democratically elected because of this process. The Legislative Council is capable of blocking proposals by the democratically elected Members of the Keys. We consider that the attraction of the Legislative Council to retired politicians and friends of politicians and the fact that it consistently appears to be promoting the cause of the Council of Ministers does not add value to the democratic process. The Legislative Council has in the past consistently resisted attempts to reform it and this continual course of action, in itself, diminishes its role.

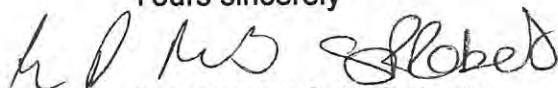
In addition we do not believe that the Bishop, by virtue of his being a representative of the Church of England, has any place in Tynwald, unless democratically elected on the same basis as other members. We were not impressed with his proposal to limit free speech and the time members spend speaking in parliament by his proposal to limit the length of time in answering questions and speaking to a motion. There are few opportunities for the electorate to listen to elected representatives and the Bishop's proposal went a step too far in our opinion.

With regard to question time it appears that the Council of Ministers votes collectively to resist any attempt to allocate more than an hour in Keys to this and we are not impressed by this. We think the morning should be allocated to question time if required.

With regard to the frequency of House of Keys and Tynwald sittings, we believe that shorter recesses would be more appropriate and in line with Government's stated aims to achieve economic growth and deliver a smaller, smarter, more efficient Government.

We do believe there could be a democratically elected second body whose sole function is to review proposed legislation and make recommendations back to the House of Keys. This body might then attract a wider range of suitably qualified and experienced individuals who would play an advisory and scrutineering role.

Yours sincerely



Andrew and Sally Roberts

000290

**2<sup>nd</sup> June 2016 submission to Lord Lisvane KCB DL by Chris Thomas MHK during the Independent Inquiry:**

- i) to examine the Functioning of the Branches of Tynwald; and**
- ii) to consider Options for Reform**

**EXECUTIVE SUMMARY**

These remarks are divided into sections as follows:

- The imperative for some change to the functioning of Tynwald
- Can Tynwald change without a nudge, and if not, what nudge is needed?
- Does Tynwald need two branches for legislative scrutiny, and if not, what is the alternative?
- Tynwald tricameralism: where are we and what is to be done?
- Tynwald policy review committees: next steps
- Open and digital democracy, and members' standards arrangements
- A new type of Tynwald member: a proposal

There is a financial and political imperative for some change to the functioning of Tynwald, and evidence-based policy recommendations are needed from an analysis of "how we work in everything we do."

A stronger Programme for Government after this September's General Election could bring Tynwald and governance change *inter alia*, building on newcomer initiatives this past year, especially if nudged by the findings and recommendations of this Independent Inquiry carried out in 2016 a Year of Democracy, as the Lord MacDermott and Lord MacDonnell Inquiries nudged previous generations to make incremental enhancement.

An advisory referendum on General Election Day to "ascertain whether only directly elected members of Tynwald (other than the President) should move and vote on legislation and resolutions relating to finance" would also be helpful.

Tynwald does not need two branches. The evidence suggests that legislative scrutiny can be carried out by legislative committee, as happens in all but the largest two British Islands parliaments. Other legislative process suggestions are: draft Bills considered by Joint Committees; pre-legislative consideration; and restoration of "the Victorian practice of Motions for leave to bring in Bills so that the necessity for legislating, and the broad intention, could be considered before getting involved in the scrutiny of a fully worked-out Bill".

Moreover I am sceptical whether elections for Legislative Council members can ever be made to work. Therefore I conclude that only directly-elected Tynwald members should vote for the Chief Minister, and move or vote on financial matters; but any indirectly-elected or nominated members could usefully contribute to policy debates, review policy and legislation, etc..

Other questions that should be addressed are about why Legislative Council rather than Council of Ministers members sit on the top of Tynwald Hill, why there is a top-shelf in Tynwald Court for the indirectly-elected members, and whether the roles of Tynwald President and Speaker could be merged.



I would be surprised if this Inquiry did not encourage Tynwald committees to develop their policy development role, learning from the past to inform the future. Another recommendation should be to enhance the transparency and public engagement of the policy review committees.

The future of Tynwald committees includes a wider context. Several departmental political member roles should be replaced with committee roles. The existence and operation of a Tynwald Auditor General and a Tynwald Commissioner for Administration would enhance committee work. QUANGOs should relate and report to Tynwald, as well as to Government.

The excellent Tynwald Office research, parliamentary and committee research function needs to be acknowledged, but the availability and capacity of this resource needs to be monitored and enhanced when necessary as Tynwald evolves.

Any investigation of how Tynwald has opened itself up, and digitalised, would find that good progress is being made, with differences which reflect its size and the nature of the Manx political process. Online and personal electoral registration, and members' standards issues (e.g. a code of conduct, a scale of penalties, recall elections etc.) are a matter for government as well as Tynwald, but some development seems likely from 2017, including revised legislation, and is needed.

## **THE IMPERATIVE FOR SOME CHANGE TO THE FUNCTIONING OF TYNWALD**

The cost of running Tynwald is now in public focus, and more than 60% of the around £5 million it costs to run Tynwald annually goes to past and present members. Thus the role played by each Tynwald member is in question. As I summarised in the May 2015 debate establishing this Inquiry:

**“we have to look at our own efficiency and effectiveness, like we are making every other part of Government do; otherwise, that is going to upset the electorate especially as I have now brought it (the cost) to their attention. (Laughter)”**

There is also a political imperative for a review. I continued:

**“Let’s think about how people talk about politicians in the street these days, because certainty and stability are vital, just as the Chief Minister said, but certainty and stability come from a consensus. The wonderful thing about our ancient parliament is we have managed to keep consensus. We have got to evolve .... such that we manage to keep that consensus, and there is this disconnect arising, I feel, between those governed and those doing the governing.”**

As Alfred Cannan MHK put it in that same debate:

**“ ..... Tynwald runs the risk of continuing to make itself out to be a First World War general eating caviar about five miles back from the frontline whilst the troops are on corned beef and about to be sent over the top – and that is the truth. There is a real leadership issue here ..... many Members who are standing for public election will be put on the spot. I will bet they all stand up and say, ‘Yes, I’ll be voting for reform in the next House and changing the way we do things,’ (A Member: Hear, hear.) and I will bet that they will stand up and say, ‘The Legislative Council shouldn’t be paid the full Member’s salary,’ and I will bet they stand up and start saying, ‘They**



shouldn't get expenses,' because that is what everybody says when they are all sitting around having a cup of coffee. **They do not say it in here, because they do not dare – they do not want to upset the Legislative Council, for some reason; they like to have the Legislative Council onside.** It is amazing how many people actually do not really express the truth in these situations – because that is the bottom line. I am being very truthful with the Legislative Council: that is the bottom line. That is what you hear, it is what I hear all the time, (A Member: Hear, hear.) and therefore we are going to have to start somewhere.”

So what we need are **evidence-based policy recommendations for the functioning of Tynwald and its branches, not policy-based evidence-making for the maintenance of the status quo.** The Lord Lisvane report needs to provide analysis about, “how we work in everything we do.” This review is not about Legislative Council abolition *per se*; it is about efficient and effective parliament and government derived from it.

Juan Turner MLC asked the really important question in his contribution to the 2015 Inquiry Debate:

“How do we want the system to work and what is going to work best for the citizen? .... Some people who are very much interested in politics, almost to an anorak level, go on about it all the time, **but I think what matters to people out there is: are they getting the value for money from the system?**”

## **CAN TYNWALD CHANGE WITHOUT A NUDGE, AND IF NOT, WHAT IS NEEDED?**

Some argue that change can come from the emergence of party politics in the Isle of Man, either as an alternative government or as an opposition.

**But there are three structural impediments to party politics in Tynwald, even if there was a will in the Island for it, and legal or structural change would be needed in each respect for party politics to flourish.** These structural impediments are:

- Tynwald nominates the Chief Minister for appointment by the Lieutenant-Governor following “a resolution of a majority of the members of Tynwald present and voting” which is different from in the UK where the Monarch must appoint as prime minister the person most likely to command the confidence of the House of Commons, typically the leader of the political party or coalition of parties that holds the largest number of seats in the House of Commons;
- There are no Government and Opposition benches in Tynwald or the Keys, despite the Westminster overlay to Tynwald during the last century and a half; and Tynwald/Keys members sit according to constituency, not political grouping; and
- No Short or Cranborne monies are paid for the organisation of opposition in Tynwald.

Moreover the Manx political feeling appears to be one of seeking consensus - rather than Westminster-style government and opposition across the Despatch Box - which inhibits party political success. **It has been suggested that the Keys “snuff box” which was passed around the old House of Keys table symbolises the Manx political tradition of working together as independents.**

So, despite some believing it can, it seems doubtful whether party politics will ever become an important element in the Manx political system given this political feeling and the structural impediments.

But stronger agreement about the Programme for Government after this September's General Election could bring governance change I believe, as well as addressing fundamental financial and other issues. A more developed Programme for Government has been part of my political campaign throughout.

This Programme for Government is more than the UK-Westminster Queen's Speech, an approach which could not, and should not, transfer to the Island. Rather it can be seen as an outcome-based framework and plan for Government to work with others to achieve agreed public policy goals. The Isle of Man Government Agenda for Change and Sir John Elvidge Review processes started us along this path again from 2012; and a **Programme for Government - and then annual statements of priorities and modifications to achieve this public policy agenda, with supporting legislative programme, medium-term financial strategy and annual budget - would be a helpful return to what used to happen more.**

In fact the Chief Minister's apparent dismissal of the need for this Tynwald Independent Inquiry in 2015 and 2016 is an example of how his Chief Minister Statement of Policy Priorities and the subsequent Agenda for Change process as implemented in the last four years became a 'wishy-washy' document which was not taken seriously by the political leadership as a programme for government.

In 2011 the Chief Minister wrote:

'Like many members of the public, I have been dismayed at the amount of time spent in the last House navel gazing with respect to internal constitutional matters. In principle, I agree with direct elections for Legislative Council as long as we do not create political instability in the process. **I would support a totally independent review to introduce new thinking into the debate, leaving Members more time to deal with more pressing issues.'**

He repeated this message to the Economic Policy Review Committee in April 2015:

"The comment I think I made to you last time, or at some point, about a commission on LegCo was born out of the exasperation of, year after year after year, interminable debates on reforming LegCo and knowing full well it is not going to go anywhere at all. ... There are two quite distinct views in Tynwald generally. They are never going to be reconciled, I think if they are left to their own devices.....It seems to me the only fair way, and we have had it in the past for boundary commissions and things like that, is to bring an outside independent body to have a new oversight of how a new Tynwald structure might work ..... **if we are going to go down this route I think that (a) it would be wiser to have an independent oversight of what a new government structure, including the House of Keys, should look like, what that relationship should be. Should it be unicameral? Should we have a single chamber? I do not know what the answer is to this at the moment. There are pros and cons to every aspect of it, but to at least get a body of work put together which is seen to be independent and not subject to the prejudices of the internal authors, if I can put it that way, might just be a better starting point than random Bills which appear periodically in the Keys."**

But, incredibly, the Chief Minister did not support my Independent Inquiry motion when put to Tynwald Court. As I stated when summing up in May 2015:

“Nothing had changed since 2011. The rest of the statement of policy priorities in the Chief Minister’s personal manifesto was about the financial crisis, about the need to deal with real issues – the ageing population, pensions and so on; so why would you put that (an Independent Inquiry) in ...”.

Beyond a Programme for Government we need what I described - in the January 2014 Modernising Ministerial Government debate when the Cabinet Office was established *de facto* - as:

**“mandate politics.....or manifesto politics or programme politics, or working together politics.** That is what I think the Bishop was talking about and what Mr Cannan was talking about. We need to have more of an idea of where we are going.”

**This type of politics is policy-based, with manifestos meaning something, and with candidate MHKs working together before an election to establish common ground and after an election to form an agreed Programme for Government.**

The Lord Bishop, in the same Modernising Ministerial Government debate, provided an intellectual public policy basis for all this:

“I think the suggestion in recommendation 2, for a Minister with responsibility for Policy and Reform, is very imaginative and is probably what we need, but I am a little bit worried about what it leads to. The Council of Ministers here forms around the Chief Minister like a government forms around the Prime Minister in the United Kingdom. In the United Kingdom, the Prime Minister is the leader of a party which either has a majority in the Commons, normally, or the leader of a party which can work with other parties in order to have a majority in the Commons. The source of power is easier to trace: it is the electorate. They, in the UK, vote according to the policies of various parties expressed in the manifesto of the various parties. Power then transfers to the Prime Minister through a party system based on the manifestos of his or her party and then is delegated by the Prime Minister to government ministers. But the power of the electorate over the government is secured by the fact that there is a manifesto for the ruling party or two manifestos for the coalition governing parties. **Here the source of power, similarly, is the electorate. The electorate vote according to the individual policies of candidates – no party system, apart from a couple of people. Power transfers to the Council of Ministers through election – so far so good – and is, hopefully, based – that election of the Chief Minister – on his or her manifesto to the public electorate, because if it is based on something different then you are causing an interruption. The difficulty comes in the Chief Minister nominating the Council of Ministers by personal delegation which, because each Member has been elected on a separate manifesto, could in fact interrupt the transfer of power from the electorate to the Council of Ministers. So it seems to me, Madam President, for that reason – I will support this and I think it should be supported; I think it is very good, it is needed and it is imaginative – but, for that reason, we need to consider very carefully about this policy element of this Minister because that person is an enforcer, without any doubt, but what will he or she enforce? Which of the eight manifestos**



**will be the one which dominates?** I think after passing this, we need some nuancing of what is meant by recommendation 2.”

**So Tynwald can change from within in the next Government through measures included in the Programme for Government this autumn, but I believe a nudge from without is probably necessary.**

I believe this because despite many substantial and significant Tynwald reports suggesting incremental change during four decades - summarised most recently in the report by the Joint Committee on the Constitutional Principles Raised by the Electoral Reform Bill 2011 – change has not come.

This last term a committee made recommendations regarding the processes of Legislative Council elections following the 20 ballots which it took to elect the fourth MLC. The Tynwald Management Committee reviewed questions *inter alia*, a select committee reviewed committee work, and members’ standards have been considered.

**But, as more or less in every administration for four decades, the Legislative Council and Council of Ministers amendment bills got nowhere again.**

To explain this I suggest two additional characteristics of Manx political history are significant, alongside the two often remarked quintessential elements of Tynwald which are:

- 1,000 year plus independent existence and Norse heritage; and
- Evolving structure, with Keys, then Legislative Council, then Council of Ministers, then Tynwald President coming to exist and then developing, with important modern legislative and institutional change in 1919, 1961 and in the 1980s.

The first additional characteristic of Manx political history is that, despite local campaigns and initiatives, ‘nudges’ from outside seem to have been necessary from time to time to actually bring about even incremental political enhancement despite local reticence to do the right thing. As I put it in my speech in May 2015 when moving for this Inquiry, **“at crucial moments in Manx constitutional history such inquiries have taken place.....they can be very helpful to move things beyond what have seemed impossible obstacles.”**

For instance the 1958 MacDermott Report is widely acknowledged to have been instrumental in bringing about the 1961 and subsequent Tynwald changes, but more change was available and could have been obtained if internal forces had not prevented it. According to Sir Charles Kerruish speaking during the Keys 2<sup>nd</sup> Reading of the Isle of Man Constitution Bill 1961:

“I think the hon. member in charge of the Bill was right when he said we didn't ask for a large measure development when the Commission was here, and show we were ready as a community to accept responsibility, and in consequence we have got what a most learned commission must have felt was the measure of development which should be afforded to us at the present time.”

The Lord MacDonnell report was also instrumental in bringing change after 1911, and Samuel Norris made a similar point about the evidence provided to that committee, despite the Manx National Reform League having been established since 1903 to campaign for governance reform, with others also involved:

“But where the Keys failed was in timorous disbelief in their own ability and in the readiness of the Manx people to assume and exercise real self-government. Over

and over again Lord MacDonnell invited the Keys' representatives to ask for Responsible Government .... In fact members had given no thought to this side of the subject."

**The Lord Lisvane report to July 2016 Tynwald can be a useful nudge, just as the Lord MacDonnell and Lord MacDermott reports were. It can contribute to breaking the "log jam in terms of how our Tynwald works after 40 years of legislative initiative and committee investigation about issues that trouble many people."**

The second characteristic is that **Manx political 'newcomers' can 'nudge' change much more quickly than newcomers in larger, party-dominated political structures** as they can bring motions and get leave to introduce bills etc. more easily. Moreover it seems the intervention of newcomers has been decisive on a number of occasions. This is my rationale for bringing the motions I have, including the one to set up this Independent Inquiry.

For instance the newish Manx National Reform League and the new Manx Labour Party made significant contributions to the 1919 changes, and it was a 2-year MHK - Clifford Irving - who moved successfully in 1957 for the Lieutenant-Governor to be asked to set up a constitutional commission, the MacDermott Commission. Moreover David Kermode writes in respect of the Council of Ministers changes in the 1980s that, "two relatively new MHKs, Allan Bell and Tony Brown, had asked Tynwald to reaffirm its support for a full ministerial system" well before the legislation was introduced.

**Will newish MHKs who have moved for incremental enhancements of Tynwald be successful this time in overcoming what David Cretney MLC has described as the contemporary but "disappointingly familiar" objections of prematurity, navel-gazing, and potential instability *inter alia*?**

Perhaps, certainly there have been already a series of incremental enhancements decided in Tynwald e.g. a voting database, changes to the Chief Minister Election Standing Orders, modernisation of the Tynwald Petition process etc.

**But there could be more incremental enhancements decided in the next Tynwald – whether moved by newcomers or old-timers - if nudged through Lord Lisvane recommendations derived from an analysis of the evidence about the functioning of the branches of Tynwald and options for reform.**

Already 2016 is an important Tynwald anniversary:

- the 150<sup>th</sup> anniversary of the introduction of some voting for Keys members;
- the centenary of the 1916 Reformers' Tynwald Day;
- the 60<sup>th</sup> anniversary of the revitalisation of the Tynwald Hill petition process;
- the 25<sup>th</sup> anniversary of the Alan Shea petition made wearing his M&S pyjamas; and
- the 10<sup>th</sup> anniversary of voting for 16 and 17 year olds.

**Incremental enhancement following comprehensive review would be an excellent way to mark 2016 as a Year of Democracy, even a Festival of Democracy!**

A third 'nudge' for change could come from an advisory referendum on General Election Day, 22<sup>nd</sup> September 2016. Asking the people what they think about they want to be



represented could break the logjam after 40 years of thwarted legislative initiative and committee investigation. The costs of holding a referendum alongside a General Election are also minimalised.

A referendum also provides an opportunity for both sides of an argument to marshal and present their argument, and the referendum could be informed by this Independent Inquiry.

I intend to move in June 2016 Tynwald as follows:

“That Tynwald resolves that a referendum be held in the Island under the Referendum Act 1979 to ascertain whether only directly elected members of Tynwald (other than the President) should move and vote on legislation and resolutions relating to finance; and further is of the opinion that the referendum should take place on 22nd September 2016.”

The question is thus one of whether indirectly-elected or nominated Tynwald members should be members of Treasury and vote in Tynwald on finance-related issues i.e. those bills and resolutions which require Treasury Act section 10 Treasury concurrence.

It has to be noted that the Irish government failed to garner support for reform of the Seanad in 2013, and the Jersey referendum on its General Election Day about reform of its States parliament was also a vote for the status quo.

## **DOES TYNWALD NEED TWO BRANCHES FOR LEGISLATIVE SCRUTINY, AND IF NOT, WHAT IS THE ALTERNATIVE?**

In May 2015 what I said about the legislative process was:

“We have eight or nine readings to get something through – the same as they do in Westminster, which, with all respect to ourselves, is a bit larger than we are; the same as they do in Ireland, but they are desperately trying to change it. Guernsey and Jersey, our very good competitors, get away with a couple ..... Wales, Scotland and Northern Ireland, which have been put together more recently ..... have got a more efficient legislative process, and I go beyond saying it is just more efficient – it is also perhaps more effective. The legislation suits the businesses in those countries better. The legislation suits the other interest groups that need good legislation in those countries better. That is where I was trying to take the debate.”

**Thus the question that needs to be answered is whether we need legislative scrutiny in two branches of Tynwald, or could this be replaced by legislative scrutiny in a single-chamber Tynwald with legislative committee review, or with Legislative Council transformed into one or more legislative committees.**

Assemblies for the much larger British Islands nations of Scotland, Wales and Northern Ireland were set up with one chamber and committees. The other Crown Dependencies, Guernsey and Jersey, only have a single chamber. New Zealand, Norway, Iceland and many other countries have abolished a second chamber successfully, with no serious calls for the reintroduction of an unelected or indirectly elected second chamber in any of these places, since 1951 in New Zealand.

### **So why does Tynwald need two branches?**

Betty Drexhage wrote in her International Comparisons of Bicameral Systems:

"At the beginning of the twentieth century, unicameral systems were much rarer. Only twelve of the over fifty parliamentary states in the world had a unicameral system. These were mainly in the Balkans and in Central America, and in addition, a few very small European countries (Luxembourg, Liechtenstein, Monaco). By around 1950, this had increased to over 35 per cent (29 of the then 80 sovereign parliamentary states) and in 1980, 67.5 per cent of the parliamentary countries had a unicameral system."

Her conclusions include two of relevance to the Isle of Man's situation: firstly, that smaller countries tend to have a unicameral system, although among larger countries, it varies; and secondly, that the federal states all have two chambers, among non-federal states, it varies.

**Isle of Man is neither large nor federal; so why does Tynwald need two branches?**

**Of course Legislative Council amends some Keys legislation, and evidence has been provided of that.**

**But Keys is capable in the review of legislation, and has amended some itself and could have amended more, as I show below.**

For instance the Keys Legislative Committee spent nearly as much time in 2014/15 considering the Landlord and Tenant (Private Housing) Bill before Clauses stage as the Legislative Council spent that year considering all legislation and the committee produced policy and drafting recommendations which persuaded the Keys to send the Bill back "for a complete rewrite".

For instance I amended the National Health and Care Service Bill 2016 in four significant ways in Keys as acknowledged by the Minister in Tynwald and to Lord Lisvane in evidence:

"In particular, I would like to thank the Hon. Member for Douglas West, Mr Thomas, for his amendments which were all accepted at the last sitting. I believe the fact that Mr Thomas took the opportunity to discuss his proposed amendments with me and my officers prior to the sitting helped us all to understand the position that he had more clearly. This resulted in Mr Thomas' amendments being presented in a form which I and the Department were happy to accept, which is why I was content to take the slightly unusual step of seconding the amendments. Whilst such conversations will clearly not always result in both the Member and the Department agreeing on an amendment, I would commend this approach to all Members going forward."

For instance the Highways (Amendment) Bill 2015 section 20 issues which were considered in a Legislative Council Committee were picked up earlier in Keys, as acknowledged by the Minister when the amended Bill returned to Keys:

"All in all, I am satisfied that Mr Turner's amendments fully answer the concerns expressed during the passage of the Bill through this House — in particular by the Hon Members for Douglas East and Douglas West, Mr Robertshaw and Mr Thomas."

During the clauses stage of this bill I had received a small rebuke from Mr Speaker as follows:

"I feel bound to comment on the last contribution that it is the duty of Members of this House to be entirely satisfied that the legislation that leaves it and goes to the Legislative Council is in a manner with which they are content. (Several Members:

Hear, hear.) Please do not be lazy and allow the Legislative Council to rectify any deficiencies in our legislation”.

What I had said, as a member of the Department bringing the Highways (Amendment) Bill, was:

“I appreciate the Department acknowledging the position as stated at the Second Reading. Goldie-Taubman, up there, our Speaker, had 12 years of dispute, a hundred years or so ago, about public rights of way. He was attempting to extinguish rights of way ..... It is a very controversial issue, and, in the light of the discussion, I call on the Legislative Council to review these points very carefully ... [Inaudible] (Mr Robertshaw: Hear, hear.) going to have lots of energy to do that, having not met since 30th June. (Laughter) (Mr Robertshaw: Hear, hear.) So I hope the Council will take it on themselves to fully investigate these when it gets to that stage.”

For instance the Town & Country Planning (Amendment) Bill 2016 was stopped at Keys 2<sup>nd</sup> Reading in February by speeches at second reading and a substantial number of good amendments tabled for Clauses stage which were never discussed.

**And the Legislative Council has not stepped up to the mark on several occasions, for instance allowing legislation to go through quickly even though Keys members had pointed to some possible areas which needed investigation.**

For instance the Sewerage Bill 2014 went through Legislative Council in December 2014 without any of the points I raised at Keys 3<sup>rd</sup> reading being considered, at least in the public part of the deliberations. My speech was:

“I hope very much that the Hon. Members in another place can take into account some of the points that I am going to raise now (A Member: Hear, hear.) because I think they are going to need careful deliberation so we do not end up with another accident, as although intended well, we might end up with a situation that we have to undo again next year. The first point is that I think we have now got three reviews going on. It is quite clear that the Chair of the Manx Utilities Authority has announced a review of water and sewerage charging and that is a really good thing, but that is different from the Treasury Minister’s announced review of domestic rates revaluation. If we go back to what the Chief Minister actually said in February 2014, when he was persuading us to vote for the sewerage charge, he actually said: ‘The best I can say to you, Hon. Members, is please believe me when I say I am absolutely committed to getting some form of mitigation in before we develop the next increase.’ (Mr Quirk: Hear, hear.) So mitigation to me sounds like we are talking about rebate scheme and single occupancy discounts, which I do not think is covered in the legislation or in the scope of either of the reviews, unless the Chair can actually advise me otherwise. Very specifically, schedule 1A, section 2 of the new Bill as it goes to the other place, says: ‘The Sewerage Authority may allow discounts or rebates in consideration [2] of prompt payment ...’ There is not a mention of single occupancy. There is not a mention of means testing and so therefore although there is in the Rates Act, this is now separated from the Rates Act. So I think we need to have the other place investigate to see whether we could actually have the mitigation that the Chief Minister announced we were going to have back in February 2014. Mr Watterson with his usual wonderful achievements in such a short time put together a charging basis for the water and sewerage rates, but he did that



in the clauses stage without public consultation and without the chance to think about it for more than a few days, and we need a profoundly more in-depth detailed inclusive look at that sort of thing. There are other issues that the other place needs to consider. Under the rates system you actually have a tribunal under section 24 of the Rating and Valuation Act, which people might think that they have got under this system, but as far as I can tell we do not have that. We merely have an appeal to the High Court. So whereas I do not believe the Rent and Rating Appeals Act 1986 will apply and so if people think that the various charges that are introduced are unfair, they cannot do a lot about them other than go to the High Court, which is not a great offer to people. Moreover, the only thing that you could appeal is actually the decision to exempt for a year because of the absence of a direct or indirect connection to the sewer and that is not the sort of thing you are going to need to appeal – you either have a connection to the sewer or you do not. You cannot appeal the decision not to charge on an alternative basis, clause 10(d) in the proposed Bill, and that might be quite a big thing, because you are either a business or you are not a business. If you are a business you get a 50% discount and if you are not a business you do not, and that is the sort of thing that people will want to appeal, but that is not covered in this legislation, I do not believe, as it leaves this place. Moreover, as I have said, there is no chance to go and appeal the rateable value, but it is not even really a rateable value, it is now a water and sewerage value. It is separated from the rates system. Moreover, you have the right to know what your neighbours and what other people have as their rateable value under the Rates Act, but you do not have it, as far as I can see, under the new sewerage and water charging system. Moreover, another point is that we had a couple of legal issues in the Work Permit area, which had to be settled by Department of Education v. Hedges 2007, and Department of Economic Development v. Simmonds 2011, which basically said that the Work Permit Appeal Tribunal could not lawfully make the decision for another body, and I am worried that the 10B(2) as currently constituted actually constitutes a request to do exactly that. I am not sure that the High Court can actually make the decision as it seems to read me. I think all they can do is refer it back to the original deciding body. So to me it would be much better back in February 2014 to set-up to task the Economic Review Committee to consider this properly. February 2016 is a perfectly realistic target to have a fair charging system, a fair rating system and a fair taxation system and unfortunately I think this might still fall down because there are still some important issues that the other place has to look at.”

**But rather than comparing House of Keys and Legislative Council performance in respect of legislative scrutiny – an impossible task given all the variables – I think we actually need to enhance Tynwald’s legislative process.**

**Legislative Council is currently set up with three distinct advantages over Keys when it scrutinises legislation as follows:**

- **The Attorney-General is present to provide legal opinion etc.;**
- **The proceedings take place in ‘committee’ so that members can speak more than once; and**
- **Government officers are easily approached and involved in the discussions.**

**These advantages could be replicated in a legislative committee at the clauses stage.**

**I conclude that the Legislative Council could, and should, be transformed into one or more legislative committees.**

In addition four specific issues for Lord Lisvane to consider in respect of the legislative process in Tynwald are:

- Not every member of the legislative committees needs to be elected, and additional skills, perspectives and representation are likely to enrich legislative review;
- As Lord Lisvane put it in his Lords Maiden Speech, “draft Bills, considered by Joint Committees of both Houses, are one option. Ministers have less political capital invested in a draft Bill and evidence-based change is more easily accepted”;
- Particularly for politically controversial legislation, a pre-legislative process could be introduced so that Government Departments learn more about the political perspectives before a bill is drafted and introduced. I think the recently-reported Animal Welfare Select Committee was an example of this type of investigation. If the different stakeholders had been brought together earlier in the Landlord and Tenant (Private Housing) Bill process, drafting and parliamentary time would have been saved, and the Bill might well have been enacted; and
- Lord Lisvane’s own suggestion that **“the Victorian practice of Motions for leave to bring in Bills so that the necessity for legislating, and the broad intention, could be considered before getting involved in the scrutiny of a fully worked-out Bill”** might be a very useful innovation here. It would seem helpful for the principles of potentially politically contested bills to be debated before full drafting. Two contemporary examples of where this process might be helpful would be a) consolidating housing and tenancy legislation and b) taking forward my leave to introduce a private member’s bill for regulating corporatized public sector entities.

## **TYNWALD TRICAMERALISM: WHERE ARE WE AND WHAT IS TO BE DONE?**

Legislative Council is much more modern than either Keys or Tynwald.

Moreover when the Council of Ministers eventually assumed the executive role once played by the Lieutenant-Governor and his advisors, the Legislative Council, the role of the Legislative Council was reworked and represented as either a “revising chamber” or as a “safeguard”.

Alongside this, Legislative Council members still serve in government as political members in all departments including Treasury - sometimes even as Ministers - and serve in public bodies and Tynwald committees.

The role and mechanisms of the indirectly-elected Legislative Council, and its power relative to that of the elected House of Keys, has been questioned for decades, and the notion of the Legislative Council as a “mediaeval form of election for unelectable MHKs” is now widespread.

Direct elections to a different type of Legislative Council, or direct elections to Tynwald, have been proposed, through the years. **But I am sceptical whether elections for Legislative Council members can ever be made to work.**



The Joint Committee on the Constitutional Principles raised by the Electoral Reform Bill recommendation is persuasive in this. It found that the constitutional issues that had been raised were imagined, and it recommended that "the Electoral Reform Bill 2011 should be returned to the Legislative Council for the continuation of the legislative process." The issues were political ones.

As Madam President Clare Christian MLC said on 12th July 2011 in one of her last contributions to debate before being elected President of Tynwald:

"Changing the system of voting will probably come about in Tynwald because if Members have an equal franchise, there may well be a move to say, "We want an equal way of voting in Tynwald... So, if the public truly want an elected Council, they have, in my view, to be prepared that the whole framework within Tynwald Court will eventually change... [Iceland] are a unicameral chamber now and I believe we, too, will become unicameral."

**Surely four decades of trying every permutation demonstrate that this is difficult, if not impossible?**

**I suggest now the only alternative is a directly-elected unicameral Tynwald, with legislative committees acting in place of the Legislative Council. Whether these legislative committees are a reform of the Legislative Council is semantic.**

So I note that the 2003 Select Committee of the House of Keys on the Constitution (Legislative Council) Bill, having observed that there is a trend in democracies throughout the world to remove second chambers, concluded positively that "having considered the option of establishing a unicameral Tynwald, your Committee has concluded that this model is a serious option that has much to commend it and could be made to work in the Manx context." More completely:

"For one reason or another approximately 50% of the world's legislatures are now unicameral. If the Council were abolished, then there would be no need for the Keys and Tynwald Court to exist as separate bodies. The House of Keys could therefore cease to exist and Tynwald Court would become the unicameral chamber for the Isle of Man. It could consist of either -

- (i) 24 directly elected members, or
- (ii) 32/ 33 directly elected members.

Tynwald Court would undertake all the functions currently undertaken by the Keys and Tynwald Court separately. It would therefore become responsible for legislation, policy, finance, secondary legislation and scrutiny of Executive Government.

In such circumstances it would be necessary to devise a new method of scrutiny and revision of primary legislation at some stage. This may be done in several ways -

- (a) By the use of pre legislative committees, which could examine Bills prior to their formal introduction to Tynwald Court. Such pre-legislative committees could also take evidence from members of the public and other interested parties. This is essentially what happens in the Scottish Parliament. In Scotland, when a Bill is proposed it is referred to the relevant subject committee for consideration. This committee may then take evidence from interested parties and produces a report, which is then considered by the Scottish Parliament.

(b) By the legislature instructing the Government to undertake pre legislative consultation.

(c) By the sending of each Bill to a specific revising committee after it had passed its Second Reading. Should such a model be adopted in the Isle of Man, if it were thought that the historic titles "House of Keys" and "Legislative Council" were important to retain, these could be used as names for such legislative scrutiny and revising committees of Tynwald."

But this 2003 Keys Committee raised the Legislative Council member functional questions which remain and include:

"The proposed Bill is seen to create some new difficulties ..... Your Committee feels that the failure of the Bill to explicitly state what role Council members would have in Tynwald Court raises a number of concerns, for example:

- Should Council members have the right to vote and speak?
- Should Council members have the right to ask Questions?
- Should Council members have the right to move motions and table amendments?"

**These questions now need to be addressed. If there are to be nominated or indirectly-elected Tynwald members in the future, their roles should be constrained. Advice about these constraints is needed, although the debates around my motions in 2016 ("Voting for the Chief Minister" and "Combined Vote") have teased out issues and perspectives, contemporary commentary which should be taken into account in this Independent Inquiry.**

**I conclude that only directly-elected Tynwald members should vote for the Chief Minister and move or vote on financial matters. Indirectly-elected or nominated members could usefully contribute to policy debates, review policy and legislation, etc..**

By Tynwald resolution in May 2016 Standing Orders are to be amended to modify **the election procedure for Chief Minister such that "the Keys votes shall be cast first and the results read out before the Council votes are cast and their results read out"** and "the results to be read out at each stage shall include not only the number of votes recorded for each candidate but also for which candidate each Member has voted and whether any Member has cast an invalid vote."

**In essence the elected-Keys vote should prevail over the Legislative Council vote when the Chief Minister is elected, just as it should.** As Sir Charles Kerruish said, speaking when David Cretney MLC and Peter Karran MHK were sworn in back in 1985:

"Whatever the reason, it is true that bicameral legislature guidelines have been eroded in this Island, that effective Government no longer rests in the hands of those entrusted with that responsibility by the electorate. That is why, as I welcome our new colleagues here today and wish them every success in their new roles and spheres of responsibility, I have mentioned the stance of one of the truly great figures of Manx History, Speaker Moore. That is why I emphasise the need for all assembled here, both long-standing and more recent members, to at all times zealously guard our responsibility to the electorate in the interests of this House as the only repository of public confidence."

Michael Coleman MLC explained the opposing Legislative Council view as:

“There is a wealth of experience up here and there is a wealth of knowledge of working with the potential candidates, knowing how they operate; and also knowledge of whether they think they could be a good Chief Minister – as opposed to possibly a large number of people coming into House of Keys for the first time. And they will be touted for and offered various inducements of whatever sort, to vote for a particular Chief Minister.”

The Council of Ministers (Amendment) Private Member’s Bill - taken through Keys unanimously at clauses stage and without a division in the third reading by Alfred Cannan MHK, but rejected at 1<sup>st</sup> Reading in Legislative Council – can be brought back after July 2017, and it should be. This would change the law so that only Keys members take part in the election and nomination of the Chief Minister in 2021 and thereafter.

**But Tynwald “voting together every time we sit together about everything we decide” was rejected in Tynwald , although nothing in Law prevents this, and “anyone familiar with representative democracy and responsible government from anywhere else will find it odd that the indirectly-elected Tynwald members even have a vote on finance and policy in our Court, and they will find it even odder that the indirectly-elected Tynwald members have a vote with three times the weight of the elected Tynwald members when the branches vote separately”, as I put it in my speech in April 2016.**

At least for the time being Tynwald members, including Keys members, prefer to have two classes of Tynwald vote.

**The powerful argument against combined voting at the moment is that voting as one body gives too much weight to the indirectly-elected members of Tynwald as long as these members continue to have a vote.**

In June 2016 Tynwald I intend to move that only directly elected members of Tynwald (other than the President) should move and vote on legislation and resolutions relating to finance.

Practical seating arrangement questions need to be revisited too, in Tynwald Court and at Tynwald Hill.

**Why do Legislative Council members rather than the Council of Ministers members sit on the top of the hill, and why is there a top-shelf in Tynwald Court for the indirectly-elected members?**

**Another issue is that the respective roles of Tynwald President and Speaker need to be revisited. Could these roles not be merged?**

## **TYNWALD POLICY REVIEW COMMITTEES: NEXT STEPS**

An ad hoc Tynwald Select Committee reviewed the committee system last year and reported in December 2015.

Usefully the committee identified three forms or models of committee work which “dictate how people view the effectiveness of the committee system”. These were

- “An “opposition” approach would mean presenting an alternative view to that of the executive as a matter of course. Such an approach is seldom adopted by committees in Tynwald where political parties are scarce and there is a strong tradition of consensus politics.



- By “scrutiny” we mean asking Ministers and officers to account ex post facto for what they have done. This might be termed a classic Public Accounts Committee approach to scrutiny. Recent examples in Tynwald would include the report by the Public Accounts Committee into the expenditure on consultancy for a review of social security; or the work of the Select Committee on the Kirk Michael School Land Exchange Agreement.
- By “participation in policy development” we mean looking at a broad issue and contributing ideas ex ante facto as to what the executive might do next. Examples would include the report by the Economic Policy Review Committee on open skies, or the Select Committee on Towed Caravans. Committee work of this kind can include giving a platform to statutory bodies, prominent industry figures, experts etc.”

Tynwald also received comment that the committee policy development and public engagement roles could increase which I summarised in the December 2015 Tynwald debate as follows:

“But I think the consensus in our Committee was that we could encourage the committees to go in the opposite direction ... to become more engaged in policy development ..... But the description of the Policy Review Committees is quite clear that they could call in Statutory Board members and they could call in people from outside Government and they could be taking the view that their job is to actually scope what we described in our Report, I think, as something like the big-picture items rather than the detail, and they could actually be doing more to help to work with Government, alongside Government, to make sure that policy was being developed in the right way.”

**I would be surprised if this Inquiry did not encourage Tynwald committees to develop their scrutiny and policy development roles, especially as scrutiny and participation in policy development go hand-in-hand, learning from the past to inform the future.**

**Another recommendation should be to enhance the transparency and public engagement of the policy review committees,** especially as Tynwald already approved such recommendations, for instance to publish committee work plans and make the evidence committees receive available as early as possible.

Another aspect of committee work that needs to be reviewed is whether the committees actually follow up what they need to follow up, and if not, why not. **Is it inadequacy of resource?**

In this respect I note that the Social Affairs Committee hardly followed up the Conduct of David Anderson MLC Standards Committee finding in paragraph 58 that:

“This case shows a serious catalogue of errors and failed communication on a basic level. This is outside this Committee’s remit, so we are unable to pursue this. However, we draw to the attention of the Social Affairs Committee the evidence which we have gathered and hope that it will investigate some of the pressing concerns which this evidence creates.”

This, and similar, encourages my belief that the future of Tynwald committees has to be seen in a wider context.



One such context is the current common perception that Manx politics takes place in Government. Nearly all Tynwald members serve in departments.

**But committee work in a Tynwald committee can be important for public policy development, and many departmental member roles should be replaced with structures reformed accordingly.**

In this matter, it should be noted that the Government Departments Act 1987 only requires a Minister and one other Tynwald member to serve in each Department, not the 4 or 5 departmental members who currently serve in the bigger departments. In my December 2015 speech I stated, citing paragraphs 16 and 17 of the Committee Report:

“At the minute we have got a Government Departments Act, and a Council of Ministers Act that talks about Departmental Members and does not really talk about the new Council of Ministers Sub-Committees which came in with the Agenda for Change; and the role of Departmental Members has profoundly changed, even in the time that I have been in this place, and it has probably been changing for years. So we need to amend the Government Departments Act. So what we said, in paragraphs 16 and 17, was: “It would in principle be possible to assist the pool available for scrutiny – and policy development – by restricting the number of Departments or Statutory Boards that Members could become involved in. Such a step would not be taken lightly, however, and how executive government is organised is beyond the scope of our inquiry in any case.”

Another such context regards the appointment of a Tynwald Auditor General and a Tynwald Commissioner for Administration which **“would enhance the work of Tynwald committees in different ways”**, according to the Committee Select Committee. **“We are disappointed that although legislation to establish these posts has been enacted, it has not yet been implemented.”**

The 2011 Tynwald Commissioner for Administration provides that the general functions of the Commissioner are to conduct investigations into the actions and service failures of listed authorities etc.. Two recent Select Committees have also recommended establishing this public ombudsman.

The general functions of the Auditor include: to conduct audits and assurance reviews under the Audit Act 2006; to carry out value for money inspections; to undertake regular consultation with the Public Accounts Committee and to provide assistance with the Committee’s investigations; to identify matters that may be appropriate for investigation by the Accounts Committee; and to examine matters referred to the Auditor by members of the public, Tynwald, or members of Tynwald.

A third context is the plethora of QUANGOs, both statutory and non-statutory public committees, which has grown up in recent decades.

**Tynwald should receive a report reviewing the “the existence, purpose, nature, membership, functioning and cost of all committees and quasi-autonomous entities in which any Department, Board or Office of the Isle of Man Government has a role considering in particular the relationship of each committee or entity with (a) Tynwald and its policy review committees and (b) the complaints process” this July, with recommendations and an action plan.** This was a Tynwald resolution of January 2016.

It is important how these extra-Tynwald bodies relate and report to Tynwald, as well as to Government. Subsidiary questions which should be addressed include things like whether the members need to be independent, how they are paid, etc.

In moving in January 2016 I summarised - including my Guy Fawkes remarks – as follows:

“I think it is very important to link the output from this work to the parliamentary committees, because one thing that we established when we looked at parliamentary committees was that at the minute there is a routine built up whereby once a year Chief Executives and Ministers come into those committees, but we were trying to encourage the parliamentary committees to have a wider source of information for them to challenge and actually try to develop policy positively; and I think these committees outside Government, these Government committees, these quasi-autonomous bodies could be a valuable source of input. For instance, I could not help but note that the Health Services Consultative Committee itself, in its report which was laid before Tynwald, actually said it no longer had any idea exactly what its purpose was really, and how it related to the other committees inside the health sector. So that in itself was a ... What is the word? They were imploring us to actually help them understand their role and, conceivably, we no longer need that committee – that is one possibility. I also think that the work should actually relate to the complaints process and the ombudsman project that is ongoing, because in the compliance world and the world where you look at risk registers and complaints registers, it is often said that a complaint is a good source of initiative for public policy development. I would like to think that somehow we can use these committees that do have that function of hearing complaints, or investigating the public policy elements of complaints, to actually feed back into our policy development processes. I would also like to think that, in actual fact, we are not really looking at a bonfire of committees; what we are actually looking at is more like the Energy for Waste incinerator-type arrangement. But what we are actually doing is we are looking at all the committees that came together through the incinerator and we are working out how we can recycle some of them to actually make them better for purpose, and then we are looking at the calorific value of each of these committees, (Laughter) because they might lower the cost and we choose which ones we burn on that basis of science and the like.”

**And finally the excellent Tynwald Office research, parliamentary and committee research function needs to be acknowledged, but the availability and capacity of this resource needs to be monitored and enhanced when necessary as Tynwald evolves.**

## **OPEN AND DIGITAL DEMOCRACY, AND MEMBERS’ STANDARDS ARRANGEMENTS**

Westminster’s Digital Democracy Commission outlined five key targets and recommendations which are a route map for the House of Commons to meet these targets. Specifically:

1. By 2020, the House of Commons should ensure that everyone can understand what it does.
2. By 2020, Parliament should be fully interactive and digital.

3. The 2015 newly elected House of Commons should create immediately a new forum for public participation in the debating function of the House of Commons.
4. By 2020, secure online voting should be an option for all voters.
5. By 2016, all published information and broadcast footage produced by Parliament should be freely available online in formats suitable for re-use. Hansard should be available as open data by the end of 2015.

**Any investigation of how Tynwald has opened itself up, and digitalised, would find that good progress is being made, with differences which reflect its size and the nature of the Manx political process, for instance with the e-petition process which allows for a member to pick up a petition in Tynwald itself rather than in a parallel process.**

Streaming and listen again audio have been introduced, as have a twitter feed, e-petitions, a voting database and more information generally available on the website, an active outreach programme. The "Transparency and Engagement" chapter in the December 2015 Committee report provides a summary of these initiatives and issues which have been addressed.

Online and personal electoral registration, and members' standards issues (e.g. a code of conduct, a scale of penalties, recall elections etc.) are a matter for government as well as Tynwald, but some development seems likely from 2017, including revised legislation, and is needed.

I intend to move in June 2016 Tynwald that:

"Tynwald Standards and Members' Interests Committee should reconsider the application of the principles governing members' conduct to members' working relationships with public servants in Government, local authorities and other public bodies, and evaluate the introduction of a) a code of conduct b) a scale of penalties and c) a recall election procedure; and report by January 2017 with recommendations."

Members' standards process issues include the question of why Tynwald does not have external members on its members' standards committee, although the largest local authority in the Isle of Man, Douglas Borough Council, has done for four years and it seems to have dealt successfully with issues which have arisen. Another question is about whether our Island can run such a process without the small local equivalent of a Parliamentary Commissioner for Standards. Investigation, and the associated processes, is important.

## **A NEW TYPE OF TYNWALD MEMBER: A PROPOSAL**

A nomination process for indirectly-elected Tynwald members has been proposed.

If such members are needed, I think this process would be helpful to the electoral college of the House of Keys.

The basis of nomination to Legislative Council could be both geographical and functional.

The geographical basis might be three members representing i) Douglas ii) the North Side (Ayre, Glenfaba, Michael) iii) the South Side (Garff, Middle, Rushen).

The functional basis could allow representation of i) business ii) worker iii) third sector iv) consumer v) agricultural/rural.

It would be politically impossible to increase the number of Legislative Council members, quite rightly. Many members of these extra-Tynwald public bodies would remain not members of Tynwald.

The remuneration of Legislative Council members should be reduced substantially if their role is reduced. This would make more comparable the remuneration received by members of statutory boards and committees and the like and members of the Legislative Council who serve on the same or similar bodies.



Miss Michelle Norman  
Secretary to Lord Lisvane's Review  
Third Floor  
St Mary's Court  
Hill Street  
Douglas  
IM1 1EU

Dear Michelle

1. Thank you for the opportunity to contribute to Lord Lisvane's review.
2. I will not rehearse the history of the evolution of the branches of Tynwald, or the constitutional changes that have moved the Island forward since 1919. These are well documented by historians and students of politics over the years, including notable works the Kilbrandon Report and the tomes by David Kermode.
3. It is fair to say that the way Government, and Tynwald, operates has changed significantly over the years following gradual reductions in the powers of the Lt. Governor over the budget (1976), Council of Minister (1986) and in Tynwald (1990). This period has seen far greater domestic control of affairs which have been on a consistent trajectory since 1866 – all for the better. The removal of the Lt. Governor from the Government of the Island has represented maturity in Manx democracy, and an improvement in the self-determination of the Manx people.
4. It is worthwhile questioning whether in 2016 the Lt. Governor is a full time job. A Lt. Governor may be argued to be necessary to fulfil the link between the Island and the Crown. The preference of having a Lt. Governor stems from an important distinction that our relationship should be directly with the Crown, and not with the Parliament in Westminster or the British Government which would be unacceptable.
5. I would offer the suggestion that there is no reason why there could not be a "Governor for the Crown Dependencies", effectively a 'job share' with Jersey and Guernsey. This has the potential to offer financial savings, and provide a more effective use of time now that there are very few executive responsibilities. Noting that the role would cover more than one country, it could be restyled from Lt. Governor to Governor.
6. The removal of the Lt. Governor from Tynwald has been equally necessary in the promotion of democracy and control of our own affairs. However, the roots of Legislative Council are in that essence of the Crown's appointees, senior office holders who were in effect the executive of the Island. The Keys represented the check on the Crown executive until the late 1970s, in the same way that Parliament provided a check on Crown prerogative before the Glorious Revolution of 1688. An important safety valve in the Manx system has been the joint meeting between the branches to decide on certain matters.
7. Whilst considering the role of Crown appointments, it is difficult to justify the continued participation of the Lord Bishop in our parliamentary affairs.
8. There is a place for faith in our parliament and government, we must accept and celebrate the fact that we have a predominantly Christian community, we should equally recognise that there are those of other faiths and none. This doesn't represent an argument to give wider religious representation in Tynwald. I would be happy if the Lord Bishop continued to

000311

lead the Court in prayer for as long as that is the Court's desire, but he should not be able to vote.

9. History being a string made of many strands, we can determine our future in a number of ways, depending on which thread we tie it to.
10. The main bifurcation of thought is whether the Legislative Council is essentially a revising Chamber. It certainly has been in recent years, but as has been seen it was once the executive.
11. One option is that Legislative Council could revert to an executive role. Tynwald could essentially be unicameral, 32 members elected from the populous, and then dividing into Government, i.e. the Council of Ministers, constituting Legislative Council with the Keys acting as check, balance and revision. At its simplest, it could just be Members of Tynwald and a different seating arrangement, as is the case in the States of Guernsey.
12. This would be a departure from recent history, as Government has evolved to be fused with the lower house. It would also provide a physical separation of 'legislature' and 'executive', giving very much a feeling of 'us and them' which would not be helpful in building relationships and working together with other elected members.
13. This brings us back to a parliamentary democracy where the executive is part of the legislature.
14. If Legislative Council has a single failing in the views of the Manx populous, it is that it has no mandate from the people. In modern parliamentary democracy, the Isle of Man is one of a dwindling number who have an indirectly elected second chamber. However, one of the significant concerns that MHKs have consistently had of direct elections to Legislative Council (whether by constituencies or an all-island election) is that of a significantly greater mandate falling to the hands of fewer people. This has consistently been the square that has needed circling to accommodate the public desire for election, with the Keys' concern of losing its pre-eminence as a chamber, and ensuring power does not become too concentrated.
15. I have been giving this matter further thought recently ahead of the Inquiry. I would like to propose a dual list system for election to Legislative Council.
16. In this system, the 24 Keys would be elected by popular mandate from constituencies around the Island. A second list can be comprised of all candidates standing in all constituencies. Having voted for their Keys candidates, people can vote for their MLCs.
17. There are a number of ways this can be achieved from Single Transferrable Vote to First Past The Post. It could be designed to ensure equality of gender or reserved seats for different groups. However, anyone elected to a seat in the House of Keys would not be eligible to take a seat in Legislative Council.
18. This has the advantages of the MLC mandate being secondary (even through the number of votes may be greater), and may also provide a guide to voting for Chief Minister, as the public will have been able to express its preference for national politicians as well as for local candidates.
19. The system has the added advantages of people who have a national profile and good policies to be elected into Tynwald, albeit with a weaker mandate than MHKs. An interesting dilemma is whether someone with a large national mandate should be eligible to be Chief Minister. I would have to say though that if the notion that the MLCs mandate is secondary, a person with a large national mandate but no seat in the Keys would need to be

ineligible. This way, Chief Ministers need to pass the constituency test first with the national test being both a test of public mood to guide Tynwald, as well as providing members to Tynwald for scrutiny.

20. I would see no problem with MLCs serving in Government Departments under this system (but not Ministers) as they would have an adequate mandate to do so.
21. Finally, I would assert that there is a need for a strong Code of Conduct to hold members to account for their conduct. Whilst the public will ultimately be the judge of their members, there needs to be a clear set of standards in place for all Tynwald Members, and a clear process based on Commonwealth benchmarks to ensure a rigorous but fair approach to holding members to account.

Yours sincerely

Hon. J.P. Watterson BA FCA MHK

Member of the House of Keys for Rushen

## **Suggestions for Tynwald reforms**

(published in the Isle of Man Examiner 10 May 2016)

Further to your article about Tynwald reform, there doesn't appear to be anything about it on the government website, no address to send in written submissions or anything.

Consequently, I'm sending my own suggestions to yourselves.

I would like to see the Legislative Council voted in nationally as a body. The members of the council would take on the ministerial roles leaving MHKs free of collective responsibility and therefore able to vote according to the wishes of their constituents and their own consciences. Prospective Chief Ministers could campaign with a set of policies and a team of colleagues.

This would also allow people to have a say in national policy and we might even get a government that can lead the island rather than just react to UK policy or the vociferous minorities on the island.

In regards to local government, as we don't seem to be able to get enough candidates for elections, why not halve the number of elected members on each council and fill the remaining seats with local residents selected for duty in the same way as for jury service. This would help eliminate the perception of self-appointed councillors forming 'cliques' acting in their own personal interests rather than for the public as a whole. It also would give more people an active role in politics which may increase interest in the decision making process and lead towards a truly democratic society.

Bob Whiteman



# Submission to the Lord Lisvane Review of the Functioning of Tynwald

The Isle of Man should rightly be proud of its ancient parliament, its history and its limited autonomy. However as we are now well into the 21<sup>st</sup> Century it is apparent that the current structure is no longer functioning in an effective manner.

There are two main issues with the current structure. More precisely there are many issues with the current structure, but I would like to focus my submission to the following two areas:

- Quantity (too high)
- Quality (too low)

## Quantity

The House of Keys consists of 24 MHKs. The Legislative Court consists of, eight elected members, the president, bishop and attorney general (or acting attorney general). This gives a total of 35 representatives.

There are way too many representatives both elected and unelected. The Island has a relatively low population of approximately 80,000. This is the equivalent to a small town in the mainland United Kingdom. It is very difficult to justify this number of officials.

Some ball park figures to compare the number of MPs/MHKs in the UK and the Isle of Man highlights a very large difference in the number of constituents per elected MP (UK)/MHK (IOM).

The 2011 Isle of Man census indicated a population of just under 85,000. With 24 MHK's this equates to approximately 1 MHK per 3500 people

The 2011 UK census gives a population figure of 63.2 million. With 650 MP's this equates to approximately 1 MP per 97,000.

A direct comparison may not be completely appropriate as we could not expect (although I believe it is just possible) for one elected official to cover the needs, expectations and running of an entire, albeit small jurisdiction. However, the figures still illustrate the significant difference using a measurement of elected parliamentary members per head population.

This ratio as it applies to MHKs cannot be justified – we are all in the world where we have to do more with less. The Isle of Man has to focus its expenditure on front line services.

The Legislative Court should be abolished. A chamber appointed by MHKs discourages genuine ability from those outside of the current political circles and regularly gives the perception of self-interest only from its existing members.

The Legislative court should be replaced by giving back the Governor genuine power to review and amend legislation. The Governor in question should be an experienced diplomat rather than ex- military who has operated at a high level (for example an ambassador) in past roles.

The number of MHK's must be cut significantly. The much more appropriate number would be 11. The odd number allowing for votes to be carried one way or another.

Not only will the cut in the number of MLC and MHK's save money, it will increase accountability as there will be less places to hide.

The number committees must also be scaled back significantly to reflect the revised smaller number of MHK's. MHK's need to spend more time working and less in committee.

## Quality

Quality of the Isle of Man representatives – both elected and unelected is a real concern.

There are indeed MHK's and MLC's who have an intelligence and skill level to be able to grasp complex concepts. However, there are a troublingly large number of MHK's in particular who give the impression of having an intellect that is unable to grasp even simple concepts. Additionally, basic communication, literacy and numeracy skills would appear to be somewhat lacking.

At the same time these officials entrusted to look after vital areas such as health and education – this is extremely worrying.

The ability to have a certain level of intellect in order to grasp a concept at least at a high level has to be an essential skill in good government. The Isle of Man is a small jurisdiction, but still has complex needs and problems to be overcome.

A certain level of intelligence necessary, does not mean having a PhD in Rocket Science or endless GCSEs or other academic qualifications. It means being smart enough to learn, question and comprehend complex issues and potential solutions at least at a high level.

We have to compare this to the real world. A person ultimately in charge of the running of a department with a budget running into the tens if not hundreds of millions has to be proven to have at least some ability.

Some professions may demand qualifications. Some may demand experience. Some – such as an armed services officer require that a selection process is undertaken to determine whether or not a candidate officer meets a basic ability.

One test could be *would I employ any of our MHK's if it was my company*. If you wouldn't why would you want them to represent you and have any part in running the island

To improve the quality, an aptitude test must be developed whereby a level of basic skill e.g. communication, literacy and numeracy and intellect can be ascertained. Those who fail to meet this standard cannot stand for election. The issues facing the Isle of Man are too important not to think about this as a solution to be left to people with a deficient aptitude.

In the reformed slimmed parliament the MHKs have to have the ability to do a really tough job and is likely to involve several skills. They will have to do a lot more with less (but preferably not less intelligence – just be clear).

Giving the Lieutenant Governor the power to review legislation as suggested in the quantity section will allow for an independent view of that legislation. An independent view by someone with no self-interest can only improve that legislation.

## Conclusion

I have respect for anyone who is prepared to stand for election to a public office. That said, we cannot continue the way we are.

I believe that resolving the quality and quantify issues can only be of benefit to this island.

Without serious reform in reducing quantity and improving quality, the Isle of Man legislature will continue to preside over the downfall of this great, (semi) autonomous jurisdiction.

The only option if the quality and quantity problems are not resolved is rule from Westminster. I can see no other way forward as things stand. If rule from Westminster comes to fruition, it will be a sad day for the Island, but one that is entirely understandable and will have been bought on by ourselves.

(Name and address of author supplied to Lord Lisvane)