



Isle of Man
Government

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Council of Ministers

Report on Collective Responsibility

Tynwald 2014

COLLECTIVE RESPONSIBILITY

1. Introduction

1.1. In the March sitting of Tynwald, the Hon. Member for Douglas South (Mrs Beecroft) moved the following motion:

That Tynwald is of the opinion that the Council of Ministers should investigate alternative systems for ensuring that collective responsibility is enforced in a more open, transparent and democratic way; and report to Tynwald by June 2014.

1.2. The Council of Ministers agreed to review the current system. In doing so, it represents an opportunity to disaggregate the subject from a number of other closely related subjects and educate the reader on the history, evolution, and practice of collective responsibility in the Isle of Man compared to elsewhere.

1.3. In order to do this, we need to look at:

- **The doctrine**
 - **What is Collective responsibility?**
 - **Why does it exist?**
- **The practice & who it applies to**
 - **Different models**
 - **The Manx model**
 - **The UK**
 - **Scotland**
 - **Northern Ireland**
 - **Other comparative Commonwealth jurisdictions**
 - **The absence of party politics**
 - **“Block vote”**
 - **What decisions does it apply to?**
 - **What are the exceptions to the rule?**
- **Enforcement**
 - **On the Isle of Man**
 - **Elsewhere**
- **Could it be more open and transparent?**
- **Conclusions**
- **Recommendations**

2. What is ministerial collective responsibility?

2.1. Ministerial collective responsibility is usually a non-statutory constitutional convention in governments using the Westminster System that members of the Cabinet / Council of Ministers must publicly support all governmental decisions made in Council of Ministers, even if they do not privately agree with them. This support includes voting for government motions and legislation in the legislature.

- 2.2. The convention is similar to, but not the same as, individual ministerial responsibility, which states that ministers are responsible and therefore culpable for the running of their departments, which falls outside of the scope of the review.
- 2.3. A distinction must also be made between Ministerial collective responsibility and the party whip, where different rules and flexibilities apply. There is however the assumption in a party system that the ruling party can rely on the support of all of its members for most votes, but certainly in matters of confidence and those designated as '3 line whips'.
- 2.4. Whilst the method of appointing and firing ministers by the Chief Minister or Parliament is mentioned in some of the jurisdictional comparisons, it is not a fundamental precondition for ministerial collective responsibility.

3. Why does it exist?

- 3.1. In its simplest form, collective responsibility exists to provide certainty and cohesion to Government so that the public can hold that Government to account. Without the discipline imposed by collective responsibility, the centrifugal forces inherent in a Government of individuals – whether members of a political party or not – would significantly undermine the ability of voters to understand what the Government was seeking to achieve and to pass judgement on its performance.
- 3.2. In most Westminster style systems, collective responsibility is related to the fact that, if a vote of no confidence is passed in parliament, the government is responsible collectively, and thus the entire government resigns. The consequence will be that a new government will be formed, or parliament will dissolve and a general election will be called.
- 3.3. The convention can be traced back to the early part of the 18th century and the rise of importance of the Monarch's ministers who began to exercise Royal prerogative powers and represent the Crown in parliament. After many occasions where the monarch used "divide and rule" between his ministers, it was concluded that they should collectively provide the monarch with the same advice as his cabinet (named after the room where Ministers were summoned to meet the monarch, often individually). Collective responsibility was certainly established practise by the mid-18th century.
- 3.4. As with many other jurisdictions, in the Isle of Man, votes of no confidence are in the Council of Ministers collectively¹. There is no mechanism for requiring the Chief Minister, or any other Minister to resign other than by this method. It follows that Council of Ministers stand or fall as a single team.
- 3.5. Rhodes, Wanna and Weller² offer this description of the principle of Cabinet solidarity in Westminster systems of parliamentary democracy: "Cabinet solidarity and collective responsibility are twin dimensions of responsible party government that enjoy constitutionality, albeit informally. They lie at the core of ministerial governance. Cabinet solidarity is purely a political convention designed to maintain or protect the collective good as perceived by a partisan ministry. It rests on the

¹ Council of Ministers Act 1990 s.2(3)(b)

² Rhodes, R.A.W.; Wanna, John; Weller, Patrick (2009). Comparing Westminster. OUP. p. 127. ISBN 978-0-19-956349-4.

notion that the executive ought to appear a collective entity, able to maintain cohesion and display political strength".

3.6. There are four main reasons for advocating collective responsibility:

- 3.6.1. Avoiding presidentialism: We do not have a presidential system of government and the Chief Minister, is formally *primus inter pares* amongst his colleagues. Because our governments share collective responsibility, we do not expect all decisions to be taken by the Chief Minister. Moreover, Westminster style systems lack the formal separation of powers which in most systems of presidential government (including, most notably, the USA) provides an essential safeguard against the concentration of too much power in the hands of one person;
- 3.6.2. Cohesion: Governments which take decisions collectively are more likely to be cohesive than those which do not. This does not mean that such governments will be cohesive, still less that they will be successful, but merely that cohesion is more likely to be achieved if the more senior Ministers have had an opportunity to influence the government's decisions. As noted above, it is this cohesion which helps hold a Government to account;
- 3.6.3. Joined-up policy-making: The major policies that affect the business of only one department are few. Public policy is inter-connected and the actions of one department can have an impact on the responsibilities of others. Often the interactions are not obvious. Also some of the most difficult and intractable social problems straddle the responsibilities of a number of departments. These connections are more likely to be made if decisions are taken collectively: indeed, our system of collective decision-taking is designed, inter alia, to provide a safety mechanism to identify collateral effects of proposals of which the originating department may not have been aware and it frequently does this. In doing so, it both highlights silo thinking and presents an opportunity to overcome it corporately;
- 3.6.4. The need for challenge: No one has consistently good judgment and we are all influenced by our own experience and preferences. We all make mistakes. Decisions taken collectively are more likely to be soundly based than those taken by a single Minister (including by the Chief Minister). This does not mean that all decisions have to be taken collectively or that those that are will invariably be better than those that are not. It does mean, however, that bringing several minds to bear on the more important decisions is likely to produce a better outcome because there will be a degree of challenge within the decision-making process.

4. The Manx Model

- 4.1. The Manx model has evolved considerably since the matter was last formally reviewed by Tynwald through the Select Committee on Ministerial Government in July 1999. In the Isle of Man there are two forms of collective responsibility. The first operates at Council of Ministers level and is broadly similar to most other Westminster based models. The Council of Ministers policy is contained in The Government Code of 2011, and the relevant sections are replicated in Appendix I.

- 4.2. The Code sets out some of the practical implications of the convention as well as setting out 5 exceptions to it, circumstances under which Ministers have freedom to speak publicly against policies and decisions of the Council of Ministers or without reference to Council: Matters of Conscience; A Declared Position; Constituency Matters; Inconsequential Matters and Unresolved Issues.
- 4.3. The second form operates within each of the Departments (but not Boards), along similar lines. The Government Code extends the convention of collective responsibility, and the exceptions therein to Members of Departments, unless they have been positively excluded from the formulation of the policy in question.

5. United Kingdom

- 5.1. In the United Kingdom, collective responsibility extends to all those holding office as Ministers and, since the 1970s, to Parliamentary Private Secretaries (PPS's). This is known as the "payroll vote". Whilst the number of paid Cabinet Ministers, Ministers, Whips is capped at 109 across the House of Commons and Lords³. However, in the British Government, this has been circumvented by appointing unpaid Ministers (including PPS's) who are subject to collective responsibility.
- 5.2. The range of collective responsibility extends further in the UK system as decisions of sub-committees of the Cabinet are also covered. It is the case that even though UK Ministers may not have had a say in a particular policy, they are bound to support and defend it.⁴⁵
- 5.3. Since 2010 the UK has been governed by a Coalition, adding a further dimension to the traditional operation of the convention of collective responsibility. The Coalition Agreement, which underpins the Government's programme and sets its terms of reference, was negotiated during May 2010 in the days after the general election. It started at seven pages long and now covers 31 policy areas from banking to Universities⁶. It is, of course, only a summary and decisions on interpretation are determined by the "The Quad" of the Prime Minister David Cameron, Deputy Prime Minister Nick Clegg, Chancellor George Osborne and Chief Secretary Danny Alexander⁷.
- 5.4. The Quad "decides all major matters of policy" such as the budget priorities. As such it is at the heart of collective responsibility in the UK Government. It is very much a party political body rather than a Government body as civil servants are not always present at its meetings. The Quad's power helps explain why the Coalition may be perceived as a government that is more politically balanced between the Conservative and Liberal Democrats in policy terms despite the Conservative dominance of numbers around the Cabinet table. The Liberal Democrat team controls half of the votes in the Coalition's sovereign chamber of The Quad. The Quad has limited other ministers' freedom to manoeuvre. Decisions taken by the Quad are handed down to other ministers to implement although other ministers are sometimes invited to participate in Quad meetings on a case-by-case basis.

³ Ministerial and other Salaries Act 1975

⁴ Wilson, H (1976) *The governance of Britain*, p.74

⁵ de Smith, S A and Brazier, R (1998) *Constitutional and administrative law*, 8th ed, p.201

⁶ <http://webarchive.nationalarchives.gov.uk/20100919110641/http://programmeforgovernment.hmg.gov.uk/files/2010/05/coalition-programme.pdf>

⁷ D'Ancona, M 'In It Together: The Inside Story of the Coalition' London: Viking 2013 pp. 47-48

- 5.5. Compared to the UK where all members of the Government, no matter how junior are subject to collective responsibility, the Isle of Man represents a 'halfway house'. The split between Council of Ministers (where members have to support all Government policy) and Departmental (where members have to support all Department policy) collective responsibility conventions is a natural consequence of the Isle of Man's consensus government, where most politicians are invited to take on some Government role.
- 5.6. The absence of pervasive party politics precludes further concentration of Council of Ministers' policy making power into fewer hands as achieved by the Quad. This also further complicates the landscape for determining a programme around which Government can coalesce, as there is no "higher authority" to provide interpretation or direction. It necessarily follows that only Council of Ministers can judge what is 'in or out' of the government programme and the scope of ministerial collective responsibility.
- 5.7. There are certain policy areas which are worked up through Council of Ministers Committees, but in all cases the final policy decisions rest with the Council of Ministers as a whole and all Ministers have the opportunity to contribute to policy-making.

6. Scotland

6.1. In Scotland, collective responsibility is set out in section 52 of the Scotland Act 1998, and detailed in the Ministerial Code⁸, and also enforced on junior ministers outside of Cabinet. It states at 2.1 "The Scottish Government operates on the basis of collective responsibility. This means that all decisions reached by the Scottish Ministers, individually or collectively, are binding on all members of the Government. Ministers are required to abide by them and defend them as necessary. The principle of collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed and advice offered within the Government should be maintained."

7. Northern Ireland

7.1. Northern Ireland does not have a formal system of collective responsibility for the Executive. There are 15 members of the Executive out of 108 Assembly members⁹. The Executive is made up of nominees from each of the political parties according to their parliamentary strength. The Executive's powers are set out in the Good Friday Agreement¹⁰. They include:

- The duties of the First Minister and Deputy First Minister will include, inter alia, dealing with and co-ordinating the work of the Executive Committee and the response of the Northern Ireland administration to external relationships.

⁸ <http://www.scotland.gov.uk/Publications/2011/12/01141452/3>

⁹ <http://www.northernireland.gov.uk/index/your-executive.htm>

¹⁰ Paras 14-25 of Strand One

http://news.bbc.co.uk/nol/shared/bsp/hi/pdfs/07_12_04_ni_agreement_02.pdf

- The Executive Committee will provide a forum for the discussion of, and agreement on, issues which cut across the responsibilities of two or more Ministers, for prioritising executive and legislative proposals and for recommending a common position where necessary (e.g. in dealing with external relationships).
 - The Executive Committee will seek to agree each year, and review as necessary, a programme incorporating an agreed budget linked to policies and programmes, subject to approval by the Assembly, after scrutiny in Assembly Committees, on a cross-community basis.
 - A party may decline the opportunity to nominate a person to serve as a Minister or may subsequently change its nominee.
 - All the Northern Ireland Departments will be headed by a Minister.
 - Ministers will have full executive authority in their respective areas of responsibility, within any broad programme agreed by the Executive Committee and endorsed by the Assembly as a whole.
- 7.2. From the above, it can be seen that the Executive is a closed doors negotiating space for trying to resolve issues between party representatives based on parliamentary strength. There is no collective responsibility. There are however, other complex constitutional safeguards where any one party disagrees with the majority¹¹. It could be said that Northern Ireland takes consensus to the extreme, as 60% of the assembly vote is required in certain instances, including at least 40% of both Unionist and Nationalist members. A corollary is that there is no formal system of opposition in the Northern Ireland Assembly.
- 7.3. It appears from the above that the Northern Ireland Executive is more similar to the UK Government's "Quad" arrangement (see 5.3) than the Manx Council of Ministers. It has been criticised by many within Northern Ireland, such as opposition party NI21, who state "Based on current voting patterns and the D'hondt system of distributing Ministerial seats, the majority of larger political parties are guaranteed a position in Government. Rather than leading to compromise, this has led to Government run in silos, with each party delivering and maintaining its own distinct mandate. Cross cutting issues usually result in 'lowest common denominator' policies being developed or decisions being deferred indefinitely or rejected. This leads to ineffectual and bad government and governance in Northern Ireland and is resulting in increasing levels of voter disengagement and diminishing voter turnout."¹² It was exactly this criticism that led to Tynwald adopting the Ministerial system in the first place.
- 7.4. The absence of collective responsibility, its fundamentally deep seated partisan nature and wider challenges of peace and reconciliation do not provide a positive role model for others to follow. The idea of a Programme for Government is but a statement of collectively agreed policy by all parties, rather than an executive's driving force.

¹¹ Community Designation: <http://www.niassembly.gov.uk/researchandlibrary/2010/10210.pdf>

¹² http://www.ni21.com/-news/reforming-the-northern-ireland-assembly#.Uy_2q97iuzl

8. Wider Commonwealth comparison

- 8.1. In Canada, the Council of Ministers is on rare occasion allowed to freely vote its conscience and to oppose the government without consequence, as occurred with the vote on capital punishment under Brian Mulroney. These events are rare and are never on matters of confidence. The most prominent Canadian Council of Ministers minister to resign because he could not vote with the Council of Ministers was John Turner, who refused to support wage and price controls. In Canada, party discipline is much tighter than in other Westminster-system countries; it is very rare for any MP to vote counter to the party leadership.
- 8.2. Similarly, in Australia on occasional issues (such as the 1999 republic referendum), there may be a conscience vote where any MP may vote as they wish, but these issues are rare and never tied to official party policy, and normally party discipline is very tight as it is in Canada.
- 8.3. In New Zealand, Collective responsibility is not circumvented by appointing people to Government posts outside of Council of Ministers. From 2005 to 2008, Winston Peters and Peter Dunne were Ministers outside of Council of Ministers, despite their parties not being considered part of a coalition, they were still subject to collective responsibility.

9. In the absence of party politics

- 9.1. There are few comparative jurisdictions in the world that operate a system without party politics. The Canadian Territories of Nunavut and Northwest Territory operate very similar systems to each other, there are also models in Vanuatu and Tuvalu. Our near neighbours in the Channel Islands also have comparable, but not identical systems of Government to ours.
- 9.2. Nunavut has a population of 31,906 (2011)¹³ and operates a 22 seat legislative assembly, where a Premier and cabinet is elected by the Members of the Legislative Assembly¹⁴. Collective responsibility applies, although Ministers are accountable to (i.e. hired and fired by) the parliament, rather than the Premier over breaches. Although the Premier may move Ministers between portfolios. No collective "programme of government" is issued. Notwithstanding this weak model of executive Government, "MLAs frequently complain that they are ignored by cabinet, that consensus government is a sham, and that ministers are arrogant and unaccountable in the exercise of power"¹⁵.
- 9.3. Tuvalu has a population (2012) of 10,837¹⁶. The number of Ministers may not exceed 1/3 of the number of MPs¹⁷. The Cabinet is collectively responsible to Parliament for the performance of the executive functions of the Government.¹⁸ There is no programme published relating to cabinet responsibility, which appears to apply to all decisions.

¹³ <http://en.wikipedia.org/wiki/Nunavut>

¹⁴ Legislative Assembly and Executive Council Act S.Nu. 2002, c.5

¹⁵ White, G. Cabinets and First Ministers 2005 P.61 (Canada)

¹⁶ http://en.wikipedia.org/wiki/Tuvalu#Constitution_and_government

¹⁷ Tuvalu Constitution para 62(3)

¹⁸ Ibid. Para 74

- 9.4. Jersey has a Ministerial system of Government, but does not currently have the system of collective responsibility. According to a press release by the Island's Chief Minister on 18th March 2014¹⁹, and following two years of consultation, they are seeking to introduce collective responsibility. This also comes alongside other measures recommended by a Parliamentary Committee²⁰ to have the Council of Ministers elected as a block, rather than individually. It is unclear how it will work, although Ministers will be expected to exercise collective responsibility on the strategic plan which is agreed by the States.
- 9.5. Guernsey has had a Committee system with Ministerial titles since 2004. Collective responsibility has been advocated as part of a wider review of the Ministerial system which is due to report this summer.²¹

10. The "Block Vote"

- 10.1. A regular feature of the criticism attributed to the Manx system is that it is difficult to tell where Government ends and Parliament begins. This is especially peculiar to those coming from a country with a party political system.
- 10.2. It is peculiar to many that a Member of a Government Department may be considered "in Government" on motions affecting a Department of which they are a member, whilst they are free to vote for or against Government on all other matters without repercussions.
- 10.3. Such is the nature of consensus Government in the Isle of Man that, unlike the UK and elsewhere, it does not condemn over half its membership to taking no active role in Government and policy formation. Members of the UK governing parties who are not within the Government are bound through the party system to vote for policies they have had only a peripheral say in. In the worst case, members of a governing party may have stood on a manifesto which has had fundamental parts of it renegotiated by a coalition agreement which they may have had no say in at all. The Manx system does seem preferable, especially when there is the ability of members to have a say in which Departments they are willing (or not willing) to be a member of, and are frequently offered more than one.
- 10.4. As in other jurisdictions, there is a difference in pay between Members taking on one or more Government jobs and those who are not engaged in Government work (with the exception of the Speaker)²². The current arrangements are as follows:

¹⁹ <http://www.gov.je/News/2014/pages/MachineryOfGovernment.aspx>

²⁰

<http://www.statesassembly.gov.je/AssemblyCommitteeReports/2012/2012.08.06%20Consultation%20Launch%20Web.pdf>

²¹ <http://www.gov.gg/article/109868/States-Review-Committee-update---Statement-by-the-Chief-Minister>

²² The 'pay gap' is not as great in the Isle of Man as it is elsewhere. The UK Prime Minister earns £142,500 compared to a backbench MP's remuneration (excluding allowances) of £67,060. For further information see *House of Commons Research Paper 13/33 'Members' Pay and Expenses – current rates from 1 April 2013*.

Role	Total Pay ²³
Chief Minister	£75,894.38
Speaker	£68,268.69
Minister	£64,410.85
President of Tynwald	£64,410.85
Chairman of a Statutory Board & Department member, or a Member of Treasury ²⁴	£60,553.01
Member of one or more Government Department ²⁵	£56,695.16
Chairman of a Statutory Board only	£48,979.47
"Backbencher" – no Government role ²⁶	£45,121.63

- 10.5. Whilst it is outside the scope of this paper to review the scales, the accusation is that the Chief Minister can control votes via patronage. There is no simple solution to this. By operating a more partisan system, more Members would be left outside of Government, making the matter more acute. By guaranteeing every Member a role, there are accusations that the differential between those who take on greater responsibility receive only a marginal reward over those who may choose to do very little.
- 10.6. On a Departmental finance motion the "block vote" could be said to be Council of Ministers, Treasury, and Departmental Members. The table below gives an illustration of the expected results from a DHA, DED or DOI motion. It should be noted that this gives Government a majority of between -1 and 2 in the House of Keys and no guarantee of a majority in the Legislative Council. This could be said to reflect the expected maximum size of the "Government party" in the legislature under the current political memberships.

	Keys	LegCo	Total
Council of Ministers	9	0	9
Treasury	1	2	3
DHA	1	1	2
Total	11	3	14

	Keys	LegCo	Total
Council of Ministers	9	0	9
Treasury	1	2	3
DED	3	2	5
Total	13	4	17

	Keys	LegCo	Total
Council of Ministers	9	0	9
Treasury	1	2	3

²³ Including the expense allowance.

²⁴ With the exception of the Communications Commission.

²⁵ There is no additional money for serving on more than one Department.

²⁶ It should also be noted that Vice Chairmen of Statutory Boards receive no additional sums. Likewise there is no further remuneration irrespective of the number of parliamentary committees served on.

DOI	4	0	4
Total	14	2	16

- 10.7. If a Member is on more than one Department, they can resign from one Department without loss of pay. As such, any close vote is carefully considered and actively lobbied on by the Council of Ministers.
- 10.8. In the few other jurisdictions without party politics (see 9) it is not uncommon for the parliament / assembly to elect the Council of Ministers either individually or en bloc. From the research undertaken, this has no impact at all on the principles of the doctrine of collective responsibility. It has served to complicate the process for removing ministers found to be in breach of the Ministerial Code, and makes it subject to Parliamentary oversight.

11. Which decisions does it apply to?

- 11.1. It is clear in the Government Code that collective responsibility applies to all decisions of Council of Ministers. Paragraph 1.27 of the Code states “Where the policy of a particular Minister is being challenged, it is the Council of Ministers as a whole which is being challenged. Thus, the defeat of a Minister on a major issue represents a defeat for Council.” This is in order to preserve the “notion that the executive ought to appear a collective entity, able to maintain cohesion and display political strength” as outlined in 3.5 above.
- 11.2. During the debate Mrs Beecroft raised the parallel with the Northern Ireland system of producing an agreed programme which is subject to collective responsibility, with everything else being outside of this. Direct comparisons between Northern Ireland and the Isle of Man are difficult; the former is a devolved administration with limited powers with a very difficult and divisive recent history. Moreover, given that Council of Ministers is formed of nine individuals rather than two, or maybe three, parties, it could take exponentially longer to agree the “programme”. However there is a mechanism within the nomination process for Chief Minister which could be taken to represent this programme.
- 11.3. All candidates for Chief Minister have to present a statement of policy priorities to Tynwald and this statement forms the policy basis on which Members of Tynwald cast their (secret) ballot for Chief Minister (see Appendix II).
- 11.4. This could mean that any situations arising subsequently would fall outside of the ambit of collective responsibility. Whilst these could be minor, they could also be quite significant, such as pre-school education or the Sefton bailout. In such circumstances consideration has to be given as to whether such significant matters are matters of confidence in and for the Council of Ministers, whether dissent on these matters would have undermined its ability to maintain cohesion and display political strength, or whether a free vote could have been exercised without undermining the collective integrity of Council of Ministers and its ability to govern.
- 11.5. Both of the situations above were divisive both within and outside of Council of Ministers. Both were the recommendations of individual Ministers who required Council consent for such a significant change in policy. If a free vote existed, it would be unlikely that both of these motions would have succeeded.

- 11.6. If a free vote was enjoyed by individual Ministers, how could their individual views be reconciled with solidarity with their fellow Minister? Having tested the water at Council, both motions could have been withdrawn knowing that the electoral mathematics “did not add up”, but this would have made it harder for the individual Minister to do what they felt was best, it would in all cases delay decision making, although ultimately the unfettered democratic will of individual Ministers, as members of Tynwald would prevail.
- 11.7. The real danger of ‘the unfettered democratic will’ prevailing in a system largely comprising independent representatives from a small community is that difficult decisions are not made and/or the lowest common denominator solution is settled on. This was a constant criticism of Manx politics in the 1970s and early 1980s.

12. Exceptions to the rules

- 12.1. The Isle of Man represents a rare example of collective responsibility where the exceptions to the rule are codified, and it expected within Council of Ministers that in purely parliamentary matters, there is a free vote²⁷. There are however times within Council of Ministers when there are tensions between parliamentary and governmental issues, and these are debated in Council of Ministers. As the Tynwald and Keys Order papers are considered in Council of Ministers, there is perhaps a presumption of Council of Ministers forming a view on what could be quite trivial matters, instead of using the “inconsequential matters” exemption provided by the Government Code.
- 12.2. The fact that the Government Code, a published document, sets out the exemptions to the rules of collective responsibility significantly enhances the transparency and openness of its operation. Members of Tynwald and the public alike are able to see the circumstances under which it is acceptable for a Minister (or a Departmental Member) can depart from the collective view.
- 12.3. The inherent strains in the operation of collective responsibility in the UK have been accommodated openly in very rare circumstances where there has been the option of “agreement to differ”. These are taken on a case by case basis; most notably in the 1930s when in Britain the National Government allowed its Liberal members to oppose the introduction of protective tariffs; and again when Harold Wilson allowed Cabinet members to campaign either for or against the 1975 referendum on whether the UK should remain in the European Economic Community.
- 12.4. As can be seen, these are matters of significant import where the alternative would be to have a significant split or resignation from cabinet over a single issue. The “agreement to differ” must in itself be agreed by the Cabinet and endorsed by the Prime Minister. In such circumstances, the Prime Minister wrote to the members of the Cabinet setting down the rules, and time limit whereby their freedom of expression may be exercised. It should be noted that in both of the circumstances above, it became very difficult to transact the business of Government during such times, involving redirection of questions and alternative arrangements for representation.

²⁷ For example, Representation of the People Bills, changes to standing orders, and time limited speeches.

13. Enforcement

- 13.1. Manx Ministers have varied in their pragmatism to the convention of collective responsibility. In some instances Members have requested permission to vote against their Department and this has been approved, whilst on other occasions the implication of public criticism has been sufficient to warrant being sacked.
- 13.2. Where matters have come to Council of Ministers via Treasury, collective responsibility has been required there.
- 13.3. Equally, matters involving Ministers and the Chief Minister have been subject to mixed judgments depending on a number of issues, of which there have been a number of examples in various Administrations.
- 13.4. It is perhaps inescapable that the Chief Minister is the only ultimate arbiter of collective responsibility as part of the Government Code. However, in theory, this could leave the Chief Minister open to accusations of playing politics or being an unfair arbiter.
- 13.5. Collective responsibility in the UK is rigorously enforced. Exceptions to open dissent are extremely rare. Miles Walker commented on the issue of enforcement in 1989: "It may be comparatively easy, Your Excellency, for me, as Chairman of Executive Council or Chief Minister, to say to one of my colleagues, 'I am sorry, if you cannot agree on this point you have to go'. I am then left with a very difficult dilemma of trying to find somebody else to take that place, somebody else who will be a better contributor in a general way, perhaps not on the specifics but in a general way, to Executive Council. So that, I think, is another concern that has to be taken into account when we try and compare Executive Council with the Cabinet in the United Kingdom."²⁸ This demonstrates that collective responsibility in the Isle of Man has very real practical, as well as doctrinal constraints.
- 13.6. In the UK, the governance surrounding enforcement of collective responsibility, and other aspects of the Ministerial Code has evolved considerably in recent years.
- 13.7. In March 2006 the Prime Minister's first independent advisor on Ministers' interests was appointed, a role which was strengthened in 2008. The advisor, a non-statutory appointment by the Prime Minister, is responsible for advising Ministers on how to comply with the Code and, *at the request of the Prime Minister*, investigating alleged breaches of the Code.
- 13.8. For the UK Government, the Prime Minister is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards. Ministers remain in office only for as long as they retain the confidence of the Prime Minister.
- 13.9. As the Ministerial system evolved in the Isle of Man, and Ministerial appointments became the responsibility of the Chief Minister without the need for Tynwald approval (from 1990) the importance of retaining the confidence of the Chief Minister has increased. It therefore follows that the Chief Minister has a central role in enforcing collective responsibility and the Ministerial Code more generally.

²⁸ Hansard, Tynwald Court, 22/2/1989 T1031-1032

14. More open and democratic?

The motion agreed by Tynwald did not question the importance of collective responsibility as a central principle of good government; it just sought to make its enforcement more open, transparent and democratic. Whilst the rationale for collective responsibility has been set out above, the motion implies that more could possibly be done to make its use more transparent.

Appendix I - Extract from the Government Code 2011

Collective Responsibility

General Principles

1.26 Collective responsibility implies that the policy of individual Ministers must be consistent with the policy of the Council of Ministers as a whole. Once Council's policy on any particular matter is decided, each Minister is expected to support it and share responsibility for it. If a Minister cannot agree with his colleagues on a matter of general policy or on a single major issue, he should consider whether he should remain a member of Council.

1.27 Collective responsibility has the following features:

- (1) A Minister may speak against any proposal in the Council of Ministers, but he must subsequently either support the policy decided upon or resign.
- (2) Where the policy of a particular Minister is being challenged, it is the Council of Ministers as a whole which is being challenged. Thus, the defeat of a Minister on a major issue represents a defeat for Council.
- (3) Every Minister must be prepared to support all Council of Ministers' decisions both **inside** and **outside** Tynwald, the House of Keys and Legislative Council.
- (4) Collective Responsibility does **not** apply to a Minister's responsibility for his personal mistakes.
- (5) Any major shift of policy proposed by a Minister must be cleared by the Council of Ministers before it is announced.

Exceptions

1.28 There are circumstances, as follows, under which Ministers have freedom to speak publicly against policies and decisions of the Council of Ministers or without reference to Council:

- (1) **Matters of conscience:** There will inevitably be issues where Ministers will be guided by a fundamental religious or moral belief [rather than political ideology]. Such issues are readily identifiable whether they arise in a Tynwald motion or in a Bill. Ministers will always have the right to a free vote on such issues.
- (2) **A declared position:** A Minister brings with him to the Council of Ministers a set of views and opinions uniquely his own. These may, in some cases, include a strongly held and publicly declared position on a particular subject. It would be unrealistic to expect such a Minister to change his position on that subject for the sake of Council's solidarity. Equally, however, it would be unacceptable for that Minister to "crusade" in support of his declared position in the knowledge that the Council of Ministers does not share his view.
- (3) **Constituency matters:** Issues may arise where there is a strong and specific constituency interest which conflicts with a Council decision. In these circumstances, a Minister from that constituency must have the right to represent that interest if he so wishes. Where this is so, the Minister concerned must make his position clear to the Council of Ministers. Provided, as a courtesy, a Minister gives advance warning to any other Minister, he may ask a written question on a constituency matter provided the question is framed in an appropriate way.
- (4) **Inconsequential matters:** Collective responsibility applies to Council policies and decisions. Where small matters of detail arise, where there can be room for disagreement without those policies or decisions being called into question, Ministers will have the freedom to express themselves. Ordinarily such matters will not come before the Council of Ministers anyway.

- (5) **Unresolved issues:** Issues will be raised from time to time which the Council of Ministers has not considered or on which Council has not taken a decision. Until a Council position is established, Ministers will be free to express themselves. However, such issues are likely to emerge on the agenda for Tynwald or one of the Branches and an opportunity will arise for the matter to be discussed in Council before debate in public. Ministers should therefore, as a general rule, where possible, seek to refrain from comment until after Council has considered the matter.

1.29 A personal or political dislike of a Council of Ministers' decision is not in itself a sufficient justification for an exemption from collective responsibility. In cases where a Minister feels personally or politically unhappy with a particular policy or Council decision, the proper forum for discussion of the matter is the Council of Ministers. If the Minister is unable to persuade Council to accept his thinking after full and frank discussion, he must accept the decision reached by Council. Any subsequent public dissent must be regarded as an unacceptable indulgence.

Conduct in Dissent

1.30 Where a Minister exercises his right to a free vote or to speak publicly against a policy or a decision of the Council of Ministers, in accordance with one of the recognised exceptions, it will be important for him to express himself towards other Ministers in a responsible way. Even in disagreement, courtesy and respect are due to a fellow Minister. A display of personal abuse, criticism or animosity would be unacceptable in such circumstances.

Chief Minister

1.31 Collective Responsibility applies to the Chief Minister in the same way as to other Ministers.

Note:

The following are examples of the practical application of the doctrine of collective responsibility in an Isle of Man context:

- (i) **Tynwald/Keys Questions** Except in the circumstances described below, it is unacceptable for Ministers to pose questions to other Ministers. There are adequate alternative opportunities for Ministers to obtain whatever information from each other that they require.

Exceptions

- (a) Supplementary questions where these are likely to be helpful to the Minister being questioned or to the Council of Ministers; and
(b) Written questions, on a subject matter where there is a strong and specific constituency interest affecting the constituency.

- (ii) **Motions before Tynwald** The support of Ministers for the following Council of Ministers or Departmental business would be expected (except in the case of (c) below, where any of the exceptions at para 1.28 apply) :-

- (a) The Policy Debate;
(b) The Budget;
(c) Motions promoted by the Council of Ministers or by a Department including proposals for expending money and approving subordinate legislation.

- (iii) **Bills before the Branches** The support of Ministers would be expected for Bills, whether or not promoted by a Department, the introduction of which has been authorised

by the Council. However, support for amendments to a Bill where those amendments do not seriously undermine the purpose of the Bill, would be acceptable. 11

Access to and Retention of Council of Ministers' Documents

1.32 Where there is a change of Chief Minister and/or Minister(s) there should be a general presumption in favour of making documents of the previous Council/Department available.

1.33 Notwithstanding paragraph 1.32, an outgoing Chief Minister/Minister may specify which documents should not be available to the incoming Chief Minister/Minister, without his or her express permission. Permission to release documents should not be unreasonably withheld.

1.34 A Chief Minister or Minister leaving the Council of Ministers or an Official leaving the service of the Council of Ministers should be requested to return all remaining Council of Ministers' papers to the Chief Secretary for destruction.

1.35 Ministers should not receive papers, or take part in discussions, on matters where they might be regarded as having a personal interest (See also Paragraph 2.14.)

The following is an extract from the Code in respect of Members of Departments:-

Collective Responsibility

- 3.11 Unless they have been positively excluded from the process of formulating the policy, Members of a Department are collectively responsible with the Minister for departmental policy in the sense that they should support that policy in public. This collective responsibility for departmental policy extends to departmental policy as a whole, and not simply to those policy areas for which a Member has been given delegated responsibility to act.
- 3.12 There are circumstances, as follows, under which Member(s) have freedom to speak publicly against policies and decisions of the Department:
- (1) Matters of Conscience
 - (2) A Declared Position
 - (3) Constituency Matters
 - (4) Inconsequential Matters
 - (5) Unresolved Issues
- A fuller discussion of collective responsibility is set out in Part 1, paragraphs 1.26 to 1.31.
- 3.13 A personal or political dislike of a Departmental decision is not in itself a sufficient justification for an exemption from collective responsibility.

Appendix II – Statement of priorities

NOMINATION OF ALLAN ROBERT BELL MHK AS CHIEF MINISTER. STATEMENT OF POLICY PRIORITIES.

Since 2008 global events have changed our world and as these events continue to unfold and economic storm clouds gather they ensure that the next five years will be the most challenging period that we have faced for a generation, both for Tynwald and also the Island.

However we must not let ourselves become downhearted. In the early eighties we also faced very difficult economic times and by working together and developing long term strategies, both social and economic, ultimately we succeeded in developing one of the most successful economies in Europe.

I am proud that I was part of the team which developed that recovery strategy and with the benefit of my experience of that period, 27 years as a Member of the House of Keys, with a wide range of Government and Parliamentary responsibilities and especially latterly, as Minister for the Treasury and Economic Development over the last turbulent ten years, I now offer myself as a candidate for the position of Chief Minister. Without question our twin top priorities have to be the re-balancing of Government finances in the wake of the VAT changes and the stimulation of further economic growth and diversification to provide new revenue streams for Government and jobs for our people.

However, we must not allow our pursuit of these vital goals to blind us to the need to maintain our social cohesion and quality of life. The next Government must provide the leadership and openness needed to promote a fully inclusive, compassionate and, above all, fair society if we are to succeed. A society which is at ease with itself.

To deliver these ideals I would propose two initial reviews.

Firstly to endorse the principles of the long term strategy document, The Development of a Prosperous and Caring Society, which laid the foundation for our current success in 1987, to see what we can learn from that far sighted strategy and to build an updated range of options for the next 20 years. I believe that we should take advantage of our current difficulties to move beyond short term palliatives and, through working together, produce a long term vision of where we want the Island to be in the future.

Secondly, I believe we need to revisit the Report on the Scope and Structure of Government. I would propose to reconstitute the original committee and charge them to produce an update on progress so far and suggestions for the future. Once completed, I believe we need a full Tynwald debate on the issue to identify a collective and acceptable way forward.

Central to any changes which may be identified in this report must also be a change to the culture of Government, without which any new proposals will fail. We cannot continue to deliver services and achieve the savings we need without challenging the long established processes and working practices across Government. To achieve these changes we need to engage staff at all levels, from Chief Executive to middle management and especially our front line staff, including the relevant Unions. In driving through change I believe in two principles. Firstly, a slash and burn approach to downsizing Government too quickly will be very damaging to both the economy and society; a more measured approach is called for, with a judicious use of our Reserves when necessary. Secondly, there can be no ring-fenced sacred cows in the review process. We must scrutinise every aspect of our operations.

To stimulate further economic activity we must build on the very effective and cooperative relationship we have with our business community. They know better than ourselves where the opportunities lie and Government must be prepared to support them in expanding existing business and also diversifying into new sectors for the future.

Our economy overall has not been in recession and is still growing, and this is recognised by our continuing AAA credit rating. To maintain that vibrancy we must have a stable taxation system and I would seek to maintain our 0/10% corporate tax structure. This has now been accepted by the international community and we must fight to protect it. The UK is in the process of establishing enterprise zones in deprived areas. We have to ensure that the whole of our Country becomes an enterprise zone, with appropriate incentives, cutting through red tape where necessary and providing the necessary infrastructure and incentives to attract new business. We also need a review of our planning system to ensure that it gives adequate consideration and priority to economic development.

Greater coordination across Government with regard to training and retraining has already begun. We must build on this to raise the skill levels in our workforce and also to help tackle the growing issue of youth unemployment. We must give hope and confidence to our young people that they have a future here.

In spite of the problems we have faced with our VAT Agreement, I do not believe that the time is right for abrogation. It is still broadly beneficial for the Island and any change at this time could seriously damage the economy. I do believe, though, that we need to consider and cost our future options, with the aim of improving our understanding of all aspects of the agreement in anticipation of any arbitrary actions by the UK government in the future.

Our experiences with the UK over the last few years lead me to believe that we must reassess the value of our reciprocal agreements with that country. The UK is currently reviewing both its pension and benefit systems with an eye to future reform. Any changes will directly impact the Island.

I believe we need an in depth review of these issues, especially the benefit system, to investigate whether it would now be more appropriate for the Island to develop its own procedures to establish a new structure more suited to our own needs rather than follow a system which will be ideologically tailored for the needs of the UK. Additionally, the UK has suggested amalgamating its tax and national insurance payment procedures. If things stay as they are, the Isle of Man will have to follow suit if any changes are made. This may also not be in the best interests of the Island.

A major problem facing most developed countries is an ageing population. During the last five years the number of Isle of Man pensioners has increased by over 2,000. This rate will accelerate and we need to plan to deal with a higher dependency ratio and the consequent costs of medical and social care, especially nursing care in old age. I propose that methods of funding these costs be fully investigated and that a commission be established to review the situation, along with proposals to maintain the sustainability of the Manx state pension. Events of the last few years and the implications of my suggestions, including the protection of the economy, prove beyond doubt that we have to become a lot more proactive in dealing with our various international partners. I have extensive experience in promoting the Island in the wider world and with negotiating in hostile environments.

If I am elected Chief Minister, raising the Island's profile would be one of my top priorities. However I recognise that there have been limited opportunities for other Members of Tynwald to gain greater experience in this area. I would undertake to ensure that whenever

possible other Members are encouraged to build their experience and confidence to help protect the Island's reputation in the future.

Improved communications off Island will be vitally important in the future. However, so will internal communication, too. If the outgoing Government can be criticised for one thing it is that we have been very poor at keeping the public fully informed as to progress in many areas. I believe we need a complete rethink on how Government and Tynwald communicates with our people. We have to be more open and honest, especially when making what may well be difficult and painful decisions in the time ahead. Even where there may be disagreement, people are more likely to accept a decision if it is clearly explained beforehand.

To build that essential trust I would propose to introduce the Freedom of Information Bill, whilst accepting that there are areas where confidentiality has to be protected. However, it must also be recognised that it may come at a high cost if the Jersey example is accurate, and other areas of Government expenditure will be adversely affected.

Additionally, I would undertake to hold public meetings around the Island periodically to reach out more effectively to our people. At this stage I do not intend to go through all the possible issues facing us in the time ahead but I would comment on a few which I believe need to be addressed.

The construction industry is a very important element of our economy and is struggling as a result of the economic slowdown and the reluctance of banks to lend. We should use this opportunity to utilise their spare capacity to address our housing problems, particularly the current shortage of starter homes, and progress the Dept of Social Care's Housing Review with some urgency. Although we will have reduced revenues in the next few years we have to do our utmost to protect core services. I am concerned by what appears to be a growing problem of Health Service waiting lists. In spite of our various initiatives, waiting times are going beyond acceptable levels.

I still believe that we need a definitive review of the scope and structure of Local Government.

This is needed to improve efficiency and value for money at local levels and to free Members of Tynwald to be genuine national politicians, focusing more on the broader strategic issues. Extra powers, such as street cleaning and minor road repairs, could be devolved from central government. Once the new role of local government has been identified, a rate revaluation should take place to introduce a fairer system across the Island.

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. Energy costs have a massive impact on inflation, which is detrimental to both households and business alike. We should encourage the development of renewable energy and reduce our energy waste. There is a clear economic imperative to do this as every pound saved is a pound which can instead be spent in our economy.

These are but a few of the challenges the Island will be facing over the next five years. More than ever before, I believe Tynwald, collectively, has to give the leadership and vision to unite and inspire our people to successfully navigate these turbulent times.

If I am given the privilege of being elected Chief Minister I promise that I will do my utmost to promote a unified team, not only in the Council of Ministers, but right across Tynwald and beyond. This is not the time to be distracted by yesterday's squabbles or overbearing egos. I do not have all the answers and I will make mistakes. I am only human.

I would hope that all Members who wish to contribute will be given the opportunity to do so and I would hope to also draw on the very extensive experience we have within our midst outside of Government.

I promise that I will be accessible to everyone and provide a listening and collegiate leadership wherever possible.

Internationally, the world economy is in uncharted waters. There is no quick or easy answer to the challenges which face us. However, we start from a position of relative strength. We have to look to the future with confidence and self-belief, working together to defend our achievements, our rights and our independence. I offer you my experience to help deliver that belief.

Allan Bell MHK

Appendix III - UK Collective Responsibility

Extract from the Ministerial Code²⁹

2 MINISTERS AND THE GOVERNMENT

2.1 The principle of collective responsibility, save where it is explicitly set aside, requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed in Cabinet and Ministerial Committees, including in correspondence, should be maintained.

2.2 The business of the Cabinet and Ministerial Committees consists in the main of:

- a. questions which significantly engage the collective responsibility of the Government because they raise major issues of policy or because they are of critical importance to the public;
- b. questions on which there is an unresolved argument between departments.

2.3 The internal process through which a decision has been made, or the level of Committee by which it was taken should not be disclosed. Decisions reached by the Cabinet or Ministerial Committees are binding on all members of the Government. They are, however, normally announced and explained as the decision of the Minister concerned. On occasion, it may be desirable to emphasise the importance of a decision by stating specifically that it is the decision of Her Majesty's Government. This, however, is the exception rather than the rule.

2.4 Matters wholly within the responsibility of a single Minister and which do not significantly engage collective responsibility need not be brought to the Cabinet or to a Ministerial Committee unless the Minister wishes to inform his colleagues or to have their advice. No definitive criteria can be given for issues which engage collective responsibility. The Cabinet Secretariats can advise where departments are unsure. When there is a difference between departments, it should not be referred to the Cabinet until other means of resolving it have been exhausted. It is the responsibility of the initiating department to ensure that proposals have been discussed with other interested departments and the outcome of these discussions should be reflected in the memorandum or letter submitted to Cabinet or a Cabinet Committee.

²⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61402/ministerial-code-may-2010.pdf