

REVIEW OF THE FUNCTIONING OF TYNWALD

LORD LISVANE KCB DL

HANSARD

Douglas,
16th May to 3rd June 2016

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Present:

Chairman:

Lord Lisvane KCB DL

Secretary:

Miss Michelle Norman

*[Senior Legal Officer (Advisory), Civil Division,
Attorney General's Chambers]*

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Monday, 16th May 2016

*The hearing of oral evidence was held in public at 10.00 a.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[LORD LISVANE *in the Chair*]

Opening Statement

5 **The Chairman (Lord Lisvane):** Good morning. Before I begin taking oral evidence as part of my review, I thought that, for the record, it would be helpful to say something about how I intend to go about the task.

My terms of reference are explicitly on the parliamentary aspects of governance. I am to examine the functions of the Branches of Tynwald, assess their efficacy, consider the scrutiny structure required by the parliament and recommend any options for reform. I have received a number of communications from members of the public about wider issues of governance and policy, but these largely fall outside my terms of reference, although they may be helpful in adding to the context; and, of course, I have had a great number of submissions which are squarely within my terms of reference.

15 I have already spent time going through a substantial bibliography helpfully compiled for me by the Library of Tynwald, and I will now be proceeding by hearing oral evidence as well as receiving written submissions. I welcome written submissions within my terms of reference from anyone, and although the programme of oral evidence is filling up I will decide whether to invite someone who has submitted written evidence to expand upon it orally.

20 I want my review to be as open and accessible as possible. There are pages on the Tynwald website which give contact details and the programme of oral evidence, and that is where the *Hansard* of the oral evidence and written submissions are posted; and the oral evidence sessions will be live-streamed on the web.

25 Although I am asked to recommend any options for reform, I should make it clear that I have no agenda and no preconceptions and I will certainly make no recommendations for change unless I think it necessary and merited.

30 It may be helpful if I say a word or two about my perspective and experience. I was in the service of the House of Commons for 42 years, gaining experience in every aspect of parliamentary activity. During my career I visited more than 50 parliaments worldwide observing their working methods and I was on attachment to several. I also worked for three international parliamentary assemblies.

I experienced local politics and governance through being a co-opted member of a county council, of a regional police authority and of a regional fire and rescue authority.

35 From 2011 to 2014 I was the Clerk of the House of Commons, the principal constitutional adviser to the House and adviser on all its procedure and business. I was also Chief Executive of the House of Commons Service of some 2,000 people.

I am the joint author of the standard textbook *How Parliament Works*, now in its seventh edition.

40 In 2014 I became an independent cross-bench Member of the House of Lords and in that House I specialise in constitutional, legal and parliamentary issues as well as advising parliaments and governments all over the world.

As I say, I want my review to be as open and accessible as possible, and I am happy to answer any questions about its process but I will not be drawn on matters of substance. Those are for my report, which I will submit to the Isle of Man Government next month.

45 Thank you very much. I will suspend the sitting until 10.30, when we will resume to hear evidence from the Speaker of the House of Keys.

*The hearing was suspended at 10.04 a.m.
and resumed at 10.30 a.m.*

**EVIDENCE OF
Hon. Stephen C RODAN BSc (Hons) MRPharm S SHK,
The Speaker of the House of Keys and Member for Garff**

The Chairman (Lord Lisvane): As it is exactly half past 10, shall we start?
Do I begin by saying: moghrey mie, Loayreyder? (*Laughter*)

50 **The Speaker:** Moghrey mie, Lord Lisvane!

Q1. Lord Lisvane: We have got this slightly less formal set-up and, I hope, a rather conversational exchange. Just to make the process clear, our proceedings are being live-streamed on the web. Hansard will be recording the sessions, and those, of course, in due
55 course, will also appear on Tynwald's web pages. I would hope that in the hour and 20 minutes or so that we have got at our disposal we will be able to cover any areas of interest – or *all* areas of interest – to you.

60 But I wonder if I can just start with a general scene-setting question, which is that one of the things that has struck me very powerfully is the closeness of electors, of the public, to the political process on the one hand, but on the other the lack of party politics and party structures and things of that sort. So I would be very interested in your thoughts about how that affects the political process here.

The Speaker: Yes, historically the Isle of Man has been a system based on independents
65 standing for election rather than political parties. There are political parties currently and there have been parties set up in the past which have been attempted and failed. There seems to be very little appetite on the part of the Manx public for a party-political structure. I think there are several reasons for that, one being that the smallness of the place would appear to mitigate against clear-cut divisions that parties would represent, and historically they have not really
70 succeeded.

Members of the House of Keys are very close to their electors; the electorates are very small, an average of around 2,000 per elected Member of the House of Keys.

75 So whether party politics would work is debatable. There are very strong arguments to have such a system, the main one being that, in advance of an election, policy positions are clearly defined and the collective drawing together of those policy positions chart a potential programme for government, rather than the system we have at the moment, where there is absolutely no certainty that ... It is a bit of a blind-date relationship between the public and the elected representatives: you do not know exactly what you are going to get until an administration has been formed post-election. Under a party structure, of course, the leader of
80 the successful party is chosen by the parliament automatically as the leader of the government; here, it is not clear in advance of an election who will actually lead the administration.

So there are good arguments to have a party system, in my opinion, but the size of the place with the number of constituencies that we have might make it rather more difficult. It can be

85 done. Small jurisdictions – Gibraltar, for example, which is much smaller than us, has one constituency electing, I think, 12 Members.

Q2. Lord Lisvane: I suppose, just to play devil’s advocate for a moment, you avoid the situation where a candidate has to have this constant compromise between the views of the party and the views of the individual.

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The Speaker: Yes, I think there is a lot to be said for strong independent voices. A party structure introduces constraints on individuals and it is quite difficult to break out of that structure. A lot of the constitutional reform in the past has come about by determined individuals and their power of persuasion over their fellow independent Members.

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We in the Isle of Man I think are incredibly lucky, in that it is possible for any individual Member to table for debate a subject of public importance in Tynwald and it will be debated. We do not have ballots, we do not have guillotines, there are no constraints – because of our size – such as Members who might want to bring in private legislation, let us say, who find it very difficult in larger jurisdictions where there is parliamentary time to consider and the imperatives of the parties’ own priorities. Here, issues are debated and it is a right that I do not think is sufficiently appreciated.

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Q3. Lord Lisvane: Well, certainly rather a refreshing change from some of the constraints at Westminster! (**The Speaker:** Yes, indeed.)

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In a sense, I think that brings us on to questions about size and dynamic between the three Branches of Tynwald.

Do you think that there are enough Members? There is the legislative throughput, the policy, the calling-to-account mode – all of those things put a lot of strain on the number of people that are available to discharge that sort of function.

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The Speaker: Yes, first of all, just to set the background to why we have got the number of Members – which I think are at an optimum level, I have to say.

Tynwald is the most precious asset that the Isle of Man has. Without Tynwald we would not be the Isle of Man: we would be the Isle of Wight, sending one MP to Westminster; we would be part of the United Kingdom.

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It is a happy accident of history that the Norse invaders of a thousand years ago introduced into the Isle of Man a system of representation that we have inherited and which has evolved. The number of the House of Keys, 24, is exactly as it was in the 13th century at the time of the breakup of the Kingdom of Mann and the Isles, when of course there were representatives from the Hebrides in Tynwald. When the Norse kingdom was dispersed the number ultimately reduced from 30 to 24 Manxmen, and that is the number we have today.

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Why I say our ‘most precious asset’ is that we have our own legislative capacity. There has been reform over the years. The power of the executive has moved away from the Lords of Mann and the Lieutenant-Governors to a Council of Ministers and a Chief Minister with a corresponding growth in democratic representation, and it is just 150 years this year since the public were first given the right to vote. Power has resided more in the elected representatives and it is really over the last 60 years, with constitutional reform, that executive power has been returned from London and from the Governor to Tynwald itself.

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So we have inherited a system where we have 32 voting Members and the Lord Bishop, who is there as of right as one of the historic barons from the past, so we really have 33 voting Members of Tynwald. As to whether this is enough, you need sufficient numbers to staff up an executive and you need Members who will serve in a parliamentary scrutiny role as well. In a party system, the two roles are very distinct and clear: the winning party’s representatives form the government; the scrutiny role is therefore open only to members of the opposition. Elsewhere, of course, the scrutiny committees are deliberately made to have a majority of the

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winning party, so it is very important that there are sufficient independent voices there to ensure that there is true scrutiny.

140 In the Isle of Man we have nine cabinet Ministers, if you like – a Council of Ministers of nine, including a Chief Minister. So you need nine Members, you need sufficient other Members to staff and to serve in the Government Departments and you need a number left over to serve on the scrutiny committees. People often argue that we have too many Members and we could do with 24. I think in practice it would make it very difficult to exercise adequate scrutiny to ensure that people were not conflicted from the government role and the parliamentary role. So I think we, at the moment, have an optimum number.

145 We can talk perhaps later about the system of scrutiny committees that we have, because there are some practical difficulties attached to them, but the point really I want to make is that the system of parliamentary administration that we have and the role of the executive within it has evolved over the years and is capable of further evolution, and I come from the point of view of having always been in favour of constitutional reform to ensure that the system we have is truly democratic. I think at present it is one step short of full democracy, and that is because of the way the Legislative Council are constituted – and I would like to say something at some stage about how that is addressed.

155 **Q4. Lord Lisvane:** Of course, and I was planning to invite you to do so. But can I pick one thing out of what you have been saying just now, which was extremely helpful, and that is regarding Government Members in Government Departments – so people who are not Ministers and are not carrying a ministerial portfolio but nevertheless, as elected Members, have a role in a Government Department. There are two things that it seems to me, coming fresh to this, are slightly odd there. The first is how does one maintain the distance which is required for objective scrutiny and challenge – first point; and second, is there a risk that where executive power lies becomes blurred, that it is not a matter of the administration justifying itself to the Members and being called to account by the Members? There is a crossover, there is a blurring of roles, isn't there?

165 **The Speaker:** I think there is potentially a blurring of roles; but provided it is understood from the outset what the responsibilities of a Member are, I think in practice it does work.

Members of Tynwald who are Ministers of course are bound by their collective responsibility as Government, who have a right to argue the case to Tynwald and get their programme through. Those Members who are attached to specific Departments are similarly bound by collective responsibility to that Department, but in other aspects of their service they are not bound by overall collective responsibility to the Council of Ministers and ought to assume, without fear or favour, a strictly parliamentary role of scrutiny.

170 So a Member, for example, who is attached to the Department of Education will have the opportunity to have their input at Department meetings and will be expected to support the Minister in Tynwald, and I think that is absolutely right and proper. In other areas of Government activity, where their own Department is not involved, they can and should assume a role of critical scrutiny as a parliamentarian and not be afraid to criticise and indeed vote against Government, provided it is not within an area of their responsibility within a Department – and in practice that is what happens.

180 In terms of does Government therefore have a built-in majority with a tied vote in Tynwald, this is often claimed, but I think when you look at the numbers there are nine Ministers bound by collective responsibility, and in terms of a particular measure of policy or legislation – let's use Education, for example – there might be three Members of that Department, therefore you are up to 12 out of 24 in the Keys, and we are just talking about the Keys but in terms of policy of course there are 33 voting Members of Tynwald. So the executive is actually short. It is pretty finely balanced. It does not have a built-in automatic majority. You could argue that the three Members of Treasury are tied in by virtue of having scrutinised and approved the policy before it

comes forward, that they are similarly bound in. That would then take it, in that case, up to perhaps 15. That is out of 33 in Tynwald, so it is still fairly finely balanced. It is a bare majority in the House of Keys.

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In practice, Government can be and has been defeated in the past, both on legislation and on policy. The system of independents we have, who, if they are doing their job properly, will without fear or favour feel quite entitled to argue and vote against the Government, of which they are otherwise a member, by view of membership of a particular party ... I think it is demonstrated that that does work.

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It would work better, in my view, if we could do away with the perception altogether that Government and its supporters have a built-in majority by ensuring that for all policy and matters short of primary legislation the vote was within Tynwald, and with 33 voting Members of Tynwald it is very hard to see how collective responsibility would bind a group together to the extent that they could drive through whatever they wanted in our particular non-party-political structure.

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Q5. Lord Lisvane: I am not talking so much – or the implication is not so much – about a steamroller majority, and I can well see that having departmental Government Members is, in a sense, a double hat, and it may even be a triple hat, which helps the numerical calculation, but if I can just test out what you have been saying, in a modern administration it is inevitable that each departmental portfolio links very closely with the next, because you are talking about the co-ordination of policy, administration and so on, and that is even more so the case with finance and with the Treasury function, which is common really to all of the others across the board. So it just seems a little odd that Member X can be a Government Member of Health and Social Care, let's say, and needs to subscribe to that overall collective because Health and Social Care is inextricably part of what the Government is doing, but can change his or her spots completely and then go and put the boot into the Government like billy-o on the environment or something like that. That seems to me an unsquared circle. Is that an unfair characterisation?

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The Speaker: For an individual Member, they quite often find they have to wear different hats at different times. They will want to defend a particular policy position which they have the opportunity to contribute to in Government discussion when it comes to parliamentary examination. Your question is: as the boundaries of policy get blurred across Departments, are Members going to feel compromised – for example, in children's policy – that if it was solely confined to the activities of the Department of Education, let's say, that Member would feel bound to support the Minister in that situation because the policy transcends other Departments, such as Social Care ... would the Member feel constrained at all in being as free with their criticism?

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I take the point that you are making, but at the end of the day decisions have to be made on sound and honest argument. The alternative would be perhaps clear divisions along party lines, so you know what the outcome is going to be. There has got to be opportunity for independent thought to be exercised, and if that gives a Member some difficulty then it will become a difficulty if they are not being honest with themselves, and because they stand as independent Members they will be respected, I think, if their argument is an honest statement of their position. I think that is the way it should be. It should not be that that Member should feel bound or constrained to support Government because they happen to be a member of Government.

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The alternative to all this is party-political lines being drawn, and while that has advantages I think you can, unfortunately, get away from the power of persuasion and debate. I have seen the mood of Tynwald Court change entirely from an original position by the force of argument of a Member who expresses the case very persuasively. The whole tide can shift and the vote can be, at the end of that, entirely right. That is good, honest debate.

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240 So, at the end of the day, if a parliamentarian is thinking honestly about the issues – they are not constrained and bound by a party position – they should have the opportunity, of course, to argue their case, and in practice this is what happens.

245 If they cannot support their Minister, they have the opportunity to resign from their Department – similarly with a Minister – and this convention has got to be accepted, particularly when Members bring to their role established positions. If they already have a strongly held conviction on a particular policy issue and join a Department where they are at odds with their Minister, they should not be, because of that established position, bound by collective responsibility – and that does happen; particularly if it is a constituency issue, you are allowed to step back, even if you are a Minister. If you are elected and your constituents are against, let us say, the building of an incinerator in your constituency and your role is to serve primarily the people who put you there, you should have the freedom to step aside from the collective responsibility either as a Minister or a Member of a Department, and in practice that is the system. Whether it is fully understood or adhered to we can perhaps debate.

255 **Q6. Lord Lisvane:** I think the incinerator example is a classic illustration of the tension between the executive and the representative, and your description of the dynamic and, as it were, the conscience of the individual Member, how that is deployed, I found very compelling.

260 But let me turn the argument on its head. ‘Defended’ is the wrong word, because this is not an adversarial process, but you put forward an extremely good case for the way in which Government Members of Departments, non-Ministers, operate. But let’s just turn that on its head. What is it that they are contributing to the overall purposes of the administration? In other words, what would be lost if they were not attached to Departments but were part of the wider pool of challenge and calling to account and scrutiny?

265 **The Speaker:** Yes, that is a good question, because what we are talking about now are, in effect, the junior Ministers, if you would like perhaps to term Members of Departments as junior Ministers. (**Lord Lisvane:** Yes.) We have the Ministers – that is the executive and that is a block vote, very much in a minority of the total membership. Is there a case for potentially conflicting other Members of Tynwald by attaching them to Government Departments? I think there is room to –

270 **Q7. Lord Lisvane:** Hold on, there may just be a misunderstanding here. The scenario I am putting to you is take the Government Members who are not Ministers out, entirely away from their departmental affiliation. Two questions really come from that: first, would there be a problem in Ministers maintaining their portfolio as sole players within their Department; and second, is there a potential advantage to Tynwald, speaking overall, in having more Members who do not have a departmental affiliation, in order to make the process of challenge and scrutiny more clear cut and without any conflicting loyalties?

280 **The Speaker:** Yes, I understand exactly the point you are making, and yes, potentially having Members who are not Ministers not serving in Departments at all and purely staffing up scrutiny committees and serving in a scrutiny role would certainly establish the executive – the Council of Ministers – as being very much in a minority, rather than the more finely balanced situation we have at the moment, and therefore there would be no guarantee that a programme would go through. It would go through provided the case was sound enough and Ministers were collectively able to make the case to Tynwald – and that is the way it should be.

290 The first part the question is would that be facilitated by not having Members attached to Departments? What I was going to say is that while it would and you would not have any potential areas of conflict, the practice of government might be made that bit more difficult in terms of the work of Government Departments. You have a Minister and you have Members of the Department whom you could term, and in other jurisdictions are called, junior Ministers –

and that is the situation that you are talking about. In practice, some Departments, because of the range of activity, it would be physically impossible for the Minister on his own to give the political direction to the Department or to exercise sufficient oversight and accountability. It would be better in that situation for the Minister to have two or three Members, in my opinion, to whom he could delegate certain functions of the Department to take responsibility. I think the Department of Economic Development is a good example of that, where you are dealing with e-commerce, you are dealing with the space industry, you are dealing with the manufacturing industry – a range of activities where it would be physically very difficult for the Minister to attend the various places of activity, attend conferences and that sort of thing, and therefore, the workload of Government is better being shared with others in the Department.

I do not think that is or ought to be the case for all Departments. There are some Departments which have a narrower focus and they arguably do not need three Members. What has happened in practice is that every Member on election is given the opportunity to serve in Government while the public are electing people to the parliament of the Isle of Man and it is from that parliament that the Members of the executive are drawn. In practice, everyone successful in the election is offered a job in Government, and for that of course they get an enhancement in their pay. So it is quite an incentive to become a member of Government. That is not necessarily a good thing, because in my opinion the role of parliamentary scrutiny on behalf of the public to oversee the activities of the executive is in many ways just as important, and should be remunerated equally, as the work of serving in Government. But the historical backdrop is that Members are offered a job, and therefore quite often there are certain Government Departments that do not need three Members but take three Members just to give everyone a job. If everyone says yes, you have got to fit them in somewhere. Today, not everyone is. In the last couple of elections not everyone has automatically taken a job in Government, and I think that is perfectly appropriate.

So I would prefer to see fewer Members tied to Government, and the main reason is to ensure that there are sufficient people to staff up the scrutiny committees. Since 2011 we have introduced a system of standing committees to oversee the activities of groups of Government Departments. This replaced simply having a Public Accounts Committee and a system of *ad hoc* select committees which disband when their work is finished. So we now have permanent standing committees of Tynwald.

It can be quite difficult – when there is a Government reshuffle, for example, or after an election to the Legislative Council – to get the fit of the committees to match those who are not serving in Government otherwise or who are not conflicted in other ways. It can be quite difficult to have enough people to serve in these three standing committees and the Public Accounts Committee. So, for that reason, I would welcome fewer people being obligated necessarily to serve in Government. I think the number is probably just about optimum but there are difficulties, as I say, when there is a Government reshuffle, getting enough people who are not conflicted into these scrutiny committees. So what we are suggesting would allow that.

What we do not want is to go to the other extreme. I know Jersey have reformed their system, but they have very many more elected Members than we do and with the best will in the world they are not all going to get a government job, so you have a lot of people left over who would like to serve in government but are confined purely to scrutiny roles, and that, I think, has introduced tensions there. We want to avoid such tensions here but we want, at the end of the day, to have a robust system of parliamentary scrutiny. We want a system where Government, because of our system of independence rather than political parties, will have to argue its case to get its programme through, and if we can evolve our present system to achieve that, that would be a good thing.

Q8. Lord Lisvane: Well, certainly in terms of attitude and experience I am no friend of making things easier for executives. I think they do need to convince others of the worth of their programme, and that really is quite an important dynamic.

345 Can we move on, because you indicated you would like to talk about bicameralism and
tricameralism and some of the practicalities. One thing that has struck me is the electoral college
of the House of Keys in nominating/electing Members of the Legislative Council. Could you say a
word or two about that? Do you think it is an appropriate way for people to find themselves on
the Council, first? And second, I am aware of some difficulties in actually making the system
work, particularly in terms of time taken, so perhaps as an *aperitif* to our discussions you would
like to say something about that.

350 **The Speaker:** Yes, indeed. The political landscape is littered with failed attempts to reform
the Legislative Council. In the last 60 years there have been –

355 **Lord Lisvane:** This is your dire warning to me, is it? (*Laughter*)

The Speaker: – numerous attempts, and successful ones, to change the dynamic that you
referred to.

360 The Legislative Council, headed by the Lieutenant-Governor, was traditionally the
powerhouse. The Governor, by virtue of holding the purse strings when he presided in Council,
was, in effect, the Government of the Isle of Man, and the Keys, as the public's representatives,
were the opposition, if we could describe it like that.

365 Over the last 60 years we have had greater democratic accountability of the Members of
Tynwald. For example, the Attorney General, who still sits in Council, his vote was removed in
1971; the Members of Council who were Deemsters, members of the judiciary, were removed
altogether from Council. So Council, over the years, has gradually become less of the historic
system of the king's barons and more accountable. It is not fully democratic; it is one step
removed, because of course they are not elected by the public but by the Keys serving as an
electoral college. As such, that system does actually work when compared with the alternatives
suggested and the outcomes that would flow from various models and making them directly
elected. It does work, in the sense that the Keys are ultimately, as representatives of the public
that are directly elected, the powerhouse.

370 The Legislative Council has the power not to thwart the will of the Keys but it can delay
legislation for up to 12 months.

375 **Q9. Lord Lisvane:** This is the Constitution Act 2006?

The Speaker: Correct. Since then, what had been unlimited powers of delay have been now
constrained to 12 months. If legislation goes through to the Keys and up for revision in the
Council, which is their prime function, they can no longer sit on it indefinitely and the Keys can
resolve that the legislation be brought to Tynwald for signature. That is very important. The
capacity of Council to thwart the legislative will of the elected Chamber is now non-existent.

385 In Tynwald, where the two legislative Branches sit jointly, the will of the Keys also ultimately
prevails. However, there is a check and balance in that the two Branches on a particular vote
have to be in agreement. If they are not in agreement, the measure falls. If they would be in
agreement otherwise through a majority of the Keys having supported, then there is the right to
return the following month for a combined vote. So the power of the Council in that situation is
simply to delay for one month a decision of Tynwald, and that power of delay I think is a very
important check and balance to have in a system which is based on independent Members and
not party structures. That is a very useful check that has evolved. It did not start out that way
but that is the way it is; and to that extent, with the subservient role in legislation and in
policymaking in Tynwald, the subservient role that Council has to the Keys, you could argue that
the system does work and to have an electoral college to establish the membership of the
Council is a perfectly workable and fair system.

395 The flaw in it, of course, is that there is a lack of democratic legitimacy. If the Council was simply confined to revising legislation then there would be no problem. If there is disagreement, there is a conference and ultimately, if there is no agreement, then the will of the Keys will prevail after 12 months. That is fine. The lack of democratic legitimacy becomes a problem because of the role of the Members of Council as Members of Tynwald. That is where the complaint comes from on the part of the public. If they were simply revising legislation, you could have a committee of eight lawyers appointed by the Government to do that role, knowing that it was the will of the Keys ultimately that was going to prevail – if it was purely legislative scrutiny, but it is not. They have a role in Tynwald, and as such they have a role in determining public policy, voting public money and a vote on secondary legislation, which is what Tynwald does – the Budget, electing the Chief Minister. I think that presents a problem in terms of democratic accountability.

400 One right that they currently have, and there is a piece of legislation going through to change it, is to remove from them the right to elect the Chief Minister, and I think that is entirely appropriate. That should be a function solely of the Keys.

410 Similarly, Members of Council, because of the way they are put there, not accountable to the public, should not serve as Ministers, and in practice that has been the political wise choice of the last two Chief Ministers. We do have a Minister who is in the Council currently, the Minister for Education, but that is because he had started the role in the Keys and moved up there. That position is being tolerated and I do not think there is any complaint about it. But in principle Members of Council should not serve as Ministers because they are not accountable to the public. I accept that this accountability is only limited to their own electors, because they are not standing for X party who are accountable as X party for Government policy at the election, but nonetheless it is democratic accountability.

420 Therefore, there has been no dispute, and if you were to ask Members of Council individually and collectively their position is that yes, there is a case for direct elections of Members of the Legislative Council by the public – do away with the electoral college system. The problem is, and this is why it has never succeeded over the years – and I had a go; I had a Bill in the past and other Members have had Bills for direct elections to Council. Why it has never succeeded is you then have two directly elected components of Tynwald, and while you have democratic legitimacy established you have potential conflict built in and you have lost the supremacy of one Branch over the other – the popularly elected Branch over the other Branch – in terms of the right to delay or thwart legislation. Why should a directly elected Council be subservient to a directly elected Keys?

430 **Q10. Lord Lisvane:** Indeed, and we have seen competing democratic mandates in a lot of bicameral parliaments producing problems, particularly if you have a different phasing of elections or different means of elections, (*The Speaker:* Precisely so.) comparing one with the other.

435 Can I come back with a couple of supplementaries on what you have said. First of all, Members of the House of Keys who end up on the Legislative Council: are there rather too many? Is it a sort of ‘cosy collective’ that results?

The Speaker: I know the view of the public is that it is a retirement home for Members of the Keys who would otherwise not be successful at the election. That is a perception.

440 **Lord Lisvane:** I should say as a Member of the House of Lords, I have to be very careful of implying criticisms possibly of some of my colleagues, but I am a cross-bencher, so that is rather different!

The Speaker: Yes, indeed.

445 I think there has been, in recent years, quite a difficulty in getting people elected to Council,
particularly those who have been Members of the House of Keys, and motives can be brought
into question. I think history does demonstrate that the Council was composed of the grand old
men of politics, if I can put it that way – political giants who would have wise heads on shoulders
and bring vast experience to bear on political debate and decision making. That is fine. The
450 democratic legitimacy point of view complaint is less strong when it was almost entirely
composed of senior ex-Members of the House of Keys who had faced often numerous elections.
Where people have been elected from outside, as they have been of necessity in recent years, it
can be a little bit difficult to justify their membership through an electoral college when they
have never ever had to face the electorate.

455 **Q11. Lord Lisvane:** Forgive me for interrupting, but doesn't this go back to your point about
what if the role of the Legislative Council were different? Let me put an absolutely off-the-wall –
it may appear off the wall – suggestion to you. I am thinking about various types of boards.
Indeed, I used to select people as independent members of a regional police authority, who
460 came in entirely from outside and by a competitive process ... We do not need to be too specific
about this for the purposes of discussion, but they might be people who wanted to serve in that
more limited way, reviewing legislation, for example, but not, quite rightly, having a role in
approving the Chief Minister or approving the Budget. Something along those lines. Can you see
any elements of attraction?

465 **The Speaker:** Well, I can, because it goes back to what is the role. If it was purely revising
primary legislation you could invite eight people from the outside – they could all be lawyers –
to do that. The question then is: is that their only role, or do they also have a role as Members of
Tynwald? That is the ultimate problem. It is not how they get there or what they do.

470 You could reduce substantially the role of Council. You could have them confined to
scrutinising European legislation and secondary legislation. In that sense then would they be
making recommendations for decision by the House of Keys? You would, in effect, be having the
House of Keys as the only voting Members of Tynwald. This model has been looked at before:
you keep Council as it is but severely constrain their role.

475 I think there are lots of practical difficulties with doing that and it would be better, in my
view, to have all Members of Tynwald present on the same election mandate – so the product of
a single election, not separate elections, as you referred to – because that can introduce
difficulties: are the most recently elected more entitled to represent the public and are their
views more important, therefore, than the existing elected body? The electoral mandate models
480 have been looked at, where you have an all-Island election for eight, or you have eight
constituencies. That introduces all sorts of other difficulties, because somebody representing
10,000 people rather than 2,000 – or 2,500, as I do – will claim to have a stronger, more
powerful voice and their case is therefore stronger than someone else's.

Those are the reasons all attempts at democratic reform, direct election to the Council, have
485 failed in the past, because if you have two Chambers elected at different times or from different
electoral constituencies, even with different roles, then that is going to introduce problems. To
come back to an earlier point, why would somebody put themselves up for election to
Legislative Council – because it would have constituents – if that role was less than other elected
Members? If their role was simply to scrutinise legislation –

490 **Q12. Lord Lisvane:** Yes, I absolutely take the point that if we are talking about competing
mandates there are all sorts of dangers in competing mandates, and going through the whole
process of election you want something in terms of being able to exercise a democratic mandate
at the end of it. I quite understand that.

495 Really, I was more musing on can you get round the competing democratic mandate point by
taking the Legislative Council out of the democratic requirements altogether. There are
disadvantages around doing that, but there are other hazards that you avoid.

500 **The Speaker:** Of course, you could do that. You could do that and you would then be left in
the position where it was the elected Members of the House of Keys who primarily carried out
the work of a parliament, because this other body, as purely a legislative revision role or some
lesser role, presumably would not have a vote in Tynwald, so you have got the House of Keys, in
effect, serving as Tynwald. That then introduces other difficulties in that you are left with 24
505 Members of Tynwald only who are Members of the House of Keys expected to form
Government with sufficient people left over to oversee and scrutinise Government. You are not
going to do that with 24, which is why you need 32, or 33 if you allow the Bishop to continue
with his vote, which I think, although it is a historic anomaly, you should.

510 **Lord Lisvane:** I was going to ask you about that.

The Speaker: We can come on to that.

I think therefore we have got to recognise that we need 32 Members of Tynwald serving in
Government to whatever degree and serving in scrutiny. And may I say that in my experience –
because you will hear evidence to the contrary – the Members of Legislative Council are
515 amongst the hardest-working Members of Tynwald. It is often thought they only meet for half a
day each week. I have seen the work they do in parliamentary scrutiny committees and in
Government Departments, and they are extremely hardworking and are often maligned by the
public, who do not see the actual work that they do. They only perceive the one small aspect of
their role – that is the revision of primary legislation. So I make that point.

520 The whole answer to this, to me, is perfectly simple. You have a single election to Tynwald:
32 Members of Tynwald elected at a General Election every five years. When they are elected
they then do what they do in the Norway parliament – the Norse system, which is our very
roots. They then split into two legislative committees, so what would happen is that Tynwald
would then elect, from its 32, eight Members, let's say, who would serve as the legislative
525 committee for revision of primary legislation. They would be called the Legislative Council. The
rest who are elected as Members of Tynwald would constitute the House of Keys. So you would
keep the historic tricameral structure. You do not need to do that, you could have a unicameral
system – you could do like New Zealand does and you could have a system of revising primary
legislation at a stage in the process of a unicameral parliament. I think, for very persuasive
530 historic reasons which have stood us in good stead over the years, we have evolved a unique
tricameral system. I do not think we should scrap it.

I think we should keep the Keys and keep the Council, but have them elected as equals
democratically, each with identical democratic accountability, and in that way, Chairman, there
is no constraint on who you choose to serve as Ministers. At the moment, the Chief Minister is
535 choosing out of 24; then they could choose out of 32. You have a bigger pool of talent to draw
from. All Members would also have the right to elect that Chief Minister. So a lot of the
problems that keep cropping up and we are tinkering around the edges – we are dealing with
the fact that Council elects a Chief Minister, so we have got some legislation to deal with that –
all that would disappear if you had a single election to Tynwald every five years.

540 What happens in Norway is they have the Storting and then they elect a quarter of their
membership to form the Lagting, who revise the legislation – two opportunities to revise it – and
any dispute comes to a vote of the whole House. That would be the way to resolve any disputes
there might be over legislation; an elected Council as against an elected Keys, particularly if
there are eight of them and 24 of the other – because you might think it should be 16 of each,
545 but I do not think it really matters. There would be a mechanism to resolve disputes, which is a
vote of the whole of Tynwald.

550 People have often argued, 'Ah, but that's not a good system because you wouldn't know whether your representative at a General Election was going to end up in the Keys or in the Council.' It would not matter, because they become solely legislative Branches purely for primary legislation. That would imply that the work of Tynwald ... Tynwald becomes more supreme and the workload grows.

555 By that I mean you would not have Questions to Ministers in the Keys or in Council, because they are simply doing the primary legislation. You would need to have, I think, Tynwald meeting every week to start, as at the moment in the Keys, and once monthly Council, with Questions to Ministers – and the parliamentary work, instead of once a month, would continue every week potentially. You could have Tynwald sitting, say, in the morning of a Tuesday and the Keys and Council meeting, say, on the Tuesday afternoon for the passage of the primary legislation. Or you could have Tynwald sit all day on a Tuesday and you could have another day or half day a week for the primary legislation. It does not really matter. A system could be configured to give primacy to Tynwald as an elected body doing parliamentary work, and Keys and Council purely primary legislation – less time required – and half the problems that the public identify and that you will hear from politicians later in evidence I am sure will disappear.

565 **Q13. Lord Lisvane:** Well, thank you very much. I am very familiar with the Storting arrangement, which people, I think, sometimes see as the Norwegians yearning after a second Chamber, and rather the same with the Finnish Eduskunta, of course, the grand committee which operates in an equivalent way. That is extremely helpful.

570 Going back to the ... 'clash' may be the wrong word, but disagreement between the two Branches of Keys and the Council: in a sense we have been using 'revising legislation' as a rather milk-and-water term, it is not challenging, but actually when you revise legislation you look at it – is this going to work, is this completely wrongheaded? Revising legislation can be quite heavy-duty stuff; it is not dot-and-comma stuff.

575 **The Speaker:** Yes, it is not a tick-box thing and in practice it is not a tick-box thing. I will pay credit to Council for the assiduous way in which they actually go through with a fine-tooth comb – of course, they have the Attorney General at hand to give advice as well – the legislation that is sent from the Keys. It is not just simply a matter of opinion. Actually, when you look at *Hansard* and you consider the way legislation is considered in Legislative Council, because of its more committee-type environment and dynamic where Members, for example, have the option to speak more than once, you will often be able to drill down better to the essence of the legislation than the more formal structure of scrutiny of Bills that we have in the Keys.

580 Of course, it is up to the Members of Keys to be as assiduous in testing the legislation and debating it, but in practice Council do, I think, a very thorough job of scrutiny, and that can continue. Why it works, I think, is the setting of the Chamber and the committee nature of the discussion rather than across-the-floor discussion that we tend to have in the Keys. That can continue under my proposed system.

590 **Q14. Lord Lisvane:** And you do have the advantage, with bicameralism, that you do not get a one-shot effort at legislation.

595 **The Speaker:** Absolutely. I can tell you there are Members of the Scottish Parliament who have visited our system who are very impressed with the fact that we have a second Chamber which goes through thoroughly the legislation and there are mechanisms for discussion and resolving disputes, rather than the system of scrutiny they have. I am sure you know they have pre-legislative scrutiny. It is all part of a sequential process there and things can and do slip through without proper parliamentary examination. They are very impressed with the fact that we have two Chambers – and this is under the present system – one of which is always subservient to the elected Chamber. So despite its lack of democratic legitimacy that we have

600 talked out it does work, and because the Keys are supreme it can work in terms of legislative
scrutiny. The problems have not gone away, that are the role of Council Members in Tynwald
and what that all implies that we have talked about, but on this particular point of two
Chambers and the scrutiny, our system does work.

605 **Q15. Lord Lisvane:** I have discussed this, as you would imagine, at Holyrood a number of
times, and indeed with my former homologue, Sir Paul Grice, after his visit to you a little while
ago –

The Speaker: Yes, he was here recently.

610 **Lord Lisvane:** I think he made, really, some of the same points.

Can I come back to this business of disagreements between the Chambers. Am I right in
thinking that the provisions in the Constitution Act 2006 have not been used in anger yet?

615 **The Speaker:** That is correct. It has never got to the stage where there has had even to be a
conference. Amendments to legislation are sent back down to the Keys from the Council. Quite
often I think they are Government amendments and the Keys and the mover in the Keys are very
happy to accept them, so the proposition has always been that the Council amendments be
approved – and that happens, then the thing goes off to Royal Assent.

620 If they are not approved, of course there is opportunity for a conference – it used to be
chaired by the Lieutenant-Governor; it is now chaired by the President of Tynwald – of three
Members from each I think it normally is, who will discuss the points of difference and hopefully
agree common ground by way of amendment.

625 If that does not happen, then the Keys can override Council by going for a joint vote in
Tynwald, but it has never got to that stage. It has in the past, when ... why the legislation was
changed ... I think there was the Food Bill quite a few years ago which went through the Keys
and came into Legislative Council, never to be seen again because it was sat on and nothing
happened. Various reform of Legislative Council Bills in the past have similarly been kicked into
the long grass just by setting up a committee that never reports. That is now impossible to
happen.

630 So it is a very good check and balance that we have and demonstrates the superior status of
the Keys under the present system.

635 **Q16. Lord Lisvane:** A learned predecessor of mine as Clerk of the House of Commons once
described a committee as a cul-de-sac down which good ideas are lured and quietly strangled.
(*Laughter*) No, that is not a reflection on what you have just been saying to me.

Two questions arising from that. First of all, what is the trigger for a conference? Is it simply
the second disagreement? And the other is that I notice you very often appoint select
committees to conference. Is that not a rather unwieldy way of going about it?

640 **The Speaker:** Do you mean committees of Keys?

Lord Lisvane: Yes.

645 **The Speaker:** Well, if we could just describe how the legislation goes through, there is formal
First Reading; Second Reading, debating the principles; then, in the Keys, clause by clause
debate on each clause by the House acting as a committee, but before that stage is reached the
House has the right, if it is particularly contentious legislation, to set up a committee of the
House to investigate and report before the clauses stage.

650 **Q17. Lord Lisvane:** Yes, I may not have made myself clear. Reference to select committee – obviously, we have the opportunity to do that really for any legislation. I was concentrating on the very narrow role. I am looking at the *Tynwald Companion* – the list of Select Committees actually set up in order to participate in the conference process. It may simply be the way that the thing is formally described when you nominate Members to take part in a conference.

655 **The Speaker:** I see what you mean. It is a committee of the House (**Lord Lisvane:** Yes, exactly.) and a committee of Council that meet to confer in conference, and you are asking how they are set up.

660 **Q18. Lord Lisvane:** Well, just looking at it, on the face of it, having a committee to do that seems to me quite heavy duty for something that is –

The Speaker: Well, you need to have a mechanism where the two Branches confer. You do not want the whole of the Keys and the whole of the Council –

665 **Q19. Lord Lisvane:** Rather than just having nominated Members, saying A, B and C can take part in the conference.

The Speaker: It is simply a matter of the House electing three Members to go to this conference and report back and then attest to the House the outcome. If there has been an outcome, a compromise reached, that will be put to the House for a vote. If there is no compromise reached, then we go to the next stage, which is that the Bill returns to the Keys and is progressed. I would just need to check Standing Orders just what the timescale is for that, but in practice I do not see it is a cumbersome arrangement at all.

675 **Q20. Lord Lisvane:** Fine, that is very helpful.

We have almost run out of time, but I am sure there will be opportunities to catch up on some of these issues. Can I ask just one last question: am I correct in thinking that emoluments are assessed and recommended by a Standing Committee of Tynwald?

680 **The Speaker:** Yes.

Q21. Lord Lisvane: Do you think that that contains the appropriate distance from the processes?

685 **The Speaker:** Yes, I do. There is a Standing Committee on Emoluments that basically does not determine – and this is very important – the levels of pay, but sets up the structure by which Members' pay is determined. It also has, or had, a role in judicial pay as well and public servants. That is perfectly appropriate because it is the elected Members of Tynwald who vote public money, so it is perfectly appropriate that there should be a Committee of Tynwald overseeing and taking responsibility for that.

In practice – and this is very important – the actual levels of pay are not decided by Members themselves, because Tynwald decided on the recommendation of the Emoluments Committee some years ago that the pay scale should be pegged to a certain point in the Civil Service pay scale which is itself the product of negotiation quite separate, quite outside the Tynwald sphere, and being pegged to that there is no self-serving argument or accusations as such that Members are determining their own levels of pay. A very, very important principle and it happened to be pegged at a certain point in a mid-scale of the Civil Service system. That is the way it has been for quite a few years.

700

Lord Lisvane: Well, that is extremely helpful and thank you very much, Mr Speaker. This has been an extremely enlightening and, may I say, enjoyable encounter, and I am very grateful to you for your help.

I suppose I will just try again: gura mie eu, Loayreyder.

705

The Speaker: Gura mie eu. Thank you very much indeed.

*The hearing was suspended at 11.43 a.m.
and resumed at 11.47 a.m.*

**EVIDENCE OF
Hon. Clare M Christian BSc MLC,
The President of Tynwald**

The Chairman (Lord Lisvane): Moghrey mie, Eaghtyrane.

710

The President: Moghrey mie, I am very pleased to have you speak Manx to me!

Lord Lisvane: Thank you very much indeed for giving me time. We have got until one o'clock or so, if that is convenient to you?

715

The President: Yes.

Lord Lisvane: As I said to you privately a moment ago, I have got some questions; but let's also cover anything that you would like to say to me. You have unrivalled – if I may say so – political, personal, professional and indeed family perspective on a lot of these things. And I remember many years ago meeting your father!

720

The President: Oh, did you?

Q22. Lord Lisvane: A most distinguished man. So it is doubly a pleasure to talk to you this morning.

725

One of the things that I am charged with assessing is efficacy and it sounds a simple word, but when you are applying it to a parliamentary body it is quite a difficult one to determine.

You have been a Member of the Keys and you have had your years on the Council. How would you assess the efficacy of the Branches of Tynwald?

730

I am thinking, I suppose, of three particular areas you would concentrate on with a parliament: one is representation, one is legislation and one is scrutiny, challenge and calling to account.

The President: Can I perhaps start with the legislative side of efficacy?

735

Lord Lisvane: Absolutely.

The President: The Branches have been evolving over time, and I am sure you have had all the historic reports and you are very familiar with the way in which the relationship between Keys and Council has changed over time – and indeed the *role* of Council has changed over time. If we look around the walls in here we will see examples of that.

740

In terms of the legislative function the Council's role, as you are aware, is as a revising chamber. I think it is true to say of any Branch that the efficacy depends on the Members of the

745 Branch. And the different structures of the Council have perhaps not given any evidence that one structure is better than another; I am thinking in terms of whether Members are elected directly from the Keys or whether they are elected from outside.

750 One of the major concerns – well, I am not sure it is a *major* concern – but a concern that has been voiced over a period of time, as you know, is whether or not the Council should be directly elected. In terms of the way it functions currently, I have seen evidence in the past that people feel Council does not have much of a role, but I do think that the scrutiny applied to legislation in Council is probably more detailed than it is in the Keys.

755 Partly this has come about because of changes in the way legislation comes forward now. Departments now promote most of the legislation that comes through, and there is a consultation process which was not the case in the past, so quite a lot of public view has been expressed before the legislation is drafted. It seems to me, on reading *Hansard* from the other place, that there is less *considered* work carried out in the House of Keys on legislation, and possibly more detailed work carried out in this Chamber. And between the two, I think they work quite well – accepting that this is simply a revising chamber.

760 The question of whether or not Members are directly elected: if we were to argue that the Council should retain the same powers as they have now – which would be a debate in itself – but if they *were* directly elected *with* the same powers, I feel it is possible that you would lose some of the experience of Members in another place, that they have because they have been Members of the Keys and had experience of handling legislation. Though perhaps the argument of the Keys ... it is ambivalent really. The Keys have in some cases in recent years directly elected

765 Members from outside, who clearly have not got the kind of experience that Keys Members have in dealing with legislation; but certainly those Members have settled into the job well and brought their own skills to the work of this Chamber.

770 So there are two arguments, aren't there? One is that if the Members were to be directly elected from outside they may well just have the same skills as Members who have been elected from the other place, and would grow into that role.

If I can turn to the ability of Council to contribute in other ways –

Q23. Lord Lisvane: Could we perhaps deal with the legislation first and then come back to the scrutiny and challenge roles? (**The President:** Yes.)

775 In terms of examining legislation ... and you have been talking about direct election. Is there a contrary argument to bringing in the experience from former Members of the House of Keys – and of course you were one yourself – and I am talking now about the outside perspective.

780 Does it look a little bit too cosy, that it is simply – and forgive me, do not take this amiss – recycling Members of the House of Keys into the Council? And is that the sort of thing the public is a little bit suspicious of?

The President: That is a valid point. It may be the perception of the public that this is too cosy.

785 Tynwald has evolved and it will continue to evolve. Certainly over the last century we have seen major changes in the relationships between the Branches, *and* Tynwald and the public – obviously since the time when elections were introduced, and in particular since 1919 when universal franchise was introduced in the Island, and with further changes following that to Executive Council and the Council of Ministers, and so on.

790 There is constant change and I feel that there is a move towards more change in this Council but I do not think it is a very loud voice – it is a *repetitive* one and we have had many reports on the issue, but have not yet been able to get an agreement on how it should be done.

795 I do think there are possible consequences of direct elections which need consideration. Direct elections, as you say, would give Members of this Council a mandate from the public. Whether or not the people who are subsequently elected in that manner to this Council would be happy with the mandate of the Council as it stands following those elections, is a moot point.

Lord Lisvane: Yes, I quite take your point.

The President: I think that if you have the same mandate as other Members of Tynwald Court you may then seek to have the same powers.

800 Tynwald can arrange this in any way it wishes, and if Tynwald says that the mandate of Legislative Council will be as it is now then you stand knowing that – and on that basis you would take your seat. However, I do think that there is potential for conflict then on the work in Tynwald, for example, where Legislative Council Members do undertake departmental work currently. And although since, I suppose, the early part of this century they have not taken on
805 ministerial roles – with the odd exception.

Q24. Lord Lisvane: That was a continuing role, I understand?

The President: Yes, it was a continuing role.

810

Q25. Lord Lisvane: Moved from one House to the other?

The President: In the present case, yes; but in an earlier case it was not so. The Chief Minister was appointed in Legislative Council, because the Keys could not resolve who to appoint so they
815 reverted to a former Chief Minister.

So the situation in relation to direct elections is an interesting one because you can argue in favour of it, but I think we do have to have a clear understanding of what the powers would be. And I do think, too, that if you were standing you also have to consider the timing issues. Are they going to be coterminous with Keys elections, or would they be staggered as before?

820

Q26. Lord Lisvane: It is the ‘out of phase’ problem – mandate competition.

The President: Yes, if indeed they were to be with the current powers eventually I think that the role of the Council Members would change somewhat, in that the general feeling is that
825 Councils should act with a national perspective; and undoubtedly I think you get an element of change where you have a mandate from a geographical area in a constituency.

Now, it is possible that you could avoid that by having an all-Island constituency, which happens in other islands. (**Lord Lisvane:** Yes.) But whether or not that would work, I do not know.

830

It would also change in the sense that I think directly elected Members would have constituents who would expect them to fulfil – in the same way as a Keys Member – a constituency function.

I will not say that Council Members do not assist members of the public – they do, with many of their issues; but is not quite the same as having a direct relationship with the population as
835 the Keys do under the current structures.

Q27. Lord Lisvane: Could I try something a bit more radical?

Let’s say in the first instance that, as a given, the slightly limited role of the Council ... I would just say in passing that we use ‘revising legislation’ in rather a sort of unchallenging, soft way,
840 but revising legislation can actually be quite a tough politically charged process – but just leaving that aside, say that people found their way on to the Legislative Council via a sort of appointments commission process. How would you view that?

The President: That is an interesting observation, it is perhaps less democratic than ... and
845 who is going to appoint? That is the question I think the population would be asking.

At the moment my perception of the Keys function is that they are elected by their constituencies to make decisions, and in that I see making a decision about who sits here as part

of their responsibility. And, okay, you can argue that they should not be deciding who sits here, but the public should. Now, if the public are deciding it then I don't think it would be acceptable, necessarily, to have an appointments commission. To some extent it takes away the powers even from those they have elected to represent them – the Keys Members who currently appoint the Council.

I am trying to decide why you feel that would be good move. *(Laughter)*

Q28. Lord Lisvane: Oh, no, no! Let me say *immediately* that I do not necessarily feel that would be a good move –

The President: But you are *exploring* it –

Lord Lisvane: – but for the purposes of challenge and exploration it is something worth having a look at.

The President: Certainly I know that in other jurisdictions there are second chambers which have a cross-section of people appointed to them from different walks of life, which may work for them. It might.

I am not sure that it would fulfil the demand for democracy that seems to be the over-riding driver in respect of any change that people want for the Legislative Council.

Lord Lisvane: Thank you for your delicate reference to the House of Lords! *(Laughter)*

The President: Actually I was thinking on the other side of the Island! *(Laughter)*

Q29. Lord Lisvane: Or in Canada? Yes, there are lots of different models that we could examine further.

Really, this is a result of my rudely interrupting you earlier on when we went off on a slightly different course. But I wonder if you could come back to the other roles of the Council, and in particular I am thinking about scrutiny and challenge now, from a slightly different perspective from that of the Keys?

The President: If I may talk about LegCo in Tynwald fulfilling a scrutiny role? **(Lord Lisvane: Yes.)**

It seems to me – as a former Member of LegCo who *had* been a Minister – the change which has come about which has removed Ministers, generally speaking, from LegCo has I think led to Legislative Council Members being utilised possibly more on select committees and scrutiny committees, than was perhaps hitherto the case.

One could argue that a Legislative Council could be elected to be the scrutinising body. You could take all the Legislative Council Members in Tynwald and make them the members of scrutiny committees. That is a model that you could consider, I imagine.

Whether or not that would be good for the relationship between Keys and the Council – it might lead to more division. But it would give the Council a very distinctive scrutinising role.

Q30. Lord Lisvane: And would that tend to offset – or at least to acknowledge – the rather greater collective that exists in the Keys because of the appointment of Government Members of departmental boards?

This is something I was exploring with Mr Speaker and, at first blush, it is a very strange extension of the executive into a body which has this very powerfully expected role of calling to account and challenging.

900 **The President:** Are you exploring that in the context of *all* Tynwald Members? Do you think it is that Council Members should not be appointed to those departmental roles?

905 **Q31. Lord Lisvane:** Well, I am really following on the proposition that perhaps there might be a more evidently ring-fenced scrutiny role for the Council. And, as it were, at the other end of the spectrum ... and it might strengthen an argument for that to be so, because with the appointment of Government Members in Departments, it seems that there is a double problem that may occur – whether it does or not is a matter of opinion.

910 First, that the extent of executive authority becomes blurred, because you have got people who are not Ministers – Mr Speaker described them as, ‘like junior Ministers’ and I can understand that; but they do not carry the direct ministerial authority and they are not subject to collective Cabinet responsibility, only to departmental loyalty if I can put it that way.

Now, from the outside that looks a very odd system.

915 **The President:** Can I explore that a little bit in the sense that at the moment in Tynwald we can have any Member of Tynwald appointed to a Department, whichever Branch they come from. I can see why, from the outside, that might look a little strange. And there could be an argument in favour of Legislative Council as the directly elected body, or otherwise, having a purely scrutinising role and leaving the directly elected body to carry out the executive functions in the Departments.

920 A weakness in that it seems to me, is that it is fine under the current system because you will have some people in Council who have had experience of departmental work. If you then, over time, move from that position and have directly elected Members of the Legislative Council to be a purely scrutinising body, they are devoid of that departmental experience. I think when you are scrutinising a body it is helpful to have actually worked in that situation, whether it is in a different Department or in some Department of Government.

925 I may be wrong about that, but that is a view I hold, having worked on the Public Accounts Committee, for example, and also been in a Department which was subject to scrutiny from Public Accounts ... I can see sometimes that the Committee does not always grasp the full extent of the problems of the Department. *(Laughter)*

930 **Lord Lisvane:** Where have I heard Ministers say that before?

The President: And I have been there with both hats, so I do think that it is quite useful to have had some departmental experience before you move to a scrutiny role.

935 **Q32. Lord Lisvane:** If I were being particularly challenging, I would say that really what you are telling me is that you cannot be a gamekeeper without first having been a poacher?

The President: Well, that is probably what I am saying, yes.

940 **Q33. Lord Lisvane:** Right! *(Laughter)*

But the business of audit, assessment, scrutiny, challenge and all of that, having a window – and I am not specifying this geographically in any way – into how an executive works may be helpful; but it really is not wholly necessary in order to be effective, is it?

945 **The President:** I am not sure. I think it helps you in the scrutiny process to have had an in-depth understanding of how a particular Department works.

950 **Q34. Lord Lisvane:** And some of the techniques ... I mean, knowing where the bodies are buried could be an extremely useful thing if you are taking a Department’s plans apart in the interests of scrutiny.

The President: Right, but I hope there are not too many buried bodies – *(Laughter)*

Lord Lisvane: I was speaking figuratively!

955 **The President:** I think, too, that such a structure would take some adjustment on the part of the public to understand that they are electing people for completely different roles.

Q35. Lord Lisvane: Yes, I can understand that.

960 This, in a sense, goes back to efficacy: one of the issues with a small jurisdiction – particularly one with the extraordinary degree of independence that you have here – is that you have to replicate all the functions of a very large jurisdiction. So we are talking about the range of policy but we are also talking about potentially a very large legislative programme.

965 Do you think that the parliamentary resources are there to cope with the amount of legislation that you need, both primary and secondary?

The President: I think so. I think that provision is made if there is a requirement to strengthen the legal drafting area, or something of that nature. I think the change I alluded to before, where we now consult before drafting a lot of primary and secondary legislation, needs refinement. I think that has been reflected from outside to say that we probably consult to death now on some issues which, with a common sense approach, might not need to be consulted on. But I do not think there is a strong argument to say that there is not enough resource at the present time.

970 I think Government drives the legislative programme primarily – there are some Private Members' Bills occasionally, for which there is an allocated resource. I do not think it is restricted. In looking the other way – and people argue sometimes that Tynwald itself is too big for the size of our population – I think against that argument we have this situation that you have illustrated that, even if it is a small jurisdiction, we still have to fulfil all the functions that a large jurisdiction has to fulfil.

980 There is a danger I feel that if you were to reduce ... you could possibly reduce the size of Tynwald to a limited degree, but there is also then the potential that the powers of the civil servants grow, because there is not enough parliamentary and political intervention if the numbers are too small.

Q36. Lord Lisvane: And certainly, having spent some time exploring your statute book, the standard of legislative drafting appears to be very high, it is very impressive that that is done with relatively limited resources.

I was thinking more about is there a feeling that there is adequate opportunity to engage with the essentials of legislation, as they come before the Branches of Tynwald?

990 **The President:** On the part of Members?

Q37. Lord Lisvane: On the part of Members, absolutely, yes.

995 **The President:** They do have a heavy workload and sometimes they are denigrated, and people think that they don't have ... but they *do* have a heavy workload. I think one of the things new Members are quite often surprised by, is how much there is to be done when they are elected. And perhaps there is not a perception on the part of the public of how much they have to do.

1000 It may well be the case that there is not sufficient time dedicated to considering the fundamentals of policy issues lying behind certain issues, and I think that is possibly the case for House of Keys Members because they have probably a lot more pressure from constituency

members. So that we should be relying on Council Members to give a more detailed reading of legislation that is coming forward, to consider those issues.

1005 But I do think that we also need to get across the fact that this is a national government and we should be looking at national issues. Quite often Members are pressured – both Council and Keys Members – by matters which are perhaps more local authority level issues; and we should be trying to convey the message that in national Government we also have to be dealing with matters that look outside the Island, and allowing for that fact in terms of the work our Members are doing.

1010

Q38. Lord Lisvane: I am thinking now about dealing with some of these things in more depth, perhaps taking into account the policy that lies behind a piece of legislation.

Would there be merit, do you think, in draft Bills being examined by a select committee – or, perhaps better, a joint committee – before formal introduction?

1015

The President: That is something that has not really been explored here, but obviously happens in other places. It might well mean that there is more parliamentary scrutiny of the fundamentals of a Bill before it gets brought forward. That would change the balance between Government and the rest of Tynwald.

1020

There have been *hints* towards something of that nature, I think, from some Members of Tynwald who work to a party structure, who would like to see more consultation before Bills are brought forward.

1025

Q39. Lord Lisvane: I am thinking of when a Bill *has* been brought forward, but having it in a draft so that it is not at that stage of a formally introduced Bill. It seems to me that some of the advantages can be that Ministers do not have as much political capital tied up as they do in a Bill which is formally theirs. It is also that – particularly if it is before a joint or select committee – you have the opportunity of greater public involvement. The public, in a way of course, can write to their MHK, or whatever, as a Bill is going through; but they can actually put in substantive propositions to a joint committee and the possibility of greater public access may perhaps mean that draft Bills have something to recommend them.

1030

The President: That is a possibility and I think we would then need to examine the consultation processes because we might be duplicating effort (**Lord Lisvane:** Yes, absolutely.) and elongating the process. But that is a possibility.

1035

Q40. Lord Lisvane: Can I ask a much more specific question?

You debate First Reading in the Council, but they do not in the Keys: how does First Reading differ from Second Reading? Is there a double count there?

1040

The President: I think it is a reversal of what happens in the Keys in a sense. The Keys simply table First Reading and then they have a debate at Second Reading.

Council does it the other way around, in that they set it out in First Reading in a bit more detail, and at that stage Council Members are able to raise with the mover issues that they want to explore further, so that the mover is ready at Second Reading to deal with those queries. In Council we then move straight to the clauses stage, whereas in the Keys they do not, they have a delay between Second Reading and clauses.

1045

So the timetable is a bit different in Council which I think is assisted by the wider consideration of the Bill at First Reading in Council.

1050

Q41. Lord Lisvane: Thank you very much. What is the proportion ... because, in theory, Bills can start either in the Council or in the Keys, but it is more usual for them to start in the Keys. What are the judgements that go into that?

1055 **The President:** I think it is largely a decision of the Council of Ministers, in the sense that most Bills are introduced into the Keys as the elected body, and then they come to the revising chamber for the scrutiny that is applied here.

1060 The judgments, I think, are firstly whether a Bill is going to be contentious, in which case they would probably rather it went through the Keys first. Secondly, currently, it is a question of timing in the dissolution of the Branch where the Keys are concerned; and so in order not to allow a Bill to drop, it has been proposed by Council of Ministers that it is introduced first in the Legislative Council.

So the vast majority of Bills are introduced in the Keys.

1065 **Q42. Lord Lisvane:** Do you think that there is an argument for shifting that balance a little?

The President: In the sense that I suppose Council is applying detailed scrutiny – or should be – you could argue that that would be a good way round to do it, and that it would go through scrutiny amendment here before it goes to the other place.

1070 **Q43. Lord Lisvane:** You have a casting vote in the Council, (**The President:** Yes.) but then you use it, I think – and tell me if I am wrong – only to ensure that the outcome is the same as it is in the Keys?

The President: That depends on the Bill.

1075

Q44. Lord Lisvane: Or where the both Branches are tied?

1080 **The President:** It is here, dealing with legislation, that provision does not apply in Standing Orders, so I do not have a Standing Orders instruction on how I vote here. I tend to use my casting vote here to continue debate, whatever that may be. If a Bill has come from another place and there is a balance here, I would use my casting vote to ensure that it did not die here if it is passed somewhere else.

1085 The argument is that debate should continue – not that I have had an instruction to that effect. Whereas in Tynwald, Standing Orders require that I cast my vote in line with the House of Keys' decision.

Q45. Lord Lisvane: Yes, voting for further debate, further opportunities, is a very well-recognised casting vote principle, of course. I can quite understand why you do that.

1090 I have been asking you questions, but what sort of areas do you think that I should be looking at, particularly in terms of ... ? You have been very guarded – or very courteous – about some of the possible options for reform.

The President: I think it is quite difficult; I do not have a fixed idea of reform. Every option throws up its challenges, it seems to me.

1095 Personally, I think that what we have works well and has worked well and, as I say, we have had considerable amounts of change over the last century or so, but there will be continual evolution. The call at the moment, of course, where there is a call, is for the Council to be directly elected. I can see that could happen, but I do have concerns about where it would lead to.

1100 Direct elections would satisfy some of the population, but we have to be clear in respect of those elections what we feel the function of the Council is going to be. Ultimately I feel that it would lead to a demand for a unicameral legislature. If it is not going to be a unicameral legislature one would have to question, I think, who would stand to be a Council Member? You will have a larger constituency, you will have less powers than you would if you stood as a Member of the House of Keys, and you will have a mandate from a bigger group of people.

1105

In those circumstances are we going to get the situation where people first stand as Members of the House of Keys – assuming that the staggering of elections continues; and if they fail there they stand for the Council election? I think we have got to recognise that if we are going down that route we have got to be clear about the role of Council.

1110 If, for example, the elections were held at the same time, people would very clearly have to determine which Branch they wanted to be in. On the other hand, if the pressure eventually came for a unicameral structure, there are many examples of unicameral structures which then subdivide into legislative committees which scrutinise legislation – twice. So it could be arranged so that the same sort of scrutiny applies in terms of legislation.

1115 What we might be in danger of losing is our traditional – and this is a matter of whether you think these things are important or not – the names which have for so long been associated with our Parliament. In fact a lot of people think that the House of Keys is the parliament, rather than Tynwald! But I think there would be pressures for equal powers.

1120 As far as the Keys are concerned there has not been a call for much change, except for the boundary changes which are going to take place – and I am not sure there was a lot of call for that from the public; but Tynwald recognised that the constituency arrangements needed to be amended and that will take place.

1125 I do feel that the balance has changed as Tynwald is evolving and has removed Ministers from Legislative Council. We are getting an evolutionary change in terms of what this Council does anyway.

Scrutiny changes, I think, have produced a more level playing field between the Departments; but I am ambivalent about whether having LegCo as a directly elected body with scrutiny powers only, would eventually be successful. I think that it could lead to conflict between the two Branches – rightly or wrongly.

1130 So I find it hard to suggest that we really need change, but it is hard to convince some people in our community that we don't.

Q46. Lord Lisvane: Yes, continuous revolution is not a comfortable state of affairs.

1135 We have been talking up to now ... almost all of our exchanges could have been on the basis of a purely bicameral system – but of course you have a tricameral system.

I wonder if you could say a little bit about how you see Tynwald as that third player? What are the necessary distinct functions which it fulfils?

1140 **The President:** Well, of course, it only deals with secondary legislation. Really, the House of Keys and Legislative Council are effectively the two legislative branches, and with Tynwald fulfilling quite a different function except in terms of approving secondary legislation. Its role is much more focused on policy issues, financial issues, and so on.

1145 The role of *Council* there is one which is sometimes considered to be a little bit contentious by some people, in the sense that again back to this argument of whether it is appropriate that they should be elected by the House of Keys and not the public. But the argument against Council Members fulfilling an equal role in Tynwald is that argument that they are not directly elected.

1150 If they *were* to be directly elected, I think we would see a reversal of some of the structures that we have now in the sense that, at the moment, Council has a delaying function, but it cannot completely block something which House of Keys in a majority supports. So to that extent it has a useful function for taking another look at things.

If Council were directly elected I think that there would be a move for them to want to participate fully in boards and Departments; a directly elected Council may well seek to be involved as Ministers again.

1155

Q47. Lord Lisvane: Yes, and direct election of course brings with it fiscal and financial authority.

The President: Yes, well at the moment they can vote on fiscal matters, but again separately from the Keys – they cannot ultimately defeat the Keys on those issues.

1160 So I think that the balance at the moment is sensible. There have been recent moves in Tynwald to change this voting procedure –

Q48. Lord Lisvane: I have read the debate of 20th April, yes, and I found it extremely interesting!

1165 **The President:** Oh, you have read it!

It is very interesting, in that it was not quite thought through, in my view, in the sense that the proposal came forward and in certain circumstances allowed the Council to line up with a *minority* of the Keys and dictate policy – which is not really what I think they had in mind!

1170 **Q49. Lord Lisvane:** Yes, I picked that up – the law of unintended consequences –

The President: Yes, and you have to be very careful about this in making any kind of constitutional change.

1175 **Q50. Lord Lisvane:** Can I come back to the operation of the Council, just really so that I can get a clearer idea of its dynamics?

The Attorney is now, after the changes of a few years ago, a non-voting member of Council. But how far does the Attorney participate and contribute?

1180 **The President:** Occasionally he gives guidance to Members of Council on a legal point, and he also promotes Bills – not so often, mostly they are moved by elected Members of Council. But there are issues such as the Equality Bill which he is currently taking through the Council and he is entirely free to do that.

1185 **Q51. Lord Lisvane:** And he routinely contributes to debate, for example?

The President: No, he does not contribute extensively to debate, he might just correct us if Council Members are going a little bit astray on any particular interpretation or legal point. His function is more likely to give guidance than to promote any kind of policy issues.

1190 **Q52. Lord Lisvane:** And what about the role of the Bishop – who is kindly coming to see me this afternoon?

1195 **The President:** The role of the Bishop is another one which pops up from time to time in terms of whether or not his role should continue and there have been various reports over the years. At the last proposal in Tynwald there was no appetite to remove the Bishop from Tynwald.

He makes some very erudite contributions, and he is in a position of neutrality in bringing a moral dimension sometimes to the debate, which might not otherwise be there.

1200 **Q53. Lord Lisvane:** I have read Prof. Edge's exhaustive research into the role of the Bishop and I am thinking of terms of casinos, some criminal law, sexuality issues and things of that sort; and his predecessors over the years have contributed quite compellingly on these areas.

1205 **The President:** Yes, of course those who feel that all Members should be directly elected would see the Bishop removed from Council. Others would simply see his vote removed, but his office be allowed to continue as a Council Member.

1210 I think that from the perspective of the Church, if he were perhaps not functioning in this Council, the Diocese might disappear – that has always been a consideration, I think.

I cannot speak for the Church on that point but that is an argument which is sometimes put forward.

Q54. Lord Lisvane: That is one I had not heard before.

1215 And there is an logic here in that he is actually recommended by the Prime Minister of the United Kingdom, which is an oddity, given the Crown Dependency status of the Island, isn't it?

The President: Well, you have given me information there that I was not entirely clear about! I must say I thought he was Crown appointment.

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Q55. Lord Lisvane: It is a Crown appointment, but it is a question of how the Crown Nominations Commission and the Prime Minister work through it.

The President: Oh, a recommendation, I see. Yes ... the Church works through the Prime Minister.

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Q56. Lord Lisvane: Can you give me a feel for the way in which conferences work, when there are differences which need to be resolved. I have read the theory, I have read the Standing Orders, but of course they are a very pale framework by comparison with knowing politically how it operates?

1230

The President: On the whole they work quite satisfactorily, I think. We send a delegation from each Branch who will meet together and consider the area of contention and generally speaking there is usually a form of words which can evolve, which is acceptable to both Branches.

1235

If we do not, then clearly the Keys ultimately will predominate, but I cannot think of any circumstances, certainly in recent times anyway, where we have not had a resolution of the difficulties that we have between the Branches.

Q57. Lord Lisvane: That is interesting, because it is a resolution which presumably is entirely about drafting if the words are on the page, it is a little different from a bicameral parliament where there is a strong whipping system, where in effect the Government of the day is saying 'Yes, we will accept that and we will give you that.'

1240

It is quite a rather different approach.

1245

The President: There is a different dynamic to it, isn't there?

Lord Lisvane: Yes, exactly.

The President: Because you are dealing with independents, on the whole. So it is really a question of getting a smaller group with representatives from both Branches together to just thrash this out and think what ultimately could be acceptable to both, and will work.

1250

It is different from the structure that you have outlined; but it works, I think.

Q58. Lord Lisvane: And it may well be something which people in a party or a whip-dominated environment would wish they had themselves.

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The President: Well, that is possible! I am sure in any party structure there are Members who wish they could have a little bit more freedom, but that is not what we apply here.

1260 I think that is part of the reason why the party structures have not really developed strongly
in the Island.

Q59. Lord Lisvane: Well, Madam President, we have covered a lot of ground. Is there
anything you would like to say to me that you have not done so far?

1265 **The President:** I think I have covered most of the issues, in the sense I would just reiterate
that of course it is within Tynwald's powers to change its structure in whichever way it thinks fit.
Occasionally we find that we have difficulties in determining the detail of that, whether it be
boundaries or, as I am sure, when you come forward with some suggestions we may have
1270 debates about your proposals.

I do think that there is perhaps not enough understanding on the part of the public of the
extensive work that Council Members do. I also think what we have now works quite well; and if
there were no change I think it would continue to provide an element of balance and scrutiny in
respect of the elected Branch of Tynwald, and continue to give us a measure of stability in our
1275 parliamentary structure.

Lord Lisvane: Thank you very much indeed and if I can say a final word: Gura mie eu,
Eaghtyrane.

1280 **The President:** Well, gura mie eu.

*The hearing was suspended at 12.39 p.m.
and resumed at 2.30 p.m.*

**EVIDENCE OF
Rt Rev Robert Mar Erskine PATERSON MA MLC,
The Lord Bishop of Sodor and Man**

Q60. The Chairman (Lord Lisvane): My Lord Bishop, welcome. I am delighted that you are
sparing the time to have a conversation about the things I am charged to look at.

Just to tell you, as it were, the terms of trade: what we are doing is being live-streamed on
the web, and *Hansard* will produce a record of that which will go on the Tynwald webpages.

1285 I think we have set aside about half an hour, if that is convenient for you.

We will cover whatever areas you feel you would like to talk about in particular, but I wonder
if I might start by asking what do you personally feel that you bring to the work of the Legislative
Council as an *ex officio* Member?

1290 **The Lord Bishop:** To the Legislative Council, I suppose it is, personally, a reasonably analytical
mind. A great deal of the time, I have to say, I am there just occasionally to pick up one or two
things, such as when we talk about Road Races Bills and things like that, the fact that I am there
all the time – unlike my English counterparts being able to come in and out – means that I sit
there sometimes through stuff of which I have absolutely no knowledge whatsoever and
1295 therefore simply do not interfere, and let those things go through exactly as they should do, and
generally speaking they will be non-controversial.

When it comes to other issues that may raise moral issues or sometimes ... I personally have
the kind of mind that will occasionally see through a little tricky problem of drafting that may
need another look at, and then I make a serious contribution to that. Or, as I said, when there
1300 are moral issues raised, then I will contribute to that. But, in some ways, I suppose, my job in the

Legislative Council is perhaps less important than in Tynwald, where the broader issues come to the fore more.

Q61. Lord Lisvane: Do you think that the Bishop should be a Member of this legislature?

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The Lord Bishop: Well, yes, I do personally. I think there is no other role in this legislature that can stand back. All the Members, to some degree, except for the Attorney General, are elected either directly or indirectly. Therefore they depend for their place there on somebody else. I do not, or at least I do not depend on anybody that can hold me to account within the legislature. Therefore I think I am sometimes able to make a reflection or steer a debate in some way that means that the discussion can move in another direction.

1310

Q62. Lord Lisvane: Do you think it is important that you should have a vote as well as a voice?

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The Lord Bishop: I think if one did not have a vote, I am not really sure that future Bishops might say, 'Well, I can come in and spend 12 hours one Tuesday and 10 hours on the Wednesday and another so many hours on the Thursday coming into a body in which I am allowed to speak, or at least I have a role to speak, perhaps only once or twice during a great long period like that.' So I think there might be a temptation on the Bishop's part to say, 'Please can I come in and out as and when I am needed?'

1320

That may be the right way to go forward, but for the moment, while the Bishop is fully there and part of the quorum, then I think the other half of the deal is that he gets a vote.

1325

Q63. Lord Lisvane: You are presumably familiar with the work of Prof. Peter Edge – (*The Lord Bishop*: No.) – and Dr Augur Pearce: an extraordinarily detailed study of the role of Bishops in the Legislative Council. (*The Lord Bishop*: Go on!)

One of the things that they derived from their research is that between 1961 and 2001 there were 53 occasions when the vote of the Bishop was decisive. Now, that research is a little way out of date, but since you have been on the Legislative Council on what occasions have you felt or understood your vote to be decisive?

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The Lord Bishop: In the Legislative Council, I cannot think of any time when it would have been a 5:4, with my being on the side of 5 on anything that was of any significance. It has happened a few times in Tynwald, where a vote on the Legislative Council has meant that Tynwald Court was divided and that, let us say ... Fairly recently, a couple of months ago, I think, on a relatively minor matter, it was 5:4 in the Legislative Council, with my vote obviously contributing to that 5, and the House of Keys had voted the other way. That meant that the two Branches were in disagreement, which meant that the motion failed. Now, the Bishop is really, in that particular case, a fairly long way away from the decision-making, but nonetheless I was one of the five Members of the Legislative Council who swung the vote.

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Q64. Lord Lisvane: I wanted to ask you some questions more on the technical side, perhaps. Then perhaps we can come back to bigger questions about efficacy and the relationship between the Chambers.

1345

The Ecclesiastical Committee: what is the point? I should, in a sense, declare an interest, because I am actually a member of the UK Ecclesiastical Committee. But what is the point of it here? How does it work?

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The Lord Bishop: The point of the Ecclesiastical Committee is that the General Synod in London might pass a measure which goes to the Parliament and in due course may pass there,

but at the end of a measure there is always a statement about the Isle of Man or the Channel Islands, as to whether this should automatically apply here or apply only after a vote of Tynwald.

1355 Where it says there should be a vote of Tynwald, it goes to the Ecclesiastical Committee, which – the expression is – ‘Manxifies’ it. Then that measure comes for acceptance to Tynwald Court. That is their role there.

1360 Of course, some things will originate in the Diocesan Synod – for instance, variations of fees, measures and things like that – that are local to the Isle of Man. They may come out of the Synod and then go to the Ecclesiastical Committee to be effectively, more or less, nodded through, but scrutinised and then to Tynwald for approval.

Q65. Lord Lisvane: And is it necessary – the final approval is with Tynwald – for the Ecclesiastical Committee to be, as it were, a parliamentary phenomenon?

1365 **The Lord Bishop:** I do not think so. No, probably not, but that is the inheritance.

Q66. Lord Lisvane: And presumably all stemming from the fact that the Church of England Assembly (Powers) Act 1919, in effect, passed the Island by?

1370 **The Lord Bishop:** Yes.

Q67. Lord Lisvane: It slightly surprised me that the recommendation – I suppose it is a Crown Nominations Commission process – (**The Lord Bishop:** Yes.) comes from the First Lord of the Treasury to the Queen. It is rather odd, isn't it, given the Crown Dependency status?

1375 **The Lord Bishop:** It is, indeed, and I was surprised at that when it happened to me. I would have thought it ought to come, as all the other dealings do, from the Ministry of Justice to the Chief Secretary, but ultimately to the Governor. One would have thought that was the process, but it does not seem to be.

1380 **Lord Lisvane:** It is an odd thing.

The Lord Bishop: And, of course, there is no *Congé d'Elire* or election by the chapter or anything like that here, even though there is presumably a chapter.

1385 **Q68. Lord Lisvane:** Thank you very much.
Do you see yourself as a pilot of Church legislation or is it something where you step back?

1390 **The Lord Bishop:** I am not on the Ecclesiastical Committee. Occasionally, the Ecclesiastical Committee will ask me for a briefing when it has something in front of it or occasionally when it does not; when it wants to understand ... For instance, the measure about the ordination of women as priests and bishops that relatively recently has gone through and was a completely different approach. They asked me whether I would go and talk them through it; explain what it was that was different and how it was different and so forth. So they take a keen interest in ecclesiastical matters, generally.

1395 **Q69. Lord Lisvane:** You have been a Member of the Legislative Council for eight years. (**The Lord Bishop:** I have.) I would be very interested in your more general reflections about the balance of power; the dealings between the different Branches of Tynwald.

1400 **The Lord Bishop:** Yes.
I think, generally speaking, it works incredibly well. I suppose my real hesitation relates more to the Council of Ministers and, in a system where only two Members of the House of Keys are

1405 elected as Members of a political party, how Tynwald chooses a Chief Minister on the basis only
of what that Chief Minister might say in front of the two Houses of Tynwald on the occasion on
which the election is being held. Therefore, the people of the Isle of Man do not have an
opportunity at any point to express their view about what the policy of the Council of Ministers
is going to be.

1410 Now, that would be okay if the Council of Ministers did not operate very frequently like a
Government, but it does. I suppose it has to really because somebody has to govern, and
gradually the system has evolved since having a Council of Ministers, as I understand it, much
more into what anybody would recognise as a form of cabinet government. Quite how you do
that here without any political parties does seem to me to be a bit too much of the luck of the
draw.

1415 Mr Cameron, in the UK, is the leader of the most significant party, the largest party in the
House of Commons, and therefore the policies of the Conservative Party become the policies of
the Government, but if you elect a Chief Minister who is elected merely on the basis of what he
has said to the constituents in Rushen, or Ramsey or Douglas or wherever, then you are
determining policy simply on the basis of that final election process through Tynwald to become
1420 Chief Minister.

Q70. Lord Lisvane: Is there a case for something like a modified Queen's Speech, so that a
platform of policy could be set out and, indeed, amendments considered, moved to it, which
would be politically binding, if not legally binding on a Chief Minister when he or she took up
1425 office?

The Lord Bishop: That would be very much the view that I would like to see. That is the way I
would like to see it go.

1430 **Q71. Lord Lisvane:** And that would bridge the personal and the 'small p' political in a sense.
Because, no doubt, I can see a lot of advantages of parties not having a very strong hand in Isle
of Man politics.

The Lord Bishop: Oh, yes, yes. I was not arguing for politics –

1435

Lord Lisvane: No, I understand that.

The Lord Bishop: – but given the fact that in a place like this, you certainly could not cope
with the range of, say, two or three strong political parties in such a small assembly and for such
1440 a small population.

Q72. Lord Lisvane: Something I would be very interested in your view on: given the length of
your experience on the Legislative Council, is this ... I can only describe it as 'blurring of executive
function', by reason of there being members of Government Departments; not Ministers, but
1445 those who are associated with the Government Department ... At the moment, I think I am right
in saying that there is one Member of the Legislative Council who is not so associated and four
Members of the Keys who are not so associated. So that means that there is a very large
collective which is part of the executive, even though there are some get-out clauses about
being able to criticise the policy of another Department, not being the one that you are
1450 associated with.

The Lord Bishop: Yes. It is curious.

I suppose it is very like the organisation of the Church on the Island too, which is that we
have virtually no full-time paid employees, because it is so small. Therefore, everybody is a
1455 volunteer; therefore, everybody wears several hats, and they have to know at any moment what

hat they are wearing, and that is the way it works here. It works remarkably well, given the fact that it is a rather curious system.

1460 I think there is very definitely – despite the fact that there are regular protestations that it is not true – pressure for the Council of Ministers to fall into line. Even over subjects that do not directly affect a particular Minister, but that particular Minister may be ... One gets the feeling – I do not know; I have never been one – that they are being whipped into line a bit.

Q73. Lord Lisvane: And who is doing the whipping?

1465 **The Lord Bishop:** I guess, either the rest of the Council of Ministers or the Chief Minister. Certainly, that accusation floats round and I do not think I have convincingly heard it denied.

Q74. Lord Lisvane: Your careful phraseology is noted!

1470 One argument against the present system, I can see, might be that when you have a collective and perhaps the boundaries of not just executive power but executive concern and influence are a little bit grey at the edges – this is from your perspective, being, as it were, able to step aside from the direct process – you are also denying yourself the resources to have a really independent scrutiny and challenge of what the executive is doing.

1475 **The Lord Bishop:** Yes. That is true and that is a criticism that is sometimes heard and I think there is some fairness to that criticism.

Q75. Lord Lisvane: In terms of the membership of the Legislative Council – I make no criticism of anybody; I am talking in terms of the system – do you think there is too much of a tendency for former Members of the House of Keys to find themselves on the Legislative Council?
1480

The Lord Bishop: I suppose there is inevitably – particularly when you are getting towards the end of a five-year period of the Keys, because by that stage the newer Members of the Keys know everybody and so forth and there is a kind of, ‘Well, if so and so wants to go up to the Legislative Council, let us support him or her in doing that.’ Because we have known them for a bit longer and therefore there might be a bit more pressure.
1485

It has varied a little in my time. I am trying to think ... At the moment, just casting my eye around the room, there are only two Members of the Legislative Council now that ... No, sorry, three. Yes, three who were not in the Keys. So that is three out of eight.
1490

Most of my time, it has been about four out of eight. So that balance does not seem to be particularly odd, but you do get this period at the end ... If there is a LegCo election towards the end of a Keys’ period, you will, I think, be bound to get ... It is more likely that a Member of the Keys will be elected.
1495

Q76. Lord Lisvane: Do you think there is a case for bringing in entirely new blood – sometimes it is difficult in a smaller jurisdiction – by some other means? Let us put election on one side, because of course you then have the problem of conflicting or competing democratic mandates – but some way, some other route into the Legislative Council?
1500

The Lord Bishop: Yes. I can see some possibility of a popular nomination process and at the very least those names being submitted to the Keys as some kind of external nominations, or that, let us say, four Members of the Legislative Council should be directly elected: some way of ensuring that you do have non-Keys’ Members appear would, I think, be useful.
1505

Q77. Lord Lisvane: But direct election, of course, might put LegCo in conflict.

1510 **The Lord Bishop:** Yes, and I think that we are talking about, in UK terms, a parliament smaller than most county councils and therefore, to confuse the electorate by having two different kinds of politician being elected – well, I think all of us would find it a bit curious.

Q78. Lord Lisvane: Does that not tend towards an argument for some sort of Appointments Commission?

1515 **The Lord Bishop:** Well, it might do, yes. Yes, it might well do.

Q79. Lord Lisvane: Where you might get the opportunity to propose somebody, but not in a form which would be a simulacrum of election: simply to put somebody onto the agenda

1520 **The Lord Bishop:** Yes. That sounds a good idea.

1525 **Q80. Lord Lisvane:** When you were talking earlier on about your background and expertise allowing you to pick up points of drafting and things, one of the things that has – not exactly puzzled me but – interested me has been, yes, it is a small jurisdiction, but, of course, with the whole spectrum – apart from foreign affairs and defence and foreign affairs and defence produce very little legislation in themselves in any jurisdiction – a huge span of the business of Government, in terms of the way that legislation comes forward, how do you see both the quality of the initial offering, but also the effectiveness of its scrutiny as it goes through Tynwald?

1530 **The Lord Bishop:** Recently we have had two Bills – no, one Bill – that started in the Legislative Council, which was the Equality Bill. We were able to give that a fair amount of scrutiny. We took three weeks over it and went through that very carefully, and therefore have sent, to the Keys, a Bill that is significantly modified – well, parts of it are significantly modified. That, I think, was very useful.

1535 My own view of the same-sex marriage Bill, which came up from the Keys here and was amended in the Keys, is that the amendment that was made in the Keys – fairly quickly – was not really very well thought through, given that it related to the Civil Partnership Act, which had been passed five years earlier, but which, in many ways, is a very much more complex Act than the same-sex marriage Bill. Therefore, simply to tack on the Civil Partnership Act onto the marriage Bill – which was more or less what was being done – at a single sitting of the House of Keys was not good revision of legislation. I failed to convince my colleagues in the Legislative Council of this, but nonetheless I think that the Keys is not a very good place to do careful thinking about the detail of legislation.

1545 **Q81. Lord Lisvane:** Presumably that – I am just thinking of it in drafting terms – came about because civil partnership requires the development of a new regime and concept, whereas same-sex marriage is, as it were, an amendment of extent?

1550 **The Lord Bishop:** Yes. Yes.

Q82. Lord Lisvane: Sorry, go on. (**The Lord Bishop:** No, no.)
On the Equality Bill, in the Council, who spoke for the Government or represented the Government's interest?

1555 **The Lord Bishop:** The Attorney General.

1560 **Q83. Lord Lisvane:** But was that as a matter of technicality or as a matter of policy? Because, presumably, the Attorney's role is very often to explain legal implications of what the Council has before it.

1565 **The Lord Bishop:** Well, I do not think I am telling any tales out of school in that originally the Chief Minister had asked me whether I would take it through and it so happened that the pressure of work essentially meant that, about two months earlier, I said to him, 'Do you know, I simply do not have the time to do the work on this.' So I am afraid 'pass' on that question.

1570 **Q84. Lord Lisvane:** Do you think the numerical relationship between the Keys and the Council is of significance? The sorts of things we have been talking about are the complexities of looking at legislation. Should there be more Members of LegCo?

The Lord Bishop: No, I think we work through that – through the size – quite well. In fact, I think nine does work.

1575 **Lord Lisvane:** It has a dynamic.

1580 **The Lord Bishop:** It has a dynamic, and it does mean periodically that the President can occasionally say ... Let us just say, I have said my piece and then somebody else says something, and you can attract the President's attention and say, 'Actually, I did not mean that. Can we go back and revisit that so that we can get a reasonable discussion going?' And she will allow us to do that kind of thing. You really could not do that in a much bigger assembly than this.

Lord Lisvane: No, I can understand that.

1585 **The Lord Bishop:** There is a sense in which you also feel as though you are working together very much as colleagues, here.

I think there is a different issue when it comes to Tynwald. I have wondered, as have other Members of Tynwald – only a few, I think – whether Tynwald should not, when it votes, vote as one body.

1590 **Q85. Lord Lisvane:** This was the debate on 20th April?

The Lord Bishop: Yes, you are absolutely right.

1595 Simply, really, because – and it works both ways, I know – you can take a vote and you can get a significant majority in the House of Keys, so that, let us just say for example, you have 18 in favour and 6 against. Then you go into the Legislative Council and it might be 5 in favour and 4 against, and the total would be very significantly against, but ... I should have put it the other way round really, positively, because then this would work. But because the Houses are divided, you end up with a negative vote.

1600 Now, I can see that it is important that the Legislative Council votes when it meets as Legislative Council; Keys votes as it meets there, but I wonder whether, when the two Houses are together, they should not vote together because they discuss and debate together.

1605 **Q86. Lord Lisvane:** Is that open to the criticism that, if LegCo is of a mind and makes common cause with the minority in the Keys, then in effect, LegCo has been the senior partner in overturning a democratic majority in the Keys?

The Lord Bishop: It is possible to work that way, but of course that is what I meant by saying it works both ways.

1610 **Lord Lisvane:** Yes, I do understand.

The Lord Bishop: You can make it work both ways and in both cases there are arguments against a single vote. It seems to me that there is a principle which says one of the points, one of the reasons, that we meet together as Tynwald is that we can share the mind, share our thoughts and wishes across the two Houses. It is something that does not ... Well, it is only once a year, in any kind of sense, that it happens in the UK Parliament, but here there is an opportunity and, since you have that opportunity, why not vote together? I would like to see it tried.

1620 **Q87. Lord Lisvane:** Well, my Lord Bishop, we have come to the end of our scheduled time. Is there anything that we have not covered that you would like to say? Obviously, there is the opportunity of *l'esprit de l'escalier* if you later feel that there is something you wished to say to me.

1625 **The Lord Bishop:** Two or three things, very briefly. The place of the Bishop: if Tynwald were to take the Bishop's vote away – we talked about that. If Tynwald were to remove the Bishop, then I think the Church of England would almost certainly follow suit at the next appointment, which I think would be damaging to both Church and state. If the Church of England were to remove the Bishop – which I do not think it has any intention of doing, but if it did – I think that would be regarded, quite rightly, as an insult to the Island. So that is one thing.

1630 I wonder whether the Bishop should be counted among the Members that count towards a quorum in Legislative Council, then in Tynwald, because one of the privileges of being a Bishop here is that one is a diocesan and as a diocesan Bishop I am expected to chair a number of committees, be a member of other committees and do various other things – maybe at the bidding of the Archbishops or whatever – in the UK or internationally. Given the difficulties of travel sometimes on and off the Island and the fact that I do not have a staff to deal with stuff like any other diocesan, having to rush back, sometimes very early in the morning, to get back to Tynwald, and dash off late at night after a session, it would be quite useful if I was not a member of the quorum, I think.

1640 And the last is that the Bishop sometimes is required to vote on political matters of which he has no opinion, no axe to grind whatsoever. Now, we have been through this: rarely does his vote count. When there is a procedural matter or a political matter, it seems to me it is undesirable that the only way out of voting is for the Bishop to excuse himself from the Chamber. Because electronic voting means yes or no; you simply cannot escape the vote. I think there are times, particularly when the Bishop has been caught having voted in such a way that it divides the Houses, let us say, when it would have been much better if I had been able simply to escape.

1650 **Q88. Lord Lisvane:** So a form of abstention?

The Lord Bishop: Yes.

Lord Lisvane: Fine, well those are three crisp points for me to take away at the end. Thank you very much indeed.

1655 **The Lord Bishop:** Thank you very much.

*The hearing was suspended at 3.05 p.m.
and resumed at 3.08 p.m.*

**EVIDENCE OF
Mr G Ralph Peake MHK,
Member for Douglas North**

Q89. The Chairman (Lord Lisvane): Welcome, Mr Peake.

1660 Thank you very much indeed for coming. The arrangement with these sittings is that they are live-streamed on the web and recorded by *Hansard* and then the transcript will be published also on the web in due course.

Now, you are a relatively new Member, so can you tell me something about your impression so far?

1665

Mr Peake: Well, thank you very much, my Lord, for that warm introduction and welcome.

Yes, I have just been an MHK now for almost a year and I am very grateful for the opportunity. I have certainly learned an awful lot in this last year. My background is in business, so looking at Government and how that runs and comparing it to a business: it is slightly different, but I think there are a lot of things that could be learned from a business-like approach to Government.

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Before I entered Government, I was not that aware of the MLCs' roles, etc. It is not something really that has come up on the doorstep either, when I was canvassing. It is spoken a lot about amongst Members and some people, but not to be a burning issue, really. There are a lot of people calling for change and some people want to keep it the same, as it is.

1675

I have tried to observe it as much as I can from being an MHK and I think, yes, there could be some changes, but also in that respect it is quite traditional in a way. I think the build-up of ex-MHKs does bring with it some experience, and I think having the Attorney General in there as well does have experience. So maybe that side of it could, I think, benefit from having more power on the legislative side. So maybe more Attorney and law would perhaps be a good thing.

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Q90. Lord Lisvane: More power on the legislative side: what would that mean in practice?

Mr Peake: Well, maybe for scrutiny of Bills and Acts that come through, that could offer more understanding of law.

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Q91. Lord Lisvane: I know that a concern of yours is the balance between effectiveness and accountability. (**Mr Peake:** Yes.) Accountability can often get in the way of effectiveness. (**Mr Peake:** Yes.) What is the way of squaring that circle, do you think? Clearly, cultural change can have a part to play in that, but is there an institutional procedural way that can bring improvements to that contradiction?

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Mr Peake: Yes. Efficiency and effectiveness: I think we do get distracted, perhaps, with a lot of things which personally I do not feel are as important as they should be. So maybe some things that come to the House, and even to Tynwald perhaps, could be dealt with in a different way, and that is where I think, if there was perhaps more legislative weight and perhaps more law, then it perhaps could be just dealt with without it coming to Tynwald. Then we could then perhaps focus on the bigger national issues.

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Q92. Lord Lisvane: Yes. You are not – I do not think I should be interpreting you as suggesting that there is a measure of legislative responsibility which should be moved elsewhere? Or are you talking about better preparation of legislation?

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Mr Peake: I think that would be very helpful, yes: better preparation and perhaps using the skills and experience of law persons would aid that.

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Q93. Lord Lisvane: But are you then moving away – I am just being devil’s advocate here – from the political driver of legislation? Should legislation be only what is thought to be technically necessary rather than as an engine of social, moral change?

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Mr Peake: No. I definitely think the political side of it should be a reflection of what the people want, and I think the politicians are here ... I certainly believe I am here to act in the interests of our constituents and the public. That is without question. That is what we should be holding people to account for, but with so much legislation, it would be useful ... I can just see that perhaps with a large Attorney General’s Office, maybe we should then have more representation from that. That would perhaps help with the speeding up of legislation.

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Q94. Lord Lisvane: It seems as though you are moving almost towards the idea of a Law Commission: something which is an expert body which is making recommendations about what changes are needed in the law to meet changing circumstances. Of course, law commissioners tidy the law up as well. Is it something along those lines?

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Mr Peake: That does sound very good. Yes, I think having that expertise there would be useful, yes.

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Q95. Lord Lisvane: One of the things I put to Mr Speaker and to the President this morning was the possibility of draft Bills – the Secretary of the Inquiry knows this is a particular enthusiasm of mine. But it does provide the opportunity – and I think it is relevant to some of the things you have been saying – for legislative proposals to be looked at, not from a technical point of view so much, as from the point of view of ‘what is this going to achieve?’

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Mr Peake: Yes, that would be much more effective, I believe: to actually have an outcome-based agenda.

I think it is important that we do have ex-MHKs in LegCo. I think we do need a degree of people being elected there. I think it should not all be by appointment. I think if we are going to retain the Legislative Council, then it does need to have some sort of representation at some point from the public.

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Q96. Lord Lisvane: Are you uncomfortable at all that the move of ex-MHKs to LegCo can be seen – and indeed is seen by some sections of the public – as being a rather cosy relationship? You know, finding a slot for somebody after they have been in one House, to find a slot for them in the other.

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Mr Peake: That is certainly what the public do give you feedback on: that particular point. If they are going to say anything about Legislative Council, it is probably highlighting that.

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But MHKs have been elected by the public and, if we do want some representation in the Legislative Council, then that is a traditional route of getting some bodies in there who have been elected.

Q97. Lord Lisvane: But what would your reaction be to something totally different for putting people on the Legislative Council through the medium of some sort of appointments commission, for example? You would have to accept that the Legislative Council did not have even the electoral college democratic mandate, but might there be merit in that sort of route to membership of LegCo?

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Mr Peake: Yes. Yes, that could be looked at.

I think it is important that the Legislative Council do offer that scrutiny, so I do think that is a very important role that they do have. As you have said, it does offer that secondary look at

1760 things, and I have not heard of anybody wanting to remove that from the system. So, how we go about appointing them can be looked at.

1765 **Q98. Lord Lisvane:** You are a member of two Departments, a sort of quasi-junior Minister – is that a fair/unfair description? Health and Social Care and Environment, Food and Agriculture. How do you see that role? What do you feel you are in those two Departments to do? What do you contribute?

Mr Peake: Well, I am very pleased to be able to be in those Departments and to contribute. I have certainly, on the Environment side, got delegated responsibility for the environment and I have certainly been able to use my business skills and understanding to help there in
1770 drafting and working with the officers in developing a strategy which will meet our Tynwald policy, which was agreed last year, on reducing our CO₂ production by 80%. So that has been very interesting.

I have been able to certainly provide some motivation and to keep people focused on timelines, and so we are bringing a strategy to Tynwald next month on how we are going to
1775 deliver that policy over the next five years. I have been very pleased with my assistance in that Department.

On the Health side, that is really a big team and that is a culture. I think we would all agree that it is very important to have a good culture, to change the culture. It has been criticised in the past, but I think we are now working towards being more inclusive; we are trying to get
1780 teamwork involved; we are trying to work on values; we are trying to attract people with the right values for the Department. We have worked very hard on compiling a set of values that the Department is comfortable with and so we are able then to attract people who want to work with the Department and who want to work here in the Isle of Man to really put the customer at the centre of all their works. Again, that is quite a comfortable place for me, because that is a
1785 business-like approach. So we are really trying to put the customer first and to work around that.

I really embrace both those positions and being able to call on my experience and knowledge and to bring it to the forefront and get people to work together. I am very grateful for the
1790 positions.

Q99. Lord Lisvane: Well, I can see you made a compelling case for the sorts of things that a Member of a Department can do. Do you think, though, that there is a risk that what is happening is an extension of the executive, in a way, where almost all – I think there is only one
1795 MLC and four MHKS who are not involved in Departments in one way or another – are all members of the executive of one grade or another? So that, in parliamentary terms, you have an executive which has got an overwhelming majority over everybody else.

Mr Peake: I can see what you mean. It has not been a problem for me at all, because I do take those roles seriously and want to work very hard and do the best I can in those roles. But I
1800 do see the parliamentary work as separate. Okay, you are working within your Department, so you are party to where the Department is going and where it wants to go and so you do agree with that and you have the opportunity, at Department level, to raise concerns and have agreement before you get to Tynwald. But putting your decisions for the Island first: I have not got a problem working in those Government Departments and still having parliamentary scrutiny and wanting to do the best for the Isle of Man.
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Q100. Lord Lisvane: I can well understand that. In terms, though, you are signed up to two Departments. If you were really outraged at something which another Department was doing, how would you go about taking action? Let us say it was something that impacted on your

1810 constituents really quite seriously, what would be the sort of processes – thought processes to begin with and then actions – that you would expect to go through?

Mr Peake: Personally?

1815 **Lord Lisvane:** Yes.

Mr Peake: Personally, I would certainly meet with the Minister or the other Member involved and find out the facts so I could make an informed decision. I certainly would definitely put the constituency needs and concerns very important, and I would find out the facts. That would be my style – other people may do that differently – but I would certainly want to find out the facts, speak to the people who can deliver the right information for you to make an informed decision.

Q101. Lord Lisvane: Okay, so you are in possession of the facts, but let's say that the Minister in that Department says, 'Well, I am sorry, chum, but actually that is part of our Department's plan. We feel very sorry for your constituents but we are not going to change the plan for them.'

1825 Now, what do you do then? Do you speak against it? Do you vote against it, even though you are a, sort of, member of the Government?

Mr Peake: Well, being a member of the Government, that does not always mean that all the decisions or all the proposals going forward are correct. I personally would certainly always work and vote by my values and that does not always mean, perhaps, that everything that comes to your attention meets with your values. I believe you have to live and work by those values. There is a time where, perhaps, you have to turn people down and point out what is the correct and the right thing to do but again, if a Minister is doing something which is against the values and principles you have, that needs pointing out and that needs debating and arguing with, and if you are unable to do that in private, then it has to then be in the public forum.

Q102. Lord Lisvane: When you joined the two Departments that you are now associated with, were you given any formal guidance as to the degree of, as it were, public support that the Department – more especially the Minister in each Department – expected from you?

1840 I am not asking you to betray any confidences. (**Mr Peake:** No, no.) This is really about process.

Mr Peake: Yes, I think in both the Departments I am in we have had some clear direction from both those Ministers and they do allow for Members to take responsibility for their areas, which is very good, and you do get quite clear boundaries and a framework to work within. So that is quite a ... perhaps I am just very lucky that both Departments I am in are like that, but they do allow the Members to take responsibility for their areas.

1850 **Q103. Lord Lisvane:** Including times when you have doubts?

Mr Peake: Well, I must admit, at the moment, with only being in a year, I have not actually come across that in both those Departments. I have been fortunate that I have believed in what the vision is for those Departments. So, personally, it has been very easy for me to work in those two Departments.

1855 I did take it upon myself to visit all the Departments when I first became an MHK and I was very happy to accept those two roles I was offered. There was no personal conflict with either of them, so my values are aligned with both those Departments.

1860 **Q104. Lord Lisvane:** Now, I think I am right in saying – do correct me if I am wrong – but you are not a great enthusiast for the departmental structure? Is that right?

Mr Peake: Yes, I believe there would be a better way.

Q105. Lord Lisvane: What might that be?

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Mr Peake: Well, I still think there wants to be roles for ministerships and Members of those areas, but I would certainly see it would be more effective if those areas were controlled by the Ministers and then the officers actually took control of those areas. I think the departmental structure does lead to silo mentality. I know it is spoken about and that we do want to try and break that down but from what I have seen it could really be improved. So, yes, I think if we move towards a more single Government and having those areas of responsibility ... The Minister could have responsibility, but I think the Chief Executive and senior officers need to also take responsibility for the delivering of those services.

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Q106. Lord Lisvane: It is a classic difficulty to resolve: the policy advice and the delivery through management, but clearly you are arguing really for a more effective, a more muscular managerial culture throughout Government.

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Mr Peake: Yes, I think the officers and Chief Executives of the present Departments – if we call them the areas – that deliver those services, yes, could take more responsibility.

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Q107. Lord Lisvane: Something that I was discussing with the Bishop was the possibility that in order to get very much the sort of thing that you have been talking about – in other words an appreciation of what the Government is trying to do right across the board – that something along the lines of the Westminster system Queen’s Speech, which actually outlined the key areas, both legislative intent, but also policy intent, which then Tynwald could vote on and amend, indeed, might be a good idea. This arose particularly in the context that because party activity is at a very low level, you do not get to know what the policy of the aspirant Chief Minister is going to be until really quite late in the process. Is there some merit in that, do you think?

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Mr Peake: Yes, again, that sounds interesting.

Obviously, with not being involved in any election of Chief Ministers in the past ... We have got a General Election coming up; at the moment, my personal focus is on working in the Departments. There are still two or three months of hard work to do. We are bringing forward ideas all the time, so I think it is important we work hard on that for the next few months and then just see what the election brings, I think.

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It is perhaps a bit late in the day now to try and bring something in before the election along those lines, but I do like the idea of what you said there about trying to have a document or shared ideas, to understand what it might look like after the Chief Minister is put in place. That does sound quite a good idea.

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Q108. Lord Lisvane: You are a member of the Economic Policy Review Committee. Is the work of that Committee also tending in that way? After all, we know that all governmental plans can be traced back to the Treasury function in the end. But is that the sort of work which is occupying you?

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Mr Peake: It is very interesting and I am delighted to help as much as I can on that Committee. I do wonder how effective it is and what we achieve.

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As I say, it is very interesting to hear the things, but I do not quite know how we can hold people accountable to the outcomes. The information that is shared: where can we take it? How can we benefit from it? How can the Island benefit from it? It does seem to be that, again, these statements are made public, which is fine, but then what? I would certainly like to see us try to

1915 use those. I mean, people do put a lot of time and effort into preparing for these committees and speeches and then I would certainly like to see some benefit come from them.

Q109. Lord Lisvane: And you are also talking about the 'Tynwald Plan' – did I hear you say? This is something I am not familiar with so if you can guide me through that.

1920 **Mr Peake:** I think my idea: if we actually had a plan for Government. It is really getting back to having some strong leadership and working on where we would actually like to be as a nation. I think if we were open and transparent with the electorate – that is what is demanding at the moment; people want more transparency. So it is having some clear goals on where we want to be. I know we have got three pillars of Government at the moment, but I think having a bit more
1925 of a target of where we would actually like to be as a nation that we could then all get behind and support and work.

So having a plan for Tynwald: what would be the ten-year plan and five-year plan and one-year plan? That is certainly what I have tried to do with the Department of Environment. We have put together now the strategy which does point out what the five-year plan is and a one-year plan. I just try and keep things simple, myself.
1930

Q110. Lord Lisvane: And try and deal with the drag and the short-termism? (**Mr Peake:** Yes.)

Well, you have been extremely helpful. Are there any areas that we have not covered, that you would like to?
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Mr Peake: No, I really just wanted to make myself available to you, as a new Member, and give you the opportunity to perhaps ask somebody who has not been in Government or parliament long and just, again, to share the experience really.

1940 **Q111. Lord Lisvane:** Well, it is extremely helpful. From what you say, it sounds as though it is a calling that you would recommend to other people.

Mr Peake: Certainly, yes. I have certainly enjoyed it and I like to hope I can contribute my experience and knowledge.
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Lord Lisvane: Fine. Well, it has been a pleasure to talk this afternoon.

Mr Peake: Thank you.

1950 **Lord Lisvane:** Thank you very much indeed.

The hearing adjourned at 3.32 p.m.

Tuesday, 17th May 2016

*The hearing of oral evidence was held in public at 9.15 a.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[LORD LISVANE *in the Chair*]

EVIDENCE OF Mr R W Henderson MLC

The Chairman (Lord Lisvane): Mr Henderson, good morning.

Mr Henderson: Good morning, Lord Lisvane.

1955 **Q112. Lord Lisvane:** Thank you very much for your written papers, which I found very helpful. I was interested in the one on the second chamber in the parliament of Kenya, because I spent some time advising them on the relations between the two chambers when they set up the second chamber, and it is very relevant to your papers and the views you put to me.

1960 Just on the process this morning, our proceedings will be live streamed, they will be recorded by *Hansard*, and then the *Hansard* transcript will be put up on the web.

May I start by saying you make a very strong case for the continuation of LegCo as a second Chamber, and for the checks and balances that are a part of the process and the relationship between the two.

1965 In terms of the quality of legislation – which is obviously a theme which runs through your written evidence – may I take you back a stage and ask you about how effective you think the statutory consultation process is in bringing something that is not completely ‘cooked’, but at least not significantly ‘undercooked’, to Tynwald?

1970 **Mr Henderson:** Sometimes that can be very good but there seems to be a theme where, over the years, Government has responded to minority views, and views of the Tynwald Members, that there should be more and more and more consultation. But we have a process now where for proposed legislation there is an almost standard format where it is issued online, a press release is done and there is a four-to-six-week period for people to submit their views.

1975 I will not say the consultation system has become complacent, but there seems to be a *pro forma* followed every time for a piece of legislation, and I think that could benefit from a more elongated process, perhaps. That is certainly where the Legislative Council’s reviewing process, I would see, comes into play very definitely, because quite often commentary about consultation is that there has not been enough time; it is complicated – ‘Could we have more information?’; ‘Can we have more public briefings?’

1980 **Q113. Lord Lisvane:** The consultation process does envisage that it can be extended in certain circumstances; but you would say the circumstances have arisen that the period of time has not been extended?

1985 **Mr Henderson:** Not really; and I think that is due in the main to the time factors involved and the pressure on the Department which is trying to bring forward whatever legislation or policy it might be. They have got a timeframe they are trying to work to, they are trying to acquiesce to

the public consultation element and the transparency element – but at the end of the day, they are under pressure to produce.

1990 The other side of the coin is that Government can then come under scrutiny and criticism for not producing enough legislation and policy – or failing in this area, or failing in that area. So there is a pressure on the consultation process to move it along and, as I say, I think it is stuck in an accepted *pro forma* – ‘Yes, we have consulted; we have got a four-to-six-week period’.

1995 Although, having said that, some more complicated issues, such as financial regulations and so on, do get an extension and sometimes on request it can be extended. But the norm is more usual for the four-to-six-week touch for the public consultation – more for Members’ input into that consultation as well.

Q114. Lord Lisvane: So Members, as well as members of public, input into it?

2000

Mr Henderson: Yes, I have input regularly to those consultations – and quite considerably in some cases.

Q115. Lord Lisvane: And if members of the public feel that they have missed the bus – and I do not want to misrepresent what you have said – on something of a tick-box exercise, do they later make direct approaches to you and to Members of the House of Keys?

2005

Mr Henderson: Yes, that is right, sir, very much so.

2010 And indeed with contentious legislation – or options such as the ones I have illustrated in my paper – for instance, the Road Traffic Legislation (Amendment) Bill has received an element of public consultation *and* input from ourselves, but it still progressed. So we have been able to provide that check and balance in the Legislative Chamber where questions have been raised then – and, indeed, the public contact Members of the Legislative Council direct. Sometimes their input into that contact is quite considerable and they lay out all the pros and cons of how they see a prospective piece, which I find is an excellent process.

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2020 With regard to the consultation when it is put out by Government and issued on the web, there is almost a standard procedural document to tick – and I have just undergone a piece of that on the new Marine Zoning initiative that they are looking at. It almost limits how you want to input into that by the size of the boxes that you can tick, or make any additional comments – and I think they could do far better on that. Or indeed it is up to us to pick up *here*, to add to that.

Q116. Lord Lisvane: Let’s go now to your paper and some of the key points you make in that.

2025 One thing that struck me very much was that you said the Tynwald system is stretched now. Where is the pressure especially acute, do you think?

Mr Henderson: I would say that statement is referring to an overview, inasmuch that we are only what I would call a micro-parliament. We have 32 or 33 Members, all of whom have Government departmental responsibilities as well, which you are invited to take up once you are elected – or indeed, Members of the Legislative Council.

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2035 You either have your own Keys work or your Legislative Council work. You have your Tynwald work on top of that and then, in the background, there is a plethora of parliamentary and Government committees running which we are all expected to participate in as well – such as the Public Accounts Committee, and we have Government scrutiny committees. I am on the Treasury as part of my Government portfolio, which then gives me a seat on the Government Social Affairs Committee as well, which is headed up by the Home Affairs Department, Minister Watterson.

Then there are Tynwald select committees in the background – they can be Keys or Legislative Council select committees – all of which provide a considerable caseload or workload

2040 from time to time. Certainly, from a Keys Member's point of view, running parallel with all those
duties they will have a considerable constituency caseload which is part of their duties or
elected functions as well. I can say, from personal experience, that can be very considerable and
it causes late evening and weekend working as well as your day job, as you are trying to respond
to all the issues that you are trying to work towards.

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Q117. Lord Lisvane: Well, certainly good case work can be incredibly time-consuming. I do
know that from first hand.

Mr Henderson: Yes, precisely, sir.

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Even your committee work, if that is being done diligently – and you are well versed in it –
can take a considerable amount of time in preparing documents, reading through items and
prepping up for a particular meeting, or producing evidence for a consultation.

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So trying to do some of the ideas that have been proposed over the years or reduce the
numbers within parliament, I think then we would very much meet critical mass or fall below
that in our functionality.

Q118. Lord Lisvane: You make a point in your paper that it would lose the dynamic and you
would get below a sustainable level.

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Mr Henderson: Yes, there is no doubt about that. Once you have undertaken the Review and
had a good flavour of the work involved in our parliament and sections of memberships from
LegCo and Tynwald, I think you will see and appreciate that.

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I have often heard Members, and I can report to the Review, that they do feel browbeaten at
times with workload in respect of, certainly, the committees or additional select committees
that are asked for. It is not unknown to be working 50-, 60- or 70-hour weeks at times.

Q119. Lord Lisvane: I do not want to lose sight of the implications of Members having
Government responsibilities without formally being Ministers and we will come back to that in a
moment, if we may, particularly because you make a point of it in your paper.

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I would just like to pick up the point that you made – I think you used the word 'plethora' –
about committees, Government committees and Tynwald, Keys and LegCo committees.
Something that struck me, looking at successive annual reports of Tynwald and looking at the list
in the Tynwald Companion, was that there were a great many committees set up for *ad hoc*
purposes. I wonder whether this contributes to the rather crowded radar, as it were, of the
average Member?

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Mr Henderson: Absolutely, sir, there is no doubt about that.

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The committee work in all its shapes and forms does have ebbs and flows, I can't deny that,
but when it is in full flow then those additional ad hoc committees, or when a committee is
moved on the hoof here, for instance, for the Legislative Council, that is an extra on top of
everything else that you have to find time for – and obviously pushes on the Members' time.

Q120. Lord Lisvane: But what sort of committee would be set up on the hoof for Legislative
Council?

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Mr Henderson: We have just had our own select committee set up on the Road Traffic Act for
instance, and that has gone on for some considerable time. Or indeed a request for a meeting
with Keys on various issues, and so on.

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So I think in overview, when things are in full flow, the parliament is running at its capacity.
Certainly from an administrative point of view I have to commend our small team who service
the various committees and Chambers in what they do – and sometimes I just do not know how

they achieve the volume of work and input required that they do aspire to, and produce some very professional documents.

So there is a resource issue in the background at times and that very much causes problems downstairs in the engine room, as it were.

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Q121. Lord Lisvane: Is there scope for a simplification of the committee structure – of course there are policy review committees – but so that there was an assumption that they were not just policy review committees, but they were oversight committees for an area of Government activity? So that it would be natural for something that needed select committee investigation to go to one of those committees, rather than a committee being set up specifically for the purpose?

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Mr Henderson: Those oversight committees that you mention were set up a few years ago as a Private Member initiative – there are three or four such committees. I am on the Social Affairs Committee and there is the Economic Committee and a couple of other ones; and we have the standing committees as well, such as the Public Accounts Committee – which can be an overbearing committee often looking into situations that the oversight committees are looking into as well.

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However, it does flag up an interesting point because I think in the pursuit of transparency and openness, and trying to give that impression to the public, perhaps we have become overstretched and overambitious in the kind of initiatives we have tried to aspire to. And as I have said in my paper, Lord Lisvane, I am not opposed to reform – I am opposed to the dismantling of a structure that I see is in the main working and serving the Island well. However, I think the work that LegCo performs – and certainly as an oversight forum – could well be looked at. I think LegCo could take on more work in that regard and maybe look at the usefulness and purpose of some of these committees, where we should be using LegCo more to determine, or certainly have an oversight of, policy.

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That would be a very welcome step forward and project LegCo into a more modern environment.

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Q122. Lord Lisvane: Thank you very much; we will come on to some of those recommendations you very helpfully put in your papers in a moment.

Let's just deal with this issue about Government responsibilities going to people who are, effectively, backbenchers but become a sort of hybrid junior minister/backbencher. You say in your first paper that a particular benefit of the separate operation of LegCo is, and I quote:

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With Ministers being signed up to collective responsibility there is a risk of conflict, given the relatively small numbers of Keys Members, all with their various governmental and departmental responsibilities, to act on any one committee.

So you make the point there, very clearly, about governmental responsibilities perhaps getting in the way of an independent resource of scrutiny and challenge.

It has become an accepted part of the system but how necessary, do you think, is it to have Members who are *not* formally Ministers associated with Government Departments in this quasi-junior ministerial role?

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Mr Henderson: Sorry, sir, could you repeat the point there? How necessary is it to have ... ?

Q123. Lord Lisvane: There are Members of both LegCo and the Keys who are associated with Government Departments – any number between I think it is four and two, depending on the Department. How necessary is it to have this sort of quasi-junior ministerial role?

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Mr Henderson: I think it is two to five –

2140 **Q124. Lord Lisvane:** Yes, it is two to five – the Secretary has very helpfully pointed out Health and Social Care, and Infrastructure, and Economic Development, all of whom have five associated Members.

2145 **Mr Henderson:** Five could be seen as possibly top heavy; however, I think it is extremely valuable that a Minister has political support as part of his executive departmental team, simply because of the ministerial workload alone, in what he or she or is expected to perform in that function.

Q125. Lord Lisvane: Could I just stop you there?
2150 These are two different things surely: one is political support, the sort of thing that a parliamentary private secretary does in the Westminster system; and the other when you are talking about workload, you are talking about taking away or relieving the Minister of an element of *executive* responsibility?

2155 **Mr Henderson:** In a hybrid sense, sir.
The Minister is the Department set down by law, that is true; however, some of his or her functions can be delegated to their Tynwald departmental Members.

2160 For instance, I work on the Treasury Department and the Minister has his main functions as per law but, by virtue of the size and nature of the Treasury, it is absolutely practical and essential that some of those functions are delegated to his departmental Members – where I have responsibility for Social Security and pensions, and I have responsibility for Government purchasing, procurement and capital projects and so on – which assist the Minister in his functions.

And I use ‘his’ because we have a male Minister, sir.
2165 He could not possibly hope to give proper due process to all that is expected of a Minister without some additional support, and some junior Members or Ministers taking on some functions to assist; and also to balance the departmental meetings and departmental decisions. You have the executive officer staff present at those decision-making meetings, and I think it balances those committees very nicely so that you have the political interface with the executive management.

2170 Certainly from a Treasury perspective that works extremely well where there is a consultative approach to the Treasury work – an oversight approach, where political views can be fed into management views and provide a blending of the two, which can produce a better quality decision and whatever work has been produced for progression to the Council of Ministers, or indeed the House of Keys, or Tynwald, or LegCo.

2175 **Q126. Lord Lisvane:** Yes, I take your point about blending the managerial and political, but the thing that I think I have difficulty with – and we can come on in a moment to the dynamic of having people with loyalties to the administration of the day, and I think that may be an important point – but I think I am right in saying that a Minister has the legal power to delegate functions to *anybody*; it does not have to be an MLC or an MHK.

2185 **Mr Henderson:** I think you would be right in that. I have never seen that happen although it has always been procedurally that the elected Members from Keys, or indirectly elected from LegCo or Tynwald Members. I cannot remember the statute now, but there is a requirement there, or an enabling power, that all Members of Tynwald can serve on Departments – I think that has some bearing on the direction of that.

2190 But I would say a departmental membership of a Minister and two Members, certainly would be a standard requirement to have a decent functioning and democratic process within the Department, so that there is that balance there between political and executive management.

Q127. Lord Lisvane: There is a feeling perhaps, in my mind, that there is a risk of being top heavy about this. What is the total staff of the Treasury? I am talking in official terms, now.

Mr Henderson: I could not answer that question off the top of my head, sir.

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Lord Lisvane: It doesn't matter.

Mr Henderson: But there are a lot of Treasury staff because there are a lot of different sections – Income Tax obviously, Capital Projects Unit and Social Security sections attached to Treasury, and so on.

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Q128. Lord Lisvane: Let's come back to the dynamic, the affiliation point.

As I understand it, there is collective cabinet responsibility so that the Ministers have to accept that under the direction of the Chief Minister. But there are the Members in Government Departments who are expected to – if I can put it this way – toe the line, in terms of what their own Department is doing, but may feel that they have a freer hand when it is about policies and actions of other Departments.

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The Treasury's writ – and you have just indicated some of your own responsibilities – all treasuries' writs, I think, in whatever democratic system we are talking about, run very wide indeed. Do you feel that, as a Treasury Member, you have a responsibility or a loyalty to the Government, almost as if you were a Minister?

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Mr Henderson: It can have that effect on you, yes, that is quite true. However, we are allowed a certain amount of latitude and obviously I would need to talk to the Minister with regard to a particular topic I would be allowed latitude on, certainly for a parliamentary issue such as this, for instance.

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When your report is delivered to Tynwald, you know, I would suspect, every Member will have a free rein on that. There are issues that do cause conflict and there is a procedure whereby I can go and see the Minister and discuss the matter and say, 'I have got a matter of conscience here, it is a pre-declared position – it is a former constituency matter.' Or, 'I downright do not believe that what we are doing is fair.'

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You have to make a point to some degree, where you are advised to leave the Chamber or you can stand by your principle and actually vote against something.

Q129. Lord Lisvane: When you took up your responsibilities, were you given a formal indication of what sort of latitude you would have in that respect?

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Mr Henderson: Yes, sir.

Q130. Lord Lisvane: A written indication?

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Mr Henderson: I would not say a written indication, but there are some indicators in the Council of Ministers' collective responsibility documents and Members' responsibilities, their duties and what they should and should not do. I think once you read that you certainly get an indicator of your stance.

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Q131. Lord Lisvane: That is very helpful.

In your first paper you use the phrase 'a perception of bias' – in other words, towards Government; and in your second paper you talk about the 'block vote of the Council of Ministers party' – and indeed you use the small 'p'.

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Is that a distorting effect, do you think? What is the basis of your slightly critical stance on that?

2245 **Mr Henderson:** As I have said, that phrase has often been borne out of frustration by Members. One Member in particular uses it and I have to support it sometimes, because what we have is a system where the Council of Ministers, Government, can produce whatever legislation they like – they can launch that in the House of Keys. They have the nine votes already for a particular item and then if it is connected to a particular Department such as Economic Development, then those Members of that Department are also expected to vote with that as it is their departmental duty.

2250 So it climbs up to 12, 13 or 14 votes very quickly. And if the executive are very keen on something they will try and gain support from other backbenchers or ‘friends of CoMin’, if I can put it like that – and I do not mean that in a disrespectful way but somebody who is seen as a little more Government-supporting than others. So they can very quickly gain a majority with certain things which does cause frustrations.

2255 It can also cause frustrations in Tynwald to a *lesser* degree. However, you still have that block vote and if it is an important initiative the Council of Ministers *will* stick together and in the affected Department their Members will be expected to toe the line on that particular issue. In the majority of cases, I have to say.

2260 **Q132. Lord Lisvane:** I think A J Balfour called democracy ‘government by explanation’ – so perhaps that sort of advocacy has a legitimate place?

2265 **Mr Henderson:** Yes, sir, it produces what is called a narrow democracy in the case of the Keys where in fact, yes, we do have elected Members to our House of Keys; however, Government forms not quite an outward majority, because there are only nine Ministers, but often what is not taken into account is the fact that departmental Members are expected too. So they do get a majority quite often and then we are talking about, as I point out, legislation and policy initiatives and monetary initiatives.

2270 It is produced by Government, it is not produced by elected Members, so you have an indirect narrow democracy there producing those initiatives – such as we see where a party has dominance in other parliaments, basically.

Q133. Lord Lisvane: Can we move on to the method of appointment of LegCo Members?

2275 You were a Member of the Keys for 17 years, so you have seen this from both sides of the equation, as it were. You call the system in your paper ‘workable and pragmatic’, but you also talk about ‘weeks of deadlock leading to parliamentary and public frustration’.

Can you bring that apparent contradiction together for me?

2280 **Mr Henderson:** Certainly. Possibly the single issue which causes a rise in public opinion, a rise in the media, and criticism of LegCo from Keys Members, is the election process to the Legislative Council by way of the voting *system*. And I am careful with my words there.

The actual voting *system* that they use can produce a deadlock – or the required number of votes, which is 13, are not achieved. This can go on for many weeks.

2285 I remember one Member of the Legislative Council, within the past five or six years, got himself elected on the 19th attempt. That is something, to me, which does merit serious examination – and have we got this system right? It was changed in Keys a few years ago through a short Bill by the Hon. Member, Mr Gawne.

2290 **Q134. Lord Lisvane:** I think the founding legislation is the Isle of Man Constitution (Elections to Council) Act 1971, and then there is a subsequent Guidance Document of 2010. I am looking at page 42 of the 2011 Companion now.

Mr Henderson: Yes.

2295 There is somewhere in his short Bill that caused an amendment to that – and I am sure he did
not intend it – but the effect now is the deadlock that I speak of, which is the pattern where if
Members do not achieve the right votes then there is a call for a re-election and a new, fresh
nomination.

2300 **Q135. Lord Lisvane:** And you have a month in which to put forward new candidatures? That
is correct?

2305 **Mr Henderson:** Again, I do not want to be disrespectful, but that process can go on *ad
nauseam* and that, I would say, scores 10 out of 10 for attracting public criticism, media criticism
and Member criticism; whereas other calls for reform over the years – such as they are – might
only have scored one out of 10 on the Henderson Richter scale. This one puts everything in the
spotlight, and then once it is in the spotlight then the odd questions start, ‘Should we have
LegCo reform *anyway?*’

2310 I think the system does itself a disservice and does the parliament a complete disservice in
the way the election process is run in that fashion. And, as I say in my paper, I am not averse to
reform in a measured, pragmatic way without having to dismantle everything, but certainly
there is plenty within that we could sharpen up. That is the number one item, I would say, that
requires sharpening and polishing.

2315 **Q136. Lord Lisvane:** You have made a very strong point on that in your written evidence for
which –

Mr Henderson: I think we could do better on that, sir, and if we improved that I think the
benefit would suit Tynwald and the public as well.

2320 **Q137. Lord Lisvane:** Do not take this the wrong way, because you have made the journey
from the Keys to LegCo, but might it be seen as a rather cosy relationship to have routinely ex-
Members of the Keys in LegCo?

2325 **Mr Henderson:** I think that is a statement that the protagonists for reform of LegCo would
use and it has been thrown out over the years by a minority; and really speaking, a reformist
could throw that out as a direct challenge, or to be provocative.

2330 The truth of the matter is that a LegCo nomination is at the behest of the Keys. You have to
approach somebody to put your name forward to start with, you have to have a nomination and
you have to have somebody who will agree to second you. You have to produce your CV as well
as part of that process, if you have got any hope of success. There is a voting mechanism in Keys
whereby you have to achieve 13 supporting votes from the elected Members – and quite often
that does not happen.

2335 So, far from being a cosy arrangement, you have got to prove your worth to the Keys
Members – such as I had to do for my election to the Legislative Council. It is a five-year position
so if you do not perform, as we have seen on recent occasions, you do not achieve the magic 13
either and the Keys can eject you as quickly as they put you in here.

2340 People have used those phrases – ‘retirement club’ is the other one – but I find that
somewhat disingenuous and insulting, because of the way we have had the changes over the
years to the Legislative Council. It has faced fundamental reforms.

2345 I think some of those comments 50, 60 or 70 years ago would be more justified, because of
the make-up of the Legislative Council then and how long Members tended to serve, and their
age group. But once we had the fundamental reforms where LegCo was, basically, disassembled
and reassembled in its current format – the Governor was removed, the Attorney General is
now in an advisory role, we have our own President now, the Council of Ministers came into
being – and the whole dynamic of LegCo changed. The age group has come down, and I think

Keys are more willing to be more scrutinising of LegCo membership and how they vote these days.

2350 And, in fact, I was advised strongly on a couple of occasions by Keys Members, 'Are you sure you know what you are doing because you will be at our behest in five years' time – not the electorate you have built up and established a relationship with, but you will be at *our* behest.'

2355 **Q138. Lord Lisvane:** When you said, a moment ago, that the Keys can get rid of an MLC as quickly as put one in, you are talking at the end of a five-year period of office – just to be clear about that?

Mr Henderson: Yes, sir. However, I would say that if the Keys felt they had an issue with the performance of a Member, there is nothing stopping a motion of no confidence coming before Tynwald.

2360 **Q139. Lord Lisvane:** In an individual Member? (**Mr Henderson:** Yes, sir.) I thought it was only collectively?

2365 **Mr Henderson:** A Keys Member – I think I am right in saying – would be able to launch a no-confidence motion in a particular Member if there were issues.

Q140. Lord Lisvane: Right, we can look at the procedural implications of that.

2370 It seems to me there are two elements that really have been themes of our conversation about appointment of Members of LegCo. One is the pool of people for appointment, and the other is the extent of the democratic mandate – in other words, the operation of the Keys as an electoral college.

2375 In terms of the pool of people for appointment: could you see any advantages, possibly, in some sort of statutory appointments commission which would invite applications, or nominations, of people from any walk of life, not necessarily people who have been involved in the doings of Tynwald in their past career; and would be able to apply accepted processes and techniques of selection to recommend a series of candidates to the Keys ?

Mr Henderson: As a replacement for the current system?

Lord Lisvane: Yes.

2380 **Mr Henderson:** I have argued that point in my paper, really. I have done some quite considerable research leading up to the Inquiry and indeed my own experience for nearly 20 years.

2385 I came into the House of Keys thinking that possibly LegCo should be done away with and should be voted upon in a different fashion, but as I have progressed through my political career I have come to realise that perhaps they were somewhat naïve approaches to my thinking. I have come to the established view – at the minute, anyway – having realised the benefits that a second Chamber or second House provides in the parliamentary process, it is well worth hanging on to for all the reasons I state.

2390 The nomination process then – and I think we have that in Canada, for instance, and certainly in the House of Lords – removes that unique quality we have here where we have an indirect but democratic process of selection. How we do it here injects an element of democracy into that selection process, in my view. The elected Members of the House of Keys have as their remit – or part of their parliamentary functionings – to select and formulate LegCo. They go to
2395 the hustings with that element as part of their role and people vote upon them knowing that part of their role is to select on their behalf the formulation of LegCo –

Q141. Lord Lisvane: Forgive me for interrupting you, but that is about the electoral college role and I have no difficulty with that at the moment.

2400 I think the point that is really between us at the moment is, how do you provide the pool of possible candidates? This is I think the second of your recommendations in your paper printed in red where you say that the Review should look at the process of appointment in second chambers and you mention the UK, Canada, and so on.

2405 In a sense what I am suggesting is something of a blend of several of those, in other words an external appointments commission whose recommended candidates could still be voted upon by the Members of House of Keys, so you would not lose the electoral college element.

Mr Henderson: I am sorry, I might have confused the matter with how I have phrased that in my paper. My main point was to support the way that we do things now because it injects a democratic element into it. But I think I also say that it does not have to be a Keys nominee in how we do things though, because nominations from outside *can* be brought forward by a Keys Member – and I think, as I have illustrated, that can have a very positive effect on the make-up of the Legislative Council, because currently we have former banking executives for instance as Members –

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Q142. Lord Lisvane: You made the point in your paper, yes, absolutely.

Mr Henderson: Yes, and they are providing a very valuable different perspective on things – and we have a media executive as well, used to publicity and PR, executive management and all the other kinds of issues.

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So I think, at the minute, there is quite a nice blend of various inputs here as a result of that.

Q143. Lord Lisvane: But you would agree, wouldn't you, that the process of nomination and of approval could be split?

2425 If we were to follow the hypothesis I have been putting to you of an external appointments commission, for example, they could nominate but the process of approving could stay with an electoral college arrangement.

Mr Henderson: That could be so, sir, I had not really considered it that far in that direction, having seen the benefits of Keys providing all nominations to the floor of the Keys – or proposing, anyway. The Keys Member, from what you are saying then, would propose the nomination that came from a nominations committee?

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Q144. Lord Lisvane: Yes ... well, I think you are taking me too far. I would say that in the hypothesis I am putting to you that an appointments commission could say, 'Here are our nominees.' And those are for approval, or otherwise, one by one by the electoral college, so that the task of nomination would pass from the Members of the Keys to an appointments commission.

2435

Mr Henderson: To an appointments commission – so the Keys in that sense, then, would not in themselves provide any names for nomination; all the names would be coming from the nomination committee?

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Q145. Lord Lisvane: On that model, yes; but of course Members of House of Keys could propose people to the appointments commission. I am not suggesting they should be entirely cut out of the process; merely that there should be a very clear distinction between nomination and approval.

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2450 **Mr Henderson:** I think that is worthy of merit, sir, and is certainly a recommendation to be taken further in examination, following any report that you produce.

Q146. Lord Lisvane: Thank you very much.

2455 Can I turn to a different point in your paper? You call for the establishment of an 'inter-House co-operational committee'. Can you explain to me what you think that would do; and what would that replace in the current practice?

Mr Henderson: I do not know if it is to replace something, rather than be an addition.

2460 It seems to me from time to time that protagonists for reform often refer to this tension that exists between the two Houses. I have not noticed it too much myself, I have to be honest, but it is an issue that is put forward.

However, I can see value in an inter-House committee such as I proposed – and it is lifted directly from the Kenyan model, as you have probably observed, sir.

2465 **Q147. Lord Lisvane:** Of course, in the Kenyan parliament they set that up in the expectation that they would need to use it, rather than it coming from tensions between the two houses because they were moving from a unicameral system to a bicameral system.

2470 **Mr Henderson:** Yes, sir. However, I can see the value of that for ourselves where an inter-House working committee does not have to meet every week – it could meet quarterly, or however often they wished to have an inter-House committee meeting. And if there are tensions, or possibly foreseen tensions coming as a result of proposed legislation policies on the horizon – or any other issues that may be seen pertinent for discussion between the Houses and a joint view arrived at, or possible scenarios – so that it would improve and build upon relationships.

2475

Q148. Lord Lisvane: Wouldn't it run the risk of simply being an additional talking shop?

2480 If you were saying to me this should to be a replacement for conferences, when there is actually legislative disagreement between the Keys and LegCo, I can well see that a single permanent focus of seeking agreement and accommodation between the two might well be a good thing; but if it is simply to talk about general issues which the Houses themselves will talk about in their own proceedings, doesn't that risk adding the fifth wheel to the coach?

Mr Henderson: That could be an observation, sir. Yes, it could be a replacement.

2485 I think it is something that needs to be looked at because, as I say, over the years various people have produced this argument for this tension and stress that they claim exists between the two Houses. Sometimes I have observed a tension between ourselves – not an intractable tension, but something that if both Branches were to meet and discuss or if, as you say, we have the conference facility ... I think it is something that is worth looking at and examining, and/or to take over the conference facility, or expand that conference facility role in that way.

2490 I do not want to add a fifth wheel to the coach either but if we go down that line of argument, I would certainly support just the examination of the conference system to see that it is doing what it should do, or should it provide a little more?

2495 **Q149. Lord Lisvane:** That is something I am very happy to look at, very carefully; and thank you for making that suggestion.

Forgive me, do carry on.

Mr Henderson: Sorry, sir.

2500 I am also specifically thinking that if there is something a conference could not take care of, or if there was an argument between the two Branches that ensued over some particular point, I

think the conference procedures do need testing to see that they are wide enough to cover some of the comments that have come through – and undoubtedly you may hear about this tension.

2505 **Q150. Lord Lisvane:** But we would be talking here about legislation, wouldn't we – not, as it were, budgetary allocations or anything like that within the Tynwald system?

Mr Henderson: Predominantly, although I would say a review of what the Legislative Council does by way of what it does examine, and *should* it be examining more policy and procedures and so on, then there may be scope to have a look at the conference facility in that respect.

Q151. Lord Lisvane: Thank you.

This really goes to the opportunity to introduce legislation *either* into the Keys *or* into LegCo, and the Equality Bill is the example you have used in your written evidence. And you say that it is especially important that legislation such as that Bill should be in LegCo when the Keys is dissolved, because the fact that LegCo continues regardless of the dissolution of the Keys would mean preserving the Bill in that form.

2515
2520 But surely, isn't there an easier way – and not taking this as a criticism of the general point – but isn't it possible simply to freeze a Bill and to reintroduce it in exactly the form it has reached when it lost to further progress by dissolution?

Mr Henderson: That is so, sir, yes. However, that process then would not quite be a waste of time ... yes, it would send a signal out that it is being progressed, but then it is lost and it has gone through that process – which I feel means the legislation, or the legislators, would not be held in a very good light in that way.

2525
2530 But this sends out a more positive process signal, in my view, whereby the Bill is not lost and it has not died, and it shows the intent of the Isle of Man Government – and it shows the intent of the legislature in a far more positive way in utilising the functionality of LegCo in that manner.

Q152. Lord Lisvane: I do not want to chop definitions with you, but if it is about making it clear that there is a will to proceed with legislation of that sort – and let us say that a Bill like the Equality Bill has been subject to 120 amendments in LegCo – surely freezing it at that point and then introducing it as amended to that point in the new mandate, is an equally good way of demonstrating political will to proceed?

2535
Mr Henderson: Do you mean what we are doing now, Lord Lisvane, in that it transgresses –?

Q153. Lord Lisvane: No, I am simply saying ... and perhaps I am making too much of picking up this technical point that you put in your paper. You say that it is an advantage that LegCo continues in operation and you have just said to me now that it demonstrates more clearly political will to continue with a particular piece of legislation.

2540
2545 All I am saying is, is there not an alternative route which does not involve ... ? Or indeed, if the Bill had been in the Keys, this would have been the route forced upon Tynwald, because the Keys would have been dissolved. But if a Bill is reintroduced in exactly the form it has reached at the point of dissolution, that can be equally an earnest of legislative intent.

Mr Henderson: Yes, sir, that could be argued. I see it as a more positive route, following what we are doing now – that is my personal view. I think it sends a more positive signal of it rather than moving something to expect it to die, and then pick it up again.

2550 To me it is a more pragmatic, positive way of doing business – certainly in this instance – and things are not dead, they are just ready to go, which is quite a difference as well, I think.

Q154. Lord Lisvane: It may well be that the patient would prefer that to parliamentary resuscitation in any event!

2555 We have covered a lot of ground; is there anything else that you would like to say to me before we finish, because we are approaching our scheduled time?

Mr Henderson: No, sir, I think you have covered all of my main points, in that I believe Legislative Council forms an invaluable part of the parliamentary process here on the Isle of Man, and I have outlined the positive attributes that it brings.

2560 I am very worried that, as an end result, a minority of folk are looking to dismantle our parliament; and there are some very real dangers, challenges and threats to the Isle of Man currently that we are having to face. I think the machinery that we are using has given us all the positive benefits of where we have arrived today, and to dismantle that in the face of such challenges and change is almost suicidal.

2565 That is not to say we should not look at reform in a more pragmatic sense and look at the internal workings of our machinery. I think the external framework is providing us a fine platform and we tinker with this at our peril, currently. I also advance various points for reform and I think the Standing Orders of all three Chambers need to be looked at for their effectiveness and appropriateness – and also the Legislative Council voting process that can cause deadlock.

2570 I would also say, sir, that the Legislative Council provides a qualitative process to the legislation. And in all my years elected, as I have pointed out, I have never had one member of the public or a constituent actually buttonhole me with the formulation of our parliament as a primary point of concern. It may have come up as a subtopic after engaging with their main topics, but as a main issue I have never had that launched at me.

2575 I think when the public have settled in their view of Tynwald, it is not a public perception or view. And whoever devised the method of the indirect election whether that was by design or by default when they were doing the LegCo reforms, I think it has produced a best-of-both-worlds parliamentary system as far as that is concerned. There is a little bit of democracy put in there and I think people are more accepting of the system because there is that check and balance built into it. As I say, it has never been a huge issue ever raised to me, sir.

2580 I think what we have at the minute, with some tweaks and adjustments, would push us forward into the future very nicely.

2585 **Lord Lisvane:** Thank you very much indeed. I am extremely grateful for all your help.

Mr Henderson: Thank you very much, Lord Lisvane.

*The hearing was suspended at 10.12 a.m.
and resumed at 10.15 a.m.*

**EVIDENCE OF
Mr Peter Murcott**

2590 **The Chairman (Lord Lisvane):** Mr Murcott, good morning.

Mr Murcott: Good morning, Lord Lisvane.

Q155. Lord Lisvane: Thank you very much indeed for sparing the time to come and talk to me this morning and thank you too for the written evidence that you have put in ahead of time.

2595 I think I am right in saying that really there are two issues: one is consultation and the other is the Coronation Oath that you would like to raise.

Mr Murcott: Those are the two main issues, though there are subsidiary issues about the scrutiny of parliamentary Bills and some of the procedures.

2600

Q156. Lord Lisvane: Shall we start with the Coronation Oath and its implications for legislation? Now, I think your position is that the Coronation Oath Act 1688 is, in effect, not always observed. Is that correct?

2605 **Mr Murcott:** That is exactly what my position is.

Q157. Lord Lisvane: And which is the provision in the 1688 Act that causes you particular concern?

2610 **Mr Murcott:** Section 3, which lays down the oath that Her Majesty takes. In section 3 – I am not going to recite the full oath – the salient points as far as legislation would go is where the Queen solemnly swears to the utmost of her power to:

Maintaine the Laws of God the true Profession of the Gospell.

Q158. Lord Lisvane: I have got that in front of me – subject to some rather antique spelling and syntax.

2615 Are you aware that the oath which Her Majesty took in 1953 was not exactly the same as that specified in the 1688 Act?

Mr Murcott: I was aware that there had been some modifications, I think in 1911 when George V came to the throne. But I thought that those modifications really related more to the Protestant faith than to the question of the laws of God and the true profession of the Gospel.

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Q159. Lord Lisvane: Well, the additional words which were put in – I have not been able to trace a statutory amendment, a formal amendment of the 1688 Act – were:

Will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship and government thereof, as by law established in England?

Mr Murcott: Yes, I am aware that is part of the original oath and –

2625 **Q160. Lord Lisvane:** Well no, I do not think it was part of the original oath. Your original is 1688.

2630 **Mr Murcott:** The original one talked about maintaining – I am speaking from memory, because I have never really taken so much interest in that because it seems to be more on the spiritual side.

The original oath did make reference to the order of the bishops and the state of the Church of England, so it may well be that that was altered, but I am not aware that the primary concern that I have had been altered.

2635 **Q161. Lord Lisvane:** I think in the 1688 Act, the provision about the bishops and clergy appears to be actually rather secular more than spiritual, because it says,

And will you preserve unto the bishops and clergy of this realme and to the churches committed to their charge all such rights and priviledges as by law doe or shall appertaine unto them or any of them?

So that does not appear, to me, to be particularly about spiritual guidance.

Mr Murcott: No. I have to say that is not one of the primary areas of my concern though.

2640 **Q162. Lord Lisvane:** No, no. I understand that.

Mr Murcott: I am a Nonconformist and I am not primarily concerned about the maintenance of the order of the Church of England, though I have warm regard for the Church of England. My primary concern is about legislation in general. The oath requires the monarch to 'maintain to the utmost of her power the laws of God and the true profession of the Gospel'. That is the primary aim and that is the part of the oath that I have always emphasised.

2650 **Q163. Lord Lisvane:** But is it, at the very least, a stateable case that the amended Coronation Oath that the Sovereign takes, as Supreme Governor of the Church of England – although as you say, you are not concerned with the Church of England institutionally – nevertheless it is as Supreme Governor that the oath is taken? And indeed, that was dropped, obviously, during the Commonwealth, but it was reinstated during the reign of Charles II. So it is Supreme Governor of the Church of England.

2655 I take the point that your concern is with legislation which does not depend upon the Church of England, but nevertheless what we are talking about is a potential tension between the oath the Sovereign has taken and the import of legislation to which she gives Royal Assent. That is the case, isn't it?

2660 **Mr Murcott:** General legislation, yes. She also, I take it, gives Royal Assent to legislation that affects the Church of England in particular, but that is not a primary area of my concern. I think that would be more appropriate for people who are in the hierarchy of the Church of England to consider that.

2665 **Q164. Lord Lisvane:** That is done by measure under the Church of England Assembly (Powers) Act 1919. So that is an entirely separate route.

What is the sort of thing that you feel assenting to is contrary to the Coronation Oath?

2670 **Mr Murcott:** There have been several pieces of legislation, but if I focus on one, and it has been the most contentious. That was the Marriage (Same Sex Couples) Act which was manifestly against the laws of God, and it would seem to me that it was contrary to the Coronation Oath that it should have ever been presented for the Queen's assent, because it could not be remotely said that that Act complied with the laws of God and the true profession of the Gospel – nor did the Manx Act for that matter either.

2675 **Q165. Lord Lisvane:** And the position of the Church of England on same-sex marriage is not to solemnise that in churches, I think.

2680 **Mr Murcott:** I am aware that that is their position, though I am coming back to the fact that the oath, with regard to that, in fact goes beyond the Church of England because churches may have or may not have various views. It actually specifically talks about the 'law of God' and I think that is where the oath is extremely specific and, quite frankly, legislatures are not observing it.

2685 **Q166. Lord Lisvane:** What is the way out of this impasse?

Mr Murcott: It is a big subject – and I do apologise for having given you a little additional booklet. In fact, I would have thought, with your very great experience – far greater than mine – you are going to know far more than I do. But there is an interesting fact in that booklet that I

2690 was not aware of when I actually submitted my evidence, which relates to a Manx Bill that effectively had the Royal Assent refused to it in 1962. A lot of people are not aware of that.

Q167. Lord Lisvane: This the Manx Wireless Telegraphy Bill?

Mr Murcott: The Wireless Telegraphy Bill, yes.

2695 But, to answer your question, that was a very interesting piece of information that I got because it showed how the refusal of the Royal Assent could take place without creating a political controversy.

2700 You see, at the moment, the system in the Isle of Man is different obviously from England. I would say that it is different in this sense: when the Bill is passed in the Isle of Man and it is submitted for the Royal Assent, it used to go to the Home Office. I think now it goes to the Justice Department; they scrutinise it. I believe it is passed around to various departments and then a recommendation is made that the Bill receives the Royal Assent – so it obviously satisfies those departments.

2705 With the Wireless Telegraphy Bill, they did not recommend. They found themselves unable to recommend that the Royal Assent be given, and so the Bill came back to the Isle of Man. The point there – which I found very fascinating – was that, in effect, the Royal Assent being refused, because, after all, the Manx Government had submitted a Bill with a request that it received the Royal Assent, and the Royal Assent was not given because the Home Office had decided, after much consultation, not to submit it.

2710 The reasons they gave were that, in their view, the proposals in that Bill would mean that an international convention would be infringed, and that was the 1959 Telecommunications Convention. They were concerned, they said, that the airwaves would be interrupted and that because they had these international obligations, therefore – that was the reason they gave – they would not be able to recommend it for the Royal Assent.

2715 Now, what that meant was that the Royal Assent was in effect not given. It was not therefore formally refused. They did not actually take it to the Privy Council for the Queen to refuse it and for them to send a message back saying, '*La Reyne s'avisera*', which would be the hallowed phrase that is used – it has not been used since Queen Anne's reign.

2720 **Q168. Lord Lisvane:** 1708-09.

Mr Murcott: 1708, with the Scottish Militia Bill.

2725 So they used another method, which was probably infinitely more diplomatic and that was that they did not present it, but it amounted in practice to the same thing: that a Bill was refused.

2730 That particular case was very important, I think, for one other reason. I have read around this subject a very great deal and there are those who enquire whether the refusal of the Royal Assent is still possible, i.e. because it has been since 1708, has it fallen into disuse? Then in the eyes of the common law, has the Royal Prerogative to refuse the Royal Assent in fact vanished, because of long non-use.

2735 Now, that is, I suppose, an argument and there are a number of people who put that argument forward, but it is not a sustainable one for two reasons. First of all, the outcome of the Wireless Telegraphy Bill showed that the Royal Assent could be refused, albeit by a diplomatic method; but also, if that were true, then there would be absolutely no point in the Justice Department or the Home Office or anybody else examining Manx Bills, because the whole thing is, they examine them to see if they approve of them. If there were no power to refuse the Royal Assent, then they would be quite frankly wasting their time and their activity would be just purely academic.

2740 So the very fact that they proceed to examine all Manx Bills shows that in their view the Royal Assent is still capable of being refused, albeit by their chosen method.

Q169. Lord Lisvane: Well, I think that is a very compelling line of argument and I would actually agree with you so far as the United Kingdom is concerned.

2745 But I think the proof that I would adduce is the existence of the Royal Assent Act 1967, because that requires Royal Assent to be notified to both Houses. Of course, at prorogation of the Westminster Parliament, the remaining Royal Assents are announced formally by the Clerk of the Crown in Chancery, responded to with: '*La Reyne le veult*', by the Clerk of the Parliaments. So the fact that assent by the third part of Parliament, following agreement by the Lords and Commons, has statutorily to be announced to the Lords and the Commons seems to me to indicate that it is a very live proceeding and while it would be extraordinary to have a *La Reyne s'avisera*, it is still constitutionally possible. I would not accept for a moment that the possibility of refusal had fallen into desuetude.

2755 **Mr Murcott:** No. I was just saying that there have been various people who had put that forward and I wanted to try and find a route whereby I could challenge it. It was just by chance that I remembered from a previous comment that I heard back in 1992 that there was a Bill that failed in effect to get the Royal Assent, and I did some investigation this last weekend to find out exactly what happened.

2760 But to come back to the point, I feel that what is happening at the moment is you have a got a very unsatisfactory situation. The state requires its head of state, as the embodiment of what the state regards as its highest aspirations, to swear an oath which in effect politically and in reality is impossible of being performed by the monarch personally. I know that the Royal Assent, the decision about it, is actually taken by government ministers. It is part of the prerogative that is no longer exercised personally by the monarch. Nevertheless, the necessary legislation still comes before her and she still has to append her signature. It seems to me, therefore, that there is a duty laid on those who in reality administer the Royal Assent to ensure that no Bill is presented to the monarch formally for her signature that contravenes the Coronation Oath. And that is something which is quite clear to me is not happening.

2770 **Q170. Lord Lisvane:** I think we are shortly going to have to leave it there. It is a proposition which I do not think I can unpick further. I have just got one final supplementary on that. Is it in fact for Her Majesty's Ministers to make that judgement because of the third limb of the Coronation Oath, as sworn, rather than the 1688 version: 'the doctrine, worship and government of the Church of England'? Is it actually the Church authorities who should intervene at that point or whose advice should be sought? Because Her Majesty's Ministers, powerful as they may be, are not in a position to be authoritative on that point.

2780 **Mr Murcott:** Her Majesty once said, to somebody who enquired from whom could she take advice, that she could take advice from 'whomsoever she wanted'. It was once suggested to her by a certain famous politician that she was probably constrained as to the sort of advice and Her Majesty did not accept that. So she can take advice from whomsoever. Technically, she could come to someone like me if she so wished. She obviously has her advisers who will give her the clear advice, but the very fact that she takes advice would suggest to me that ultimately Her Majesty then has to take a decision, and she does have a very clear statutory duty.

2785 There is another point here, which I think has been overlooked and that is another limb of the Bill of Rights Act 1689. It makes it perfectly clear that the 'pretended suspending and dispensing powers' are hereby null and void. If someone advises Her Majesty to sign a Bill which is incontrovertibly contrary to her statutory duty, what are they doing? They are advising Her Majesty in effect to do the very thing that James II was overthrown for doing, and that is to suspend or dispense with the operation of a very clear Act of Parliament that is still in force. Now, that is something which cannot be done. You cannot suspend or dispense with an Act of Parliament.

2795 The Coronation Oath Act is extremely clear and it is not being observed. I do not blame Her Majesty for this because, quite frankly, I know full well, as well as anybody else knows, that if she took the personal decision to refuse the Royal Assent – say, for example, to the Marriage (Same Sex Couples) Bill, which she would have been perfectly entitled to do and could have had a very incontrovertible argument by citing an act of Parliament and all the points I have made – we know full well that the general populous would not have seen it in those terms because they are not people who normally look into legal issues and constitutional issues. It would not have been very long before a campaign would have been whipped up against the monarchy and it would have led it to great trouble.

2800 That seems to me to be a highly unsatisfactory situation: that you require of the monarch, you place a statutory duty on the monarch, you ask the monarch to come – as on 4th November 1952 – to swear before both Houses of Parliament; then on 2nd June 1953 again, to swear the same oath, in the context of a sacred church service, to do something which in practice cannot be done.

2810 I think it is long overdue for that to be investigated and for those who have the real power to take steps to ensure that, while the Coronation Act is still in force, it is abided by. If they find that in the present time the Coronation Oath is a barrier to the things that they wish to do, they have a very simply proposition which is entirely within the Bill of Rights – and the Bill of Rights is quite clear that no law is to be suspended or dispensed with except by the repeal of that law by another act of Parliament. That has not been done and until that is done, I think, quite frankly, it is an issue that deserves far wider debate than it is receiving. I keep on bringing it up to our own legislature and I shall go on doing so.

2815 **Lord Lisvane:** I think that is the point at which we ought to park that subject for the moment, because I do not think we are in a position to take it very much further this morning.

Mr Murcott: Yes, thank you very much.

2820 **Q171. Lord Lisvane:** Let us turn to the issue of consultation. On the surface of it, that seems a very good and sensible preliminary to formal legislation, but I think it is your contention that it has not worked as it was intended to or as it ought. Is that correct?

2825 **Mr Murcott:** I think the most recent incident threw up that there was a deficiency in the process. That was really what I was saying.

2830 I have been making submissions and responses to consultation processes for years. I have been on the Island since 1990. I have taken a great interest in legislation, on quite a wide range. Legislation concerning criminal procedure interests me immensely, because I used to teach that area of law at the Isle of Man College – and the criminal law in general. Industrial law: I had an interest in that in the last decade, because I used to represent the Isle of Man Trade Union Council as an unpaid legislation officer. So I took a very great interest in that and I have made many responses.

2835 The problem that came up on the most recent one was a consultation that actually yielded a lot of responses. It was the consultation on the Isle of Man Marriage (Same Sex Couples) Bill. They had a startling number of responses. They normally, I think, would get possibly 20 or 30. On this one they had 176. That is exceptional for this Island, for so many people to respond.

2840 What was unsatisfactory was that, first of all, the subject was not without its complexities, and I think it was not sufficient to say that it was something on which people would already have a fixed view, because you could say that on any consultation. People necessarily wanted to take time to get their view committed to paper, and some people wrote some very lengthy and very erudite responses and they had done a huge amount of research.

What happened in the consultation process was that the consultation code says that there would be a minimum of six weeks. It was reduced to five. I suppose some might say, 'Well, what

2845 is a week?’ It is actually quite significant, because some people who might wish to respond
might be responding on behalf of others, especially from the churches where they might wish to
call, say, a committee together, and it is not always easy to do that at the drop of a hat. So six
weeks was not really an awfully long time as it stood, and to take another week off was actually
possibly going to cause difficulties for people –

2850 **Q172. Lord Lisvane:** Can I just interrupt there, because consultation criterion 1 in the
guidance document says, if you are going to go less than six weeks, then you ought to consider
supplementing formal consultation with other means of consultation, and that should give the
reasons for any shortening of the consultation. I mean, reasons were given, although you did not
find them compelling.

2855 **Mr Murcott:** They were far from compelling and –

Q173. Lord Lisvane: Were you aware of the first limb of that guidance being followed?

2860 **Mr Murcott:** Alternatives?

Q174. Lord Lisvane: Yes, supplementary means of consultation.

2865 **Mr Murcott:** I was not aware of that, no.
What happened was that I responded to the reduction in the time. I discovered that I had to,
in effect, send my response to the place where I think the decision had originally been taken that
the time would be five weeks. My concern was that it is very difficult if someone takes a decision
to be able to review his own decision. It is far better if it goes to someone who did not take that
decision.

2870 What this threw up was – for the first time, I must say, because it had never arisen before in
any of the consultations to which I have made a response – that there is not an independent
party to whom you can raise an appeal about the way the consultation process is being
conducted.

2875 **Q175. Lord Lisvane:** Who do you think or what sort of independent party might that be?
Given that this is a governmental decision, is there a point of parliamentary appeal that you
think might be used?

2880 **Mr Murcott:** Yes, I think there is.

We do have in the Manx legislature people who are not part of the executive. They are
backbenchers – to use the phrase that is used in Westminster –

2885 **Q176. Lord Lisvane:** But relatively few, given the affiliation of Members to Government
Departments.

Mr Murcott: Relatively few, absolutely. But they are there and they do tend to be very
independently minded people. I certainly would have confidence in an appeal going to someone
in that category.

2890 **Q177. Lord Lisvane:** Or the presiding officers?

2895 **Mr Murcott:** I think I would prefer it to go to one of the Members of the legislature – not to
cast any aspersion on the presiding officers – because the Members of the legislature are the
ones who are answerable to the people and they will be therefore particularly sensitive to what
the people say.

I might just add with regard to this legislature that in many ways this legislature is extremely democratic in the sense that it is very acutely aware of public opinion and responds to it, and does not unduly stray away from public opinion, because as we go around the streets of the Isle of Man you are highly likely to meet anyone from the Chief Minister down. In fact, one day on the Promenade I commented, on meeting the Chief Minister and having a conversation with him for about 10 minutes: I said, 'You know, one of the great strengths of the Isle of Man is that I can meet someone like yourself, we can stand here and talk', and I can meet other people of great seniority, which never happened to me when I lived in the United Kingdom. I never even saw my own MP, let alone anybody who was above.

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Q178. Lord Lisvane: In a sense, you have certainly made your point. What was done was something that you disagreed with, in terms of the shortening of the period of consultation and the limitation placed on you and on others to formulate their views on that particular Bill and to ensure that they were taken into account. But really the issue that arises on this is a dual one, isn't it? One is the quality of the legislation that results from the legislative process and the other is the extent to which that legislation has, as it were, the franking of popular, democratic approval in addition to parliamentary approval.

2910

So can I just explore that a little further? Presumably, the idea of having a draft Bill rather than, in other words, a truly pre-legislative stage would meet some of the criticisms that you have put to me.

2915

Mr Murcott: Well, it would. Having a draft Bill is certainly very helpful. I understood that what we had was a draft Bill. It was not a completed Bill, I think, because there were certain points that were yet to be put in place, but I think that the main body of the Bill was in place.

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Q179. Lord Lisvane: It was in effect a Green Paper?

Mr Murcott: It was in effect a Green Paper, yes.

Q180. Lord Lisvane: In old money; we do not see Green Papers now, but we know what we are talking about.

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Mr Murcott: Yes it was, and that was another reason why I was very concerned about the process. I can understand Bills, because I used to teach law at the Isle of Man College, and I used to look at an awful lot of legislation; but the ordinary person cannot, and they do not know where to look to find the very points that they want. That was really my concern in the way the thing was done – not the question of the fact that the Bill was fought, because it was – and there was a quite a lot of paperwork. They not only put forward –

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Q181. Lord Lisvane: There should be explanatory notes.

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Mr Murcott: Oh, yes, there was the explanatory notes. There was the proposed Bill and there was also a copy of the Manx Marriage Act 1984 which was being amended. From my memory, I think that they had very helpfully highlighted in red the parts where the amendments were going. Nevertheless, when you looked at all that documentation, I seem to recall that you got about 90 pages of material before you. For the average person that is going to be very difficult for them to evaluate, even with the explanatory memorandum.

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Q182. Lord Lisvane: I am quite keen to move away from the specifics of that particular Bill to look at how you think the quality of legislation might be improved, so we may well now move on perhaps to the additional areas that you wanted to cover.

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Mr Murcott: I would be pleased to do that, yes, thank you.

2950 **Lord Lisvane:** And I do have my eye on the clock.

Mr Murcott: Yes, I have got my watch here too. *(Laughter)*

2955 Yes, we now come to the next stage, of course, which is the scrutiny of parliamentary Bills. My concern here is that the general procedure is not satisfactory. From my understanding of the United Kingdom – and I know that you will correct me if I have misunderstood it – when a Bill is introduced, you have the First Reading, the Second Reading and what we call here ‘the clauses stage’ goes to a committee appointed by the House which examines the Bill in Westminster in detail and is capable of receiving representations from all kinds of people. They actually table amendments during that committee stage and it is then reported back at the report stage and obviously Parliament has to approve those amendments that are made.

2960 The strength of that procedure – though I have never actually had any connection with it whatsoever – is that does have the possibility of interested parties being able to give evidence and make submissions. It is only, I believe, occasionally, in the House of Commons, that they would form a committee, in effect, of the whole House and would do the work of the select committee as a whole House. I would take it that they would only do that where you have got Bills of great urgency that they needed to get through quickly. Is that correct?

Q183. Lord Lisvane: Yes. What you have described is the Public Bill Committee procedure –

2970 **Mr Murcott:** Yes, the Public Bills.

Lord Lisvane: – which is normally preceded – for Bills that start in the Commons, not Bills that start in the Lords – by two days of evidence taking. It is different from committing a Bill to a select committee, which of course can be done in either House.

2975 In terms of report stage, that tends to be quite brief and limited to the remaining areas of major political contention.

2980 A committee of the whole House is relatively rare in the Commons, but extremely frequent in the Lords. For example, in the Lords, on the Housing and Planning Bill – to which Royal Assent was given last Thursday – we had 10 days in a committee of the whole House and five days on report. That rather reflects the more relaxed approach to parliamentary time in the House of Lords than in the House of Commons. Broadly, you have correctly described the principles.

2985 **Mr Murcott:** What happens here is, in fact, the opposite. It is fairly rare for a Bill to go to a select committee. There is a process and there is a procedure and a Bill can be moved to go to a select committee, but it is relatively rare that it does. There seems to be a view – this may be unofficial – that if it goes to the select committee that it is almost the death knell to the Bill.

2990 The media has a telling expression, as they often do. They call it being ‘kicked into the long grass.’ I do remember sitting in a debate once back in the 1990s where a certain Member said, quite openly, that he was looking for the quickest method whereby he could in effect put an end to the Bill, and that was why he was supporting it going to a select committee. So there seems to be a perception that the select committee procedure will mean that the Bill will probably get lost sight of.

2995 I think that is a great pity, if I have understood it correctly from sitting in the public gallery, because what happens as the alternative is that Bills have their clauses stage, and the clauses stage are really quite brisk at times, and that does concern me greatly.

Q184. Lord Lisvane: Are you talking now about the Keys –

Mr Murcott: In the Keys.

3000 **Lord Lisvane:** – rather than LegCo?

Mr Murcott: No, it is quite brisk in the LegCo as well. I have sat over there and I have listened to Bills going through the LegCo.

3005 **Q185. Lord Lisvane:** The example was given to me earlier of the Equality Bill, which has not been brisk, I think it is fair to say.

Mr Murcott: No. I think the Equality Bill, if I may say so, is an exception. It is very rare that a Bill is introduced first of all into the Legislative Council. Normally, it will go through the Keys. The Equality Bill is unusually large, extremely complex, and I would say that that one has to be seen on its own as an exception. It is certainly not the norm.

I have sat in the public gallery over many years in both of the Branches of Tynwald, especially during clauses stage, and they do go through at quite a brisk pace, and there is not the sort of scrutiny that you would get on a select committee.

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Q186. Lord Lisvane: It seems to me that you are arguing very compellingly for a routine select committee stage for every Bill, unless there was a strong reason for it to bypass that stage. It might be urgency; it might be that it was a very lightweight, very limited Bill.

3020 **Mr Murcott:** I think that is what I am saying, yes.

Q187. Lord Lisvane: And you would presumably, by the same token, see as a very positive element the fact that this was the opportunity for the public to have a second go at putting to legislators views that they would like to have taken into account, including of course from people who might be directly affected by the proposed provisions.

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Mr Murcott: Yes, that would certainly be my concern as well. It would mean that people who have got a particular interest in certain areas of legislation would have an opportunity to present that – not to be obstructive, but to be helpful.

3030 I think, in my own particular case, I would particularly have valued the opportunity with regard to Bills that create new criminal offences and some of the burdens of proof and so on which have concerned me, and which I have written to the House about – to every single Member – or responded to consultations. But, I would have greatly valued the opportunity to be able to appear before them and to have a question and answer such as we are having, where they could tease out from me exactly where we were coming from.

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That has only ever happened once in my experience and it was not from a select committee. There was a Bill some years ago. It was a criminal justice Bill and, in fact, it amalgamated six Bills, if I remember, all in one. It was a very complex piece of legislation and there were a lot of areas of concern. What happened on that one was that a group of MHKs, Members of the House of Keys who knew me, were anxious to hear what I had to say. They arranged an informal gathering before it came to its clauses stage and they invited me to go along and address them on the concerns that I had.

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I remember doing that. I remember they questioned me and we had a very fruitful exchange. What happened the following day was that a motion was moved that this Bill ought to go to a select committee, and by a single vote it went to a select committee. But that was, again – rather like the Equality Bill that is going through at the moment – I have to say, not the norm. That has only ever happened once: by making representations, by invitation, I was able to persuade the Members that the Bill ought to go to a select committee and the majority – albeit a slender one – agreed. I think the long-term view was that the decision was a right one.

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3050 What I have to do at the moment, which is very unsatisfactory indeed, is that, after a consultation, if a Bill comes forward about which I have got concerns – and more often than not

3055 it is going to be ones to do with the criminal law – I would have to write to every single Member
of the House of Keys – which I do not mind doing but it does not yield the same results because
they receive so much correspondence. They have got so much to read that, even if you put it in
simple terms, and quite often you cannot, they are not going to have time to read it and
respond.

Q188. Lord Lisvane: Can I put a contrary view to you? If I were Chief Minister, I would be
3060 saying about this select committee idea: ‘Oh come on, get real! Governments have got a
legislative programme and if we send everything to select committee, we will just get bogged
down in a morass of consultation and evidence and all the rest of it. We will lose focus and we
will lose momentum as a Government, and then where shall we be?’

Mr Murcott: It may well be they would say that, but –
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Q189. Lord Lisvane: What would be your counter?

Mr Murcott: My counter would be that law-making is an extremely important process and it
3070 is absolutely essential that you get it right. I believe that a lot of law goes through this legislature
that is not properly scrutinised and which may not be the right thing, and I can think of one or
two instances.

Q190. Lord Lisvane: You might guess from my professional background that I have some
3075 sympathy with a search for excellence in the legislative process.

Mr Murcott, I think we have just about run out of time, unless there is anything in two or
three minutes that you can put to me.

Mr Murcott: I think the thing that I would like to leave with you – because I have made one
3080 or two suggestions here – is to reiterate that I believe that the Manx legislature is responsive to
public opinion. I personally have a lot of contact with a lot of the Members of both the Keys and
the Legislative Council; individually I find that they will listen to me. Even those who have very
different views are sometimes some of the most friendly personally to me – so I do get a hearing
on an individual basis.

I believe that they are very hard working. I believe that they are very diligent, but I do think
3085 that the procedures that they have to work under are not completely adequate for the task,
which I have tried to describe. I want to make that very clear distinction between the diligence
of those who operate the system and the system that they have to operate. That would be my
first point that I would like to make.

The second point really is one that I have to say I did not make a submission on but I believe
3090 you may get submissions on it, and that is this question of whether we should have a unicameral
system.

Q191. Lord Lisvane: We have occupied many sheets of paper so far and some considerable
3095 time, which will be reflected in the *Hansard* transcript – so the answer is yes.

Mr Murcott: Let me say, I think it would be an absolute disaster for the Isle of Man. I would
3100 wholeheartedly agree with those who would wish to preserve the present system. It is not
perfect. There have been many attempts, for example, to try and reform the Legislative Council.
I have lost count of how many Bills have come forward and how many attempts have been
made.

Q192. Lord Lisvane: I have seen the list.

3105 **Mr Murcott:** Yes, and each one fails. I should not have thought there was another proposal they could come up with that has not been done before.

3110 The system is not perfect. I have listened with great interest to some of the suggestions that you have made. I have found those immensely interesting, but your suggestions have been in the better working of it. I certainly think that the Legislative Council should continue, because here you have got people, in many cases, of very long experience – like the person whom I know pretty well who was giving evidence before you. He is a highly experienced politician, a very valuable politician, and he has done very much good in this House. It is of great assistance to the system that you have got a man like him sitting in the Legislative Council.

3115 What I do think is that rather greater use could be made therefore of the Legislative Council. I do recall back in the 1990s giving evidence to a select committee. I think, again, it was on criminal procedure. I recall very clearly that one of the members of that select committee was the then Lord Bishop of Sodor and Man, whom I knew pretty well, because I remember very clearly him asking me questions.

3120 I would have thought, coming back to the select committee, that – and I would put this rider – that if there was an increased use of that, I think that it should automatically always be considered to include people from the Legislative Council, for another very good reason. There are quite a number of experienced politicians who are not standing for election. If you just simply take the people from the Keys, you may well get some inexperienced ones. Here we have got a body of high experience and people who will certainly be able to be of great assistance in that process.

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Q193. Lord Lisvane: And of course if you use a joint committee, then you reduce some of the risk of double handling in conclusions.

Mr Murcott: Absolutely and I think that would be my recommendation.

3130 But to return to the point about the unicameral assembly, I sincerely hope it never happens. It will be a disaster, because mistakes have sometimes been made in the Keys which it has been necessary for the LegCo to revise. I am not sure how the unicameral assembly would actually correct their own mistakes.

3135 **Lord Lisvane:** That is a very good point on which to muse and on which to finish. Mr Murcott, thank you very much indeed. I am most grateful to you.

3140 **Mr Murcott:** Well let me say, I am exceedingly grateful that you should choose someone such as me, because from looking down the list there are not too many people coming from ... After all, at the end of the road, I am from the general public, even though I take a close interest in politics. I have never sat in this assembly, so I am really very grateful to you for the time that you have given and the very fact that you thought my submission was worthy of being listened to.

3145 **Lord Lisvane:** Thank you very much again.

The hearing adjourned at 11.00 a.m.

Wednesday, 18th May 2016

*The hearing of oral evidence was held in public at 10.00 a.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[LORD LISVANE *in the Chair*]

EVIDENCE OF Mr Roger Rawcliffe

Q194. The Chairman (Lord Lisvane): Good morning, Mr Rawcliffe, and welcome.

The terms of trade, as it were, are that our discussions are live-streamed on the web and *Hansard* produces a transcript which, when it is finalised, will also go on the Tynwald webpages.

3150 If I can start by thanking you very much for your concise memorandum. I wonder if you could say something about your experience and background in constitutional matters.

Mr Rawcliffe: There are two parts of it. Firstly, as far as the Isle of Man is concerned, I was one of the Government auditors from about 1980 to about 1992 or 1993, when we ceased to be the auditors. So I had a lot to do with the old system, which was the Boards of Tynwald. I was there for the introduction of the ministerial system, which has been much criticised by all sorts of people, but was an enormous improvement on the previous arrangement. I think, in order to get some sort of consistent government, you have to have a system of that kind somewhere.

3160 That is one of the things which I know a lot of people have been uncomfortable with and it may be that the Council of Ministers is too dominant in numbers in the proportions of Tynwald. And, of course, the Council of Ministers also has the Members of Tynwald who are Members of Departments. So to a large extent, the whole of Tynwald is the Government.

Q195. Lord Lisvane: We might explore that in a bit more detail later on.
3165 And your wider constitutional interests?

Mr Rawcliffe: Well, I am a classicist and in between qualifying as a chartered accountant and actually doing something much about it, I taught at Stowe for 20 years. I was taught by, perhaps, your headmaster, McCrum, at one time –

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Lord Lisvane: Indeed, yes!

Mr Rawcliffe: – when I was at Cambridge.

3175 When I taught at Stowe I was teaching mostly classics, but I rather accidentally inherited the ancient history teaching and developed an enormous interest in constitutions – much more than I had at Cambridge, perhaps – particularly the fall of the Roman constitution and the Athenian constitution, which in peculiar little ways illustrate the sorts of problems that all constitutions have. How do you run a government which does not get subverted by undue pressures, by collapsing, as the Roman one did or being neatly subverted into an autocracy?

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Q196. Lord Lisvane: There are a lot of very close similarities because the dynamics are the same across the centuries. If I might say, *mutato nomine de te fabula narratur!* (*Laughter*)

3185 **Mr Rawcliffe:** Anyway, apart from teaching Richard Branson – who was one of my star A-level pupils, in the sense that no one expected him to pass anything! – I had 20 years doing that, so there is a lot of time for reflection.

Coming here, I was in the firm of accountants which did the Government audit and I was, at one stage, after I had retired, put up for the Legislative Council, but at that time Tynwald or the House of Keys was not predisposed to accept people from outside. It is not a terribly satisfactory system anyway.

3190 It seemed to me that to get some new blood in from people who were time-expired Members of the House of Keys could be useful, if you got people who had the right sort of interest and knowledge and who were independent enough. But the House of Keys does not particularly like independent people outside the House of Keys, and that, I think, has been one of our problems. You see it in the House of Commons, don't you?

Q197. Lord Lisvane: Well, shall we look at that in rather more detail, both in terms of the relationship between the Keys and LegCo and in terms of the settling of the membership of LegCo?

3200 You say in your memorandum, the operation of the Keys as an electoral college has – and I quote:

recently been an embarrassing shambles.

Could you enlarge on that for a moment?

3205 **Mr Rawcliffe:** Well, all the Members have to vote, to be seen to be voting, and for anybody to be elected they have to have more than 12 votes. I suppose they have to have 13 votes for someone to be elected, and the last two or three elections to the Council have failed to do this in any rapid and satisfactory manner.

Q198. Lord Lisvane: I have been reading the *Hansards*!

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Mr Rawcliffe: It is in a way laughable to the public outside that they cannot actually do it. It looks like petty jealousies and it also looks like the Keys protecting themselves.

3215 **Q199. Lord Lisvane:** Let us take that point on. The recycling of Members of the Keys into LegCo is a pretty constant process. I have been told it is quite useful because you get people with political experience going into LegCo. I am not sure that I find that a decisive argument.

Mr Rawcliffe: No, I am not sure I do either.

3220 It is difficult and the people from outside have not, on the whole, inspired confidence, I don't think – that is the last five, six, seven years perhaps, that we have a number in. Some have done one term and been quite good contributors. There is a chap called David Callister who was a journalist and broadcaster on Manx Radio, and he made quite a useful contribution and was well-known and widely trusted. But he said he would do one term and he did one term.

3225 Others, we do not really know. We have Mr Wild, who has got himself in some difficulty with a drink-driving thing, which could happen to anybody. But I do not think many people knew him. He was a manager, I think, of Lloyds – a respectable senior position.

3230 But somehow or other, I do not think it has worked as well as I had hoped it might. The people they have put up from the Keys have, in a few cases, been people of distinction, like Don Gelling, who was the Chief Minister and was in the Council for a while and indeed was Chief Minister again in the Council when there was a bit of a crisis: somebody had to resign as Chief Minister.

But some of them do look as if they were really not going to contribute very much and they were just put up there because they were well-controlled by their experience in the Keys and they were not going to upset the Keys by doing anything that the Keys would not approve of.

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Q200. Lord Lisvane: Taking that a little further, do you think there is a case for popular election of LegCo?

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Mr Rawcliffe: Yes, definitely. I think it has to happen. You will no doubt see the same arguments in the House of Lords, and that I dare say will have to happen at some stage.

Q201. Lord Lisvane: You are very decisive in your memorandum about that.

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You also say that if the tasks of LegCo were very clearly delineated and it were made distinct from that of the Keys, there would not be the problem of the clash of democratic mandates, as it were.

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Mr Rawcliffe: Well, they are going to perceive that there is a problem, but I do not see that there should be if their role is different. It seems to me that any constitution has to provide a government, it has to pass the laws and do what it needs, but the people need protection from the government and at the moment the Council is too mingled up with the functions of government. I know they cannot now be ministers – well, I think one is at the moment, but that is transitional. So the distinction of the importance of the Council in the new arrangement is lost, to a certain extent.

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We have these slightly arcane voting systems in Tynwald as a whole and in the two parts, but I do not think that seems at the moment to signify very much and most people just do not understand it, including me!

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Q202. Lord Lisvane: It is possible to put forward a scenario in which LegCo's functions – as you have in your memorandum – are very clearly outlined and they are distinct from those of the Keys, but – and I suspect that you are a constitutional realist – parliamentary systems often find that they are prone to mission creep. Do you think that if you have elected politicians in LegCo, the compartmentalisation, as it were, of LegCo's responsibilities would be firm enough?

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Mr Rawcliffe: I do not know. The suggestion I made that they perhaps could be chairs of committees, which I think matches their watchdog role, would be all right. I have mentioned, for example, being on the boards of these various companies or –

Q203. Lord Lisvane: The Statutory Boards.

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Mr Rawcliffe: The Statutory Boards. But some of them are more than Statutory Boards, aren't they? Because some of them look as if ... The Post Office looks as if it will be a subsidiary company and they could be involved in that without getting mixed up in the legislative process. But as you say, that would be slightly fudging the boundary.

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Q204. Lord Lisvane: Is there a risk of blurring of powers, do you think, having parliamentarians playing a role like that?

Mr Rawcliffe: Sorry, I ...

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Lord Lisvane: Is there a risk of blurring at least notional separation of powers, having parliamentarians playing roles like that?

Mr Rawcliffe: Yes, I think there is.

Q205. Lord Lisvane: Which can be dangerous.

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Mr Rawcliffe: Which could be unfortunate; in which case, you perhaps would not arrange that in that way.

But I think the committees are important. I think the Public Accounts Committee is an important watchdog and it would be one that the Council would be suitable for.

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Q206. Lord Lisvane: Looking at the committee system overall, it seems to me, for a legislature of the size of Tynwald, it is really quite complex and it is quite extensive. Are there opportunities, do you think, for simplifying it; makings its role more evidently understood?

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Mr Rawcliffe: I am sure it would be. I do not know enough about what committees there are. I do know that they do *ad hoc* committees, because I was on one that met in this room at one stage about four or five years ago. I suppose they are like Royal Commissions: they investigate something or other that the Keys wants investigating. There is no good reason why a Member of the Council should not be on that, because that is, in a sense, part of the watchdog function.

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Q207. Lord Lisvane: Let me go back to the constitution of the Council. You make a strong case for popular election, but might there be an alternative: perhaps using something along the lines of a statutory appointments commission?

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Mr Rawcliffe: Yes, you could do that. I would be less happy with that.

Q208. Lord Lisvane: Because of the loss of democratic legitimacy?

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Mr Rawcliffe: Partly that. It is the *quis custodiet*, isn't it? Who actually chooses them? We are back onto that problem. I think it better to elect them. I would elect them on a different principle and at a different time, because the possibility of national madness always lurks about the place. We saw it in the 1930s and we may be about to see it in the 2010s.

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Q209. Lord Lisvane: I see the *quis custodiet* argument is a very powerful one if you are talking about an appointments commission that has the first and the last word. But if the appointments commission were a nominating body and the Keys were to vote on those nominations by a different system, so that, for example, you did not need to attain 13 votes, but you actually ranked the nominations – of which there were more than the places to be filled – and those who got the most votes filled those places, do you think that would answer? That would introduce a democratic element into it, because the Keys would continue to act as an electoral college.

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Mr Rawcliffe: I do not think that would be satisfactory. It would be an improvement on what we have at the moment, I think. But I see no good reason why it should not be democratically done.

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I do feel quite strongly – although it would be administratively less convenient – that the election should take place at a different time and on a different basis, and the idea of proportional representation of some sort might well be appropriate for this.

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I would also be inclined to reduce the number, because I think their functions ... The amount of time that would be demanded would be reduced. I had originally thought of reducing their salaries but I think this perhaps would be a more satisfactory way of dealing with that.

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If you take – and I have slightly gone back on what I thought, perhaps, two weeks ago – the position of the Council as part of Tynwald and its voting role: if you have six out of 30, it is 20%. I see no good reason why those particular elected people – they are not dominating the Keys or the parliamentary system – who are elected by the electorate after all, should not have a role. It would be a minor role; it would only be a 20% role. In some ways perhaps the slightly arcane

method of voting, of the Keys' vote and the Council's vote in Tynwald as a whole could be got rid of and they would simply be a voting body of 30 for the functions of Tynwald.

Q210. Lord Lisvane: Which was debated in Tynwald last month.

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Mr Rawcliffe: By reducing it to six you are improving the proportions, if you like. And six works quite well with the existing constituencies, because you have got two constituencies will produce one Council Member.

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Q211. Lord Lisvane: Can we go back? You touched on it earlier on. You also say in your memorandum that in a Chamber of 24, the number Ministers should not exceed seven, to prevent undue dominance. There you are talking about titular Ministers presumably, but of course there is this mass of Keys' Members and Members of the Council who are associated with the Government Departments – which I think an outsider would see as being quite odd in terms of the boundary between executive function and challenge function.

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Mr Rawcliffe: Yes – which does not work at the moment.

We had, a number of years ago – in the time of Terry Groves as a Member of the House of Keys – a body which met and discussed all these matters – and he was a Minister at that time. We talked about the power balance in the Keys. His opinion was – and I think I would support this, talking to various Members. I have known most of the Members of the House of Keys over about 30 years, I suppose, not necessarily terribly well.

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His opinion was that the people who were members of Departments felt themselves that they were dominated by the Council of Ministers, and they themselves have a feeling – not all of them obviously – that the Council of Ministers can get what they want through because of their numbers of eight out of 24 and because of the power patriot of the Chief Minister.

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His feeling, at that time, was that seven was the critical number; that seven would actually be better and that is why I made that ... It has arisen since and other people have mentioned it. I do not speak very strongly on that, but there is a balance which, again, you get in all governments, I suppose.

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But you are quite right. The ordinary Members of the House of Keys, unless they have fallen out with the Government or chosen, like Mrs Beecroft, not to be involved so that they can be critical, you are quite right: they are nearly all in some way involved in Government, in Departments of Government.

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Q212. Lord Lisvane: Of course I have been told about the principle that there is collective cabinet responsibility which covers titular Ministers, and there is a departmental responsibility which covers the associated MLCs or MHKs of that Department, but it seems very difficult to put that aspect of collective responsibility, as it were, in one box and to say, 'Well, on Health of Social Care you have got to toe the party line, whereas you can put the boot in elsewhere.' Doesn't that seem a little odd to you?

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Mr Rawcliffe: Well, I am not sure it works very well.

Yes, it is odd, but if they cannot do that, then you have got no opposition of any description except for the odd person who stands out, or has been sacked. There have been people who have been in the Departments who have been thrown out for whatever reason, who are not in the Government – in a way, perhaps, a maverick sort – but they do not produce any sort of consistent opposition.

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To talk personalities, Peter Karran has done this in an eccentric manner for many years – unpredictable. Mrs Beecroft, I think, rather more successfully and consistently has picked things up. There are other people like Alf Cannan who partly does it – and whose father was an MHK as

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well and got into opposition mode at one point. My wife's cousin's cousin! It is all mixed up, in the Isle of Man, with relationships, which makes it a bit more interesting.

3390 **Q213. Lord Lisvane:** I think every parliament has a constituency of the dispossessed, as it were, which can be quite a powerful force.

One of the things I am asked to assess is efficacy. I think, in terms of forming an objective judgment of efficacy of any parliamentary function, it is quite an uphill task. What are your impressions as to how effective Tynwald is – I suppose under the three main headings of any
3395 parliamentary body: legislation, scrutiny and challenge and representation?

Mr Rawcliffe: As far as legislation is concerned, I think Tynwald is perfectly competent to pass legislation. What legislation it chooses to put forward is a matter for the Members and I suppose the Chief Minister and the Council of Ministers. But it goes through and, as always, I
3400 think we have far too much legislation, and the idea of saying, 'Do we really need this?' is one which perhaps all governments should have as their first question. So I think that is all right.

The execution of what they are doing is much improved since the board system, because they meet, there is a Council of Ministers, they discuss things and there is some overlap. Certainly, as someone who used to introduce people ... We were the largest firm of accountants
3405 on the Island and we had a lot of people who wanted to start a business and, in the days of the board, you had to go to the chairman of this board and then the chairman of that board and they did not agree with each other anyway, and it was a very laborious process. It is much improved. The move to where we are now has been, in my opinion, a necessary move and it can work. Whether it works well or not depends on the quality of the people, I think, in charge of the
3410 various functions.

The quality of Members of the House of Keys is an anxiety – I suppose it is in the House of Commons as well. To get the right people to stand and, if they do stand, to get the electorate not to just choose their mates, but to elect some people of some ability. We do get them, but often we get people who are not really up to it, in my opinion – my strongly held opinion!
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Q214. Lord Lisvane: Well, that, if I may mischievously say, was slightly behind the proposition I put to you about an appointments commission for LegCo, where actually somebody's record of service and demonstration of ability weigh in the scale.

Mr Rawcliffe: Yes, I see the point. I think the difficulty with a LegCo direct election would getting people to turn out at all to vote. That is a problem, not only with that but with all elections.
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Q215. Lord Lisvane: Yes, which has perhaps been seen in the case of the Policing and Crime Commissioners in England.
3425

Mr Rawcliffe: Very much so.

I do not know how you would put together your shortlist of candidates or who would be the people who would put together the shortlist.
3430

Q216. Lord Lisvane: You would certainly need something which was thoroughly independent, and I think the question would be what sort of pool would you be fishing in? Would you have enough people who were ready to put themselves forward or could be nominated? And I suppose Members of the House of Keys, themselves, could nominate to go through that process.
3435

Mr Rawcliffe: Oh, yes. There is no reason why they should not be put forward to the commission – not necessarily go from the commission to the final choice. Well, that is certainly worth considering – slightly moving from where I was, but I see the point very clearly.

3440 We could, of course, do the Athenian system of just putting everybody's name in the hat and pulling them out, and we might get a better quality!

Q217. Lord Lisvane: Yes, I think the *Sortes Virgilianae* as well might lead us to find the right page of the Tynwald Companion! (*Laughter*)

3445 Taking the institution as a whole, we have been talking really in terms of bicameralism and not unicameralism – which you are very clear in your memorandum you would not support – but Tynwald has this odd tricameral existence.

Mr Rawcliffe: It is a tricameral system, isn't it?

3450 Charles Cain, who is unfortunately recently deceased, was a great advocate of fiddling around with it. He was an MHK for a time – a very bright King's Choral Scholar, he was. He was full of ideas, but I never understood it! He said it was a wonderful Celtic/Scandinavian thing that he much advocated, but I think he was given to romance and I think he was thinking backwards and recreating something.

3455 I suppose, if we still had what I am suggesting, and we have a House of Keys that does what I am suggesting and a Council which, again, is limited to that particular function and the third element is the two together, and if they all vote together, that I suppose preserves the tricameral system. If the Council were appointed, then that argument might change a bit. It might be that Tynwald as a whole should not vote.

3460 There is a question of what powers the Council would have of delaying or altering anything, which would need careful consideration – which I have not really done.

Q218. Lord Lisvane: I would not have thought that the provisions in the Constitution Act 2006 would be too reprehensible in the context of a nomination system, particularly if the nomination were franked by the approval of the Keys.

3465 **Mr Rawcliffe:** Yes, that would give them, from the Keys' point of view, a legitimacy, wouldn't it?

Q219. Lord Lisvane: It would.

3470 I realise that, as a Member of the House of Lords, I am on rather weak ground here! (*Laughter*)

Mr Rawcliffe: Well, I think the Members of the House of Lords, sadly, have got great problems, or the institution has got great problems.

3475 **Lord Lisvane:** Well, I am delighted to say that would take me considerably out of my terms of reference.

Mr Rawcliffe: I think so and I do not think you will see it happen!

3480 **Q220. Lord Lisvane:** Possibly not!
Is there any other area that we have not covered, that you want to discuss?

Mr Rawcliffe: No, this is confined really to the functions of Tynwald, isn't it?

3485 **Lord Lisvane:** Yes.

Mr Rawcliffe: We are not talking about local authorities or anything of that nature.

3490 **Lord Lisvane:** No, emphatically not.

Mr Rawcliffe: I think we have covered all the points that I raised and discussed them.

That has been very interesting, from my point of view: the idea of a panel of appointers to a larger panel of candidates. It might have merit.

3495 Getting people out to vote and getting people to take responsibility for what they are deciding, even taking an interest in it ... All many of them do is sit there and moan afterwards.

Lord Lisvane: 'Twas ever thus, I think!

That may be a good moment on which to finish. Thank you very much indeed.

3500 **Mr Rawcliffe:** Well, thank you very much for hearing me.

Lord Lisvane: Very helpful. Thank you.

*The hearing was suspended at 10.31 a.m.
and resumed at 2.00 p.m.*

**EVIDENCE OF
Hon. Allan R Bell MHK,
The Chief Minister and Member for Ramsey**

Q221. The Chairman (Lord Lisvane): Chief Minister, welcome.

3505 Thank you very much indeed: I know how pressured your schedule is. I am extremely grateful to you for finding time to have the conversation we are going to have for the next hour or so, if that suits you.

Just to make the process clear, our proceedings are being live-streamed on the web and *Hansard* is taking a record. The final transcript will appear on Tynwald's webpages.

3510 Now, I wonder if I could start with some general questions. After your experience of the political process and the governmental process, you probably have an unrivalled perspective on what goes on.

3515 If I could start, I have read your statement – your manifesto, as it were – when you stood to be Chief Minister. I wonder if there is a disconnect, given the very low participation of political parties formally in the political life of the Island, between the people that the electorate vote for and the programme that they eventually get. I wonder if you could give me some of your thoughts on that.

3520 **The Chief Minister:** That is an interesting point, actually. It is a point which is often raised in the Island, because, as you rightly say, we do not have parties, so we do not have a party manifesto which the successful group could adhere to.

3525 It really is left very much to the Chief Minister of the day to develop his own manifesto. Clearly a Chief Minister has to present a manifesto to Tynwald to get elected in the first place and also to engage with like-minded people, I think, who were elected in that particular election, to come together to develop a manifesto and a programme of works which would be broadly acceptable to Tynwald.

3530 So it is not a manifesto, as such, which is presented directly to the people, but it is a manifesto which is developed out of the various Members' contact with the people during the election. I would hope, anyway, it is a reflection of the viewpoints which have been gathered together during that election period.

The Council of Ministers, again because we do not have party politics, has to be a coalition. It is a consensual approach to politics. The Chief Minister does not have the power to impose a strict agenda on the Council without their agreement and co-operation. So the manifesto which

3535 does develop, I think, is a reflection of a collective group of MHKs who arrived at election time, which I think goes some way to reflect what public opinion is of the day.

It is somewhat rough and ready. It is not as clear cut, say, as a Conservative or Labour Party manifesto would be in the United Kingdom, where it is quite clear where people stand on various issues, but it is a best attempt, I think, of a Chief Minister of the day to identify what the key issues are on the day and steps which might be taken either directly to address them or at least to prioritise those as key issues which need working on.

3540 It is a tricky situation and I know there is some concern at times that when we do stand as MHKs in the first instance, we do not actually announce that we are going to be standing for Chief Minister, and so it is a bit hit and miss whether, in fact, anyone who does announce that he is going to be Chief Minister actually ends up as Chief Minister.

3545 It is quite a messy process in that respect. There is a body of thought which says that, once the Chief Minister is appointed, his policies, perhaps, should go back to the people for further endorsement. I do not think that would work either.

I think, while we have independents in Government, while we do not have party politics, while we work on a consensual basis, the process we have is probably about the best we could develop in those circumstances.

3550 **Q222. Lord Lisvane:** I take it from what you have been saying that your manifesto, if I can call it that – your statement – could be described as ‘work in progress’ because you have got to appoint your fellow Ministers; you have got to see how that dynamic works and they will have their own views, as you have described it.

3555 Rather than go back to the people, and I can see that actually trying to arrange a sort of referendum-type approval of a package would be a nightmare to achieve, is there a case for, say, having a second stage approval, whereby you and your administration put forward a more detailed package of policies and actions that you intend to pursue? It is not coincidence, perhaps, I am thinking of this on the day that the Queen’s Speech has taken place at Westminster.

3560 **The Chief Minister:** Yes. I think that is a valid point. The Chief Minister of the day puts forward his manifesto to Members anyway, because the Chief Minister, obviously, is elected by the Members of Tynwald –

3565 **Q223. Lord Lisvane:** But that is a very singular, personal thing at that stage.

The Chief Minister: Oh, yes. You are talking about a stage beyond that, I would guess.

3570 **Q224. Lord Lisvane:** Once the collective of the cabinet has developed.

The Chief Minister: Yes, I think a Queen’s Speech type of approach would be a valid way forward. It would give a more formed manifesto the chance to be debated on the floor of Tynwald.

3575 **Q225. Lord Lisvane:** And amended?

3580 **The Chief Minister:** Well, certainly the Chief Minister and the Council of the day would listen to what Members have to say and, if there were valid arguments against or for any of the proposals, I am absolutely sure they would be taken on board. They would have to be taken on board anyway because, if the Council and the Chief Minister decided on a certain course of action, the chances are that action would need to have Tynwald endorsement at some point anyway. As policy development, it would have to come back for Tynwald’s approval.

3585 To have a clear steer right at the start of the parameters that the Tynwald of the day would be prepared to work within, I think probably would actually be quite helpful to the Council of Ministers as well. It would send out a very clear message to the people on the Island as to what the direction of travel is likely to be over the time ahead.

3590 However, in a small community, whilst we set off with the best of intentions at the start of an administration, it is very easy for an administration to get blown one way or another by the winds of local issues which have cropped up, which had not been planned for or anticipated. That sometimes causes the course to veer somewhat from the original plans.

3595 For example, the Isle of Man is a non-sovereign state. We are very influenced by what events go on outside of the Island, which we cannot always anticipate at an election time. Therefore, the direction of travel may well be altered in reaction to external pressures which in some cases might build up. For example, the issue which has dominated the Isle of Man over the last few years has been the loss of our VAT revenue. That was not something that Government itself had any direct influence over, but it has had a massive influence on how we have developed policy ever since.

3600 Yes, I think the basic point of coming back with an agreed platform would be very beneficial for everyone.

Q226. Lord Lisvane: I think there is not an administration in the world that is entirely free from Harold Macmillan's 'Events, dear boy, events'.

3605 **The Chief Minister:** Absolutely.

Q227. Lord Lisvane: Do you think that LegCo should have a role in the election of the Chief Minister?

3610 **The Chief Minister:** I think that question, in terms of what we are discussing, probably would be premature. I think we need to know what the role of LegCo is within the overall Tynwald structure and, depending on how that role evolved, then perhaps the LegCo should have a say in the election of a Chief Minister.

3615 The argument, obviously, at the moment is that it should be just for the House of Keys and it is quite right that the elected Members, the representatives of the public who have come in straight from the hustings, should decide who their Chief Minister is going to be. But the fact is we still have LegCo. It is still there; it is a fact of life. It is part of Tynwald. It has a vote at the moment on policy development, on financial issues, on budgets, etc. Therefore, I think we would need to identify, first of all, exactly what role or how a LegCo – if, in fact, we need a LegCo – fits into a modern Tynwald.

3620 Depending on what that final shape might be, I think then you ask that question: should it have a vote for the Chief Minister of the day?

3625 **Q228. Lord Lisvane:** Well, let's park that for a moment, but you very helpfully raise the issue: tricameralism, bicameralism, unicameralism. Where do you stand on that?

3630 **The Chief Minister:** I think, by common consent – and that includes most Members of the current Legislative Council – there is a need to make it more democratically accountable than it is at the moment. It has been a consistent problem all the way through. I was elected in 1984 and this debate was going on almost as soon as I was elected. This is not a new issue; we have been talking about this for 30 years or more.

3635 My real concern in all this is to ensure that we have a form of Government which is workable, which will deliver a democratically structured Government providing the public services that the public need, in a timely fashion.

The problem I have had with the debates we have had over the years is not so much that I have been against reform. I am not against reform, but I have not been convinced that the suggestions which have been put forward are actually going to improve on what we have at the moment. I still struggle with that, I have to say.

3640 We have had a whole raft of suggestions put forward, from a unicameral system to a directly elected LegCo sitting alongside the Keys, and various other stops in between. Each one of them, though, has their flaws, and I still have to be convinced as to what the optimum structure might be that would deliver those priorities which I have just outlined.

3645 **Q229. Lord Lisvane:** Let's explore some of the implications of those. A directly elected LegCo, presumably, raises the problem of a competing democratic mandate.

The Chief Minister: Yes. That in particular has been my concern. I have been a great believer in the primacy of the House of Keys. We are the directly elected representatives of the people. 3650 We are there to reflect their views and therefore the House of Keys, as it is structured at the moment, should have absolutely primacy in Tynwald over LegCo. By and large, that has actually worked. In spite of some of the comments that have been made, there are very few occasions when the major policies of Government have been derailed because of actions in LegCo.

3655 However, given the present structure as it is today, if you had a directly elected LegCo, there would be conflict immediately introduced into the system. Because there are eight Members of LegCo who would be elected, plus the Bishop; we have 24 Members of the House of Keys. Therefore, based on a similar sort of constituency basis, a LegCo Member would have a constituency three times the size of a Member of the House of Keys. Therefore, how could the Keys possibly have any claim to primacy when you are in that situation? Therefore, you have got 3660 this constant conflict, as to who would actually have primacy in parliament.

I think that is a recipe for instability, and one of the proud boasts that the Island has, which I think has been hugely beneficial, is that we have political stability here. In a very unstable world these days, political stability is vitally important, particularly in terms of developing the economy.

3665 The hesitation I have about a directly elected LegCo in the present environment is that it would immediately introduce this conflict into the House of Keys, and I cannot see how that would be resolved whilst we are working within the existing parameters.

3670 **Q230. Lord Lisvane:** Presumably, if the elections did not take place at the same time, you could have arguments about whose mandate was more recent and so more authoritative.

The Chief Minister: Absolutely.

3675 **Q231. Lord Lisvane:** Can I put to you an idea that I tried on other witnesses, to the effect that clearly you need some sort of democratic authority for LegCo, if it is to continue in whatever form, but what about some sort of statutory appointments commission which could put forward candidates, and those candidates could then be voted on by the Keys?

3680 **The Chief Minister:** That would be one way of dealing with it, but again it gets away from the direct, democratic legitimacy of LegCo if we had an appointments panel set aside to nominate 'local worthies', for want of a better description. That still then would cut out the broader involvement of the people of the Island.

3685 Whilst from an administrative point of view, I am sure that would work – it would be a very able way – actually that model is not a million miles away from what we have got at the moment. Instead of having an appointments committee, we have Members of the House of Keys who nominate people for the LegCo, and increasingly these days the Keys is nominating people from outside the political system.

3690 When I was first elected in 1984, I cannot remember any time around that period where that
sort of thing happened. LegCo, in those days, was seen very much as a recipient of the collective
experience of the House of Keys. The most experienced Members ultimately rose to LegCo, and
that collection of experience and corporate memory was very beneficial. Over the years, though,
3695 that has changed and it has been more and more difficult to get House of Keys' Members to
stand for LegCo. Therefore, we have looked outside for Members.

In effect, the Keys themselves, as time has gone on, have actually developed into a sort of
3695 nomination panel, in a very loose sense; then their nominations are voted on. So it would not be
a million miles from what we have got at the moment, except that it would take the Keys out of
doing the nominating, that is all. But it would exclude the wider public from having any direct
say in the nominations.

3700 Just thinking about it, one of the other problems, of course, if we had a selection panel,
would be who would they be accountable to themselves? At least when Members of the House
of Keys are nominating Members for the LegCo, ultimately they have to answer to their own
constituents when they go back. If they make a mess of it, then I am sure our constituents will
tell us.

3705 If you have a separate panel altogether, which is not political, not answerable to the public, in
many ways, whilst it is administratively efficient perhaps, it is actually less accountable than
probably the system we have got at the moment.

Q232. Lord Lisvane: I understand that. I am probably confusing the issue by calling this
3710 hypothetical body an 'appointments commission'; it would be a 'nominations commission'.
Because I agree with you that one loses the democratic connection of the House of Keys acting
in effect as an electoral college, perhaps at one's disadvantage. I am not suggesting that they
should be cut out of the process, and I think it is arguable that, if there were to be a nominations
commission, the public could actually be very closely involved, not in putting up I think as you
said 'local worthies'; they might be 'young firebrands'.

3715 **The Chief Minister:** Well, yes. And that would be welcome. The LegCo is often described as a
'retirement home for old MHKs' and we certainly would not want to develop into that.

LegCo has a vitally important role to play in the parliamentary process. You want people who
are energetic, with new ideas – although balanced with experience as well, at times.

3720 **Q233. Lord Lisvane:** I was going to put that 'retirement home' perception to you. That is
potentially quite damaging with the public, isn't it?

3725 **The Chief Minister:** Yes, I think.

Q234. Lord Lisvane: It looks just cosy.

3730 **The Chief Minister:** It does, but again it has moved on. It certainly did go through that
period – and I have used that term myself, I have to say, in the past, because that is what it was,
really. It was just a way of pensioning off MHKs who, frankly, were burnt out, had nothing more
to contribute, but this was an easy way of getting them out of the Keys. Or people who have
come in – and I certainly can recall one or two of them – who were actually quite shocked at the
cut and thrust of daily politics. When they arrived in the House of Keys, they had not anticipated
it being quite the body that it was and simply wanted an escape route as quickly as possible. So
3735 people have been appointed, I think, for the wrong reasons at times, over the years.

We absolutely have to get away from that, but there is still, in a small environment like ours,
a benefit to be gained from some form of retention of elements of experience, because we are
only 24 in the Keys at present, if it stays this way. If there was to be a big turnover of Members ...

3740 If I look at Guernsey, for example, just this last couple of weeks: very nearly half their legislature are new Members who have come in. Now, that is all very well and good – it is renewal; it is new energy; hopefully, new ideas – but it is dramatically inexperienced in the world that it has to perform in. So it would be beneficial to have some form of system which, if we could manage it, retained an element of experience, just to balance some of that enthusiasm which any parliament needs from time to time.

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Q235. Lord Lisvane: If the wheel is going to be reinvented, it would be a jolly good idea if it turned out to be round again.

3750 **The Chief Minister:** Well, yes. I am sure it happens in every parliament, but certainly here, we are brilliant at reinventing wheels. God knows, we have done it so many times! Perhaps my view gets a bit jaundiced after 32 years. I have seen so many wheels reinvented, I have lost count of them, frankly. But that is part of the process: everyone comes in, they are bright-eyed, bushy-tailed, they have got the answer to all the problems, but nine times out of ten, we have already looked at many of these things and for various reasons have discounted them.

3755

So having not a blocking, but a steadying hand, just to point out some of the steps that have taken place in the past, because, not only do we have – or could have – a regular turnover of Members, but of course, officers move on quite quickly as well. If you cannot retain that experience and that corporate memory, either in some sort of political form or at least at officer level, then we are in danger of repeating past mistakes and taking actions which may not necessarily be in the best interests of the Island.

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Q236. Lord Lisvane: That is extremely helpful, though your remark about everything having been tried out before makes my task, in a sense, even more daunting.

3765 Can I ask you one more question about the relationship between the Branches? Then what I would like to do is to explore some of the dynamics of the administration: the Government side of the scene.

What is your view about a motion failing when Keys and LegCo are in disagreement?

3770 **The Chief Minister:** In the present regime?

Lord Lisvane: Yes.

3775 **The Chief Minister:** Undoubtedly, the Keys' vote should prevail, however that is achieved. The House of Keys, as the directly elected assembly, must be the pre-eminent body. The benefit I think we get from Legislative Council – from a legislation point of view, it is a revising Chamber – but in terms of policy development, which does not happen very often, but just on the odd occasion that LegCo does vote in a different way to the Keys, it might be beneficial to give Keys pause for thought, perhaps for a month, just to review the situation and then come back, as we do anyway with a combined vote. Then nearly always the Keys' vote, just because of weight of numbers, will dominate and the issue will go through.

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I think it does no harm at all to have a facility which occasionally can act as a brake on over-exuberant actions on the part of the elected body.

Q237. Lord Lisvane: A 'think again' function?

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The Chief Minister: A think again function. Once they do think again and, if they still believe that is the right way forward, then that is fine; their view should absolutely prevail over LegCo. I do not think there is any question about that. The Government of the Isle of Man has to be the directly elected representatives of the people, but in any body, any organisation, there needs to be a wise hand there just to say, 'Have you thought this through?'

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To be fair, certainly from a legislation point of view, there have been occasions when the Keys themselves have realised that certain things should not have happened or legislation needed to be amended, and it has been very beneficial for LegCo to be there, to actually correct whatever that initial error might have been.

3795 Having a 'think again' element in it is vitally important, I think, really.

Q238. Lord Lisvane: I should have the *Hansard* for 20th April at my fingertips, and I do not, I am afraid. What was your view in that debate of the two voting as one routinely?

3800 **The Chief Minister:** I do not see a problem particularly with the two voting as one. Again, I suppose I have got a number of different views on that. I cannot even remember how I voted on that one, because my concern about all this – and there have been a number of issues like this over the last two or three months – is if we are embarked on a review of the overall body, we should not be tinkering round the edges until we have got a clear view of how the structure is going to work in the first place, otherwise it is just muddying the waters. I do not see any benefit from that at all.

3805 This is a long way of answering your question. It would depend on what the future relationship between the two bodies might be and how parliament looks, as to whether in fact it would benefit from voting as one body.

3810 I suppose I am dodging your question really.

Q239. Lord Lisvane: No, no. It is an 'it depends' answer.

3815 **The Chief Minister:** It is an 'it depends'. As it is at the moment, yes, it could work, but there is a danger in that too, because the Council of Ministers has a block vote or a number of votes and, if Council was to ally itself with the Council of Ministers, then it is conceivable that those two bodies could actually drive through policy against the wishes of the elected Members. That would not be a healthy situation either, within the present structure.

3820 **Q240. Lord Lisvane:** And conversely, Council could ally itself with the minority in the Keys and frustrate what was a democratically elected majority.

3825 **The Chief Minister:** Absolutely, yes. The reverse of that is absolutely true. Therefore, a minority of elected Members, in alliance with LegCo, could actually dominate the Keys against the election of the Council of Ministers.

Q241. Lord Lisvane: The *Hansard* has magically appeared in front of me – thank you Michelle. You voted against.

3830 **The Chief Minister:** Right – for that reason.

Q242. Lord Lisvane: I quite understand.

3835 **The Chief Minister:** If we are in the middle of a review, it is pointless jumping in with amendments and reforms until we know what the final shape is like.

Primarily my concern is these various alliances which could develop which might tip the balance in some cases.

3840 **Q243. Lord Lisvane:** Let's move on then to the administration and how you run it and how you see it. You have got your cabinet. Am I right in saying that is nine Ministers, including yourself?

The Chief Minister: Including myself, yes.

3845 **Q244. Lord Lisvane:** But you have also got Members who are affiliated or associated with Government Departments. What do they bring to the party?

3850 **The Chief Minister:** We have the Chief Minister and eight Ministers; we have eight Departments. I think it has been very beneficial having Members working in Departments with specific responsibilities. They are not exactly junior ministers, but they would be the equivalent, I suppose, of junior ministers elsewhere. They have responsibility for specific areas within those Departments. The Minister is the Department, so the Minister has the final say over everything, but in terms of getting specific projects developed or in terms of developing a particular area, for example, Health and Social Care: we have Members for Health, Members for Social Care.
3855 They can focus on their particular area of responsibility, whereas the Minister has a much broader remit over the whole Department. It gives Members a real input into the development of Government policy, certainly in that area.

To do otherwise – which is something which gets raised from time to time – you would have a lot of backbenchers sitting twiddling their thumbs for most of the time. They would not be engaged in the policy development, and really then would only be able to discuss policy when it finally reaches the floor of Tynwald. Members will not get the opportunity to inform and develop policy before it actually gets finalised on the floor of Tynwald.
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I think it is healthy to have Members involved in that sort of activity.

3865 **Q245. Lord Lisvane:** If I were going to be a devil's advocate – which I will now be – I could describe the contribution which you are very positive about as being 'complicity', so that you have people on board, you have people within your governmental tent who are much less prone to criticise thereafter.

3870 **The Chief Minister:** Yes, we hear that from time to time, but I do not think that is the case at all.

We have collective responsibility in Government, and that applies to the Council of Ministers, in most cases, but there are certain situations where that does not necessarily apply. Collective responsibility in Departments only applies to those Members of that Department in regard to the specific issues that Department is dealing with. They have absolute freedom to vote against Government; to argue against Government; to do whatever they want outside of that immediate departmental responsibility. For most of the time, they are free to attack Government, to undermine Government, to do whatever they want, but just for that particular area of responsibility, if they have been party to actually the development of that particular policy, then they are expected to fall in line to support the Minister when he is on the floor of Tynwald. But outside of that, backbenchers have absolute freedom to do whatever they want.
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Q246. Lord Lisvane: Doesn't that risk being a little unrealistic, because modern government is joined-up? We hear an awful lot, in all sorts of administrations, about needing to join up, and some of the pressures of modern government mean that you have got to join up because if you do not, you proceed at your peril. Can it really be compartmentalised like that?
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The Chief Minister: It can. It works. That may not be the answer you are after.

We have a number of Members – I think two or three – who stay outside of Government altogether.
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Q247. Lord Lisvane: I think it is five at the moment.

3895 **The Chief Minister:** Is it five? I am not sure how many we have got outside at the moment – a number, anyway, who do not – and that can vary from time to time for a number of reasons.

All Members have an absolute freedom to stay outside if they wish. This time, at the start of the administration, I interviewed every single Member who was elected, to ask them if they wanted to work in Government, because it was my ambition certainly at the start of this House to try and establish a ‘Government of national unity’, where all the disparate views could be brought together, and we ended up with the big tent government type of thing. Not because I wanted to silence Members, but because I felt that the major challenges facing this administration are by far the biggest I have experienced in 30 years in Government. Therefore, I felt we needed to draw on the talents of all Members to try and find solutions, to work together.

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3905 I interviewed them all and to begin with, I think we managed to get all of them. They all wanted to work together, and they were all given departmental posts. Equally, they could have all turned round and said, ‘No, we do not want to work in Government. We want to sit on the backbenches’ and they would be equally free to do that.

I suppose where the cynicism creeps into that situation is, of course, if you become a Member of a Department, there is an extra stipend on your salary. So it could be seen that Members are being bought off. Now I do not believe that is the case at all. In my experience, dealing with backbenchers, those who work in Government do so because they want to; they want to make a contribution. That is why they are elected. They are not there simply to sit on the backbenches to be voting fodder from time to time; they are there to actually help create policy. But the perception, I know, is that, ‘Oh, well, they are working for Departments; they are being bought off by the Chief Minister of the day. Therefore they are honour bound to support Government.’ But in reality, it does not actually work that way.

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3915 **Q248. Lord Lisvane:** Of course there are Members who quite explicitly say they are not going to be part of it. I can think of one or two names straight off.

3920 **The Chief Ministers:** Yes, but of course, there are different reasons for them not wanting to be part of it. I should leave it at that.

Q249. Lord Lisvane: We will not explore any further that particular line.

3925 I can understand in your search for a broader political acceptability that you see this as being a good thing, but in terms of bringing in talents, your powers are actually quite extensive, aren't they? I think section 3(2) of the Government Departments Act 1987 allows you or Ministers in individual Departments to delegate functions to anybody. So if you are after a Government of all the talents, you can spread your net more widely.

3930 **The Chief Minister:** Yes, within the elected talent pool that I have available to me, I try to do that as best we can. I suppose the challenge in a small community like the Isle of Man is that ... This is going to sound wrong; it is not how I mean it to be. The talent is not necessarily evenly spread across all the elected Members. Some Members are more talented in certain ways than others; they have different skills. So you try to match all those up. Some skills may not fit for whatever reason, so we have to leave them outside.

3935 We do try to engage all the key positions with elected Members, but I guess from time to time there is a need to bring in the best expertise we have. They obviously do not come in as Ministers or whatever, but we do look to external advice. We are a very small Government. People forget at times that the Council of Ministers and, indeed, the whole of Tynwald is 33 people in total, but we are the directors of a billion-pound company. The gross income of the Isle of Man Government now is roughly £1 billion a year. It is a relatively small number of people to be managing a very diverse range of activities within that £1 billion. We have to get the best advice we can. It does not always work, unfortunately.

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Q250. Lord Lisvane: Picking up on the range of activities and really going back to the theme of joined-up government, does the lack of a single legal entity make joined-up government more difficult?

3950 **The Chief Minister:** One of the frustration that I have had – and I have not been able to resolve it, I have to say, in this administration – is the silo mentality across Government. This is not something which has just happened. It has been with us for many years. There are far too many people still who are focused on the needs of their specific Department, and often on the needs of their specific section within that Department, rather than thinking across Government.

3955 The situation I think is twofold. I think a single legal entity would be beneficial; it would need to lead to some sort of structural change around that. But the real problem is the cultural change: the attitude of the Members and officers. You can change the scope of Government, the size of Government and the structure of Government, but until you can actually address the culture of Government and how we address things, and look at getting people in the key places
3960 looking across Government ... If you take an action in one Department, instead of just thinking how it affects this Department, you also need to think about how it is affecting other areas right across Government.

Far too often, we are stymied on a number of initiatives which we want to go forward because of this narrow thinking, this silo thinking. It prevents us modernising Government in the way that it needs. It often prevents us from making speedy responses to issues which might crop up. It slows down the delivery of public services and, after all, Government is here for only one reason and that is to serve the public, to provide the services and the various benefits the public quite rightly expect.

3965 The system of government we have now functions in far too many silos, with officers far too focused on those silos. It is a major inhibitor to modernising and developing a structure of Government which is fit for purpose for the Isle of Man for the next 10 or 20 years.

I have not been able to achieve it within the life of this administration – certainly not in the way that I had hoped five years ago. I very much hope the next administration, when it comes in, will pick up the baton and carry on that work, because if we do not do that – if we do not start breaking down these silos – we will not be able to respond to the huge challenges facing the Island at the moment.

3970 I mentioned earlier on the body blow that we received when we lost our VAT revenues. That was a third of Government's income at the time. That is a huge amount of money to lose. Therefore we have had to take some very difficult and painful decisions. But if we are really going to drive out the saving that we need, to get the books back together again, we have got to completely restructure Government. We have got to downsize it. We have got to get rid of these silos. We have got to be more efficient – a smaller, smarter Government – and the silo system inhibits our ability to deliver that.

3985 **Q251. Lord Lisvane:** Presumably another inhibition is the degree of statutory and practical independence that individual Ministers have within their departmental portfolios?

The Chief Minister: Yes. This is a human nature thing, I think, as much as anything else. Ministers everywhere vary in ability and also vary in vision. Where we came in on this, we do not
3990 have a party system, so the Ministers when they are appointed – when I put my cabinet together, for example – I try to get a balance between right and left in terms of political views. I try to get a regional base, so that all elements of the Island are represented somehow, so we get a genuine overview of where we are. That does not necessarily lead to a focused approach on some of the issues of the day. If I was a Tory Prime Minister or a Labour Prime Minister, I could
3995 point to the manifesto and say, 'These are the points in the manifesto that we have agreed to drive forward; therefore, we can focus on that, we know broadly what strategy.' Here, because

we have got different priorities, it is actually quite difficult, always to get Ministers working in the same direction, to deliver on that outcome that we want.

4000 **Q252. Lord Lisvane:** So you are not like the centurion being able to say, 'Go, and he goeth'? You are more like somebody saying, 'Let me outline to you some of the advantages of going.'

The Chief Minister: Yes. The Chief Minister has two powers – or we hope he has two powers. One is of persuasion: to persuade the Council of Ministers that certain actions are the best way forward, to try and develop the consensus round that. If that fails, the Chief Minister really only
4005 has the nuclear option after that, and that is to sack the Minister. You can do that once or twice and it gets a bit careless beyond that, really.

The Chief Minister of the day does not have the range of power that often is attributed to him, I am afraid.

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Q253. Lord Lisvane: I can understand that can be a bit of a challenge.

In terms of legislation, all administrations legislate. It is part, obviously, of doing the daily business, but it is also part of showing that you have determination; you are moving in a particular direction; you want to achieve things. Do you think that the system can cope with
4015 your legislative programme?

The Chief Minister: That is a very good question. I think the system ultimately can, and it does. It has to. It is interesting you ask that question today. As you said at the outset, we have just had the Queen's Speech today and I have just been reading it. They have their list of
4020 legislation all typed out. They have a good idea what the programme is going to be and they will be focused on that.

The difficulty we have in not having a party structure is it is often left to the Departments, individually, to originate the legislation they need for the policies that are driven forward, rather than it coming from the centre. That sometimes can lead to a disjointed approach to priority
4025 setting for legislation as it comes through.

There are Bills which come from the centre – I am not saying they do not happen. We have eight Departments who have their own sets of priorities that they want to promote. Very often the legislation will actually emanate from those Departments, based on those priorities. It will come up to the centre and then it is co-ordinated and pushed forward. It is a bottom-up
4030 approach to legislation rather than top-down, which I think is a bit different from how I would read the situation in the United Kingdom, for example – although I might be wrong on that.

Q254. Lord Lisvane: No, I think you are right, because there is much more clearance and co-ordination at an earlier stage, in the embryonic stage, before legislation comes forward
4035 formally.

The Chief Minister: It has always been the same and it is not working as well as it should. All the time I have been in Government, it has been the Departments which have generated the legislation in the main. It is not just this administration; it is going back as far as I can remember.
4040 But it does sometimes mean that an energetic Department that is focused on legislation can drive through more Bills than others who either do not have the resources or are slow in developing whatever it might be. Therefore, sometimes – certainly from the outside looking in – you can get the feeling that we have got a skewed sense of priorities when it comes to legislation coming forward. It is not really that; it is just the speed of the developing legislation
4045 within the present structure which leads to that perception, really.

Q255. Lord Lisvane: Do you have within Government a single point of parliamentary business management which can say in effect to Department A, 'Look, hang on! You can have your Bill,

4050 but you will wait now while Department B has its Bill and then you can carry on with yours' – that sort of thing?

The Chief Minister: The Council of Ministers largely co-ordinates Government business. All legislation ultimately comes through the Council of Ministers and we do prioritise it.

4055 This is not in any way meant to be a criticism, but one of the other restraints on legislation coming through is the availability of legal draftsmen. That in particular for this administration has been a real problem. It has been a real headache. We have had a number of head counts short for most of this period. We have struggled to get legal draftsmen. I understand there is a shortage, worldwide, of legal draftsmen. We have been looking at Australia and all sorts of places to find those bodies. It is the availability of drafting time which is as much of a restraint, frankly, as what I have just outlined.

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Q256. Lord Lisvane: That is a classic chicane in any legislative process. It is certainly one I have got experience of.

4065 **The Chief Minister:** I am sure you know better than I do. We are in the process of taking through the Equality Bill at the moment –

Q257. Lord Lisvane: Which is in LegCo.

4070 **The Chief Minister:** It is in LegCo at the moment. It will stay in LegCo and then it will be picked up after. It is a big Bill; it is one of the biggest we have taken through. I think it is the biggest we have taken through in this particular administration. That has tied legal draftsmen up for about 18 months on quite a big, complex Bill. So you do not need too many of those Bills coming through before, no matter how enthusiastic a Department or, indeed, the Council might be on getting legislation through, physically it just cannot be drafted quickly enough to get that logjam freed.

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Q258. Lord Lisvane: Looking at the genesis of legislation, how well do you think the consultation period works? Because there is quite detailed guidance on how to conduct consultations.

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The Chief Minister: In the past there has been criticism that we have not consulted enough, that Bills have had a fairly cursory consultation.

4085 I have made it an absolute point, since I became Chief Minister, to open up Government as much as we possibly can, so there is more information than ever on various websites, we brought in the Freedom of Information Act, and we consult on everything under the sun, just about.

4090 Initially that seemed a good idea, but I think we have got to the stage now where I am hearing, constantly, 'We are consulting too much' or perhaps consulting on too low level issues. There may be some truth in that as well. Probably the next administration needs just to weigh up the extent to which some of this consultation is appropriate, because some of the consultations we have, there is a very small response anyway. But it slows down the legislation for at least six weeks while the process goes through, and we get very little benefit at the end of it.

4095 I do not think we have quite got the consultation right, but it might just be a question of prioritising what is likely to be more in the public interest against that which is more routine and frankly the public are not too concerned one way or the other over.

Q259. Lord Lisvane: I wonder if there is a way of killing two birds with one stone by using draft Bills?

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You have a draft; it knocks out the consultation process, because the public is then able to comment on the draft, with the additional benefit that it is commenting, as it were, within a parliamentary forum.

4105 **The Chief Minister:** That might be a way of doing it, but is that not doing the same thing, except you are having the consultation at the start, rather than at the end of the process?

4110 **Q260. Lord Lisvane:** Well, it would simply be that the contributors to the consultation would contribute not in that mode but once a draft Bill was being looked at, for example, by a Tynwald committee.

4115 **The Chief Minister:** The committee system is something which has got mentioned from time to time. The danger with consultation, of course: in a general sense, the people who often respond to some of these Bills are the more zealous members of the community who have a strong view on things, but they are actually often a very small number. We have 85,000 people we have got to cater for here. It is what democracy is all about, but you do get some people who have very strong views and try to, for whatever reason, impose their views on the Bill of the day – whatever is being discussed – but that may not necessarily be representative Island-wide.

4120 Consultation sounds good, it is democratic, it opens up to scrutiny – absolutely as it should do – but whether the public at large engage with that process widely enough, sufficient to actually either understand what the implications are or to suggest changes, that gives me some concern too, because we have 85,000 people and I think most of the Bills I have ever been involved with, if they get 100 responses, that is very good, and it is often in single or double figures, no more than that. Can we say that is representative of the whole Island? It is debatable, isn't it?

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Q261. Lord Lisvane: I think we are all familiar with the concept of the professional consultee.

4130 **The Chief Minister:** Yes, there is a danger we slip into that.

Q262. Lord Lisvane: But my idea was that any process of consultation, exposure and so on, would actually be moderated by, let us say, a Tynwald committee, because it would be looking at the Bill, but it would be taking account of what people were able to say directly to it at the same time.

4135 **The Chief Minister:** I think there would be some benefit from that. Those various stages, I suppose, still exist though. You are talking about consultation on the draft before it becomes a Bill, but we draft the Bill and then put it out for consultation.

4140 **Q263. Lord Lisvane:** No, that would be double-handling. What I am suggesting is that you have a Bill which is in draft form, so that you are not bound to every single provision of the Bill. You are able to take account of evidentially based suggestions for change, for example. You have less political capital tied up in a draft Bill, but if a draft Bill is being examined – and this would be stage one; I am not talking about adding a stage – it would replace consultation, but it would mean that there was something there for people to comment on, if they wanted, but at the same time it was being exposed in that stage of preparation in a parliamentary and political forum – before a committee, for example.

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4150 **The Chief Minister:** That might be a way of considering it. I do not think we have ever gone into that in any great depth. It is an idea which gets thrown up from time to time.

The other thing we need to be very conscious of though in what we do – and this does not apply in all cases, I freely admit – in some instances time is quite important in getting some of

4155 this legislation through. We have been incredibly successful over the last, certainly, 25 years in growing a very diverse economy – if I can use that as an example. A lot of that has come though because we have been able to move very quickly when economic opportunity has been shown to us, and that has meant that we have been able to move legislation very quickly or bring in regulation very quickly or whatever structures are needed, to enable us to capitalise very quickly on what that opportunity is. On a number of occasions, that has given us a head start over competition.

4160 The only hesitation I have about too many scrutiny committees – or whatever title you might want to put on them – is whatever they do, they must not slow down the process. Some legislation is fine; it can be digested leisurely and it is not time-important in that sense, but there will be occasions where we need to get that legislation through, and the system must facilitate the smooth passage in whatever form that Bill ultimately takes, but it needs to get through, otherwise the time will have passed and we will have lost that opportunity.

4170 The Isle of Man: if we are going to survive in the future, let alone thrive, we have got to be fleet of foot. We have to have systems here at every level which can respond to external challenges and also external opportunities if we are going to survive. The pressure on the Isle of Man over the next few years is going to be greater than it has ever been. The economy is changing, worldwide; we are under huge scrutiny pressures, etc. We cannot afford to lose that one advantage that we have, otherwise we are going to lose a great deal.

Q264. Lord Lisvane: That point is very well taken.

4175 I would not suggest that there would be a straitjacket whereby you would have to proceed like that on every occasion. It might be that the Equality Bill might have benefitted from that sort of treatment. If you have a system like that, there would have to be some sort of bypass mechanism, where you could demonstrate that urgency existed and that you needed a different route.

4180 **The Chief Minister:** I think that caveat would have to be included in whatever structure was put in place, I would agree.

4185 **Q265. Lord Lisvane:** This handily brings us on to committees of all three Branches. The committee structure, looking at it from outside, from afresh, seems to be really quite complex and quite extensive. Could it do with simplification?

4190 **The Chief Minister:** Yes, I am absolutely sure it does. We have a range of committees. We like committees. It is much easier than making a decision; we send it to a committee. But the key scrutiny committees, for example, in Tynwald, are relatively new in the form that they have got at the moment.

Q266. Lord Lisvane: You are talking about the three Policy Review Committees?

4195 **The Chief Minister:** Yes, if we start with that. Whether they need beefing up – there are arguments that Members of those Committees should be taken off Departments altogether, for example, and just be scrutiny Members, but treated in exactly the same way as a Member of a Department would in terms of salary, etc. There may well be an argument for that, but it would need a bit of thought going into it.

4200 Scrutiny is hugely important in any democratic forum and especially in ours as well because, whilst we all think we have got the answers to everything, it does not always work that way and we make mistakes. There is always an angle that we have not thought about. Constructive scrutiny is very important.

4205 Certainly, looking at one or two other jurisdictions, my fear is the scrutiny does not necessarily evolve as constructively as it might and it has actually turned out to be quite an adversarial situation rather than a constructive co-operation to develop the best outcome.

Q267. Lord Lisvane: I think that is always a risk.

4210 One of the things that struck me about the orders of reference of the Policy Review Committees was that it was very much – do not take this the wrong way – ‘following the Lord Mayor’s procession’, because they were only looking at policy once it had been implemented. In other words, there was not an input to something that was in the process of gestation.

4215 **The Chief Minister:** Yes, I think that is a fair comment. I think scrutiny really has been a scrutiny of outcomes, rather than inputs. Perhaps there is a need to look to see how that would evolve. Again, whether it would work in a small entity like the Isle of Man, I do not know, but it needs to be structured in such a way that it is a constructive mechanism; they work in tandem to try and develop whatever that policy is, otherwise you are going to get the scrutiny committee on a head to head with the Departments who are trying to develop their particular policy. That is going to get quite messy, I think, if it is not handled properly.

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Q268. Lord Lisvane: Again, I think that comes down to political personalities.

The Chief Minister: Yes, it does.

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Q269. Lord Lisvane: As various systems do.

4230 **The Chief Minister:** Well, particularly, again, in a small jurisdiction: we are far more personality-based here than we are in any ideological way or any other format. Often policies can get derailed on the vagaries of one person, rather than on any sort of broader strategic approach to life.

Q270. Lord Lisvane: But I can see advantages equally in not being limited to the deployment of 20/20 hindsight.

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The Chief Minister: Yes, absolutely.

I think the committee system that we have at the moment is an evolutionary thing. It has to be taken on to a new level. When a new Government comes in, it needs to review the committee system that we have. I do not believe it has worked as effectively as it might have. It should not just be a rubberstamp for Government, but equally it should not be set up as a foil for Government and as a constant source of adversarial confrontation.

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Q271. Lord Lisvane: It cannot be an alternative government.

4245 **The Chief Minister:** Certainly in one of two places which I am aware of, that has happened: they see themselves very much as the alternative government. That cannot be of any help, especially in a small jurisdiction, again where we have to move quickly sometimes with the development of policy to capitalise on opportunities.

4250 **Q272. Lord Lisvane:** It reminds me of Gladstone telling the House of Commons, ‘It is not your job to run the country but to call to account those who do.’

The Chief Minister: Well, that is a point, yes.

The Council of Ministers: the Chief Minister and Ministers absolutely have to be accountable to the Keys. They have to be able to defend the positions that they have struck, and hopefully

4255 develop the policy and the process. But ultimately the Ministers are the ones who are making the final decisions in that Department.

Q273. Lord Lisvane: Absolutely.

4260 Just on a very last point – because we are running out of time, and you have been very generous with your time – going back to a public perception issue that we almost touched on earlier on: emoluments. We were talking about that in terms of Members of Government Departments. Is it appropriate that they are recommended by a standing committee of Tynwald? Does that internalise the process?

4265 **The Chief Minister:** Is this Members as a whole, you are talking about now?

Q274. Lord Lisvane: Yes, additional payments for specific functions.

4270 **The Chief Minister:** The basic structure, the pay salaries, have always been a bone of contention. I forget now just when it changed, but for years Members in effect used to vote on their own pay. We used to set our own pay rates, etc.

Q275. Lord Lisvane: And now that is pegged to a rate?

4275 **The Chief Minister:** Now it is fixed to a Civil Service rate and so Members have no direct say in it.

We made the very bold decision a few years ago to have an external group – and I think it was the Commonwealth Parliamentary Association brought in three wise men from Canada, Gibraltar and India – I forget where it was now. They reviewed our salary structures here and came back with what they believed was a fair and appropriate level of remuneration. Unfortunately, their recommendation was way above what we were getting paid at the time, which was probably not the wisest outcome of that particular exercise. So it was binned shortly afterwards. We then moved onto the Civil Service spine base. In terms of incremental annual increases, that works. But you are talking about, then, the additional payments for Departments.

4285 **Q276. Lord Lisvane:** I am talking about the extras.

4290 **The Chief Minister:** That salary settlement has been in place now for a good few years. It does work. Whether it would need to be taken out of Government, I do not know. I have not really thought about that. We would have to see.

Q277. Lord Lisvane: I should make clear that I am not talking about basic pay. It is responsibility allowances.

4295 **The Chief Minister:** Yes. I think there is probably a case to review that, again, in the light of the scrutiny structures, to see whether in fact there should be a similar allowance for scrutiny. If you are doing the scrutiny properly, in some areas anyway, it could be very time consuming and it, in effect, could be your main role in Government as opposed to being a departmental Member. Because although we do have Members of Departments, some of them, I have to say, have very little to do. It is getting people engaged within a Department to give them something to do, but in terms of workload, it is something you could do in a very short period of time. In fact, I would imagine some of the Members working on Departments actually have a lighter workload than might otherwise be the case should they be on an active scrutiny committee, for example. Therefore, I think probably the time has come now to review the whole lot in the round: the departmental allowances, as well as the scrutiny, to put them on a different basis.

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The only hesitation – and you could not legislate for it; it would be down to personalities – is that scrutiny does not become, as you said, the alternative government. It has to be constructive scrutiny, but you cannot really write that into the rule books. It is down to individuals, really, as to how they interpret their roles of the day.

4310 We are a small Government here; we are a small community. It is important that Government moves as efficiently and effectively as it can do to deliver the services and to develop a strong economy, but we have to be transparent and accountable in what we are doing as well. It is getting a balance between these two priorities, to give overall good government for the Island, I think.

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Q278. Lord Lisvane: Chief Minister, we have covered a very wide canvas indeed. Is there anything that you think that we have missed out? If there is, after you have had time to reflect obviously, I am very happy to have anything in writing or to meet again.

4320 **The Chief Minister:** I am sure this is a subject we can spend all day talking about, quite honestly. We have spent 30 years talking it and we still have not got a solution to it.

I do think there is a view that the structure we have at the moment needs modernising. There is wide disagreement though as to what that modern structure would be. There is some awareness outside of the need to modernise. I have to say, as Chief Minister, I have not been inundated with demands by the wider public for reform. I think the role and activities of LegCo is a bit of a mystery to a large number of people on the Island. It is not something people are very familiar with.

4325 Just moving away from that, it has to have a more democratic accountability to the people and quite what that form will take, I bow to your superior advice on that eventually. I am sure you will have the answer – the Holy Grail – to what we are seeking.

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Q279. Lord Lisvane: That starts with giving *an* answer; whether it is *the* answer, of course –

4335 **The Chief Minister:** Well, the one certainty is: whatever answer you get, it will still not satisfy a large number of people, so I would not be too concerned about that.

But the important thing in all this is it needs to have more democratic accountability; there is no question about that. But we have to have a system of government here which works; which delivers what the people expected us to deliver. There is too much game-playing around the debate of reform at the moment. There are too many points being scored, there are personalities involved in it. You have got to push that all to one side. What we have to have is an effective, modern Government for the Isle of Man going forward for the next 50 years. It has to be one that works, is democratically accountable, but one which provides the checks and balances and oversight that the Island badly needs.

4340 It is a difficult task. We have looked at all sorts of options over the years and none of them have appeared to be workable – or certainly not any better than what we have got at the moment. Accepting that today's might be imperfect, the alternatives, in many ways, have been even worse.

4345 It is important we do not pursue change for the sake of change. That is my big concern about that.

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Lord Lisvane: Well, thank you very much indeed for your help. I am most grateful.

The Chief Minister: Thank you.

*The hearing was suspended at 3.05 p.m.
and resumed at 3.08 p.m.*

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EVIDENCE OF

Hon. R Howard Quayle MHK,

Minister for Health and Social Care and Member for Middle

Q280. The Chairman (Lord Lisvane): Good afternoon, Mr Quayle, I am very grateful to you for sparing the time to have a conversation about some of the issues that I am charged with examining. We have got something like three quarters of an hour in front of us and I hope to be able to cover all the areas of interest to you, as well as some questions that I have got.

4360 I wonder if you would like to begin by giving me some general thoughts about the effectiveness of the tricameral structure and where the strains and the pressures come.

Hon. R H Quayle: Thank you very much, Lord Lisvane, for inviting me to the hearing and I am glad to give evidence.

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Lord Lisvane: I should say, before you go on, that the proceedings are being live-streamed on the web and *Hansard* are taking a record, and when that is finalised it will also appear on the Tynwald web pages.

4370 **Hon. R H Quayle:** Thank you very much.

If I first may state my background to give you an understanding of where I am coming from. This is my first term as a politician, I was elected in 2011. I had never really considered myself a politician and I still do not consider myself a politician. I consider myself to be a good businessman trying to do some good for the Island and that is the focus of my view when I look at this.

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I find an awful lot of people tend to spend a large amount of their time discussing the minutiae of every point on whether we should be tricameral, bicameral or publicly elected and I got really frustrated with my colleagues in the Budget in February of this year where we fuffed around – for want of a better word – for hours discussing legislation, elections and the Upper House; and there was not one motion on how we should be growing the economy to balance the books.

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I sometimes despair that so much time is spent on discussing what I consider to be ... I think you sometimes have two types of people: those who – and I hope myself included – want to roll their sleeves up and just get on with it; and the others, who will pontificate for hours on end about the meaning of a word. I have to say that I have the biggest single-seat constituency on the Island and when I went round door-knocking – and I hit every door in my constituency *just* by the last day before the election – I think *one* person briefly raised the publicly elected Legislative Council. So I suppose I am going to take the Bert Lance view – I think he was the director of the Office of Management and Budget under Carter – ‘if it ain't broke, don't fix it’.

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I think the Legislative Council as elected by MHKs works. I have brought a copy of the rules for me to refer to, and I think where we let ourselves down *dramatically* is how we elect the MLCs to the Upper House – it has become a bit of a farce and I think an awful lot of damage has been done to the good name of Tynwald. You have a number of politicians who want the Island to be independent and they vote accordingly to spoil papers, etc. and bring the election into disrepute, purely to try and have an election of the Upper House.

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I think if you have an all-Island election of MLCs you effectively give them a greater mandate than the MHKs! So I just cannot square the circle on why you would want to do that.

If we look at page 50 of the Standing Orders of the House of Keys, it mentions a ‘round of elections’ and that comes under 8.2(2) item (vi)(a):

In this Standing Order –
(a) a “round of elections”...

4400 – and it is the voting system, really. I think just to simplify it so that the highest number of votes wins, effectively. You go through the procedure of presenting your CV and having people propose you, and then all the silly games that go on are done away with.

Q281. Lord Lisvane: To achieve the 13?

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Hon. R H Quayle: Yes ... well, I am not even saying you achieve 13.

You have seven candidates and, if you have three vacancies, the three highest votes in the first round are in. End of. All the horse-trading, the spoiled papers, the trying to – *intentionally*, in my opinion – damage the election process would be done away with straight away. The candidates would know from day one that these are the rules. As a member of the public I used to listen and despair when it used to go on for months and months – and I felt embarrassed, as a Manxman, that this was going on. I thought to myself, ‘There has got to be a better way.’

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4415 Having observed it, yet again, in the four and a half years that I have been a political Member, I have analysed whether we should do away with the Upper House; and I think I am justified, because personally I have squared the circle in my own mind, supporting the retention of an elected House by the House of Keys. I see it as an application of the principle of checks and balances.

4420 Whether we will always attract the best candidates to the job is something where politics throughout the world probably fails. I have got many a business colleague who is coming to the end of their career and I have said, ‘Would you consider standing for the Legislative Council?’ They have laughed and said, ‘We are not prepared to put our family and our business reputations through the front page of newspapers and radio interviews which are constantly trying to unearth some bit of dirt on you. And while we would like to give our time to help the Island ...’ they have backed off.

4425 I think that is sad and I think one of the disadvantages of social media – especially Facebook – are the personal attacks on politicians. As a result of that I think fewer and fewer people who would be well-suited for the position of giving advice and scrutinising legislation ... I think we are struggling to attract decent candidates. As a result of that it could be argued that politicians who maybe should have retired at the election are enabled to go up. But I am sure that happens throughout the world.

4430 I should imagine my evidence will be in a minority view amongst people coming in to see you – that if it ain’t broke, don’t fix it. I think there is a small, but very noisy, minority of people on this Island who want to do away with the Upper House. I feel personally, as a new Member with no axe to grind and no hidden agenda other than to try and do a good job for the people of the Isle of Man, it is a good system that needs tweaking; and, as I say, the election is an absolute farce.

4435 How do you stop the destroying of reputations by media and Facebook? I do not think you are ever going to be able to achieve that in this report, so we will just have to hope that one day our utopia or Xanadu world is achieved.

4440

Q282. Lord Lisvane: I think one question of perception which arose earlier on this afternoon when I was talking to the Chief Minister, was that of LegCo being a retirement home for the Keys.

4445 In one sense an argument could be made that you need that political experience and people who actually know the form and indeed, in the terms you mentioned a moment ago, are prepared to have that level of public exposure. But the retirement home perception can be quite damaging, can’t it?

4450 **Hon. R H Quayle:** It can, and to a certain extent it does happen – but it is not a hundred percent, if you look in the elections since I have been elected in my short term since 2011. I voted for Mr Coleman – and I am probably seen as right of centre and Mr Coleman is a member

of the Labour Party; but, equally, he was the president of the Computer Society and he had been on numerous banks as director in an advisory role. I felt he was eminently qualified for the position as a Member of the Legislative Council so I voted for him and he is on. The same thing
4455 happened with Mr Wild who had a deep knowledge of banking.

So the majority of MLCs are MHKs who have gone up – or retired, as the public may see it. In my first year or two there was a now-retired Member called Mr Eddie Lowey MLC, and he had been a politician of long standing. He had been in for 30 or 40 years and as a new Member I greatly valued his experience of what had happened over the last 30 years.

4460 I always believe history has a habit of repeating itself – if you think of Napoleon fighting on too many fronts and then Hitler came along and did exactly the same thing. I think having a mix of the business community or experienced members of the public, along with experienced ex-Members of House of Keys, works as long as it is not a hundred percent each way. As I say, I greatly valued the experienced comments of the Member of the Legislative Council, Mr Lowey. I
4465 did not always agree with him, but he was a canny old soul and as a new Member I really valued the feedback and advice that he gave.

It is a hard one and in fact you are never going to get a utopian world. We are a population of 85,000 so I suppose it is horses for courses. Our system is not going to suit a 64 million population such as England but for a small Island, I think it has not done too badly.

4470 I have a private motto of *qui non proficit deficit* – if you do not advance you lose ground. So yes, you should be constantly looking at improving yourself, but I think the basic principles of our system are sound. I am sure that will not be the majority view that you will hear in evidence. But having gone round a constituency in 2011, my constituents were more interested in good education for their children; good health and social care for their loved ones; potholes, speed
4475 limits, car parking spaces. The topic of Upper House elections and reform is not on the public's mind. If we were a new country starting from fresh, maybe we might do something differently, but I think we have got along quite well on the whole.

Q283. Lord Lisvane: In terms of squaring the circle of experience and diversity – which, in a sense, is what you have been talking about in the context of Legislative Council – do you think there would be anything to be said for a separate statutory nominations committee who would encourage people, and then assess them in terms of what their likely contribution might be and how useful their experience might be?

4480 You and I have both been on boards and we always look at our board members to see what the right mix of skills is, in order to contribute to the whole. But going about it in that rather more organised way, might that have something to recommend it?

Hon. R H Quayle: My initial thoughts are it is back to horses for courses, I think, on a small Island community with a population of 84,000 to 85,000. It could be argued that we all know one another on the whole and that you could have a small number of people effectively
4490 controlling the appointment of who should go forward into a greater selection process.

I think how you would pick that committee would be incredibly hard. Plus the fact that sometimes experience has taught me that it is the people who you least expect to be good that tend to turn out well, and some of your dead certs that they will do a good job, when you see
4495 them perform you think, 'Well, they just have not lived up to the expectations.'

So I have given you an initial thought to your question.

Q284. Lord Lisvane: My purpose in asking it was to see whether there was a way of widening the pool.

4500 You said a moment ago that everybody knows everybody else and sometimes that can lead to the usual suspects being appointed. And sometimes, equally, from the outside it can be a discouraging phenomenon whereby – perhaps reflecting greater diversity in the community – people who do not see themselves as potential professional politicians, perhaps people who

4505 have got other responsibilities – childcare or whatever it might be – who do not put themselves forward, nevertheless might be encouraged to do so?

Hon. R H Quayle: I think anything that increases the diversity of society and, certainly, getting more ladies into politics has to be a good thing. I am just not convinced from my initial thoughts that it would work.

4510 You have got some very good Members who have very limited business experience, but they bring a certain understanding of other areas of society into the House and I think you need a mix. The last thing you want in the House of Keys, in my opinion, is 24 middle-aged white businessmen. I think you need a diverse mix, really.

4515 **Q285. Lord Lisvane:** Just on that point, why do you think there are so few women in Tynwald?

Hon. R H Quayle: I think they are too intelligent – they see the grief that we have to go through!

4520 Joking apart, I spoke to my wife as I was coming here today and I said I am going to be giving evidence. We were discussing the election coming up on 22nd September, and a lady who I have an awful lot of time for – and who I think would do a fantastic job as an MHK. My wife had discussed it with her and she said she had observed what I had gone through with people constantly coming up to me at all times including social events, and it had totally turned her off going into politics.

4525

Q286. Lord Lisvane: But in a sense that is an individual personal reaction rather than a gender issue.

4530 **Hon. R H Quayle:** I do not know why we have got the mix we have.

I said, tongue in cheek, that I think ladies are too smart to want to put themselves through it, when we have two very good Members – Mrs Beecroft and Madam President, our first Lady President. I honestly do not know.

4535 I would happily work with 23 ladies and myself, as a politician. I do not support stating that only ladies can stand in an election, I think that would be unfair; but anything that we can do to increase the percentage has got to be a good thing. I am at a loss, having tried to encourage good lady candidates to stand. The general feedback I get is that they are not prepared to put themselves ... I have tried with two very good candidates who I think would do a fantastic job for the Island. I have asked them and they have declined, and it has all been down to the fact they have not been prepared to put their family through the exposure that being an MHK carries with it – which is a very sad state of affairs.

4540

Q287. Lord Lisvane: I do not think you should give up your work of encouragement, let me put it like that!

4545 Let me move on to your role as a Minister and how you interact with the Branches of Tynwald. How far do you feel you are effectively challenged in a parliamentary forum in what you are doing as a Minister?

4550 **Hon. R H Quayle:** The scrutinising committee is very good, and they normally go into great detail.

Q288. Lord Lisvane: The policy review committee?

Hon. R H Quayle: The Social Affairs Policy Review Committee.

4555 I am very disappointed when I am getting asked Questions in Tynwald and Keys – it tends to be point-scoring. I suppose this is a naïve first-term politician giving you an answer here. I expected more on policy and why we were doing something, and ‘Wouldn’t x be better than y?’ and had I thought of *this* ... because I suppose that is what I came in for.

4560 But I tend to get asked Questions regarding an individual constituent, or something that is populist at the time. It is either point-scoring to raise a profile for an election coming up, or looking to appease a small number of society, rather than hitting me with, ‘Why aren’t you trying this as a new procedure for your Department?’

Personally, I would prefer more of that.

4565 **Q289. Lord Lisvane:** In one sense, perhaps, you should not be surprised because it is an exact reflection of what you were saying to me a few minutes ago about people being interested in car parking spaces and pavements, and so on.

And you had its expression perhaps yesterday, in the Question you were asked in Tynwald about the nurse on the night shift?

4570

Hon. R H Quayle: Yes, that is correct – but I suppose I always look for the best in people.

4575 As I said at the start of the interview I came into politics not as a politician, not wanting to make a career out of politics but purely to come in for as long as I am wanted to do a job to the best of my capabilities and then go back to my life. I presumed that other politicians – I suppose naïvely – should think the same. That it is not a game, I am not there to promote one party over another on this Island, I am here to try and modernise.

4580 I think the Island has not prepared itself well for some of the challenges – the ageing population is a classic example – and as a result I have spent a lot of time studying the best examples throughout the world. I am now trying to implement a five-year strategy on Health and Social Care; but that was not arrived at as a result of constant questioning by backbenchers on what we should be doing. I had to go off and formulate that idea myself and then go out to the public, consult on it and bring it to Tynwald; and I am glad to say I got a hundred percent approval.

4585 Sadly there seems to be very little policy driving from backbenchers – it is more about what I would consider to be minutiae and that is a disappointment.

Q290. Lord Lisvane: You mentioned Health and Social Care and, as I understand it, those were two Departments which were put together and in a sense that must have been seen as a welcome move towards joined-up Government.

4590 But without a single legal entity it is quite difficult to have joined-up Government, isn’t it?

Hon. R H Quayle: Yes, the single legal entity has taxed me in a way.

4595 First of all, on 1st April 2014 I merged the two Departments, Health and Social Care. The Social Security bit went off to Treasury and eventually, a year later, Housing went off to the Department of Infrastructure. So that was a good move but you have still got the individual empires and trying to get people to work together. It is going to happen.

I bumped into Jeremy Corbyn at the Labour Party conference and I think that was one of the few things we had in agreement, in common – that, if he ruled the UK Government, he would merge Health and Social Care.

4600 I think that was a very good move to do. It was not my idea, it had already been agreed, but I was glad to do it and it is working –

Q291. Lord Lisvane: One has a direct budgetary impact on the other.

4605 **Hon. R H Quayle:** Yes, when you have a nursing home problem you are not going to be that bothered about improving the numbers of nursing home beds, but if it is blocking your hospital

because there are not enough, and you are one Department ... Or equally if you have got someone who has had a broken hip and they are in hospital and the hospital have fixed them, but the house has not been adapted by your reablement team making sure that they have got raised chairs and frames and toilet seats and all that sorted out. Then if that has not been done, one Department does not suffer; whereas if it is one seamless Department then the cost of someone having to stay in hospital because the Adult Social Care Services had not delivered their facility as part of a team ...

The minute someone goes into hospital you should have that team thinking, 'Right, they are going to want to go home within, on average, two weeks, what are we going to do to make sure that the minute the consultant signs them off their house is ready?' So that, as a seamless organisation, is working; and, you could say, the individual Department and the legality of that.

It worries me that whilst I can accept the need for a single legal entity to overcome ivory towers, are you putting all the power into one person? It would give the Chief Minister a phenomenal power – and I have not, again, squared the circle on that one.

I can see the need for it and, as I say, merging the two Departments has certainly worked. But how you would protect not having ... I am not saying 'a dictatorship'? Our Chief Minister is accused of being a dictator, but having sat in Council, he has to accept the majority decision of the Council of Ministers, even though he is at liberty to try and influence it. I just think if you have a single legal entity you would need to make sure that there was not too much power given to the Chief Minister.

Q292. Lord Lisvane: Not so much ivory towers as ivory silos, in a sense of actually getting people to work across Government.

You, as a Minister, have got considerable statutory independence which I have no doubt that successive Chief Ministers – and I am not personalising this – have found a little frustrating that their Ministers have their own fiefdoms which may well get in the way of delivering a properly knitted-together package of policy proposals.

Hon. R H Quayle: That is correct, but I am appointed by the Chief Minister; so if the Chief Minister is not happy with my performance he can hoof me out if I am not toeing the party line to an extent, if he is frustrated.

You are right, there are instances where you feel having someone blocking reform for the greater good all the time to protect their fiefdom, cannot be allowed to continue. I can accept the single legal entity, it is just trying to make sure that there are checks put in place from giving the Chief Minister absolute power, effectively – otherwise what is the point in being a Minister?

It could be seen that you are just a puppet to a Chief Minister then, if they have total power.

Q293. Lord Lisvane: Isn't a contrary proposition to say that you are part of the team making your policy contribution and then delivering on behalf of the team as a whole?

Hon. R H Quayle: Yes, but sometimes each Department has specialist circumstances where you have specialist knowledge as the Minister of the Department that some of your colleagues do not have; and therefore I suppose maybe it is up to you to have the skill to put over those concerns to your fellow Council of Ministers to then support it.

Q294. Lord Lisvane: Particularly to the Treasury, normally!

Hon. R H Quayle: Yes, sometimes it could be argued that Treasury control the policy in the Departments, not the Minister. So whether you already have the single legal entity channelled through the Treasury, or not.

4660 **Q295. Lord Lisvane:** Can I move onto the phenomenon of having departmental Members associated with Government Departments. You have as many as any other Department does, you have five. What is the contribution they make?

Hon. R H Quayle: I have four; five including myself. Mr Wild is no longer a member of the Department.

4665 **Q296. Lord Lisvane:** Ah, but you have five places; presumably you could appoint another one?

Hon. R H Quayle: No, but funnily enough when I took over from the previous Minister for Health there were just two of them.

4670 The Department of Health and Social Care spends quarter of a billion a year; it is responsible for three and a half thousand members of staff – it is the monster Department in Government. I could not do a good job running it properly on my own – it is back to that old phrase, if you fight on too many fronts you get beaten. Therefore having a team of four – I have Mr Coleman in charge of Primary Care, Mental Health and Public Health; I have Mr Quirk in charge of Adult Services; Mr Harmer in charge of Children and Families; and Mr Peake in charge of Acute Services.

4675 I have weekly meetings with them, with just the Chief Executive, where we have a warts-and-all discussion and we discuss the latest thinking and problems that the Department has; and then we have a full Department monthly meeting. I value their input. I cannot be everywhere at once; it is such a big Department that I think the four, plus a Minister, works quite well for me. I like the other Members to know what is going on in the Department because I appreciate their feedback and we try to do everything by a majority view.

4685 **Q297. Lord Lisvane:** I could understand that there is an attraction in having a sort of political collective where you are supported by fellow Members, in this case of the House of Keys and one Member of LegCo. But you have power to delegate functions to anybody – they do not have to be politicians, if you are talking about how you carry the burden of a complex Department.

4690 **Hon. R H Quayle:** You have your Civil Service team but, politically, I do not have the power to bring in a member of the public to do the political chairing.

Q298. Lord Lisvane: I thought section 3(2) of the Government Departments Act does give you that power?

4695 **Hon. R H Quayle:** Right, I would have to clarify that.

Q299. Lord Lisvane: Let me just quote it to you:

The Minister may authorise any member or officer of the Department, or any other person, to exercise any functions of the Department in his place, either alone or jointly with him or with any other such person or persons.

That is section 3(2) of the Government Departments Act 1987.

4700 **Hon. R H Quayle:** Yes, in fact I have used that very point to bring in an ex-Chief Executive of the Department to run a committee for me, but that was to advise the political Members at the end of the day when we were making a decision in the Department – it is the political Members that have the vote.

4705 So yes, I have brought in various members of the public to sit on committees or chair committees for me; but at the end of the day they have always sat under a politician, and all departmental decisions are made by the political Members.

My apologies if we were at cross purposes on that one.

4710 **Q300. Lord Lisvane:** Yes, I quite understand about bringing in sources of advice and that sort of thing, but in fact whether you choose to exercise it or not you do have statutory power to delegate executive functions to whosoever you think fit – and they do not have to be politicians.

4715 **Hon. R H Quayle:** Yes, I have always taken the attitude that publicly elected people should be taking the final policy decisions.

Q301. Lord Lisvane: Presumably that is you, as the Minister – you take the final policy decision?

4720 **Hon. R H Quayle:** Yes, but I have never run the Department as ‘what I say goes’; it is always taking the advice of the Members of the Department. You listen to the arguments sometimes, or the presentations from the officers, and to date I have always gone with the majority view.

I am lucky, I suppose, that the Members have backed me up on the whole in everything I have wanted.

4725 **Q302. Lord Lisvane:** You are a very fortunate Minister, in the scheme of things, I have no doubt.

4730 But let’s look in a wider sense at what the implications of that might be, because there are nine Ministers and you have collective Cabinet responsibility and the Chief Minister can sack you if you are seriously out of line – although, as he was saying when he was giving evidence earlier on that there are only so many assassinations, as it were, that you can conduct without threat to your own position.

4735 But there are very few Members – and I think it is something like four Members of the Keys who are not associated with a Department. Although the understanding is if you are a Member associated – in this case, your four in Health and Social Care – you expect them to back you up.

Hon. R H Quayle: Unless they have a pre-declared position.

4740 **Q303. Lord Lisvane:** How would that work out in practice? Perhaps there is a pre-declared position that you have to circumvent?

4745 **Hon. R H Quayle:** Well, I have a pre-declared position on public sector pensions myself, as a Minister – I called them Ponzi schemes in 2012. I moved a motion in January 2014 that it was unsustainable, and when the Council of Ministers are discussing something if I feel I have a pre-declared interest as a result of that ... if I have a difference of opinion to their declared policy then I have the right to have a pre-declared position and vote against.

I have only been a Minister for just over two years and I have never had a pre-declared position from a Member of the political team of the Department; but if I did, I would respect it and if we could not reach agreement and it was 4-1, then we would crack on with it.

4750 **Q304. Lord Lisvane:** So you would not regard that as being an insuperable barrier to maintaining your political cohesion?

4755 **Hon. R H Quayle:** No, as long as the card was not played every five minutes on every policy going. I think a pre-declared position ... I have never used it as a Minister in over two years, so to use it, I think, it has to be a very serious issue. But equally, it should be respected.

Q305. Lord Lisvane: I quite understand that.

4760 May we go back to the issue of challenge and scrutiny, where you said that you found the Health and Social Care Policy Review Committee very active and very contributory in a sense. Strictly speaking, their orders of reference allow them to look at a policy only when it has been implemented so they are actually following the political process, but several steps behind.

Do you find that in practice?

4765 **Hon. R H Quayle:** They have had, as individual Members in their own right, the opportunity to debate a strategy in Tynwald – for example, the five-year Health and Social Care strategy which was approved in October last year, having been out for full consultation with the public, was debated in Tynwald. Individual Members were able to discuss the strategy and decide whether they supported it or not.

4770 I suppose when you go back to the scrutinising committees you could say they probably scrutinise areas where perhaps you have made mistakes, or perceived mistakes, or where things are maybe not working and the strategy does not get called into question.

Q306. Lord Lisvane: Would you appreciate a more contemporaneous input?

4775 I take the point that Tynwald as a whole can look at the policy plan, you have the policy review committee following up sometime afterwards. Would you appreciate a more real-time input into what you are doing?

Hon. R H Quayle: If it was constructive.

4780 I think when you observe questions and comments from an awful lot of my political colleagues they are very good at criticising something, or why something went wrong, but rarely do I see examples of ... 'I do not think you should do this.' Or, 'The problem is *a*, here is the solution.'

In my opinion, I do not see anywhere near enough of that.

4785 **Q307. Lord Lisvane:** But is there a case there of taking two to tango, in that if you let a policy review committee which was taking a more contemporary and more real-time view into your thinking, and saying, 'What do you think about this?'

Or is it actually that you are getting that sort of input from your departmental Members?

4790 **Hon. R H Quayle:** I genuinely have an open mind as a politician and therefore if a backbencher comes along to me with a better idea than we, as a Department, currently have, I like to think I am big enough to take it on board.

4795 Plagiarism is the most sincere form of flattery and often it is not the case of *having* the best idea, from a business world ... the people who have the ideas do not always make the money, it is somebody who recognises an opportunity and then goes ahead and implements a far greater change.

In my business world I used to like to go round and see some of my competitors and look at what they were doing and think, 'Can I adapt that to my business?'

4800 I do not support party politics, I think the independent system works for a small Island; and because I genuinely have no hidden agendas and no party affiliation, I am just a very proud Manxman who wants to do as much good for his Island as possible. Therefore, I personally do not see taking advice from anyone whether they be on a scrutiny committee or a new backbencher, or even a member of the public ... I have said all along that the Island has a wealth of really experienced, freshly retired business people who could give an awful lot of advice to politicians. I am more than happy to take as much advice; and if someone gives me a good idea and it is backed up, then I am more than happy to run with it.

4805 Equally, you are quite correct, as Minister the buck stops with me and it must be my decision – and with the support of my political colleagues to then take that policy to Tynwald.

Q308. Lord Lisvane: We are running close to, or indeed over, our scheduled time, but I wonder if I could just finish with some questions about the legislative process?

4810 What Bills have you so far had the experience of taking through?

Hon. R H Quayle: I have just done the Disability Discrimination Act 2016 – well, I have implemented it, it was brought in in 2006 and then it sat on a shelf, I think, from a cost point of view. Various administrations had –

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Q309. Lord Lisvane: So just to be clear, you commenced it, rather than taking – ?

Hon. R H Quayle: I have commenced it but I have brought in various amendments.

4820 I have just brought in the new National Health and Care Service Bill, which is probably the biggest change to Health and Social Care in 50 years. It is a system of schemes which is very modern in its thinking and it will enable future Health and Social Care Ministers ...

As Health and Social Care changes rapidly you will be able to see a need for change. You go out and consult with the public, you then take that strategy to Tynwald; Tynwald debates it and once Tynwald has debated it, and if they approve it, it is then law.

4825

On the scheme mechanism – and I think that is the first time it has ever been done, we had a new legal drafter, so I cannot take any credit for any of that. That was a *major* piece of legislation because I was able to implement, hopefully, more business-orientated ideas and a much quicker reaction. If I want to move legislation at the moment without a scheme, I have the legal draftsman draft it up, I then have to get permission ... you have to queue, so you could be waiting a couple of years just to get in the queue to get your legislation –

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Q310. Lord Lisvane: Are you talking about primary legislation?

Hon. R H Quayle: Yes, primary legislation.

4835

As a result of the new Act which has just had its Second Reading and clauses stage in the Legislative Council, I hope to have Royal Assent by July.

Q311. Lord Lisvane: Can you give me an idea of how you feel that the legislative process has added value?

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Hon. R H Quayle: Do you mean from a scrutinising point of view of what you are proposing?

Q312. Lord Lisvane: Yes, you as the Minister have your pretty well-settled ideas of what you want to do and you are putting that to a process of parliamentary assessment and scrutiny challenge. Has that added value?

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Hon. R H Quayle: Yes, I gave concessions ... for example, Mr Thomas MHK, Member for Douglas West, recommended that because they were schemes ... I wanted to implement it straight away; and he said, 'No, you should only have the scheme actually start on the date you have come forward with the detail.' I listened to his viewpoints on that and I conceded that he was probably correct; and I took the unusual measure to second his amendment clauses to the legislation.

4850

So I think it is probably down to the individual again. If you have an open mind and you are genuinely trying to do what is right, having feedback from your colleagues has to be a good thing because there are always areas where you have not thought – or you think you *have* thought – something through, and sometimes your colleagues might spot an idea that you have maybe missed, or you have unintentionally affected someone that you had no intention of damaging.

4855

I am very lucky that, other than the amendment by Mr Thomas, nothing was amended to my Bill; but whether that is the skill of the legal draftsman, I do not know.

4860 **Q313. Lord Lisvane:** Legal draftsmen only clothe policy in words, so I am sure that you can take credit for that!

Hon. R H Quayle: I have now got legislation in place and when I toured Ramsey District Cottage Hospital as a new Minister, as an example, we had a beautiful state-of-the-art theatre which was being used for 12½ hours a week. We were not sweating the assets.

4865 I wanted to see if there was within the business community, say, a plastic surgeon who wanted to rent the facility off me to share some of the fixed costs – because whether you use the theatre for an hour, or a year, or it is flat out you still have maintenance costs for that theatre. But legislation-wise I could not do it.

4870 Equally when I was visiting a member of the Sierra Leone party – a team that came to visit the Island – I bumped into a little old lady who had been in that hospital ward for over two years, because her family had effectively abandoned her. Living in a ward was not good for her, it was not the right place to be and no one had tackled that situation because they did not technically have the powers to do so. The consultants had signed her off as fit to go into a residential home, but the family had effectively abandoned her. This new legislation enables me to place someone somewhere which is suitable for them – and to charge their estate, which was not available before.

4875 So it is something which I think, going forward, will be seen as a good piece of legislation – maybe it is more business-orientated legislation, I do not know. But I appreciated the checks of the Upper House – and, fortunately, in this instance they did not find anything.

4880 But, as I say, in the House of Keys Mr Thomas spotted something which, on reflection, and as I was wanting to achieve what he wanted anyway, and we just had not dotted the i's and crossed the t's properly, then I was happy to acquiesce to his requirement.

4885 I appreciate the scrutiny because I know as an individual I am far from perfect; and if other people have a better idea than I have always been of the opinion you should be big enough, and that should be seen as a quality in your character to accept other people's ideas if they are better, rather than see it as a weakness.

Lord Lisvane: I think that is a very good note to finish on, if I may!

4890 I am most grateful to you for the time you have spent and I have found our conversation extremely helpful. Thank you very much indeed.

Hon. R H Quayle: Thank you very much.

4895 I appreciate I only have four years and there are other Members with much more detailed knowledge than I have, who can give you the greater detail and experience. I can give feedback and am maybe giving you the views of a new Member.

Lord Lisvane: Well, they all count.
Thank you very much again.

4900

Hon. R H Quayle: Thank you very much, Lord Lisvane.

*The hearing was suspended at 3.56 p.m.
and resumed at 3.57 p.m.*

EVIDENCE OF
Mr David M Anderson MLC

Q314. The Chairman (Lord Lisvane): Mr Anderson, welcome. Thank you very much indeed for sparing the time to talk to me this afternoon.

4905 Just to make the process clear, our conversation is being live-streamed on the web and *Hansard* will record what we say. The transcripts will, when finalised, be put on the Tynwald webpages as well.

4910 You heard some of the conversation with Mr Quayle, so may I start in roughly the same vein by asking your opinion about bicameralism and tricameralism and how it works in practice? You, through your varied career, have seen it from a lot of perspectives.

4915 **Mr Anderson:** Yes, I was elected in 2001 to the House of Keys. At that stage, I came into politics because I had concerns about various issues. At that stage, the MHK for my area had been in the House of Keys for a considerable length of time. I think you will be meeting him at the end of your interview process: Mr Gilbey. I approached him on two occasions to see would he be letting his name be going forward to the Upper House, which is Legislative Council, obviously, and he said he was a Keys' man and he would not.

4920 I think he was a very good Member. However, he was not going to take that experience to another place, and I had a few issues that had come to the surface and, despite thinking to myself, 'I have never put myself in this position' ... My father and my grandfather were both Members of the House of Keys and the Legislative Council before me. I had seen it all and decided that was not for me, but a few issues swayed me. I was on the local authority for nine years before I stood for the House of Keys.

4925 I stood for the House of Keys and was elected. I think that shows you that there was a slight problem building up in our process, in that, for years MHKs had taken their experience to the Upper House and very rarely did we have Members of the Legislative Council elected from outside of the Keys. They tended to be people that had a lot of experience in the House of Keys and they took that experience upstairs, if you like.

4930 I think what has happened over the last 10 to 15 years is that people have seen the House of Keys as the powerhouse and have been rather reluctant to leave that powerhouse. I think that has created a different relationship between Keys and Council and for the general public outside, who I do not think have understood the value of the Upper House and what they contribute. I have gone on record of late, saying that I would be happy for the Legislative Council to be elected from a broader mandate, from a constituency basis, but then I realised that then gives a dilemma because you have got bigger constituencies possibly and then you would say, 'Well, you have got a bigger mandate than those in the Keys.' So there is a dilemma there.

4940 I think I am trying to explain that over the last 10 to 15 years, the pressure has built up on the political system, because those elder statesmen maybe have not all taken their experience to the Legislative Council. We have then had various people come – and some of them have made excellent contributions to the Legislative Council; I must put that on record – but quite often you now get Keys' Members making political shots at those people that have not been through the political electoral process.

4945 I think there is a lack of understanding outside of Tynwald about the value of the Legislative Council, because over the last several elections we have had to the Legislative Council, they have been rather convoluted affairs.

Q315. Lord Lisvane: And lengthy?

4950 **Mr Anderson:** Yes – particularly in my case – and have discredited, I think, the process. That is my reason for saying I think it is time the Keys did not do it. Why not throw it open? But I do realise that then creates a tension about powerhouses for the future.

4955 I think our system has served us well for a long time. Obviously, since I have come in, we now have the scrutiny committees as well. I heard you mentioning before: there are only four Members that do not actually sit on a Government Department. When I first came in, I think everybody had a role to play in a Government Department. That has changed.

4960 What I am concerned about is that it could be a slightly easier option, should I say, for people to sit on a scrutiny committee and actually scrutinise without contributing in a different area. So I think it is very healthy that we have people on scrutiny committees, but I think it is very healthy as well that they make a contribution in another Department that is not conflicted with the scrutiny committee that they sit on.

4965 **Q316. Lord Lisvane:** Overall though, is there a risk that that blurs the lines between membership of the executive and membership of the body or a role in the body that is supposed to challenge and call to account what the executive is doing?

Mr Anderson: Yes. We have distinct scrutiny groups so, if you are in a Government Department, you do not scrutinise, obviously, your Government Department's areas. So far, it seems to work reasonably well. However, I do recognise that could be a bit of a problem.

4970 I think we have come a long way in the last 10 years – well, the last four or five years with these scrutiny committees. When I stopped being Minister, when I was reshuffled two years ago, I went straight onto one of those scrutiny committees, but now I have joined Treasury team, I am not on one of the scrutiny committees, but I enjoyed that role and I think it had a very healthy contribution to make.

4975 **Q317. Lord Lisvane:** Give me an idea of what you do as a Member of the Treasury team?

4980 **Mr Anderson:** Right, okay. The Minister takes a lot of the responsibilities in Treasury. It is rather unfortunate that he is the only Member of Treasury in the House of Keys. So he has quite a heavy burden in that respect, whereas there are two Treasury Members in the Legislative Council: Mr Henderson and myself.

4985 He delegates various areas of responsibility, but when it comes down to the policy areas, it is the Minister that makes those decisions. When negotiating on all sorts of off-Island business, it is the Treasury Minister that goes. As an ordinary Member of the Treasury, you are not expected to play a role, but that is up to the individual Minister. As you said earlier, Ministers can delegate responsibilities in all Departments.

I have only been in that Department for just over a year. Maybe as I learn the ropes more and become more trusted – or whatever you would like to call it – I will be given more responsibility.

4990 When I was in the Department of Education, after leaving being the Minister of the Department of Health, I did have quite a lot more responsibility, but I think it is just a question of time, where you learn the ropes and various things are delegated.

Certain Ministers like to take on more responsibility and a heavier workload than others.

4995 **Q318. Lord Lisvane:** The Treasury function is one which, in any administration, has a writ that runs right across what everybody is doing, because what everybody is doing has got to be paid for. So you have a particular perspective on this issue of joined-up Government and how far Ministers are in silos. Having been a Minister with a departmental portfolio before, what is your take on that?

5000 **Mr Anderson:** Well, I think in our system you need quite a strong Chief Minister who has to pick a team that will work together. I think that is quite critical. We have had more ministerial changes in the last five years than in any other five-year period.

The period before that, when the previous Chief Minister, Tony Brown, was in place, in that five years, there was a reshuffle within the Council of Ministers, but that team of Ministers

5005 stayed in place for the whole five years. I think that had a better effect in keeping people working together.

I think this Chief Minister has brought people into the team who were – shall I say – challenging in certain areas and I think that was done for very good reasons: to try and keep stability in the Council of Ministers and to make sure Government had a majority. There was a stage, half way through this administration, I think, the Chief Minister was feeling quite challenged. He reshuffled his pack and brought two or three of the challengers into the team.

5010 However, I think you have got to recognise that, by doing that, you sometimes maybe weaken your own team, in effect, because you are actually taking people then with contrary views in different areas. I do not see this present Council of Ministers – this period of time, over the last four years – as being constructive because there have been too many changes.

5015 The Chief Minister wanted as broad a team as possible when he set up his first administration, but after one year, one Minister had to be replaced because it was creating all sorts of problems as far as teamwork was concerned. I think teamwork is the key thing, but I think the key thing is that the Chief Minister must pick a team that can work together. Then you get over this silo mentality.

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Q319. Lord Lisvane: That is very interesting. So you have Ministers who have got a considerable degree of statutory and practical independence; in a sense giving up an element of their freedom of action for the greater good?

5025 **Mr Anderson:** Yes, I think there has to be very clear policies set out at the beginning of an administration about what the aims and the objectives of the administration are going to be. People joining that team have to respect those policies and those aims. I think that is key to a successful administration.

5030 **Q320. Lord Lisvane:** Something I put to the Chief Minister earlier on – and I would be very grateful for your view on it – is this difficulty, which I suppose has its roots in there not being a highly developed party political system. Of course that in itself has its advantages, but nevertheless, somebody who is going to be Chief Minister – or, say, somebody who has the aspiration of being Chief Minister – stands for election as an MHK, puts down a statement on the basis of which he hopes to be elected Chief Minister, but that is a sort of one-stop shop or at least one-shot exposure of his opinions.

5035 Tynwald has got to take that at face value but then, after being elected Chief Minister, he has to form an administration and that may require all sorts of – and you have hinted at it – (**Mr Anderson:** Compromises.) compromises, trimming, adaptations, additions, whatever you like, because he is then, as it were, bishop in a broader church.

5040 **Mr Anderson:** Yes, I recognise that as a problem. Just to give you a bit of an example: I think we had a debate yesterday about Legislative Council voting for the Chief Minister. It was decided that the Keys should vote first and the Keys' vote should be read out before Legislative Council Members actually voted on who should be Chief Minister, so that basically they were giving us a broad hint who should be the Chief Minister.

5045 But when I was asked, last time I was canvassing, who I would like to be the Chief Minister, the person who I said I would like to be Chief Minister did not become a candidate, even though he had put his name forward previously, but when it came to it, he was not in the running. So, effectively, we only had two candidates, and there was not a very broad choice, shall I say. It is strange that people say it is so important that you know who is going to be the Chief Minister when you are running for the House of Keys, and yet you do not know who the candidates are until after the election.

5050 Going back to your point, I think it is not just the manifesto that the Chief Minister puts forward. If you have worked in the Tynwald environment for the previous five years, you have

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got a very good understanding of how that individual operates and what contribution he can make as Chief Minister.

5060 I think the concern I had: if you have a large number of new MHKs coming into the Keys at the next general election, they might be swayed by that manifesto without actually knowing how that person operates and what team qualities that person has. That is one good argument why the Legislative Council should have an equal vote with the Keys, because they have been there, they have seen, for maybe 5, 10, 15 years, that person operating in Tynwald and maybe can make a more informed judgment on who the best person would be to be Chief Minister.

5065 It will be interesting to see what happens next time in that respect.

Q321. Lord Lisvane: In a sense, that is the first stage of what I was putting to you a moment ago: that you have the election of a Chief Minister on the basis of a statement, a manifesto, whatever you like to call it, but then for all the reasons we have discussed, changes have to be made to that in order for a Chief Minister to form a team and keep that team together.

5070 Perhaps this happens in some way, and do tell me if it does. This happens to be the day on which the Queen's Speech took place at Westminster, where there is a legislative programme which has been thought about and agreed collectively, which is then put to parliament. Is there a case for having something a bit like that and perhaps a little less formulaic than it is at Westminster, where you do not get much chance to amend it in any meaningful way?

5075 **Mr Anderson:** I would suggest that, I think, when the present Chief Minister was drawing up his manifesto, he did consult with the six previous Ministers that were re-elected. We were all loosely involved in what he was putting forward. The candidates for Chief Minister have the ability, at the moment, in those 10 days/two weeks, to canvass other people: 'What do you think we should be doing? What is your priority? I would potentially bring you into my team; what are your priorities? Do they align with my priorities?' – and maybe a little bit broader, five or six people. So you would not be coming just with your own list of wishes, you would have a collective structure of targets and aims and objectives for those from five or six different people who primarily would have been people who, I would have thought, would have been in for the previous term.

Q322. Lord Lisvane: In a sense that can be an exercise in political shrewdness, because you would be making your own programme progressively more resilient against challenge, but it would not have the element of democratic endorsement which a vote in Tynwald might secure for it.

5090 **Mr Anderson:** That is right, but you have got to be practical, I think, about this. You have only got 10 days/two weeks from the election to when you put your manifesto out to be Chief Minister. We know each other reasonably well and I would like to think that ...

5095 You are going back to something like a party system where, when a party gets elected in the UK, you know what your aims, objectives and policies are going to be, because you have been drawing those up for the last several years and everybody knows about them. Over here, policy evolves more slowly, shall I say. I think a lot of it is based on previous track record, as well, but obviously things develop over that previous five years and priorities change as they have done over the last few years.

5100 I cannot see any simple solution. We are where we are, and we are evolving. It is still evolving; our political process is evolving all the time. I think we have some great strengths, but you have highlighted one or two areas where we could actually strengthen the process.

5105 I have not got the blueprint.

Q323. Lord Lisvane: No, and I think the blueprint has been far to seek despite a great deal of effort over the years, which in a sense makes my task all the more daunting.

5110 The last thing I was suggesting was that a party political template might be put over the process. I was really trying to address what I saw as the disconnect between the statement made by a Chief Minister seeking election and Tynwald as a whole – the Keys separately, if necessary – saying, after the Chief Minister has formed his administration, ‘Right, we approve that as a plan of action.’

5115 **Mr Anderson:** I put the question back to you, then: if Tynwald then said, ‘No, we are not happy with that’ we go back to square one again, I guess.

We have the ability, through our process, to change things. If you look at the Chief Minister’s manifesto from five years – I must remind myself what was in it.

5120 **Q324. Lord Lisvane:** I think I have a copy here.

Mr Anderson: I am sure you will find a lot of things have developed because circumstances have changed over those years; certain things have not been achieved and other things have become very important issues. External issues have taken the lion’s share of the time and effort.

5125 You have to recognise, I think, that there has to be a degree of flexibility and you have to be able to change – and the Isle of Man has done that successfully for many decades. We have the ability in Tynwald to actually pass legislation quickly and do things to strengthen our own arm or protect ourselves.

5130 I am struggling to understand how what you explain would actually work. Yes, it is nice to put this blueprint down at the beginning of the administration, but you have to be realistic. Even if you agreed with it and all of a sudden circumstances dictated that you had to go in another direction and you had to sacrifice things, I think the vast majority of independent Tynwald Members would understand changes in that respect.

5135 What you are saying about a statement that Tynwald then – it is not dissecting his policy and rejecting it. I think it is taken in the round and in good faith, and ‘Let’s see what happens’. I think it is very critical that people have a good understanding of the individual, regardless of the policies.

5140 **Q325. Lord Lisvane:** I certainly would not be putting that forward as a possibility as some sort of parliamentary straitjacket because I think everybody understands that parliaments and governments have to face, sometimes, very rapidly changing circumstances and adapt to them.

I was thinking more of endorsing a direction of travel but of course, even in the Westminster Queen’s Speech, it finishes with the words:

Other measures will be laid before you.

It is the get-out clause.

5145 May I take you back? You were a strong defender of the distinct contribution of LegCo. If you were, in a few sentences, trying to convince people who understood what the Keys was about, but did not really understand what LegCo was about, how would you do it?

5150 **Mr Anderson:** I would probably like to take them in and see the work that Legislative Council does and explain that most Legislative Council Members play an active part in a Government Department as well as a scrutiny role. They have a different contribution to make than a Keys’ Member, as they do not have constituents.

5155 I think there is a bit of a tension really between Members that have constituents and Members that do not. I think this has built up over the last five to 10 years: this ‘us and them’ sort of thing. I think there needs to be a differential between the rewards for a Keys’ Member and Legislative Council Members, in recognising the Legislative Council Members do not have constituency issues to work with. Some of my colleagues would argue that their workload is as

heavy as an MHK's. However, that is not my experience, and I think there should be a differential put in place, whether that is to increase the Keys' salaries or to reduce the Legislative Councils' salaries – to reduce that tension and recognising that Keys' Members have an extra role to play.

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But I would say to people from outside, 'Come and experience it. Come and sit and listen to Legislative Council.' We do not have the airtime that Keys have, because there is not the questioning. We tend to find more direct ways of getting answers to questions. They do not get the understanding of the way Legislative Council works. I think it forms a very good check and balance to what goes on, particularly for legislation.

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I think I would need to stress that the role in Departments is quite critical because they can take a different perspective than somebody who has a constituency angle on a Department.

Q326. Lord Lisvane: If indeed we agree that the role in Departments is something that is indispensable to the system.

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Mr Anderson: Yes, there are more Members outside of Departments than there have been in the past. However, I think, if you want to make a real contribution, you need to be in a Department. You can still challenge Government in other areas, other than your Department, and that does take place.

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Q327. Lord Lisvane: What about the legislative process? You were identifying that as a constructive role of LegCo, and I have been hearing about the Equality Bill which is clearly occupying a lot of time.

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Do you see scope for more Bills starting in LegCo, as the Equality Bill has?

Mr Anderson: I think it has the potential, but it is nice to have the feeling from the elected body about legislation before it comes to the Upper House. In a way, that angle is not being tested by putting it through the Upper House first. It could always come back to us if it is amended in the Lower House anyway.

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It is something that is quite new: putting this legislation forward in Council first. I think there are three or four Bills going in that direction at the moment.

Q328. Lord Lisvane: There is a distinction, isn't there, between political acceptability and desirability and legislative quality? You could argue that, actually, LegCo is in a very good position to contribute to legislative quality.

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Mr Anderson: Exactly, and that is why I think it is good that it goes through the Keys first, because then we have the ability to make sure the acknowledged quality is there. There are amendments made and sometimes they are things that have been spotted in that passage of time between the two Houses. It could work the other way round, I acknowledge.

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Q329. Lord Lisvane: Well, I was going to say, it is an argument which is fairly easily turned on its head, because you can provide the Keys with something of higher quality to get their teeth into.

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Mr Anderson: Yes, or we could give them something to test them as well.

Q330. Lord Lisvane: Yes, indeed.

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Do you think that the resources are there to deal with the amount of legislation that any administration wants to bring in? I suppose, really, what I am saying, is there adequate and timely scrutiny? You have seen this from the ministerial side as well as from the other side.

5210 **Mr Anderson:** I think the weight of legislation varies considerably from one period to another. With the pressures that have been on in the last few years to do with all sorts of things that have happened – with Moneyval, whatever – that have demanded new and updated legislation and there has been a period of concerned pressure for putting new legislation forward. But I do not think that will always be the case, hopefully. It has been quite a turbulent period since 2008 and everything that has gone on. I think resources have been improved to help that legislation go through. Hopefully, it will not be something that is running downhill faster and faster. It will hopefully plateau.

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5220 You will probably have the evidence of how many Bills have gone forward in each of the last 10 to 15 years. I think administrations do not have a lot of Bills in the first few years of the administration; then there is a cavalry charge in the last year, but circumstances latterly have dictated that, I think.

Q331. Lord Lisvane: And, of course, crude statistics are actually quite difficult to see your way through, because a two-page, highly contentious Bill and a 200-page –

5225 **Mr Anderson:** A preferential amendment Bill or something that has got five clauses is not quite the same as an Equality Bill.

Q332. Lord Lisvane: Do you think there is adequate scrutiny of secondary legislation?

5230 **Mr Anderson:** Probably not, to be truthful. However, that is up to the individuals within the Branches to keep their eyes peeled for things, really. I think, if you go back five or ten years, there was more scrutiny by Members on legislation than there is at present.

5235 **Q333. Lord Lisvane:** It is very noticeable, reading a whole run of Tynwald proceedings. In a sense, it is a little odd that secondary legislation is approved by Tynwald, whereas primary legislation, you go back to a classic bicameralism. But the pattern has been really, pretty much rubberstamping.

5240 **Mr Anderson:** I would agree, yes; it has been of late.

Q334. Lord Lisvane: Is that something that, perhaps, a revamped committee system might cope more effectively with?

5245 **Mr Anderson:** That is possible, yes. I had not thought of it, but it is possible. If committees were delegated certain areas to look into and then report maybe to Tynwald, that would be the way to do it. Members have that sort of skill-set – and those that are not interested and have their own priorities.

5250 **Q335. Lord Lisvane:** It could easily be made part of a menu of core activities for subject committees. (**Mr Anderson:** Yes.)

One of the things that slightly foxed me was Policy Review Committees: they seem to be required, almost, to be there after the event, because there is that provision in their Standing Orders that says they examine a policy once implemented.

5255 **Mr Anderson:** Yes, that developed from the Public Accounts Committee, which we only had in its own right to start with and then these areas have broadened out through that.

5260 Yes, it might be alien to you, but it is something that we have been quite used to. I suppose it goes back to the lack of party systems, really. You have three parties, with three sets of different targets, objectives, all ready to come in, whereas in ours we tend to work things up as time goes by, which tends to be more of a hybrid animal.

Q336. Lord Lisvane: I think you may be right in saying that it is alien to my parliamentary experience, but not to my local government experience. I have been a co-opted member of a county council and so the whole idea – particularly if it is operating the executive model – of the policy review function is one which is actually quite close to what there is here.

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Mr Anderson: Yes. You have to take into account the numbers we have in our system, as well, I suppose, and how you carve things up with those numbers, particularly if a handful of people – which is quite a percentage – decide not to take part in a function of parliament.

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Q337. Lord Lisvane: That is very difficult and you have to find some way. A volunteer being worth ten pressed men – but nonetheless, you have to find a way round that, I agree.

I have found our conversation extremely helpful. I do not know whether there are areas that you would like to cover that we have not. Please feel free to say anything else that you think needs saying.

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Mr Anderson: Well, in conclusion, I will just say that I think our system has served us well to date, but I recognise time has moved on and our parliamentary system has evolved; it has not stayed the same. We must be open to new ways of doing our business, but I think things are not drastically astray, and I would like to think that any changes that we do make in the future are ones we think about seriously and we do not just do because other jurisdictions do things differently – because we are all unique, aren't we? We are an Island of 86,000 people and we have to model ourselves on what is good for those 86,000. Just because jurisdictions around about do things differently, does not mean to say that we should do things the same as they do.

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It is quite interesting that we have visits from Commonwealth parliamentary countries that look at our system and they scratch their heads for a while, but when they have been here for a little while and witnessed it, they think, 'Well, it does have some merit.' So I do not think we need radical reform; I think we might need a little bit of tweaking.

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Lord Lisvane: Well, since I spent much of my career warning people against the dangers of procedural and constitutional imports, you can take it with some confidence that that point is very well taken.

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Mr Anderson: Thank you very much.

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Lord Lisvane: Thank you very much, again.

The hearing adjourned at 4.36 p.m.

Thursday, 19th May 2016

*The hearing of oral evidence was held in public at 2.00 p.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[LORD LISVANE *in the Chair*]

**EVIDENCE OF
Mr Leonard I Singer MHK,
Member for Ramsey**

5300 **Q338. The Chairman (Lord Lisvane):** Welcome, Mr Singer, thank you very much indeed for sparing the time to come and have a conversation this afternoon, and thank you for bearing with us while the clock ticked on to exactly two o'clock.

I should just say to begin with – and you probably know already – that the proceedings are being live-streamed and are being recorded by *Hansard*, and when the *Hansard* transcript is finalised that will go up on the Tynwald web pages.

5305 So again, renewed thanks for coming along. I hope we will cover all the areas which are of interest to you.

I have some questions and perhaps if I could start off with, in a sense, the most general question, which is: what do you think about the tricameral structure, and should it continue?

5310 **Mr Singer:** I support the tricameral structure; I think it works well.

I have been in the House since 1996, I had a break between 2006 and 2011, and I don't know if you are aware that I have also sat in both the House of Keys and the Legislative Council.

Lord Lisvane: I was just looking at your CV, just as we were starting!

5315 **Mr Singer:** So I think the tricameral system is tradition and I think it works, and to go to a one-chamber or a two-chamber parliament I do not think would be to any advantage.

I think it works very well and, as I say, we are following tradition which I think is very important.

5320 **Q339. Lord Lisvane:** Although tradition needs to be tested, perhaps, in the name of efficacy.

Mr Singer: Of course, yes; but I do not see any immediate problems coming from the tricameral system.

5325 **Q340. Lord Lisvane:** One of the things that I am charged with doing is assessing efficacy of the Branches of Tynwald which, of course, in objective terms is a very hard thing to do. How effective do you think they are?

I suppose the main three functions would be representation, legislation and scrutiny and calling to account. So in each of those, how well do you think they perform?

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Mr Singer: The main contribution that I really wanted to make today was discussing the structure of Tynwald, and the relationship between the House of Keys and the Legislative Council.

5335 **Lord Lisvane:** That would be very helpful.

Mr Singer: And also I would like to talk briefly about the scrutiny committees.

Lord Lisvane: Both of those are squarely within my areas of interest.

5340 **Mr Singer:** I have made a few notes, so are you happy for me to go through these notes so, hopefully, I do not miss anything out?

Lord Lisvane: Of course.

5345 **Mr Singer:** Most of the Keys Members stand up and say they support a popular election to the Legislative Council; but there have been, as you know, numerous attempts to legislate over the years. There have been many different formulae coming forward, none of which have actually received majority support.

5350 Much of the concern to me has been in regard to the powers that an elected Council would have – they have only got eight people so have they got a greater mandate, or not?

5355 So I would need to know: we would have to regulate what powers they had if it was popularly elected. But the main assurance, from my experience, is that those people who are elected and who are sitting in the Legislative Council are actually dedicated to scrutinising Bills in detail. That is their duty and if someone gets elected popularly because they have put their name forward and they are chosen, if they have not got that particular interest then I think we have got a problem.

5360 My experience of both Houses is that the formality of the Keys and the restriction of how often a Member is allowed to speak does result in drafting errors not being spotted; however, in Council, which is running as a committee with free discussion, going through Bills line by line the scrutiny is much more efficient.

A reasonable number of Bills do come back to the Keys with amendments from the Council, often minor, and it is very rare that the Keys do not accept those amendments. Therefore my view is that the Legislative Council make an important contribution to the accuracy and the workability of the legislation.

5365 **Q341. Lord Lisvane:** Just before you go on, can I ask you on a point of detail? I thought it was possible to speak twice in the Keys on clauses?

5370 **Mr Singer:** No.

Q342. Lord Lisvane: It is only once, even though it is in effect a committee stage?

5375 **Mr Singer:** Yes. If there is an amendment you can speak to the amendment, but when a clause is discussed you can speak once.

Q343. Lord Lisvane: Right, so on 'clause stand part' you can speak, (**Mr Singer:** Once.) but you can also speak on any amendment?

5380 **Mr Singer:** If there is a further amendment – yes.

Q344. Lord Lisvane: Yes, absolutely, each amendment obviously is a self-contained debate. Thank you.

5385 **Mr Singer:** So whether a suitable and workable solution of popular election to Council comes forward, is anyone's guess; but until then I believe, as I have said, that the responsibilities of Legislative Council Members should be limited.

The Legislative Council has no public mandate so it should not be able to thwart the will of the elected Chamber – as you, sir, witnessed on Tuesday. My view is that they should also not be in positions of making policy and financial decisions which affect the public. So I would favour 5390 them purely being a revising chamber.

I would therefore not support Legislative Council Members being appointed as Ministers or Members of Departments. I think most Departments probably have too many Members in them anyway now, because the Ministers' and the Chief Minister's current practice is to offer all Tynwald Members a Department post.

5395 When I sat in the Legislative Council – and I think I actually sat where you are sitting, sir – due to circumstances a few years ago we had a Chief Minister who resigned, and the new Chief Minister was a Member of the Council, and therefore was only answerable to the elected Members of the Keys once a month. I think that was unsatisfactory; and that would also apply to Ministers *now* in the Council and in the future. I would say that there should be no Ministers in 5400 the Legislative Council for the reasons I have stated earlier.

I would not give Legislative Council Members a vote in Tynwald but their contribution to debate would be valuable; and I suppose with far less responsibility there would have to be an adjustment in Council Members' remuneration.

5405 So that was the statement I really wanted to make to you about the relationship.

Q345. Lord Lisvane: That is really helpful and thank you for that.

You use the word 'revising' – 'being a revising chamber' – and revising is rather a convenient word because it is sort of a non-challenging word, it is just dotting i's and crossing t's. But of course, as we know, revising can actually extend to pretty major and profound amendment of 5410 Bills. So you would still accept that happily within your scenario, would you?

Mr Singer: We do get that, we have had some Bills in recent times – the Equality Bill – and I think a lot of amendments will come from that.

5415 **Q346. Lord Lisvane:** Although that is one that started in Legislative Council?

Mr Singer: It started, yes – that is not a particularly good example.

5420 **Lord Lisvane:** So the conflict is not so much –

Mr Singer: But on the Keys agenda we do regularly get amendments from the Council, because I believe they do closely look at the legislation which, perhaps because of the Keys structure, does not happen. So that is why I think this is very useful. And when it does come back it is usually accepted because they are correct, and errors have sometimes been spotted.

5425 **Q347. Lord Lisvane:** *Errors*, or differences of political emphasis?

Nobody minds being told, actually, this is now better from a factual point of view or an effectiveness point of view?

5430 **Mr Singer:** Definitely errors in drafting which, if they had not been spotted, would have probably caused difficulty once the Bill had become law. And they do make some amendments. If Keys do not agree with Legislative Council then there can be a meeting between the two to discuss it. But I cannot remember that happening in this last five years, although I remember once or twice before.

5435 So there is no conflict between the two Chambers really on the matter of legislation that I see, other than recently when we had the Marriage (Same Sex Couples) Bill and there were certain people in the Upper House who felt that they could not support it for various reasons, and so they voted against it.

5440 **Q348. Lord Lisvane:** I would like to move on to scrutiny in a moment, but can we look again at the way in which LegCo comes about – the way in which it is constituted?

The use of the Keys as an electoral college has been criticised in a number of the hearings I have been having, along the lines that it is too lengthy, too cumbersome, that games are played about who scores off whom and so on; but I can see that the use of the Keys as an electoral college, giving some degree of democratic authority to LegCo, is very useful.

5445 So there is a question then, isn't there, about *how* nominations get to the Keys? I wonder if something like a statutory appointments commission to encourage people – because there is an element of that, actually getting people to stand. People have told me about experiences they have had where people are actually quite reluctant to come forward, and people who had a contribution to make might well be readier to do it through a more open system of nomination, perhaps?

Mr Singer: It all depends on who should be in the Legislative Council, what is the basis of those people being there? The original basis was that these people were experienced, perhaps a bit older, they then took their experience of the Keys to the Legislative Council.

5455 But it has become a game and people will block people for possibly no reason at all that we know of, and I have seen up to about 17 different ... was it 17? Certainly a lot of elections – and then only every two weeks, and it went on for ever and ever.

5460 That is something that wants looking at too, that if you do not get people in the first time you do not have to wait a long time before the next election – you want nominations immediately and maybe an election a week later. So that, to a certain extent, has put the election process into disrepute.

5465 There has also been a reluctance in recent times to bring anybody in from the outside – but I think sometimes people who are proposed by Members of the Keys bringing people from the outside, there is a political element to the people they want to bring in.

Q349. Lord Lisvane: What do you mean by that? What are they trying to achieve politically?

5470 **Mr Singer:** They have views that coincide with the person who is nominating –

Q350. Lord Lisvane: They want allies?

Mr Singer: Yes, and that is recognised by Members of the Keys.

5475 Very few people have actually been brought in from the outside, but I must say some of the Members who have been brought in ... and I am thinking particularly of Dudley Butt, the ex-Deputy Chief of the Police, who was excellent because he really got into the system and the legislation – he was very, very good.

5480 Electoral college: it all depends how that is going to work. Who is going to do the nominating? Would they be nominated from Members of the Keys to the electoral college, or would they just look around and say, 'Such and such a person has applied; we think they would be suitable'?

5485 **Q351. Lord Lisvane:** If you have a statutory appointments commission then, of course, the regime that it operates would be up for discussion. But I think the essential elements of it are to have something that is independent – of course, you have a *quis custodiet* argument about those people to whom are they answerable; but what you do is you split the process of

nominating – they do not have any power to put people into LegCo, it is only the Keys that has that because they are the appointers, as it were.

5490 **Mr Singer:** So would the Keys still have the ability to nominate to this college?

Q352. Lord Lisvane: It is to a committee.

5495 **Mr Singer:** And they would judge as to yes or no – or, ‘We will recommend’ or ‘We will not recommend’?

5500 **Q353. Lord Lisvane:** I think it would be logical for that to happen, because otherwise you would have a twin-track process whereby any nomination for an MHK automatically had a higher priority than any nomination of somebody from the general public – who might have considerable skills and experience to bring to bear.

5505 **Mr Singer:** Well, that is one of the reasons why they say they are bringing people in from outside; but it has not worked and I think certainly I would support you in saying this is something that should be looked at.

5510 **Q354. Lord Lisvane:** And, of course, it would be very much in tune with what you were saying about a more restricted, in a sense a more apolitical, role for Legislative Council; because the business of building alliances – which are basically political alliances between the two Houses – would not fit with that role.

5515 **Mr Singer:** I think it certainly would help the primacy of the Keys in that the elected chamber makes the important decisions. And I would support that.

5520 **Q355. Lord Lisvane:** Can we move on to scrutiny, but first of all looking at the context of it? You mentioned a moment ago that Ministers are able to bring in Members of the Keys, and MLCs as well, into Government Departments – and most Members of the Keys do have a role of that sort. It seems to me that is quite a difficult one to defend in terms of two things.

5525 The first is: where is the boundary between executive authority and the role of challenge and accountability which any democratic chamber ought to have?

5530 Second, you have almost a block vote of the Government. Now, I know everybody has told me that you could be a departmental Member and you have to be loyal to your Department, but you could put the boot into another Department and that will not be regarded as being disloyal.

5535 **Mr Singer:** I am a Member, at the moment, of the Department of Economic Development and I can tell you – and I will not tell you what items – that a couple of items have come to the Department in recent times where the officers have proposed this particular policy and the Minister is supporting it, and the Members have turned round and said ‘No!’ and in fact it has not come forward. So there is that restriction.

5540 **Q356. Lord Lisvane:** I will not press you on which items they were.

5545 **Mr Singer:** But I think if we are talking about the Public Accounts Committee and the scrutiny committees, as you know the scrutiny committees were introduced for this session and I was the first Chairman of the Economic Policy Review Committee. At no time did we ever feel pressurised into holding back from our investigations and I can say that the Departments which we overlooked on that committee were the Department of Economic Development, the Treasury and the Chief Minister’s office. They did receive in-depth scrutiny, with the Ministers appearing before us on a regular basis *and* being grilled.

5540 On occasion this actually brought an earlier review and change in Department policy. So it certainly did not matter to us while sitting there, what other Departments we were Members of, because we were focused on these Departments and we never felt restricted. Matters were referred to the Committee – they could be referred by Ministers or by backbenchers – but it was a committee which actually chose its subjects of investigation. I felt that I sat on the Public Accounts Committee because I was Chairman of the Policy Review Committee, and that was
5545 very useful in ensuring there was no duplication of enquiries as well, because we knew what everybody else was doing.

We heard the Chairman of the PAC say the other day that there had been difficulties recently because of unforeseen circumstances, but my experience was that structure of the chairmen of the policy review committees sitting on the Public Accounts Committee with the other
5550 chairmen, I thought it worked very well.

Can I say one more thing? I know you were referring to the fact that you would have some Members on Departments and other Members not involved in Departments, there is a lot of work to do and we are the equivalent of Junior Ministers; and in the Department of Economic Development now, I have delegated responsibility for the whole of the finance sector, the
5555 shipping register, the aircraft register, the general registries, country strategies, high net worth individuals and the space sector.

So I have got those responsibilities. But if you have too many people *not* involved in Departments, especially if it is not going to include Members of the Legislative Council, then I think having people purely doing scrutiny will make things very difficult for Departments in a
5560 way. Also if those people are on scrutiny committees and they have had no experience within Departments, that can also lead to problems because they do not really know how Departments work.

Q357. Lord Lisvane: Yes, but it is not beyond the wit of man to explain to them, brief them,
5565 get them to understand how a Department works. Indeed, it is very much in a Department's interest that a scrutiny committee really understands what the practical challenges and difficulties are within a Department.

Mr Singer: That is if they choose to. It is often that the scrutiny committee themselves will pick something up and ask to discuss – and then it has *got* to be discussed. I remember we
5570 looked into – it was called the Sefton Group loans – and we asked to look at that as the Economic Policy Review Committee. The Chief Minister referred it to us first of all, thinking it was probably going to disappear, but we looked into it and we got into it very deeply and it ended up with a ministerial resignation.

5575 So I think the work we do generally, and the work the others do, are important and do bring things out and do bring changes in departmental views and policies.

Q358. Lord Lisvane: The Standing Orders, the Orders of Reference, of the policy review committees are, at first sight, rather limiting because they talk about examining policies,
5580 reviewing policies, when they have been implemented – which seems to be several steps down the road. But from what you have been saying the orders of reference do not appear to be very limiting.

Mr Singer: No. When a Minister came before us we actually wrote a list of items that we may want to discuss and those included current items as well; and there was never any protest that
5585 maybe we were talking about something current and not something that has already been implemented.

So you are right, often we did not stick very strongly to those – and that was probably a good thing for Tynwald and for the public as well. And these meetings were inevitably in public so the
5590 public did know what was going on, there was nothing hidden as far as that was concerned.

So I think the way they have developed over the five years has been very helpful and useful to everybody.

5595 **Q359. Lord Lisvane:** A moment ago when we were talking about departmental Members, you said that if they were *not* there the Department – I take it the Minister – would have a difficulty. What do you mean by that?

5600 **Mr Singer:** In the Departments I have been in – Economic Development and the Department of Infrastructure – they have got so many responsibilities that the Minister tends to put out the majority of the responsibilities to the Members, who have then got delegated powers. Again, my experience is that those matters ... like I had highways and I had legislation when I was in the Department of Infrastructure. They were very busy Departments but, as a Department Member, I made the day-to-day decisions.

5605 It was only when I wanted a policy change that I came to the Minister. So the Minister was really like the umbrella over his Members. Some of the Departments have a great number of responsibilities and that is why if you have got too few Members in the Department it makes it very difficult because you have got too many responsibilities. But if you have got too *many*, the reason could be that *everybody* is offered a place ... So, 'such and such an MHK, or MLC, would like to serve on a committee; who will take him?'

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Q360. Lord Lisvane: But you are talking about the multiplication of responsibilities, and those are all on a political level. Do they have to be discharged at a political level? You are talking, in effect, of a Department with a Minister and perhaps four, or even five, Junior Ministers. (**Mr Singer:** Yes.)

5615 That seems a little bit over the top. I was just comparing the system of Ministers and Deputy Ministers to that in Belfast and Cardiff and Edinburgh, for example.

Mr Singer: We always say that, as a government, whilst we are small we have just as many responsibilities as a large government.

5620 We do not have backbenchers who are just voting fodder like, perhaps, you have in the House of Commons where they are only there to vote! Everybody does take the job seriously here. Some Departments have not got as many political Members because they have not got as many responsibilities. But there are some really large Departments and it is a judgement by the Minister how many people he wants to have in that Department.

5625 Does that answer your question?

Q361. Lord Lisvane: Not quite! I think there are a lot of members of the House of Commons who would take issue with you on the assertion that they are only there to vote.

5630 But let's just leave that for a moment and go back to this business about do these functions have to be discharged on a political level? Because, for example, section 3(2) of the Government Departments Act 1987 allows a Minister to delegate a function not just to a departmental Member, but to *anybody*. So I do not quite see –

5635 **Mr Singer:** I am not quite sure who you mean by 'anybody' – I mean, political Members and the Minister take the responsibility.

Q362. Lord Lisvane: Well, the Minister takes responsibility –

5640 **Mr Singer:** Well the Minister does, yes; but I always feel that I have got the responsibility put on me that I do it right. I do not say, 'Oh well, it is the Minister's fault.'

Q363. Lord Lisvane: No, I am not suggesting that it is an excuse for not doing the job.

Mr Singer: I think most Members want to do a job. I think they feel they are elected to do a job and they want to be in the Department; and, again, I have always been happy doing it.

5645 I am not sure that I would like it to be delegated to a person who is not a Member of the actual parliament – and that is what you are talking about, aren't you, bringing other people in? Or to an officer?

5650 **Q364. Lord Lisvane:** Why not to an officer, if the Minister retains political responsibility and oversight?

Mr Singer: Because the political Members are elected by the public; and we are coming back to the same thing – a non-elected person making a decision.

5655 I know if the delegated person comes to the Minister, it is important for the Minister I think to have a political input. I do not see the point, really, if Members are willing to do it and get into the job properly.

The officers are there to bring forward the policy. An officer might bring forward something to me as a delegated Member and I will then look at it and say yes or no. He is not making the decision. If I think a larger change of policy is necessary I will go to the Minister.

5660 I think that the political Member should be the one making that decision – the officers are there to suggest, maybe, what they should be doing and to carry out the instruction.

Q365. Lord Lisvane: Can I move onto the legislative process and how that works?

5665 A feature of it is consultation and obviously with your huge breadth of experience you have seen consultation as a preliminary to legislation and you have seen a regime when there was not a systematic process of consultation. How well do you think consultation has worked?

5670 **Mr Singer:** I am quite disappointed when an item goes out to consultation. It is always published in the newspaper, it is on the radio and people know that consultation has gone out; but I find the number of responses very disappointing.

5675 Sometimes a policy will come forward, after consultation, where maybe only a handful of people have replied and the original proposals may well be altered slightly – or altered quite a lot. I sometimes think to myself that is not really a consultation as such, because so few people have replied and it could well be people grouping together with a reply to this. So it is not a true reflection of what the public think.

So I do find it disappointing sometimes.

5680 **Q366. Lord Lisvane:** And it is disappointing if it reflects a low level of democratic engagement.

Mr Singer: How it can be done better, I don't know.

5685 But the Chief Minister has had these roadshows several times over the five years, going out to different areas and inviting the public to come to the roadshows and to ask any questions on policies. The Ministers have tended to go to these meetings so they can answer questions on their responsibilities, and you may get 40 or 50 people there.

Again, I say to myself, if you go to Douglas here, and you get 50 or 60 people out of 20,000 people ... I suppose the lack of interest is coming from the public and you have got to ask why. The answer is probably because the Government is not getting the message over that they are important, and it is their views that should be shaping some of the policies.

5690 That is what the Government is asking them, but they are not coming back; so you have got to decide is there a better way? And I am not quite sure what that would be because it has always been the same.

Q367. Lord Lisvane: Is social media used much in this sort of process?

5695 **Mr Singer:** Social media *is* used but the problem with social media is that it can be quite offensive at times. I think somebody referred to these people as ‘keyboard warriors’ and particularly when you get to the newspapers and some of the various websites where people do not have to put their names on, they can be very offensive picking on people – particularly Members of Tynwald.

5700 Yes, you expect criticism, but you do not expect abuse for no reason. I think that discredits the social media to a certain extent.

Lord Lisvane: I can quite understand your view.
Something that I tried on the Chief Minister when we spoke yesterday –

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Mr Singer: I have to be careful because he is my colleague in Ramsey.

Lord Lisvane: I know! And it is a very lovely part of the Island, if I may say –

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Mr Singer: We think so!

Lord Lisvane: I visited at the weekend in the lovely sunshine.

Mr Singer: You can visit at any time with sunshine!

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Q368. Lord Lisvane: But something I tried on him when we spoke yesterday when we were talking about consultation and making it more effective, was the idea of *draft* legislation.

5720 All Bills are draft legislation, but what I am talking about really is a preliminary draft so that it would be something in which Ministers did not yet have any great political capital invested, but collapsing the consultation period into consideration of a draft Bill perhaps by a select committee or a joint committee of the two Houses; then people who wanted to put in their twopenn’orth would have an opportunity to make representations to the committee, rather than simply tossing in their views in a consultation process which might be at quite an arid sort of stage.

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Mr Singer: Are you talking about the public putting in their views? Or Members?

Q369. Lord Lisvane: Absolutely anybody – or Members, come to that.

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Mr Singer: Well as far as Members are concerned we do have a lot of briefings. If Ministers are bringing forward new legislation we do have briefings on that legislation, usually before it is introduced into the Keys so we can put our views in then – but it is probably a bit late in the process at that time.

5735 It is just sparking that public interest. Some of the subjects we find very dry ourselves, so how do you stimulate the public to say, ‘Yes, I want to go and have a look at that legislation; and what do I think of it?’ – because it can be quite difficult at times even just when you have got the review of what it says. A lot of the legislation, if you take a particular man in the street it will not interest him. So, again, I am not sure that would work, honestly.

Does it work elsewhere?

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Q370. Lord Lisvane: It is quite effective at Westminster. I am always very cautious indeed about suggesting that something can be transplanted from one jurisdiction to another. Equally, certainly, when I was Clerk of the House I was always on the lookout for things that could be nicked from other jurisdictions and then used at Westminster!

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Mr Singer: If it is good I think it should be looked at.

Q371. Lord Lisvane: Do you think that secondary legislation is adequately scrutinised – (Mr Singer: No.) because there is a sort of oddity, isn't there, that it is rubberstamped by Tynwald – ?

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Mr Singer: It is odd.

It comes forward and you either have to accept it or reject it – a bit like our Budget actually. There is a lot of fuss about the Budget as well because you cannot reject part of it, you either have to accept it or reject it.

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Sorry, I have lost track –

Q372. Lord Lisvane: Two things: one is, how effective is scrutiny of secondary legislation?

And second, the sort of oddity that secondary legislation is dealt with by Tynwald, but with primary legislation you go back to what is a pretty straightforward bicameral consideration.

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Mr Singer: I think if the secondary legislation is brought to Tynwald ... I am just thinking whether it can actually be picked up at the next sitting for discussion. I can't remember that, I have just got it in the back of my mind.

But certainly you either vote for it as it is written or you reject it.

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Q373. Lord Lisvane: It is my understanding that approval motions are debatable, so one might be able to –

Mr Singer: Oh yes, it is debatable but you cannot change it – I don't think.

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Q374. Lord Lisvane: No, and I can see a reasonably good argument for that because otherwise you would have a proliferation of amendable Bills, in effect.

Mr Singer: Yes, it would not work – you have actually accepted the Bill and you probably discussed already, during the passage of that Bill, a lot of those things that are in that secondary legislation.

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Q375. Lord Lisvane: The delegated powers certainly you would expect to discuss when you are looking at draft primary legislation.

I am sorry, I am dodging about because I am now going back to relationships in the executive. Does the lack of a single legal entity mean it is harder to practise joined-up government?

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Mr Singer: The presentation that we had by Professor Elvidge on the single legal entity ... a few of us, including myself, were not convinced that it was going to improve the situation. I know that this consultation recently had actually come back and softened, saying we should still have the Departments, etc.

But to me it seemed that powers were being taken away from the elected Members and going to the centre – there was too much going to be coming out of the centre, and too much power going into the Chief Minister and the Chief Secretary. So I was not convinced that was going to work. I felt a lot of the things that they said that a single legal entity would bring, could be done anyway if people wanted to do it.

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Q376. Lord Lisvane: You were talking about power being taken away from elected Members. Is that elected Members as a generality in the House of Keys, or particularly from the departmental Members?

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Mr Singer: Yes, from the departmental.

5800 **Q377. Lord Lisvane:** But you have got a situation, haven't you, if you do not have a single legal entity, where individual Departments have a great deal of independence and freedom?

I can see there is a balance that needs to be struck: all Chief Ministers in all types of administrations want to have more power over their team, but if you have got a situation which militates against joining up, or fiat from the centre, aren't you losing out a bit?

5805 **Mr Singer:** I think that we have had the problem over the years of this silo mentality, and I think we have still got it. I can still come across an item where one Department said this and another Department did not know about it. That is why I said if we really got rid of this silo mentality and they really worked together and knew what everybody was doing ... and I think a lot of that should come from within the Council of Ministers itself.

5810 If they knew what they were doing, I think that is something that we urgently need – and it is not happening. We would certainly save money and save time and we might get a more acceptable legislation that everybody supports, because they have actually discussed it – and they do not seem to discuss it.

5815 I was not convinced that a single legal entity was necessary to do that – I think that is up to the particular Chief Minister and the Ministers to be able to work together.

Q378. Lord Lisvane: What you are saying, in effect, is that the cultural problem is much more important than the legal problem. Or, rather, what is the issue?

5820 **Mr Singer:** I am not a legal person! But the fact is we have a problem that in certain areas the Departments have not worked together.

Q379. Lord Lisvane: Can we go back and, in a sense, this is an echo of the departmental Member theme we were discussing earlier on.

5825 Emoluments: the additional payments. I understand that standard basic salary is pegged to a civil service rank but is it appropriate, do you think, that it is a Standing Committee of Tynwald which recommends what additional payments, percentages of the basic pay, are? That it should be a committee of parliamentarians that recommends that?

5830 **Mr Singer:** Quite a number of years ago Members themselves used to make decisions on their wage and it was obvious that the public did not like that. So they called together from the Commonwealth Parliamentary Association ... we had about three or four people from different parts of the Commonwealth who came to study and make a recommendation about what we should earn. And they came up with a very high figure!

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Q380. Lord Lisvane: I was told that a certain amount was –

Mr Singer: And that caused panic amongst everybody who said, 'We can't do that!' And of course that is when we became linked to a median position in the Civil Service scale.

5840 I think that somebody who works in a Department should be paid a fixed amount of money – and I know the argument is, 'Oh, it is grace and favour.' I do not think it is because, as I said, every Member is offered a place if they wish to take it. If somebody chooses *not* to and they are not doing that work, they are not getting the extra pay.

5845 **Q381. Lord Lisvane:** I am not suggesting merit or otherwise of somebody getting that enhancement, or undertaking that work. Really what I am asking is –

Mr Singer: Who should decide it?

5850 **Q382. Lord Lisvane:** What is the propriety of the way in which that is decided? How much extra it should be, for example?

Mr Singer: It has not really changed over the years, it has been this 30% as far as I can remember, from when I first came in in 1996. So would it be the Emoluments Committee that would make that recommendation?
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Q383. Lord Lisvane: Yes, the Standing Committee of Tynwald.

Mr Singer: They have certainly not made a recommendation in recent times, that I can remember, to change that 30%.
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So you could go out to an independent ... is that what you mean? Go out to somebody independent? (**Lord Lisvane:** Yes.) We saw what happened last time!

Q384. Lord Lisvane: Well, there are ways and ways of doing something.
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Mr Singer: I have certainly not heard Members criticising it, because nothing has actually happened and it has been there now for so long.

Q385. Lord Lisvane: Something that strikes the casual viewer – and perhaps I am a bit more than the casual viewer – is, when you look at the Keys, and when you look at Tynwald, how very few women Members there are. Why do you think that is?
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Mr Singer: It is very disappointing because the women that we have had in over the years have been very strong politicians.

I really cannot answer that, because it is not as though there are women who actually put their names forward for election – and I think that is a disappointment. There are all the standard reasons that come forward, that they are looking after families and they do not want to get embroiled in politics; but I do not think that is a fact.
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I think the women we have had here have become deeply embroiled in the politics. So if a woman has wanted to look after a family, and she has looked after her family, then that is probably the right time and a good age to come into politics. But for some reason on the Isle of Man, they do not put their names forward.
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I know you get a high percentage in the UK because it is off a list; and I think sometimes there can be a bias, can't there, to select a woman from a parliamentary list? But there is no list here, no politics, and the person has got to make the decision, 'I want to stand for the House of Keys; I want to run my own campaign.'
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Because you have got to do it all yourself and you do not really get any help. I don't know. And it is not only here in the House of Keys, but it is also in the local authorities as well. In Ramsey they did not have an election, but among the people who were nominated there was only one woman, out of 12.
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I can't answer that – maybe Michelle can answer that! – why women do not stand. I think they should do and it is a shame that they do not.

Q386. Lord Lisvane: It is an interesting cultural and social issue to pursue, I can see.
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We have covered a lot of ground. Is there anything you feel that we should cover that we haven't?

Mr Singer: No, as I say, we have discussed the subjects I wanted to discuss; and I hope I have been able to contribute something to the rest of the discussion.
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Lord Lisvane: Very much so.

Mr Singer: I would like to thank you for the opportunity of listening to me today.

Lord Lisvane: I found it immensely helpful and I am extremely grateful.

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Mr Singer: And I wish you luck in coming to your conclusions!
Thank you very much.

Lord Lisvane: Thank you very much indeed – I will take that entirely in the spirit in which it
5910 was offered!

*The hearing was suspended at 2.46 p.m.
and resumed at 2.55 p.m.*

**EVIDENCE OF
Hon. Laurence D Skelly MHK,
Minister for Economic Development and Member for Rushen**

Q387. The Chairman (Lord Lisvane): Mr Skelly, welcome.

Thank you very much indeed for sparing the time to come and have a conversation with me
about some of these issues.

5915 Just before we start, to make the process clear, our conversation is being live-streamed and it
is also being recorded by *Hansard*. When the transcripts are finalised, they will go on the
Tynwald webpages.

Again, thank you for coming. I am very happy to accommodate anything you particularly
want to say to me. Equally, I have got quite a lot of questions I would like to ask you.

5920 Can I start, perhaps, with the most general question, then we can see where we go from
there? That is really about the bicameral structure – or I should say, tricameral. What are its
benefits and should it continue?

Hon. L D Skelly: In my view, it should continue in its current format, as a tricameral system.
Not least of all, I think history has demonstrated that this system actually does work. I believe it
5925 works for the Isle of Man and the people of the Isle of Man, and it has served political structure
very well.

Q388. Lord Lisvane: You have come, in a sense, relatively recently, by comparison with some
of your colleagues, being elected in 2011 and becoming a Minister in 2014. How well aware
5930 were you of the workings of Tynwald before you actually came here?

Hon. L D Skelly: I would suggest reasonably well. We educate our young people in politics
quite well in comparison to when I ask other people in other countries. I used to live in America
and I have got family in the UK. By comparison, I think the Isle of Man's young people
5935 understand the political system quite well. We do regular tours here – which I now do on the
other side of the coin – so it is very good to have a reasonable understanding.

You know what Tynwald is, you know who the House of Keys are and, to a certain extent, you
understand what LegCo does. That is probably the biggest bone of contention for the future.

5940 **Q389. Lord Lisvane:** Right, well we will come onto that in a moment.

Certainly, I have been very impressed by the education and outreach efforts that the Clerk of
Tynwald's Office and all the Members feel a responsibility for. That helps, but it is always, in my
experience, a bit of an uphill task.

5945 **Hon. L D Skelly:** Yes, I would agree. I would further say, having had a reasonable understanding in the private sector, prior to going political, and now having served in the political sphere – albeit for a relatively short-time, back benching and also now as a Minister – I can see two very different sides of it. But, for that reason, I believe the tricameral system actually works quite effectively.

5950 **Q390. Lord Lisvane:** Let's pick out – and you were a little bit restrained in your mention of LegCo a moment or two ago. Clearly that is an area – or that is part of the system – on which a lot of speculation and bright ideas focus.

Do you think the Members of LegCo should be popularly elected?

5955 **Hon. L D Skelly:** No.

Q391. Lord Lisvane: Why not?

5960 **Hon. L D Skelly:** As I say, I believe the system works quite well. The problem – if I put it in that particular context – is perception, first and foremost. My view is based on campaigning previously – and actually I do not think you stop campaigning, once you become elected. You are already looking ahead and people have plenty of views to share.

5965 The issue about Tynwald and how it functions tends to always come onto LegCo and the first question, as you rightly ask: should it be popularly elected? I believe not, and the reason why: the public, I would suggest, think that they have got enough publicly elected officials in Tynwald, in 24 of us as MHKs. To create more, would be complete and utter overkill in terms of public representation, given the size of our population; given the size of our Government. I really do not see any serious benefit to that.

5970 It is a cul-de-sac. I am sure you have done your research and you would have noticed the numerous attempts to take this particular path, and they all end in failure. There was a Member that was elected on that particular basis: Mr Callister. I just saw the end of his term and I saw his proposal at the very end of his term and it was defeated, as all the other efforts have been defeated, because, at the end of the day, we struggle to agree on a number of issues. When we cannot agree, it just does not happen.

5975 Ultimately, I believe the system works in its current format of being elected by MHKs.

Q392. Lord Lisvane: Operating as an electoral college?

5980 **Hon. L D Skelly:** Indeed. My belief there is that LegCo is here for – and I think this is where debate gets lost. It must be understood what their primary function is: it is a revising chamber. That function is very important. That is why I believe in the tricameral system, because when it does come here into LegCo, the opportunity for that revision needs to be diligent. I think it needs to be understood, particularly when you are talking about law. That is why I think there is a real value in MHKs being in here for that purpose, because that is what MHKs did prior to if they do get elected here. So there is a real value in MHKs.

5985 However, I do believe there is also value in having a mixed LegCo, from the point of view of having independent representation; that is from the community, from the business world, to try and give a balance.

5990 Outside their primary function, I believe their other value is actually in sitting in the Departments. The advice and contribution that they can offer is very different from an elected constituency-based politician. That independence and level of scrutiny and probity is, I think, very important when you are formulating policy and strategy and making decisions. I believe the independence of that is very important in Departments.

5995 Finally, they can actually translate that into debate when it does hit the floor of Tynwald at the same time.

Q393. Lord Lisvane: So you are really arguing for complementarity rather than competition between those two Chambers?

Hon. L D Skelly: Correct, yes.

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Q394. Lord Lisvane: And the stumbling blocks, I take from what you are saying, are that there are enough politicians already: elected politicians, and the issue of possibly a competing democratic mandate, particularly if the elections took place at a different time, presumably.

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Hon. L D Skelly: You are already there, starting down the cul-de-sac, sir, to be quite honest with you. The first question is, should they be all-Island politicians or should they be constituency-based? It just opens up that can of worms. You would never get a consensus and that is why you have never seen any real reform in that particular area.

That is my personal view.

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Q395. Lord Lisvane: No, that is very helpful.

One of the things that I am charged with doing is assessing efficacy. Now, of course, that is incredibly difficult to do in objective terms, but I suppose you would expect any parliamentary body, of however many chambers, to be operating, really, in three main areas: one, it is representing people – those elected Members, that is; it is a legislature – so what about the quality of its output; and it should be scrutinising and calling to account.

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In each of those three areas, I wonder if you have got any thoughts about how well the job is done now and ways in which it might, perhaps, be done better?

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Hon. L D Skelly: Yes. Could it be done better? I guess, obviously, they do not have the constituency issue.

If I was to simplify things, from my point of view, from a business – I come from a business background. Looking at Legislative Council, I see their role being very similar to a non-executive in the business world. A non-executive is there to do, as I just said, the probity, the independence and to really do that level of scrutiny, so you do have robust policy and legislation, in essence. The root of that, I think, is where the differential is, personally, between MHKs and MLCs, and it is currently set on an equality basis, and it comes back to financial issues.

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With my colleague, Alf Cannan, three years ago, we brought forward a motion to evaluate the service of Tynwald Members. For that, we were proposing – similar to the UK, I think you have a parliamentary independent organisation that evaluates what politicians do and what they should be remunerated. We have a very complex system with regard to our pay structure. That is attached to the Civil Service pay – which is quite relevant at the moment, given the public sector pension issue that we are trying to deal with. So we are already conflicted, because we are already attached to that, but that is a side issue.

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I see equality there that is inappropriate between MHKs and MLCs. In other words, they should not be paid the same. I do not believe they should be on the same pay scale. If I go back to the analogy of business and the non-executive, if you look at this as a non-executive of national importance, they should be paid and compensated at that same level. Again, that is just my view and it is something that, sadly, was not supported when we brought this motion to Tynwald three years ago and it was defeated quite heavily. One of the problems you have got with that is I believe it is financially driven. So the turkeys voting for Christmas issue comes into play there, big style.

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If you actually removed or rather gained a pay structure and compensation structure that mirrored the non-executive role for the people sitting here at LegCo in future, you would have a very different MHK who would certainly be doing it for the very right reasons. You would have people from business, again, doing it for the right reasons and not having the fear of the stick

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that they get right now. You would have real true patriots who want to give back. They are not doing it just because it is a job and it is well paid, as it is seen in most people's eyes.

One of my colleagues terms it as the 'medieval retirement for MHKs'.

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Q396. Lord Lisvane: I have heard that.

Hon. L D Skelly: And a lot of the public actually can empathise with that. We do have MHKs here. I think they perform a good job in the role, because they understand legislation. But I think you would have a very different LegCo if you actually changed the pay structure.

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Q397. Lord Lisvane: Let's pick up this non-executive concept, because it is actually the first time anybody has used that word or phrase to me. I have benefitted hugely in several different sets of circumstances from really good non-execs who are able to challenge, who have a considerable degree of independence, but have applicable skills and experience. I am sure you had similar experiences yourself.

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In a sense, the MHKs who have come up onto LegCo, they are still in the same culture. I would find it slightly harder to regard them as the real non-exec type, of the sort that you have been talking about.

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Let me put a proposition to you and see what you think of it. Clearly, you do not want to lose what sort of democratic authority there is for LegCo, so there is an argument for the electoral college role of the Keys. But, as I have been told, almost repeatedly, this has been pretty chaotic in the way in which it has been exercised. There is – and you acknowledged that a moment ago – perhaps rather too many former Members of the Keys who find themselves on LegCo.

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But, if you had an entirely independent statutory appointments commission, which made nominations and had, as part of its role, to encourage people who were not usual suspects for being politicians, but were making their way and had skills and experience in other fields which could then be applied to the business of parliament, would you see that as being a viable way forward?

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Hon. L D Skelly: It is something I believe should be considered, undoubtedly.

However, the other element that could improve the quality of the candidates that are prepared to come forward is if we do what we did just yesterday: remove the secrecy of the vote. That is one of the issues that you have. When we propose a Member for Legislative Council, it is, once more, a vote that is taken in secret. Therefore, you do not know who is voting for who and that is not helpful. I know some people who have tried and some who are not prepared to put their name forward for fear of being embarrassed in front of what would be a very public vote, but you really do not know who is voting for you or not.

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Remove the secrecy and I think you might, again, see a different calibre come forward and have a different result in terms of the actually Members.

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Q398. Lord Lisvane: Is there any steam behind that: removing the secrecy?

Hon. L D Skelly: There has been. We saw yesterday – where we have removed the secrecy for the Chief Minister's vote – that was very clear. In terms of our political system, there are a number of areas that we can solve, already, to improve it without any sort of radical reform.

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The process you describe as an 'independent commission' to put people forward will always fall foul of the issue of the 'jobs for the boys' sort of thing. The Isle of Man is so small: the community and the connection, and you will get that even with the proposals of Members coming forward, particularly from the outside. Who knows who? – that sort of thing.

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We cannot get away from that in the Isle of Man. The reality is that it needs to be somebody who is doing it for the right reasons. I come back to the financial aspect: if we had it at a level

that it does attract the right sort of person, for the right reasons, I think that would improve the system.

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Q399. Lord Lisvane: That is really helpful. Thank you.

This is not actually too far a jump from what we have been talking about: the involvement of individual Members – MHKs and MLCs with Departments. You have, I think, five Members who are associated, indeed. I was talking to Mr Singer earlier on this afternoon.

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It is a little difficult to understand where the dynamic of that comes from, because you are dealing with a relatively small administration. There are nine titular Ministers – like yourself – including the Chief Minister, and the Departments are relatively small, although, of course, the Isle of Man being the Isle of Man, the span of policy that they have to deal with is actually remarkably wide; wider, indeed, than in the devolved parliament and assemblies in the UK.

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But, it does seem odd that you have that degree of political involvement in the business of a Department; for two reasons, really. One is – do not take this amiss, but – why can't the Minister deal with it himself? The second is, you build up, in a sense, almost a government party which becomes virtually the whole of the House of Keys – I think there are only four exceptions.

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Hon. L D Skelly: No, good point. I would accept that.

We could operate with less, there is no doubt about that. I have just inherited what has always been there in the past, in terms of the Department. I have also been DOI Minister; we had a similar number of Members there as well. There is no doubt about it, you could certainly operate with less Members.

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I do not believe it would be appropriate for a Minister to formulate a policy single-handedly on the basis that it really is not tested in terms of its probity. That is really what it comes to when we look at policy, we look at strategy, and it goes through a Department. The more you have, the more input you get and the more opportunity there will be that it is going to robust, coming forward.

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But it could operate, certainly, with fewer Members. That gets back to the other point I was saying before: there is probably enough politicians as it is, that are publicly elected. Why would we need more? I am thinking of LegCo being part and party of that.

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It is something that probably does need further consideration with regard to a restructure. We have been through this; just before I was elected, there was a restructure of Government and it was still settling, I think, when this administration really came to bear. There is a reasonable argument for more restructuring, but that is really going to be for the next administration, clearly.

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Q400. Lord Lisvane: Sure, given where we are in the electoral cycle.

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Hon. L D Skelly: Yes. I would say, though, that we have a situation at the moment with two, three Members who are pure parliamentarians. In other words, they do not serve in any part of Government. That, essentially, can be beneficial on one hand, because it gives them complete and utter free rein to challenge and probe, but then it does not give them any ownership at the same time. The issue there becomes that, if you are in a Department, then you can, hopefully, enact some real, physical change in terms of a structure or a policy that you really want to see through. You can get into the detail and really see change, and give you, politically, real ownership. Subsequently, also, you have that challenge. If you are a pure parliamentarian, you will never have real ownership unless you want to try and change something on the floor, which is always cumbersome, difficult and can be quite fraught, for all different reasons.

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I do believe there is an argument there – and this probably comes back to compensation and why I would like to see an independent review of that. Because, we have a pay structure – a bizarre pay structure – where we have expenses; we have supplements for working within Departments; a supplement for a Minister and supplements for Chairmen, etc. I think this all

6150 does need to be reviewed because, whilst there are different responsibilities and there is an argument for a higher pay scale or a sliding scale, I think there needs to be a more simplistic basic pay structure that would also require a duty for a Member to actually serve in some capacity within Government.

6155 **Q401. Lord Lisvane:** You have been using the word 'independent' in that context, so I take it that you would be a little leery about the emoluments being determined by a committee of Tynwald.

Hon. L D Skelly: The problem of that is that it is politicians determining politicians' pay. It is wrong. Just the fundamentals of that does not really jive with me at all.

Q402. Lord Lisvane: And of course, you have got, as you mentioned, the basic pay. That is pegged to a Civil Service rank, so that is part of the problem –

6165 **Hon. L D Skelly:** It is part of a historic problem. I have spoken to those who have been around, who set that up, and I understand why they did that. But it has been a long time since they have had an independent review of what we really do, and part of that needs to be reviewing the service of all Tynwald Members. With that, you then bring the spotlight on us all, not just LegCo where a lot of the focus has been.

6170 **Q403. Lord Lisvane:** Your reference, earlier on, to the House of Commons: I think you are probably thinking of the Independent Parliamentary Standards Authority.

Hon. L D Skelly: That is what I am thinking about, yes. I think a body like that would be appropriate for us to do a regular review. That could happen, perhaps, every administration, or shortly after a new administration and so forth.

Q404. Lord Lisvane: Can I pursue a little more the relationship between the Minister and the departmental Members?

6180 You said that a Minister could not bring forward this policy on his own. Now, I found that quite a strange assertion, because Ministers are in the business of being Ministers: leading on policy, having ideas which they pursue within their departmental responsibilities. You were being very – there was a great degree of humility about that. I am not suggesting that it was false humility, but it surprised me.

6185 **Hon. L D Skelly:** A Minister can and Ministers have – there is no doubt about that. They have the authority to do so. But my own personal belief is, if you want to bring forward a policy and you cannot convince your own Members within your Department – who should understand the real objectives and the strategies of that Department – then you have got a real struggle. Why would you want to take that further *per se* on the floor of Tynwald, if you cannot even convince your own Members? So there it becomes a very early fundamental flaw, in my own book. That is, again, trying to be democratic within a Department before taking it any further.

6195 **Q405. Lord Lisvane:** But what you are describing to me – if I am a little bit irreverent about this – is a sort of parliamentary focus group. 'Let's try it on the departmental Members and, if they bite, then that is probably a good indication of the sort of reception we will get in Tynwald.'

6200 **Hon. L D Skelly:** It is, but I think you also need to consider that we predominantly operate as independent political Members. So we do not have a party to test a policy on before going public on it *per se*.

6205 In essence, if you do have a concept, an idea – and we all come with our own individual manifestos, so we have got concepts and policy ideas and so forth that we want to test and which will test. You can test them in different ways. You can test them through a Department; you can test them through committees; you can test them on the floor of the Keys or in Tynwald. There are different methods to actually test that but, ultimately, as a Minister, if you want to test, clearly you want to do that with your own Members first and foremost.

6210 **Q406. Lord Lisvane:** But also you can test it within cabinet: isn't that the more appropriate way, if it is going to be part of what the administration of the day is taking forward?

Hon. L D Skelly: It is. It becomes almost too high-level because, sooner or later, we get into a level of detail – we should not, but we always do. There is always devil in the detail and that is where legislation comes into play.

6215 In essence, it is the Department and the Members within the Department. For example, in my case: the Department of Economic Development, there could be some legislation that affects a particular industry. Now would that be understood by a Minister in another area who has got so many other priorities? Highly unlikely. We would need such a significant level of briefing to be able to get to that particular point.

6220 **Q407. Lord Lisvane:** Presumably that is where the Cabinet Office function comes into play, isn't it?

Hon. L D Skelly: It is, yes. And these are different levels of scrutiny, if you like.

6225 We also have the Council of Ministers' subcommittees. I sit on National Strategy Group and also the Environment and Infrastructure Group. So we very often will test policy in those areas too. Therefore, you would have two or three Departments with related interests to test what policy or strategy you are reviewing at the time.

6230 **Q408. Lord Lisvane:** Those consist only of titular Ministers?

Hon. L D Skelly: No, both actually.

Q409. Lord Lisvane: So they are departmental?

6235 **Hon. L D Skelly:** Yes, departmental Members as well as Ministers. So you have a mix in that particular area.

6240 It is quite a healthy way, I believe, to try and understand. The current structure: we have these ministerial legal entities, as currently set up, which tend to encourage the silo mentality. It encourages that because they are separate legal entities and it is more or less a default. When you bring a policy into one of the Council of Ministers' subcommittees: Environment and Infrastructure or National Strategy Group, you get the opportunity to test it across other areas.

I am a fan of the single legal entity, and we are trying to progress that. I think this will help resolve some of the problems we have experienced in the past.

6245 **Q410. Lord Lisvane:** Well, you are ahead of me there, because I was just about to ask you about the single legal entity and, indeed, the silo problem. Because individual Ministers have a lot of practical and statutory independence, don't they?

Hon. L D Skelly: Absolutely, we do. It is just historical, really.

6250 Part of the reform is to try and achieve this single legal entity. All too often, and particularly this administration has been very fiscal focused because of the rebalancing – very understandable. You would have a Department driving a policy for fiscal savings, but often it

6255 turns out it might be saving in one Department but it affects another area of Government. In the most simplistic terms, it means, 'Hey, this is not a good joined-up Government.' Whilst we do try to work together, there are clearly things that do fall down.

With the single legal entity, the process that needs to wrap around that should hopefully avoid issues and circumstances of that nature in the future.

6260 **Q411. Lord Lisvane:** And what are the prospects for achieving that? Where do things stand?

Hon. L D Skelly: Good question. It will fall on the next administration. We have not managed to achieve it in this administration. We have had a number of workshops on it. It raises quite a lot of questions and there will still be some test on that, I think. We are trying to progress the legislation in readiness for the next administration to consider if they can enact that, hopefully in the relatively short-term.

6265 But that brings a perfect timing for the other review of the structure of Government. Is it fit for purpose; the number of Departments; the structure of some of the other bodies – the Statutory Boards and so forth; do they fit in the right area? So there is a good opportunity: a single legal entity as well as a review of the structure of Government at that time.

6270 **Q412. Lord Lisvane:** It has been put to me by several people that a single legal entity – and I can see the advantages in terms of joined-up Government, which must be quite an effort to achieve as things stand now – will put too much power in the hands of the Chief Minister.

6275 **Hon. L D Skelly:** Yes, there is already a misconception: they think he has got more power than he actually has.

6280 That really comes down to how it is actually legislated really. I think there are mechanisms in place that could ensure it is not dictatorial, which is what people may perceive. That is the fear, really. It needs to ensure that the single legal entity – it is not so much the Chief Minister, it is really Ministers – that they do not go rogue, I guess.

Q413. Lord Lisvane: Yes, and, presumably, too, it has to be presented as an enabling measure rather than anything else?

6285 **Hon. L D Skelly:** Well termed!

Q414. Lord Lisvane: You mentioned Statutory Boards a moment ago. Do you think it is appropriate that Members of Tynwald sit on those?

6290 **Hon. L D Skelly:** Another good question – having attempted corporatisation of the Post Office recently and sadly failed.

6295 It is a problem inasmuch that, in many ways, when you have got such a highly valued strategic asset ... Let us take our utilities, for example: that traditionally has always had a Member on the Board. There is a benefit, I think, because politically driven policies can be achieved much faster, if we have got issues.

6300 For example, our Health Department, I know we have had discussion, shall we say – not real reviews – as to whether it should be set up as a trust: let the professionals run the Health Department, so to speak. That would make a lot of sense in many people's eyes, but I think it has been proven that, when politicians have an involvement, they can really drive what would be effective policy in a much quicker way.

I think it depends on the organisation. Commercial organisations: politicians are probably not well-suited to it, but when you have got social organisations, then there could be a strong element, because they have to fight for funds. Ultimately, it is the politicians that really need to challenge the Government, the Treasury, to say what you need funds for. Usually, it comes and

6305 is more powerful, when it comes with a politician and a ministerial post arguing that particular
point.

Q415. Lord Lisvane: But the Statutory Boards are in effect nationalised industries, and a lot of
people would say, 'If you have got a nationalised industry, the last thing you need to do is to
6310 have a politician get anywhere near it.'

Hon. L D Skelly: Yes, indeed.

It is about strategic assets, in my mind. I think of the utilities, in particular. We had the Manx
Electricity Authority and the Water Authority, and we merged the two together to formulate a
6315 trading model that will allow it to manage its way through its very substantial debt. That was not
politically motivated. We could have sold the asset off and in that case then, in my mind, we lose
control. A Government, losing control of an energy asset would not be good politics, healthy
politics, certainly for the mid to longer term; that is the argument, I think, behind all that.

In a bigger market, there may be a case for not doing that, but with the Isle of Man and its
6320 sometimes unique situation, there is I think a stronger argument.

Q416. Lord Lisvane: That is extremely helpful and I entirely understand the point you make.

As a departmental Minister, you have a particular view of legislation. You sponsor it and you
want to see it through Tynwald in the form in which you had originally conceived it. How
6325 effective do you think the legislative process is and what sort of degree of challenge do you find
that it presents to you?

Hon. L D Skelly: That is a very good question. Is it robust enough, I guess? It depends on how
complex the legislation is. I remember as a backbencher, I was involved in a fairly technical piece
6330 of legislation – the first major piece I did – regarding intellectual property: very important to a
number of industries on the Isle of Man. It was linked to international protocols and all sorts of
things. I got very intimate with it and was very proud; we took it through and actually got really
no challenge at all. But the real work was actually done with the industry in this particular case,
so the consultation – and sometimes it might be with the public or it might be with other bodies
6335 and so forth.

I have seen how poor legislation ... That is what we tend to do: the amended legislation. That,
again, comes into the probity side of things. It is up to you, politically, to make sure you can
highlight, (a) the importance of it; why you are doing it and really to be able to put your case
over, but you do need a reasonable amount of time to actually reflect, consult and, again, go
6340 through the different Chambers. This is where the differing backgrounds come into play and
where LegCo really should come into play, if you have got the balance right within LegCo,
particularly with outside interests. That is why you need this level of balance, in my personal
view.

MHKs do work here, in my mind, but only a limited number of them. People from the private
6345 sector work; also community-focused people. I still believe, also, that the Bishop sitting here is
beneficial for differing reasons, not just history and heritage, but he brings a lot of moral fibre
into the political world, which is beneficial. He can also speak up for some of the sectors within
the community that other legislators do not. I think that is quite beneficial.

Again, the tricameral works, and that is one of the reasons. I cannot see any real reason to
6350 change it too drastically or any matter of tweaking.

Q417. Lord Lisvane: One of the themes of what you have been saying has been taking every
advantage of external, non-political and non-parliamentary skills and experience: the broader
community, but people who have valid views which can be used to good effect in the
6355 parliamentary context.

I have not heard that the statutory consultation process has got too many friends. It sounds great, but generally it does not seem to produce very many reactions.

6360 I wonder if I can put to you a slightly different possibility, which would be to roll the public consultation up into consideration of a draft Bill. In other words, something which was genuinely pre-legislative where, at that stage, business, individuals, experts, people who had a view, as well as the committee who were actually considering it – and it might be a select committee of one House or it might be a joint committee of two – and bringing its faculties to bear on a draft piece of legislation – which might, of course, smooth the passage of that legislation afterwards.

6365 **Hon. L D Skelly:** It might. I think the issue is probably level of engagement – which is always a very good question. We get criticised for doing too much consultation. Then, when you do not do any, you will get criticised for doing none. There is never a right or wrong way.

6370 The obvious way is always to do some form of consultation. I think there is an argument for different mediums of consultation. When I say that, traditionally it would be in a very basic format that would go out in a press release and so forth. Today, with engagement and political apathy, we need to look at other mechanisms of engagement with the general public. I am particularly thinking of social media here; how we can use this to better communicate with people.

6375 There are some barriers to that, but I think it can be used in an effective way to try and engage the wider public in processing our political importance. All too often, a press release happens, a consultation happens, legislation gets introduced and all of a sudden a law has changed and the public do not know anything about it.

6380 People consume information very differently today, so that is why we need to be a lot more e-enabled, but e-communicating. I think we have a very good digital strategy, but I do not think we are doing enough, particularly in the area of social media. That is one of the communication channels I think we could do more with.

6385 **Q418. Lord Lisvane:** I think I am right in saying that e-business has been part of your commercial experience and career.

Hon. L D Skelly: It has, both privately and politically. It is our fastest growing sector on the Isle of Man.

6390 **Q419. Lord Lisvane:** That does not surprise me. How does your Department use social media and other –

6395 **Hon. L D Skelly:** Mainly through marketing, predominantly, but we are e-enabling a whole host of different functions: registering for businesses, for example; you can do that entirely online. You can apply for work permits online. These are just innovations we have done fairly recently.

6400 The greatest achievement is probably in our area of visitor economy, the tourism market. We have a budget that is less than half of what it was maybe four or five years ago and we are reaching an audience two, three, four times as big and being more effective in growing our tourism through marketing and particularly through social media. So it is being innovative in the area of e-marketing that has been very effective for us.

Q420. Lord Lisvane: Let me move from primary to secondary legislation.

6405 In a way, it seems slightly odd that secondary legislation is approved by Tynwald, whereas primary legislation, you have got actually a rather traditional bicameral relationship. Do you think secondary legislation is adequately scrutinised? I do not know how much your Department accounts for in an average year.

Hon. L D Skelly: We probably do less than others. Is there any deficiency there? It is very difficult for me to say, because we have not done that much, to be perfectly honest with you.

6410 From what I have seen and witnessed through other Departments, it seems to work reasonably effectively, I believe.

Q421. Lord Lisvane: Can you tell me something about your relationship with the Economic Policy Review Committee? I was hearing about review committee operations earlier this afternoon. The Standing Orders appear to be quite constraining because, on the face of it, they are about looking at policies after policies have been implemented, so you are always playing catch up, but I suspect – and I think my suspicions have been confirmed – that in practice, it is current issues as well as the formal responsibility.

6420 **Hon. L D Skelly:** It is, and it should be constrained. It should be current issues, which is typically where it tends to go *off-piste* very quickly – these review committees, anyway. That is perfectly fine, because we are there to be tested with our brief. Most Departments' brief is fairly big. At the end of the day, if we cannot give the opportunity to the scrutiny committee to do that, then there is not much use of the actually scrutiny committee, I guess.

6425 I personally do not mind. If you were to relax that even further, I would not have a problem, but they do tend to go *off-piste* or off the recommended questions very quickly.

Q422. Lord Lisvane: Would a scrutiny committee which was operating – not trying to be an alternative Government, but – in a relatively supportive, but let's say, a 'candid friend' attitude, be a possible replacement for the sort of political advice that you are getting from departmental Members?

6430 **Hon. L D Skelly:** It is always helpful. I have done three or four of them now. I find they are suitably challenging, I will say, in their current format.

6435

Q423. Lord Lisvane: Constructively?

Hon. L D Skelly: Yes, they are. There is no doubt it.

6440 I do find it helpful, without a doubt. Again, it is that probity test to say, 'Are we on top of our brief? Do we know what the issues are; the challenges', as well as, sometimes, the opportunities, in our case, that we are uncovered.

More independence, I guess, is what you are saying really. You are talking about independent people sitting on that role?

6445 **Q424. Lord Lisvane:** No, not necessarily. I am talking about a parliamentary function, possibly carried out by the same people who now are departmental Members, but in a rather different mode.

6450 **Hon. L D Skelly:** Very often, though, you might sit in a different department – usually that is how it works. You clearly cannot sit in the same Department and challenge. If you are sitting in a different Department, you will actually be privy to certain information. That might be quite healthy in terms of a challenge. It is a little bit more inside-track, if you like. From that point of view, it can be really quite healthy.

6455 **Q425. Lord Lisvane:** The last question I had is really totally different from anything we have discussed before. Why are there not more women in Tynwald?

Hon. L D Skelly: An excellent question. I could only put it down to: it is intimidating, I suspect.

6460 **Q426. Lord Lisvane:** Personally intimidating?

Hon. L D Skelly: Yes, I think so. That would be the only reason I could think, because there are plenty of successful women in business. I attended an event last night and probably more than half there were women actually, and all very successful in their own right, in their own industry.

6465 It is something that we need to do more of, without a shadow of a doubt, to try and encourage. But encouraging is one thing and actually somebody stepping up is another thing.

LegCo is a great example. And the secrecy of the vote is probably one of the greatest fears: you have got a lot of men voting for effectively more men. Would a woman want to put her name forward for fear of the men not voting for her? I do not know. If it is under secrecy, they just do not know. That is another flaw, I think, that needs to be corrected.

6470 All I know is there are some women standing this September who have already declared and I hope there will be more.

Q427. Lord Lisvane: Right, well, it will be very interesting to see the outcome of that.

6475 **Hon. L D Skelly:** How many are there in your Chamber by comparison?

Q428. Lord Lisvane: In both Houses, my view is that it is shamefully low. In the Commons, it is about 21%¹ and I think in the Lords about 22.5%. Both ought to be a lot higher.

6480 **Hon. L D Skelly:** It is higher than ours, so any advice you might have for us?

Q429. Lord Lisvane: I think the means of getting there are not directly comparable, so probably no advice that I can immediately give you.

6485 It is certainly about looking at what the barriers might be. I think that is particularly true of elected office.

Your point about LegCo is extremely well made, and it may be that an appointments commission which actually had a brief to increase diversity might be something of an engine in that respect. But standing for elected office to the Keys may be a different proposition entirely.

6490 **Hon. L D Skelly:** Yes, you are talking about positive discrimination there, I guess.

Q430. Lord Lisvane: No. I am talking about encouragement.

6495 **Hon. L D Skelly:** Well, I think we have all encouraged – I certainly have – in both Chambers, but there is definitely a fear there. It is a fear of losing. It does not matter: male or female, but the few that just do not like the idea of being voted on by all those men.

Q431. Lord Lisvane: We have covered an extremely wide canvas.

6500 Is there anything you would like to say to me that you have not so far done?

Hon. L D Skelly: No. I think we have covered it all. We have covered a lot more than I thought we would do, really.

6505 Just to reiterate, I think the tricameral works well for the people, the Isle of Man, and serves Isle of Man politics quite well.

The biggest bone of contention is right here: LegCo. If we can overcome the issue of being publicly elected or not publicly elected – and I know there are many Members that think they

¹ Note by Lord Lisvane: This figure related to the 2010 British House of Commons. In 2015, 191 women were elected, representing 29% of the House. There are 191 women members of the House of Lords, representing 25% of that House.

6510 should be. I think, if we just focused in on them not being, and then looked at the compensation. So another call for an independent review of our service and our compensation for all Members might actually be able to give us a different take on it, rather than some of the attempts in the past which have all run into dead ends.

Lord Lisvane: That is extremely helpful.

6515 Thank you very much indeed for sparing the time to come to talk to me.

Hon. L D Skelly: Thank you very much.

*The hearing was suspended at 4.43 p.m.
and resumed at 4.00 p.m.*

**EVIDENCE OF
Mr John L M Quinn, HM Acting Attorney General,
Mr David Bermingham, Chief Legislative Drafter and
Mr Howard Connell, Legislative Drafter,
Attorney General's Chambers**

Lord Lisvane: Well, Mr Acting Attorney, thank you very much indeed for sparing the time to come and talk to me this afternoon.

6520 Thank you too for your memorandum, which I found extremely helpful. I have especially noted and of course entirely understand your wish not to be drawn into political considerations, and I am more than content that our discussions this afternoon should be on what I might term technical matters.

6525 **The Acting Attorney General:** Yes.

Q432. Lord Lisvane: But before we come onto the specific points you raise in your paper, could you say something about legislative drafting on the Island and the resources and pressures? Perhaps I might say as a preliminary that I have been very impressed with what I have seen of the output and the rather unfussy style which your drafters employ.

The Acting Attorney General: Yes, thank you.

6535 I would like to start by saying that I think it would be understood that in a perfect world we would have more resources made available to us because we certainly cannot answer the demands which are made of us.

The drafting division of my Chambers consists currently of a Chief Legislative Drafter, three legislative drafters – sorry!

[Mr Bermingham and Mr Connell joined the Acting Attorney General.]

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Q433. Lord Lisvane: Shall we just pause for a moment to introduce your colleagues, for the record?

6545 **The Acting Attorney General:** I have with me David Bermingham at the end, who is the Chief Legislative Drafter; and Howard Connell on my right, who is a senior and very experienced drafter. They are part of my drafting team.

6550 **Q434. Lord Lisvane:** Perhaps I could say to them what I said to you a moment ago, that in my exploration of your statute book, I have been impressed by the rather direct and unfussy style of drafting.

Mr Bermingham: Thank you very much.

6555 **Q435. Lord Lisvane:** And I will also say something which I should have said at the beginning, which is that our conversations are being live-streamed and recorded by *Hansard* and, when the transcripts are finalised, they will appear on the Tynwald webpages.

So, Mr Attorney, do continue.

The Acting Attorney General: Thank you, Lord Lisvane.

6560 As I was saying, the drafting division in Chambers currently consists of the Chief Legislative Drafter, Mr Bermingham here and three legislative drafters, all experienced drafters: Howard Connell and then two other gentlemen.

6565 In addition, we have two legal officers who are legal officers legislation, by designation, who are support to the team. I will come to it in a moment, but essentially one of them I see very much as developing into a full-time drafter of some experience who will deal, eventually, with the drafting of primary legislation.

6570 As I will mention, what I am keen to do is for the Island to grow its own expertise in this respect, because what I have found in my time as Acting Attorney is that there is great difficulty in recruiting experienced drafters, and we have had to go all over the world to do so. Our last two recruits: one came from the Falkland Islands and the other came from Northern Ireland. Again, there are no drafting resources on-Island that we were able to identify to recruit.

6575 **Q436. Lord Lisvane:** I remember, when I was Clerk of Legislation in the House of Commons and worked very closely with First Parliamentary Counsel, that the Parliamentary Counsel Office always used to say that it took seven years to train somebody to draft a medium-sized Bill, so the challenge is evident.

The Acting Attorney General: Yes.

6580 When I took office, at that stage I simply had a Chief Legislative Drafter and two drafters with an assistant. I was able to persuade Government that we needed to have better resources and Government made the investment, made the commitment, to provide those resources last year, and we have been successful in recruiting to meet the demand.

6585 I have measured that demand and I am satisfied that we have sufficient resources to deal with primary legislation. I have measured that in the context of the workload which Chambers is charged with, and that is to deal with the drafting of primary legislation, not secondary. However, we have a role with secondary legislation, because it is our function to review it, not so much before it is finalised, but before it comes before Tynwald, if it is going there – before its sanction.

6590 **Q437. Lord Lisvane:** And you have an overall responsibility for the health of the statute book?

The Acting Attorney General: That is correct.

6595 **Q438. Lord Lisvane:** Which fits well with that, presumably?

The Acting Attorney General: Yes, because one of the other functions of the division is responsibility to maintain the Government's – it is actually Chambers' – website which contains

6600 the up-to-date legislation. We would like to see that further developed because at the present time it does not include secondary legislation.

Q439. Lord Lisvane: Forgive me for interrupting you but as you have mentioned the website, one of the problems of the legislation.gov.uk website is the huge updating requirement. Presumably you have to deploy resources to deal with that?

6605 Do bring your colleagues in as you think fit.

Mr Connell: May I answer that, my Lord?

6610 The position is that we do not have a formal commitment to the outside world to deliver it, but our ambition internally is to keep the website up to date so that it is accurate to the end of the month preceding the day on which it is visited – which is sometimes quite a challenge for our librarian, who is now a member of our team. She has taken that on and she is making sure that it happens. With most of our Bills, we are actually able to do it.

Q440. Lord Lisvane: That is an ambitious aim, but if you are achieving it, that is impressive.

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Mr Connell: I had the miserable experience of trying to work with legislation.gov.uk and those cryptic little notes which said, ‘There are amendments which have not been incorporated’ which meant you never know quite what you were looking at. We are trying to avoid that very problem.

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Q441. Lord Lisvane: I have been a fellow sufferer, but it has improved greatly.

Mr Connell: It has.

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Q442. Lord Lisvane: Mr Acting Attorney, please do go on.

The Acting Attorney General: In general terms, your Lordship, that is an outline of the resources we have available and of the nature of the work which we carry out. I have said – and I am hopeful that the Chief Legislative Drafter will support me here – we are comfortable with the resources currently but as I said right at the start before my colleagues joined us, we would welcome more resources, but that is all dependent on the workload that our Government want us to deal with year on year.

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6635 We are looking at an average currently of about 15 Bills a year, which we can manage. Now, clearly, there will be situations where, if we have some extremely large Bills to do, that might impact on our ability to meet that target. By way of an example, in recent years, since I have been here – it finished as I joined – one of our drafters – and it was Mr Bermingham actually – had been involved in drafting legislation for insolvency: new insolvency law for the Isle of Man and a new Companies Act. It was actually shelved after all of Mr Bermingham’s efforts. I think over a period of two years?

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Mr Bermingham: Eighteen months, two years.

The Acting Attorney General: Eighteen months to two years. But you can see how something like that could impact on our ability to produce the goods, so to speak.

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I do not know if that is helpful to you but that is an outline of what we are about.

Q443. Lord Lisvane: That is extremely helpful. Thank you very much.

6650 One question which occurs to me: you say you have the resources, but presumably that presupposes an appropriate phasing of departmental instructions for drafting, and when they start to bunch up then you have a problem of prioritisation?

The Acting Attorney General: Yes. In that regard, your Lordship, we have started to address that with the assistance of the Council of Ministers, who have set up a legislation subcommittee and that has been very effective. It has only been in place for something like a year. We have regular meetings where we have the priorities, which are agreed by Council of Ministers, which we are to address in a period. That is reviewed and the progress of those Bills are reviewed.

With the help of the Cabinet Office, one of their officers is then sent off, when necessary, to persuade the Departments to actually get on with it, because the politicians do not always understand. It is all well and good saying, 'Right, we are going to have this Bill introduced'; then we have drafted them and then they just gather dust. We have got to get on with it.

That system of having the subcommittee has been very helpful.

Q444. Lord Lisvane: I do not want to take you into areas which you would find in any way embarrassing, but what do you think about the quality of departmental instructions?

The Acting Attorney General: I will pass that one, if I may, your Lordship.

Mr Bermingham: It is variable, for various reasons. We are a small Island, a small jurisdiction. The drafters will tend to be the only lawyer involved in a particular Bill project, so a drafter will be working with a departmental officer who the chances are will not be a lawyer. Having said that –

Q445. Lord Lisvane: Very often, that is rather a good thing.

Mr Bermingham: Very often a very good thing, indeed.

The instructions are sometimes very good, sometimes not so good. It depends on the mix of the legislation officer's job. Most legislation officers are doing more than just giving us Bill instructions; some of them will be preparing the secondary legislation; most of them will have an important policy role and some of them will be doing lots of other things as well. It is a moveable feast, really.

The quality is variable but improving, and is much better than it was certainly when I started. We do now run training courses, as part of the drafting division. We run a course about giving instructions for Bills and we run another course about drafting secondary legislation. I think they have helped in recent years, and the position is improving all the time, I would say.

Q446. Lord Lisvane: We all know that no matter what the jurisdiction, good drafting instructions depend on a certain fixity of purpose of Ministers.

To what extent do you find second thoughts? I have been exploring the policy development function with other witnesses. To what extent is what you get, what you eventually have to work on?

Mr Connell: Very often one is actually driven, when given early instructions, to do as one of my former colleagues – who actually went back to 36 Whitehall as an Assistant Parliamentary Counsel and ended up as a full Parliamentary Counsel – namely a 'ranging shot': 'Your instructions might have asked me to do this, see whether it fits the purpose.' Sometimes one is driven to do that because there is no depth to the instructions and there is no real fixity of purpose at all.

There is one classic case – we will not say where it came from – where we were told, 'We just want a Bill'!

'Yes, but what do you want *in it*?' – 'Ah!'

Q447. Lord Lisvane: You remind me of the frequency with which Ministers say that a Bill is going to send a message. My response was always, 'If you want to send a message, get somebody who can do semaphore.' (*Laughter*)

6705 **Mr Connell:** I think we concur!

Q448. Lord Lisvane: You mentioned 36 Whitehall a moment ago. How far do you have contact and professional discussions with drafters in other jurisdictions?

6710 **Mr Bermingham:** We are all members of CALC, which is the Commonwealth Association of Legislation Counsel. Every drafter in Chambers is a member of CALC.

We tend actually to forge relationships with drafters who we come across in the course of our dealings which tend to be more in the other Crown Dependencies and in other territories where a drafter may have been working on the Isle of Man at some stage in the past, rather than 36 Whitehall. For example, we have had people from Australia working here recently. In fact, if truth be told, I have never had any contact with anyone in particular at 36 Whitehall.

6720 **Mr Connell:** Can I just put the counter into that: because of my previous role in both DHSS and HMRC in London, I do occasionally have call to pick up the phone and talk to former professional colleagues in 36. It is not very common.

More often than not, we are talking to our fellow Crown Dependencies, because we are trying to find out what it is that the UK are up to and what our common line ought to be.

Q449. Lord Lisvane: I take the point.

6725 In a sense this comes out of our discussion of departmental drafting instructions and moving into the formal legislative process. One of the things that I have been discussing with a lot of witnesses is the consultation procedure, which I think it is fair to say, a lot of people have found a little disappointing. It is there and it is obviously a good thing, but the amount of engagement and return that you get from it is relatively small.

6730 One of the propositions I put to people is: might a draft Bill stage which was genuinely pre-legislative have a lot of advantages, because you would show the cards, as it were, to Tynwald? You would have something in which Ministers did not necessarily have a great deal of political capital invested, so that evidentially based arguments for amendment might be more convincing, and you could then roll the consultation period or process into the draft Bill stage, particularly if the draft Bill was being examined, say, by a joint committee.

6735 Do you have any thoughts on that? I know one of the difficulties is about phasing your use of drafting resources, because you may find yourself almost double counting.

6740 **Mr Bermingham:** There is a requirement to consult – which is a political requirement, not a legislative requirement – in relation to Bills.

Q450. Lord Lisvane: It is in guidance, I think, isn't it?

6745 **Mr Bermingham:** Indeed. And it is to be treated as binding unless the Council of Ministers makes an exception for a particular Bill.

It does not say *when* you must consult and I must admit in recent years the consultation has tended to take place in relation to the draft Bill that we have prepared on instructions; so the full product that we are expecting to introduce, subject to consultation comments. There is certainly scope, and I personally believe it would be good if earlier consultation happened in relation to the policy.

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Mr Connell: Certainly consultation on the policy, as a formal pre-legislative step, would improve the quality, in my view. It certainly did in London and I do not see why it would not work here.

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The Acting Attorney General: I think it would be fair to say, your Lordship, that the Departments are treating the consultation – and I am not saying rightly or wrongly, because that is not my world – to help them formulate their policy. So they will give us the instructions; we draft the Bill; it then goes out to consultation; and then we are quite often having to do a rework because they change their policy as a consequence of the consultation.

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Q451. Lord Lisvane: Is there an order/counter-order/disorder problem with that, from time to time?

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The Acting Attorney General: I am nodding! *(Laughter)*

Q452. Lord Lisvane: What a discreet way of indicating assent! Thank you. That is really helpful.

I think it is probably time to move on to the three particular points that you raise in your paper. The first point of difficulty stems really from a very positive aspect of the system: your professional drafters are available to draft amendments for Private Members which, as you point out, does not happen at Westminster, Stormont or Holyrood. I think I have a possible suggestion which might help, but do you want first to enlarge on the problem? This is the difficulty of scope and amendments to the long title.

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Mr Connell: The difficulty of scope is quite severe in relation to some Bills. There are one or two Members who see that a Bill – let us say about Road Traffic – gives them scope to introduce something about environmental issues on a more wide-scale basis.

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Q453. Lord Lisvane: Tacking?

Mr Connell: Yes, tacking is a common problem.

In fact, the most recent example of it was the Representation of the People Bill which went through last year, or came into operation this year, which had as a single purpose the renaming of a constituency. I think two separate Members then saw it as an opportunity to raise issues which had been considered by the Commission which had produced the report on boundaries and other aspects of Tynwald procedure and the electoral process somewhat earlier, but the proposals had been dropped by the Council of Ministers. They saw this as a good opportunity to bring them back into play, as it were.

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Because an amendment to the long title – which is effectively what defines scope here – can simply be moved as part of the clauses stage – which is our equivalent of the committee stage in London – we cannot guarantee that the attempt is going to fail; therefore, amendments, however extravagant and however tangentially linked to the main thrust of the Bill, have to be drafted. Sometimes that can take up an awful lot of time.

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The most extreme example of amendments being needed to be drafted actually was in relation to an earlier Representation of the People (Amendment) Bill. There we had amendments on all sorts of issues associated with constituencies, but that was clearly fair game because that was what the Bill was about. With the other Bill, which was simply a renaming Bill for a constituency because the relevant Member did not like the idea that his constituency was going to change its name, we suddenly has issues about disclosure of interests and other exotic and interesting topics, but which had nothing to do with the original purpose of the Bill.

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That appeared to raise one particularly complicated problem, because the Bill in question was a Private Member's Bill. A private Member who wants to introduce a Bill has to seek the

6805 leave of the House of Keys and he has to frame his prospective long title, because it forms part
of the resolution of the House. So his Bill was actually a Bill to rename the constituency – that
was what he got approval to do – and yet it was open to another Member, who had not sought
the leave of the House, to tack a related topic on without notice and without leave.

6810 **Q454. Lord Lisvane:** Shall we park the leave to introduce problem for the moment, and deal
with the amendments to the title?

It seems to me that part of the problem is that there is a very mechanistic relationship
between the out-of-scope amendments and the possibility that some way in the future they
may be franked by amendments to the long title and so brought within scope.

6815 It seemed to me that possibly the answer was an instruction: an instruction moved at any
stage, but I would think after Keys' Second Reading but before clauses, would make the issue
much simpler, because an instruction would simply say that in respect of the such-and-such Bill,
the House may make provision for whatever it was that was out of scope.

6820 So as soon as the instruction ... and no doubt amendments could be made to the instruction
or not, but you would end up with a very clear authority for the extension of the scope of the
Bill. Once you had done that, then you certainly would not be drafting amendments on a
contingent basis.

Mr Connell: That would tremendously improve the situation.

6825 **Q455. Lord Lisvane:** Presumably also the converse would be true because if the instruction
were tried for and it failed, then you would know that that was that. On the basis of 'question
already decided', that would not be able to be tried again. I must try that quirk out on the Clerk
of Tynwald, but that seems quite likely.

6830 I thought a subset of this was, and let me try this on you: the oddity that amendments to the
long title are considered at the start of clauses.

Mr Connell: It is indeed an oddity and in one of the select committee reports, which is
referred to in the memorandum that we sent you –

6835 **Q456. Lord Lisvane:** The 2010-11 one?

6840 **Mr Connell:** Yes. There was actually a proposal that the Speaker should have power to move
amendments in his own name at Third Reading, to rectify any problem with the long title. In fact
we have had an issue with a long title this year, because the South Douglas Bill, for want of a
better term – the Representation of the People Bill which dealt with the name of the
constituency – had its long title amended to frank the amendments which were then proposed,
and then the amendments were voted down. So it was not a happy situation, because it got into
this Chamber with a long title referring to things which actually were not in the Bill.

6845 **Q457. Lord Lisvane:** That I saw as being an additional argument for doing amendments to the
long title at the end, because it is only when you know what the outcome is that you know what
the long title should be. That would seem to be a relatively easy thing to achieve and it seems to
me that it would have another advantage, because if you have been through the process of an
instruction so that you have expanded the scope, it may well be that the amendments which
6850 were intended to take advantage of that expanded scope fail. So, if you have made your
amendments to title on the basis of the instruction, you are also caught out, but by a different
route.

6855 **Mr Connell:** Indeed. It would seem sensible to amend the long title once the dust had
actually settled.

Q458. Lord Lisvane: I have looked at the Standing Orders Committee Report because if I have read them right, they keep amendments to the long title to a stage of the Bill at which amendments have not yet been considered.

6860 **Mr Connell:** Yes they do, but that was an attempt to limit the scope of debate. You are quite right, it would be sensible to deal with it by way of an instruction before clauses and then a review afterwards and making consequential changes to the long title at Third Reading.

Q459. Lord Lisvane: Yes, and the utility of an instruction is that it is permissive rather than making substantive changes to the Bill. Well, I am delighted we are on such ready common ground.

Let me go back now to this leave to introduce a Bill, which is a similar sort of problem, but in a slightly different guise. Do you want to say something now about that? I stopped you earlier on.

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Mr Connell: The problem with leave to introduce is that the resolution is usually framed by the Clerks and they of course have not had the benefit of lengthy discussions with the Member. They will have had some discussion with him or her, but they will not have had the chance to analyse in depth precisely what is required. Therefore they will frame a long title on the basis of their understanding of what is proposed. The Member will then come over to us and say, 'I got leave to introduce.' We sit down with the Member and go through his instructions in some depth, produce a draft Bill and, lo and behold, actually when one analyses it, there are one or two things that are consequential that have not been taken into account and 'Are they franked by the long title as proposed? Oh dear, no they are not.'

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6880 Now, in strictness, the Bill has to have the long title that is proposed, because otherwise why would you bother to frame the resolution in those terms? I am happy to say that the Clerk of Tynwald is a little elastic in this and he has allowed us on occasions to go wider than has been proposed in the resolution, on the basis that it is common sense, which is very good as a pragmatic solution, but I do not think it is technically accurate.

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I think it would be better to abandon the pretence that the long title is settled by the resolution and say that the resolution should be about the intention of the Bill and what it is aiming to achieve and leave the long title to us as the technicians – or as Geoffrey Howe once called us, the 'engineering artificers' – who know how to design the thing.

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Q460. Lord Lisvane: Yes, Lord Salisbury – with whom I have had great dealings recently, as we are attempting to put together with the help of others a draft new Act of Union – calls it 'legislative housemaids'. But that may reflect the domestic arrangements at Hatfield rather than anything else.

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You are very close to what I was going to offer you as a possible solution to the problem. I am very keen on the Victorian practice in the 19th century House of Commons of motions for leave to bring in Bills. Of course, when the closure was introduced in the 1880s, it was introduced not on the Second Reading of the Bill with the Irish obstructionism on the Protection of Person and Property (Ireland) Bill; it was on the motion for leave to bring in the Bill.

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So if you were to adapt your suggestion and say you have a motion for leave to bring in – which in layman's language describes what is to be achieved – you do still need to have a bridge between that proceeding and the formality of the long title. What I would suggest is that the presiding officer is in a good position to say 'Yes, these are congruent.'

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Mr Connell: That would solve the problem.

Q461. Lord Lisvane: That would get you out of the problem.

Mr Connell: It would indeed.

6910 **Lord Lisvane:** Well, what a constructive afternoon!

Mr Connell: Indeed!

6915 **Q462. Lord Lisvane:** May I move to the last point, Mr Attorney, that you have raised, which is Salmon letters? I wonder if you would like to say something about those. Well, not just Salmon letters, but let's say the problem which can be addressed in part by Salmon letters.

6920 **The Acting Attorney General:** Yes. This comes, again, from my own experience of sitting in Tynwald, where reports have come before Tynwald, of the select committee, which have been or have contained criticism of individuals, and there has been often the cry of 'foul' from certain Members as to the breach of natural justice issues and all the rest of it when someone is criticised either in the report in writing, or alternatively on the floor of the House after that report. Of course, that person who is criticised has not had the opportunity of putting their case and defending themselves.

6925 In my mind, we have a strange process – and this is from a layman coming into the proceedings – where the reports of the select committees are tabled on the agenda for a Tynwald sitting and at that point, albeit they have not been before Tynwald, are then available to the public; they can access this. So they will see the recommendations and often these criticisms that are made of people. Again quite often, the press will pick up on this and in
6930 advance of the Tynwald sitting, there could be articles focusing on the criticism of named individuals.

That has been a challenge and it is a challenge which Tynwald has not addressed. Clearly whilst sitting, the Members of Tynwald are protected by the rules of privilege, so they are free within certain parameters to say as they wish, but it is not of much comfort to the member of
6935 the public and quite often officers in Government who are the subject of criticism.

I felt that this was something that perhaps this review ought or might like to consider whether there should be some form of 'Maxwellianisation' procedure, as I say in this – which is a word that you gave me (**Mr Connell:** Indeed.) – in the public interest. I sense, in the public interest, there should be something and I was concerned enough to raise it with you, your
6940 Lordship.

Q463. Lord Lisvane: I am very grateful that you have.

6945 On the first point that you raise, you seem to describe it as slightly surprising that the reports are available. I think there has to be a moment when it is as a matter of record, when a committee reports and of course, it is up to other parts of the mechanism to decide whether that moment of reporting is also the moment of publication. It need not be and sometimes tactically publication can be delayed, although if there are criticisms of an individual, it may be that the damnification of that individual is increased by a lack of notice before there are subsequent proceedings on the report. I do understand that very well.

6950 I think there are several ways of going about this, but I think the importance of finding some solution is emphasised by the fact that the committee, I take it, is a tribunal under Article 6 of the European Convention on Human Rights. Article 6 and Article 13 would suggest that at least there ... I am thinking in particular of the United Kingdom: the case of A, in front of the European Court of Human Rights. The pressure for a formal right of reply, when you are subject to
6955 criticism in circumstances protected by privilege, I think sets up some probably quite dangerous tensions in terms of parliamentary privilege.

Mr Bermingham: It does indeed.

6960 **Q464. Lord Lisvane:** I think there are probably two ways of going about it. One is within the
process of the inquiry – and I have got personal experience of a number of cases of both ways of
proceeding – where you make it clear to Mr X that the skids are going to be under him in the
report, and you say why, or you write to him and then you take evidence from him. He then
6965 might say, on one issue, ‘bang to rights’; on another he might say, ‘you have not taken this into
account, have you?’

The other way of doing it would be to get to the end of the inquiry, finalise the report and
then tell Mr X that he is being criticised. The danger of method two is that Mr X, for all that he
might be subject to criticism for doing so, has held back some crucial and relevant piece of
information which completely undermines your criticism of him.

6970 Now, if you adopt option 1, then you can say in proceedings – and he is protected as well –
‘This is the basis of our criticism of you, what have you got to say about it?’

6975 Either way, I think something represented by the Salmon concept is really important, because
it protects a parliamentary function from being portrayed ... I am quite sure, on the basis of the
case of A, ECHR proceedings could be taken. It protects the privileged proceeding from attack on
the basis that it has been fundamentally unfair and the tribunal has operated in an unfair
manner. Does that seem reasonable?

Mr Connell: Yes, it does.

6980 **The Acting Attorney General:** The difficulty, your Lordship, I am sure you will appreciate, it is
not a point I can force through. I can express concern. I can caution the House as to the potential
risk of not doing something, and that is why I thought it prudent to raise it as part of this review
by you, your Lordship; that if it is something that you might consider in the context of your
overall review, it is a matter that then may be picked up.

6985 I have mentioned it whilst on my feet, and I am not going to say I was ignored – I may have
been – but I just thought it was something that was worthy of consideration. It is a matter that
causes me some concern.

6990 **Q465. Lord Lisvane:** I think it is both interesting and important and as you have raised it with
me, together with the other two points, I will feel constrained to report in more or less the
terms in which we have been exchanging views.

The Acting Attorney General: Thank you very much.

6995 **Q466. Lord Lisvane:** Is there anything else that you would like to cover?

The Acting Attorney General: There is one matter, if I may. It is going back to the question of
resource. Again, I say this in the context of my role, with the ultimate responsibility for providing
the drafting provision which is required of us by Government.

7000 It surprised me when I took office that not only do we have legislative drafters in Chambers,
but we have what might be described as legislative officers in the various Departments. As I have
mentioned already, they primarily deal with the secondary legislation. My view, from a
management perspective, is that is not an efficient way of dealing with what is really a shared
resource across Government for drafting.

7005 Again, I table this really as a comment that I believe that a more efficient way would be for
the Island to focus on trying to provide a centre of excellence for drafting: a drafting team which
would deal with all aspects of the mechanism of the drafting – not the policy formation; and it
would enable us – this comes from my experience of trying to recruit – to grow our own in a
better and a more efficient manner.

7010 I mention that in the context of resource. I have brought it, informally at this point in time, to
Treasury as a matter which they ought to consider. Essentially, I see cost savings and an

opportunity going forward, but more importantly to improve quality and to enhance the efficiency of drafting, because as I have said before, I think the demands on us will grow, and that has certainly been our experience over the years. It is growing more and more.

7015 What has also been happening, however, which you ought to be aware of, is that historically the Departments felt able to go to external drafters and I, from a management perspective again, introduced – and it has been supported by Treasury – a situation where Chambers has now got to be used as a gateway, so Departments cannot just simply go out.

7020 Firstly, I will decide whether or not in a particular case, because it is a specialised area or whatever, it is a suitable matter to go to external drafters. Again my simple point is that we are never going to learn if they send all of the more complicated matters out.

More importantly, what has been happening, again in my experience, is that it has gone to external drafters and then we have got to spend so much time modifying it into our way of legislating here that, very simply, I do not suppose either cost of money or time has been saved. Again, we have introduced that.

7025 The situations when we are going externally are reducing, but I have got to measure that in my mind with the ability to better develop the team. I certainly do see this opportunity of creating a centre of excellence.

7030 There are other examples and I think I am correct in saying in Jersey they have all of their drafting in one area and I think that is a model which we perhaps should follow.

Q467. Lord Lisvane: I think that is a very compelling case, if I may say so.

7035 To what extent is the lack of a single legal entity militating against this, because I have heard a certain amount of evidence about silos and departmental independence and things of that sort?

The Acting Attorney General: It is something we try to avoid talking about actually, for obvious reasons.

7040 **Q468. Lord Lisvane:** I am happy to leave it as an unanswered question.

Mr Connell: I think we should, my Lord.

7045 **Lord Lisvane:** In the Charles Ives sense.

Mr Connell: Yes, absolutely.

Q469. Lord Lisvane: That is very interesting.

7050 Of course, the Treasury and PCO in the UK jurisdiction tried going out for chunks of the Finance Bill.

Mr Connell: Yes, with interesting results, as I recall!

7055 **Lord Lisvane:** It turned out to be extremely expensive.

Mr Connell: And not at all productive, as I recall – because I was involved in drafting, internally, bits of that particular Finance Bill.

7060 **Lord Lisvane:** Quite a few things had to be put right at quite considerable expense, as I recall.

The Acting Attorney General: Was that your drafting they were putting right?

Mr Connell: No, it was not; it was the external stuff! *(Laughter)*

Lord Lisvane: Well, thank you very much indeed.

7065 This has been – if I may say so – an entertaining way to finish the day. *(Laughter)*
I hope you have also found it constructive, Mr Attorney and your colleagues. I am extremely grateful to you for coming along to talk to me this afternoon.

The Acting Attorney General: Thank you very much.

7070
The hearing adjourned at 4.42 p.m.

Friday, 20th May 2016

*The hearing of oral evidence was held in public at 9.30 a.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[LORD LISVANE *in the Chair*]

EVIDENCE OF Hon. W Edward Teare MHK, Minister for the Treasury and Member for Ayre

Lord Lisvane: Well, Minister Teare, thank very much for your patience while the clock ticked over to 9.30 a.m.

7075 Can I just say a word about the process. Our conversations are being live-streamed and *Hansard* are taking a recording and the final version of the transcript will be put up on the Tynwald website.

May I reiterate my thanks to you for sparing the time this morning to talk about the matters covered by my Review.

Hon. W E Teare: Thank you for the opportunity, my Lord. I very much appreciate it.

7080 **Q470. Lord Lisvane:** Can we start with really, in a sense, the most general question: bicameralism, tricameralism – how do you see the advantages and disadvantages?

7085 **Hon. W E Teare:** I see it that at the moment we have checks and balances, because if it was one Chamber then really everything would move through at the one time; there would be no time to reflect on what had gone through.

7090 So I think that the tricameral Chamber, whereby the two Branches are separate for the basis of progressing legislation and then they meet together to decide policy and finance, works well. In my opinion, where the currency, as it were, is being debased is the actual voting arrangements for Members of the Legislative Council.

Q471. Lord Lisvane: Things have not gone exactly smoothly?

7095 **Hon. W E Teare:** No, it has not gone exactly smoothly.
I think it is a bit rich that I, as a representative in a single seat constituency, at this moment in

time ... I accept the principle of the first past the post gets the seat, whereas if it is a vote for the Legislative Council you have to get 13 votes and I think that is wrong, because I have seen lots of tactical voting in my time in the House of Keys and there are some who do not even vote.

7100 So if it was just first past the post then I think that would take away a lot of the shenanigans that I see going on at the moment.

Q472. Lord Lisvane: The implication of what you are saying is that you would prefer the electoral college system to some system in which LegCo was directly elected?

7105 **Hon. W E Teare:** I do.

If LegCo was directly elected by the entire population of the Island they would have a much bigger mandate, so the balance of power would then swing from the House of Keys into the Legislative Council, because there is one third of the Members in LegCo as there is in the House of Keys at the present time. So if you move that forward, a Member of the Legislative Council could, in effect, have three times the number of votes as a Member of the House of Keys. So my own view is that they will be able to look down on us and say, 'We have got more votes than you so we have got the power.' It is a difficult argument to counter.

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Q473. Lord Lisvane: It is the old problem of competing democratic mandates.

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Hon. W E Teare: It is indeed, yes.

Lord Lisvane: Particularly if the elections took place at different times.

7120 **Hon. W E Teare:** It is and the other problem too is – just to digress for a second, if I may be permitted – a direct vote for the Chief Minister would turn us into a presidential system as well.

Q474. Lord Lisvane: Do you mean a direct popular vote?

7125 **Hon. W E Teare:** A direct popular vote, yes, because then the Chief Minister would have to be the first out of up to potentially 40,000 votes and that would be difficult to stand against the Chief Minister in terms of policy, because they would be able to come down from the mountain with the tablets of stone and say, 'I do not care what you think. This is what the public have agreed with me.'

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Q475. Lord Lisvane: I can quite see that. Do you think that there is a perception, true or false, that LegCo is a bit of a cosy second career for MHKs?

7135 **Hon. W E Teare:** Not really, because in the past we have brought in people from outside who have got additional skills and some of the people we have brought in have been very impressive individuals. It also gives the opportunity to bring people in who are somewhat later in life – and I hope they will not take that too personally – who have got life skills and life experiences.

I think that in a functioning parliament we need people from all backgrounds – not only career politicians, but those who have been through the university of life as well.

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Q476. Lord Lisvane: I find that is an argument that gets even stronger the older I get!
(Laughter)

In terms of bringing people in from outside, I think in evidence yesterday it was described as a bit like non-execs. You and I have both had experiences in our career of what non-execs can bring to an organisation. (**Hon. W E Teare:** Yes.) Is that the way that you would see it?

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7150 **Hon. W E Teare:** I do because, as I said in the outset, it is the checks and balances, and a non-executive can make people stop at times and see the elephant in the room, (**Lord Lisvane:** Absolutely.) because we in Departments are advised by our officials. Normally we accept the advice, occasionally we do not, but when we actually take it to the floor of Tynwald, at times when some of the Members of the Legislative Council get on their feet I know I might have problems.

7155 **Q477. Lord Lisvane:** In that case, is there an argument for making it easier to bring people in from a non-parliamentary background?

7160 **Hon. W E Teare:** I think there is because we could be criticised at the present time that people are nominated on the basis of 'it is who you know', and it could be said it is the old boys' club.

7165 **Q478. Lord Lisvane:** What about an appointments commission? Not to make the appointments – perhaps I should more correctly call it a nominations commission – but with a brief to make the member base much wider in terms of experience and access to being a member of the parliamentary institution rather more attractive.

7170 **Hon. W E Teare:** I would be quite comfortable with that because we would cast the net wider. I would also think too that there is an argument – and maybe I will fail to advance the argument, but there is an argument – that it should be drawn on a geographical basis as well, because if we go back 20 or 30 years, the Legislative Council was representative of the whole Island in a way, although they were not directly elected so they did not have constituencies of course, but over the last decade or so more and more of the Members of Legislative Council have come from Douglas and the East. So, for example, if you have a look, there is nobody in the Legislative Council from the north of the Island.

7175 **Q479. Lord Lisvane:** Is there a danger that if you had a geographical affiliation there would start to be an element of competition with the elected Member?

7180 **Hon. W E Teare:** No, I do not think so because if you had a broad consensus it would reflect the population, the make-up of the Island better. I represent the sheading of Ayre which is rural in the main so if we had somebody else from the north and they would also adduce the rural view as well, as opposed to the urban view.

Q480. Lord Lisvane: I was in your constituency on Saturday and very beautiful it was.

7185 **Hon. W E Teare:** It is very nice. Some would say – and I could not possibly disagree – that the sun shines on the righteous! (*Laughter*)

7190 **Q481. Lord Lisvane:** Can I move onto the relationship between the executive and parliamentary functions, because something that, coming afresh to the proposition, seems a little strange is the system whereby you have Members of Tynwald who are associated with Government Departments, although they are not titular Ministers. Could you say a word or two about how you see that and what they bring to the party, in effect?

7195 **Hon. W E Teare:** Once again, they actually act as a check to the Minister and from my perspective my Members in Treasury are invaluable. They concentrate on certain areas of activity within Treasury. If you take Mr Henderson, for example, he is delegated Social Security and, in effect, he is the Minister there. He deals with the issues for me. He keeps me fully in the loop. We agree policy together, going forward, but he is the person who makes sure that that is

7200 carried through, because I, to be quite candid, do not have the time. Treasury is a big organisation. We have many disparate parts of the Department, so overall it means that the Minister cannot do everything, because the Minister, being directly elected, also has constituency work to undertake.

7205 I normally leave home before half past seven in the morning and I am home at a reasonable time – about six o'clock at night – so then I will start on the constituency work and I normally try to finish at nine at night, and I am working, to some extent, seven days a week. That is my choice; I have got no problem with that, but it means that it is a very difficult balancing act. So my Department Members are an invaluable help and I certainly could not function – I would not be able to function effectively – if I did not have that support.

7210 **Q482. Lord Lisvane:** Of course that sort of workload is something not normally appreciated by the general public?

7215 **Hon. W E Teare:** No. For example, last night my phone went off at 25 to 12. But that is life. I signed the nomination papers; I cannot complain about it.

Q483. Lord Lisvane: No, it is something that I am, at least at one remove, very familiar with. Can I put it to you, though, that when you say, 'We agree policy' – you and the associated Members of Treasury – there is a lack of transparency because, in effect, the parliamentary challenge – the calling to account challenge – is happening not on the floor of the Keys or in Tynwald; it is happening in an office in Treasury?

7225 **Hon. W E Teare:** It is, but then you have to work up policy to make suggestions to bring it back to Tynwald, to get Tynwald to agree to it. Somebody has to start off with that blank piece of paper, and that is what we do.

At times we will go back to Tynwald Members and they say, 'We are not happy with it' – well, that is fine, you just tell us what the alternatives are and we will work that up.

7230 A good illustration of that at the moment is the National Health or the state pension. We have broken with the UK but we have had a series of discussions with Tynwald Members working up policy and the way forward. So that has been very useful because instead of us wasting time and energy coming up with what we think is appropriate, we are building a consensus as we move along.

Q484. Lord Lisvane: I have been following your explanation to the public of how to build up fractional entitlements, which is not an easy thing to get over.

7235 **Hon. W E Teare:** No, it is not and it is not easy to get over as a soundbite either.

Q485. Lord Lisvane: I can quite understand. More generally though, you have fewer departmental Members than some Departments, I think the maximum is five; is there a risk that there is a blurring – and I am not talking now about Treasury, I am talking about the overall system – of where the boundaries of executive authority or executive influence begin and end, because, if you look at it in the round, most of Tynwald is in Government in one form or another?

7245 **Hon. W E Teare:** It is, you are correct and I would not disagree with your view.

Q486. Lord Lisvane: Is therefore the corollary of that that there is insufficient scrutiny challenge entirely separate from Government? I think I am right in saying that there are only four Members of the Keys who are not associated with a Government Department.

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Hon. W E Teare: It does not stop those Members who are Members of Departments actually scrutinising us, and scrutinising us very aggressively at times through Question Time or indeed when we bring a motion to the floor of Tynwald.

7255 So basically, you cannot go into Tynwald taking anything for granted. You need to be well-prepared. If you are not well prepared then you are preparing for failure and that is where the hard work comes in, because you are trying to double guess where the challenges are coming from.

7260 My Department Members will give me advice on where the potential challenges are coming from, and that to me means that when I go in there I am ready for, I will not say everything but for most things.

7265 **Q487. Lord Lisvane:** It is the sort of thing, isn't it, that in the Westminster system – and I am always very cautious about comparing jurisdictions directly because things are not transplantable, and I am very realistic about that – the sort of function that is carried out by a parliamentary private secretary, saying, 'Minister, the Party are unlikely to be happy about X or Y'? I realise there is another difference here because you are not dealing with a party.

7270 **Hon. W E Teare:** In a way, yes, you could say that there is an analogy between the two of them, but I do not think that we could make a strong argument to put a cost burden on the taxpayer for other advisers.

7275 **Q488. Lord Lisvane:** That, in a sense, brings me to what I was going to ask you. In a lot of systems, or faced with the proposition in its simplest form, one will be saying if the breadth of ministerial responsibility is so great that you need that additional support, what about officials? Because officials, of course, are not responsible to the public directly, but nevertheless they are responsible to you and they might well take on the running of part of your portfolio.

7280 **Hon. W E Teare:** They actually are responsible for the administration and the implementation of policy, but policy and the direction of travel rests with the political function.

Q489. Lord Lisvane: But you are always in an oversight role? Or are you saying there is just too much for you to have oversight and authorisation of?

7285 **Hon. W E Teare:** I do not think it is appropriate that I should be interfering with the day-to-day activities of the Department. I set the policy and ask questions to make sure that policy is being implemented.

7290 **Q490. Lord Lisvane:** I think every permanent secretary or chief officer will probably endorse your philosophical approach to the separation of roles in running the Department, but for example, under the Government Departments Act 1987, you can delegate a function to anybody that you see fit. Have you ever done that?

7295 **Hon. W E Teare:** I do when it comes to, for example, paying bills – procuring goods and services within certain levels, yes.

Q491. Lord Lisvane: Is that a formal delegation or is that simply something which comes with the territory of somebody being an official in your Department?

7300 **Hon. W E Teare:** No, it is a formal delegation. So whenever there is a change in an official in the Department, I would consider delegating functions to them and normally my own policy is that if they come into the Department and they are just learning the ropes, then the delegations they get initially would not be as extensive as the predecessor held. So they are just actually

learning and then when I or the Chief Executive feel comfortable with them, then yes, we will give a full delegation.

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Q492. Lord Lisvane: It does not matter what sort of administration we are talking about, the Treasury function has a longer reach than any other Department, and that is perhaps understandable. You are looking a little wryly at me! Do you agree with that?

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Hon. W E Teare: Some would say we are the spiders in the middle of the web.

Q493. Lord Lisvane: I understand but nevertheless, you have to concern yourself with the effectiveness and efficiency of all the other Government Departments and how they are spending taxpayers' money. Do you find that the lack of a single legal entity gets in the way of that?

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Hon. W E Teare: I think it does because there are too many compartmentalised Departments and I think really if we were able just to look across a single field as opposed to having separate plots, it would be much easier from our point of view. There have been occasions when we have asked Departments to reconsider something; it is because the Department has not considered the knock-on effects or the consequences to other Departments. 'It is alright for us, thank you very much,' but where are the ripples going to stop once that stone goes in the water?

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Q494. Lord Lisvane: It is about joined-up government.

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Hon. W E Teare: It is indeed.

Q495. Lord Lisvane: Given that individual departmental Ministers have considerable statutory and practical independence, how do you deal with that?

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Hon. W E Teare: If there is any dispute between Ministers we go to the Council of Ministers for, in effect, an overarching view to resolve any dispute. I cannot remember the last time it happened. Normally, we can sort our differences out at the first stage.

In this last Budget session we have had some lively debates, but at the end of the day we have reached an amicable compromise and moved on.

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Q496. Lord Lisvane: And that is a compromise which is not a lowest common denominator, but a constructive one?

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Hon. W E Teare: I do not accept the lowest common denominator; I set my standards higher.

Q497. Lord Lisvane: Do Council of Ministers' committees play a role in that as a means of co-ordinating the executive function?

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Hon. W E Teare: They do. If you take the National Strategy Group, for example, that in effect sets overarching policies and also, from time to time, there will be unexpected issues arising, so how do we deal with those as well, especially on the international front? So it does help to bring the organisation together but there is a lot more that could be done if we worked on this single legal entity.

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Q498. Lord Lisvane: How far off do you think that is? Presumably it is going to be for the next mandate now?

7355 **Hon. W E Teare:** It will be in the next House now. It will involve primary legislation, I would imagine, so yes it will be at least 12, possibly 18 months, I would think.

Q499. Lord Lisvane: Is there a general will to achieve that?

7360 **Hon. W E Teare:** There is a general will in the Council of Ministers, but there are always unintentional consequences because you are going to finish up with a Chief Minister and two, possibly three, very powerful Ministers. So, in effect, you would have divisions of Ministers and I really do not think that is appropriate. At the moment we are really all equals and the Chief Minister is the leader.

7365 **Q500. Lord Lisvane:** So the tactic might be to get general agreement on a direction of travel towards a single legal entity before Ministers in the next House have a chance to mark out their fiefdoms?

7370 **Hon. W E Teare:** I would say that is up to them really. I would not want to prejudge!

Q501. Lord Lisvane: No, suck it and see.

7375 One thing which is a little bit puzzling, but in a sense it is an inevitable concomitant of not having a party system, is that you do not know what sort of platform an aspirant Chief Minister at the start of a mandate is going to go for until you see his statement upon which he hopes to be elected.

7380 I can understand that people who know Mr X will say, 'Well, I know what his priorities are. I know what sort of thing is going to be in the statement,' but he then has to form an administration on the basis of the statement that he has made about his intentions, once he is elected. Is there a difficulty then in not having a collective statement on what the administration is going to try to achieve and what its priorities are?

7385 **Hon. W E Teare:** The person who drafts the prospectus to be Chief Minister is not Chief Minister until that is accepted by Tynwald. So once you are approached by the Chief Minister to join his administration, by implication, I feel, you sign up to that mandate and you help the Chief Minister to deliver what he or she has put in the prospectus.

That is your starting point. There will be occasions as the administration progresses where you will meet unexpected issues, and that might blow you off course, but nevertheless that is your starting point.

7390 **Q502. Lord Lisvane:** Yes and of course the unexpected issues are like death and taxes: they will always be there.

7395 **Hon. W E Teare:** They are, and it has been particularly tiring over the last five years. I have never seen anything like it.

Q503. Lord Lisvane: The lack of VAT, I guess, has been one of the biggest – particularly for you?

7400 **Hon. W E Teare:** It has taken a lot of my time and my officers' time as well.

7405 **Q504. Lord Lisvane:** Would there be any merit in having a second stage once the Chief Minister has been elected on that manifesto given to his colleagues, once he has formed an administration, taking into account what the particular priorities of the people he has asked to join him in the Council of Ministers, then having some sort of parliamentary shop window of a statement about, 'This is what we are going to try to achieve,' other things being equal – you

cannot predict the unpredictable, by definition – but nevertheless something which was then capable of endorsement by Tynwald?

7410 **Hon. W E Teare:** That was the system up until about a decade ago and the debates were inconclusive at times. But in principle, yes, it does have merit because you can have a clear line of sight about what we propose and what we are trying to do, and that is what we have done this year in the Budget process. We are now streamlining our financial reporting so the Budget says what we are setting out to achieve and then the financial reports, the year-end accounts will actually highlight what has been achieved, so people will be easily able to compare between the two.

7415 **Q505. Lord Lisvane:** Does PAC look at outcomes in that way?

Hon. W E Teare: PAC looks at anything that has been referred to them.
7420 The PAC gets copies of what used to be called the Internal Audit reports, internal audit of the function of Treasury – it is called Assurance Advisory now. They get copies of all reports and any issues that are raised, the PAC have got the *vires* to go in and conduct an investigation if they feel it appropriate.

7425 **Q506. Lord Lisvane:** Who are your external auditors?

Hon. W E Teare: KPMG.

Q507. Lord Lisvane: Has that been the case for some time?

7430 **Hon. W E Teare:** It has been the case for some time, although we do get advice from other firms of auditors as well. We have currently got PwC in helping us with our financial reporting, and we have had Deloitte's in about 12 months ago as well, just having a look at how we construct our accounts.

7435 **Q508. Lord Lisvane:** Do you have any connection with the UK National Audit Office?

Hon. W E Teare: No, we do not, although our assurance advisory officials do take part, with their counterparts, in conferences in the UK and that keeps them up to speed.

7440 **Q509. Lord Lisvane:** Yes, I am aware of that sort of collective. But do you find that KPMG and PwC have sufficient experience in, in effect, Government accounting?

7445 **Hon. W E Teare:** Yes, I meet them on a regular basis and I used to meet auditors in my previous life, so I have got no difficulties at all with them. They are competent. They do pick up the issues as we go through. So I feel that they are certainly up to speed.

Q510. Lord Lisvane: We both understand from our previous lives how important it is to have a good relationship with auditors.

7450 **Hon. W E Teare:** But not too cosy!

Q511. Lord Lisvane: Not too cosy!
7455 You said PAC deal with things that are referred to them. Does that mean to say they are not self-starting?

7460 **Hon. W E Teare:** No, sorry they can self-start as well because if, for example, a motion is taken to Tynwald, the PAC might have a look at what actually transpired in the fullness of time – ‘That is what you proposed, how did it work out?’ But, in fairness to the PAC, Government is a big organisation and there is a lot of work going on, so there is a lot that could well cross their desks and then they have to make the difficult decision of which one do we pick.

7465 **Q512. Lord Lisvane:** They do not have a third party help in doing that? Again, I do not want to draw parallels too closely; I am mindful that the House of Commons Public Accounts Committee is driven by the work of the National Audit Office and that means that target acquisition is much easier.

7470 **Hon. W E Teare:** Yes, there might be an argument that there should be professional expertise on board, but they do have the option, as I understand it, to seek external advice if they feel it necessary.

Q513. Lord Lisvane: Can you say something about the budgetary process and how satisfactory or otherwise you find it?

7475 **Hon. W E Teare:** We have already started preliminary work on our Budgets which the Treasury Minister will present to Tynwald in February next year. We get bids in from Departments for funding; it will be for funding for existing activities and they will come to us as well for funding for new activities, extension of services. But the first thing we do is we send out, in effect, an indication as to whether there is any extra money on the table or whether we are taking money off the table.

7480 So we try to manage expectations right at the start because we do not want to waste people's time. Then, with that, over the summer my officials meet with officials of Departments and there is a winnowing process and a bidding process, then normally in October will go to the Council of Ministers with an indicative Budget – I think is the best way of putting it. Treasury does not allocate resources *per se*; we act on the instructions of the Council of Ministers. So the Council of Ministers will agree amongst themselves what the priority should be and then we will reflect that privatisation in the Budget.

7485 So by the second week in December it is virtually set in concrete. Towards the end of December or very early January I will get final sign-off from the Council of Ministers. It then goes for printing and about three weeks before the Budget I will brief Tynwald Members privately; and on the Monday – the day before the Budget is actually presented properly – I will brief the media, and then it is all hands to the pumps.

7490 **Q514. Lord Lisvane:** What about the parliamentary process which then follows? Can you describe that and how effective you think it is?

7500 **Hon. W E Teare:** I think really the difficulty is people want spending on their particular interest, but there is a reluctance to identify areas where we should stop spending to make provision for that. They are the difficult decisions that those in Government have to make. We cannot be all things to all people.

Q515. Lord Lisvane: But in a sense you are aware of some of those pressures and you can get on the front foot in terms of accommodating them or at least explaining why they cannot be accommodated?

7505 **Hon. W E Teare:** Yes, we need to understand that there are two words in the English language: the first is ‘yes’ and the other one is ‘no’, and we should use ‘no’.

Q516. Lord Lisvane: In terms of budgetary approval, that is by Tynwald as a whole, is it not?

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Hon. W E Teare: That is by Tynwald and we report our annual accounts to Tynwald normally in July each year. There are two financial documents presented to Tynwald: there is the Light Blue Book and the Dark Blue Book. One gives the detailed information and the other one is the statutory accounts.

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Q517. Lord Lisvane: But is there a split between supply and appropriation? Estimates and appropriation accounts? I think you have just been describing appropriation accounts and the outcomes.

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Hon. W E Teare: Yes, basically what I am trying to encourage in Departments is: just because you have a budget does not mean to say you have to spend it all. I have had problems in the past where some sections seem to regard a budget as a floor rather than a ceiling.

Q518. Lord Lisvane: Do you have strict annuality or is there any element of carry-over?

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Hon. W E Teare: There is a bit of an element of carry-over, yes.

Q419. Lord Lisvane: What is the percentage?

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Hon. W E Teare: We are not that hidebound. If somebody has made a commitment and the funding of that commitment goes over the end of the financial year, then we will allow that carry forward.

So what we try to avoid is the so-called 'mad March spend' where people say, 'I have got this money; I have got to do something with it because if we do not use all our budget, next year we are going to get less.'

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Q520. Lord Lisvane: Is there a distinction though between carry-over and making an allocation for the second year of a three-year or five-year plan?

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Hon. W E Teare: Not really because the carryover, we will regard that as a separate issue.

Q521. Lord Lisvane: It is money already voted, in effect?

Hon. W E Teare: It is money already voted, yes.

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Q522. Lord Lisvane: So it will not be covered by the financial plans for year 2?

Hon. W E Teare: No, it will not. It is taken as a separate issue.

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Q523. Lord Lisvane: That is very interesting.
In a typical year, what sort of percentage of total spend would that cover?

Hon. W E Teare: It is only quite modest.

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Q524. Lord Lisvane: Five per cent?

Hon. W E Teare: I would say it is probably less than that, because if you have a look at our total spend, it is £955 million; it is certainly not £45 million or £47 million. We allow carry-on – I would say it is £10 million, maybe £15 million, but nothing more than that.

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Q525. Lord Lisvane: That is very low.

In terms of the way in which the Budget is considered by Tynwald, my understanding is that it is an all or nothing vote: either you approve the Budget or you do not approve the Budget. Is that right?

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Hon. W E Teare: It is, and could I say that if they cherry picked the little bits that they liked then how would we actually finish up with a financial motion? How would we know what the actual final spending pattern would be? Because it could actually lead to the law of unintended consequences. You want more money spending here, but as I said before, you are not prepared to reduce expenditure elsewhere.

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Q526. Lord Lisvane: The argument against that, in terms of the way the system works, is of course that you would have a rule that any amendment had to be fiscally neutral.

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Hon. W E Teare: I would be quite happy with that because it would then put them in the same position as I am in. *(Laughter)*

Q527. Lord Lisvane: Would you contemplate, with equanimity, a system where the Budget could be amended in that way?

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Hon. W E Teare: It would not give me any difficulties at all. Okay, it would be an interesting debate; it would be interesting to see them come forward and adduce their own ideas, but then I think there would be some reluctance to identify where the money could be found from.

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Q528. Lord Lisvane: But, as you say, they would end up with a much better understanding of some of the challenges you have to deal with.

Hon. W E Teare: If I could use a colloquialism, it would contaminate them with the decision.

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Q529. Lord Lisvane: Complicity can be a very useful political weapon.

Hon. W E Teare: It can. We'll all hang together, you mean?

Q530. Lord Lisvane: Exactly.

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Let me turn to scrutiny. How far do you think you are challenged in both the budgetary process and the work of your Department?

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Hon. W E Teare: The challenge tends to be in the detail, rather than the overarching principles and I would like to see more challenge at the higher level as opposed to the minutiae, because nothing is achievable unless we get the higher level right.

Q531. Lord Lisvane: Is there a mechanism for doing that?

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Hon. W E Teare: There is a mechanism through policy debates, there is a mechanism through questions in the House. Questions should not really initiate a policy debate, but they can be useful in opening up policy issues and inconsistencies from time to time.

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Q532. Lord Lisvane: But in a sense that can be a rather sporadic or episodic way of engaging with the way you are discharging your departmental responsibilities. Do you have sustained and consistent scrutiny via a committee?

7615 **Hon. W E Teare:** Yes, we have the Economic Policy Review Committee. They call us in to give evidence. We go in, I think it is every six months – I have just actually seen them – and then if they want to see us on an *ad hoc* basis, then I am quite comfortable with that. So it is myself and my Chief Financial Officer who would appear before the Economic Scrutiny Committee. That is one of three committees which was set up at the end of the last administration.

7620 So I think that does work well. It has brought more rigour to it and there is more focus as well, because you have got individual Tynwald Members who concentrate on a particular area, so they develop expertise in that particular area over a period of time.

Q533. Lord Lisvane: Strictly speaking, the Standing Orders that govern the operation of those committees talk about examining policies once they have been implemented, but they range a little more widely than that, presumably?

7625 **Hon. W E Teare:** They do because they actually question you about what you have done and also potential emerging policy as well.

Q534. Lord Lisvane: Do you find that is constructive?

7630 **Hon. W E Teare:** I find it is very constructive.

Q535. Lord Lisvane: Not adversarial?

7635 **Hon. W E Teare:** No, far from it. The Economic Policy Committee, with Mr Coleman – he is one of the people whom I am always nervous when they get on their feet to ask a question; you know there is something coming which you may not have anticipated. The President of Tynwald, when she was a Member of the Legislative Council, was exactly the same: when she got on her feet you knew that the knockout punch was not very far off.

7640 **Q536. Lord Lisvane:** On a completely different tack, financial again, but do you think it is appropriate that emoluments are decided by a Standing Committee of Tynwald? I understand that pay is pegged to a Civil Service salary point.

7645 **Hon. W E Teare:** I have not given it any thought whatsoever. It is a very controversial issue. For some people the pay is a lot, for others it is less than they were getting in their previous role.

7650 So overall I do not think the pay and the responsibility is going to be attractive to get the people that we need going forward. It is very demanding. You do not get a great deal of credit for it and it has got very toxic over the last decade as well. When I first came in I was criticised for my policies; now it is very much personality driven. And you have got social media as well; people hiding behind pseudonyms, who are very personal, putting it politely.

Q537. Lord Lisvane: Do you see any prospect of reversing that trend?

7655 **Hon. W E Teare:** Not really. In fact it is accelerating and I think that is going to impact upon democracy in the fullness of time.

My own view is, if you think you can do any better, there is a General Election coming; stand!

7660 **Q538. Lord Lisvane:** Can I finish because we are beginning to run out of time, but I want to give you an opportunity to raise any matters that we have not covered, but my last question is: why do you think there are so few women in Tynwald?

Hon. W E Teare: Let us go back to the personality bashing. It is very aggressive and there is no need for it.

Q539. Lord Lisvane: From outside, do you mean, or from within the institution?

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Hon. W E Teare: Both. It is very febrile at times. I was criticised by my wife, actually, for how I was dealing with Questions; she said, 'You are too aggressive,' so I said, 'Am I?' She said, 'Yes, you are too aggressive. You ought to listen to yourself.' Politicians are not very good ... they do not realise that there is a receive mode as well as transmit. So I backed off and I have got a different, more conciliatory approach now, with a question – 'Oh, yes that is a good idea. Would you bring me the information on it and I will have a look at it.'

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Q540. Lord Lisvane: Have you felt that your standard-bearing on this has been appreciated?

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Hon. W E Teare: No, I do not, but it has been more effective.

Q541. Lord Lisvane: Yes. As Churchill once said, 'If you have to kill a man, it costs nothing to be polite!' (*Laughter*)

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Hon. W E Teare: Smile when you are doing it!

Q542. Lord Lisvane: Is there anything that we have not covered that you would like to raise?

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Hon. W E Teare: No, thanks very much, because basically ...
Oh, there is just one thing. There was a question raised about the participation of the Bishop in the Council and I think that is valuable. Certainly the Bishops I have seen there, they do not talk very often but when they do it is very valuable and they have not got a constituency, have not got an axe to grind and I do think that they bring a lot to the table, especially as they do not cost us any money either! (*Laughter*)

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Lord Lisvane: That is well said from a Treasury Minister!
I had the pleasure of taking evidence from the Bishop on Monday, so your point is very well taken.

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Hon. W E Teare: Thank you very much.

Lord Lisvane: Thank you very much, indeed.

Hon. W E Teare: Thank you for your time.

*The hearing was suspended at 10.12 a.m.
and resumed at 10.15 a.m.*

**EVIDENCE OF
Mr Christopher R Robertshaw MHK,
Member for Douglas East**

7700

Q543. Lord Lisvane: Good morning, Mr Robertshaw. Thank you very much for sparing the time to come and talk to me. I hope this informal conversational style will suit you; it certainly suits me.

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Just to make some things clear about the process, our conversation is being livestreamed and the *Hansard* record, when that has been finalised, will be put up on the Tynwald web pages. We have got until about 11 o'clock, if that suits you.

Thank you very much indeed for your memorandum and for the pieces from the *Manx Examiner*. I think, strictly speaking, the structure of Government *per se* is outside my terms of reference, but of course anything which changes in Government may have a knock-on effect as to how Tynwald operates and how Tynwald assesses the processes of Government and scrutinises it.

Mr Robertshaw: Indeed, and I appreciate that to be the case, but I thought it was important that my contribution – and obviously you are receiving a considerable number of contributions – should be one more holistic, which looked beyond your remit and then came back into it. I would argue that there are certain dangers – and I do not mean this in terms of your particular concerns, but myopic; everything actually fits together in a small community of only 85,000 – in that the knock-on effects are very considerable.

Where I would like to start, if I may, is the very, very big picture, which is the circumstances which the Isle of Man finds itself in. Those are very simple, very specific and very clear, but difficult to deal with, and that is that we must retain low taxation and yet have a society which, quite understandably and rightly, demands high levels of service. It is being able to put those two things together that is an extraordinary challenge that I am not sure yet any jurisdiction has managed to fully deal with. We have to, because if we allow ourselves to move towards passing out ever-higher charges to the general public, in taxation or whatever, then that will impact upon our wellbeing as an economy. If we limit the services on the other side, then that will get a pretty strong reaction as well.

So there is a very specific challenge that we now have. It was not evident until after the VAT issue came to a head, because we were languishing in significant sums of money, and it has led us a little complacently towards the wrong structure of Government. What we need to do is what we have said we should do; it is delivering it that is the issue. What we have said is that we need a single legal entity. We have also said that we need to embrace digital inclusion, and these are very important subjects. There is a reticence to move away from our departmentalised silo system, but we must do it in relationship to digital inclusion, because what we have inherited effectively is a system of government which is more suitable for a much larger jurisdiction than us but which cannot see the individual citizen. One Department can see one aspect of a person's life and another Department another, but if we are going to be able to hone efficiently delivery of services, we must learn to see the individual holistically as an individual, as a whole, and be able to refine our services to that person. That means that we omit inefficiencies, unnecessary overspending. Our allocation of funding is very much borne out of the post-war system of clunky allocations: you have an entitlement here –

Q544. Lord Lisvane: Block grants?

Mr Robertshaw: Yes. You have an entitlement there. Whether that particular person needs those services or allocations is almost immaterial; you fit those criteria. But equally there are citizens who do not sit within those criteria, who actually need support but the Government cannot see because they cannot see the individual. It brings that other point into play, which the administration quite rightly addresses, and that is the issue of vulnerability. We need to be able to address the vulnerable, and I have consistently said in this administration that we cannot see the vulnerable because we cannot see the needs of an individual.

I learnt this particularly when I was Minister for Social Care. I became, very quickly, very exasperated with an organisation and a system which was not functioning the way I tried to function when I was in the private sector. I had three key criteria when I was in the private sector: the efficiency of my business, its productivity and the service of the customer. After nine weeks in the job of Minister for Social Care I got the senior staff together and I said, 'I have attended all these meetings, I have listened to everything everybody has had to say, but we are not functioning properly.' They said, 'Well, Minister, what do you mean?' I said that those three

7760 things that I have just mentioned to you must be key priorities for us: ‘I have heard all sorts of
 things about dissatisfaction with budgeting from the Treasury or tensions between Departments
 or tensions within divisions of Departments or individuals causing difficulties. How often have
 we talked about efficiency, how often have we talked about productivity and how often have we
 actually talked about the individual?’ I said, ‘Actually, I can tell you: not at all.’ So we then tried
 to start changing things. I think the Chief Minister recognised that I am a reformer by nature, by
 7765 instinct, and brought me into the centre, but then it did not take me long to appreciate that we
 were in the wrong place, and much of my time since then has been addressing what is it that we
 need to do.

So that was the generation of those four articles, which I hope you have had the chance to
 skim-read, perhaps – I do not know.

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Q545. Lord Lisvane: I have read them extremely thoroughly. I was just going to ask you about
 the first of them.

Mr Robertshaw: Would you like to do that now?

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Q546. Lord Lisvane: Well, in the first of those articles you talk about the silo effect, which a
 lot of people have mentioned to me, the over-focus of Ministers on their Department, and you
 also are quite stern about departmental chief executive officers having – you do not use the
 word, but nevertheless I think this is what you mean – a bit of a cushy time.

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Mr Robertshaw: They would not believe it was a cushy time, but the nature of their function
 within a silo must be to protect that organisation, and there is no incentive or desire for them to
 want to say, ‘Well, no, this isn’t the right way.’

I need to explain something to you. Why digital inclusion and single legal entity sit so closely
 7785 together is that, whilst that is the case, data protection interrupts the ability of Government to
 identify an individual. I am sure you are aware of the work Estonia has done in this regard,
 where I think the state has a requirement to collect data but once and thereafter that data
 belongs to the individual. The individual can access services through passwords etc., but they
 can also access that data so that the individual knows who has been looking at their information
 7790 and why. That is where we need to go to, because ... and this was another problem that I came
 across very quickly when I was in the centre as Minister for Policy and Reform. I said within four
 weeks of going into the job, ‘I cannot do this,’ and they said, ‘Minister, why?’ I said, ‘Well, there
 is no data.’ It is no good sitting round a table as a group of people and developing a group think
 attitude or coming up with ideas. What we need in the centre is socioeconomic modelling data
 7795 that will assist us in arriving at those decisions, and that information is not there – the centre
 exists in a vacuum – and I said we need that. But the point about migrating – this is important –
 to individual records for each citizen is effectively that you can take that, anonymise it,
 aggregate it and provide brilliant modelling to a standard that almost any other jurisdiction
 would give its eye teeth for, really, because we are so small.

We are – we should be – what the future of good government should be about, because I
 7800 look at other jurisdictions and they are struggling with the size of ... In the UK there is this
 constant process of trying to go down to localism. We can actually do it here, but we are still
 following the UK clunky model of departments. So, if you have a single database for an individual
 and, obviously, all sorts of controls over how that is dealt with –

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Q547. Lord Lisvane: And, as in Estonia, an absolute right to inspect and amend your data.

Mr Robertshaw: Exactly, and when I first came to the conclusion this is where we needed to
 go, I spoke to what is now our Information Commissioner and I said to him, ‘Ian, why aren’t we

7810 going in this direction? Is this the right thing to do? Would you object?’ and he said, ‘Well, it’s about time somebody said that to me, because it is the right way.’

7815 So, we start to migrate towards the little paper I gave you, called ‘Options for further reform’. What we need to do is recognise that we move to the single legal entity for the reasons that I have described about allowing data to exist in one place, and then we need to build back so the Government becomes sensitive to the individual citizen. So instead of being an organisation that deals in clunky areas, we are dealing with individual citizens, which is again a wonderful opportunity we have got, considering the size of our population. Again, none of that which I am putting forward here is brand new. Various jurisdictions are doing various bits of it quite successfully.

7820 **Q548. Lord Lisvane:** Although data protection and data sharing are always going to be a difficulty.

7825 **Mr Robertshaw:** No, it is not going to be, because if the citizen owns the data, how can there be a data protection –

Q549. Lord Lisvane: No, you misunderstand me. In other jurisdictions, where you use a top-down approach –

7830 **Mr Robertshaw:** Oh, it is hopeless.

Q550. Lord Lisvane: Exactly, and that is where data sharing and data protection become obstacles (**Mr Robertshaw:** Indeed.) to the effective use of data.

7835 **Mr Robertshaw:** Absolutely, but it does something else, and this is really crucial. Because different Departments of Government have to maintain their element – this Department may know about your left arm, the next one your right knee; I am being silly, but you know what I mean – they cannot see the whole individual, but they need to run separate databases in order to function in their organisation, which means we have this colossal administration continually and repetitively receiving the same information in a whole load of areas. So every time a citizen on the Isle of Man gives information yet again to a Department the taxpayer is paying for that. So not only do we have the completely unnecessary ensemble of Departments, but we have beneath it a big bureaucratic structure trying to deal with a system which does not deal with the true needs of the citizen. And one of the great concerns, I would argue, for some citizens is that they just do not understand the complexity of Government or how to make it work for them.

7840 I conducted something called a Big Debate some time back, which enjoyed a certain amount of criticism but it talked about how we needed to reverse the process and the citizen needed to be at the top of the pyramid rather than struggling at the bottom trying to co-ordinate all these difficulties. But if you consolidate down around the key areas – and other jurisdictions are doing this – around people, around infrastructure and environment and around the economy, you have got three policy ‘hooks’, as I would call them, and that is the way to build it up, because if you consolidate the concerns of the individual citizen within one policy hub, then, from what I have said before, you can begin to understand how sophisticated our assessments of need can become. But as it grows in competence – and it would take a number of years to do it – it would mean also that we could personalise issues to a much greater extent than we are in terms of means testing and needs testing. That would help not only to diminish the outlay of unnecessary cost on needs – in other words, not allocate funds to people who do not need them but because they sit in that category; it also means that in certain areas we could address means testing, where, for example, somebody like me, who has a business, who is paid as a politician, who has 7855 a pension – and yet when I go to get a prescription I get it free. We spend £20 million, thereabouts, on prescriptions and recover, I think, less than £1 million, and that is ridiculous. But 7860

7865 it is no good creating crude categories; you need to put people into groupings. Some people should get prescriptions free; others should pay a small charge; other people, like me, should pay a little bit more. You begin then to change everything because you know the individual citizen.

7870 So you would have senior Ministers responsible for leading their policy hubs, and then that would be co-ordinated by the Cabinet Office and Treasury – Treasury from the budgetary side; Cabinet Office from the policy co-ordination side, and a lot of the work would happen in the subcommittees. The exasperating thing is that we have gone so far down the road to these things. We have said we need single legal entity, we have said we need digital inclusion, we have created the three subcommittees of Government in accordance with this, but we have not enacted them because ... They have not come alive, because the authority still lies in the individual Department.

7875 Equally and conversely, on the other side, I was a member of the committee that first created the parliamentary review committees – in 2011, I think they came in.

Q551. Lord Lisvane: The three?

7880 **Mr Robertshaw:** The three, yes, and they mirror the three Council subcommittees, but they have been brought ... Life has not been breathed or pushed into them; the oxygen is not there. So they exist, but they have not come to life. And I think some of the fears that exist in the parliament about this are Members feeling, 'Oh, well, gosh, I know where we are now, I understand the ministerial system and I understand how delegated membership works; but, ooh, the single legal entity – what happens there?'

7885 So that was why this Options paper was produced, because it redefines people's roles and is, I would argue, actually very exciting, because what we have got are inadequacies in the way things work. First of all, we have got the Council of Ministers there, and backbenchers almost, as it were, the opposition. Then you have got review committees which exist but can only look at historical policy. If I were a Minister of a policy hub I would be very anxious to know that one of the ways to avoid group think would be to ensure that I was giving the review committee opportunity to live-consider developing policy.

7890 **Q552. Lord Lisvane:** Can I just stop you there, because it is a point I have put to a number of witnesses: when I looked at the Standing Orders as they apply to the Policy Review Committees, I was struck by the fact that they place them very clearly in the past – they say that they should examine policies that have been implemented. But I have been told by a number of people that that may be what it says in the Standing Orders but in fact they are a lot more assertive in moving into current issues.

7900 **Mr Robertshaw:** I think that is true, but the green light has not yet occurred and I think we need to be very specific about this, that a review body, a review committee, must be ... Because we have not got a party system we need that other view, that other perspective, that other examination of developing policy that we have not got.

7905 **Q553. Lord Lisvane:** And that, your 'Options for further reform' paper clearly is intended to address, because you reduce the involvement of Members as affiliated members of Departments.

7910 **Mr Robertshaw:** Yes, I have never been comfortable about delegations in the way it works. In fact, when I came in I said, 'I don't want to do that.'

Q554. Lord Lisvane: You didn't want to have others associated with your Department?

7915 **Mr Robertshaw:** No. When I came in as a backbencher I was offered a delegated role. I said, 'No, I don't want to do it. I don't believe in it.' I think it is just dishing out jobs and money.

Lord Lisvane: Well, that is a –

7920 **Mr Robertshaw:** Well, no, it is part of it. Let's be mercenary for a minute.

Q555. Lord Lisvane: It is a point I have put to a number of witnesses. But equally I have had Ministers and ex-Ministers – let me take your view on this – say, 'Oh, well, the scope of my Department, the breadth of its responsibilities, is so great that I couldn't possibly deal with them all myself, so I need to have these departmental Members who take responsibility for particular areas.' I have to say I have not found that very convincing.

7930 **Mr Robertshaw:** Nor should you, sir. Just compare us to, shall we say, a local authority with maybe three or four times the population and, once you extricate things like the health budget etc., a budget maybe not dissimilar to ours. They have one chief executive, a clear line in terms of policy development from their council, and then beneath that you have divisional leads who collaboratively have to follow the policy overarching directive. We get lost sometimes in unnecessary detail, which to some extent answers your question.

7935 I am going to be slightly arrogant here, but it is the truth. When I first joined the Council of Ministers – I do not know whether Michelle was there or not at the time – within three months I said, 'This is dysfunctional.' And they said: 'Who's this new Minister?' and 'Well, why?' And the phrase I use is quite colourful: policies were emerging at the Council of Ministers' level like unexpected pregnancies that we suddenly had to deal with, because they were coming this way, rather than collectively the Council of Ministers saying, 'What is it that we are going to achieve in these next five years that will resonate with those who have put us into power?'

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Q556. Lord Lisvane: And making the sub-policies subservient.

7945 **Mr Robertshaw:** Precisely. And that is why the subcommittees must be given life and oxygen, because what needs to happen is that senior group, as I have defined in the Options paper, need to articulate the big-ticket issues: 'Don't get lost in detail – understand what the big things, the strategic issues that you are trying to achieve are.' Then you allocate to the much more powerful subcommittees how to enable and to deliver that policy. That is then taken back to the Council, who already know that they have asked for it to be looked at. So there is a clarity there, but also, particularly in the people policy hub, that must be done horizontally as well as vertically, because what often happens in the current system is a policy finds its way up through to the top, emerges, as I said, like an unexpected pregnancy, only to find later on that somewhere it conflicts with something else because the work horizontally was not done.

7950 Then again, coming back to the point we were discussing a few moments ago, the review committees must be much more enabled, should be a much more interesting job than just being a critic of what has been.

7955 If, for example, for the sake for argument here, I was the chair of a review committee, I would be wanting to contribute positively as well as being a critic, and I would want to say, okay, I understand the Council of Ministers have said to this subcommittee, 'These are the areas we want you to look at and establish and develop ideas and policies.' The review committee might well want to say, 'Okay, we'll analyse that, look at it. We might decide we think they have dealt with this and this and this very well, but maybe they should be considering it; maybe we should be considering it.' So there should be an interaction between the Review Committee and the actual subcommittee of the Council of Ministers.

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7965 **Q557. Lord Lisvane:** And presumably – forgive me for interrupting – there would be the additional advantage that this would be happening in public, rather than behind the doors of a particular Department.

7970 **Mr Robertshaw:** Absolutely, and altogether the quality of the data ... We sort of make policies in mid-air, really, almost like guesswork. As you create this increased and much improved database, an understanding of what we need to do in the socioeconomic modelling, it starts to more and more carefully define what it is that we need to do effectively and productively. That is the sort of environment, that efficiency. I think I put in one of my papers that Baroness Martha Lane Fox –

7975 **Q558. Lord Lisvane:** Martha Lane Fox, indeed. I should perhaps sort of declare an interest in that I have taken the opportunity of discussing these issues with her.

7980 **Mr Robertshaw:** She is one of my heroines, actually. I love the phrase she uses: taking cash from the cold hand of administration and delivering it to –

Lord Lisvane: The warm hand –

7985 **Mr Robertshaw:** Of teachers and nurses, yes. And we are in great danger at the moment – and this is no disrespect to Mr Teare at all; it is a system he has to work within – where we are driving things by budget control rather than policy-driven processes which respond proactively to the needs of the citizen. We have got it back to front.

7990 **Q559. Lord Lisvane:** And, presumably, as long as you have something which has got a silo characteristic about it –

Mr Robertshaw: That will remain.

7995 **Q560. Lord Lisvane:** Exactly, and not only that but you will have no control over bright ideas making their way up, becoming policy proposals, cluttering the overall agenda (**Mr Robertshaw:** Precisely.) and making prioritisation very difficult.

8000 **Mr Robertshaw:** Exactly. One of the things that I do not cover in the policy options paper is the importance that must be attached to both the subcommittees on the executive side and the review committees on the parliamentary side having the opportunity to suck in more advice and guidance from a panoply of talent that exists on the Island. What we tend to do – if I can bore you with this, and I am sure you are already aware of it – is we arrive at a policy and then put out a consultation, but it is defined already. What we need to do is absorb more guidance and ideas and thoughts at the subcommittee and review body level, so that the community is much more involved. It is not an easy matter, because you are going to get conflicts of interest there that both the subcommittees and the parliamentary review bodies are going to find it difficult to deal with, and that is why it is not in at this stage, but I do see that Review Committees and subcommittees should have the opportunity to have a seat there and to draw people in much more readily, to examine their thoughts, than we do at the moment. We seem, at the moment, to act too much in a bubble and then rely on the consultation afterwards. Again, I would say that is back to front.

8010 **Q561. Lord Lisvane:** You have set out a very compelling vision (**Mr Robertshaw:** Good!) (*Laughter*) of the broad sunlit uplands, but what are the chances of getting there, taking single legal entity perhaps as a lodestone?

Mr Robertshaw: I am asked that question quite regularly, and I have been accused of ‘the sunny uplands’ before, but let me put it another way: there is a certain imperative for driving this all forward, and that is that if we do not do it we do have increasingly serious problems.

8020 Let me take you back to my very first comment: how do you correlate a low taxation or competitive taxation environment, which we must be as our USP, with high-quality services? What is it that we must do to allow that to happen? If we continue to ... I will choose my words a little carefully here, I think – be diplomatic for a change! If we carry on going too slowly, then we are going to get to a point where the reserves have run out, and once your reserves have run
8025 out you are starting to seriously run out of options because you need to apply funding to invest in some of these new structures. For example – you will not, of course – if you examine my Budget speech, I talk about how the allocation of capital and funding allocation to digital inclusion is thoroughly inadequate. So we still have that opportunity, and it is going to be very much the job of the next administration to enact as much of this as possible. I do believe we will
8030 get single legal entity. The degree to which we get digital inclusion is ... Well, the jury is out on that, I think.

Q562. Lord Lisvane: May I just ask a question on digital inclusion: one of the possible disadvantages, or discouragements, is where the digital divide lies, and presumably it is a very
8035 small digital divide on the Island because of the nature of the population. We are talking about people who do not habitually use e-methods.

Mr Robertshaw: Precisely, and I think in my note to Michelle I did talk about the importance that exists in restructuring local government. What I have done here is learn from the Buurtzorg
8040 experience in Holland, where they had a pretty awful health and community service system, and in 2004 they said, ‘To hell with this, we’re going to change everything,’ and they introduced Buurtzorg, which is very much a technology-based system which puts responsibility for the well-being of a citizen very much in the hands of the professional, actually interacting with the client, patient, or whatever. It has been a huge success – and again Martha Lane Fox touched on this –
8045 where a few years ago they had grown to 6,500 staff and 40 administrators, but both the staff, the professionals, liked it because they were able to deliver the service immediately to their client. Without going through a myriad of management systems and hierarchies it happened and they were responsible for it and they were able to deal with that individual’s holistic needs along the lines I have spoken to you about earlier. The BBC were so enamoured with it a few months
8050 ago they actually covered it and they were getting reports from people saying, ‘We like this, we feel we’re getting good service from our government service providers.’

One of the things – and this comes to your point – that has come out of the Buurtzorg
8055 experience is that the right community size is something between 14,000 and 20,000. It sort of works when you consolidate your service delivery around that sort of community size, which is great for us because there are 80,000-odd of us. So what we need is to re-enable the local delivery of community services around four hubs – east, west, north and south – and we need one-stop shops in each of those regions so you are dispensing service to the front line. For those who are on the right side of the divide, who are enabled, they can access many of their services online; but for all of those people who are fearful, unable, uncomfortable or unhappy about
8060 using technology, there needs to be one point that they can go to. If it were you, for example, they would go to you as the one-stop shop and say ‘I cannot use technology, but I need ...’ You are trained to actually act as the intermediary for that person into those services. So it is no good having seven or eight Departments all sitting with their head offices and receptions in Douglas if somebody wants something in Port Erin and they do not know where to go or who to
8065 speak to, and then, ‘Oh, no, you’ve come to the wrong place.’ You know all this stuff. What they need to do is go to one person who can say ‘I can do it for you’ and it is done.

One of the things that will come out of ... I am slightly out of order here. I am chairing a Select Committee on the Jury System, and one of the things we are looking at and will come out, that

8070 we are examining at the moment, is the issue of a single identifying code for each individual citizen. We have not got that at the moment, and once you have got that ... You see other jurisdictions starting to move in that direction anyway, particularly the smaller ones.

Q563. Lord Lisvane: And the larger ones too: France, for example.

8075 **Mr Robertshaw:** Well, I am unaware of that, so you have got the advantage of me there.

Let me go back to my sunny uplands for a second. It is a wonderful opportunity for a community with its own parliamentary system, its own neo-independence and a small community to use technology in ways which enable a quality of service which thus far is unheard of – efficient, productive and customer sensitive – and it therefore means that we can apply the funding we get from the taxpayer much better than we do and remain low tax, high-quality service.

8080 One of the things I have not touched on in the Options paper is how the review bodies would be formed.

8085 **Q564. Lord Lisvane:** I wanted to take you there, in terms of parliamentary scrutiny and how effective it might be, and how it might actually be deployed. In your Options paper, really one of the themes is shifting parliamentary resources from Departments to the generality of the call to account and challenge function; so if you could enlarge on that, that would be very helpful.

8090 **Mr Robertshaw:** Yes, well, because in the Options paper, as you will have seen, most Members would either be a Minister or a spokesperson, or the Speaker or a Chair of one of the Review Committees ... Incidentally, can I just very quickly touch on the sequence of appointments? Has anybody touched on that so far?

8095 **Q565. Lord Lisvane:** No, carry on.

Mr Robertshaw: Quickly, then, when the Chief Minister is elected by the Court, the next thing that happens is ... Well, the Speaker is first, then there is the Chief Minister. Obviously the Speaker is first; otherwise you cannot function. Then you have got the Chief Minister. Then the Chief Minister selects his or her Ministers. Then there is a thing that happens where Members are allocated to Departments, and the leftovers, as it were almost, go to the Review Committees. I would argue that that is the wrong sequence. I would see it as something like the Speaker, the Chief Minister, the senior Ministers and then the Chairs of the Review Committees, because I would argue it is a much more important role. I would see those as very much being elected Members – that is the Chairs of the Review Committees.

Q566. Lord Lisvane: Elected Members – so, from the Keys, not LegCo?

8110 **Mr Robertshaw:** No, from Keys but supported by two Members from LegCo – so if there are four review committees you have got two to each of them – and then one other Member who is dealing, for example, on the review committee on the Environment and Infrastructure hub but in his executive work he is probably sitting in the Health and Wellbeing hub, so there is no conflict. So you would have around about four Members: one elected Chair, two Members from LegCo and another elected Member to balance things off.

8115 I am a supporter of LegCo in terms of that opportunity to think twice, and all the areas that such an organisation would grant, but I do not believe that unelected Members should sit in executive Departments with delegated powers. I do not see that. I think there is a much more interesting review and scrutiny job to be had in properly functioning review bodies. So LegCo then becomes second guessing, second thought and review. That is coherent.

8120 At the moment, I would put it to you, it is incoherent. It is almost like a me-too MHK. It does not need to be. I certainly do not think that LegCo should be popularly elected, because I think 24 Members is enough; but I do think we should have more powerful scrutiny, and that is where LegCo Members could play a very important role.

8125 **Q567. Lord Lisvane:** And presumably 24 elected Members is enough, but if you elected LegCo then you would have some sort of really not very profitable competition between elected Members.

8130 **Mr Robertshaw:** And I think you see that in other small jurisdictions where you have got too many Members and they are fighting for position. In this situation everybody has got an important role.

8135 **Q568. Lord Lisvane:** Can I move to legislative scrutiny from the sort of policy issues we have been discussing. How effective do you think legislative scrutiny is at the moment?

Mr Robertshaw: I would say it is very important, because in my experience I think – I would be very surprised if you have not heard this comment before – that to some extent there is a certain reliance on the part of the Keys for LegCo to scrutinise some of the finer detail.

8140 **Q569. Lord Lisvane:** I have heard that before.

Mr Robertshaw: Well, I support that view.

8145 **Q570. Lord Lisvane:** And is there an advantage in Bills that start in either House? Is there an advantage in Bills, like the Equality Bill at the moment, starting in LegCo?

Mr Robertshaw: I am ambivalent about that. I am comfortable with it. I do not think we need to be too prescriptive one way or the other. I am comfortable with it.

8150 **Q571. Lord Lisvane:** I am sorry I am dotting around, but going back to the issue of the Chief Minister and the Chief Minister's policy platform, one of the results or one of the concomitants of not having a party system is that there is necessarily no collective manifesto for numbers of candidates in a general election. So somebody who aspires to be Chief Minister will put forward his statement on which he offers himself for election as Chief Minister, but when he is elected
8155 he gathers his titular Ministers, however many they may be – either in your schema or as it is at the moment – and departmental Members then accrue to each individual Department. But would there be benefit – and I am thinking very much along the lines of the joined-up issues that you were putting to me earlier on – in then having some means whereby a programme for government is formally considered by Tynwald?

8160 **Mr Robertshaw:** After the election of the Chief Minister and the Ministers?

8165 **Q572. Lord Lisvane:** Yes, when they have had time to see, for example, how the collective may actually start to modify or moderate the Chief Minister's initial statement – because he is one individual.

8170 **Mr Robertshaw:** I think that would be helpful because it would give clarity and purpose and it would give the opportunity for the elected Members to sign up to and to amend and adjust it, to trim it. Rather than seeing it just being owned by the Council of Ministers, it could be then owned by the House as a whole, and so the purpose and dynamic for the following five years would be clear.

8175 **Q573. Lord Lisvane:** And I can see a logical symmetry because people have said to me that departmental Members are very important in getting Tynwald to own the programme, but if you reduce the number of departmental Members – and I think you make a very good case for doing that – a vote on the policy proposals would produce ownership in a different form, wouldn't it?

Mr Robertshaw: And I think that would be a healthy one.

8180 **Q574. Lord Lisvane:** Can I ask you a completely different question, which I have asked most witnesses: why are there not more women in Tynwald?

8185 **Mr Robertshaw:** Hard to say. To be honest, I do not think I can contribute anything more than that which Eddie said before – I happened to come in just towards the end. I do not think I can contribute to that. No, I cannot think of a good reason why it is not the case. It is unfortunate – it is very unfortunate. It is erring on the really uncomfortable now. I think you are aware of what we dealt with in Tynwald on Tuesday.

8190 **Lord Lisvane:** I was there for the whole of the proceedings.

Mr Robertshaw: The least said soonest mended, I think, there.

8195 **Q575. Lord Lisvane:** We are just about to run out of time. Is there anything that you want to say to me that you have not had the opportunity to do so?

8200 **Mr Robertshaw:** Just to emphasise the importance of seeing this four regional community governmental local hubs, and I think they are going to be crucially important as well in making the delivery of services right. I have taken us right from the concept of competitive-cost jurisdiction and high-quality services right through to the delivery. We do not pick on one particular element in isolation; we have to do everything. We migrate towards it. We see the picture, we see the model we are trying to get to and we migrate to it as best we can where we can.

8205 **Lord Lisvane:** Well, thank you very much indeed. I have much enjoyed our conversation and I am very grateful to you for sparing the time for it.

Mr Robertshaw: My pleasure, I have enjoyed it, and thank you for your time, sir.

*The hearing was suspended at 10.58 a.m.
and resumed at 11.02 a.m.*

EVIDENCE OF

**Mr R I S Phillips, Clerk of Tynwald and Secretary of the House of Keys,
Dr J D C King, Deputy Clerk of Tynwald and Clerk of the Legislative Council, and
Mrs J Corkish, Third Clerk**

Q576. The Chairman (Lord Lisvane): Welcome.

8210 I think you will be very familiar with the arrangements made for this conversation. Our proceedings are being live-streamed and the *Hansard* record, when it is finalised, will appear on the Tynwald webpages. This is a good opportunity for me to express my appreciation of the excellent job that *Hansard* is doing.

We have about an hour today, but a further session scheduled for 3rd June.

8215 I think we should probably start with a declaration of interest or at least of connection, because you, Mr Phillips, and I were colleagues in the service in the House of Commons for, if my calculation is correct, 27 years.

The Clerk: You have a good memory!

8220 **Q577. Lord Lisvane:** That actually may be a very good place to start.

What were your impressions, moving from a very large Parliament – 635 Members, when you left; 650 now; an even larger Upper House – to the Isle of Man? How have those initial impressions been borne out in this smaller and more focused jurisdiction?

8225 **The Clerk:** Thank you for that, Lord Lisvane. It is indeed a great pleasure to see you again and resume our rather long acquaintanceship.

8230 Before I go into that question, can I just introduce the two people I have brought along with me and explain why I have wingmen here. We are very much a team and, on my left, is Jonathan King who is the Deputy Clerk of Tynwald. He is also Deputy Secretary of the House of Keys. But he is, in his own right, Clerk of the Legislative Council.

8235 It may well be, without anticipating what you are going to ask us, that a lot of the questions are going to focus on his end of the structure, and I was very keen to give him as much rein as possible, so that he can explain to you how that particular part of the body works – which I do not fully understand myself. You will remember that, although we both worked in the House of Commons, we do not necessarily understand how the House of Lords works, although you now, of course, have changed sides, as it were. But you do not necessarily understand the other institution. I have never actually sat through a sitting of the Legislative Council, so there are things that he knows a lot more about than I do – many things, in fact, but the Legislative Council is one of them.

8240 On my right is Jo Corkish who is the Third Clerk of Tynwald, and she does have a good view of all the structure, but she has also worked for a year in the Civil Service and so she has, as it were, seen us from one group of consumers' point of view. She has an interesting point of view and I hope that she will share her views with us in the course of this hour.

8245 **Q578. Lord Lisvane:** That is very helpful. Do bring your colleagues in as you see fit, and I would expect them to self-start as appropriate.

8250 **The Clerk:** Oh, believe me, I expect them to as well! *(Laughter)* One of the joys of working with them is that they do interrupt me freely, a lot – and it is always worthwhile.

The Deputy Clerk: No, we do not! *(Laughter)*

8255 **The Clerk:** You started asking me about the difference between working in the House of Commons and that institution and where we are today. It has been enormously interesting, coming here, because most of the parliaments throughout the Commonwealth look to Westminster as a model and, to a greater or lesser extent, they may resemble Westminster. There is only one other House of Commons, of course, in Canada, but nonetheless, whatever the names, they do have a very strong emotional, historical, institutional link, which we foster and we see them grown. It is true to say now, isn't it, that Westminster learns from its colleagues in the Commonwealth as much as the other way round? **(Lord Lisvane: Emphatically.)** Absolutely, and it is a very strong set of links.

8260 But here it is totally different, although of course we are very fond of our friends in Westminster. It is not unique, but it is a very unusual thing to have a parliament in the Commonwealth that is so well established, that is so different in structure; the fundamentals are not the same.

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When one gives advice, one has to remember ... I have had to relearn an awful lot of things. It may be something like the fact that Tynwald is never dissolved, which is quite a substantial thing to remember. Only the House of Keys is dissolved, and that does have some interesting practical consequences. One can give examples – I will not go too far down that right now, but it is certainly something which has an impact.

8270 It has been a tremendous joy, as a clerkly practitioner, to relearn and look at things. It is a very good mirror to show that things do not have to be in one particular way.

Clearly, the big difference is size. This is quite a small jurisdiction: it is 85,000 people. It has got its own parliament, and it sets its own laws and its own taxes. It is more than just a local council. It is a country, but a very small one.

8275 It is not dominated by political parties, as Westminster is, as indeed most jurisdictions are throughout the world. The parliaments you and I have both visited, worked with, and so on, tend to be dominated by partisan politics and that is not the case here. I find that very refreshing. There are a number of interesting consequences of this: there are no whips. Now, you know and I know that the whips are a much-maligned group, but they are very useful in terms of getting the business through the House. Also, they are useful for administrators in terms of keeping things on a civilised level. We do not have that.

8280 There is no formal opposition. This is something which we may well explore a little bit more in detail. I tend to take a very rosy view of things, and it may be that Jo, who grew up on the Island, will take a different view – I do not know; I do not want to put words into her mouth.

8285 I think the fact that there is no formal opposition means that debate has a resonance that it does not have when you know that two or three particular parties have prepared views and you pretty well know what the speeches are going to be, and you know what the votes are going to be because everyone is whipped.

8290 One of the interesting aspects of our job is that we sit through debates where we do not know what the result is going to be necessarily. The Government does withdraw business because it cannot get the majority and sometimes it does lose the debate, and I mean that in the sense that we have seen debates change people's opinions so that actually a vote is won or lost according to a speech. That is enormously refreshing. It is very much coming back to basics from a clerkly point of view.

8295 I think those are the principal things that are different here that I wanted to focus on.

Q579. Lord Lisvane: That is very helpful, and if we broaden the issues into the advantages and disadvantages of bicameralism, tricameralism, perhaps indeed, your colleagues will contribute from their particular perspectives.

The Clerk: I hope I am going to encourage them by continuing just a little bit by saying that one thing that I am strongly attached to is the skeleton of how Tynwald operates in the sense that the structure we have now – where there is an overarching body: Tynwald, with two Branches, and the two Branches, the three bodies, have a complex relationship – works very well indeed.

8305 One of the things that I wanted to emphasise to you and I hope to people listening – in particular people off-Island – is that this is a system that works. It works very well indeed and any changes are an improvement to a properly functioning parliament, not a parliament that is not working well. I would like to emphasise that, because this is a jurisdiction with a very strong attachment to the rule of law and a very strong institutional and cultural respect for rules. So what we are looking at is something that actually I think is very effective.

8310 I hope that, when you come to write your report, you appreciate the ingenuity of the tricameral model. No-one else has got it in quite the same way, I realise that, but that does not mean it is not a good idea. It has got the virtue that it has got strong historical roots, which is quite important in parliamentary terms. We should not be the prisoners of history, but we are

emotional as well as rational beings and for a political system to work it has to resonate in the heart as well as the head.

8320 I think, therefore, any departure from that traditional, very strong, uniquely Manx structure would need to be examined very carefully before one took that step, and the benefits would have to be substantial.

Q580. Lord Lisvane: While preserving, as you say, the framework with its historical, cultural authority.

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The Clerk: Indeed. I am going to look at Jo at this point, because she has a fine Manx name: Corkish. Maybe she is going to be able to say something – perhaps to contradict me. I do hope so.

8330 **The Third Clerk:** I think that the structure works well. I like the fact that the Branches do different things. I think that the Legislative Council could be developed further to have perhaps a stronger scrutiny role, because they very much pay close attention to their role in scrutinising legislation, and I think that could be extended and thus move away from having scrutiny done by
8335 the same people who work in Government Departments as well. I think a lot of the impression outside is that parliament and Government are just the same thing. When you have worked inside, you realise that is far from the case, but that is quite a difficult message to get across sometimes, because so many of our Members are involved in Government work.

Q581. Lord Lisvane: We might come back to that. That is a theme which runs through most of the operations of Tynwald.

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Dr King, what does it look like from the LegCo angle?

The Deputy Clerk: I have to agree with Roger that my starting point is to observe that the system works. There are lots of different parliamentary models around the world and I have
8345 visited a few – not as many as you guys – and I can see that Members come back from trips to other parliaments and they quite often say, ‘Ooh, they do it differently in such and such a place; why don’t we do it that way here?’ And we learn a lot from that, but you do have to think carefully before adopting somebody else’s model, just because it is different.

I think the debate which set up this inquiry started from a motion by Mr Thomas: ‘that it
8350 would be a jolly good idea to have a unicameral system and, by the way, let’s have an inquiry to find out some more.’ There was an amendment which said, ‘Let’s not start from a unicameral objective, but certainly let’s have an inquiry.’ That is a very typical illustration of the way debates in Tynwald go. We did not know what was going to happen in the debate; that is what happened and here we are.

8355 I have been trying to think through in my own mind what difference it would make to have a unicameral system. Lots of people have unicameral systems and they have much the same kind of operation as we have. At the end of the day, they produce legislation and they produce scrutiny of government. I think I would also like to say – maybe strike a slightly different tone from Roger – that while I have grown attached to the structure that I have learned about in the
8360 Isle of Man over the last nine years, if people in the Isle of Man want to change to a different model, then that is fine, and my objective then is to make whatever new structure comes along work, and I think any structure can be made to work.

What would we lose? What difference would it make if we went unicameral? Well, you have to look at what the Legislative Council actually does. I would put four headings: it considers
8365 legislation; it sits as part of Tynwald and Members participate in Tynwald debates and vote; Members take on executive roles; and Members serve on scrutiny committees.

Of the four, the big one is consideration of Bills, because that is where LegCo sits separately in this Chamber and, as Roger said, he is not normally here and so maybe has not got quite the same feel for how it really works.

8370 What really happens in here is very interesting. People do actually read Bills; everybody reads Bills. The first thing I would say is that, if you want to know the background to a piece of Manx legislation ... There are circumstances where you are doing research or maybe you are looking at a piece of administrative structure or something and you want to know why it was done that way. You might go back to *Hansard* and see if anybody explained it during the passage of the Bill
8375 which became that Act. Without having done any kind of firm statistical analysis, I would say you are more likely to find an explanation in LegCo than in the Keys, because people ask more question as Bills are going through.

I would cite two examples of that from my own experience. I was asked quite early on in my time in the Isle of Man to look at the origin of the payment of Members' expenses regime. This
8380 started off in 1922 and there is an excellent speech in the Legislative Council from the Attorney General in 1922 explaining why they decided to start paying Members at that time. Funnily enough, if you look at the speech, it is very familiar. It is exactly the same speech that people make today, but it is in the Legislative Council.

A more mundane example: we just published a report on the registration of land, and when
8385 you register a property should you put a notice up to tell you neighbours that you have just registered your property? We asked the Land Registry if this was a new idea and they said, 'No, this was debated in the Legislative Council in December 1981.' We were able to look at it and, fair enough, the law is the way it is. It does not matter that much what happened in 1981, but the point is you get explanations on the record and you can see what people were thinking
8390 about at the time. You may then change it, but the explanation is there.

Q582. Lord Lisvane: If you characterise a Chamber as a revising Chamber, in some ways, you are avoiding frightening the horses, because revising sounds, 'Oh, it is just dotting the i's and crossing the t's; it is safe. But actually we know that revising legislation can be pretty heavy-duty
8395 and it can be pretty politically challenging. Presumably LegCo does not shrink from that sort of role.

The Deputy Clerk: It does not shrink from making revisions that it sees fit.

I had a look this week at some of the amendments that have been agreed by LegCo since I
8400 have been here. I have divided them into three categories – and I will give you this.

There is one category which is simply 'drafting amendments', where a Bill has gone through a process and the drafters have thought for whatever reason, 'Oh, whoops! There is a mistake there' and, 'Good news, the Bill has not finished its process; we can put in a correction.' Now that, clearly, you could have in any political system and you do not need a second Chamber for
8405 that as long as you have got some kind of process, so I disregard those.

Then you have 'Government amendments' where the Government, at a policy level, has had second thoughts about something or wants to react to something that has happened in the real world. The Bill has not finished its process yet and amendments are proposed in the Legislative Council. Again, you could do that in a unicameral system also, and it does not really matter what
8410 the political structure is. If the Bill has not become an Act, you can fix it and that is great.

The really interesting ones are the amendments which come out of the Legislative Council discussion itself. I have got 14 examples. I will not go through them all laboriously, but 14 times over a period of about eight years: it is not something which happens all the time, but it does happen. It is unpredictable and it does illustrate some of the things that you have been asking
8415 about and that we have been thinking about.

It does show Members of the Legislative Council taking a different view from Ministers – even their own Minister in some cases – when they are functioning as Members of Departments. A point will be raised in the Legislative Council; the Member moving the Bill will

8420 say, 'Well, my Department, my Minister, does not like this idea, but I will go away and talk about
it.' Then, because we have enormous flexibility of procedure, we can either pause the
consideration of that clause or we can come back and make amendments at Third Reading. The
Member in charge of the Bill in the Legislative Council is not the Minister and will sometimes
take a view in his own right; because he can feel the tone of the debate in the Legislative
Council, he will go back to the Minister and say, 'I think we are going to have to concede on this
8425 one.' They will then usually concede, actually.

In theory they could offer to bring forward a Government amendment at the next sitting, but
they do not tend to do that here, because all the amendments are drafted by the Attorney
General's Chambers, so they just get it drafted and it gets moved by the Member who thought it
up, rather than by the Government.

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Q583. Lord Lisvane: I think that leads us rather neatly onto the business of how disputes – or
disagreements, perhaps will be a better word – between LegCo and Keys are resolved.

Would you like to say something about that and how effective you think the processes are?

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The Clerk: We are talking about the two Branches sitting separately now, aren't we? We are
not talking about how they deal in Tynwald, as one body, deliberating, because that is a very
interesting part of the whole picture.

Lord Lisvane: Well, let's park that for a moment and come back to it.

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The Clerk: Okay. In terms of sitting separately, I have always been rather impressed with the
system of setting up a conference between the two Branches. This is clerked by both Jonathan
and me; it is presided over by the President and there is a team from both Branches. They meet
privately and they talk it through.

8445

No doubt Jonathan is able to give you chapter and verse about how many times in the last
eight years we have met –

The Deputy Clerk: Not many. I have got three examples in front of me: Animal Health from
2008, Marriage and Civil Registration from 2010, and Sunbeds from 2012.

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It is not something which happens every day of the week. In fact – going back to my chart of
all the amendments that have been made – the vast majority of times that Legislative Council
amends a Bill, even if it was not the Government's idea, the Keys accepts the amendments.

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The Clerk: That is true. Bear in mind, of course, that without formal political parties, there is
not any opposition just for the sake of it – the normal competition. That needs to be excluded
from the normal thoughts, as it were.

It is quite rare for people to get to the point where they have to take time out and sit down
and talk, but nonetheless it is a very good flexible system which actually does produce a
compromise. I think it is in each of those cases, isn't it, that they have negotiated?

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When Jonathan was speaking a few minutes ago, I was considering this point about the
relationship between Legislative Council and the Keys. This is where it is extremely difficult to
describe. It is very difficult to write down properly how it works, because it is about a common
understanding of the relative status of the two Branches. I think it is true to say that, at all times,
Members of the Legislative Council, who are elected as we all know by the Keys, are conscious
8465 that they are not popularly elected. So, I think there is a recognition there that at the end of the
day the Keys is going to get its own way. You may argue, but at the end of the day the Keys will
win.

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Q584. Lord Lisvane: So there is an implicit restraint? (**The Clerk:** Yes.) And not extending to a
pre-emptive cringe?

The Clerk: Yes, exactly.

8475 **The Deputy Clerk:** It is explicit constraint, because we do have the Constitution Act 2006, based on the Constitution Act 1961, which says that – exactly as Roger has said – if there is a dispute, ultimately the Keys can have its own way. There is a high threshold, because you need 17 votes in the Keys and there is also a period of delay, but the rule is there and you can have a Keys only Bill.

8480 **Q585. Lord Lisvane:** But it has not been used yet, has it: those provisions in the 2006 Act?

The Deputy Clerk: You say it has not been used. I am not aware that a Keys only Bill has ever been enacted, but that is not to say that the legislation has had no effect, because people know it is there.

8485 **The Clerk:** Yes. It is a gun in a drawer; you do not have to use it.

It is not dissimilar from the relative status of the Lords and the Commons. Everybody knows, at the end of the day, that you may revise as much as you like but if they really mean it, they mean it, and you will have to give in. But you know as well as anybody that there is quite a lot of water goes under the bridge before that point and you can exert quite a successful influence on the way things are done and on particular decisions. We do not live in such a brutal world where everything is a binary decision.

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Q586. Lord Lisvane: As the proponent of some amendments on which the Government was defeated earlier this month, but which were later overturned in the House of Commons, I know exactly what you mean.

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The Deputy Clerk: I was just going to say, the power of delay is astonishingly strong. You would not have thought so, would you, but the number of times when the debate is along the lines of, 'Well, should we do this thing or should we not?' 'Ah, well, it would cause a delay, so let's not.' That is also something which they take very seriously up here. When considering amending a Bill, the mover of the Bill will say, 'We really want to get this Bill through. It is a nice idea that someone else has thought of, but actually we thought about that during the consultation period and we decided not to do it.' You could put it back to the Keys and have a bust up, but quite often the Legislative Council will then back off and say, 'Well, okay, we have had our say, and we will let the Bill go ahead as drafted.'

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Q587. Lord Lisvane: Just one detailed question before we move on to the parked issue of voting in Tynwald: I think I am right in saying that the Keys very often sets up a select committee to take part in a conference. Am I right in that? They seem to be listed in the Tynwald Companion.

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The Deputy Clerk: We list them as if they were selected committees; they are slightly different in Standing Orders. We would refer to a select committee on a Bill usually when we were talking about a Bill staying in the one Chamber. So you could have the Keys' Committee on the Criminal Justice Bill; we have had a LegCo Committee on a Highways Bill recently. They are nothing to do with talking to the other Branch.

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But when we do have a conference, then each Branch sets up ... I think it is referred to as a 'deputation' in the Standing Orders, but we tend to refer to it as a 'committee' as a shorthand, because it looks rather like a committee.

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Q588. Lord Lisvane: But it is not unnecessarily cumbersome, is it?

The Clerk: No. It is effectively a joint committee, I suppose: an *ad hoc* joint committee of the two Branches –

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The Deputy Clerk: Except that the two sides will sit, also, separately. We will have a meeting of the LegCo side to say, ‘What are we going to say to the Keys?’ And you will have a meeting of the Keys’ side – a bit like a trade dispute, but ultimately there has to be a coming together.

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Q589. Lord Lisvane: Proximity talks followed by real talks?

The Clerk: Absolutely, yes.

We have to be very careful, because the same words like ‘select committee’ mean rather different things in different jurisdictions.

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Q590. Lord Lisvane: Oh, indeed. I should just say that I am – as Mr Phillips will know – extraordinarily sensitive to the dangers of just assuming that something can be transplanted from one jurisdiction to another. You have to look at the dynamics of the body that you are examining.

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The Clerk: Yes. They are delegations, but whatever you call them they are very similar to select committees, which in our terms are *ad hoc* committees.

Q591. Lord Lisvane: Yes, I understand that.

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Can we return to the parked subject of voting in Tynwald, and give me your feelings about the effectiveness or indeed the problems that might be associated with that?

The Clerk: Well, what can I say? It works; we get decisions. It is, as we all know, still something which is dominated by the Keys in the sense that if the Keys lose, then there is a reasonably well used mechanism for having the matter come back, usually the next month –

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The Deputy Clerk: You mean if it is passed in the Keys and defeated in the Council? Because if it is lost in the Keys, it is lost.

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The Clerk: Indeed, yes. I am assuming that you have read the Standing Orders already and know what I am speaking on. I am not going through it in great detail, but yes, it is as Jonathan has said.

It always is the case that the Keys, at the end of the day, pretty much, is going to get its own way, assuming as Jonathan has said, that it does have its own will expressed, but defeated.

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Is that a bad thing? I think that is more in the realm of politics than the mechanics of how things are done. Certainly the mechanics make it very clear what has been done. It has got a clear result which of course is probably the number one objective that you always want, isn’t it?

I cannot criticise it, as somebody in the engine room, as it were. It works. Now, it may not be satisfactory from a political point of view, but then other people will be able to talk to you about that.

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The Deputy Clerk: I would like to suggest that you explore instances where people have not chosen to exercise their right under Standing Order 3.19. When a vote is passed in the Keys and defeated in the Council, what the Rule says is that the Member who moved the motion *may* stand up and ask for a combined vote at the next sitting. He or she has discretion, and quite often they do; sometimes they do not.

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If it is a vote on an amendment to a motion, then the whole thing is put off for a month and you do not get the vote on the substantive motion, with or without the amendment, until that delay has elapsed.

8575 But there are cases where Members do not exercise that right and that may mean that Member has made a calculation that there is no point, based on arithmetic. It may mean, alternatively, that that Member is satisfied, for whatever reason, to accept a defeat. As Roger says, that is politics; that is not procedure.

8580 As an observer, I would say it is a very subtle mechanism and it does allow for all sorts of permutations, as between what people would like Tynwald to decide; what people would like to be seen to be advocating; what people would like the outcome to be; who they would like to blame for it not happening.

Q592. Lord Lisvane: I can see the subtleties, indeed.

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The Clerk: One of the delights, of course, is it is open to amendment as well, which is a very clever provision.

Q593. Lord Lisvane: It is. That is a very good point.

8590 I have read with great interest the debate on 20th April about, as one might call it, unitary voting. I do not want to take you into politically sensitive areas, but you must have a technical view on the advantages and disadvantages of such a thing.

8595 **The Deputy Clerk:** Mr Thomas proposed that you change the Standing Order so that the bias is in favour of voting as one body. At the moment it says:

Unless otherwise provided [the Branches] ... vote separately.

8600 And his amendment to Standing Orders was, 'Unless otherwise provided Tynwald shall vote as one body.' What difference would that really make? I think, as I have just said, it would remove what I call the subtlety of the system. It would effectively make Tynwald operate as a unicameral chamber. So the distinct voice of the Legislative Council would not be heard in Tynwald Court. It would still be there in primary legislation, but not in policy debates, secondary legislation and finance.

The Clerk: There is one other subtlety to this, which is that it would have the impact of removing the veto of the Keys, which I would have said was a bad thing.

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Q594. Lord Lisvane: And presumably it could introduce a distortion in that, if LegCo were of a mind and combined with a minority in the Keys, they would be overturning, perhaps, the Government's view, supported by a majority of the directly elected Members in the Keys.

8610 **The Clerk:** It did occur to us when we were discussing this that, if you have nine Members of the Council of Ministers, you could imagine a set of circumstances where they might convince the majority of Legislative Council to go along with them and they would railroad things through in the teeth of a concerted opposition by the popularly elected Members of Tynwald, which is not an outcome people really would want, frankly.

8615 So I think from that kind of engineering perspective, it is not as good as the system we have now.

8620 **The Third Clerk:** I think the system that we have now allows for that time for delay and just some further thought. If the Legislative Council have voted against something that has been supported in the Keys, it gives everybody time to go away and think why that might have happened and to look at the proposal again in a bit more detail, come back the next month. The Keys still have the opportunity to dominate the vote at that time.

I think it means that Legislative Council again cannot indefinitely stop things; they really are mainly a delaying, 'Let's just think about this for a bit longer' body.

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The Clerk: I think it is worth stepping outside Tynwald for a moment and looking at the Island as a society. One of the things that is a function of a small society is that the connection between politicians and the public is much closer and much more active. It is something which, as a refugee from Westminster, I am very impressed with.

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What Jo has just described resonates very heavily on the Island. It actually really does matter if you stop and everybody talks about it for a month, because of course Tynwald goes from month to month. Therefore, it is quite effective and yet the Keys rule the roost.

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Lord Lisvane: I can vouch for the connection: meeting a number of my witnesses as I walked along Market Street.

The Clerk: Well, indeed, yes.

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Q595. Lord Lisvane: Can I ask you about a couple of technical issues, but your bread and butter, I know? Debates at clauses stage: now, in LegCo, I think, Members are allowed to speak twice. Is that correct?

The Deputy Clerk: That is correct.

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Q596. Lord Lisvane: But not in the Keys?

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The Clerk: That is correct. That is one of those interesting differences in flavour between the two Branches where, without speaking remotely disparagingly, Legislative Council is very like a constant committee. As a Westminster observer, that is how I regard this: the horseshoe shape; the rule book that Jonathan is holding is a very slender document for a reason. That allows considerable flexibility in terms of not allowing procedure to get in the way of a decision.

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Having read the *Hansards* of Legislative Council, it is very different in tone and in procedure from the House of Keys, which is an enrichment, I think, of the system. The House of Keys tends to follow a modified version of chamber procedure that you would be familiar with. So, yes, there is a rule about speaking only once, apart from when there is an amendment to a motion, you can speak again, but generally speaking, you get up and you speak once.

Q597. Lord Lisvane: And it works?

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The Clerk: Yes it does. It works very well indeed and the advantage of the comparatively simple procedure that we have here is that Members understand the procedure, and that is incredibly important, of course. You do not want a rule book that only the priestly initiates understand. Actually, most people do have proper understanding of the rules and generally strong opinions about how they should be, which is good because the rules are for them to transact business.

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Q598. Lord Lisvane: Also, it follows – something that I would think that any servant of any legislature anywhere in the world would think was a good thing which is – that the rules are constantly tested; they are not just there as a sort of decorative add on.

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The Clerk: Yes, that is true.

I think probably more so than at Westminster because, harking back to one of the original points I made, we do not have any whips. We do not have political parties with prearranged views. So, as you know better than any of us, the whips will talk to each other in advance to

8675 work out the *déroulement* of the debate, and so on, so that actually an awful lot of procedure is not necessary because they have sorted it out. We do not have anything like that.

One of the interests of my job is that we do have an awful lot of conversations from first principles about how things should be done, which makes our job rather interesting from time to time.

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The Deputy Clerk: What you do not see in the Legislative Council is any procedural points at all, really. I do not think I have ever had a Legislative Council Member ask me, 'What can I do to prevent this happening? Is there a Standing Order I can rely on? Can you unearth some ancient procedure which would make it easier for me to subvert what somebody else is trying to do?' It just does not happen in the Legislative Council.

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This rule book is slender for a reason. It was introduced in 1932 and the Deemster who introduced it said words to the effect of – and bear in mind, they had just been reformed only 13 years before that – 'Oh well, we have never had Standing Orders before but everybody else seems to have Standing Orders so we are going to have some; here they are.'

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I tell you – talk about the rules being tested! – when I was appointed in 2007 and read the rules, they had been updated in 1980, because the word 'Governor' had been scribbled out and the word 'President' had been put in, but they had fallen into disuse, if they had ever been used.

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What really happens in LegCo is that there are quite a lot of former MHKs up here – including all the Presidents that we have had since that job was created – and people tend to operate as if it was a bit like the House of Keys, but smaller and with fewer restraints. So yes, there is a sense of orderly procedure, but it is more based on practice than on anything that is written down.

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The Clerk: The personality of the President, I think, is important in this context, because if you have a President who has, if I can call it, a purposive approach to interpretation of the rules, and who very much decides that the point of having this rule is to get this particular piece of work done, then they may well have a slightly looser application than others who tend to follow a much more formal, 'What does the rule actually say?' type of approach.

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I think we are still fairly young in experience in terms of the different Presidents, because we have only had three so far. I did not know Sir Charles, but certainly the two Presidents I have served under have had subtly different approaches, which is enormously influential, I suspect, in a Branch with so few rules.

Q599. Lord Lisvane: I met Sir Charles many years ago, but this was an aspect we did not discuss. *(Laughter)*

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The Deputy Clerk: Well, funnily enough, one of the Rules which we inherited from 1932 was that when it gets to the clauses stage, the presiding officer may withdraw and let somebody else preside over the clauses stage. I think we might have got rid of that since, but one envisages these Governors who we see around us getting to the clauses stage, in the good old days, and thinking they would rather be somewhere else!

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The Clerk: If I can exercise some sort of slight criticism here and say that, if you look at the *Hansards* of the clauses stages, there are an awful lot of Bills that are not very closely looked at. Every Bill is gone through clause by clause, but there is not always a very close debate on every clause. They are introduced and there may not be a speech on them in the Keys.

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Now, I think there is much greater detail in Legislative Council and what is certainly the case is that the whole system depends, to a great degree, on their meticulous approach to legislation, which is very different in flavour from the approach taken by the Keys.

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I do not raise this as any criticism, but really to introduce another point which you will be very aware of, which is the importance of having two Branches with very distinct characteristics.

Q600. Lord Lisvane: We are talking about complementarity, not competition.

The Clerk: Correct.

8730 The fact that this is not a popularly elected Chamber is influential in that process. I am not going to make a political point now, because it is matter of politics how people should be elected here, but I think we should recognise and value the fact that the two Branches are so different. It is not the same process gone through twice.

8735 **Q601. Lord Lisvane:** No. I understand that.

In terms of where Bills start: the Equality Bill – which is quite a heavy duty piece of work – started in LegCo, I understand.

8740 **The Clerk:** That is correct and the reason for that is perhaps something the Secretary can advise about rather than us – because we take what we are given – but it is not a coincidence that we are about to go into an election and that the House of Keys, of course, would be dissolved, so you would have to have completed all the stages in the House of Keys and then not amended the Bill if it was going to succeed. So clearly there is a very good tactical reason why you would want to start in the Legislative Council at this point in the electoral cycle.

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Q602. Lord Lisvane: Although reintroduction at the point reached at the moment at dissolution would be an alternative.

8750 **The Clerk:** It would be if people had the stomach for it, but it is also with a different set of Members. I think with something as complex as this, a very large important piece of work – it is not an easy Bill – it is not difficult to work out why people wanted to start at this end of the building, as it were, rather than in the Keys.

8755 **Q603. Lord Lisvane:** Is there an argument for starting more Bills that perhaps do not fall into this tactical/business management category?

8760 **The Clerk:** I am not really aware of any reason why we should not normally start in the Keys. I think the advantage of the way we do it at the moment is that the popularly elected people can stop the Bill in its tracks at Second Reading if they want to without having to wait for a lot of detailed work having been done in the other Branch. That does appeal, certainly.

Q604. Lord Lisvane: That is a powerful argument, I can see.

8765 **The Clerk:** Also, frankly, you should play to your strengths, and once you have got through the first Chamber, revising it seems to me the right way round.

Q605. Lord Lisvane: Yes.

8770 Can I ask: one thing which is rather attractive in terms of discharging one's democratic duty is, as I understand it, you need leave of absence not to attend a sitting?

The Clerk: Yes, I must say, having spent my formative years in a chamber which is largely empty, I rather respect this very consciously dutiful tradition enshrined in the rules, that you should turn up and take full part in the sittings unless you have got a jolly good reason not to – and it is not up to you to decide whether it is a jolly good reason; it is up to the presiding officer.

8775 This is a rule which is very rigorously enforced. You know of course that, if you were absent for six months without leave, your seat would be vacated by operation of law.

In fact, Members do seek leave of absence for necessary reasons such as work off-Island for the Government or whatever it is. The presiding officers do exercise common sense, but actually the Chamber is almost always full.

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Q606. Lord Lisvane: And a corollary of this, in a way, it seems to me: the rules about abstention.

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The Clerk: Well, I am aware that this has been raised in front of you before. This is veering towards the political now, so I have to tread slightly warily, I suppose.

Q607. Lord Lisvane: Carry on treading! *(Laughter)*

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The Clerk: Again, I think if people are elected to serve, they serve. They come along, they have to attend and they have to make their minds up, because that is what they are supposed to do.

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The Third Clerk: And they have no party view imposed upon them, many of them. So they have to be here to go through the process of what is being debated and discussed then to vote on it. There is no pre-organised voting, unless you look at the Government collective responsibility.

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The Clerk: As we have discussed on a previous occasion, the right of Members to amend motions on the hoof – not as in Westminster: having to put them down in advance, so people can think about them – actually doing it during the process of debate, and very often in reaction to what is said in debate is a very powerful safety valve. If you are not sure about the original question, you can amend it into some form that you are clearer about.

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I think that allowing Members to abstain ... and obviously I suppose, for the sake of the footnotes, one should acknowledge that the Speaker in the Keys can abstain, as you may know. But actually, not allowing anybody to abstain does mean that everybody shares the burden of decision-making.

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Q608. Lord Lisvane: I can see that, without parties, the argument for that becomes much stronger.

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The Deputy Clerk: To put it another way, and going back to a point that Roger made before, we do not know what people think unless they tell us. I say 'we': the people of the Isle of Man – and not speaking as a Clerk here, but as a member of the public. People have to record their vote because otherwise it is unknown. It would be very easy, I suspect, for a Member of Tynwald to abstain an awful lot of the time.

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Q609. Lord Lisvane: And, if you had mass abstention on something where, perhaps, coming out one side or the other of a question might be embarrassing or politically exposing, then things would grind to a halt, if you only had half a dozen votes cast, for example.

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The Clerk: Yes. I am also aware there is a slight mischievous point which is that there are occasions when having a second Chamber is quite useful politically, if they happen to vote in a way that is the different from the majority of your Chamber and possibly even contrary to the way in which you have voted – politics being what it is. I think Jonathan may have hinted at that earlier.

Q610. Lord Lisvane: That is most delicately expressed.

8830 We have been talking about primary legislation; can I turn to secondary legislation? That is considered by Tynwald and that seems a slight oddity, given that the overarching body looks at the second category of legislation whereas, if you are talking about primary legislation, it is bicameralism.

8835 **The Clerk:** That is right. It is something which, I have to say, they do quite well. There is always a debate on the floor about statutory documents, as we call them, if they are subject to that parliamentary procedure. Most of them are subject to approval, so there is a pretty close communal eye kept on that.

I had not actually thought about this, as to the advantages or otherwise of sending them to the Branches.

8840 **The Deputy Clerk:** I have sometimes wondered why it is different, but I think you could ask the question either way round. If we can consider secondary legislation altogether, why do we consider primary legislation separately? If we considered primary legislation altogether as well, well we would be the States of Jersey, wouldn't we, or something like it?

8845 **Q611. Lord Lisvane:** The answer must be because secondary legislation is unamendable.

The Deputy Clerk: If you are going to propose amendments –

8850 **Q612. Lord Lisvane:** Because otherwise you have a family of subordinate Bills.

The Clerk: I suppose, also, because it is secondary legislation, you have already talked about the policy. You have agreed the law that gives the power. I suppose this really is linked to the idea that Tynwald is where you talk about policy and so secondary legislation tends to be an expression of policy.

8855 **The Deputy Clerk:** Quite a lot of secondary legislation has origins in Government circulars which would previously have just been issued by the Governor. As people have got involved and things have become more important – I am thinking about Members' expenses, for example, which is something I happen to have looked at. In 1922, the Governor would have said what people were going to be paid, and that was that. Today, it is subject to a statutory procedure where the Treasury makes an order and it gets approved by Tynwald. I think you could envisage that really the point about Tynwald Court is that, before 1990, this was where the Governor and the Keys met and, if something is important enough to the Keys, then they will make it subject to Tynwald approval, so that it is not just left to the Governor.

8865 **The Clerk:** Without wishing to sound dyed in the wool conservative about things, I suppose – picking up on the point you make that they are not amendable – were you to devolve them to the Branches, you would be substituting two debates for one.

8870 **Q613. Lord Lisvane:** Yes.

But is there adequate scrutiny? Could there be a committee function? I am not talking now about a debating committee, but an investigative committee, preparing the way for approval, because I do not know what your view is about where the threshold between primary and secondary legislation is fixed and whether perhaps there are things in secondary legislation which would benefit from the exposure of the primary legislative process.

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The Clerk: The only amendment that you can put down to the motion to approve the statutory document is to refer it to a committee, and it is very rarely done.

8880 **Q614. Lord Lisvane:** But it is a function which might improve the overall quality of legislative scrutiny, isn't it?

The Clerk: I think we have to look at resources at this stage. I favour, strongly, committee scrutiny of legislation. It is a very good system. Very occasionally, the Keys, as you will have
8885 noticed by now, has done some pretty good work on Bills in the Keys, and that ability to take evidence is really valuable. But we are three Clerks and there is a limit to what we can do.

Obviously, I would like more and I would like to do more, but I think that we have to be aware of the resources that we are given by the 85,000 people for whom we work. Although it would be great to have more committees examining these things, in fact it is a very flexible
8890 system: you could refer them to the standing committees; you can do quite a lot if you want to.

Q615. Lord Lisvane: That was rather what I was thinking, so that you multitask in the standing committees.

The Deputy Clerk: In 2006, there was a review of committees which picked up on this point and people said, 'Well we have got all this secondary legislation and we do not seem to be
8895 scrutinising it.' So they set up a thing called the Scrutiny Committee which had two jobs: one was to look back at Tynwald policy decisions which had previously been resolved to see whether they had been implemented; the second was to consider secondary legislation referred to the
8900 committee. I was Clerk of the Committee when I was appointed in 2007 until it was dissolved in 2011. From memory, probably fewer than half a dozen instruments were referred to it: you can lead a horse to water. The scrutiny mechanism is there if people want to use it.

The Clerk: It also does suffer from the disadvantage of not talking about it *now*. As you sit
8905 through the Order Paper, one of the games that we play is how long do we think the sitting is going to last – I am always wrong. Noel Cringle, the previous President, was always right. It is a sort of parlour game to play. You do not know which of the orders will be nodded through and which will actually have maybe an hour's debate, but that does happen and it can happen when
8910 somebody just wants it to.

I think in the context in which we are speaking, there is already a very flexible system, and, if you want to talk about a Bill – I do not know – that changes camping in Sulby or something, and you feel strongly about it, that is what you are going to do *now*. Then people who are present and who had not thought of it will join in, if they want to.

Lord Lisvane: I was just going to embark on the committee scrutiny role, but as it is one
8915 minute to noon, this might be a good subject to defer to our next meeting the week after next.

The Clerk: I greatly look forward to it. It has been a tremendous pleasure to speak to you
8920 today.

Lord Lisvane: Well, thank you very much all three of you. I really do appreciate it.

The hearing adjourned at 12 noon.

Tuesday, 31st May 2016

*The hearing of oral evidence was held in public at 2.00 p.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[LORD LISVANE *in the Chair*]

**EVIDENCE OF
Hon. John P Shimmin MHK,
Minister for Policy & Reform and Member for Douglas South**

Q616. The Chairman (Lord Lisvane): Minister Shimmin, thank you very much indeed for coming to talk to me this afternoon; I very much appreciate it.

8925 We have a fairly conversational and informal style, but perhaps I had better say about the terms of trade before we start: our words will be live-streamed and *Hansard* are taking a record. When that is finalised, it will appear on the Tynwald website.

Can I start on the governmental side – and I hope we can cover, in the hour or so we have got, all the areas which are of interest to you as well as to me.

8930 You have been the Minister for Policy & Reform since last year. It is a splendid title: what does it involve?

Hon. J P Shimmin: My first experience of it was in 2006 when there was the change documentation which was about restructuring of Government.

8935 At that stage, a department of reform was something that I was proposing – or had been proposed in that Report – to try and bring about a change. In my manifesto for Chief Minister at that time, I had seen a period of change requiring a department set up for that purpose, and there would be, in my view, a need for a five-year concentration on restructuring of Government.

8940 That never saw the light of day with regard to what happened in 2006 and beyond, but when the restructuring came forward this time, it was a recognition that Government was in need of reform and it would not happen organically in the current structure. So, although I was not directly involved in that process, it had been discussed for many years: the need to bring about change would require the set-up of a reform area. That tied in with the setting up of the Cabinet Office, which would appear to be the vehicle to deliver it.

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Q617. Lord Lisvane: What is top of your agenda for reform at the moment?

8950 **Hon. J P Shimmin:** That is part of my frustration, as it was my predecessor's: because the Cabinet Office and the responsibilities put into the Cabinet Office were many and varied, the distraction from doing the reform part – what I think both Mr Robertshaw and myself felt was required – has not been as swift or as meaningful as I would have liked.

8955 There are a number of reasons for that. Firstly, until December, it was not a department in its own right. Therefore, it did not have the means or ability to really employ staff to work with me or indeed to appoint a new Member to work underneath.

The second part of it is the responsibilities of the post also included public sector pensions, the Public Services Commission, attendance on all of the Council of Ministers' committees. Therefore it became more of an administrative, bureaucratic role than I had envisaged for it.

8960 When I first moved back into Government after my period in the wilderness, I had hoped to
work under Minister Robertshaw and to work at a level significantly below, working with staff
from various Departments to try and drive change from within the system. Because of the
unexpected resignation of Minister Robertshaw, that meant I had to take on the other areas and
we have gone through significant change in both the Public Services Commission and the Public
Sector Pensions Authority, which I believe has prevented me from doing as much on the reform
8965 as I would have liked.

Q618. Lord Lisvane: Somebody once said that restructuring the UK Ministry of Defence was
like performing an appendectomy on a man carrying a grand piano. Presumably that is quite a
familiar scenario, given what you have just been describing.

8970 **Hon. J P Shimmin:** I also think that, as we have moved towards the end of this administration,
it has become more a matter of preparation for what would be useful for the next
administration rather than attempting to push through some of the changes during this one. For
that, I could cite such things as the single legal identity, but also a lot to do with planning and
8975 various policies of Government, that we would not be able to persuade Tynwald that we should
bring to them so close to an election – but there is a need to prepare a lot of work.

Much of my work, now, is in preparation for the next administration so that they will have
the information upon which they can make choices and decisions.

8980 **Q619. Lord Lisvane:** I would like to move on to the structure of Government, because
although it is in formal terms outside my terms of reference, of course, the equal and opposite
activity of Tynwald is to a certain extent conditioned by it.

A number of people have described to me that at the moment there are, in effect, ministerial
fiefdoms which are not always or totally under command. Presumably that is something which is
8985 antipathetic to the sorts of reform you are talking about?

Hon. J P Shimmin: I find part of the criticism that comes against Government is about a
system where actually the problems emanate from the people involved, whether they be at
officer or political level. Any system that we put in place is never going to be perfect, nor the
8990 people making it up.

Fiefdoms can only be created if the Minister and the Chief Officer choose to make it as such. I
do not believe there is necessarily a reason why that would develop. I think that is almost borne
out by my political colleagues throughout the backbenches and ministerial positions.

8995 I am ambivalent about the single legal entity. It should be able to work quite adequately
within the current structure; it obviously is not. Therefore, a change may make it better, but
merely changing the name is not going to actually change the culture.

Q620. Lord Lisvane: If we change the metaphor for a moment and talk about the silo
mentality, what you seem to be saying is that you do not need structural change to overcome
9000 the silo mentality; you can do it culturally if there is sufficient will.

Hon. J P Shimmin: If there is sufficient political will and leadership, it would be possible. It
would probably be easier if there were more substantive external policy and guidelines, because
most of the officers involved require that sort of guideline.

9005 I think, politically, silos exist more at officer level than political level, in my experience. They
do that because they feel a legal obligation to the Department and the Minister under which
they serve. That can be effectively neutralised by the Ministers collaborating and working
together – which does happen on occasions, but the officers still feel as if they are unsure who
their master is. Therefore, on balance, I would go with the single legal entity and that all parties

9010 in Government, all the officers, would realise that they had a greater common requirement and
responsibility rather than a specific one.

Q621. Lord Lisvane: So that would provide the sort of guideline you were talking about a
moment ago?

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Hon. J P Shimmin: Yes. I am constantly frustrated – and have been for 20 years – that officers
within Government feel as if they are unsure or lack the confidence that they will be supported
by making a decision, and they default back to one of safety. I think that is a weakness within
our political leadership and ministerial leadership: to make the officers clear that when we talk
9020 about ‘it is okay to take a risk and make mistakes,’ that is going to be backed up by the
politicians involved.

Q622. Lord Lisvane: I do not want you to make invidious identifications, but how do you get
from where we are now to the exercise of the sort of leadership that will make people
9025 absolutely clear about what their position is and what their radius of action is?

Hon. J P Shimmin: I think it is going to be a long process because the breakdown of trust
within Government and externally between the public and Government is one which is not going
to be healed quickly. I think there is, from my point of view, the stepping-out of myself and some
9030 of the old guard, to be replaced by the newer Members to come in and potentially for the public
to give them the opportunity of learning and developing a system.

The problem, as I see it – and why I no longer fit within Government – is it has become more
about process than outcome. Everybody talks about trying to reduce bureaucracy, trying to
streamline and trying to take risks, but there is nothing which any political parties, individuals or
9035 groups are doing which is reducing that level of procedure.

The alternative, as I have said – half jokingly, but it is true – is that you no longer need me in
my position; you need a legal adviser, because whenever there is anything contentious that
comes along, it gets pushed out to the legal opinion, which is then used by a number of officers
and politicians as a reason to take a particular course of action. I believe we are elected to make
9040 those decisions and I feel that that is happening less often.

Q623. Lord Lisvane: You gave, in effect, two cheers for single legal entity. Can you see any
wider advantages of it, in terms of structural change?

Hon. J P Shimmin: My concern about all of this is the misunderstanding of the motives that
will be used by Members of Tynwald and the public. I think there is a lack of belief that this is
being done for the good of the people; it is being proposed by those in power to try and seek to
have more power. I think the actual reverse is the truth, but the perception is that to have single
9050 legal entity will put too much power in the hands of too few.

I worry about how we are going to actually manage to change that because if I was to attempt
to bring forward single legal entity at the moment, I think I would be unsuccessful. We need to
try and win back the trust of the people before we can expect them to celebrate the changes
that would be outlined in that.

Q624. Lord Lisvane: But the second part of the process is, by its nature, quite lengthy. The
first, for all sorts of reasons of external pressure and movement of events, you probably want to
do a little faster; so you do not want to risk the cart being before the horse.

Hon. J P Shimmin: I have found in recent times that the explanations of what I and others
9060 may be choosing to do are not represented in a way which the public are prepared to condone
and believe as being true. Therefore, the idea of attempting to introduce it is one which will be

better done by those who are not as long-serving as I am and may be less tarnished. They can look at this with a more open mind than those of us who have been around for a long period of time.

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Q625. Lord Lisvane: I can understand that.

Taking the single legal entity, others have expressed unease that it might concentrate power too much, but in a relatively small administration isn't it going to be an invaluable tool in making sure that everybody is marching to the same drumbeat?

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Hon. J P Shimmin: Once again, my concern is that those are words which I would like to see happen and be borne out in evidence; the reality within a political world is less likely to be the outcome. I think in a small jurisdiction such as ours, where you have a group of individuals pushed together into the Council of Ministers with no or limited common purpose, to then expect all of them to fall under the banner and make agreements is back down to the individuals rather than the system.

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Therefore, if you were to put in the single legal entity, unless you were going to be using it as a big stick to dictate to various Ministers and Departments, you would still have the same human failings; they would have their own agendas that they see as their responsibilities.

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Q626. Lord Lisvane: There have been changes in the departmental structure and, more recently, the amalgamation of two Departments. Do you think there is scope for doing more of that?

What is your feeling about the way in which administration responsibilities find homes in individual Departments?

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Hon. J P Shimmin: I would image that I am out of step with many of my colleagues, but I believe that change should be an ongoing process; many of my colleagues would see that we should just leave it alone and not change or rock the boat any more.

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We do not live in a perfect world and nobody, when we were restructuring Government, felt that we had the system right. Therefore, there will be a need for continual evolution and change.

Are there ways in which it can be improved? Yes, of course. The main dilemma I have in the Cabinet Office, in the Policy & Reform position, is that it is like jelly: you can push it, but it will rebound to its original shape. You need an external party, whether it be under a political banner, in the Cabinet and Policy & Reform area, which is centralising the common view of the single legal entity and almost forcing through change – which would be one way of doing it. The alternative is a slow, organic change.

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I am in the former camp, but that is no longer in keeping with a level of representation the people appear to want; we have become ever-increasingly democratic, which means that the processes will take a little bit longer to change whilst we try and bring everybody on board. I am from the old school of 'just do it' and that does not seem to go down well in parts of the Civil Service and even Tynwald.

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Q627. Lord Lisvane: Well, if you were gifted with, shall we say, obedient jelly which stayed where it was put, what sort of structure of Government would you ideally like to see, in terms of numbers of Departments and that sort of thing?

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Hon. J P Shimmin: I am opposed to those who would choose to reduce considerably the number of Departments and indeed Members of those Departments. I am in the unusual position of now having been a Minister of five or six different Departments. I believe that I could effectively run each of those Departments with a Minister plus one, or on occasions two.

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9115 By doing so, however, I would delegate much of the decision-making to the officers, not the elected Members. The scale and size of some of the Departments we have, such as Health, Economic Development, and Infrastructure, would benefit from at least having a Minister plus a couple of junior ministers or second Members of the Department.

To collapse more of the Departments is perfectly feasible, but with limited political oversight, you are dependent upon the officers.

9120 Again, I go back to point one, which is regarding the single legal entity. There are many ways in which officers can avoid the changes that I might politically wish to see and if you then are trying to push those through, there has become an increasing tendency that it is seen as being a negative political outcome.

9125 I heard talk about the Treasury Minister saying how his wife had requested that he is 'less mean', I think was the term, in dealing with things. So we have got this imbalance between you have got to be tough to actually make the changes, but if you are tough that can be seen as negative and be criticised.

Once that is criticised politically, you will then be perceived as a bully and therefore your ability to influence change is influenced.

9130 **Q628. Lord Lisvane:** I think the quotation from the Minister's wife was about how he answered questions, rather than how he ran the Department, but nevertheless I take the point.

9135 Can I explore this business of departmental Members a bit more? In relatively small Departments, relatively small numbers of people – a big scope of responsibilities, I accept – it seems very strange that a case can be made for having four or five political players – or indeed a Minister plus five in the biggest Departments. That seems very strange to me. I can see that a Minister plus a deputy, there is a good argument for it. But people are telling me, 'Oh, well, the range of responsibilities is so great that I cannot tackle them all myself.' One answer to that is, 'Well, actually that is what officials are for.'

9140 **Hon. J P Shimmin:** I think the last point is the main issue that we still have not got right, but that is down to the individuals involved in the system at political and officer level. If the officers were doing their job and the politicians theirs, it would be an easier world. I believe that there are Departments that could operate very comfortably with a Minister plus one.

9145 When I was looking at the potential of being Chief Minister in 2006, I believed that you could run all affairs of the Government with about 25 or 26 Members and the remainder could be in a scrutiny role. That introduces the different problem about primacy, as to who is elected first, appointed first. But I would have said that you can operate the affairs of Government within the region of 26 Members, and in Tynwald with the current level of effectively 32. That would give you six that would be without any portfolio. Any fewer than those 26 would be fine; you would be doubling up and you would then be depending upon the officers to do their job.

9150 I think there is scope for training for MHKs and MLCs when first appointed, and that training should be ongoing to differentiate between a political role and a management role.

9155 **Q629. Lord Lisvane:** And you would also be depending, presumably, on able, energetic Ministers to ensure that officials did understand their role?

9160 **Hon. J P Shimmin:** I think over the years I have been a Minister, I have seen many of us of poor and good quality as Ministers, and everything in between. I certainly think that many Ministers do things in a way which I do not feel conducive to a political ministerial role, but those who possibly are more political than ministerial in their roles are seen as being arrogant and aloof.

So once again the backbenchers win on the level that they can criticise you whichever way you choose to conduct yourself as a Minister. There is no script, there is no right and wrong way, there is no blueprint for what makes a good Minister. It is just down to the personality and

9165 talents of the individual. We get stuck with this position where I do not see any doubt that the ministerial role, having watched it organically grow over the last 15 years, is one which I feel I understand totally, but I am leaving politics because I do not think other people agree with me.

Q630. Lord Lisvane: Let us go back to the numbers you were quoting just now, and having six spares, as it were. The implication of that, of course, is that there is a huge, possibly unacknowledged, possibly generally under-deployed, in percentage terms, 'Government party'. Is that healthy?

Hon. J P Shimmin: Yes.

9175 I think people are elected, whether it be MHKs or MLCs, because they feel they want to serve. If they feel they want to serve, that is normally coming into the Government or the parliament and doing a function. I think the idea of people not having a role or a purpose is a demotivating one for the individual and a lack of responsibility to those who have appointed them.

9180 I think that most, if not all, MHKs, when they are elected, feel as if they want to contribute. We have tried, over the years, to differentiate a level between governmental and scrutiny. I do not think we have got that anywhere near right as yet. How you structure that is one of the challenges you and the rest of the next administration will face.

9185 Certainly the idea of what is alleged to be 'buying votes' is far more about keeping people involved and allowing them to learn and grow. So new Members coming into the House of Keys have tried to be afforded a place within Government as a means by which they can learn and understand and become better.

Q631. Lord Lisvane: I can understand that argument, but basically you are describing to me a governmental function, whereas, if you look at the parliamentary role of Tynwald – and in this case, particularly the House of Keys – I think most people would agree there are three prime functions: representation; legislation; and scrutiny and challenge, calling to account – lots of sub-functions, but all in some way related to those. Now, aren't those good enough to provide a purpose? You were talking about needing a purpose a moment ago.

9195 **Hon. J P Shimmin:** I would go back to the original of those who are elected. I think that is a matter for the people of the Isle of Man, but for numerous elections they have failed to get a balanced representation between the males and females within the House. There is a culture whereby those Members who look after their constituents – the archetypal 'potholes and dog-dirt brigade', looking after the interests of a number of their constituents – I think denigrates the Government and the parliament of the Isle of Man, but to those individual members of the public, that is what is most important to them.

Q632. Lord Lisvane: Forgive me, but most parliamentarians have to wear several hats. I am simply inviting you to wear, I think, four at the moment!

Hon. J P Shimmin: It would be nice to take a few off!

9210 I think we are back to the fact that the individual Member has a choice of how they conduct and choose to behave. By that, I mean how they busy their time. The role of a Minister is and has become increasingly full-time, which then removes them from the amount of capacity to do some of the day-to-day politicking. Again, are they getting involved within the management rather than the political arena?

9215 I struggle to understand how many backbench Members are fully utilising their time, because I seldom see that operating. Having been a Minister for a long period of time, I cannot easily see whether they are: working within departments – not from my experience, not at a great level; working with constituents – certainly, and that is the invisible part that I would not see. The

parliamentary bit: very little do I see that they are fulfilling parliamentary roles which tend to be a committee, if they are on it, meeting every few weeks.

9220 So I can only assume that the majority of the work of the majority of the backbench Members is constituency work. However important that is, the Ministers find it increasingly difficult to do the same level. Therefore, you have got to always try and get that balance right. The backbench Member, such as Mr Thomas following me now, does far more constituency work than I ever do. As such, when it goes to the election, he is likely to have assisted far more of our constituents than I have done.

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Q633. Lord Lisvane: I do not want to put words in your mouth, but what you are saying seems rather to tend in the direction of a need for an alternative career structure so that you could make your mark – let's leave the representational role: constituency work is a given, however much anybody does of it – on the more identifiably parliamentary rather than governmental side.

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Hon. J P Shimmin: You *are* putting words in my mouth, and I appreciate it!

9235 I think that the difficulty in a small jurisdiction is that that can be seen as opposition for the sake of opposition. We have seen that creeping into some of our standing committees whereby, in order to be more visible – and indeed this has happened in Westminster, where some of the parliamentary committees there are becoming more famous than the Ministers in the areas that they are investigating – I think some of our committees are looking for fights, whereas when I first came into parliament, we were all trying to work for the good of the Island.

9240 Therefore, whether it be through the attempt at party politics or the attempt of scrutiny committees coming in, it does make it into more of an opposition in Government. I do not mind the scrutiny, but I do not think it is resourced adequately or independently enough from Government to have the influence it should.

9245 I go back to the 26 Members in Government; those Members outside of Government to work in scrutiny but to actually be able to be seen as a career path: yes, but I would like to see movement between the two parts so that I, as a Minister, at some stage could become part of the scrutiny. I would see that element of movement between the two, rather than what we have which is a polarised opposition in Government.

Q634. Lord Lisvane: But a critical friend – which, ideally, I suppose, the Policy Review Committees should be – need not necessarily mean a member of the opposition.

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9255 **Hon. J P Shimmin:** I agree. I refer you to the *Hansards* of the various scrutiny committees and whether you see that they are achieving that outcome or whether it is certain pet subjects of the Chairs or the individuals on that Committee, rather than the critical friend of looking at what is in the best interests of the Island.

Q635. Lord Lisvane: Although, on the other side, I recall the Treasury Minister saying how constructive he found his engagement with Policy Review Committees.

9260 **Hon. J P Shimmin:** I am sure he did and I am sure he does.

Q636. Lord Lisvane: Moving to a different hat, possibly worn simultaneously: what is your view about Members being on Statutory Boards? You were Chair of the Post Office Board for four years, I think.

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Hon. J P Shimmin: Less than that, but yes, Post Office.

It is a system that I came into. I knew very little about parliament or Tynwald before being elected in 1996; I did not come from nor was I surrounded by political experience.

9270 The tricameral system and the system of government which had recently changed to the ministerial system is what I came into – very inexperienced and naive – and therefore evolved with that evolving ministerial system.

9275 We have the fundamental problem that those of us who are elected by the people to represent the people, as opposed to those who are appointed by a body to go on and serve in the same capacity ... I revert back to my comment: in my 20 years, the lack of trust in Government has never been as strong as it is currently. There is almost this feeling that anybody who is not a politician will be trusted more than the politicians. I find that extremely concerning. I think that those of us who are elected by the people to represent them need to win back that trust.

9280 To go to a period of appointees into some of these serious positions: I am not opposed to it, but I do see that there is a danger it would be abrogating the political oversight on behalf of the people to some of those key functions.

9285 Again, I have referred that there is a necessity for training for Members, when newly elected, and indeed those of us who have been here for a period of time. I think that is a fundamental flaw in our system: that there is no ongoing professional training for Members of Tynwald to potentially learn to do their jobs better, more appropriately, and to learn the necessary skills to fulfil those roles.

9290 **Q637. Lord Lisvane:** Although there is training available. I can think of all sorts of examples of small, medium and, indeed, large jurisdictions where that happens on a fairly significant scale.

9295 **Hon. J P Shimmin:** It does and all we can do is make it more easily available to Members. Again, compulsion is unlikely to work, but I think that there is a responsibility for both Government and parliament. Part of that is what I am working on, between now and the next administration, to arrange for adequate ability for Members to be trained in areas, to become better.

9300 **Q638. Lord Lisvane:** What sort of training would you envisage? Just to take an example, there is legislative training. I know, for example, first hand that the National Assembly for Wales has been majoring on that, or certainly did in the last mandate: learning how to read a Bill; learning some of the basic things about judicial construction and so on.

Hon. J P Shimmin: It is not attempting to be patronising, but all of it! I think all of us have weaknesses in numerous areas.

9305 As somebody who has been here for 20 years, I have many weaknesses. Therefore, to have the ability to easily enrol upon areas of interest or weakness would be beneficial and would have been over the years.

9310 The idea of allowing us to ‘learn on the job’, I believe, is no longer acceptable. I think there should be an expectation that we would continue to grow and evolve individually and collectively. That means that those persons coming into Tynwald or the House of Keys in September and beyond need to have almost a menu of areas that they can go and get training to become better.

Q639. Lord Lisvane: That is very helpful.

9315 Can we move to the parliamentary structures? Tynwald, as a tricameral institution, is unique; how well do you think that works in terms of the way that the three bodies operate one with another?

9320 **Hon. J P Shimmin:** I have a degree of nostalgia for the fact that, just like horse trams, we have had this system, albeit evolving over the years, and it is something which is unique about the Isle of Man in a way which I am quite proud of.

I do not believe it is working. I believe that public and political dissatisfaction with the Legislative Council has meant that there needs to be evolution and change. I think the embarrassment we all feel at Legislative Council elections is one which means there is no public or political stomach for a continuation of the same.

9325 Quite simply, I have no understanding, nor have I ever understood, why they are paid the same as Members of the House of Keys. To make myself popular: I would immediately take £20,000 off them, like that! I fail to understand how people who have no public mandate nor constituents directly responsible for them have the same as those of us who are representing thousands of people and therefore have other responsibilities. They are remunerated for their work if they choose to be in Government. Therefore, I think they are overpaid for the work that they do.

9330 I believe that the scrutiny of legislation is done better in Legislative Council than it has been in the House of Keys for many years. Therefore, there is a function of that scrutiny.

9335 I believe the tricameral system is one which does differentiate us from others and, once again, I would say that my biggest concern with the whole system is not the system but the parties that make up that system. Why there were no women put forward towards Legislative Council for appointment; why there are so few successful women elected to the House of Keys, I find represents more about the public mood and feeling about the system that we operate.

9340 **Q640. Lord Lisvane:** Let's come back to that in a moment.

It struck me that two elements of your argument were actually fighting one against the other – (*Hon. J P Shimmin:* Frequently!) because you were talking about LegCo not having a democratic mandate, but you were also talking about the possibility of LegCo Members going into Government. Now, if you do not have a democratic mandate, that surely is not acceptable, is it?

9350 *Hon. J P Shimmin:* They do not have the public mandate. They have a collegiate mandate from those who judge them to be worthy for those posts. The idea of the elder statesmen that some people perceive it as – which seems to be evolving over recent years – is one where there was a lot of experience that was held within Legislative Council which would have been a sad loss to Government were that to be the case.

In a small jurisdiction I do not think we can afford to be too prissy about who is or who is not allowed to be in Government and, again, it is down to the individuals. But we have a system that is easy to criticise but difficult to restructure in a way which does not merely replace one problem with a different problem.

9355 My concern is that we are going through a period of attempting to change to something as yet untested – not dissimilar to the United Kingdom in its situation with the Brexit referendum. There is not a right and a wrong; there are people's opinions. The outcome of whichever the way the vote goes will have implications, but you have to be a brave person to make that decision to change.

9360 **Q641. Lord Lisvane:** Both in terms of operational utility and in terms of the way that politics is perceived outside, it seems that most conversations include LegCo at some stage, and there have been lots of attempts to deal with – I do not want to call it the 'LegCo problem' but – acceptability, mandate and various other things.

Is the possibility of an outside nominations commission something that might help, so that you would not lose the electoral college relationship, but you would possibly get a wider slate of names than is at present available?

9370 I am also thinking about the point you made about the involvement of women in parliamentary politics.

Hon. J P Shimmin: I would have no problem with that. It would take away some of the discomfort that we experience in the Keys.

9375 I think that the difficulty is that those of us inside the tent tend to be surrounded by other people who have a strong view on politics and political agendas. The vast majority of people I know do not give a stuff about politics or politicians. They have no more knowledge about Legislative Council elections than they do about the European Union elections.

9380 There is a view from many of my political colleagues that this is a burning issue and to those who they continue to talk to about it, it becomes a burning issue. But it is not one which is likely to be generated at the side of a football pitch or in a bar, from my experience. People get on and live their lives, and halleluiah that they do so!

9385 The problem we have got is, again, the political elite looking at our own systems to try and see how we can do it better to satisfy the political audience that is out there. I think the disconnect with the majority of the people is one which causes me an ongoing cause for concern. I put myself into that category as much or more than my political colleagues because I am not a good constituency MHK. I am not somebody who goes out and hears the word of everybody on the street, but I attempt to be an ordinary person and worry about the same things I believe other ordinary people worry about, and Legislative Council does not hit their agenda as being a problem, nor does the single legal entity, nor does the structure of Government. What they are worried about is how it affects them with their job opportunities and such like.

9390 All the constant denigration of politics and politicians merely makes them weary that they cannot trust the authority that is meant to be there to try and give them and their children futures.

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Q642. Lord Lisvane: As an element in possibly causing denigration, is the 'retirement home' perception of LegCo something that needs to be dealt with?

9400 **Hon. J P Shimmin:** Say it often enough and it becomes true! One of my political colleagues, over the last 20 years, has repeatedly come out with the same crass type of comments, and once they are publicly picked up and popularised, then they become the norm.

9405 Juan Turner was appointed there with no political mandate previously and I think he was in his 30s. There has been almost a move away from being a retirement home because politicians, quite often, are fearful of going up there because of the public or political vilification they will get.

9410 I am more concerned about the quality of the people. If you were a person of quality, it is unlikely that you would allow your name to go forward under the current system; therefore, the nominations body that you are talking about, I believe, would be a major step forward. It would allow people to see that they were being put into a professional type of organisation rather than the political melee that they find themselves absorbed in. I find it is unsavoury to see the way which we have treated some very honourable people during the LegCo elections.

9415 **Q643. Lord Lisvane:** Do you think – this may be just to get the proposition out of the way – that there is a case for electing LegCo?

Hon. J P Shimmin: There is a case for it. Once again, how much do you benefit by appointing more politicians? The same people who condemn LegCo condemn the House of Keys and the elected Members who the public put there.

9420 If you put in a different group of elected people with a potentially larger constituency base, again any system has positives, but it is likely to merely replace it with other negatives.

So should it be popularly elected, democratically? Yes, of course, it should be. Would it make the system better? I doubt it. You would have more politicians going forward than maybe some of the elder statesmen that you referred to ... I think you called it a 'retirement home' but –

9425 **Lord Lisvane:** I was quoting others.

Hon. J P Shimmin: I am sure you were.

I think the Isle of Man is an extremely successful financial centre with a wide, diverse economy and it is run, on the whole, by people who can be popularly elected by small numbers of their peers. Again, I am not criticising others; I include myself in that. So, just over 1,000 to elect me or others does not give me the ability to run a small country. I think that we need to try and raise the game and if that is by a nominations board looking at Legislative Council, to be bringing in people with the skills and experience required to run a small country, I would not be opposed to that.

9435 **Q644. Lord Lisvane:** Do you think that LegCo should have a financial role, in terms of approval of the Budget and things of that sort?

Hon. J P Shimmin: I have no qualms about it; they are Members of Tynwald and I see them as Members of the Tynwald. Others see them in a different light.

9440 Once again, democratically, I could argue the case and say, 'No they should not.' But give me an alternative and I would consider it. Just to say, 'This is wrong' needs a balance of what an alternative would look like and to scrutinise that alternative before we make the change.

9445 **Q645. Lord Lisvane:** And your answer would be similar in terms of the proposition that they should not have a role in electing the Chief Minister, for example? Approving the Chief Minister?

9450 **Hon. J P Shimmin:** Once again, there are lots of people who believe what is said in the House of Keys and Tynwald as being the true agenda on this. Every Chief Minister has their suspicions or knowledge of who or has not supported them either by their vote or by their behaviour. It is not something any Chief Minister I have ever worked under would have any doubts or qualms about who did or did not vote for them and whether they would or would not put them into their Government and administration.

9455 They are Members of Tynwald and until such time as you change the structure of Tynwald I would say, yes they can and should have a vote. I believe there could be in the region of 10 new Members of the House of Keys at this next election. If that is the case, then who would I prefer to pick a new Chief Minister? Ten people who have not been in politics before, or supported by eight or nine Member of Legislative Council who have maybe worked for years with all of the candidates? I think that experience would be hard to replicate if you just removed that altogether and allowed it to be the House of Keys, where I think you may get candidates coming in on an anti-Government agenda and, if they were the only ones making the decision, then I think that could be dangerous to the good affairs of the Isle of Man.

9465 **Q646. Lord Lisvane:** Let me go back to a point that you mentioned a few minutes ago and ask you, why do think there are not more women in Manx politics, and specifically in Tynwald?

9470 **Hon. J P Shimmin:** I do not have an answer for you because ... There must be a perception of women that the world of politics is something they are not prepared to enter – blindingly obvious. Why is that? Conduct and behaviour of Members? Not in my experience. We have had some extremely capable, able female Members and Ministers within the last 20 years.

There are sufficient numbers of women who are in local authority politics who could and should be looking towards making the step up, as a number of male colleagues do. There are many intelligent women in our community who are more than capable of doing the job as well as any man.

9475 I am loath to criticise the media, but it does appear that there is such a negative impression of politics, those who are always interviewed are predominantly male and if the audience of

women do not feel as if they want to be a part of what is at times quite an unpleasant and personal area, we have to find a way of changing it.

9480 **Q647. Lord Lisvane:** Increased representation of women would of course be only one aspect of increasing diversity overall.

9485 **Hon. J P Shimmin:** Yes, but when you have got more people called John and Chris in your elected House than you have women, it is somewhat obvious that we have a major problem. It is the only thing that I will be campaigning on for this election: not for specific individuals, but just to try and get more women candidates to stand.

9490 We do not have a party system that could actually have quotas. We do not want to make it something whereby there is a quota system, but we need to try and get a significant number of women candidates to come forward and hopefully to also reassure the public that they are every bit as good or better than the majority of us men.

Q648. Lord Lisvane: Thank you. That is very helpful.

9495 One of the things I am charged with is assessing the efficacy of the Branches of Tynwald. Now, that is a very difficult thing to do objectively, but let's take your long ministerial experience: how effectively do you feel that you have been challenged as a Minister over the period of your experience?

Hon. J P Shimmin: *[Pause]* The radio has not stopped; I am just not sure how to answer that!

9500 I can only put it into the practical areas where people will challenge, which would be Question Time; it would be motions on the floor; it would be scrutiny committees.

9505 How well have I been challenged? We have all played the game. I have attended; I have answered questions; I have moved motions; people have opposed them, and we come with an outcome.

9505 I have attended scrutiny committees for some years and I have got through it. Have I been challenged? Seldom on the right things. The bottom line again is they know what they know; they ask me about what they want to ask me about and they are not often the things that they should be asking me about. Will I volunteer those issues that are more pertinent and relevant? Of course not.

9510 I go back to a point I made before: I think some of these committees have become the personal agendas of some of the parties involved who have prioritised what they see as being right. That would be something which, again, would be training for them as chairs and members of a scrutiny committee, to see how to understand what is actually important and what is their role.

9515 **Q649. Lord Lisvane:** And what about support for that function? It is remarkable, I think, the way that the support for all the operations of Tynwald is found from fairly modest resources. You would see it be desirable that additional resources were allocated to scrutiny and accountability?

9520 **Hon. J P Shimmin:** In an ideal world, I suppose that might be helpful, from a governmental point of view. I am not sure I would argue that point too strongly.

9525 I think again, the element that we have lost is no better highlighted than the embarrassment of the House of Keys Question Time where you have issues that used to be of importance to the public carried over week after week, after week, because they are not really that important. The actually area of questions and scrutiny that is being done to Government, far from being helpful to the public, is quite often distracting and non-beneficial to the public. It is part of the democratic process. It has evolved into a media attention-seeking area, so that is how they operate.

9530 I think it is part of the role of Members of Tynwald to probe and question. Do I think they do it well? No. I think they have members of the public raise issues and they ask questions on their behalf. I do not think it is actually scrutinising what is going on in Government Departments to the level that I wish it were.

Q650. Lord Lisvane: Is the format of Question Time part of that suboptimal outcome?

9535 **Hon. J P Shimmin:** Once again, the system is fine. The misuse of it by individuals is one I cannot control. Therefore, the domination by two or three individuals, in order to get their own agendas covered by the media is fine; they are using the system.

Q651. Lord Lisvane: Should there be a rationing of Questions?

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Hon. J P Shimmin: No, there should be a greater level of self-awareness from the Members.

Q652. Lord Lisvane: In the absence of realising that pious hope, should there be rationing?

9545 **Hon. J P Shimmin:** I would be loath to interfere because there could be grounds when a good Member has legitimate reasons to ask good questions. I would not be in favour of rationing. I would like it to be an individual responsibility.

9550 It is no clearer than the item you listened in Tynwald the other week, where the conduct and behaviour of individual Members is not for the rest of us to condemn or criticise because they have the democratic legitimacy in the same way that we have. For any Member who is appointed or elected by their people, I am not their boss; I have no control over the way in which they conduct themselves. That is a matter between them and the voters. As such, I would be loath to impose restrictions on my political colleagues because, if I could do that to them, then they could do that to me, and I would not like that freedom to be removed.

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Q653. Lord Lisvane: Let's leave the specifics of recent proceedings entirely out of this, but you are not arguing, are you, for a five-year blank cheque to behave badly, where the only constraint is the view of the electorate at the end of five years?

9560 **Hon. J P Shimmin:** I would like you to come forward with an opportunity whereby the electorate were able to find a means of expressing their displeasure with what has gone on. But, once again, it is not to be a vocal minority of people who are unhappy. How you find that, democratically, is a challenge.

9565 **Q654. Lord Lisvane:** A recall petition?

Hon. J P Shimmin: Yes, and it seems to be flavour of the month with the petition process and the electronic ability to get petitions and such like. So as long as the procedure was sufficiently meritorious, that there would be the rights of the people to feel as if their elected Member was no longer adequate and put that back to democratic checks, then that would be acceptable.

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Q655. Lord Lisvane: I think I am right in saying that, apart from constraints imposed by statute and Standing Orders, there is no code of conduct. There is one, I think, for members of Statutory Boards.

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Hon. J P Shimmin: I am sure some of your other contributors will be able to tell you that that is factually correct. If you are telling me there is not, I am sure there is not.

Q656. Lord Lisvane: I think I am right in saying that it is as I have described it.

9580 **Hon. J P Shimmin:** I am fairly confident you would be right. I am surprised by it; I would have assumed there would have been, but again I am famous for not necessarily worrying too much about the bureaucracy, the paperwork. I conduct myself in a manner where I try to hold onto what I would consider would be an appropriate code of conduct. I have never felt the need to go and check to see if there is one.

9585 **Lord Lisvane:** Can we move –

Hon. J P Shimmin: Quickly on, Lord Lisvane, I am afraid, because I shall have to rush to the airport fairly soon.

9590 **Q657. Lord Lisvane:** I know the constraints, so I was just going to suggest that this should be our last area and dealt with with a little brevity.

In the time you have been a Minister, you have been responsible for promoting legislation. Tell me what you think about the effectiveness of the legislative process.

9595 **Hon. J P Shimmin:** With all modesty, I was given the role – not my beckoning – to chair a legislative subcommittee of the Council of Ministers about 12 months ago. I think during that time there has been, out of all recognition, an improvement – not because of me, but because of the process where three Ministers sit down with the Attorney General, a head draftsman and one or two officers of the Cabinet Office, and we determine progress, priority.

9600 This, again, is something which the new administration will probably have a list of A, B and C types of Bills that are at various stages of request or drafting. However you want to split that cake, you could say there should be those Bills that are to protect the vulnerable, to grow the economy or to balance the budget. There are those that should be social legislation, financial legislation, international legislation.

9605 In the past it was left really to Departments to shout the loudest and quite often they were not ready to progress their legislation. I think we have reasonably successfully removed all of that and in the future, I do not think legislation and its movement coming forward should ever be a problem.

9610 **Q658. Lord Lisvane:** In effect, this is a business committee, prioritising and imposing legislative standards, in a sense as well, because you want to be sure that Bills are ready for introduction when Departments say they are.

9615 **Hon. J P Shimmin:** Absolutely: legislative discipline, which says that it is not just a case of putting it on the Bill because we always have it on the list, but actually 'Is it ready to go; have you done all the necessary preparation, consultation, etc?'

9620 It is just a discipline that Departments have never had to comply with before. I think that is now ticking the box, job done, quite simply by a small subcommittee of Council of Ministers. That could be improved, but at the moment I do not see legislation as being a problem, moving forward, in achieving a smoother and politically driven agenda of legislation.

Q659. Lord Lisvane: And that has been in place for the last 12 months?

9625 **Hon. J P Shimmin:** Probably just under 12 months, but there was a need to try and do it in order to make sure we could achieve the target of getting through legislation that we required before the end of this administration.

9630 It did expose some areas of weakness, particularly when we source legislative drafting outside of Government. It is then brought into Government with the expectation that that would be almost ready to run, but then it would be changed and modified. Now, whether that is the fault of the external drafters or the internal drafters, that did expose weaknesses in the

system, where we were paying good money to have external drafters, but then when it came forward it was not ready to be progressed.

9635 **Lord Lisvane:** As somebody who is obsessively early in getting to airports, the last thing I want to do is to detain you any longer.
May I thank you and wish you a safe journey.

Hon. J P Shimmin: Thank you very much.

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*The hearing was suspended at 2.57 p.m.
and resumed at 3.00 p.m.*

**EVIDENCE OF
Mr Christopher C Thomas MHK,
Member for Douglas West**

Q660. The Chairman (Lord Lisvane): Welcome, Mr Thomas. Thank you very much indeed for coming to talk to me. As you will have seen from the previous session, we try and do this in a fairly conversational style, but what we say is being live-streamed and is being recorded by *Hansard*, and when the transcripts are finalised they go on the website.

9645 I should acknowledge that us sitting opposite each other now is largely as a result of your initiative in Tynwald last year. May I thank you too for your comprehensive memorandum. I hope we will cover most, if not all of the areas that you set out in the paper.

I am going to start by taking issue with you on one thing that you said in the debate on 20th April – page 1311, line 565. You said:

what Lord Lisvane is likely to tell us is being exaggerated. Although Lord Lisvane should make ... technical recommendations ... he cannot be expected to make political recommendations.

9650 I think, about that, I would say that what has been clear to me, and is absolutely no surprise at all, is that anything that I say will be in the nature of a political recommendation, and I do not recognise any no-go areas in my terms of reference. But where I do agree with you, of course, is that it will not be for me to decide what happens after I have made my recommendations.

9655 **Mr Thomas:** Thank you, Lord Lisvane, for clearing that up.

Q661. Lord Lisvane: In the Tynwald debate last year, the second half of your motion was for a referendum on the future structure. Do you still take that view?

9660 **Mr Thomas:** I think referenda can be very helpful. There have only been a dozen or so in the British Islands, but I suggest that in Scotland the referendum was very helpful to actually bring out the arguments on both sides of an important issue; in Ireland it was very important about the future of the Seanad, the second chamber; in Jersey it was very important to think about the nature of a small island parliament. I think, given we have had four decades of trying to deal
9665 with the issues of whether or not Legislative Council Members need to be directly elected and how we organise our legislative process, it might be that alongside your visit, with your political recommendations after an evidence-based analysis, a referendum could actually help break the logjam and help us to get to a resolution such that people cannot keep bringing this up year in year out.

9670 In actual fact, the one disappointment I have with your review is just its timetable. You did
not actually arrive in our Island – because you were not invited – until after the intended
deadline that I expressed in my motion in May 2015. I asked Government to report by December
2015 because a general election – as was used in Jersey, for instance, with their referendum –
9675 makes a referendum much more practically easy and also much cheaper. So it is a shame, in one
sense, that your report is so close to our General Election.

Q662. Lord Lisvane: Yes, I do understand that; although as you kindly observe, these are
matters which were not in my hands!

9680 Do you think that the issues that we have been talking about, and which would be canvassed
in a referendum, are really too complex for what would end up as a binary choice?

Mr Thomas: Two points to make. The first one is I agree with you: a referendum, to be
successful, has to be about a very simple question. I get from that two conclusions. The first one
is that we need something like your report, your analysis, to help us get down to the very simple
9685 question that is asked.

And the second point is I think I have identified that issue through two or three years of
thinking about it, because I think the nub of it comes down to the role of people who have a
mandate and the role of people who do not have a mandate. So the question I think would be
most helpful at the minute is: should only directly elected Members, perhaps excluding the
9690 President, be involved in public policy-making and financial decisions?

Q663. Lord Lisvane: I can understand the financial decisions point, and in a sense I think you
can say that that is the strongest point, because if you have people who are voting for taxation,
deciding how to spend the money should be the preserve of those who are directly represented
9695 – the taxed and the people who benefit from the spending. But in terms of public policy, if you
have that ... I will not say ‘detachment’, but if you have that broader view, which many people
have told me that it is possible for LegCo to take, isn’t that a good thing? Isn’t that a benefit to
standards of governance?

9700 **Mr Thomas:** It can be, and it comes down to a definitional issue as well: how do you define
public policy? So I take your point.

I liked your nominations commission suggestion in the previous interview to put together a
different type of second chamber, based on perhaps functional representation or local authority
representation. I can think of three natural areas around the Island which could be represented
9705 in some sort of second chamber. In essence, there is voting on a public policy issue and there is
taking part in the debate, and I think it can be very valuable, myself, to have non-elected or
indirectly elected people, or nominated people functionally nominated, taking part in
discussions and making legislation better, but there are some issues of public policy – especially
finance, as you identify, and the choice of a Chief Minister – that I think the public is likely to
9710 believe should be the sole preserve of directly elected Members.

Q664. Lord Lisvane: What would you say to the response that Minister Shimmin gave me to
the question about election of the Chief Minister, where he said that actually it is the additional
experience that people in LegCo can draw upon which might add value to the knowledge of the
9715 appointability or the likely ability of a Chief Minister candidate?

Mr Thomas: The legislation that was put forward and was passed nearly unanimously – only
Mr Teare voted against it – actually would still have allowed for a candidate to have come in
different ways into the process, but I think you would be hard pressed, or anybody would be
9720 hard pressed, to find a democracy on Earth where the election did not translate into the election
of a Chief Minister by the parliament. So we have that unusual situation in the Isle of Man.

I made the case that it was so unusual the public would find it unusual and the public would expect only directly elected Members to be actually voting on the Chief Minister, because that is so vital for the future of policy during the forthcoming five years after the election.

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Q665. Lord Lisvane: And, of course, here you have this difficulty that party activity is at a very low level.

Mr Thomas: That is true, and that has got all sorts of implications. To come back to another point that Mr Shimmin made, I think in this last five or six years there has already been a turnover of Members inside the House of Keys approaching half, and so if Mr Shimmin is right that many more Members are not going to be there next time, his point of view could be one that is widely shared. But to me, that is damning of the common sense and the wisdom of the Manx public and of the general electorate. You can get experience in different ways: from having served for a long time inside parliament; you can get experience in local authorities; you can get experience in other areas of public policy and public life; you can get experience from business and from the third sector; all sorts of ways, and I think the public can be trusted to actually make sure that it elects the right sort of people, even if they are new.

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There was a time, I think about 30 years ago, when only three Members of the House of Keys had actually served more than five years, and I think that led to three decades ... because the three people involved would work with some of the 30-year politicians we still have in politics, and they would say that that led to very good politics for a generation. So ultimately what I am saying is the electorate is sensible; they will get the right balance of experience, even if the experience is not just time-served Keys Members and Legislative Council Members.

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Q666. Lord Lisvane: Just now you were talking about, I think you said, three ways in which you could structure LegCo. One of those was on local authorities, so that would be a sort of local authority electoral college, I guess – something a bit like the Länder?

Mr Thomas: Yes, it could, but I like the idea of the ... Well, let me go back. During the most recent Legislative Council elections I took part in, I actually floated the idea of a couple of candidates ... which is that I would be much keener to want to support them in public if they would say that they were there as the representative of somebody. There is somebody I can think of who tends to have a Labour Party, trade union, working person perspective, and to me, if he had said 'That's my role' I would have been happier with that than somebody else, who seems to me to be more the rural community farmer type, and I would have been satisfied with that.

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So I can see that there might be a case made for a nomination committee to come forward with nominees to the House of Keys from functional representations like business, trade unions, labour, consumers, third sector, farmers, rural affairs; or even ... Douglas is about a third of the Isle of Man's population in local authority areas times, so perhaps we could have somebody from Douglas, somebody from what we call the north-siders, the north and the west, and somebody from the south-siders, the south and the east, because that is the historic division of the Island. So there are various ways that I think you could end up with different representation without an election in the second Chamber, and that might be a way forward if there is really a need for a second Chamber.

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You will understand from my submission to you that I believe the role of the people indirectly elected in that way should be constrained, and I have described some ways in my written submission about how I imagine that should be constrained. I thought one of the most powerful arguments Mr Shimmin made was the one about money. He just said he found it frustrating that Members of Legislative Council earned £20,000 ... He thought he would be happiest if £20,000 was taken off their salary straightaway, and that is a powerful point I hear in the community that we both represent.

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9775 We have various things like the Health Services Consultative Committee, the Education
Council, the Police Consultative Forum and Consultative Committee, where people are serving in
the public interest for a much lower remuneration than Members of Legislative Council get. We
have people who chair the Arts Council and the Sports Council and the Statutory Boards that you
mention, who have a much lower remuneration than Members of Legislative Council. I think
9780 that is where the consensus could be reformed in the community, if Members of the Legislative
Council were more public interest, second chamber, representing interests similarly to the public
interest representatives who serve on those statutory bodies and committees and the like.

Q667. Lord Lisvane: If you were going to tick that number of boxes, you would probably need
9785 more Members of LegCo, wouldn't you?

Mr Thomas: I do not think that is politically possible. I came up with my eight there as being
the same number of lower-paid and part-time second-chamber representatives. My manifesto –

Q668. Lord Lisvane: You could have 16 and be budgetarily neutral.
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Mr Thomas: But as I explained to you, I think it is imperative that we do our work and that
you make recommendations to the limit, because we are at a stage where there is an imperative
– both a political and a financial imperative – that we do something, because our budget of
£5 million is one that has been relatively stable. Sixty per cent of that is Members', past and
9795 present, salary, and that is something that is in the public eye. You cannot help but notice
perhaps that on the newspaper stand today the front page of our local newspaper is all about
the cost of Members of Tynwald, and it is an easy target at the minute because newspapers
need that sort of ... They choose the sort of stories that make people buy newspapers, and this is
one such story at the minute.

Q669. Lord Lisvane: And that 60% covers pensions as well as salaries and allowances?
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Mr Thomas: Yes, and that is the amount that is increasing substantially in recent years
because more and more Members, like everybody else in the population, live longer.
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Q670. Lord Lisvane: Let's take that Chief Minister theme forward for a moment, if we may.
You talk about a programme for government – and I found that passage in your memorandum
very helpful. Can you perhaps enlarge a bit on how a programme for government would work?
You say it is not going to be anything like a Queen's Speech, and that was the parallel you drew –
9810 no, I would hope that it would be a lot more informative than any Queen's Speech.

Mr Thomas: Yes, my first question – because I do believe backbenchers do actually have
more success than Minister Shimmin described to you – when I got into Keys was to ask about
the current Government's programme for government, because there was a clear statement
that, by I think it was January 2013, there would be a public document with intended outcomes
and actions to get there, and when I came in, in June 2013, it did not exist. So I really peppered
9815 Ministers to put something up to show what it is you are trying to do and how it is you are trying
to achieve what you are trying to achieve. That came up soon later.

So a programme for government is actually a group of people – who get elected, obviously –
9820 working together before the election having formed an idea of different policies that matter to
each of the individual candidates, how they could work together; and then, with a big bang, in
October-November, after the General Election in September, actually putting together a similar
document to the one that exists in Northern Ireland or in coalition government in the United
Kingdom or in Ireland after the couple of months of horse trading, given the multi-successful
9825 election result. So it is a solid document to which I would hope all the Ministers who agree to

serve in the Council of Ministers have definitely signed up with – along with at least one other person, because I am strongly of the view, differently from Mr Shimmin, that most of the Departments can be run by a Minister and one departmental Member, as the law requires.

9830 **Q671. Lord Lisvane:** Which is the minimum that the law requires.

Mr Thomas: The minimum the law requires – there is no maximum – but, to me, that is a sufficient number as well.

9835 I like the idea that you were postulating to Mr Shimmin about there being alternative career structures. Jersey, for instance, limits the number of members of government to about 22 or 23 out of a 50-Member parliament, and I like that. There are alternative career structures in Jersey. You can develop your occupation serving on the scrutiny committees, working to develop policy, properly coming to understand housing and Social Security – just like Minister Shimmin was bemoaning that he felt some of the Keys Members did not do before they became Ministers.

9840 **Q672. Lord Lisvane:** In the scenario you have just outlined, about how people get together perhaps before an election, you might actually have to junk quite a lot of what you have agreed upon because it would all be subject to who was going to get appointed/elected as Chief Minister and what sort of trimming or amendment or adjustments that person had to make when putting his – and it would seem likely, on recent history, to be ‘his’ – cabinet together.

9850 **Mr Thomas:** You are right. I think later this week you have got a chance to take evidence from both Kate Beecroft and Peter Karran, and I think that was one of the issues that Liberal Vannin did not address properly in 2011, because I do not think they ever had a written agreement about what they were signing up to when they joined the Government of national unity.

9855 To me, it is about compromise. It is about forming a commonly shared vision of what you are trying to do. I have got certain policies, for me, that I weight here very high, and others that are much lower in priority. I know how I would take part in negotiations and I think I am beginning to get a feel for other people, but Liberal Vannin did not manage that in 2011 and I think there are lessons to be learned from that, that you could perhaps try and unpick with the party leader of the time and the current party leader.

9860 **Q673. Lord Lisvane:** And if there were to be such a programme for government, would you envisage that being debated with amendments being able to be moved?

9865 **Mr Thomas:** Yes, and that is what we used to have in the Island, and I think it is a bit lazy on Government’s part not to have carried on in that way. I think the feeling developed that it was just a series of set-piece speeches, but I genuinely think, as I tried to explain in written form, that the programme of government would actually then filter down into a public document of outcomes and action plans to get to those outcomes with resources allocated through a medium-term financial strategy with the supporting legislative programme. The legislative programme when I arrived had priorities, half of which did not happen ever since I have arrived here. We heard just now from Minister Shimmin that there were structural reasons for that, and I accept that in good faith, but that was the right time, three years ago, to actually work out what legislation was needed and to do it and to work through using the resources you had on the basis of what was needed. It is a shame that we did not have the Education Act by now, that we did not have the Equality Act before the end of this parliament, that we did not have the Gas Regulation Bill that we need, and everything like that.

9875 **Q674. Lord Lisvane:** Yes, although I suppose it is fair to say that programmes for government, a bit like Queen’s Speeches, tend to be a little aspirational – that is part of their character.

Can I take you to legislation and page 10 of your paper, please. This is part of the scenario in which there is, as I read your paper, no formal LegCo.

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Mr Thomas: I have suggested in the 21st century the Legislative Council can be transformed into one or more legislative committees, including – although I do not say explicitly – perhaps indirectly elected/nominated Members to add in a bit of gravitas and professional expertise and experience in other areas.

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Q675. Lord Lisvane: A skills mix, in effect.

Mr Thomas: Yes.

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Q676. Lord Lisvane: But if you are going to go to legislative committees, what is the point of actually losing LegCo? Because you lose that institutional identity. You have got people who are sort of loose in the system. If there is no LegCo, they cannot be Members of it.

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Mr Thomas: It is semantics. We can call these legislative committees Legislative Council, but it is a mindset, it is a way of thinking about it. I am not talking about making them directly elected, as you can see quite clearly from my submission; I am talking about them stepping up to the mark and actually taking what they do relatively well, in terms of legislative review, and making it even better. I identify on page 10 the three advantages that Legislative Council has got, compared to Keys, which are: the Attorney General is present to provide legal opinion; secondly, the proceedings take place in committee so that Members can speak more than once; and thirdly, the Government officers are easily approached and involved in the discussions.

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One of the pieces of evidence I gave to you in writing is that our Landlord and Tenant (Private Housing) Bill Select Committee of Keys, that I chaired, met in public for longer when reviewing that Bill than Legislative Council did in the whole year, I believe. We really had lots of witnesses and we really tore into the legislation and came up with drafting recommendations as well as political recommendations. We could do that because we were in a committee format and we could call evidence and we could really work with officers.

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And so what I am saying is it is about the process of reviewing legislation, and I think we are not doing as good a job as we should be doing in the modern world. I gave you some examples in my written submission where things have slipped through and where Keys, if Members work properly with drafters and also with the political Government Department responsible, can actually do just as much as Legislative Council, and I contend ... I have given you five or six pieces of evidence whereby Keys Members have actually been just as important in making legislation better as Legislative Council Members have.

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Q677. Lord Lisvane: That is very helpful.

In a sense, the select committee format is one which we might explore a little further, in terms of how legislation as a whole is handled. At the moment, there is a statutory consultation process, which I think is six weeks, and there are various criteria that have to be followed if you are going to conduct one. There are various ways in which you can reduce the consultation period if you need to. But a lot of people who have been talking to me say that actually the response to consultation is almost derisory, is so small that it is virtually not worth doing. I am summarising. But if you were to have Bills in draft – and in a sense this is almost what you were looking at, although it was not a draft Bill properly speaking, on your Select Committee – you could probably combine a number of functions, couldn't you? (**Mr Thomas:** Yes.) It would, in a sense, be a consultation, and actually a rather more constructive one because members of the public could actually engage, as your witnesses did, directly with the legislators.

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9930 **Mr Thomas:** Yes, you have explained it more eloquently than I could – so yes, I agree, but there would still be a role for a committee at the clauses stage to review it. But I definitely think that the draft Bill pre-legislative review stage, as you have described, would be worthwhile. I even go back further than that, because I think another idea of yours – one that you floated in your maiden speech – was the one of the Victorian practice of motions for leave to bring in Bills so that the necessity for legislating in the broad intention could be considered before getting involved in the scrutiny of a fully worked-out Bill. I like that idea for controversial topics.

9935 So, for instance, I am responsible for housing at the minute and we have got a massive task consolidating housing Acts going back to 1955 and tenancy Acts going back nearly as far, and we have got issues in housing that we need to deal with. I think that is such a good candidate for something whereby we have a political debate very early in the next administration about what it is we are trying to achieve, so we do not waste legislative drafters' time and we do not create political arguments about clauses – we actually have the political arguments about the way forward beforehand. So I think that is the one ...

9940 Another point that you might have noticed is that as a new Member of the House of Keys, you can make a bigger impact much more quickly. Because we do not have party structures and we do not have pecking orders and waiting times, I can move a motion or look for leave to introduce about anything just by getting Mr Phillips or Mr King to draft it for me – as long as I can get it through the Keys or Tynwald. A few weeks ago I actually put down and got leave to introduce a Bill about regulating corporatised public sector entities, and that is what I am currently trying to do if the flesh is equal to the spirit, because to me it would be perfect to put together a consultation about the principles of what the legislation would be trying to achieve at this stage so that the next House could actually have something to work on – and that would be a backbench initiative rather than a Government initiative.

9955 **Q678. Lord Lisvane:** Well, thank you for the implied compliment on motions for leave to bring in Bills. I think I am becoming known as something of an obsessive on the subject, but, I have to say, an unrepentant obsessive.

I think that deals with the legislative issues that I had in mind and I think it also covers the ones that you raise in your paper – do tell me if not.

9960 As I am charged with looking at efficacy – and it is a very difficult thing to reach an objective judgement on, of its nature, but I suppose parliamentary efficacy is about representation, about legislation and about scrutiny, challenge and call to account – how do you think that last function could be done better? Again, you touch on it in your paper.

9965 **Mr Thomas:** There are various tools to use. One is Question Time, and I share some of Minister Shimmin's frustration with some of the Questions asked in Question Time. I think David Kermode wrote a chapter about Question Time and I think he proved, through looking at five-year cycles, that the number of Questions went up in the run-up to an election, which suggests that perhaps the purpose of the Question is to show your constituents you are doing something and also perhaps to get the media attention, because the media do actually focus on Question Time.

9970 To me, a good questioner is always focusing as much on Questions that are going to produce information that is helpful to develop public policy, so they might as well be Written Questions and more or less you do not get any coverage in the media for Written Questions. There are exceptions, but an honest questioner would have an equal number of Written Questions put down as they would for the Oral Questions. So, to be precise, Question Time has become a bit of a spectacle and it is played as such by some politicians.

9975 The second way to do it is that any Member can bring motions. I do not know if you have had anybody analyse for you the number of private motions brought by people, but it is not only me; some of my newer colleagues have also brought motions. I think that is another tool that Members can use to hold Government to account. One of the motions I brought was to get what

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is called the Ageing Population Report published, because it had been withheld in the way that Minister Shimmin described. He was attempting to try to withhold some information and it was published through a motion of mine. I exposed the lack of a population policy. People make statements about population but we do not actually have a population policy, and so on.
9985 Another of my colleagues used a motion to bring credit unions and the lack of a credit union into focus. Another of my colleagues has brought out issues to do with the governance of Health and Social Care very well using motions.

So we have got tools of Questions, we have got tools of motions, and then we have the tool of Private Members' Bills. There are very few of us. The constraint is always the number of hours
9990 in the day and the energy – and also the constraint is understanding of Members of the process and what they can achieve in the process, so training comes into it and education and the type of people you have as representatives. I do think that if used properly, by the right people in the right way, we have actually got an incredible amount of tools available to Members to hold the Government to account.

I think this Government has not achieved what it wanted to achieve, because it has become apparent to some of us and to the wider public that some of the directions they intended to march us down are the wrong directions – to do with public sector pensions and to do with National Insurance and state benefits, and to do with growth for growth's sake and a whole number of areas where Government policy, I believe, is questionable. I think I could find
10000 evidence to demonstrate and prove that policy has actually changed in certain of those areas and will have to change more through the activity of backbenchers.

Q679. Lord Lisvane: When you talk about a private Member's motion, if that is agreed to is it felt by the Government that it is really binding upon the Government?
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Mr Thomas: No. There are lots of examples of motions that have just been there; and no, they are not binding. No motion of Tynwald is binding, even a Government motion. I can give you lots of examples in written case.

Power is not about what is written on the paper; power is about what happens around what is written on the paper. The Disability Discrimination Act was going nowhere, it was being subsumed by those who have political power into the Equality Bill for different reasons, so I used a private Member's motion to remind people that we had had a Disability Discrimination Act pending the Appointed Day Order for a decade and that was becoming more and more embarrassing. So, fair play to the Departments involved, once that was exposed they have
10015 actually begun the process of bringing in regulations and codes underpinning it and implementing it within a certain timetable. It is still quite a slow timetable but we have made progress.

I can give you lots of examples, but the main point is that political power is not only about what is written on the paper. The chance that Members have to actually bring motions actually
10020 forces Government to react in certain ways.

Q680. Lord Lisvane: I think we would agree very readily about that.

Mr Thomas: National Insurance is an issue. We have now got in this week's newspaper ...
10025 While you are here you will be able to read about Government Actuary's Department reports on the National Insurance Fund and, in actual fact, how healthy our position is. As recently as December I was told in a Question that that was private information and that that would not be released, but now, in May, it has just been published without any commentary on the fact – until now that I am making the point – that I was previously told that was private information. So
10030 Members can use the oxygen of publicity and the oxygen of public political comment to actually force Government to keep promises that they have made in the past.

10035 **Q681. Lord Lisvane:** You have described three groups – Questions, motions and Private Members’ Bills. Can we now look at the scrutiny function *per se* through committees. I am looking here at pages 13, 14 and 15 of your memorandum. You make this distinction between scrutiny *ex post facto* and participation in policy development *ex ante facto*. Is that a realistic distinction to make, do you think?

10040 **Mr Thomas:** That is in quote marks in my paper because that is a straight lift from our Committee report that was agreed at –

Q682. Lord Lisvane: I understand it came out of that Select Committee.

10045 **Mr Thomas:** That was received in December. I agree with you. My case inside that Committee – and I was pleased with this result – was that scrutiny became *ex ante* policy development, tackling emerging issues. You learn from the past to make recommendations to Government for the future, so I see them being much closer than some of the longer-standing politicians do.

10050 There has been a tradition inside this parliament, inside Tynwald, that scrutiny committees do scrutiny, they do not do emerging policy, and I do not think that is helpful. It all comes back to that point that you have made over and over again with a number of people, that we have this culture that everybody serves in a Government Department.

10055 I want to go back to something that I did not hear Mr Shimmin tell you but I think is what I perceive to be the general perception in the public, which is if you go back even as recently as the 1980s you got elected to the Keys to become a member of Government. Because we had the boards system until that period, quite clearly it was like a local authority in that sense: you got elected and you became a decision-maker inside one of the board committees in the same way that you would, in a local authority, get elected and then become one of the committee members. That has changed legally but it has not changed so much in the public perception, so that is one of the major issues that I want you to try and ... or I hope that you will challenge in your report, because the Government Department role is much more complicated – the perception of it is much more complicated than you first think. Elected candidates do have the expectation put on them that they will serve in Government as well as just being a Member of a parliament, and I think the way to break that down is for these parliamentary committees actually to become more involved in participating in policy development.

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Q683. Lord Lisvane: And presumably you would say that if you were to limit the number of Members in Government this alternative career structure might become a reality and you would have more resources, more Member resources, to devote to an expanded scrutiny system.

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Mr Thomas: Yes. It was Mr Butt, a former Member of the Legislative Council, who made the case strongly that you sort of cited earlier on this afternoon when you said how attractive would it be to get elected with a much larger mandate than other Members and then just do scrutiny and just do ... He made that point very strongly to our Committee when we were looking at committees, and I think this approach of having policy development and consideration of emerging policies inside the committees is a way to address that issue raised by Mr Butt and others.

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Q684. Lord Lisvane: And at the moment the Policy Review Committees actually have very constraining Standing Orders, don’t they, because in effect they limit you to looking at how well a policy has worked?

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Mr Thomas: And I would seek to encourage Tynwald to reconsider that.

10085 **Q685. Lord Lisvane:** I have been told that, actually, some of them have not felt too constrained by that in practice.

Mr Thomas: And we concluded in our Committee that was not quite as strong as you stated – I just did not want to contradict you. We concluded that, in actual fact, you could push the Standing Orders for the committees and get more involved in policy development. It was just a feeling amongst the members of the Committee, rather than something that was actually constraining in Standing Orders.

10095 **Q686. Lord Lisvane:** And how do you offset the sort of concerns that Minister Shimmin – and, I think, if my memory serves, the Chief Minister as well – felt, that there was a risk of a lively committee being a sort of opposition in itself rather than a scrutineer?

10100 **Mr Thomas:** That is a risk and that makes me frustrated. If I look at the work of the Public Accounts Committee, they have gone down certain areas and they have not looked into other areas. That is why I have suggested to you in my written submission that you need to look at the context of committees.

10105 Was it realistic for the Public Accounts Committee to follow every area of Government without an Auditor General in the background? At the minute, the Public Accounts Committee gets Treasury's, or Government's, audit reports and quality assurance reports, but it does not actually have what most parliaments have, which is a degree of independent audit and assessment from something like an Auditor General. We have the legislation – we have had the legislation since 2011, but we have not brought it into force. Obviously, there are costs, so therefore something else will have to give to create that, but I would be much happier if we had a Tynwald Auditor General there helping something like the Public Accounts Committee properly look for value for money and all the other things that it is charged to do in the legislation.

10110 Secondly, the ombudsman – the Tynwald Commissioner for Administration – could play a similar role, because often complaints and breaches of risk that appear on risk registers are vital for understanding how public policy can work.

10115 Thirdly, we have all of the statutory and non-statutory committees outside Tynwald that do not ever really get listened to – and I gave you some evidence for that from the Health Services body – and I think they should be feeding in systematically to these policy development committees. In other words, through the first five years of their existence in their modern form, each of these committees has got into the habit of calling in the Minister and the chief executive each quarter, because roughly they cover three of them, and looking at other issues that seem exciting for Members at the time. That can tend towards opposition, like you said, depending on the personalities involved.

10120 I would like more of a structured approach: publication of their work programmes; systematic publication of their findings earlier; and, most importantly, engaging with a wider group of people. But that takes us also, as I am sure you are going to tell me and Mr Shimmin will probably throw back at me and say it is process again, it is procedure and the antithesis of lean, mean Government.

Q687. Lord Lisvane: But then the role of the candid friend can be extremely useful in improving the performance of Government. (**Mr Thomas:** Exactly.)

10130 In terms of auditors, I think the public sector auditor is KPMG. If there were to be an Auditor General function, that would need quite a bit of restructuring, presumably. I do not know whether it is something that a commercial firm is able to support easily.

10135 **Mr Thomas:** We have not even got around to thinking about that, as far as I am aware. We have done some thinking in the last 12 months about how we would set up the Tynwald Commissioner for Administration, but those are the sorts of questions that we have to ask.

10140 KPMG has been Government's auditor for 16 or 17 years, which would be pushing it now for any place inside the European Union. There have been issues that affect the public and the public worries about value for money, and we do have internal audit and internal quality assurance and advisory services but I do think the public could have confidence restored if somehow a robust, more independent, more professional service was provided to political Members.

10145 Again, it is a difference between Mr Shimmin and myself that I wanted you to hear. I think traditionally the senior Manx politicians have seen themselves as being too much involved in managing everything. You heard Mr Shimmin say he needed more than one departmental Member – I think this is what he said – because otherwise he would not be able to keep in touch with everything: if it was not like that and if he was not in touch with everything, officers would go native and feral and would start making decisions.

10150 I think modern politicians have to understand that there is a very profound difference between an operational decision and a policy decision. Modern politicians have to limit themselves to making sure that public policy is going in the right direction that the people need and that officers are not running rings around them and actually doing an alternative policy, which I have experienced might be the case in certain situations. Secondly, politicians have got to make sure that they have adequate oversight in place to make sure that operational officers are making operational decisions fairly, efficiently, effectively and so on.

10155 I think on the Island we have got an excessive expectation of how hands on politicians will be, and that is part of the process that I hope you can help us with, with your feedback and your independent analysis.

Q688. Lord Lisvane: That is extremely helpful.

10160 Can I just go back to the Commissioner for Administration and see what you would envisage that individual doing?

10165 **Mr Thomas:** I just use it by example: I think in Westminster you have a Health Services Ombudsman and a Parliamentary Ombudsman and you have the filter through the MPs. That would be a good starting point to see why we need different ... The obvious difference, from our point of view, is we are tiny – we are 1,000 times smaller than the United Kingdom – so we would have to have a much smaller system, but the principle of an MHK filter, or even a Tynwald Member filter, seems to me to be a good one.

10170 At the minute we have that in any case, because Members of Tynwald are asked to take up issues for constituents and we deal with Petitions for Redress of Grievance that are put down on Tynwald Hill. I think we need time, officers need time, to work on this – and they are doing at the minute. I think we need a local small-scale system building on those functions such that MHKs do not become the social worker of last resort, the mental health worker of last resort, the planning appellant of last resort and all those other type functions that we tend to become too much rather than the job of politicians – going back to the operational decisions – to understand and respect the professional officers and to set up a system, like an ombudsman system, where we will be involved when the system is alleged not to be working and we get a complaint that can be put into a system here.

10180 Tynwald has to be centred on Tynwald and it would mean giving more power to the Clerk in Tynwald, the way I see it, such that there is perceived to be a degree of independence from local authorities, Statutory Boards and Government Departments against whom complaints could be made in the public interest.

10185 **Q689. Lord Lisvane:** But you are limiting it to the classic role of investigating maladministration.

Mr Thomas: Yes.

10190 **Q690. Lord Lisvane:** What I am feeling towards is might there be a way of providing more resourcing and, if I can use the phrase, target acquisition to the scrutiny role?

10195 **Mr Thomas:** Yes, very much so. My professional background included compliance, and any good compliance officer would be looking at the complaints and the breaches of procedures to find out what the regulator might have an issue with in years to come. So very much so, it should be feeding into the scrutiny policy/review process.

Q691. Lord Lisvane: So something that was endemic rather than –

10200 **Mr Thomas:** Yes, very much so. That is exactly what the output would be for. It would be saving money because it would be making for better government. What we have always got to remember is we are not a Little England type place in the Isle of Man; we cannot do something just because it is done like that in Westminster. Our scale, a thousand times smaller than the United Kingdom, means that we have got to do things in different ways, and when you start talking about that too early on it will be perceived as we need a massive bureaucracy called the ombudsman, just as we have lots of in the United Kingdom, and we do not have that resource. We have just got Mr King, Mr Phillips and Mrs Corkish to manage a part-time independent person, or something like that, and that is where we have to start from.

10210 **Q692. Lord Lisvane:** Would you like to see a formal code of conduct?

10215 **Mr Thomas:** I think that would be helpful, yes. My attempt at an adjournment in the debate you witnessed ... And it was not successful, because moving for an adjournment is always a sort of pathetic thing to do, but the tensions were so high that day that I do think – because we do not have recall elections, because we do not have codes of conduct, we do not have similar things that you have had to have in Westminster because of the expenses scandal and the like, and most importantly because anger was so high that day on various sides – in one sense a cooling-off period might have been a good response, so that is why I moved for an adjournment, quite pathetically, in many ways.

10220 **Q693. Lord Lisvane:** Just looking at the provision in the Standing Orders – that says, in effect, that if you do not apologise you are suspended – is there an argument for having something a bit closer to a tariff?

10225 **Mr Thomas:** I think so. Your data is all up there for Westminster and you get 20 days for this and 10 days for this, as far as I can see. We have got ourselves into a situation that is going to be very hard to resolve, and that was unfortunate and entirely foreseeable, the way I was feeling at the beginning of that debate, and that is a great shame.

10230 So a tariff, a greater degree of bringing lay members into the investigatory process, having a Members' Standards Committee – like we do in Douglas Borough Council, in actual fact; I had four years of experience there with lay members with direct experience of this type of thing on their Standards Committee – all these things have to be worthwhile and the recall election process of petition in certain situations is a good fallback. We have a piece of legislation amending the Representation of the People Act – it is scheduled for 2017-18 – and to me we ought to try and include something about this in that piece of legislation as well.

10235 **Q694. Lord Lisvane:** I do not have to declare this as an interest because I am no longer doing it, but I have chaired standards and ethics committees for county councils and police authorities, and certainly I can see the advantage of external members. The difficulty, I think, in a parliamentary environment, is getting acceptability for that because there is a feeling that if you are an elected Member that is it, so to speak.

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10245 **Mr Thomas:** And the reality in our situation, for the debate you witnessed, was that, as far as I remember, the Standing Order we used only came in in about December 2014, so it was not strongly embedded; and secondly, the code of conduct alternative of just embedding the Nolan principles was only introduced the month before. So, all in all, it is a very unfortunate episode and I hope we can all learn from it and grow out of it, and somehow a solution, a resolution, can be worked out – but I am not convinced that is possible at the minute. We will probably have to have an election and see what the result is before we move to the next stage.

10250 **Q695. Lord Lisvane:** I understand that Members' pay is tied to an official salary point. Do you think it is appropriate to have a Standing Committee of Tynwald recommending emoluments – in other words, the add-ons?

10255 **Mr Thomas:** It could be perceived as being a conflict of interest and perception is most important in politics, and so I would prefer any recommendation that you can think of, of a better way ... For instance, pensions have always been very uncomfortable. We have probably the last private arrangement for pensions in the British Isles, because you could not do this, what we do, pretty much, post-Maxwell and all of that, in the UK. I am delighted in that I think we will be moving into the Government scheme quite soon. All these issues, and I have not paid a great deal of attention to them, but if you can think of any ways to manage public perception and to make it fairer, I hope you can do that.

10260 Just before the 2011 Election, as far as I remember, there was a report to look again at relative remuneration. That came forward just before the Election and then it was parked because the Election was too close. I hinted at the story in today's newspaper about the fallout of the new starters' regime and what that means for new Members of the House of Keys in September. Again, it is unfortunate timing. A couple of my colleagues – I think it was Mr Skelly and Mr Cannan – moved earlier in this administration that we should have an independent review of remuneration and benefits, and probably that was necessary; but having said that, as far as I remember, the Commonwealth Parliamentary Association sent over experts in 1999, or something like that, and to me their recommendations were perfect. They made a lot of sense. I cannot see why we cannot just implement those recommendations now – so, if that is something within your scope, please go for it!

10265 **Q696. Lord Lisvane:** I think you may be taking me on to dangerous and indeed contentious ground, but the CPA visit has been quoted to me by a number of people – mainly because the result was very much higher than anybody thought that it was going to be.

10270 **Mr Thomas:** I got teased by my closest family that, because of the way I saw politics and because of the way I behaved after I was elected, I was the only one of the new Members not to be immediately given a departmental Member job. I was kept out there for 10 months, so at that time I was earning £11,000 less than my colleagues and I did get a lot of ribbing and teasing from my closest family that I was the lowest-paid politician in the British Isles at that time and how was that an achievement.

10285 **Q697. Lord Lisvane:** Why do you think there are not more women in Tynwald?

Mr Thomas: The number of women in Tynwald is a direct function of the number of candidates. In the 2011 Election there were only seven out of 70 candidates who were female and the same proportion got elected, so that is what we have to solve: we have to have more candidates.

10290 I cannot give you a better answer than Mr Shimmin did, which is that it must be something to do with the perception of the way we carry out our business; it must be something to do with the criticism, the critical appraisal that we get in public, the long hours into the evening, those

10295 sorts of issues. I could not help but notice that in the recent Guernsey general election a third of women came forward and their parliament was transformed. I think we probably are the lowest in the Commonwealth now, so I really do hope, like Mr Shimmin expressed his hope, that that aspect of diversity is addressed along with the other aspects of diversity to do with age and to do with other types of profiling.

10300 **Q698. Lord Lisvane:** It may be worth looking at the Inter-parliamentary Union's list of comparators – I am not sure they would make reassuring reading!

I think we have covered most of the areas in your paper. Is there any other area that you would like to explore in the time we have got left?

10305 **Mr Thomas:** Thank you very much for asking that question at the end.

I suppose just to say something about open and digital democracy, because this way that we are sitting now was an innovation that came up, I think, in the Landlord and Tenant Committee. We used to have people sitting with their back to the audience giving evidence to us, sitting round here, and we have got this more interactive approach. To that Committee we brought in a legislative drafter – who, at the time, was working in Brussels for us – by video conference.

10310 Another of the motions I have brought is about publishing the voting database, and I think staff are working on making it more transparent exactly what Members have done privately and for Government as part of their time here.

10315 So, what I wanted to say is I think our parliament would stand up quite well against the Digital Democracy Commission type aspirations expressed across, but we are constrained, given that we are a small place with limited resources. So we do not have our own alternative debates that you can petition to have, because we do not need it – because we have devised a system whereby an e-petition can be put down formally and then picked up by a Member and debated in our full Chamber because we have that ability. That is just something I wanted to bring to your attention.

10320 I think later in the week you have got some submissions from a direct democracy perspective. I am a conservative when it comes to direct democracy because I do not perceive there is great interest to be as involved as some people imagine the public want to be involved. I agree with Mr Shimmin that jobs and incomes and pensions and education and health are what really motivate people, not actually how the governance works. But wherever possible, I think it is important for us to be transparent and do whatever we can to use technology to enable participation in this ancient institution, Tynwald, which needs to evolve to reconnect, to an extent, the people with their parliament and to do what is really important in the Island, which is to conserve consensus, because that consensus is very slightly fragile because of the way some things have panned out particularly in the last five years.

10330 **Q699. Lord Lisvane:** And I assume that you would accept – indeed, you would take it as a central tenet – that high standards of governance and process support high standards of delivery to the things that really matter to people.

10335 **Mr Thomas:** Yes, and we cannot help ... We have made two changes to our Representation of the People Act in the last five years. We have legislated for the creation of parties. We have worked on the beginnings of changing the way that people register to vote and cast their votes, and we have got more work to do. We have also equalised constituencies so that now popular particular personalities but also the policies they espouse will be more comparable throughout the Island.

10340 These are all helpful, and I hope that in five years' time we will be looking back and saying this was the cusp when programmes for government, mandate politics, programme politics – all the things I have written to you about – actually became more important and the 2016 Election was one where the people fully got involved in policies and public policy and legislation where

10345 needed, rather than just voting for ... those thousand people that Minister Shimmin described to you, a small cluster of people just voting for somebody for different regions.

Lord Lisvane: Well, I shall be looking at the outcome with more than usual attention.

10350 **Mr Thomas:** Thank you very much for your attention; that is very kind.

Lord Lisvane: Thank you very much for this conversation – I have really enjoyed it. It has been most helpful.

The hearing adjourned at 3.56 p.m.

Wednesday, 1st June 2016

*The hearing of oral evidence was held in public at 10.15 a.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[LORD LISVANE *in the Chair*]

EVIDENCE OF Mr William M Malarkey MHK, Member for Douglas South

10355 **Q700. The Chairman (Lord Lisvane):** Good morning, Mr Malarkey.

Thank you very much indeed for sparing the time to come and talk to me. The terms of trade, as it were, are that our conversation will be live-streamed and also that *Hansard* are preparing a record, and when that has been finalised that will go up on the Tynwald webpages.

10360 So can I, first of all, thank you very much indeed for your paper. Could you tell me something about the genesis of the views there and how you went about collecting them?

Mr Malarkey: Good morning, Lord Lisvane.

10365 Can I say that I feel I am here today not representing me, but representing the public, the people who put me here. I believe that your review is extremely important and there are a lot of views out on the Island from the electorate who want to have their say.

Not everybody will want to write to you direct so I decided to do a poll that would give the people of the Isle of Man a chance to express their views, and that is what I have presented to you this morning.

10370 **Q701. Lord Lisvane:** How did you go about doing that? I am interested in how you achieved the coverage and how people got involved.

10375 **Mr Malarkey:** The poll was done on Facebook. Obviously that restricts the poll somewhat, but Facebook is probably the most popular social media used on the Island, other than Twitter and Google and all the other things, so I decided that Facebook would be the way forward.

Also, there was an opportunity that if people did not have Facebook and did not want to join Facebook, they could copy the questionnaire and post it to me. Some people did that, and I actually electronically added their postal ones on to the survey, to make sure that the survey coming through is what the people think.

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Q702. Lord Lisvane: And it is very helpful to have the raw data at the back of your paper, as well.

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Mr Malarkey: I have given you everything but names and emails etc. The ones that were not anonymised did allow that to go through. For data protection purposes I have taken that out today, but I can prove that all the data here is legitimate. I have some proof on my copy of names and people who actually put it in, to prove that there is no duplication where possible, because I went through making sure that anybody that did try to duplicate was not allowed to do so.

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Q703. Lord Lisvane: On that basis, of course, I am very happy to take this at face value. Just for the record, how many respondents altogether did you have?

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Mr Malarkey: I had 336 respondents. The survey I pushed out for about two weeks. The local papers and the local radio stations announced it, it was on my Facebook site and I asked people to share it.

I thought the response was extremely good. We do not normally get that type of response for Government surveys, let alone online polls.

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Q704. Lord Lisvane: I have been hearing about the consultation process, and how that is sometimes very disappointing.

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Mr Malarkey: Very disappointing. You get 20 responses, if you are lucky, sometimes, so to have 336 ...

But what I found was most encouraging is over a third of those who responded also put additional comments. If you look at the way the poll was designed, there were no leading questions. I made a point that this is not about my view; it is what the public view was. So I did not go, 'Should we get rid of LegCo? Yes/No', because I knew what the answer would be.

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Q705. Lord Lisvane: 'What is your view of', rather than –

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Mr Malarkey: It was like a 'Yes/No/Other', and if you look at the comprehensive list, the second list, you will see that all the other comments are on that list, as well as the additional comments. So you can see where people have clicked 'Other' and what they have actually written in the other little box.

The final box here, which is the comments, to make it simpler and bigger, you have got that on your first sheet after what the four questions were. There are 116 separate comments from the public on what their views are.

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Q706. Lord Lisvane: Yes, and this starts at page 3 of your –

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Mr Malarkey: That is right, and it goes right through to page 11, I think, so it is quite clear. I think there is some bedtime reading for you, sir!

There are some very interesting points. Some of the points I agree with, some of the points I don't agree with. But, as I said at the beginning, this is not about me; it is about what the public want, I believe.

Q707. Lord Lisvane: This is extremely helpful and it gives a window into a wider sample of opinion, as you say.

10430 Over what period were you inviting comments? What was the time that this was open, so to speak?

Mr Malarkey: When I knew you were doing the review, and when I had a date with you of today, that was about three weeks ago, I think. So I launched the poll then. I did not actually close the poll until Sunday night, but I have been keeping an eye on it and it was not active for the last 10 days, if you like, because it was not being advertised any more. It was not being pushed.

10435 The initial response in the first four days was colossal. I would think about 80% of the results came through in the first four or five days, when it was on the radio, in the newspapers and being shared by several Facebook sites.

Q708. Lord Lisvane: Fine. Well, that is extremely helpful, and perhaps it gives us an additional starting point for our discussion because you say that you agree with some of what the majority of your respondents say, but not everything.

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Mr Malarkey: Indeed. We could be here for more than an hour if I was to go through every question in detail. There is a string I see going through public opinion, but I think you have probably learnt that yourself by now.

10450 There is a lot of discontent with regard to how LegCo operates, how it is elected, what its job is and what it gets paid. And that becomes quite apparent when you start to read some of the comments coming through.

10455 If we could go through bit by bit on each question: 'Do you think the present three chamber Tynwald Parliament needs to be changed?' Now, when I put the question forward I tried to explain to people what 'tricameral' was and what 'unicameral' was, just in simple points. It says the 'three chambers are House of Keys, Legislative Council, together in Tynwald Court – this is tricameral'. So I tried to explain that in the question as I put it forward.

Q709. Lord Lisvane: I am following that – that is on page 1.

10460 **Mr Malarkey:** Yes, indeed – of the actual questionnaire.

Q710. Lord Lisvane: But there is a general point, isn't there, about seeking views on something as complex as the relationship between the various parts of a tricameral system. You can do it in fairly basic terms, but in terms of the way it operates, that is quite a difficult thing to get over for what is in effect a ternary choice.

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Mr Malarkey: When you say 'the relationship', do you mean between the Chambers or between the public and the Chambers?

10470 **Q711. Lord Lisvane:** Between the Chambers. Because, for example, if you are talking about LegCo – and I am very well aware of a wide range of criticisms of LegCo, both the way it operates, the way it comes into being, its democratic mandate and all the rest – but you have to set that, don't you, against the background of the role which LegCo plays? And if you were to say 'should ... ?' – and you do raise the question of revision, but it is something which perhaps is quite difficult to get over in a survey of this sort.

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Mr Malarkey: I think the Manx public know exactly the situation with regard to the Chambers. Their main concern is that the Legislative Council Chamber, they have no control over. They have no control over who sits in it.

10480 In recent months they have not done themselves any favour by rejecting such Bills as the Chief Minister's Election Bill. That has given them a bit of a black mark in the public eye as well, I would say.

10485 My own personal opinion is that I would like to see them as the revision Chamber. When I was elected in 2006, one of my key campaign things was 'Let's get rid of this old boys' club'. I make no secret about that. I used the words 'old boys' club' in my manifestos going forward.

10490 **Q712. Lord Lisvane:** But let's just take that business of being a revising Chamber. For a lot of people *revising* legislation sounds very unchallenging: it is about looking at the detail and perhaps dotting some i's and crossing some t's. But revising legislation can actually be pretty heavy duty and politically challenging. Wouldn't you agree with that?

10495 **Mr Malarkey:** Indeed. And if I could carry on from where I was in 2006, I would have got rid of Legislative Council either totally or made sure they were all elected. I do believe they do have an important role to play in revising what goes through Keys.

Q713. Lord Lisvane: And if they were elected, on what sort of basis would you expect them to be elected?

10500 **Mr Malarkey:** Well, if they are elected by the public, this has always a problem of finding a system with the way forward. I have been involved in several attempts to have that –

Q714. Lord Lisvane: There have been a good many attempts, yes.

10505 **Mr Malarkey:** There have been and I have been involved very much so in trying to get them elected by the public. I have tried to have referendums as to whether the public actually want them to be elected or are they happy for them to be a revising –

Q715. Lord Lisvane: Well, you have conducted a mini referendum, in effect!

10510 **Mr Malarkey:** I have, because about two months ago I went to Tynwald and tried to have a referendum because in my opinion the best time to have a referendum is when you are having a general election. The cost is at a minimum because you have got the people at the polling station anyway, so let's ask the people what they want.

10515 I am very much a believer it is what the people want, not what I want.

Q716. Lord Lisvane: Yes, but then you are exercising your judgement and your experience, so let's say on what sort of basis of suffrage should LegCo, if elected, be elected?

10520 **Mr Malarkey:** I would be happy if they were elected totally by the public and it became one Chamber all elected by the public.

But you could then have the argument, do we need 32 elected Members for a population of 85,000 people?

10525 **Q717. Lord Lisvane:** Yes, but surely the argument is about the totality of Members, not necessarily the total number that is elected, because if you are talking about politicians, members of a parliamentary assembly, the judgement is pretty similar in each case, isn't it?

10530 **Mr Malarkey:** You are giving virtually people off the street, who can walk in and become a Member of Legislative Council, the power to vote down legislation. I am sorry, I think that is wrong. I think the public think that is wrong. They have no mandate whatsoever.

Some Members have got mandates because they have progressed from being in the House of Keys up to the Legislative Council, but there are several Members who do not have that mandate. They do not have one vote from the people, but they can control very important decisions going forward.

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Q718. Lord Lisvane: Let me take your phrase you used a moment ago about somebody walking in off the street: if they get on to LegCo, then it is the fault of the Members of the House of Keys who vote for them, isn't it, as an electoral college?

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Mr Malarkey: Well, I have got no argument with that one, sir. I have not liked the way we elect our Members of LegCo ever since I have been in here, since 2006, and I have tried to do something about it ever since then.

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Q719. Lord Lisvane: You also said, forgive me for picking you up on this, that somebody on LegCo has a mandate – well, surely they do not? Because if they have been a Member of the House of Keys, fine, but when they finish being a Member of the House of Keys their mandate is extinguished, isn't it?

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Mr Malarkey: Yes, but we have at least two Members or three Members in there at the moment who still have the mandate of the people because it was only four years ago they were elected by the people. So until this next election, they technically still have the five-year mandate that they were elected on.

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Q720. Lord Lisvane: But I do not quite follow the reasoning there. They are in LegCo –

Mr Malarkey: There is Bill Henderson, there is David Cretney – whose seat I have taken – and there is Tim Crookall, who were all elected to the House of Keys in 2011. Since 2011, they have been elevated to the Legislative Council, so technically speaking, they still have the vote that they got into the House of Keys with.

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If you think any normal serving person who was elected in 2011 has a five-year term and has the backing of his constituents for five years. So three of those Members still have the backing of their constituents, to a degree, until this coming election.

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Q721. Lord Lisvane: But when they moved from the House of Keys to LegCo, their places were taken by people with a fresh democratic mandate.

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Mr Malarkey: With new people coming through, yes. It is a grey area, I quite agree, but it is a completely different ... At least they have been to the public and the public have picked them for what they are at some stage of their political career. But other Members I could mention who have never been in politics before, who probably bring some very good professional skills to the Legislative Council but should not have a vote, in my opinion. And I think the public see it that way as well. In fact it is quite obvious from the poll that is what the public think.

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Q722. Lord Lisvane: I understand that, but if I were to play devil's advocate I would say that your argument tends to a continuation of what some people have called the 'cosy retirement home' for MHKs – that you rather like to see people with MHK experience in LegCo.

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Mr Malarkey: I am making comparisons with what we have at the moment, rather than what I would like to see for the future, so let's not mix that up. We have a mix at the moment of some MHKs who I say still have a partial mandate because they have been and we have some LegCo Members who have never been to the poll. So I am drawing a line through the two of them.

My personal opinion, and I go back to it, I think as a revising committee, there is a lot to be said for having a revising committee, because the House of Keys do make mistakes, that has been proven time and time again when legislation has to come back to the Keys.

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Q723. Lord Lisvane: Forgive me – isn't it the Government, in effect, that is making the mistake if there is something wrong in the legislation that they introduce and it is the Keys not being sharp enough, or not having the opportunity to pick the mistake up? I think it is probably a good idea to separate the two.

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Mr Malarkey: Absolutely no argument about it: it is the Government that brings most of the legislation forward. Sometimes it is Private Members' Bills, but then we could sit here and argue all day, was the mistake made in the Attorney General's office, was it made by the Government, or was it made by the person presenting the Bill? Sometimes it is tampered with because people in the House of Keys try to tag on extra clauses, and they actually make a little bit of a mess of the Bill going forward.

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I had a recent Bill, a *very* simple one over changing the boundary name of my constituency; it was that it had been changed to Douglas West when it was actually in Douglas South. It went through quite smoothly, but a Member tried to tag on something else, changed the long title, the Keys agreed to change the long title but did not agree his clause. So by the time my Bill went through it had the wrong title to it.

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Q724. Lord Lisvane: I am very well aware of that particular example and indeed, talking to Mr Acting Attorney General a fortnight ago, we explored this issue of long titles, and long titles being outflanked by subsequent amendment, in some detail. So I am very familiar with the case.

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Mr Malarkey: So it needed the revising Council to look at that and then send that back for a quick Keys motion just to rectify it. So they *do* play a part. Otherwise we are going to have to change the whole way we do legislation in that case.

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Q725. Lord Lisvane: But let me go back to – in a sense we went off on something of a digression – this issue of the basis on which LegCo, if popularly elected, might be elected. What would you like to see? What system would you like to see?

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Mr Malarkey: I still have not come up with one that is absolutely perfect, and I must admit that.

Q726. Lord Lisvane: Well, the least imperfect?

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Mr Malarkey: The big argument has been if we had eight areas of the Island and had representatives from each area, I think that would be the fairest way forward.

The way the House of Keys saw it is that they would maybe then be what you call 'super Members' because they would have more votes under their belt than Member of Keys have had under their belt. So that is what has always been the resistance from Keys: frightened of making an eight-person super Council, if you like, with more power than what they have got.

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Q727. Lord Lisvane: I can understand that MHKs might be uneasy about it but it is also open to the criticism, isn't it, that you create your Upper House with arguably a greater democratic mandate than your Lower House, because each of them can say to an MHK, 'my mandate is three times as broad as yours'?

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Mr Malarkey: And that is why every Bill that has come forward has never successfully gone forward. I would rather take the powers away from the Legislative Council, make them a revising

10635 body, go to a unicameral system where it is just the House of Keys and there are no votes for
Legislative Council.

Q728. Lord Lisvane: Hang on, you can't have a unicameral system if you have got a revising LegCo, can you? Because it has got to have the ability to send things back to the Keys and it can only do that as a Chamber.

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Mr Malarkey: It would be no different, sir, than sending it off to committee, to make sure that it was right. It is only if they find fault in it would it have to come back.

Q729. Lord Lisvane: But that is the situation now, isn't it?

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Mr Malarkey: Yes, that is what they are doing at the moment, the revising. But they are also having votes in Tynwald.

Q730. Lord Lisvane: I understand that, but I think there are two separate issues there: there is the role of LegCo in financial and budgetary matters, policy matters and the election or the appointment of the Chief Minister; and there is the role of LegCo as a legislative revising Chamber. I think what I am putting to you – and it may be angels dancing on the head of a pin, possibly – is that were they to lose their powers in those first three areas, there would be no need if they were to be a legislative revising Chamber, to stop them being a separate Chamber?

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Mr Malarkey: As long as they lost their powers, they would be a separate Chamber as a revising Chamber.

Q731. Lord Lisvane: Not as it were almost an informal committee?

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Mr Malarkey: Well, yes. I am going back to the fact that they then come in and join us in Tynwald and they vote separately to us and they can vote our motions down, etc. That is totally wrong.

Q732. Lord Lisvane: If there were joint voting, and I understand that perhaps this went further than the sort of thing you are suggesting, is that not open to the objection that a majority in LegCo, joining with a minority in the Keys could overturn Government proposals which actually enjoyed a majority in the Keys?

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Mr Malarkey: I believe you were in the Chamber for that debate, were you, in April?

Q733. Lord Lisvane: I wasn't, but I have read the *Hansard*.

Mr Malarkey: You have read the *Hansard*. That is exactly what the problem was, and it is not something I favoured, the single Chamber vote. Again, you are allowing nine votes that are not votes of the public in that situation. It is totally wrong.

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It goes back to how the Chief Minister is voted in, absolutely terrible. When I came in in 2006 as one of 24 elected Members and then sat in Tynwald and found out that 33 people were going to vote for the Chief Minister, I was flabbergasted! I was totally amazed! What right do those nine Members, and I include the Bishop in that, have to pick the Chief Minister, when 24 people have been out for three or four months, knocking on doors, finding out what the people want, what the people are asking for? This is all about: we are supposed to represent the people.

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Q734. Lord Lisvane: Let me take that issue of what the people want, because there is a difficulty, isn't there, when a Chief Minister stands for election as Chief Minister, he – and it has

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10690 been 'he' up to now – has to put a statement, and I have got examples in front of me, expressing what platform, in effect, he is going to pursue – if you can 'pursue' a platform! But upon what series of propositions and proposals he is going to form his administration. But there are difficulties about that because with a very low level of party activity, you are taking a whole lot of independent points of view. The Chief Minister is distilling some of them with which he agrees, but the proposition overall, upon which he is to be elected Chief Minister, is one that has not passed any other sort of test of political acceptability or approval.

10695 **Mr Malarkey:** The situation is you have just had 24 Members who have been out on the doorstep, listening to what the people want. I would never go out tomorrow and write a manifesto for a September election, because I want to know what the people want before I make promises. They do not want to hear my promises of what I want; they want to hear what they want going forward.

10700 So before you elect a Chief Minister, you take the 24 people who have actually listened on the doorstep to what they want their Chief Minister to do next time, who they want for their Chief Minister next time, because these conversations go on all the time at the doorstep. And remember, it is only 12 months since I was on the doorstep at the by-election getting elected. I felt, coming in here, that the Government we had was not in touch with the public. They really weren't.

10705 **Q735. Lord Lisvane:** But that is a rather fundamental difference of political philosophy here, isn't it? You are telling me in effect that representatives of the people should actually be *delegates*, not representatives. In other words, they should be channels for the views of the public, of the electorate, not really forming their own views, informed no doubt by what people think. I mean this is the Burke tension, isn't it, between delegate and representative?

10715 **Mr Malarkey:** You own informed views, sir, come from what you are told. Just like when we sit in debate in Tynwald and somebody is trying to move something forward: you sit like a jury and you decide with what information you are given whether you are making the right choice or not.

10720 Similarly when you go to elect a Chief Minister, you are making that decision and that judgement on who you have spoken to on the doorstep, what the public opinion is. It would be a very foolish politician to come in and say, 'Well, I have heard that they all want A, B and C, but I am going to vote for D because he is my mate.' That is wrong.

10725 **Q736. Lord Lisvane:** I understand that, but aren't you potentially getting into the difficulty where, for the business of Government – and the business of Government in the Island is extremely complex; it covers most of what a nation state would have to provide in its administration and in its parliamentary activity – you cannot expect individual electors, or very few of them perhaps, actually to have opinions right across the span of what is going to be governmental activity?

10730 **Mr Malarkey:** I think it would be a very difficult five years if you put a Chief Minister in there that did not have some support from the public.

Q737. Lord Lisvane: That is rather a different thing.

10735 **Mr Malarkey:** No, it goes back to: I know who the public want to support because I have just spend four months on the doors knocking and talking to people. Legislative Council have not. They have not been out knocking on the doors. They are totally disconnected from the people of the Isle of Man.

10740 **Q738. Lord Lisvane:** Let's leave LegCo on one side for a moment, and look at it from the point
of view of the Keys. You have got the Chief Minister's statement. But of course, if a Chief
Minister is elected, he then has to form an administration and the people that he brings into his
administration will all have had their own views, and perhaps things that they themselves have
10745 been discussing when they have been knocking on doors and he will have to adapt his
aspirations, possibly quite considerably. Now if that is the case, is there an argument for having
a programme for government – which of course, a few years ago, used to exist in a slightly
different form – put forward and voted on, and if necessary amended a little bit further down
the track, once the Chief Minister has formed his administration?

10750 **Mr Malarkey:** I did try to bring a Bill through in 2010 to have the Chief Minister elected by
the public. I got it through as far as clauses stage and then it was, at the time, 'kicked into touch'
would be a good phrase for it, because I do believe that the Chief Minister should be elected by
the public.

10755 **Q739. Lord Lisvane:** But that is a rather different situation, isn't it? Because if you were to
have the Chief Minister elected by the public, then no doubt the Chief Minister would stand on a
manifesto and once elected, that manifesto would have been approved by the public. Now,
aren't you automatically then reducing the role of Members of the House of Keys, because the
Chief Minister would say, 'Well, I am not going to take your criticism, I am afraid, because my
manifesto has been approved by the public, and I have an absolute authority, whatever you
think, to carry that into action'?

10760 **Mr Malarkey:** I think he would have to get some support by the other Members, otherwise
he would not get very far as Chief Minister, to be perfectly honest!

10765 **Q740. Lord Lisvane:** Absolutely, but what I am saying is as soon as you start electing a Chief
Minister, doesn't that automatically reduce the role of the Keys in moderating or modifying
what the Chief Minister wants to do, in terms of the manifesto that he has put forward?

10770 **Mr Malarkey:** But the Chief Minister, if we stick to the present system, then has to bring his
Ministers together to his cabinet. Now, that is where the options are. He has to make sure that
whoever he is bringing in there agrees with his policies, otherwise they are not going to vote
with him.

10775 My understanding is, and I have never been a Minister, that the Chief Minister would then
look at everybody's manifesto and make sure that he is not bringing in a rebel or somebody that
totally disagrees on major policies that he wants to push forward. So there is obviously a lot of
negotiation that goes on after you actually have a Chief Minister to make sure he has got a
workable Government.

10780 **Q741. Lord Lisvane:** Let's posit for a moment that the system is the same, and leave this
question of direct election of the Chief Minister on one side. If the system were to remain the
same, what is your view about the programme for government idea that I put to you a moment
ago?

Mr Malarkey: In what form?

10785 **Q742. Lord Lisvane:** So that the succession of events is: that a Chief Minister makes the
statement on which he seeks to be elected; he is elected; he forms his administration, having to
take into account what may be considerably constraining factors where individuals say, 'Well
actually no, that bit of your statement, that's for the birds, I am not interested in that and I am
not going to support it', so that already the statement on which he is elected is having to be

10790 considerably modified. Now, at that point, or after that point, would it be a good idea to turn it
10795 into an agreed programme for government, supported by the whole of the Council of Ministers
and put it to the Keys, with the possibility of it being amended by the Keys?

Mr Malarkey: I do like the theory, but I would have thought you can get a Council of
10795 Ministers of eight out of 24, with eight people with like-minded views going forward. That is the
challenge that a new Chief Minister has to face. I go back to the fact that he has the option, he
has manifestos in front of him. If I was asked to be a Minister tomorrow and there were some
issues coming up, I would say, 'That particular issue in my manifesto, I would be quite happy to
do the job, but I cannot agree with you on that one policy.'

10800 Now, the Chief Minister has now got to decide whether he wants me, and it is a very strong
thing for him, or does he allow me to step out of that decision? To me, that is a better working
relationship.

Q743. Lord Lisvane: Well, you have distilled the essence of collective cabinet responsibility
10805 and the sorts of strains that it imposes.

Mr Malarkey: To a degree, but that was my understanding of how it works when a Chief
Minister puts it together in the first place anyway. I was always told that he reads the manifestos
of those he wants to bring on board, or certainly the Chief Secretary does. Because I go back to
10810 you would not want to bring somebody in who has got very strong views on something that
Government wanted to push forward.

Q744. Lord Lisvane: No, I accept that. But of course the Chief Minister reading the
manifestos of those he wants to bring into Government, that is an element of *Realpolitik*
10815 because he does not want to be wrong footed by saying to somebody 'Come into Government'
and then it proves to be an unworkable relationship.

What I was searching for was a way, when all that had been done, of achieving a political
endorsement. Of course, not set in stone: we all understand that events happen and policies
have to be adapted in the light of those events; but nevertheless, something which has received
10820 parliamentary approval, rather than simply being an exercise in trimming in order to be able to
put a cabinet together that is going to stay together.

Mr Malarkey: I was not re-elected in 2011, but when Mr Bell became Chief Minister, I believe
10825 that was the way he went forward anyway. He tried to make it a party of unity, a Government of
unity. He brought in Liberal Vannin, he tried to do just exactly what you are trying to say. But no
matter how you try to do that at the end of the day you will always get those who want to do
political grandstanding and lay the way forward for their own futures. So you might have unity at
the start of a Government. I think, Lord Lisvane, you know well enough that it does not always
last!

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Q745. Lord Lisvane: No, the political road is littered with wrecks on the hard shoulder, I think
it is fair enough to say!

But let me, in a sense, take the discussion we have been having on into the institutional
make-up. How far do you think Government is really challenged in what it is doing day by day?

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Mr Malarkey: I am not privy to what goes on inside the Council of Ministers so are we talking
about what challenges they have within the cabinet?

Q746. Lord Lisvane: No, I am not talking about that. I am talking about the parliamentary
10840 function which, one of them – it is fair to say, I suppose, that there are three main ones:
representation; legislation; and scrutiny and challenge, calling to account – how far that calling

to account function is really exercised in Tynwald? Or in the House of Keys, if you want to deal with that separately?

10845 **Mr Malarkey:** I think it has been challenged and challenged more and more of late. Certainly, it does not help the discontent between the Branches.

Q747. Lord Lisvane: Challenged in LegCo, you mean?

10850 **Mr Malarkey:** I think LegCo has been challenged, certainly by the Keys, and it makes it challenging in Tynwald itself for legislation going forward.

10855 **Q748. Lord Lisvane:** I may not have made myself clear. What I am after is your assessment of when the Government wants to do something, it has a policy or it has legislation, how far that is really made subject to an evidentially based scrutiny and calling to account.

Mr Malarkey: Again, I go back to Tynwald: I think it has a very good ... it is well and truly talked through in Tynwald and scrutinised by several Members and well debated.

10860 What I go back to is: Government does not always get its own way these days because, again, of the discontent between ... You will always find this getting to an election, where you will get Government trying to bring policies through, no matter how good they are, and backbenchers trying to defeat Government, if you like.

10865 **Q749. Lord Lisvane:** An impending election always raises the temperature (*Laughter*) in every jurisdiction!

Mr Malarkey: It brings the best out of people, doesn't it!
I do believe that Tynwald does give good debate to legislation and good outcomes.

10870 **Q750. Lord Lisvane:** Well, that is the debating function. What about the committee function? How well do you see the Policy Review Committees operating?

10875 **Mr Malarkey:** I can be honest; I have not had an awful lot of dealings with them. Of course, coming in quite late, I have not really been put on to any committees because all the committees were filled.

From what I can remember going back between 2006-2011, I was on scrutiny committees in that time and I found them very effective, well-working, well worthwhile.

10880 **Q751. Lord Lisvane:** And constructively so?

Mr Malarkey: Yes. It could be argued that sometimes we have too many committees and maybe we do not look at the right things, but that is up to what gets referred to the committees in the first place, isn't it?

10885 **Q752. Lord Lisvane:** Well, yes, I think there is a distinction, isn't there? Because there is something that gets referred to a committee, or indeed as with the current Select Committee on the Jury System, something which is set up –

10890 **Mr Malarkey:** Which I am on, yes!

Q753. Lord Lisvane: I know you are, that is why I mentioned it! Which is set up to look at a particular identified problem or issue; and on the other hand the constant activity of a scrutiny

committee looking at a particular area of Government activity, which really I suppose the Policy Review Committees should be.

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Mr Malarkey: Or the Public Accounts Committee, etc. Yes, and they play an extremely important part in Government. There is always the argument about these committee members being in Departments as well and having maybe conflicts sometimes, and I think that has to be reviewed. There is certainly an argument for a Public Accounts Committee that is just pure and simply non-departmental Members, so that it can have a good, open, honest, debate without being conflicted in any way.

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Q754. Lord Lisvane: Well, the issue of 2010-12 with the PAC being inquorate because of conflicts probably shows that up quite well.

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Mr Malarkey: Indeed, yes. Do we need as many departmental Members from the House? Certainly when you are using all the House of Keys and all LegCo, you end up with some Departments that have got four or five political Members on them. They would be much better being on a proper scrutiny committee with no ties to any Department.

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Q755. Lord Lisvane: It is very interesting to hear you say that because I was going to go on to departmental Members in a moment. But just before we leave the subject of scrutiny committees, one criticism that I have heard made of them is that they start to be an opposition. In other words, they are opposing for opposition's sake, rather than conducting the 'candid friend' role, which perhaps you would expect in a scrutiny committee. Do you have a thought about that?

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Mr Malarkey: I have sat on scrutiny committees where ... It depends who chairs them, to be perfectly honest, and who is put on the committees. You can get a chairman who is really anti-Government, who will turn a committee into an opposition, you are absolutely right. So again, it is getting the mix right on these committees that is probably the most important part.

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Q756. Lord Lisvane: So I am thinking now about the possibility of, as it were, an alternative career structure that does not depend wholly on Government. Is there a case for changing the order in which elections and appointments are made so that chairs of scrutiny committees of some sort, not necessarily in their present format, would be made immediately after the Chief Minister was elected? So, as it were, that would take them up in the pecking order, but it would also mean that they were elected from a larger pool, not at that stage reduced by the number of Members who had gone into Government?

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Mr Malarkey: I think that is a very good argument, sir. I think it makes sense and it would then deplete the amount of Members left who could then be put on to departmental positions.

Q757. Lord Lisvane: I have been told that, of course, the Council of Ministers have to observe collective cabinet responsibility, but departmental Members are expected to toe the line so far as their own Department is concerned, but they can pretty much have free rein on criticising other Departments. But does that not, even with that degree of freedom, tend towards the House of Keys being really a house of Government, with very, very few people *really* independent from it?

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Mr Malarkey: I would not argue with that. I am very strong in my departmental ... and certainly have been in the past, of which Departments I will go in because I will not be gagged or restrained in any way.

10945 I was offered two different Departments 12 months ago when I was re-elected. I turned both
down because in my manifesto I had serious complaints about the Departments. I was not sure
whether I was being put in there to try and keep me quiet, but I certainly was not going to
accept them – although one of the Ministers did turn around and say, ‘I’ll let you have a free
vote when it comes to the time.’

10950 I said, ‘Will you let me have free speech, which is a bit more important, because if I do not
agree with what you are saying, I want to be able to tell you why?’

‘Oh, you can’t do that in Tynwald.’

I said, ‘Well, I’m sorry, I can’t be in your Department.’

So, yes, you have really hit the nail on the head. There can be a lot of restrictions.

10955 **Q758. Lord Lisvane:** Let’s take that business of being taken into a Department to keep
somebody quiet. Isn’t the other side of that coin the possibility of trying to fix things from
inside?

10960 **Mr Malarkey:** I believe that we can quite often fix things from the outside. Departments will
co-operate with you if you co-operate with them. I always try to work with all Departments if I
have got a problem. It is only when it gets into the Chamber and they are bringing something
forward that I do not particularly support, I will not be gagged by being in a Department.

Q759. Lord Lisvane: Fair enough.

10965 On a totally different tack, can I ask you, why do you think there are not more women in
Tynwald?

10970 **Mr Malarkey:** I really have got absolutely no idea! The only other female in Keys at the
moment knocked me off my seat in 2011, so I am probably the wrong person to be asking!
(Laughter)

Q760. Lord Lisvane: I do not want to move into an area of personalities! Let’s keep this at a
high level of generality.

10975 But why do you think, as some people have said to me, the culture is actually quite
antipathetic towards people coming in from non-political backgrounds and particularly women
coming in from non-political backgrounds?

Mr Malarkey: Isn’t that down to the electorate?

10980 There are several women that do actually stand as candidates, but they don’t get in. At the
last by-election in East Douglas, I think there were two or three females who stood, but they
were not elected. I do not think it is anything I can put my finger on. It is up to again, it goes back
to the electorate: what do they want? Were the women strong enough coming forward with
their views? Obviously not, because they did not get elected.

10985 **Q761. Lord Lisvane:** Do you think that the way in which emoluments, I understand that the
basic pay is pegged to a Civil Service rank, but do you think it is appropriate that a committee of
Tynwald decides on the level of the add-ons? That that is done from within, as it were, rather
than independently?

10990 **Mr Malarkey:** I do not see a problem with that because it has to come to Tynwald to be
finalised anyway and the public know whether we are voting ourselves a pay rise or whether we
are not voting ourselves a pay rise. It is quite open as far as I am concerned, from that point of
view.

10995 **Q762. Lord Lisvane:** And do you think that there should be a code of conduct for Members?

Mr Malarkey: Yes. As recent events, unfortunately, have proved, definitely there should be a code of conduct.

11000 Unfortunately I was not actually present for the May sitting of Tynwald, I was on parliamentary business in Jersey, but from what I have read of the debate I think it brought the level of the standards of Tynwald down somewhat. So maybe if we had a proper code of conduct, it would never have got that far.

11005 **Q763. Lord Lisvane:** I do not want to refer to the particular case, but as a general proposition you agree there should be?

Mr Malarkey: I think there should be a code of conduct, yes, indeed. We should all have standards to live to.

11010 **Q764. Lord Lisvane:** Well, thank you very much. Time is against us. I found this conversation extremely helpful. Is there anything else that you would like to add, any area that we have not covered?

11015 **Mr Malarkey:** I do not think so, Lord Lisvane. I think I would like you to look at the poll in depth and remember that although I have had my voice today, my most important voice is the voice of the people I represent. So that is why I would like you to take into consideration what is in the poll and the comments that they make.

Lord Lisvane: Of course. I have that well on board.

11020 **Mr Malarkey:** Other than that, I thank you for your time.

Lord Lisvane: Thank you very much indeed.

11025 **Mr Malarkey:** Thank you.

*The hearing was suspended at 11.00 a.m.
and resumed at 2.00 p.m.*

**EVIDENCE OF
Mr Raymond K Harmer MHK,
Member for Peel**

11030 **Q765. The Chairman (Lord Lisvane):** Mr Harmer, thank you very much indeed for coming to talk to me this afternoon. We will have a fairly informal conversational style, I hope, but I should just remind you that what we say is being live-streamed and *Hansard* are recording our proceedings; and when those transcripts have been finalised they will be put up on the Tynwald webpages.

You are a relative newcomer to this parliamentary and political scene so I would be particularly interested in those fresh impressions. Perhaps the first place to start is the tricameral structure, which is unique – Keys, LegCo, Tynwald.

11035 How well do you think that works, and what are the things that you think could be made to work better?

Mr Harmer: That is a very interesting point and, as you say, it is very unique. I suppose the difficulty with anything is that maybe we have hidden things that are done, and if we have tinkered without care then I presume lots of unintended consequences ...

11040 The key part, particularly on the Legislative Council scenario, is definitely that they are there to review and revise legislation. But some places do have a single chamber – Jersey and places like that – where, actually, that works quite effectively.

11045 So we really need to consider – and I suppose it is almost an academic exercise – how much revision there has been; and are there other mechanisms such as committees and things like that? I think in principle, certainly having the revising chamber and the main chamber, it seems to be a good thing, but I would not be averse to changing.

11050 Some of the technical things are quite interesting because, obviously, the legislation normally comes first in the Keys and then goes to Legislative Council. However, we both start on the same date, and they are quite quiet to begin with – so there are some practical things in there. I do have to be honest, looking back, I am not sure I am seeing a huge amount of revision in legislation, not what I was necessarily expecting. You do get the odd change, but I was expecting a lot more scrutiny.

11055 Maybe that is unfair, maybe that is me being a bit new to this, but I suppose I was initially expecting quite considerably more input.

Q766. Lord Lisvane: I suppose the Government might say that is because the Government is getting it right to start with!

11060 But what sort of thing would you expect? There is this comfortable phrase about it being a revising chamber which sounds as though it is just matters of technicality really; but revising legislation can be quite heavy duty in terms of pointing out where things really are fundamentally wrong.

Is that the sort of function that you were expecting to see?

11065 **Mr Harmer:** I was expecting that more. There are particular interests that come out – I know there are the road races and certain elements where there may be some expertise in those areas. But in other areas there has not been that in-depth overview or dispassionate view taken that I was expecting.

11070 **Q767. Lord Lisvane:** And in terms of injecting expertise into the process, do you find that you are the recipient of briefings from sectors on the Island, whether it might be business or whatever, depending on what sort of issue is before the Keys at the time?

11075 **Mr Harmer:** I think that is a very interesting problem, because that is one of the areas that I am not convinced that particularly works well, unless the intention is to just keep things going. For example, Members – particularly those who are not in Departments – are often given things very late. So you will have a presentation which is almost like a dry run of Keys or Tynwald literally two days beforehand and there isn't any way of assimilating all that information and really coming up with anything that is fundamental.

11080 I would prefer things at a much earlier stage. I think that gives with it significant risk, obviously, because you may endlessly go into committee. But I do think that with some of the things that come through, it is *really* difficult to give any real objective analysis or to get that input from wider afield with such a short period. And really you are then playing catch-up.

11085 Yes, you *can* do it, but you have got a couple of weeks ... and it would be useful to have that input much earlier on, particularly input from other sectors as well.

Q768. Lord Lisvane: Do you think that is primarily a function of the short time that you have; or is there an unawareness perhaps on the part of interests outside the parliamentary sphere, that this is something that they could do?

11090 **Mr Harmer:** I think it is a bit of both. I think, often, people do not find out about things until it really is very late in the process, and having things late in the process has that potential of not providing good legislation. I think there have been instances where quite considerable changes have been made late in the day, and when it gets into Keys – which would have been avoided had there been a bit more announcement.

11095 It is a very difficult thing because it is human behaviour, isn't it – in the sense that there is consultation and there are all of these steps to go through? But there does seem to be just a mechanism of saying, 'Right, okay, once it is actually at First Reading, that is when it gets noticed.' But if there was a consultation ... I just think the briefings and getting people on board earlier on would be useful.

11100 This may be an issue more for Government rather than for Tynwald or the House of Keys, but one of my big beliefs is that everything is straitjacketed into Departments and roles, where I do really believe that if things were more outcome-based, particularly if Members had the ability – if you take Children or the Environment – to work across Departments –

11105 **Q769. Lord Lisvane:** Joined-up Government?

Mr Harmer: Yes, that kind of thing would be a lot more helpful. I think when it is very straitjacketed in these very ... I am trying to think of the word –

11110 **Lord Lisvane:** The silos.

Mr Harmer: Yes, the silos and the bureaucratic way of dealing with things, then I think you will get those sorts of outcomes.

11115 **Q770. Lord Lisvane:** Can we park that just for a moment and go back to the issue you were discussing a second ago about the preparation of legislation, and particularly the exposure of legislative intent to parliamentarians?

Something that I have suggested to a number of witnesses is the possibility of collapsing the consultation process which, it seems, does not get a terribly good response; and of course occupies six weeks, unless that is reduced in a formal sense.

11120 Collapsing it into a process whereby the norm is the publication of Bills in draft so that they can be examined by a select or joint committee; and the public would be able to put their views directly to the parliamentarians who are examining the Bill: do you think that might offer hope of improvement?

11125 **Mr Harmer:** I think that would be exactly right.

If you see a first draft of a Bill and then it becomes real, I think certainly the feeling amongst the public whenever there is consultation ... I know it sounds odd, but there is not that belief that it is actually as worthwhile as perhaps we *know* it is; but that perception is out there, which is a shame. I think if you have a first draft then that actually gives people the time.

11130 I also like the idea of a committee, in a sense, and this is where it could be dealt with in LegCo or some other mechanism – it does not have to be – but a committee actually dealing with it. When you have this arrangement here in LegCo you will still have the similar structure, the similar concept of a speech, of somebody very much immediately giving a riposte; and it is very political, where there is an element of more considered analysis that I think would be useful, particularly in our type of environment.

11135 **Q771. Lord Lisvane:** I was certainly thinking much more of evidence-based examination and challenge.

11140 **Mr Harmer:** Yes, evidence-based, exactly; and you will then engage with people at the right time. As I say, sometimes different Departments have come in late and then you have actually got somebody with a very powerful point that could have been addressed a lot earlier – and it would have given a much better approach, I think.

11145 **Q772. Lord Lisvane:** Let's go back to the issue which you raised about the silo operation of Government.

Could you say something a bit more about that and how, let's say, it does not facilitate the business of Government and formulation of policy?

11150 **Mr Harmer:** Yes, I do not think it really assists when you have got very defined Departments. I have significant doubts about that, because many issues these days are *across* Departments.

Children is a classic case, because it is both in the Department of Health and the Department of Children, but we are not looking at the issues in the round. So, therefore, you may get a policy that is developed by Education that has implications in Social Services, and *vice versa*. Therefore you are going to get a very skewed viewpoint of how that policy should persist.

11155 Environment is a similar one where you have it, for example, in DEFA but you also have it in the Department of Infrastructure. So you might have the Department of Infrastructure saying, 'It is really good, we should make our houses better for the environment'; and DEFA saying, 'This is really good, we should adapt our planning for houses that do not waste as much in emissions';
11160 but the two have not necessarily connected. They are only connected in certain Council of Ministers' committees.

But it is that development policy and certainly whether the Members can input into that is limited. All the papers will go into the Council of Ministers that way, via their defined structures. Whereas if you had a much more outcome-based ... actually saying what you are trying to achieve. I am thinking in the business world you would actually look at your strategic objectives and develop your business from that. I appreciate Government is a lot more than that, but it is a sense of saying, 'What are the right outcomes we are trying to achieve?' – rather than just trying to follow particular lines.

11165 The Department of Infrastructure is one example: is that more of a service Department? If you build a road, you build a road just to build a road – or do you actually want do other things that are linked in with Health or Economic – ?
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Q773. Lord Lisvane: In terms of economic activity, for example?

11175 **Mr Harmer:** Yes, and certainly in terms of maybe co-commissioning, having budgets which are at cross-departmental levels. And I do think whilst, obviously, with the Council of Ministers they generally have a brief across because they meet together, I think when it gets to the Members level they are not necessarily utilised at their best. They could be good agents to achieve those outcomes that work across Departments and you could develop Government that way, and the way that we build up policy.
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It is that concept of building up policy that does seem to be very skewed between one Department and another Department, rather than that more lateral thinking where you might get legislation that is actually cross-purpose.

11185 **Q774. Lord Lisvane:** In most governmental systems you have a process of interdepartmental policy clearance: the minister wants to do something in one department, but there is a process – whether it is through a cabinet office arrangement or in some other way – of both alerting across government that this initiative may go forward, but also inviting input from individual departmental perspectives. Are you saying that that really does not happen here?
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Mr Harmer: Or perhaps it is not as effective as it could be, perhaps, that is really where I am coming from. And again, this is coming very much from new experience.

11195 I think this is more of a governmental issue, particularly where civil servants and public servants are all doing an excellent job, but they are all having to fight within their own structures of what was data protection, and things like that, where they cannot move from one to the other. And it is that interdepartmental ability to work across Departments that is lacking. Remembering, of course, that as an island we need to be nimbler and fitter and slimmer than larger jurisdiction.

11200 Sometimes I feel that we have imported a more heavy mechanism that is good for large jurisdictions, but if we are going to go above and beyond other areas we need to be nimbler and more fleet of foot. That is where I am really coming from.

11205 It is not necessarily a criticism, but a necessity if the Isle of Man is going to prosper in the future – and certainly if the Government is going to be that smaller, smarter Government that we all want to achieve.

Q775. Lord Lisvane: Is that an innate conservatism – small ‘c’ conservatism?

Mr Harmer: Yes, absolutely.

11210 **Q776. Lord Lisvane:** Have you looked at the possible implications of a single legal entity?

11215 **Mr Harmer:** Yes, and I think, certainly in my understanding, there is a lot of misunderstanding because a single legal entity in terms of the outside world, I understand, is eight years of legislation.

11220 There is the more practical concept of having all Departments working to one head, or one common objective. I do support that concept because, at the end of the day, we are in a fast-changing world and the objectives that the Isle of Man is trying to achieve ... For example, in the business world, let’s say, our next stage is IT storage data centres, where we store data for companies all round the world, for example, could be an opportunity. That links into many different Departments – or potentially could do – and I think if we only look at everything on a departmental basis we are going to struggle.

11225 Again, I will go back to an Environment one: there is talk of tidal power and wind power, and you have DOI looking at it in one way of legislation, but surely there should be an economic benefit otherwise we do not need to do it – or a social benefit, or some other benefit, that might be in the Department of Economic Development.

11230 So a lot of resource and time ... for example, we put the Marine Bill together and that is really good; but on the other hand, without the right sort of partnership with other areas of the Department, what is ultimately going to be the outcome? So unless we have that better working together I am not convinced that the structures we have without a single legal entity will achieve that.

11235 I am not convinced if we say we will just carry on as we are, that we will be able to effect that change – and that is the key, I think, going forward. We need to be able to change quicker than we have in the past when, over the last few hundred years, things were very static and relatively stable during the agricultural age. And even in the industrial age it moved fast. But these days things are moving *much* faster in both the economy and the business world and unless we adapt to that change ... Whoever adapts better, I think, will have the best outcome.

11240 **Q777. Lord Lisvane:** The implication of what you have been saying is partly that without a single legal entity, the Chief Minister simply does not have the power to knock heads together within Government and say, ‘Right, get going, this is what we are trying to achieve’.

11245 **Mr Harmer:** I think so, but like I say, I am not a hundred percent wedded to the single legal entity in one sense, but I am minded towards that because at the moment it does not have that sort of ability to actually do that. I think that is reasonably clear. But again it is that cross-departmental working, I think that is most important; and if that is achieved through the single legal entity, that is possibly a solution.

I do think most important is co-commissioning budgets. Sometimes we go line by line and very detailed on our budget but maybe, rather than do that, we should have certain areas where we actually say these two Departments *have* to work together on this particular area.

11250 There would be many areas where a Department can just deal with everything, as it does, and move forward; but maybe that would just engender where there does need to be co-operation, but that would work through.

11255 **Q778. Lord Lisvane:** Some of the most vivid indication of the silo problem that I have seen is a list of information-sharing protocols between Departments, which occupied a page and a bit of A4!

Now, if they were all in the same governmental entity, you would not need any of that because the data would be common to them all, I take it?

11260 **Mr Harmer:** Exactly. And also if you had the rights or Tynwald permissions for that data to be used for an outcome, for a purpose, then that would allow better cross-governmental working. At the moment you hit a wall, sometimes even *within* Departments – certainly in my areas with Children’s Services, between Education and Social Services – where one area may know of a particular problem, but it is very difficult for that information to pass through the walls as we have them.

11265 Some of that may just be people’s perceptions of the silo; and some may say that if you think of a silo, you are in a silo, and you properly operate as though you *are* in a silo – even if actually the legislation gives you more flexibility. But there certainly seem to be problems with information-sharing between the Department of Economic Development ... I was in a meeting where we had a similar issue, just being able to deal with children and their next job opportunities and things like that. Just being able to deal with things effectively, there are all sorts of barriers within the Department. At the end of the day that sadly means worse outcomes for those individuals.

11270 So there are clearly cases across Government where that happens. And it is ironic, because we are quite a small jurisdiction so you would have thought that it would be possible.

11275 **Q779. Lord Lisvane:** Can I turn to something which is in a sense quite closely connected, and that is the role of departmental Members.

11280 You, as a new Member, are a departmental Member of Infrastructure, and of Health and Social Care. Can you give me an idea of what you bring to those two Departments as an elected Member, but not a Minister – this odd sort of hybrid role?

Mr Harmer: Exactly.

11285 Obviously you use your experience, your inquisitive mind and your ability to drill further – and hopefully you are providing that input. If there is a particular area you can then focus on it and provide suggestions, working through. But I would argue that the departmental Member could be a *lot* better based on actually achieving particular outcomes.

11290 You could have a sponsored Department – probably one sponsored Department each. I am not sure whether Departments need five Members or four Members, or whatever, but you could have a sponsored Department, working across a particular area to assist the Ministers in formulating policy.

I am not convinced that the current structure is the most effective if you are trying to achieve the most out of your Members of Departments, and the fact that everybody is a member of at

11295 least one Department, unless they choose not to be. The structure of one departmental meeting ... I just do not think that coming in as a new Member, with the lack of induction and the lack of familiarisation, just almost left to fend for yourself ... Yes, you do that, of course you do. You work your way up and you learn; but the point is, is it the most effective? I would say not.

11300 I would say it would be much more effective to try and use the departmental Members, and I could say to you in Health, 'Yes, the Department of Health is your sponsoring Department but your remit is children and to make sure the Departments are working better across there'.

11305 Again, if there was some co-commissioning budget, obviously not as much as a Minister, but let's say if you had a smaller budget to look at a particular area. In mine, for example, is a classic case of early help that we are trying to give parents, and that involved the Department of Home Affairs, and Children, and Health. But, as a Member, having the authority to get all of those Departments together and say, 'Look, we need to co-commission a budget', is incredibly difficult. So I would argue that a Member for Children is sponsored by the Health Department that can say, 'Okay you have a budget to deal with early help. Make it happen – but that is your responsibility'.

11310 So it is not full ministerial responsibility but it is an effective responsibility. The trouble with that policy, for example, is that it slips between different Departments, it has not moved on as well as it should have done; so in this particular case it has a temporary contract until 2017, but it really needs to be set in permanently, but everybody is quite rightly guarding their own budgets.

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Q780. Lord Lisvane: Early years intervention is one of the classic multidisciplinary challenges, and I think every developed society has got that sort of problem.

11320 But when you are talking about having a quasi-Minister for Children, could that not be achieved just as well by the Chief Minister saying to a Minister, 'Right, you are the lead Minister on this, but here is a protocol of consultation, of getting everybody else on side – and yes, you can ring fence bits of the budget to ensure that you can deliver that'?

11325 **Mr Harmer:** Yes, but at the moment every issue like that becomes very senior, so it would then involve the Education Minister, the Home Affairs Minister, the Department of Health Minister – and it may not be his main priority; Noble's Hospital may be his main priority. So the Chief Minister or the Council of Ministers say, 'Right, Department of Health, you need to deal with this issue; here is your consigned budget'. Then you work on that and it is then given to a Member to say, 'Right, okay, this is yours.' You are a Member of the Department but you have that particular focus and that means that you can really achieve something; whereas, if you only have parts of it, you can only take your bit so far.

11330 You may have three or four sponsoring, but let's say one Department is only letting 1% of that Department, then that small piece could halt the whole progress of the actual work; so in that example, one of the Departments has a larger slice of the budget potentially, one has a very small part – but it is the tail wagging the dog again, and that could affect the whole policy. But I do not think that gives good joined-up policy or thinking and it is the development policy which I think is key here.

11335 **Q781. Lord Lisvane:** Let's come on to the development of policy in a moment.

11340 But it struck me, in a devil's advocate role, to say, 'Yes, but one of the things Ministers are paid for is to multi-task' – because you were saying that the Minister might not be able to concentrate on this because he wants to concentrate on that. And with the right support –

11345 **Mr Harmer:** Yes, with the right support, but then he is having to get involved in every little issue rather than being able to delegate effectively.

Q782. Lord Lisvane: But isn't that the sort of thing that officials are there for?

11350 **Mr Harmer:** And this is when they are in their own silos, this is where you get that same issue where they do not always have the authority or the *vires* to connect – and particularly when you are developing new policy.

11355 Once it is set in motion I think everything is fine, it is the development of new policy when it is new and different and requires change; that is the difficult issue where the Departments struggle a lot more. Then you have taken, let's say, one issue where it is a policy you are trying to develop and it has had to be dealt with right at the top by the Chief Minister, rather than being able to bring it from the bottom up. I think that is really where I am coming from.

Q783. Lord Lisvane: Let's take it more into the strictly parliamentary environment.

11360 When you were describing to me the sorts of things that a departmental Member can bring to the party – with a small 'p' – it struck me that those were all the sorts of things that you would expect of, let us say, the chair of an effective scrutiny committee or, in this case, a policy review committee. Would you agree with that – that a lot of these functions in terms of being the candid friend, in terms of being a constructive critic of policy, can take place in a strictly parliamentary forum – and they do not have to take place behind the closed doors of a Department?

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Mr Harmer: There is an element of truth in that and I think as the departmental Member you have full access to that area so that, rather than it becoming quite formal about asking questions, you can have your one-to-ones and things like that, and that can be *very* useful to actually gain that greater picture.

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Q784. Lord Lisvane: Isn't that rather a good example of 'agency capture', as the Americans call it, where you are drawn into – and I don't want to use this word in a pejorative way – 'complicity' with the policy?

11375 **Mr Harmer:** Unless you can shape it, and that depends on the person. But I do sense that on the whole concept of a departmental Member, there is a whole piece of work that could be done around that, and that is why I do really feel that if there was a role in terms of outcome base ... Obviously the alternative is you just have Ministers and parliamentarians, but you need some sort of mechanism for people to learn and become a Minister. But whether you would have four Members in each Department – you would need somebody to second the Minister and you could probably do that straightforward thing just to have a Member and a seconder; but, like I say, you could have this concept based on what outcomes would work across Departments, which I feel would be a very useful way to change it to more outcome based

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11385 Going on to the scrutiny committees, I think that would be a very useful area with LegCo, where they could focus more on the scrutiny side of things.

Q785. Lord Lisvane: Do they have the resources in terms of numbers of Members to do that?

11390 **Mr Harmer:** You could still have a Member of Keys but you could have it balanced two to one, with the Keys being the chairperson, and then having two people with that sort of information being able to deal with that. Then you could argue ... and I question whether having the LegCo departmental Member is of use. You need to have a mechanism so that Government can bring its Bills, obviously – some sort of rule that says you will propose and second it, or there is somebody to do that. But I do question the departmental Member ... because I do see that

11395 LegCo is a very different area and they mainly have a revising ability, but could potentially have a scrutiny role as well.

Q786. Lord Lisvane: Let's turn to LegCo, because that is the way we have gone in this last exchange.

11400 Do you think there is a case for electing LegCo?

Mr Harmer: No, I am pretty clear that having it directly elected ... unless there was a clear remit; but at the moment LegCo follows very much a similar role to an MHK – in fact they can be Ministers, they could be Chief Minister. I am very much in favour of a slightly smaller ... I still question whether we need *exactly* 24 MHKs, or whether in the totality as many as 31 is needed.

11405 Therefore – and certainly I know people have a different experience – but for me my experience on the doorstep was very much that it was not a burning issue –

Q787. Lord Lisvane: They do not talk about it down at the Dog and Duck?

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Mr Harmer: No! It is much more something that we are fascinated by. We have got to make sure the structure is right and when it does not work or things happen, clearly that is when the public are interested. But I think provided it has the best outcomes, again, then it would.

I think the danger of having it fully elected is all you have created then is 32 MHKs.

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Q788. Lord Lisvane: And of whom a significant proportion could claim a greater democratic mandate than the single constituency?

Mr Harmer: Exactly, so you would have super-MHKs – where, again, you are not building that expertise, that balance. There are some things that I definitely think could be tweaked in terms of an election; for example, it is an oddity that you can vote for yourself when somebody coming from the outside cannot – so you are already at a disadvantage of one.

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I think the mechanism is very old and the whole thing that you have to clear this number, and you have had five or six stages, and it takes three or four months to vote in an MLC. It is particularly strange and I think that everybody who is presented should have an equal chance to meet everybody, to have hustings, or whatever.

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I had a discreet message where somebody said they had never spoken to me so will not vote for me; and of course somebody from the outside will not have that opportunity, the same as a standing MHK. So I think if you had a proper mechanism, maybe they just need a majority, or have some way of getting a list and then be able to base it on that.

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I do also think that there is an argument going into the future, certainly, that the MLC salary is more akin to a non-exec role, and I think that way you would then achieve a much greater spread of candidates.

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Q789. Lord Lisvane: A lot of your answers have touched on expertise and informing proceedings with experiences from outside.

Can I put to you something that I have put to a number of witnesses, in terms of the membership of LegCo? That is to have somebody like a nominations commission, let's say, which is specifically tasked with bringing proposals forward – or of course proposals could come from MHKs, as they could come from members of the public, or indeed self-nomination by individuals.

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They could be charged with exactly that: achieving that mix of skills and experience, of people who are then put forward for approval; and it would be a competitive process and the top scorers would get in, and the bottom scorers would not – but with approval by the Keys.

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Mr Harmer: Yes, I think that could be a good mechanism, provided you have also had the opportunity to nominate your own. I think therefore if the MLCs had a much broader representation in the sense that there is an aspect of expertise, but there is also an aspect of have we got the right demographics with regard to equality and things like that so you can

11450 actually see different sectors of society in those seven seats; but actually that would then give an opportunity too for the MHKs to select or not select.

Q790. Lord Lisvane: Would a corollary of that be to prevent an ex-MHK becoming an MLC, on the grounds that it might be seen as a self-perpetuating oligarchy?

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Mr Harmer: The key thing there is if it was more like a non-exec role with the salary, then I think that would be an issue that was partly solved. And also, I wonder whether standing MHKs should really have the mechanism to automatically go to be MLCs – it is fine if they are no longer an MHK, and perhaps come back.

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I do question that concept and if you have been voted in for a term, my own view is that that really should be the primary focus. It does concern me that there is this concept where you go up to MLCs, and the problem with the MLC structure at the moment is it has too much corollary to what the MHKs have got. They can be Members, Ministers or Chief Minister which I am really struggling with, and particularly with an MLC being either a Chief Minister or Minister. I think that is something going forward that we should try and avoid.

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Q791. Lord Lisvane: That is a point that a number of people have put to me, largely I think on the basis that even if you take the Keys as an electoral college, it does not bestow enough of a democratic mandate on LegCo to support that sort of role.

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Mr Harmer: Absolutely, and if you talk about formulating policy and you talk about a Council of Ministers, then you have got somebody structurally giving a vote – and maybe the casting vote on the policy – that actually has not been democratically evolved.

So, again, I think that is definitely something that we should change.

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Q792. Lord Lisvane: Although if we were talking about a more diverse make-up of the membership of LegCo, input into policy might be a key role for them?

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Mr Harmer: Yes, absolutely, but again it is in that revising concept, it is to avoid the errors we have had. And I would come back to my point where, as a new Member, I was expecting a lot more to come back from LegCo saying, 'You have missed this, and you have missed that ... '.

I think we all know there are examples where policy and legislation has not been as robust as we could have had, and I think if we get better scrutiny and more input earlier on that would be much better.

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Q793. Lord Lisvane: Near the beginning of our conversation you made an explicit reference to the need for training.

Could you enlarge on that a little, because clearly you felt that there should have been a more formal induction for you when you joined last year?

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Mr Harmer: Absolutely, and don't get me wrong, we are all grown-ups. I am merely making the point that if you wanted to be more effective it would be better if there was actually some sort of run-through of how the different areas work together – because there are a lot of assumptions made. And of course, you just get up to speed quicker.

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Q794. Lord Lisvane: Don't get me wrong, I am not criticising the Clerk of Tynwald or his operation, I have no doubt that the Member induction, pure and simple, was very good. But one of the things that is noticeable in a lot of jurisdictions – medium, large and small – there is almost a hunger for some sort of continuous professional development. For example, if you are going to be examining legislation then a really good working knowledge of the mechanics of a

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Bill – how it is put together and how it works – is, presumably, something that *you* have not been given and which you might feel a requirement for?

11505 **Mr Harmer:** And for me it is fine, because for my very first role when I was employed in the private sector, somebody gave me a big wad of 10,000 pages to go ahead and read – and that is a sort of training. But I do think, as a general point, you are not making the most effective use of that time; and to say how Bills are structured and where you can make amendments and where you can influence would be incredibly useful for all of us – and it prevents missed opportunities.

11510 As I was saying before, I think there is a disparity between the Members and the executive; and I think for an effective Government there needs to be better ability for the Members to participate, to change and to evolve policy which I do not think is the case at the moment. The other area I have said before is I think there must be limits ... and I understand the concept of collective responsibility but I do think that sometimes it is taken so literally, and we are too defensive.

11515 I believe in challenge, I believe in constructive dialogue and constructive criticism, and I think that is *very* important. The danger, particularly in a smaller chamber, is that simply there is perceived wisdom and I think more opportunity to actually be able to rightly challenge – and how we can change the structures of the Government and parliamentary system, it would be good to allow that to happen.

11520 **Q795. Lord Lisvane:** My last question – and we must have a round-up opportunity for you, as we are coming to the end of our time – is perhaps particularly appropriate to you having very recently come into the House; and that is about diversity.

11525 Why aren't there more women in Tynwald?

Mr Harmer: I think that is a very good question.

I think you have to look at the whole set up of Tynwald, the working practices and simple things for mothers and the facilities that they would need.

11530 **Q796. Lord Lisvane:** I am not so much talking about incorporating child care –

Mr Harmer: No, I do not mean that, it was probably a very inelegant way of saying this, but the structure and the feel of the place does feel that it pertains more to a certain type of person than it does to others.

11535 **Q797. Lord Lisvane:** A bit clubby?

Mr Harmer: Yes, I think so; and I think there is a whole piece of work to break those barriers down, and to get more people involved from all different sectors of society.

11540 But you are right, I think there is that sort of clubby atmosphere; and it is how we interact with the rest of the population. Maybe there is a lot more work in connecting with the commissioners and things like that, to bring more different types of people.

I do think that is very important, going forward.

11545 **Q798. Lord Lisvane:** An earlier witness was drawing a comparison between – I think it was a particular conference or seminar – involving a lot of high-achieving women on the Island. So people who possibly have childcare responsibilities or not, I don't know, but nevertheless making their own way in their own careers, but seeming reluctant to come into the political forum.

11550 **Mr Harmer:** Yes, and I think there is a whole issue here that goes wider into the way the press deals with things – it is a very confrontational, male type of way we do things.

11555 I would have to be blunt, I think we consider a certain salary but if you want to have really high-achieving women or different groups, because when you break your whole career – which people can do – then that is quite a difficult thing for people to do; and then to understand that it is not long-term – you are only ever here for a term and you cannot guarantee it. It is not a career.

11560 And that is why it comes back to the point about MLCs, if it was more of a non-exec where it was expected to be part-time you may actually get a much better diversity.

Q799. Lord Lisvane: And, of course, gender diversity is only one sort of diversity.

11565 **Mr Harmer:** No, but there are disabilities and all sorts of different ... you can see the way that it is difficult to get up and down stairs, it is not easy if you have disabilities and things like that. But I do think it is really important and it is something that does need to be drilled in more; and I do think that there is a cultural area.

And I do feel, coming back to my point, coming from the sort of environment I have had and the learning I have had to do where it was all very much a case of, 'There is the big book, you know where the library is; we will have a one-to-one'.

11570 It is not a conducive environment to develop policy and at the end of the day we are trying to build good policy for the Isle of Man here, and I think sometimes the mechanisms do not allow that; it has a concept of perceived wisdom from a sector of society – it does not allow proper challenge and proper ability to influence it at the right stages.

11575 **Lord Lisvane:** Well, thank you very much and unless there is anything else which you are burning to tell me, which you could certainly do in a written note afterwards, I think it only remains for me to thank you very much indeed for what I have found to be an extremely helpful conversation.

11580 **Mr Harmer:** Thank you very much.

Lord Lisvane: Thank you very much indeed.

*The hearing was suspended at 2.49 p.m.
and resumed at 2.52 p.m.*

**EVIDENCE OF
Mr Peter Karran MHK,
Member for Onchan**

11585 **Q800. The Chairman (Lord Lisvane):** Mr Karran, welcome. It is very good to see you and thank you very much for coming to have what, as you will have seen from the previous session, is a fairly conversational exchange, but of course there are some formalities about it. What we are saying is being live-streamed and *Hansard* are recording the exchanges. When the transcript is finalised, the pages will go up on the Tynwald website. Although we are in a parliamentary environment, of course there is no parliamentary privilege or anything of the sort attaching to what we say to each other.

11590 Can I start with the apparently low level of party politics? Perhaps you can tell me your own perception of that and how it works.

Mr Karran: I may even tell you the reality as far as how it works.

You have got to remember that I am one of the few that have been here before the

11595 ministerial system. I stated in the late 1970s when we used to have postcode justice, where we had the situation where peers were being fitted up for crimes, where we had a police force that ran the biggest burglary cartel.

My length of time, as far as being involved in politics, is a lot longer than the previous speaker and many others. In those days, basically, masonry and farming ran the policy as far as the Island was concerned: my famous lines of 'four legs and a woolly coat, pampered; two legs and no coat'.

There has always been an unofficial party system within the Island. As we see now, with this dishonest form of party politics that we have allowed since the creation of CoMin, with the fact that, basically, it has been passed amongst mates over the last 25 years. This idea that there has not been party politics: it might not have been the way the Brits would do it, but it was there.

I think the important thing that we have got to get over is that the Tynwald system is something quite unique. It was a system that came about over a thousand years ago, where it was a form of governance where they were in a hostile climate or territory, and they needed to work together. The old system – basically, a marrying of the Celts and the Norse together – worked on a different value system.

Q801. Lord Lisvane: It was a war council for a lot of its existence, I guess.

Mr Karran: Well, there was, basically, survival and you were all in it together and those at the top served those at the bottom. The British system was obviously the other way round; one of the things that legitimised the political system over the centuries. Unfortunately, in most of our history they talk about the breastplate as far as law on the Island is concerned.

The situation today is we have to recognise that Tynwald has to change from that sort of system. I will be giving you a written document at a later date but when you are the opposition – as the old Bishop said, 'the hereditary opposition' – for so long, with no resources, and being dyslexic, and the horrendous problems we have had with the Members' secretariat, it does take me much more time to try and get things done.

I would say that, in my opinion, there have been some great improvements brought about through the ministerial system, but there have also been some great liabilities as well. As the only person who actually voted against the ministerial system, I thought for the first 10 years that maybe I had got it wrong because we got a wealth of social legislation through, so that my stance about four legs and a woolly coat really became secondary.

People forget that 30 years ago, the average working wage was 45% of the Brits', unless you were a doctor, nurse – then you had UK parity. You had the situation where we were 30 years behind with redundancy.

The opportunity arose with the new ministerial system, that the first Ard-shirveishagh, the first Chief Minister, as you would know, said that he would never have redundancy, but he brought in a massive amount of social legislation, because the Labour Party were basically the balance between the right and the ultra-right. When you work out the Labour Party were pro-hanging, pro-birching and anti-gay rights and all that sort of thing – and they were the left wingers – you could see the sort of atmosphere as far as politics on the Island was concerned.

The situation was that, because of the fact that we had this unholy alliance between us and a couple of independents who were socialist orientated, we were the balance of power. I think I need to explain that one of the first things I tried to do was make it illegal again to sell unroadworthy vehicles. The argument, which is in *Hansard*, is: 'Well, what will the poor people drive?' 'You pay them a decent wage.'

So this idea worked very well at the beginning, but the problem is we need to change the function of Tynwald. We cannot afford a situation, like myself, where basically when I came into this House, I was told I was mad: 'You are wasting your life. If you are going to go in, have six months' pay and be able to get on a boat in a hurry – if you want to do the job right.'

Because we have not got that value system in the old Tynwald system, we do need to bring in the parliamentary audit on a proper basis, rather than the farce that we have at the present time.

11650 **Q802. Lord Lisvane:** What do you mean by parliamentary audit?

Mr Karran: The problem is, as you know, we have just seen one of the Members being suspended from the House. In his case, I have actually seen an improvement in his actions over the years. There are other Members who, anywhere else, would be debarred from public office, and who have held the highest office in the land.

11655 We need to try and get a situation where we do not allow this sort of a cabal: what they talk about 'the Manx mafia', as far as the Island is concerned; where they all stick together; they are all matey-matey, clubby-clubby. That has been the biggest liability because, if we had brought in good systems of government, this wonderful economic boom we have had ... and it has been a *phenomenal* boom for the Island. People do not realise how much. As traditional lefties, we would be fighting for reciprocal agreements with the Brits. It flipped: the right wing were fighting for reciprocal agreements, when we got better pensions, we got better allowances, we got a better redundancy scheme, when we allowed for the 26 weeks – I have forgotten the details of it.

11660 We almost had this social revolution, but our problem has been, when we talk about it, we have the ridiculous situation – and I have got this in my submission later on – you could not ask questions about a standing committee, even though it could not meet for years because it had been conflicted on so many issues.

11670 **Q803. Lord Lisvane:** The PAC example between 2010 and 2012, for example?

Mr Karran: Yes.

I had to put a motion down to bring it forward in order to try and get it exposed.

11675 These are issues that have severe deficits in the democratic system, as far as parliamentary process. I came in here when, virtually, there was me and another old bachelor in the Upper House who were the only people who were in here full-time. Basically, you could not afford to be in here if you had a wife and kids.

Q804. Lord Lisvane: You have put a lot of material on the table, but let me just take you back to that parliamentary audit point again. Do you find it strange that there is no formal code of conduct?

11680 **Mr Karran:** The problem you have got is that you should act honourably, but I am afraid if you were talking about a code of conduct and you look at the shenanigans that have happened over the last 20-odd years in here ... There are some rather bizarre reactions of many over the years.

11685 There is no audit. What you have got to remember is we did big battles at the beginning. We stopped them, with this ridiculous situation that Government Departments should not prosecute other Government Departments. You cannot have that in a functioning democracy. They were hard won battles by a few of us who were not prepared to compromise and had made enough offers as far as those things were concerned.

11690 People complain about today and, to be fair, today things are a lot more just, a lot more transparent and a lot less corrupt than it has ever been, but the danger is, if we do not get this Review of Tynwald sorted ... It is all right the likes of the old Bishops talking about being 'the hereditary opposition', we need to properly fund the people that come after me on this issue. Because at the moment it has cost me a fortune, through loss of executive income, because of course you get a basic pay and then you get so much if you do this, and so much if you do that,

and so much if you do the other. Of course, if you have got a wife and kids and you have got liabilities, then it becomes a major factor.

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Q805. Lord Lisvane: Well, we can explore that and how it plays out in the balance of power, because that is something I am really interested in. But just before we go there, do you think that it is right that, okay, basic pay is pegged to an official Civil Service rank, but there is the Standing Committee of Tynwald on Emoluments?

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Mr Karran: Well to be fair on that, the problem was that the politicians chickened out and that was the reason. There were independent inquiries before –

Q806. Lord Lisvane: You are talking about the CPA delegation?

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Mr Karran: Yes.

I am not bothered about the money. I am glad I have had a reasonable wage. I did not go into public life to make money. I went into public life to try and ‘make a New Jerusalem’, if I was a Brit.

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I think that we have created a lot of issues that I have been a major factor in stopping. You were talking about the Public Accounts Committee: we had the ridiculous situation of Members of Treasury, we had Ministers; we have had all sorts of people that were so conflicted.

You have got to remember, the idea of conflict is something of a new idea as far as the Isle of Man is concerned and the people outside the golden circle that I have been a member of and had the privilege of trying to protect the underclass in our society – and not just on a parliamentary basis, but even on a legal basis to a certain degree.

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We need to make sure this Review starts putting in the good systems of government that have been so woefully inadequate over the years. As we were talking about the Public Accounts Committee, when one of the establishment comes and tells me, ‘You were right. We should have done that, but we could not let you win.’ It is the dishonesty of the party system that I dislike and I think that is something that we are very concerned about. There has to be an equality of arms and there has not been that.

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Q807. Lord Lisvane: That is a very good moment to turn to this balance of power question.

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One of the things that I found really quite surprising, coming to the system afresh, is the role of the departmental Member, because it seems to me that you have got collective cabinet responsibility and you have got to toe the line there, but I am told, if you are a departmental Member, you have got to play the departmental tune, but you can do what you like to other Departments. Now, the more you move towards joined-up Government – and an earlier remark of yours suggested that you would like to see more joined-up Government – *(Interjection by Mr Karran)* Let us not go down that track for the moment. If you are doing that, then it seems that, inevitably, that is creating a Government party.

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Mr Karran: Well it is only them. The problem is you have got a Government party now. Lots of these departmental memberships are just sweeties to buy people into the system. Now, I know I have to be careful. I am busy trying to work out getting some litigation insurance when I leave, for being an MHK. We can joke about it, but it is a serious issue.

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The problem you have got at the present time, and you take Standing Orders: we had the outrageous situation the other week where some of us actually lived under siege over gay rights; had faeces through our letterbox; had our tyres slashed on a regular basis to the point that my brother was quite amazed about that. Yet, we could not suspend Standing Orders for the Questions to carry on in the House of Keys, but we could suspend Standing Orders for most of them. The majority of them are far from being for gay rights, but because the Chief Minister

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11750 asked for suspension of Standing Orders to do with the Civil Partnership and Marriage Bill, that went through.

When you look at the figures and you look at the membership, basically the Government has the parliament as just a little bunch of puppeteers, if the truth is known, in my opinion.

11755 **Q808. Lord Lisvane:** But let me try and separate the two issues here, because in one sense I think a lot of people would agree that a Chief Minister, in whatever sort of jurisdiction – I am not being specific now – needs to have the command of the parliamentary assembly in order to get any sort of programme of action and policy through. That is one thing.

Of course, he has got to justify it –

11760 **Mr Karran:** Well, what I would say to that then is: have honest party politics.

Q809. Lord Lisvane: Hold on! Let me just make this distinction and then you can comment on the two wings of it, so to speak.

11765 On the one hand, the point I put to you is that it is not particularly out of the way for a Chief Minister to have that additional influence in a Chamber because, for a lot of the time, it is going to be necessary in order to get any sort of policy through parliament, because if you cannot do that then you cannot be a Chief Minister, in whatever jurisdiction.

11770 The thing that I find is specific to Tynwald as a whole is the extraordinary formal involvement of people who otherwise you would expect to be backbenchers and performing a function of scrutiny and challenge, you see them drawn into the Government tent to the extent that you end up with the vast majority of the Keys being associated with the Government. Now that seems strange to me.

11775 **Mr Karran:** Well, the problem is what the Manx call *lhiam-lhiat*, and that is the problem with independents: Tory to you, Liberal to me, Labour to whoever; with thee, with me and with nobody but themselves. That is the definition of a *lhiam-lhiat*. I think the Brits call it a Vicar of Bray, do they?

11780 But the situation is that it has big fiscal and social implications if you fall out of the pecking order. You have got to remember, I was supposed to be a Minister in 1992. We had a major scandal going on in 1992 within the Home Affairs Department. I had to make a stand and it has lost me between 10% and 15% of my wages since that date, as far as trying to put the audit that is the democratic deficit we have got at the moment. Like I have said, if you do not have a few of the Council of Ministers on your side, you cannot suspend Standing Orders.

11785 **Q810. Lord Lisvane:** But if you were to reduce the size of the administration – because, at the moment, I think I am right in saying there are only four Members who are not associated in some way with the administration – if you reduce the size of the administration, of course, you will never knock out –

11790 **Mr Karran:** Are there as many as four? There is me; now Mr Houghton has been taken out of a Department. There is only me that is without a Department at the moment.

Q811. Lord Lisvane: Mrs Beecroft?

11795 **Mr Karran:** No, she is in a Department. So there is only me that is out of a Department at the present time, and Mr Houghton after this.

11800 **Q812. Lord Lisvane:** Well, that is adding strength to the proposition, rather than weakening it.

Mr Karran: No, what it is showing is the fact that is the reason why we have gone through the biggest economic boom and we have blown it, because there has been no proper scrutiny on fiscal control. We have had scandal after scandal after scandal, and some of us have nothing but threats of what will be done to us if we do not toe the line on these things.

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Q813. Lord Lisvane: Surely the inevitable result of that or the implication of that is that you need a huge strengthening of the independent function of scrutiny and challenge within the Keys.

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Mr Karran: You are not going to get that if they are all part of Departments.

Q814. Lord Lisvane: That is precisely my point. If you need to have that –

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Mr Karran: I think you have got to try and change it. The problem you have got to realise is, I have more than likely been the major factor on what they can get away with for decades; they might not agree to that. Many of the things we have asked them to do they will do, but they will not do it in my day, because that is part of the patronage system that they have tried to develop.

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What we have got to do is get the likes of the PAC – and I was going to discuss that later, but since you brought it up ... The PAC has to be outside the departmental membership of Government. It is an absolute outrage that we have had this situation.

It is equally outrageous that we have got these Micky Mouse Standing Orders that increasingly keep being used as weapons against people who are not part of the executive club.

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Q815. Lord Lisvane: Can you give me an example?

Mr Karran: Well, you have just seen the thing with Mr Houghton. I wanted to sack Mr Houghton when I was Minister of Education, when we tried to have a Government of national unity.

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The tragedy is this Review needed to be done 10 or 15 years ago. We are now going into difficult fiscal times. If ever we need to work together, we are going to need to work together now. What people forget is the tremendous enhancement of the quality of life for so many in our society. When I came in here, I released the unmarried mothers from the lunatic asylum. I did not know they existed. So we are only talking back in the mid-1980s when that was being done. We have come a long, long way.

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Q816. Lord Lisvane: But can I go back to the specifics of Standing Orders, because you were saying that was symptomatic of what was wrong. You were talking about PAC and then you were talking about the misuse – did I understand you correctly – of Standing Orders?

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Mr Karran: I think the problem you have got is, as I say, if we were being consistent, like we saw with the issues in Question Time –

Q817. Lord Lisvane: Sorry, what issues?

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Mr Karran: I am talking about the time we had a sitting and we suspended Standing Orders for the Marriage Bill and civil partners, and yet before that we would not suspend, yet they were out.

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You have got to remember – I found it quite amusing listening – there are very few of us actually read these Bills. The problem you have got is because there is nothing in it for them to read: ‘just nod the right way with whoever is in executive power and you’re laughing.’

The problem you have got is the fact that you do actually need a group of people who are not going to be fiscally worse off, not going to be worse off as far as the trips are concerned, so that they can have that balance, so that they have a career structure.

11855 Also what you have got to remember is that we have the most amazing press, and I suppose the problem is now ... Maybe you want to check up how many journalists are actually paid by Government and how many journalists are actually in the Manx media at the moment.

Q818. Lord Lisvane: I think that might take me slightly outside my terms of reference!

11860 **Mr Karran:** Well, yes, I suppose you are right!

Q819. Lord Lisvane: Let me put a proposition to you, really to rebalance the system, which it seems would reflect or deal with a lot of the criticisms you have been putting to me.

11865 First of all, to reduce the size of the administration, so that you had Ministers – at the very most you might have a deputy, possibly not in all Departments. So you would have people who were genuinely backbenchers. But, of course, in terms of their allowances and so on, they would be seen as second-class citizens. I think it is fair for Ministers to get paid more, but for departmental Members, then we have got that point of contention.

11870 But as soon as you have elected the Chief Minister, you then elect – before any other Ministers, before anything on the governmental side – the Chairs of scrutiny committees. Let's say there are three or four, if you include PAC. So in a very public way, you make the point that this is the alternative career and you pay them as much or possibly even a little more than a departmental Member. The Chairs, perhaps, you pay as Ministers and the members of their committees get some sort of allowance.

11875 **Mr Karran:** Well, I think you might find that that has already been raised in Tynwald by myself some considerable time ago.

Q820. Lord Lisvane: There are some arguments that improve by repetition.

11880 **Mr Karran:** Better for not being from the Antichrist, as far as the establishment is concerned in this country! *(Laughter)*

11885 Yes, that would be great. We need to try and develop. The problem is going to be that we have been through a bonanza of boom and the deficit that is left on so many fronts. But that would be a step in the right direction. I think it would be an important step.

One of the problems that we have got with Tynwald is to make sure we separate the power between the executive and the parliament and also the judiciary. If I get time, I will raise the issues that I think are fundamental issues of the separation of power.

11890 We do not want to fall back into the old ways of postcode justice and 'it is not what you know, it is who you know' opportunity on this Island. This Review can do an awful lot of good if it is done in the right way.

11895 The old Tynwald value system is nothing compared to what ... You talk to some people about Tynwald and they almost talk about it in a spiritual way! They might be embarrassed by us, as Members, and our actions, but that is why we need to bring these checks and balances and that is where I hope that your Review will actually start putting in those rungs that have been so desperately lacking.

11900 When people outside the Chamber have been looking and saying to me, 'What planet are they are on?' How can we end up with £400-odd million – or whatever it is – worth of debt with the MEA? How did we end up with a situation where we did not see what happened over the User Agreement, that then gave them the liquidity to put another £140 million or £150 million onto the value of the Steam Packet Company – which is still being paid off by the people of the Island through the freight charges?

11905 **Q821. Lord Lisvane:** Well, let me propose to you that we now move our focus to LegCo and perhaps, after that, you can tell me what you want to tell me about the judiciary, but I think I will need to be quite careful because *prima facie* I am not sure that really does come within my terms of reference, but perhaps you can make the link for me.

Mr Karran: Your links between what I am saying now and –

11910 **Q822. Lord Lisvane:** No, if you were to talk about the judiciary, how that would fall within my terms of reference.

11915 **Mr Karran:** The thing is, I do not believe the Chief Minister should be appointing the judiciary; I question it, until we change the role of the speakership. Remember they broke the law over the speakership. They did not read their legislation. The Deputy Speaker was not supposed to be a member of a Government Department. So instead of electing me as the Deputy Speaker, they decided I was only the Acting Deputy Speaker. Then when they changed it, they put one of their chums back in.

11920 We need a consistent, fair approach on the legislative points and the way that we administer justice and the law on this Island. I hope that your Review will address that issue.

Q823. Lord Lisvane: Let's park that particular issue for the moment and go onto LegCo. Is all well in the world of LegCo?

11925 **Mr Karran:** The problem is that, personally speaking, I have had a number of Private Member's Bills over LegCo over the years. I think that they should be on an all-Island basis with the Single Transferable Vote (STV). That means that the vote of a citizen in Ayre is the same vote as somebody in Douglas.

11930 I was originally elected the Member for Middle. There were about 250 to 300 people in Santon Parish when I was the MHK for Middle. It took me a week to do them, but if I did Ballacurry, I could spend a week and get to over 1,000 people, as far as canvassing is concerned.

11935 In my opinion, if it is to stay how it is at the moment, the Legislative Council needs to be elected on an all-Island basis, on an STV basis, preferably with a firm remit that it is not to get involved with dog dirt and potholes, but it is there as a revising chamber. That is the sort of thing that my role would be better at, as far as that is concerned. Standing Order that is what I would prefer to do.

If we are to keep the *status quo*, I do think that they should not be part of the executive function. I do think that they should not be electing the Chief Minister.

11940 As far as the Bishop is concerned, I actually think it helps the gene pool, as far as him being there. Whether he should vote – sundry nationalists would be horrified, because it is the only thing left that legitimises the old system of the Celts and Norse system of government, with him being the last feudal baron.

11945 **Q824. Lord Lisvane:** What do you mean about the Bishop assisting the gene pool?

Mr Karran: The fact that he is from outside. He has spent the last 20 years trying not to turn the Upper House into a mediaeval redundancy fund for unelectable MHKs.

11950 I think if you really want to bring about change to the Upper House, what you should do – and we have come a long way, because I think half of them now have never been in the House of Keys – is actually say that sitting Members cannot become Members of the Upper House. I think that would give the boost to actually address the issue of the Upper House.

What I would like to see, if we can do something like the Republic – the Irish free state – has done where they had some sort of electoral college, where you had someone from the university, someone from the unions, someone from the Rotary, the Masons, or whatever,

11955 having input into that role. But I do not see the infrastructure there to be able to address that issue on that basis.

I have been one of the instigators of a number of people to get into the Upper House. So long as they have kept at arm's length as far as my recommendation, they have succeeded!
(Laughter)

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Q825. Lord Lisvane: Let me just put a counter-argument to your whole-Island, STV election. If you did that, you would have Members of the Upper House who could argue quite plausibly that they had a greater democratic mandate than individual Members of the Keys.

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Mr Karran: It would depend; there are two arguments there. One is that it would depend on what basis you were electing them. That could actually be the basis of your audit on your House of Keys, if you did it the right way. You are right: we could end up with something like a senate.

11970 What you have got to remember is it is not that long ago when you would be sitting around this Chamber, the people out there were on £50 a year and we were paying Whitehall stooges in here: the Vicar General, the First Deemster, the Second Deemster, the Receiver General and all these others – 1910 was the first time they elected two to be elected by the Keys.

11975 There were good points about that fiefdom-type of governance. We would never have had this week's TT: the then Governor had his mates over, and they could not close public roads in the UK, by an Act, so he just did it by royal decree. It was like when he said, 'You cannot even get the ink for your pens without my permission.'

What we have got to do is we have got to evolve the systems of government. The priority, if we are to make this Island, this microstate, into something that glows throughout the world, is the emphasis that those at the top serve and we are not served. That is the fundamental Celtic belief, and a lot of Manx people will believe in that sort of thing.

11980 If you can bring about a system that brings about that emphasis, that would be fantastic.

Q826. Lord Lisvane: Of course, it is a Latin derivation, not a Celtic one – of which I spent a lot of my early years grappling with, I have to declare, although that was largely Welsh rather than –

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Mr Karran: My Welsh is very limited, sir. I know little bits of Welsh but not much.

Q827. Lord Lisvane: But on the Latin side, of course, you would endorse the fact that the original meaning of Minister was 'servant'?

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Mr Karran: Yes and Ard-shirveishagh is 'chief servant'. It is about serving, not to the Crown, but to the people, and that is the emphasis.

11995 I think we have a wonderful opportunity on the Island. We have had a wonderful opportunity. The point is it is going to be a hard slog and the problem will be that we can spin things for a while, but the reality ... Maybe at a later date there will be a group of people who will come along and say, 'We will bring about the changes for the Manx people.' The Manx people are not people just within their genealogy; Manx people are people who have got their heart in the Island. This idea that you have got to be three generations to be Manx ... What is in your heart makes you Manx.

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Q828. Lord Lisvane: And the challenge, presumably, is that much greater since the VAT clawback?

Mr Karran: The problem is that was brought about by our own stupidity. I think I should not go into that here, but I am quite happy to –

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Q829. Lord Lisvane: I am quite sure that would be outside my terms of reference!

Mr Karran: Yes, chapter and verse – or you will be getting the anthrax in the Members' tea, like me!

12010 Yes, you are right. But the problem is that we have gone through the biggest economic boom and we should be fiscally secure and, if we had had good parliamentary process in the past, we would be fiscally secure now.

12015 When I did the water bond, I was the one who brought about ... When they came to me, sheepishly, about getting bonds originally, the Treasury and no one else wanted to know about it. They came to me; they argued the point. We thought about it; we had a lot of sleepless nights and we did it and we did it on the basis of good, sound business, not on the basis of 'fiefdomism'. The situation was that we managed to achieve that issue of getting a water bond, that actually created the AAA rating for the finance industry, which obviously, being the Antichrist, I would never get any credit for anything.

12020 I think what we have got to try to do is get this audit – not opposition for the sake of opposition. I have to say that they try and make out, 'Oh, they are just opposing.' I get so tired of listening to the diatribe from the media about, 'Oh, you always oppose.' The truth is, if you look at our agenda paper, there are 30 items, and it is likely 15 of them never even get mentioned. They get nodded through. If they do not get nodded through, there is about four or five of us who have 95% of the reasons why they have not got nodded through.

12025 **Q830. Lord Lisvane:** Presumably, looking at that wider context again, which you brought up a few seconds ago, you would say that part of the Island being able to demonstrate best practice and confidence-building in financial services, and the sort of resilience and performance in a whole lot of other areas, is linked with being able to show best practice in terms of democratic norms within parliament.

12035 **Mr Karran:** I think the point is that we have got to educate. We have got a section of society that does not vote. They do not like us – and that even includes me. Believe it or not, many people think I am too much of an establishment-wallah. I would hate to think what you lot would think of them, if they think I am too establishment.

12040 We need that democracy. We also need to try and get people to realise that democracy is not perfect. Many of the people that have been voted in and I have had to sit with have disgusted me over the years, but the fact is they have a mandate. At the end of the day, no matter how much I dislike them, how much I might be appalled by them, they have a mandate and if they are right and I do not vote with them because they are right, then I am no better than them. That has been one of the problems, maybe I have: that my vote has never been for sale.

12045 **Q831. Lord Lisvane:** Let's pick up that point of service to the citizen. Perhaps you can tell me something about what contribution you think an ombudsman would make?

12050 **Mr Karran:** I tried to get an ombudsman back in 1988. We try to do as best we can for anyone who is *persona non grata*; who no one would touch with a muddied stick. My problem is I am wilfully under-resourced. I can put Questions down, when I think executive Government has been absolutely outrageous.

12055 I think the best way is we need an agency: we either ask the Brits, with the Welsh Assembly, the Scottish Assembly or the Irish Assembly, and do it on an agency basis. This idea of having somebody on the Island – they were going to have a Tynwald Commissioner – the person was so conflicted that it was just farcical. Like this ridiculous thing about putting a Member of the Upper House, the Legislative Council, Coonceil Slattysagh, as the unofficial ombudsman: it is absolutely ridiculous, I really do think.

What would be really thought-provoking is actually find a useful role for the Governor. Admittedly, we have cut the costs of the Governor down considerably, but he is still pretty well a waste of money, in my opinion! Maybe we could turn him into the ombudsman. But my ideal

12060 situation would be to try and get an agency that does ombudsmen, because the person who knows everything about everything is either an idiot or a liar, and they should not be an ombudsman.

12065 **Q832. Lord Lisvane:** Well, I think the idea of the Lieutenant Governor being involved in that way is a very interesting one. I am not sure how far he would welcome the idea, but –

Mr Karran: He would earn his money!

12070 **Q833. Lord Lisvane:** But what occurs to me, from what you were saying, is that the business of investigating maladministration is actually very often a highly technical process, requiring considerable knowledge of how things work, and really the professional balancing of evidence and things of that sort. So the logic of that might well mean that buying it in on an agency basis would be a better thing to do.

12075 **Mr Karran:** I think there are great opportunities and great benefits of being a small jurisdiction. In my first seat, I had a majority of six and 11 between me and the second and third person for my seat in 1985, so every vote does count.

I do agree with you, but there are great disadvantages. It is very difficult, even for the best of us. Whilst I believe in the oath as far as ‘without fear or favour’, it is almost a religious thing with a couple of Members over the years.

12080 The ombudsman: I think you have got to look at an agency. That would be the best way forward.

12085 **Q834. Lord Lisvane:** A lot of what you have been saying, of course, has reflected a fierce independence of mind so far as the Island is concerned. Would there be resistance to the idea of somebody coming in from another jurisdiction on that agency basis, to perform that function?

12090 **Mr Karran:** I think the problem is – and it will be in my paper about the set up – that far too often, we do not want to expose things, and because we do not expose things they grow like a cancer and they have caused so many missed opportunities as far the Island is concerned. That is why I think you have to sometimes accept some sort of situation.

12095 You are talking to the man that talks about the constitutional position with the Brits on the basis of the bastardry of the gun boat in the harbour. If I can see the logic as far as having an ombudsmen service done on an agency basis, then I think that, even if I am seen as part of the establishment by many of the extreme views on the Island, I think the majority of people would accept it.

The reason they will not want that is they will not be able to tickle them under chin or, like I said before, when I remember one famous Minister telling me, ‘Well, if the consultant does not give us what we want, we just will not employ him again.’

12100 **Q835. Lord Lisvane:** Moving on from the ombudsman role, what about an auditor general?

12105 **Mr Karran:** There is an old Manx saying that goes, ‘*beggan er veggan ny share*’: little by little you get better. I think, if you could get an ombudsmen, you would go a long way, and I think your ombudsman would more likely do a lot of things that would look at the other side.

I am one of the few politicians left that have been in Government when we had no money; people forget that. The problem has been, because of the bad parliamentary process, instead of addressing the issues on audit and things, they have just thrown it away.

12110 I think, if one of the recommendations is to get some sort of ombudsman service outside the Island, on an agency basis, debated by Tynwald and not appointed by executive Government, I think that would be a reasonable compromise.

As I say, there is not even a decent secretariat service. As a dyslexic, it is like taking away a wheelchair from somebody who is paraplegic. There are other issues that need to be addressed in this cosy club – and some may class it more of an old midden situation.

12115 **Q836. Lord Lisvane:** I can see the tactical advantages of going step by step if you are looking to reform, but I would also say that the ombudsman function is really a highly specialised one. It is not something that, for example, could fuel the examination or the choice of subjects for examination by PAC, simply because it is apples and pears.

12120 **Mr Karran:** I think there is a cheaper option than that. We have got some phenomenally good people on the Island.

I used to have a delightful friend that, when I first got in here, it turned out that he was a multi-millionaire. I more likely would not have helped him if I had known that at the time. But the point was that he would look at an issue, and I would look from a lefty's view at how to solve the issue by spending money. He, being a capitalist pig – as I used to tell him on a regular basis – would look from the basis of how to spend somebody else's money to do it!

12125 I really do think this is why I believe that the Public Accounts ... That is why I wanted four lay people. There is a tremendous wealth of information from people out there who could really help. Maybe they should not vote on the PAC, but they should have the right.

12130 A bit like the Bishop, and their input sometimes. We have had some stunning Bishops and we have had some maybe not so stunning Bishops. Their contribution could go a long way to make an effective Public ... You take the likes of me: you give me a balance sheet and it will take me a week to work it out, but you get the likes of Kate Beecroft and she is wonderful with that sort of thing. I have friends who I say, 'Well look at this. Where am I going wrong?'

12135 That is where I think, if the Public Accounts Committee was outside the membership of Government and you had lay people on the Public Accounts Committee and they were elected on the basis of ability and not on mates' rates, then I think you could have a stunning ... The talent on this Island of people that could be called upon ... I am not talking about the people that tend to be called on, who seem to be able to –

12140 **Q837. Lord Lisvane:** The usual suspects?

Mr Karran: Well, let's say, sometimes you wonder whether they use the public purse as their own personal piggybank.

12145 But the point is there are a lot of people who are not interested in business, who are retired, need something to do, and I can see a role for those people in that role.

Q838. Lord Lisvane: You would not have any qualms about moving the Public Accounts Committee function outside Tynwald?

12150 **Mr Karran:** I think the problem is the membership. I do not see anything wrong with that. At the end of the day, we have the mandate. If you can provide me with better information, better knowledge on other aspects and better resources by doing it a different way, then that should be the aim. What the aim should be in politics is not to win, but to actually contribute to make sure that the right decisions are made.

Q839. Lord Lisvane: I am thinking more of the authority of the committee; that if it were a committee of Tynwald, it would have a different status.

12160 **Mr Karran:** To be honest with you, I think it would have more authority, because I think you find that the people outside are pretty well disgusted with the majority of Tynwald, to be

perfectly honest with you. I am going, so they can bring all the mad new Standing Orders in that they want.

12165 The point is that I think the lay input would be well. This is where the party system has fallen down. Basically, the 'CoMin Party' – the dishonest party politics we have got at the moment – they have got their civil servants, so no wonder ... I remember getting them into abject horror in a private meeting, that they now run round like headless chickens over the public sector pension. We tried about eight years ago. Our initiatives actually brought about the poacher's pocket of the money in the pot for the public sector pension. They booed and hissed me down, 12170 but they did it.

I really do think that sometimes that would be a way forward for having lay people, but I think the problem has been, if we had proper party politics and it was resourced properly, the strategic policy would be developed by the membership of that party, transparent to that party, and not what we have at the moment. I remember when I first stood, I had somebody with a 12175 royal blue rosette and I had a staunch Labour man telling me, 'Oh, he is an independent, but he is a trade union supporter.' I was on about this *lhiam-lhiat*-ism that we have got in the Island which needs to be changed.

Q840. Lord Lisvane: But I can see that those would be the advantages or the claimed 12180 advantages of a developed political party structure, but that is some distance away to seek, isn't it?

Mr Karran: I think the problem is that the horrendous onslaught of negativity towards Liberal 12185 Vannin – LibVan as they call themselves now. The problem was that I was originally elected an independent Labour candidate, because I wanted people to know where I was coming from, because it is too easy to be this independent. When you find that I am, more likely, the most independent Member that has been in the House of Keys since George Swales, who has an independent socialist Christian person who was in here.

I think there has to be a rapid change. We cannot afford to run Government in such an 12190 incompetent way and survive for the future. That is why I think, hopefully, this Review may bring about some of the rungs in the ladder.

Q841. Lord Lisvane: Just before we leave PAC, might a middle way be to have PAC as a 12195 committee of Tynwald, but with lay members added? You might need statutory or Standing Order authority to do that.

Mr Karran: I thought that that was what ... Yes, I would have lay members. To be honest with 12200 you, sir, I do not care how you do it. You need that intellectual challenge. To be honest with you, there is not an intellectual challenge in the House of Keys and there is not much in the Upper House either. I believe that if you had people looking from a different angle ...

I know it seems rather ironic, me being here for 31 years as an MHK, but I was never expected to survive 31 years! I wanted to go in 1991.

I do think we have got to get away from –

12205 **Q842. Lord Lisvane:** I see you were re-elected six times!

Mr Karran: Yes. I have been very fortunate! I have been very honoured by the people of 12210 Middle and Onchan who have re-elected me so many times. We have had all sorts of things with polling stations being changed and all sorts of things done over the years, and we have still managed to top the poll to their abject horror! But this is not about me.

I do think that having some way of having those laypeople would be so important, because there are too many professional politicians today. I know that must seem ridiculous because I have been there for 30-odd years, but I have done most of the things that were *persona non*

12215 *grata*, like rehabilitation of offenders; I was anti-birch; pro-human rights – which included gay rights. I can remember having people wanting to lynch me over wanting to bring in compulsory seatbelts, because I was going to burn them death or drown them in Douglas Harbour – I hope nobody drowns in Douglas Harbour! – but just for wanting to bring seatbelts in.

You can actually get elected without having to be just part of the brothel.

12220 **Q843. Lord Lisvane:** I think we are probably coming towards the end of our time, but you have given me one paper and you have promised me another, which will no doubt cover any areas that we have missed out.

12225 Can I finish with a question which you heard me ask Mr Harmer earlier on, which is this question about diversity? Why is Tynwald not more diverse? Why, in particular, in a most evident way, does it not have more women in it?

Mr Karran: They have more likely got more sense and more integrity!

12230 I just think the point is it is the way it is. It is not easy for women in there, as he did say, and he is only a new boy. It can be quite a nasty, toxic environment if you are not rowing in the right direction. When you see the way that some have been treated over the years in there, I can understand why other women would not stand. The way Kate gets treated is appalling at times.

12235 I think that the presiding officers need to be on, maybe, a slightly different electoral college, where the Government has not got their block vote to put who they want in as the presiding officers. Maybe, then, we might have a more robust way of protecting people who want to say it how it is.

Q844. Lord Lisvane: But might not a code of conduct help in that?

12240 **Mr Karran:** Well, what is the code of conduct for – what like?

12245 **Q845. Lord Lisvane:** Well, I am obviously not going to draft on the hoof, but I think any effective code of conduct needs to have two elements. One is to put in very plain terms what are the *desiderata* of parliamentary behaviour and behaviour one to another. Also, taking into account responsibilities to those outside – and the Nolan Principles are quite a good starting point, but there is obviously a lot more in terms of practice. That is, as it were, part one.

Part two needs to have provisions as to what happens if people fall below the standard that they have accepted they will seek to meet.

12250 **Mr Karran:** Well then, you want to go and read the Mount Murray Report, read the Crow Report, read a number of other reports about people who have had the freedom to flourish, on the basis that it is horrendous.

12255 I think you are coming from a different political environment. I know I maybe do come over a bit arrogant at times. I am trying to tell my grandad how to suck eggs when we talk about parliamentary process, but you are over here and you are like a babe in arms, and what you have got to remember is, when you have had Ministers being able to tell you that they will have your house off you and ‘We will sort that out or you will never get these things’ ... I really think that the problem is that, whilst you have youthful enthusiasm for these standards, they will be used as a weapon by the establishment to consolidate the institutional corruption of the place.

12260 I abhor people abusing their position in the House of Keys. We have a sacred bond as far as being Members of the House of Keys. My problem is the fact that when you see some of the abuses and some of the things that have been said to some of us – very few of us – we are almost on the basis of a dissident as far as this Island. My concern about your parliamentary standards, it would be a bit like schizophrenia; it will apply differently to different people.

12265 I came into politics against postcode justice; against a police force that was completely out of control. Mr Houghton, in his case: it is not Mr Houghton, it is the franchise with the North

Douglas constituents. My concern is that it has cost me thousands of pounds by not toeing the party line. It has cost me many sleepless nights and having to run off to lawyers.

12270 Go and read the Speaker's report! That would be another report you might read. When I had the delightful lawyer who said to me – and he went up in my estimations – I said, 'I will pay you, like I pay the others' – 'Mr Karran, I could not have the reputational damage and the loss of business to allow you to become a client of mine.' These are not jokes; these are realities!

12275 I think the situation is that we have got a long way to go from the aspirations of the value system of the old Tynwald system and the aspirations of what you have got. You have got a robust media. You have got your *Guardian*, who hopefully will always survive. You have got your *Private Eye*. You have got an opposition and opposition parties that can never be part of the feeding pack. It would cost people dearly as far as that.

12280 You have got to remember that people like me have had the Speaker's report – I think you should read that. I have been summoned, when we have had multi-million-pound scandals, to the President's office, because it upset ex-Members of Tynwald.

I just worry that, whilst you are right, the greatest honour a Manxman can have is to be an Oltey yn Chiare as Feed, a Member of the House of Keys.

12285 **Q846. Lord Lisvane:** Well, thank you very much. I take that very much on board and I will say that it is a good many years since I have been accused of youthful enthusiasm!

Mr Karran: You do not understand the system here yet!

Q847. Lord Lisvane: So thank you for that.

12290 I think, actually, for the avoidance of doubt, I should make clear that, as I said in my opening statement, I am very cautious, always, about transferring things lock, stock and barrel from one jurisdiction to another, because you have got to be very sensitive about the context in which they are operating. I think what one can say is very often common to different jurisdictions are the basic dynamics of representation, proposal, challenge, scrutiny and so on, and there are different ways of accommodating those within the parliamentary process.

12295 **Mr Karran:** Hopefully, this is a journey that, maybe, we will see an improvement. We are not going to see a solution from your report, but if it works in that way.

12300 Some of the issues that I think you should be looking at, as far as Tynwald functions are concerned, is the role of the Attorney General and its independence: whether it is part of the executive or the parliament, and maybe the issue of whether in that role – I take it that you will be including the Branches of Tynwald?

Q848. Lord Lisvane: Indeed.

12305 **Mr Karran:** I think the question needs to be asked of whether the Attorney General should be in the Lower House. You see, the problem at the moment is there is nothing in it but trouble, if you read the Government Bills: you are a troublemaker, you are a menace. I do think that, really, the Attorney General would be far better served in the Lower House or there should be somebody in the Lower House, helping.

12310 We did have a Clerk who used to do a legislative briefing, which I found a fantastic aid. It was a great tragedy when it was stopped with the demise of that Clerk. That is something I would like you to think about. As somebody who has been here 30 years, I think that it would be something that I would hope you would consider.

12315 I think that the presiding officers should not be elected by ... and it is difficult, because the first thing you elect, after the General Election, is the Speaker. I do think there is an issue of trying to get the speakership depoliticised. That is what worries me about your youthful

enthusiasm about your code of conduct. A code of conduct would be that, so long as you do not expose anything, you will be alright – and that is what worries me.

If you can come up with a code of conduct that will protect the democratic rights of people ...

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Q849. Lord Lisvane: Of course, the corollary or the key other element of a code of conduct is who makes the judgments against it? If those are political judgments, then it has failed.

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Mr Karran: I am afraid that, unfortunately, Tynwald is really just an extension of parliament at the moment.

The other issues I would like you to look at in the Review is the equality of arms. You are not just on lower pay. If you are a Minister, you have got a private secretary. We need to get decent services for Members of parliament who are legitimate backbenchers. It is appalling. You only have to go and have a look at my office, as Last Hope Hotel as far as people's problems are concerned.

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You also need to look at the issue of litigation. We need decent litigation cover for Members of Tynwald. You are all right if you are a Minister, you are covered. We need proper litigation insurance, to protect people from people who will vexatiously litigate.

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Q850. Lord Lisvane: That is separate from the protection of whatever you say in proceedings?

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Mr Karran: Absolutely, but I think it is important that you can end up finding yourself with Pandora's boxes. The likes of the Speaker's Report was rather a disturbing time. I am all for standards, but how you develop those standards on an equal and level basis and not use them as a weapon, that will be very good.

Anyway, you have more than likely had enough of me so I shall leave you in peace.

I will try and sit down and get a proper document to you which may be a very useful aid for you to see. The problem will be that you will be cooed by the system that we have got at the present time and no one will show you the other side.

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It would be interesting to know, did any of the others organisations like Mec Vannin – that will not stand for election – or any of them make any representations?

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Q851. Lord Lisvane: We have had a submission from the Manx Labour Party.

Mr Karran: It would have been nice to try and get some of the people who are not part of the system to talk, but it is difficult to get people to do that, which is a great shame, because there is no reason why we should not, today, because it is a much fairer society. Hopefully, when you have finished with your commission, we will work towards putting the rungs in the ladder that some of us have been battling for years against the institutional corruption in this place –

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Q852. Lord Lisvane: At least I hope the outcome of my Review will be a positive one, without necessarily commenting on what you just said.

Mr Karran, thank you very much indeed. I have enjoyed our exchanges hugely and I am very grateful that you spared the time to come and talk to me.

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Thank you very much.

Mr Karran: Gura mie mooar eu: a big thank you.

The hearing adjourned at 4.00 p.m.

Thursday, 2nd June 2016

*The hearing of oral evidence was held in public at 9.30 a.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[LORD LISVANE *in the Chair*]

**EVIDENCE OF
Mr Alfred L Cannan MHK,
Member for Michael**

12365 **Q853. The Chairman (Lord Lisvane):** Mr Cannan, good morning. Thank you very much indeed
for sparing the time to come and talk to me. The proceedings are fairly conversational and
informal, but what we say is being live-streamed and *Hansard* are taking a transcript. When that
12370 transcript has been finalised it will be put up on the Tynwald webpages. And of course although
we are in a parliamentary environment, there is no parliamentary privilege attaching to what
people say to me.

Thank you very much for the outline of your particular concerns. I wonder if you would just
like to start on that, and then perhaps we can pursue some of the threads that you identify in
the email that you have sent me.

12375 **Mr Cannan:** Certainly. First of all, I think that you are here at a very important time for Manx
politics, Lord Lisvane. To me, there are two key drivers really driving things forward at the
moment. First of all is the financial circumstances of the Isle of Man and the challenges that we
have there to deal with: there is about a £75-million hole in our budgets and of course we have a
12380 burgeoning public sector pensions liability and debts which are adding to those issues. So I think
that whilst we are dealing with those problems on behalf of the people and making some quite
difficult decisions that impact on them, I think in turn the people of the Island are looking for a
parliament that is value for money in its own way. So I think we do need to look very carefully
about what we are presenting and functioning in, and how we are functioning as a parliament,
and that it is value for money.

12385 And second is modern democracy: the changes that have been brought about over the years
by world circumstances, by political issues that have developed around politicians' behaviours
and, to a degree, the different democratic pressures brought about by social media, Freedom of
Information Acts, which mean that we should be pushing towards a more open democracy as
much as possible.

12390 So I think those are two very key drivers which add a lot of weight and responsibility to this
Review, and I highlighted to you in particular one of the very prevalent discussions we have been
having around the role and function of the Legislative Council as being, in my view, one of the
key areas that we do need to reform if we are being seen to improve and streamline the
democratic process and provide a sense of leadership, as I said, in terms of it is not just 'Do as I
12395 say', but we are going to do as we say as well, ourselves.

One of the key questions I had – and have always had – is: what is the purpose of the
Legislative Council in particular, and what values is it actually bringing to the whole process? In
other words, outside of the 24 democratically elected Members of the House of Keys, what
purpose is Legislative Council actually serving?

12400 There have been, over the years, a lot of changes with the Legislative Council, but as it stands at the moment, to me it presents a real mishmash. The individuals in there are not publicly elected, albeit they are elected by the House of Keys, but they do and can significantly influence the day-to-day policy-making and decision-making of Government, to a degree that I think you might not find elsewhere.

12405 Just to draw a direct comparison, I think you would find it unusual for the House of Lords to be so actively involved in the day-to-day running of a government, as a lot of the Members of the Legislative Council are. So this idea that Legislative Council is a revising chamber, really seems to me to be a concept only and not really something that is clearly defined. I would question, what actually is the Legislative Council?

12410 I also ask a number of questions around: is it right, for example, that the Legislative Council, because of the roles they play, because of their departmental roles, because of our system of government, can influence such key decisions such as the election of the Chief Minister? Is it right that they should hold ministerial positions within Government, not being publicly elected and not having to stand for public election? Is it right that they have the influence that they do in the Departments in the day-to-day policy-making behind the scenes, in Health, in Education, in Economic Development, for example?

12415 Also, we have seen a couple of examples recently where I think the Legislative Council have frustrated the will of the House of Keys, in terms of their democratic wishes. For example, with the democratic wishes of the House of Keys to have, in the election of the Chief Minister, just the votes in the House of Keys to count: we brought forward a Council of Ministers (Amendment) Bill; that was blocked by the Legislative Council.

12420 Another recent example was a willingness in the House of Keys to have an emergency debate on public sector pensions – a very critical issue for us at the moment; £3 billion worth of liabilities; potentially a proposal to add another £60 million of cost onto our revenue budgets – and that was blocked by the Legislative Council in a voting process.

Q854. Lord Lisvane: Can I just stop you on that specific example?

12430 I can understand the Chief Minister point, and there is a very compelling argument that says that the democratically elected should be the ones exclusively who elect or appoint the Chief Minister; but of course, in the second example you have given me, the Keys could have had a debate, just as valid and just as timely, just within the Keys, couldn't they?

Mr Cannan: Yes, and in fact we did push another debate two weeks later, I think, into the Keys, and we had a more structured debate around the issue, but perhaps with less of an impact that it would have had, had it taken place in Tynwald two weeks previously.

12435 So the background to that was the proposals that have been brought forward, quite controversial in some ways, very heavily supported within Government and by unions, and yet concerning for quite a number of MHKs because of the cost onto revenue. The Government – the Council of Ministers – decided to pull that debate, much to the disappointment of many of us, who really felt that debate needed to go ahead there and then, in order to maintain the whole momentum around this critical debate. Yes, of course, it went ahead later, and quite rightly the Keys took it to the Keys, but arguably we should have had it then. The democratic will of the Keys was that that debate should have taken place. There was no *real* reason for the Legislative Council to prevent it taking place.

12445 So that is just an example, I think, where there is that clash, if you like, which I do not think is particularly acceptable in today's society. Really we need to be looking at whether those kinds of blockages should be happening in a modern democracy, where we are looking to the elected representatives to drive forward the change – and of course, the people who have to go out to the ballot boxes in the village halls to explain themselves every five years.

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12455 **Q855. Lord Lisvane:** Before you move on, can I just pick up another point that you made a few moments ago, and that was the parallel you were drawing with the House of Lords. Now, I have been very, very careful to emphasise that I am not somebody who believes that structures and processes can be transferred easily from one jurisdiction to another; you absolutely have to make them fit with the constitutional context. But of course, in the House of Lords, there are quite a number of Government Ministers, so the parallel of what you were seeking to achieve is not exact.

12460 **Mr Cannan:** No, and I guess we need to be very careful about these comparisons, but we are much smaller. I think it needs to be taken in the context that we are a much smaller democracy. We are much more heavily scrutinised.

12465 I do not think that I would necessarily, definitely say, 'No, under no circumstances', but my point is to merely highlight that perhaps the influence of the Legislative Council overall, in terms of its influence on the will of the House of Keys, is that at the moment the balance is wrong, and we need to be very careful that we are not in a situation where unelected Members are having an undue influence over the running of the Keys, or over policy that the Keys really do want to drive forward.

12470 **Q856. Lord Lisvane:** It seems to me that – and thank you for distilling it like that – in those circumstances there are two directions in which one could go: one could limit the role of the Legislative Council or one could make it more democratic by electing it.

12475 In the paper that you sent me in advance, it seems pretty clear your preference is for the first route: that its composition stays roughly as it is at the moment, but its powers and its activities are changed in order to be more appropriate to that composition.

Mr Cannan: I think the key question that really needs to be answered is: what is the purpose of the Legislative Council? Until we actually can really understand that at the moment, I think it is hard to get a definitive answer.

12480 But yes, my overall preference is, and my view is, that the Legislative Council should be a revising chamber – that is their first and foremost primary responsibility – and that they should be more involved in the scrutiny process than they should be involved in executive Government.

If you defined it like that, which is my view, then you would also then go on to define items like, for example, if that is what they are going to do, how should they be paid? Is the election process right? Is the term of office and the structure around the Legislative Council right?

12485 If I go back to that issue I raised right at the very beginning, we are in very straitened financial times – as is everybody. Public finances are under huge pressure, not just here but across the United Kingdom and into Europe and other countries, and we all know that. Is it right for 84,000 people to have 33 full-time politicians? My answer to that is no, I do not think that is justified at the moment, and we should be making changes.

12490 If you then said, 'Okay, where is the most focused place to help try and change things to make this a much more flexible, more democratic Government, with more democratic policy-making?', I would suggest that the place start is the Legislative Council, by defining their role. Then if you did take that kind of view, that they were simply there to review and check legislation and revise it, and also then to add additional weight to scrutiny, you might say for example, therefore their pay and conditions should change; they should not be regarded as equivalent to MHKs; that they should maybe sit on a day rate, for example, and they will be paid accordingly to the number of boards and committees that they sit on, in terms of if they take on a revising and reviewing role.

12500 But I certainly think that the whole of this Government is overweight at the moment. We do need to streamline it. The Legislative Council is a good place to start because of the other reasons that I have outlined as questions about, in a modern democracy, should that level of influence be played by a group of people, albeit who work hard – and many of them are very

committed to their jobs, I do not dispute that – but should that level of influence over the day-to-day policy-making be made in that way?

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Q857. Lord Lisvane: I take your argument about numbers, and indeed it is said that if the answer to any question is ‘more politicians’, it is the wrong question! (*Laughter*) But there is a minimum, isn’t there, in order to maintain the dynamic which is needed for legislative scrutiny, for the function of scrutiny and challenge?

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The National Assembly for Wales, for example, has discovered this, in terms of actually staffing their scrutiny committees: you do need a certain number of people in order to be able to do it effectively. You have here on the Island an extraordinarily wide range of governmental activity. It extends right across almost all the responsibilities of a nation state.

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Mr Cannan: Well, it does, and I do not think I have ever argued that the Tynwald structure itself is completely flawed, because the monthly sittings of Tynwald can be on occasions very productive. We can have very strong debates in there. We need to improve that process, though, because at the moment, it is far too heavily weighted in favour of the Government. Obviously, when people are elected in the Keys, we are elected as independents. When they go up to the Legislative Council, or come into the Legislative Council, it is normally as a sort of independent. If you then tie everybody, or tie the weight of balance straight into executive Government, I do not think you get the productivity in decision-making and policy-making that is necessarily right for the Island.

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One of the issues that we have had is, I think, that we have tended to have a Government that is more interested in serving the Government, rather than really delivering on a lot of core issues for the population.

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In suggesting what I am suggesting to you about the Legislative Council, it is about actually streamlining the process to make it a more democratic process, to make policy-making, which should really happen to a large degree on the floor of Tynwald ... to encourage that process to take place and to remove also this continuous issue that has grown over the last few years, where I think that the Council of Ministers, by virtue of their set-up and structure, almost has become a *de facto* party, without a mandate really. I think removing the influence of the Legislative Council on that process – i.e. taking them away from executive Government – will lead to a much more open and democratic process, because whoever is in the Council of Ministers will have to say, ‘We can’t rely on the votes of Tynwald, if we make this decision. What we are going to have to go down there with, is to take the policy down to Tynwald and get the debate so that we can actually come out with the answers that we need to deliver for people.’

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That is also part of this process, coming up with a much better delivery of our politics – much more open debate – and I think taking the Legislative Council in particular away from some of that executive Government role will enhance that process.

Q858. Lord Lisvane: Can I explore two things that I think come out of what you have just been saying?

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The first is the implications of the role of departmental Members. You are a departmental Member in the Department for Economic Development, but it seems to me at first blush that it is very strange, when you have a Minister who is in charge of a Department, that you should also have between one and five Members of the Keys – or of Legislative Council, I acknowledge that – who are tied in to the Department.

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Surely if anything goes to create a government party, to make the writ of government run more widely through a parliamentary assembly, it is an arrangement like that, isn’t it?

Mr Cannan: Well, yes. I am not going to disagree with you on this point, because actually, once you start stacking up the numbers, then you see how very quickly things start moving straight away in favour of the Government/Council of Ministers, because not only do you then

12555 get the eight Council of Ministers, you normally have the Treasury involved in any decision-making, so that takes the two or three Members of Treasury straight in to the vote; and then if you go to the Department of Economic Development, quite correctly, if there is a subject there – you get the Minister plus the four or so departmental Members.

12560 So straight away, you have already got 8, 11, 14, 15 or 16 votes which are going to come down on the side of Government.

Q859. Lord Lisvane: I think I am right in saying that there are only four Members of the Keys who are not potentially conflicted in the sort of way we are discussing.

12565 **Mr Cannan:** I think this goes down to a large degree to – and I will be careful what I say here – when you have got a £10,000 allowance attached to being a Member of a Department, and everybody is given that opportunity to be in a Department, you have to ask yourself, ‘does that necessarily encourage the right structure for proper, open, democratic decision-making?’

12570 **Q860. Lord Lisvane:** And ‘does it play well with the public?’

Mr Cannan: Yes, so that slightly draws me into another area, a very prevalent point at the moment of MHKs – the pay and conditions and the makeup that we have got there. There are a lot of question marks around that, but particularly –

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Q861. Lord Lisvane: Could we park that one for a moment, and if I can put my question on the second thing that I think arose out of what you were saying, this goes very much to your points about openness, transparency and democratic mandate. When a Chief Minister seeks appointment, he – and it has been ‘he’ up to now – makes a statement upon which he stands. But once appointed, he has got to form a cabinet and that will involve a certain amount of modification of what he wants to do, because he needs to keep everybody in the tent.

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But all that, in a sense, happens behind closed doors. Is there a case, do you think – and there was a procedure, I understand, of this sort a little while ago – for having really quite a formal programme for government, so that once the administration had been formed and all the various bits had been ironed out, the Chief Minister came to Tynwald or to the Keys and said, ‘Right, this is a document which I am inviting you to approve – and this is, of course, not set in stone, because events have to be reacted to, but nevertheless this is what we are going to do – and I would like democratic endorsement of that?’

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12590 **Mr Cannan:** Absolutely. I think that has been lacking. I think if you look at the last Government, one of the criticisms I have had is that there has not been a very open and transparent, clear and understandable plan for Government that was going to deliver the three objectives that they had, which were to balance the budget, grow the economy and protect the vulnerable. We were really just delivered, as a Tynwald I guess, ‘Those are the three objectives, and that’s what we are going to set about doing’, but no real understanding of what the legislative drivers were going to be that were going to achieve that. So you were left asking yourself questions all the time about, well, who are the vulnerable? That tag could be attached to a lot of circumstances and a lot of people and a lot of individuals.

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Then when you talk about balancing the budget, if we take it at present, we have got a £75 million black hole. There are some quite significant decisions that will have to be made around that. But that was never really set out in clear legislative guidance or financial guidance in an understandable way what was actually going to happen. Of course, what happened was that over the last four or five years, there has just been a lot of top-slicing of a budget – which is fine, but what that has led to is incremental charges creeping in on the public in a number of areas. These have often come out of the blue or we have just raised standing charges for a range of circumstances – licence fees, for example – year on year.

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I think that actually the public wanted more from Government. They want to understand. They understand that there is a problem; they understand that they may have to pay more; but what they do not understand is why there is suddenly an extra £1 or £3 or £10 over here, or £50
12610 over here on sewerage rates, or rates reviews going on, on the other side. And of course we run into danger that it is actually the very people that we are trying to protect – the vulnerable, the less well-off in society – who end up actually paying the most.

So I go back to your original point: absolutely vital, I think, that the Chief Minister lays out a Government framework, at the very least, of plans and objectives, legislative changes, if not
12615 over the year, probably over the five years, outlining certainly in detail over the next 12 months, so that Tynwald can come back, debate those, approve what it wants to approve, and go to town in debate and find solutions to those areas that it is unhappy with.

Q862. Lord Lisvane: I think there are, again, two things arising from that that I would like to pursue with you. One is that you have got a title for an area of Government policy, but as you say, it is very difficult to tease it out: what does it actually mean? Where is it going? I would like
12620 to ask you whether you think that a really rigorous scrutiny and challenge function, which perhaps does not exist in that form at the moment, might do that – in other words, call Government to account in a more transparent and more vigorous way.

And the other is in terms of some of these cross-cutting objectives like protecting the vulnerable: how far the existing departmental framework gets in the way of that, because it is a group of silos, rather than a single governmental entity.
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If you would like to scrutiny and challenge first, and we will come on to the departmental structure after that.
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Mr Cannan: Just to deal with that, I absolutely think we need to improve that, and to be less afraid of scrutiny and challenge. I have sensed over the years, even before I came in but certainly since I have been in, there has been a general reluctance; that things were *not* to go to select committees and *not* to go in front the Public Accounts Committee and *not* to be referred to the Policy Review Committees. When they *are* referred – not always, but from time to time – I think
12635 the level or detail of the questioning has been itself questionable as to whether it has in fact been challenging enough. Not challenging in a destructive way, but I would say challenging in a positive way.

In other words, if the policy makes sense, if it is understandable, you are going to be able to answer the questions. If you are under pressure and the policy does not make sense or you do not understand it, then it is going to start to come out, and the cracks and the flaws are going to be exposed. Surely that is a positive thing, not a negative thing.
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Q863. Lord Lisvane: I agree with you.
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Mr Cannan: Absolutely, so that just draws me back, because you might say, ‘Well, why do you think it has not been perhaps, in your view, challenging enough?’ and I would say –

Q864. Lord Lisvane: That was the very question I was about to ask, yes!
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Mr Cannan: I would say to you: because I think there are far too many conflicts. We have already talked about the number of departmental memberships. It is the Chief Minister, of course, who makes the decision about whether you do or do not have a departmental membership, that is purely in his hands. And of course, for example, whether you are in the Legislative Council or House of Keys, you may feel a reluctance to openly dig into a subject that may expose – or *feel* it exposes; it doesn't always expose the Minister – the Department and that individual to criticism that may have some consequences. Either the policy may have to be withdrawn or the individual is going to have to stand up and say, ‘Look, I've got it wrong.’ But
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12660 that is not going to happen, I don't think, if you have a cosy relationship. Well, I will be careful with the words 'cosy relationship', but if you feel –

Q865. Lord Lisvane: If it is insufficiently challenging?

12665 **Mr Cannan:** Yes, that you do not challenge it because it might just upset the apple cart. I think we need stronger debate. I think we need stronger challenge because it draws out the best and the worst in people, but ultimately, you would hope that it does lead to better results for the people of the Island, and that is the critical factor.

12670 **Q866. Lord Lisvane:** You need, in fact, acceptance that good scrutiny makes for good government.

Mr Cannan: Absolutely. We should not be afraid of it and we do need to improve it.

12675 **Q867. Lord Lisvane:** From what you have been saying, it seems that the tricameral structure, given the curing of the Legislative Council issues that you have drawn attention to, is something that you are not particularly critical of; that you can make improvements within a tricameral structure?

12680 **Mr Cannan:** I think so. I think I have taken the view that structurally, the tricameral structure seems to work, and *can* work, and has been shown to work on occasions extremely well. But perhaps the level of debate and quality of debate and challenge, as you said, just needs to be improved.

12685 I am not against it. I just think it needs to be streamlined. The unicameral structure which is now being talked about, to me is an anathema because what you are really asking for is then going to be definitely 33 full-time politicians on the Island.

Q868. Lord Lisvane: Would that necessarily follow, if you simply said, 'Right, Keys is going to be the parliament: it is going to have 24 Members just as it has at the moment'?

12690 **Mr Cannan:** Well, you could abolish that. You could abolish that structure, absolutely. You would have to reform a whole number of areas. I think you would need to look closely at departmental memberships etc., but it would be feasible. I would not be averse to that. I think generally, if you were retaining the 24 Members of the Keys, my view is that you would need a further body to review and revise what they were doing.

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Q869. Lord Lisvane: Let me stop you there. Fine, that is bicameralism. What is it that tricameralism adds? What is it that Tynwald does, or needs to do, that two chambers could not do in terms of the democratic mandate on the one side and the revising role on the other?

12700 **Mr Cannan:** I think that basically, what it does offer is – or probably ultimately *should* be – a speedier process, a more refined process. In other words, you get the two Houses together. If you were going to have a major policy decision that is ultimately going to lead to legislation, then I think at an early stage, if for example the Legislative Council were purely in that revising role, and Members were able to stand up and highlight what they saw potentially as flaws, that in turn may make the Keys think, or may make the relevant Department which is going to be driving that through think, about what actually needs to be done. If there were strong objections, then maybe Government might feel that 'Actually, this piece of legislation needs a complete review before we even bring it forward.'

12710 So I think what it does, or what it should do, is enhance the process and if you are truly getting down to finding the best policies, driving through more focused Government objectives

and legislation, then by having that monthly debate in theory we should be helping enhance that end process.

12715 **Q870. Lord Lisvane:** So it is the jointery which Tynwald allows for the two Chambers to debate collectively that you think is a strength?

12720 **Mr Cannan:** I think so, that is a strength; but on the other hand, what we cannot then have is a situation where the Legislative Council can stop the will of the collective. That needs to be just carefully revised, I think, and looked at. Maybe what we need to do – possibly a simple answer to that – is just to look at the way that Standing Orders are managed, in terms of the voting structure within Tynwald.

Q871. Lord Lisvane: Are you talking now about Keys and LegCo voting as one?

12725 **Mr Cannan:** Yes. Going back to my original example where we wanted that debate to take place, there was no real reason for that to be prevented. It was not going to impact on the people of the Island *per se*, there and then. This was a critical debate about a pension scheme that was already on the Order Paper. The blocking of it I think was unnecessary, so those kinds of issues, we need to just find a pathway through – if we retain that tricameral system, of course.

12730 **Q872. Lord Lisvane:** We left on one side, earlier on, the issue of single legal entity. Do you think that that, if achieved, is going to, first, improve the operations of Government and second, make them more amenable, as it were, to calling to account and challenge?

12735 **Mr Cannan:** I think that the single legal entity idea has a lot of merit. There are certainly a lot of blocks at the moment. Government Departments can choose to block other Departments, if you like. Policy is not always delivered consistently across Government. So there are a lot of merits ...

12740 I think the one thing I would say to you, Lord Lisvane, is that it goes back to this scrutiny issue. Providing we have got the right scrutiny mechanisms in place, that the Government's policies are open to proper challenge and proper analysis, then I do not see why a change should not necessarily work, and work properly. But it is really about the scrutiny, and that is the critical thing.

12745 **Q873. Lord Lisvane:** And specifically on that, if you have the departmental silos, it is very easy to counter scrutiny by simply passing the parcel and saying it is the responsibility of another Department. If you do not have joined-up government, then there isn't a single point of accountability at which a parliamentary function can point itself.

12750 **Mr Cannan:** I think to a degree, in some ways the system as it stands at the moment is fairly easy to understand. You have got the Department of Education, the Department of Environment, Food and Agriculture, and the Department of Infrastructure, for example, just to name but three. To a large degree, certainly as Chairman of the Public Accounts Committee, I have found it reasonably easy to get to Departments, to get to the root of the issue of the responsible Department and to have them in front of the Public Accounts Committee to answer questions. So I am not sure that there has been too much of a culture of trying to pass the buck within the system of Government that we have over here.

12755 I do accept, though, that there has been a silo mentality. I think the blocks tend to come in when one Government is trying to bring forward advances in technology, for example, and another Department does not feel that it is in a position that it is going to impact on their

functions as a Department, and there may be issues with it. So you find those blocks do occur. That is what needs to be ironed out.

12765 If that is what is going to be achieved by having a single legal entity – i.e. you are just going to have more influence in turning round and saying to the Departments, ‘That’s the policy. You get on with it now, there are no blocks’ – then I think it would be a positive thing. It will be positive, if we have got the scrutiny right.

12770 **Q874. Lord Lisvane:** Well, you have very deftly brought me on to the subject with which I was going to occupy the few minutes that we have got left, and that is the way in which PAC operates.

12775 You have had your PAC hat for three years, I think – since 2012. The first question is: what sort of support do you get? It is slightly odd that the Government’s auditors are a commercial firm, rather than a national Audit Office type function. Can you give me your thoughts on that?

Mr Cannan: The *modus operandi* is that we get the Government’s internal auditors – so the Internal Audit department –

12780 **Q875. Lord Lisvane:** KPMG?

12785 **Mr Cannan:** No, no, Government does have an Internal Audit department to review operational functions of Government and to analyse their functions in respect of Government policy around Smaller, Smarter Government or Transforming Government, for example. So we do get to see quite a lot of those reports and functions which do highlight to us from time to time problems.

Q876. Lord Lisvane: Do you see them all?

12790 **Mr Cannan:** Yes, we see all the Internal Audit.

Q877. Lord Lisvane: You said ‘quite a lot’ – is it ‘quite a lot’ or ‘all’?

12795 **Mr Cannan:** Sorry, no, we see all Internal Audit reports, once they have been prepared. They come through to us and those that we have concerns about we will pull out and start to investigate ourselves.

Q878. Lord Lisvane: Who makes a decision within or outside Internal Audit as to what areas should be subject to Internal Audit investigation?

12800 **Mr Cannan:** Well, the external auditors ... I have got an *assumption* now that they are talking to Internal Audit! But the other driver, of course, is Tynwald itself, and we do get a lot of letters from Members of Tynwald themselves highlighting issues, highlighting areas of Government expenditure –

12805 **Q879. Lord Lisvane:** I can see that that fuels your operations, but specifically, if Internal Audit is self-starting, is that something that they decide, ‘We’d better look at this’ and they do; or is it something that, let’s say in most organisations, there is an internal audit programme, which is typically approved by the audit committee with the knowledge of the chief executive or corporate officer?

12810 So what is the parallel in these circumstances?

Mr Cannan: Internal Audit will conduct those reviews across Government. They will obviously have a programme of audit, and that programme of internal audit is discussed with the Public

12815 Accounts Committee on an annual basis. We tend to see the Chief Internal Auditor twice a year, and that is the key driver in terms of delivering these assessments.

Q880. Lord Lisvane: Can you amend the programme?

12820 **Mr Cannan:** We speak to the Internal Auditor, as I said, at least twice a year and we discuss with him areas of concern. If we feel that there is an area, then we could direct the Internal Auditor to investigate.

12825 **Q881. Lord Lisvane:** So you can amend the programme; you can acquire a new target for him?

Mr Cannan: Yes. But a lot of the investigation work that we tend to do, we will tend to gather the evidence ourselves through our clerical support. In other words, we will write to the Departments, we will write to the Treasury asking for financial figures, if we feel there is a problem and then we will obviously bring people in for questioning.

12830 **Q882. Lord Lisvane:** But in a typical PAC inquiry, is the starting point that you have the Internal Audit report in front of you, and you then use that as the basis for an inquiry?

12835 **Mr Cannan:** That is one of the methods, yes, absolutely. I think on a number of occasions, the Internal Audit report has been produced for us and we have followed through an investigation there. There have been a number of times where we have had letters in and we have decided that those letters have merit to ask further questions around the public expenditure that has been taking place.

12840 **Q883. Lord Lisvane:** How effective do you judge that you are?

Mr Cannan: The Public Accounts Committee has some issues at the moment, because it has a number of conflicts of interest. In fact we recently had –

12845 **Q884. Lord Lisvane:** I have read the 2010-12 conflict report.

12850 **Mr Cannan:** Yes, so we are seeking ways to improve that, particularly around the roles held by the Chairman of the Public Accounts Committee. I have felt myself that over the last two or three years, as I have taken on Economic Development and the chairmanship of the Manx Utilities Authority, that the potential conflicts in some areas of major responsibility are too great probably to hold that position as Chairman of the Public Accounts. I have actually raised that issue twice now with Tynwald: once with a select committee looking into the purpose and effectiveness of the review committees; and also in the last debate.

12855 So I am hopeful that that matter is now being taken forward, because the matter is going to be looked at after the next election, and certainly I would be very supportive of the Chairman of the Public Accounts Committee in the future having no or limited responsibilities outside of his or her function.

12860 The other members of the Public Accounts Committee are made up from the review committees. They are normally the chairmen of the Social Affairs Policy Review Committee, the Economic Policy Review Committee, and the Environment and Infrastructure Policy Review Committee. Together, we will form the Public Accounts Committee.

12865 **Q885. Lord Lisvane:** Would it help to have a larger committee, not just from the conflict point of view?

Mr Cannan: I think arguably we could go up to five or six members of the committee, yes. It may well be that actually the Public Accounts Committee has more responsibilities in terms of perhaps the number of times that it sits. We look at whether it actually should be a more effective scrutiny of Government policy and performance, and financial matters.

12870 So arguably, you could enhance that, and I think that if we were to move more towards effective scrutiny, then I think that there would be a strong case for the Public Accounts Committee's role, its support mechanisms and the numbers of people sitting on the Public Accounts Committee to be looked at carefully.

12875 **Q886. Lord Lisvane:** Do you feel that you have got enough resource, in terms of support?

Mr Cannan: I think during my term, we have had some quite controversial matters to deal with, in terms of how money has been spent, but so far we have not really uncovered anything that has been a massive area of controversy or illegality or highly questionable expenditure. 12880 Some of the methodology behind that expenditure in terms of how it has been allocated has been questionable, but most of the time the necessity has been there.

But the Public Accounts Committee has at the moment one secretary and receives the reports from the Internal Auditor. It could be given more support in terms of further analysis of the Budget, for example. There is no support function at the moment available to the Public 12885 Accounts Committee for individuals to assist in analysing where the public expenditure is allocated and to highlight to the Public Accounts Committee areas where perhaps the Treasury have allocated money that may need investigation or may need challenge.

So the answer to that question is that again, the Public Accounts Committee as a scrutiny organisation is open, I think, and needs further review and reflection and could be better in 12890 terms of presenting a more regular challenge and a better challenge to the executive and to the Ministers.

Lord Lisvane: Well, thank you very much indeed. We have alas run out of our time. If there are further thoughts that occur to you, by all means let me have them in writing, but our 12895 conversation this morning has been extremely helpful to me, and I am extremely grateful to you for sparing the time.

Thank you very much indeed.

Mr Cannan: Thank you very much, Lord Lisvane.

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*The hearing was suspended at 10.17 a.m.
and resumed at 10.19 a.m.*

EVIDENCE OF Mr James Hampton

Q887. The Chairman (Lord Lisvane): Mr Hampton, good morning. Thank you very much indeed for sparing the time to come and talk to me, and thank you too for the two pieces of written evidence which you have given me.

The terms of trade are that our conversation – which, as you have seen, is relatively informal – is live-streamed and is recorded by *Hansard*, and when the transcripts are finalised they are 12905 put up on the Tynwald website. We have got about 45 minutes or so, if that suits you.

You have got one paper under your own name and one is as a result of polling. Can you tell me a bit about how you came to do that and what your coverage was?

12910 **Mr Hampton:** I suppose I am here with two hats on, really, today: I am here with the hat on of the group letter that I compiled, and my own personal submission. There is a connection between them, but my own personal views are probably more radical than those contained within the group submission.

12915 My point of interest is the public, and I think I am right in saying that I perhaps have the dubious honour of being the only member of the public you are going to see personally who is not either within the system, retired from it or has tried to be so. So I suppose that is where I come in.

12920 **Q888. Lord Lisvane:** I should just interrupt you there perhaps to say that the invitation to give evidence was a very open one and I have a large number of written submissions which do not come from the categories you have named.

12925 **Mr Hampton:** Yes. My interest, in essence, is the public and the public's perception of not only this process but the one you have been tasked to assess, and so when the Review was announced – and of course there has been a lot of conversation about it now locally – I thought it would be nice to gather some group thoughts.

12930 One of the things that is obvious from the letter that I compiled for the group is overall this sense of disenfranchisement. All three of those main topics which were brought forward in essence relate to disenfranchisement in one form or another, and that is what I then go on to expand on in my own personal submission. So, yes, that is where I come from.

12935 As you are undoubtedly aware, there is an awful lot of discussion these days – far more than there was even a generation ago – and that is one of the things that really interests me. Within my lifetime it has become possible, and I do so frequently, to talk to people every day who I have never met – people all around the Isle of Man who I have never met and have no connection to whatsoever. A generation ago I might have been discussing politics with my friends and family; now I can discuss politics and the role of parliament with everybody, if we want to, and there is very little barrier to that.

12940 I think there is a perception within parliament, within the Government, that that is risky – and it is risky. There are risks associated not only with the conversation *per se* but with the potential within that conversation, in where that conversation could go, because there are very positive things that that could produce and there are also very negative things that that could produce.

12945 And so I suppose that is where I come from: how can we try and start ... That is one of the things I expand upon in my own personal submission, that in reality I do not decide how future generations who have access to this technology will use it. As I expand upon in my own personal submission, my parents' generation fretted about television and telephones, and now I do not have either – I do not have a home telephone and I do not have a television – and my generation, we fret about our children being on iPads and iPhones. We do not decide how they will define that, but we can observe the trends. We can observe how this is unfolding, both on the positive and on the extremely negative. You only have to look at the news every day to see the negative potential within that connectivity. A very strong, perhaps not very well thought-out idea can gain a huge amount of traction in a very dangerous way.

12950 And so how do we begin? If we sit back and do nothing, those trajectories will just carry on and, as I have said in my personal submission, the consequences of that can be really serious. So I think – I feel, anyway – that my generation has an obligation to at least try and start to think about how this is inevitably going to unfold. To sit here as somebody of my generation and your generation – forgive me for observing that you are probably a generation above me – and to assume that this is just going to carry on is naive at best.

12960 **Q889. Lord Lisvane:** Well, I was accused of youthful enthusiasm during evidence yesterday!

12965 **Mr Hampton:** Yes, well, perhaps you have been the biggest surprise in this process, because the disenfranchisement that you feel if you walk out the door here I think perhaps led people to guess that you were going to be an establishment figure. I have listened to quite a lot of the Review already and I think that is one of the things that has surprised people – the way in which you have put your finger quite pointedly on a number of issues which people are very concerned about – and I think that has pleased a lot of people.

12970 **Q890. Lord Lisvane:** Well, I am very glad to hear that. Perhaps we can pursue some of those. Let me take your personal paper, and I hope you will not take it amiss if I say that this has a broader philosophical sweep than a lot of the evidence that I have received. (**Mr Hampton:** Yes.) One of the things that occurred to me reading it was that, in a sense, the size of the Island's community sets up a tension of its own, because it is small enough for the prospect of direct democracy to look achievable on the one side; but on the other, the complexity of what has to be dealt with in Government and parliament – everything apart from foreign affairs and defence, and even those impact on domestic policies; anything that any nation state has to deal with – those complexities always fight, don't they, against the sometimes binary choices which direct democracy offers?

12980 **Mr Hampton:** Yes, and this is one of the things – criticisms, I suppose – that I have had to address when discussing this publicly.

12985 Personally, I always have a tendency, with my own business and the way I try to approach things, to try and go back to the source of the problem. I think that if we put aside the history and the tradition of what we have right here, what we are looking at, in effect, is the translation of intent – and that is simply what we do not have at the moment. There is no process. I cannot vote left or right; I cannot vote to push the policy framework of the Island in any direction at the moment. That is a bad thing in itself, but the reality of what we do have is actually a potential, because, as you say, there are complex issues which unfold from every question.

12990 So you might ask a very simple question like 'Why am I waiting four hours in A&E?' and that is an issue which, if you went to A&E, you would get a lot of people – well, if you went anywhere, straight outside the door, and asked people ... Yes, that is a very simple issue. But as soon as you have asked that question, there is a whole raft of other questions.

12995 I personally believe that if the public had more access to the power which governs those decisions they would inevitably start on a process of learning, because there is this perception that we will just make the wrong choices. I could say that the wrong choices are being made now and nobody is learning anything from them because this system that we have is transitory and there is very little accountability, there is very little capacity to learn; whereas the public ...

13000 In essence, it reflects this continuous idea that we have that Tynwald is a continuous parliament because of this unusual system that we have, and in actual fact it is the population who are the continuous part, really. So, when we look at these decisions on which there might be negative consequences, a simple binary decision of which there might be a negative outcome if we make the wrong choice, the public has the capacity to learn from that.

13005 Going back to the idea that there might be all sorts of technicalities behind that, if the public decides that they want a simple binary choice and they want to, let's say, increase funding for the Health Service, it really should be up to the politicians ... That is why I do not see direct democracy as a complete replacement. I do not anticipate that everybody out there is going to be working out the technicalities of how we fund the Health Service, but I would like to see ... 'I want a better-funded Health Service,' for example, 'and I need you to discuss with me how we are going to do that' – because there will always be multiple options as to how that could be resolved – and at the moment that conversation does not happen on the Isle of Man.

13010 It comes back to the issue of size. You get this scenario where I can go and knock on the door of my MHK, or send him an e-mail or harass him on Facebook because I have had to wait four

hours in A&E, but that is not resolving it. That is just the issue; that is not resolving the policy framework behind that. We never get to have that conversation.

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Q891. Lord Lisvane: No. That is a very good point, but it is open to, not criticism, but at least question about the disconnect between the personal experience and the institutional reaction. Down in the public bar in the Red Lion they may be saying, 'I had to wait four hours in A&E – isn't that appalling!' and that will be the end of the conversation, and actually making an institutional wave or even a ripple from that is a very difficult thing to achieve.

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Mr Hampton: It is a very difficult thing to achieve if you do not have the power to achieve it, because, as you observed just a few moments ago, it is possible for an institution like this to dance around an issue like that to avoid ...

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At the moment we have a statement in the media that there simply is not the funding to increase, and of course, as you say, that is where it will stop. Unless there are clear consequences for the public, they will never take that next step.

We could say, just hypothetically, 'I want to improve the funding for the Health Service: how am I going to do that?' Well, one of the things that we could discuss on the Isle of Man is our rather unusual taxation structure. If we were to discuss that and say we could adjust the tax cap, for example, that might be a very popular choice for the majority because the majority are not affected by that tax cap, but there will be a negative consequence, or there could be a negative consequence, if we said, 'Oh, let's just make all these rich people pay tax.' The tendency for the public is to just say, 'Oh, we'll just do this,' and unless the public are able to ... because with the responsibility to make decisions come consequences, and at the moment I think the public perceives that that is not affecting Tynwald, but it does affect them.

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Q892. Lord Lisvane: In the background of this conversation, perhaps, is Edmund Burke's address to the electors of Bristol: should members of any parliament be delegates from their constituents, or should they be representatives making up their own minds on the basis of what is put to them by the people they represent?

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Mr Hampton: Yes, I think that in the context of the Isle of Man that becomes rather unusual because we do not have this capacity to vote for an idea; you are voting for a personality, and so it is highly unusual for a candidate to come and knock on your door and discuss policy with you.

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In reality we are all aware that they have no power to achieve that policy because if they are elected they go into this process, which you have picked up with a couple of people already, of forming a Government and, in reality, the promise that they may have made to you in terms of policy is secondary to this process of forming a Government.

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Q893. Lord Lisvane: But are they really going to be talking about policy? Surely on the doorstep they are more likely to be talking about the four hours in A&E?

Mr Hampton: Yes, exactly; that is how it unfolds.

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Q894. Lord Lisvane: That is where the conversation starts, is what you are saying to me.

Mr Hampton: Yes, so in my mind what would be far more ... and you have discussed it on a number of occasions, this idea for a programme of Government. If that programme of Government was at the forefront of that conversation and you had dealt with the issues relating to let's say the funding of the Health Service, the question of the four-hour wait in A&E automatically becomes part of that. If you resolve the policy question, I no longer have the question of why I am waiting – I know; and if I know that I am waiting because we have this taxation structure, and if we change that taxation policy and prioritisation of funding structure

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13065 there could be other consequences which I am not happy with. But I should be able to say, 'Do I want to spend that on that, or do I want to spend it on something else? How do I want the Isle of Man to progress and what direction do I want it to progress into?' At the moment it feels like it is moving in one direction, and personally I sense that there are problems with that.

13070 I feel incredibly lucky to have been born here and to have benefited from the good times. I would not be sitting here talking to you now if I had not been born here and if I had not been looked after by the people of the Isle of Man. Now some of the benefits which I have benefited from are not available to my children, and so at that point you think, 'Well, what is happening? If those benefits are no longer available to my children, are we going in reverse here?' And then you think, 'Well, what can I do about it?' and it does not feel like much; it does not feel like much I can do about it.

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Q895. Lord Lisvane: And presumably, just in passing, you would support a system which allowed amendments to the Budget, provided they were fiscally neutral – in other words, amendments to move expenditure from one area to another.

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Mr Hampton: I think it goes back to this point that you have made about the technicalities of how a binary decision like 'shall we spend more on the Health Service or education?' has to be unpicked, and I do not anticipate that the public are going to get down to that nitty-gritty. But I do anticipate that the public would go, 'Why are we wasting all this money on this road when we could be spending it on ...?' and we cannot second guess that. We cannot second guess what we should spend. Every week you will find a story in the newspaper: the Government have spent this, or they have not spent this – but that is where the conversation stops. There is no broader ... I do not feel that the conversation has to become incredibly detailed, but it does have to become a little bit more connected than it is at present.

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Q896. Lord Lisvane: Would a really vigorous non-conflicted scrutiny-and-challenge function within Tynwald – whether it is within the Keys, within LegCo, or both – start to help that? In other words, not one which was responsive but one which was seeking to answer some of the questions that you have been posing in the last few minutes?

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Mr Hampton: This is the other thing: I think a lot of people perhaps do not have a very clear picture of how this institution currently does its business, but as I understand it, basically you have the elected Keys and it is effectively their role to translate intent into action; and then, in theory, it is the second Chamber's responsibility to scrutinise if that intent is what is going to result from ... if the way that the action is being created is actually going to produce the result that is required by the intent – not to question the original intent.

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So the first point is how do you get that intent translated, because that is the bit that I feel is missing. I do feel – and you have seen it from the first letter, by the group – that there is this question of the direction or mandate of the scrutiny part, because I do feel that the public feels that if there was more mandate behind them, yes, they would be able to scrutinise more effectively and say, 'No – we know this is what you wanted, because this is what you have brought to us, but what you have actually presented will not achieve that.' That is the essence of scrutiny, isn't it? Just to break it down to the very base level, you have an intent and that intent has to be translated into some action, and if there is a problem in the middle and it does not look like it is actually going to achieve that action, that is where the scrutiny comes in.

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So, if there was a mandate behind that, I think the public would feel much more ... because the public, as you have read in the first letter, do have this perception that there are conflicts of interest there, as you have been discussing.

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So yes, I think a more effective scrutiny process, but certainly one that the public, I think, feel that they have the power to support.

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Q897. Lord Lisvane: Isn't the scrutiny function wider than that, though, because that takes the intent as a given? Sometimes the intent can be completely wrongheaded: it becomes a category error, like asking 'why doesn't a bicycle make good coffee?'

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Mr Hampton: Yes, that is where you get into dangerous territory, don't you, because where does scrutiny stop and redirecting intent begin? If you continue to block, in terms of a process of scrutiny, eventually the intent will change.

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Q898. Lord Lisvane: Well, yes, but I think my response to that would be that scrutiny is not there to block; scrutiny is there to expose, and if exposure is evidentially based then it is very hard for the proponent of the wrongheaded policy to pursue it against public and political exposure.

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Mr Hampton: Yes, I take that. And I think the scrutiny body, however it ends up being formed – and the public would probably feel, I assume, the same, from the letter that we compiled – would be more ... There would be more trust in that process and they would feel more effective if they had a public mandate to do that. But if the public mandate was limited ... Because I think this is the problem, or the perceived problem, which I know was raised by the Chief Minister, that when you would have two elected bodies, there would be –

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Q899. Lord Lisvane: A competing democratic mandate.

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Mr Hampton: But, to me, a simple solution to that process is the clear division of roles. So if one body has the role of translating the intent of the public into an action and the other body has the responsibility of ensuring that that is what is produced, the second body is limited in that role, so they cannot change the original intent – then you resolve that problem.

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Q900. Lord Lisvane: Well, that is slightly Panglossian, I think, (**Mr Hampton:** Yes, that's true!) because doesn't it have the seeds of, if not disaster, at least deadlock in it? We are talking about the Keys here forming the intent, and your directly elected but limited-role second Chamber assessing that. If the second Chamber can say, for example, 'I have three times the democratic mandate of any that any one MHK has, because of the basis on which I have been elected and therefore not only can I say' – to take our earlier example – 'that this is a wrongheaded intent, I can say that with democratic force, to the point where I do not think that the people who voted for me would or should approve of that', then you set up a direct democratic conflict.

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Mr Hampton: Yes, I take that point and I suppose at that point this is where the third option that I have outlined comes in, because we have capacity now to ask instantly. This idea of representation that we are using at the moment is an ancient idea. The idea that a revising Chamber has to guess what the public actually wanted is not the case anymore.

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Q901. Lord Lisvane: But I am just looking at the practicality now. It is a very attractive concept that you get into a parliamentary impasse and so you say to the people, 'What's the answer to this?' There are two things about that. The first is that it is very difficult, isn't it, to articulate the impasse, the pros and cons on each side, in a way which can easily be put, as you say in your personal paper, that can be communicated by digital means, whatever? And second, what sort of response are you going to get? How interested are people in getting you out of the impasse? To be totally cynical, are people more likely to be interested in blaming both Houses for what they have got themselves into?

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Mr Hampton: Yes, I suppose in that respect what I would do, if I had to think of that problem, is go back to my blank sheet of paper. That is how I solve a problem. If we have started with this

13170 idea that a programme for government, some idea of a policy direction or a range of policy
 13175 directions, is democratically formulated and approved and is continually modifiable, (**Lord
 Lisvane:** Yes, of course.) – because to me that seems a far more efficient way of doing it – why
 are we stopping? Things change, but they change gradually –

Q902. Lord Lisvane: And they have to react to outside events as well.

13175 **Mr Hampton:** Yes, but I cannot think of an occasion where public opinion has simply stopped
 and changed direction. Generally it evolves gradually.

13180 So, if we start at that point, it is clear to both sides of this the process which then relates to
 that, what the intent of the public can be. So, if we think of the worst-case scenario, I guess a
 really technical issue on financial regulation – virtually nobody out there is interested and there
 is a disagreement between the two sides, it has to come back to intent. So if the intent is that
 13185 we want to increase the attractiveness of the Island for e-gaming and there is a certain very
 technical piece of legislation which MHKs think will do that but the scrutiny body thinks will not,
 who do we ask to resolve that? Who do we trust to resolve it? At the end of the day, we have a
 huge e-gaming sector on the Isle of Man. They can give their perspective on how that would
 actually play to them – that is an element of the public in terms of the businesses concerned –
 but equally, there will be other groups within society who might have serious concerns about
 what that might do. So the intelligence, the knowledge in order to resolve that impasse is in
 society.

13190 I find it difficult to accept that the solution to that problem is just held within this building,
 because there is so much more ... I only have a very limited knowledge, about what I do, but I
 am aware that there are people out there ... For instance, at the moment there is a debate
 which is about to unfold about the Steam Packet. The Steam Packet is highly emotive, a really
 13195 binary ... and if you walk out here and ask you will get a lot of opinion on that. I have had
 conversations with people privately about the actual technicalities, things that I cannot really
 even grasp, but there are people out there who understand all of the technicalities because the
 Steam Packet have made their formal offer to the public. But there is a whole raft of issues
 behind that, which certain people out there understand very well and understand that there
 could be pros and cons to what they have offered and there could be pros and cons to what
 13200 somebody else could offer, and there could be pros and cons to all of the different options. So,
 to believe that the answer is held within this building, when there are people within the
 population who have a much more hands-on experience of these issues – about any issue,
 really, that you can ... It is only when you get to moral issues and ethical issues that it really does
 come down to the individual, I feel. And again, why is it that we are relying on persons within
 13205 these buildings to make such difficult decisions?

One of the things that I found very interesting – I listened to the submission by Mr Murcott.
 He is a very interesting character and he had a very interesting conversation with you about his
 hot topic at the moment, and my perception, having looked at that whole process he went
 through with you ... Fundamentally, the problem, as I saw it, is the fact that – he was correct
 13210 with this – he was not allowed the ability to debate and have his voice heard properly; and that,
 to me, is the biggest problem because if the process had been far more open and he had been
 able to ascertain what the will of the majority actually was, it is highly unlikely that he would
 have set off on the course that he has now set off on, which I find in essence is negative. It is a
 negative for society, as I see it. He sees it as a very personal issue to him, which is entirely
 13215 correct, but if the process had been far more open it would have eliminated that need for
 conflict.

And there are more issues on the horizon on the Isle of Man at the moment that fall into that
 character. These are not technical issues regarding taxation; these are personal, moral issues,
 and I feel that there are sections of society who feel that if this decision is made within this

13220 building and they are consulted but not really listened to, that will lead to further negative consequences, which goes back to this issue of disenfranchisement.

13225 **Q903. Lord Lisvane:** Let's go back to the example that you quoted a moment or two ago of highly technical legislation relating to e-gaming. Is one way out of this a scenario which you may have heard me put to other witnesses, which is to collapse the consultation process into a draft Bill process so that if legislation were proposed, it would be proposed first not in a Bill to be formally introduced into Tynwald, to either House, but exposed in a draft Bill which would be looked at by I think ideally a joint committee, but where people could make their submissions and indeed give oral evidence directly to the people who were considering the draft?

13230 **Mr Hampton:** In principle, yes, a very positive step. In reality, I think the problem comes back to this issue of power, and I think this is the bit that I outlined with regard to the Scottish independence referendum. If the Scottish independence referendum had merely been a petition or a poll which could trigger a debate, as the current UK petition system can, where you can have an e-petition, that is still no guarantee of an action, and I think that that is the missing link – and it is the link which is very frightening, I think, for an establishment like this because that is the piece of the puzzle which they do not really want to relinquish, but that is the piece of the puzzle that ... I feel, anyway, that if you do not relinquish at least something you are not going to get a broader engagement. You will get special interest engagement.

13235 So let's say, for example, in e-gaming legislation you will get a very strong lobby from the industry and you might also get a very strong lobby from an anti-gambling group or campaign, but you will not really get very much interest across the board, I feel. That is not unusual but if the public had decided at a very base level that yes, we want to promote e-gaming in a programme for government, then the public has said that 'we want to promote e-gaming', for example; but the public might also say, 'Well, we want to promote e-gaming but we do not particularly want our whole economy to be heavily dependent on it.' So there are already a couple of options appearing: how far do we push this? But once you have started that process, I think if people really did feel that they had power to direct that, you would get more engagement and the first step is that setting of the broad policy, because a broad policy framework does not give you those technical answers but until you have taken that first step ...

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13250 If you do not take the first step you are not on the route to being engaged.

Q904. Lord Lisvane: Well, the first step is certainly exposing and making accessible – which I think is a key element – what is to become a legislative proposal, but I readily accept that a difficulty inherent in the proposal I have just put to you is that committees are much readier to look ... If somebody goes to them and says, 'Look at clause 14: if that were enacted it would have all of these undesirable consequences.' 'Oh, terrific,' says the committee, 'thanks for pointing that out – there's a nice chunky recommendation for us.' But if somebody comes along and says, 'This is totally on the wrong track,' in a sense it just sails past the committee's consciousness. There is always that risk when you are using this sort of technique, I think.

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Mr Hampton: Yes, definitely, and I think that there is no easy solution to this, but in my mind, until we take this first step and move in this direction you are not moving in that direction, and I think that the consequences of not moving in that direction could be very serious.

13265 I am not a technical person, I do not profess to know the answers to that in a technical form, but the essence of having people engaged and having people understand the consequences ... because what we are looking at when we look at that very technical e-gaming piece of legislation is the consequences, really. We might say yes, we want an e-gaming industry, but there are consequences to that, and at the moment it would appear that one of the consequences is that our economy is heavily reliant on that sector, which is risky and that risk is

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not perceived. It is extremely risky, but I think if you walked out the door here you might not get that response. You might not get that perception that this could all go, just like that.

13275 **Q905. Lord Lisvane:** I do not want to put forward scrutiny of the sort I have outlined as being the answer to everything, but if those concerns are expressed and they are on the record I think that is a very important element: they do not just disappear – I am not saying that something that goes to an MHK is going to disappear into a filing cabinet, but nevertheless it is a different sort of engagement. (*Mr Hampton:* Yes.)

13280 You were saying earlier on – about your four-hour wait in A&E, which I hope was just an example – that you might harass your MHK on Facebook. I am sure that you would do that in a very dignified and courteous way. (*Mr Hampton:* I would!) Exactly. And you will be aware that some of the evidence that has been given to me is that MHKs, and perhaps to a lesser extent Members of LegCo, do find the Facebook criticisms, particularly if they are anonymous, really very difficult to cope with. It has also been suggested to me that that thought, of almost
13285 unreasonable criticism and unanswerable criticism, tends to discourage people from actually coming into this particular branch of public service.

Mr Hampton: Yes, and also discourages the wider public from getting involved in that conversation.

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Q906. Lord Lisvane: Absolutely. Given that your evidence is so heavily on digital democracy and how these new means of communication and communicating opinion are working, is there a way round this? It is a problem that is not unique to the Island, by any means.

13295 *Mr Hampton:* In some respects, the problem that you have outlined there is unique to the Isle of Man because the very interesting thing about the Isle of Man is, because we do not have this party structure, this is the sort of pattern that we have fallen into. Because we have the history of the politics based on charm, on people having this ... that is the pattern that we are falling into and that is why I see it as inevitable that something will evolve from this.

13300 In the UK – my perception is, anyway – it would be highly unusual for me to have a conversation with my MP, to be able to barricade them, because they have this party structure around them, which in some respects is a buffer between them and being directly responsible; whereas I can have a conversation with any of them, really, and I can put pressure on them directly. So I do see that as a potential negative because it is holding us back from expanding
13305 upon this broader idea of a policy framework, and I think that the policy framework is potentially the solution to that.

So if the policy framework were mandated democratically and were set out and were continually available for discussion, it would take the pressure off the individuals because they can refer back and say, 'Well, this is the policy framework which the majority of people have mandated,' and if that policy framework means that you are waiting for four hours in A&E it is only the majority of people who can push that policy framework to change that and reprioritise spending in one way or another. So it would give that buffer that UK MPs have of a party, of a framework, but it would allow it to be far more responsive, because I think the people of the Isle of Man expect it to be responsive – because we have had this system where we can just go and harass an MHK.
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Q907. Lord Lisvane: I think I should say in the UK system I have never been aware of the party being a buffer between the constituent and the constituency MP. Of course the party's policy may be something to which the MP cleaves and says, 'Well, I'm sorry, but that is the policy of my party,' but equally you could say that in the Isle of Man the fact that there are not political parties is actually a fantastic plus, and there are lots of countries that do have highly
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aggressive, contentious party politics where perhaps voters would love to have something which was more personal of the sort that you have been describing.

13325 **Mr Hampton:** Yes, it is a negative inasmuch as I feel it is potentially holding us back in the history and in the entrenched way that it has evolved, but it is also a great potential, because, as you say, there is not this boundary and we could find a way through here to create a policy framework which is popularly mandated, which would remove this potential for micromanagement which I know you have discussed with a couple of people, this feeling that
13330 some MHKs have that they have to manage everything specifically.

On that, I think I agree with Mr Thomas inasmuch as what do people out there really want? They want to set out a broad set of objectives, and if they come to a point where they think, 'This isn't working, because I'm waiting four hours in A&E,' then the conversation can evolve. It can evolve, and that is what I would hope: that that could evolve more organically. So, if enough
13335 people have waited four hours in A&E, the conversation will start and the policy framework could be pushed or tweaked, and rather than me going to my MHK, 'I've had to wait four hours in A&E,' I can have a conversation with everybody about 'Why am I waiting four hours in A&E? Why are there wards being closed? Why are there not enough staff generally in the Hospital?' That is an issue that a load of people are aware of.

13340 But the conversation should not really be happening directly with a single MHK, I feel, because it is not an efficient way to deal with it – because it does not deal with it, it has not dealt with it; whereas if the conversation were happening on a broader platform and we were able to put our mandate behind 'We want to try and tweak this a little bit – we think we're spending a little bit too much money over here on this when we could be spending it on more doctors for
13345 A&E,' or 'We think we're not quite taxing these people enough', that broad conversation is what I feel is ... We have to take that first step in order to get that to happen.

Q908. Lord Lisvane: Can I finish with two areas which are really about the perception of parliament here? We all know that slagging off national parliaments is a national sport all over
13350 the world, so I do not think any parliamentarian or parliament can realistically hope to be loved and cherished. You are not in that game if you are in parliamentary politics. But how do you think that Tynwald could improve the perception of what it does? I do not want to go back over the democratic mandate field, but simply what people are doing in order to get the work that they do better understood.

13355 **Mr Hampton:** This is a conversation that I have had with a couple of MHKs already.

There is the obvious statement that people do not feel like they are being listened to; we have covered that.

13360 They are making great strides with providing information. This is a perfect example – brilliant – the way that I can listen to exactly what has happened here every day. That is fantastic, that thinking.

For example, if I knock on my MHK's door and say, 'There's a pothole in my road,' it is within a process. If I do not know what that process is I am just going to get frustrated; whereas I run a small business and I know that I could publish that information so easily – I have logged this
13365 complaint, it is at this stage of the process, it is in a queue or whatever, it is being prioritised in relation to other complaints or other issues. I no longer complain. If I know when I logged that complaint about A&E or about a pothole, or about whatever, I can go to a website and I can see where my complaint is – there is a number – just like a good business would run a complaints system. I know I am being dealt with, I know that this is where it is at, it is being prioritised in
13370 this group – and I think that would definitely help.

I think the public have a very great warmth for the history of this entity, but I think that they are tired of the actual day-to-day running of it now, and I think that is probably quite a difficult thing for somebody like me to get over in terms of what I have suggested to you, because what I

13375 have suggested to you sounds very radical. In actual fact, it is not very radical if you look at the history of Tynwald. If you look at the history of how Tynwald started, what I have suggested to you is not actually that radical; it is just a modern incarnation of how this process actually started. Where we have ended up now is as a consequence of how virtually all parliaments are run.

13380 It does not have to be like that and I think that, in terms of perception and in terms of the public's perception, we are living in an age where we expect information. As I say, this is new to me. My children are never going to understand why they cannot get that information right now, and we fear that but for them it will be the norm.

13385 **Q909. Lord Lisvane:** It is responsiveness you are arguing for, principally.

Mr Hampton: Yes.

13390 **Q910. Lord Lisvane:** A final question about diversity – and you have heard me ask this question of other witnesses perhaps. Why do you think there are not more women in Tynwald?

Mr Hampton: Because of the system. Because of the perception – again coming back to the perception – of the way that the system is run.

13395 Personally, I think that women would make a great improvement, but I talked a little bit in my submission about the psychology of leadership and about institutions like this. It took a very long time to get women into the Houses of Parliament. We are a few steps behind that. There is a perception about the way that this ... I do not want to say 'club', but this structure is operated, which ... I think you were speaking to Mrs Beecroft today and there is a perception about the way that she is addressed and treated, but I think there is also a perception among other women about the ability to actually get things done.

13400 I think perhaps men are more naive in terms of believing that they can go in there and rustle things up and make a change, whereas women would sit back and say, 'Okay, what's actually the problem here?'

13405 **Q911. Lord Lisvane:** I am not sure that I am going to follow you on the really thin ice of gender stereotypes, but –

13410 **Mr Hampton:** Yes, but I think it is definitely ... Well, there are other issues, of course, in terms of the wider roles of women in society, but I think there is ... Obviously, I am not a woman, but I would imagine there is a perception that there is a way that this process is operated and perhaps it does not suit women – it does not appeal to them, I should say – to get involved with this. It is in complete defiance of the fact that obviously women have a very strong opinion ... equally strong opinion as anybody else and they should be represented and they should be involved in all decision-making processes.

13415 My gut reaction would be it is the system. I would imagine that a female candidate would look at this and go, 'Well, am I actually going to be able to achieve what I want to achieve?' It takes an incredible amount of determination to do that and I think in essence it is effectively the same reason that I am not involved. People have asked me why I do not stand and I look at this system and I realise I am going to end up banging my head against a wall because there is the perception that it is very entrenched and that, no matter how good your intention is, once you step in through these doors you have to play this game. For somebody like me, I know that that would destroy me, that would kill me personally, and I would guess that that is ... Women have different priorities in life and I think that is perhaps part of it. There is a perception that this is how the game is played, and until the game changes there will be a reluctance to get involved.

13425 **Q912. Lord Lisvane:** And it has been a pleasure to talk to you about how the game might change. I am really grateful to you for your help and for the papers you have submitted.

Mr Hampton: Thank you very much. I look forward very much to seeing the results.

13430 As I have said at the end of my letter, ultimately this will come down to the public. I am extremely happy about what I have heard so far and I am hopeful about what results from it, but ultimately the public have to pay attention and actually demand ... If they want any of the options which you present it is up to them. It has to be this core ... the public, because you have heard an awful lot of evidence from an awful lot of people within the structure, but ultimately it is up to the public. It is up to the public to push what they want.

13435 **Lord Lisvane:** Well, you will not be surprised to hear me say that I am quite interested in what is going to come out of this as well!

Mr Hampton: Well, it is a massive opportunity, I guess; it is a very interesting proposition.

13440 **Lord Lisvane:** Thank you again.

Mr Hampton: Thank you very much.

*The hearing was suspended at 11.07 a.m.
and resumed at 11.30 a.m.*

EVIDENCE OF Mr David C Cretney MLC

13445 **Q913. The Chairman (Lord Lisvane):** Mr Cretney, good morning.

Thank you very much indeed for sparing the time to come and talk to me.

If I can get a few preliminaries out of the way before I invite you to make an opening statement. As I think you know, our conversation is being live streamed and the *Hansard* record, once the transcript has been finalised, will appear on the Tynwald webpages. Although we are in parliamentary precincts, there is no parliamentary privilege, obviously.

13450 In terms of your own position, you are Chairman of the Manx Labour Party and the party has put in a submission to my review, but you are going to speak to me in a personal capacity, if I understand right.

13455 **Mr Cretney:** Yes. I am also happy, if there are any points arising from the letter submitted from the Labour Party, if you wish to ask me any points on those I am happy to respond to those. But it is my personal view.

Q914. Lord Lisvane: I am sure the areas that they cover will come up in our conversation. Would you like to make your opening statement?

13460 **Mr Cretney:** Thank you, very much.

Having been a Member of Tynwald for 31 years, I have long felt that democratic deficit exists regarding the Upper House which is currently subject to the, at least perceived, patronage of the Lower House – its electorate.

13465 The people are, in my opinion, most unhappy with the current electoral process, which can go on for weeks and many ballots. This can be for a number of reasons, including, for example: some Members of the House of Keys do not agree with the Legislative Council as currently

13470 constituted in law; the electorate can include cliques or kingmakers and this in turn leads to the accusation that unelectable MHKs, Government placements or ‘yes men’ are promoted. All of which brings the Legislative Council into disrepute, rightly or wrongly.

13475 It is therefore my contention that the time is long overdue for democratic reform. I have been asked, with my widely known strong views on the subject, why I allowed my name to be considered as a Member of the Legislative Council for one term. My response is very simple: if reform is to take place – which I believe it should – at the instigation of the people’s representatives in the Keys, there is a requirement for the Council to have Members who are prepared to embrace change and help facilitate it.

13480 I believe there is more public and political appetite for democratic advancement than I can remember presently, and before I retire I would wish to play my part in it. And for the record, having topped the poll six times out of seven elections in over 25 years, having more votes at each election than anyone else elected in any Douglas constituency, I still consider myself electable.

13485 The Isle of Man, at the forthcoming September 2016 General Election for the House of Keys, will be divided up into 12 two-seat constituencies with an average population of 7,000 voters. This is indeed a more democratic proposition than the previous one-, two- and three-seat constituencies and took a very long time to achieve.

13490 The 2020 one: I believe a directly elected Tynwald could be the outcome. Without being too inflexible on the numbers, a 24-seat Tynwald could, at its first sitting, divide into two legislative Branches of perhaps 18 in the Keys and six in the Council. The division could be achieved in a number of ways: perhaps the six highest votes to Council or by Members voting for each Branch, just as they do at the first sitting for the Speaker.

I see a number of advantages in this. Firstly, it would be more democratic and transparent. It would provide more stability in terms of no potential by-elections during the five-year term, other than those due to death in office, resignation or retirement.

13495 Ministers could come from either Branch and still retain legitimacy in terms of accountability. Bills could be introduced more regularly and legitimately in either Branch to prevent the present logjam, where Bills sometimes queue up for the Keys whilst Legislative Council have no work.

In the event of the Branches being out of line, this could be resolved by collective vote in Tynwald. It would ensure that, as at present, we have the benefit of the two Branches scrutinising legislation.

13500 So let’s look at some of the numbers. In the UK, Members of Parliament, as at 31st July 2015, received £74,000 plus allowances, constituency office expenses and a residency in London. There are 650 constituencies which have average electorates of: in England, 72,400; Scotland, 69,000; Northern Ireland, 66,800; and Wales, 56,800. Of course there is some state funding available for the Opposition parties.

13505 On the Isle of Man – and I accept you have indicated this this morning, my Lord – we undertake additional responsibilities not carried out by Members of Parliament presently, where a Member is paid: £39,546.50; plus a small untaxed expenses allowance of £6,707.42, which should be taxed, in my opinion; and up until recently on-Island travel expenses, which I campaigned against and since September 2014 no Member has claimed; plus enhancements for Department Members for one Department – and, like some others, I am on two presently – certain Chairmanships, Ministers, Chief Minister and presiding officers.

13515 The electorate for two Members will be 7,000 average from September 2016. So I would argue that, from a financial and practical perspective, on a per elector basis, we could manage with 24 Members of Tynwald. This would be further enhanced if we had a reduced number of local authorities with real powers to deliver services at a local level, and achieve cost benefits by combining costs and other efficiencies. Currently, we have 22 local authorities for a population of 84,000.

13520 National Government should concentrate on the national and international issues. The two Branches should continue to meet in the Tynwald setting for financial policy debates and vote with the combined vote of both Branches on every issue, where a vote is called.

That would be more democratic and transparent on the basis that, at present, some Members of Legislative Council have never had a democratic mandate or even faced the public in election and they have the power to apply taxes and charges as part of their role.

13525 I accept my solution may appear too radical for some, but it is my opinion that there is an appetite for reform, at long last, which I believe should not be missed.

On behalf of the Manx Labour Party, as you indicated, other options have been submitted for your consideration. We also comment on scrutiny.

13530 All around the world – as the previous speaker this morning said – there is a disengagement for many with the existing political process. This can only be reversed, in my opinion, by more transparency, by restoring trust where it is absent, by better communication with the electorate and, on the Isle of Man, a more democratic outcome to the issues that you are considering, Lord Lisvane, would contribute.

13535 **Q915. Lord Lisvane:** Mr Cretney, thank you very much indeed. I think that gives us quite an agenda for our conversation.

Let me pick up, first of all, this business of electing all the Members of a successor institution. If it were 18 and six, as you suggested, there would be room, wouldn't there, for argument about democratic mandates, and if there were a difference between the Keys and LegCo it would be harder, wouldn't it, both morally and practically, for the Keys to override LegCo?

13540 **Mr Cretney:** My suggestion is that the 12 two-seat constituencies remain and so they would all be elected under the same mandate.

13545 My suggestion is not that the Legislative Council would have a wider mandate, which would introduce the difficulties you suggest. If they were to be elected on the same mandate – the 12 two-seat constituencies – and then divided up after election at the first sitting, some Members are more interested in scrutiny than others, I am sure they would indicate that and I am sure that it could work.

13550 **Q916. Lord Lisvane:** It is not so much that there would be an argument that LegCo had a better democratic mandate – that could happen under some scenarios that have been put to me: for example, in bigger constituencies covering three key seats, they could say, 'Well, actually my mandate is a stronger one than yours' – but simply that it is an equal mandate. So that there is not, instinct in the process or in the arrangement, an acceptance that the elected House in the end will get its way, because LegCo could say, 'Well, we disagree with you and our mandate is just as good as yours.'

13555 **Mr Cretney:** Yes, and in that circumstance, what I am suggesting is that a combined vote would be taken in Tynwald to resolve any such difficulties.

13560 **Q917. Lord Lisvane:** Combined votes in Tynwald – and I read the 20th April debate with great interest: one of the potential disadvantages of that is that LegCo could combine with a minority in the Keys to overturn something that the Government and a majority of the Keys approved of.

13565 **Mr Cretney:** Yes. My suggestion about having the two Branches of Tynwald – which is what they are; it is Keys and Legislative Council in Tynwald assembled – is that they can have the discussions, they can have the scrutiny – which I believe is very important – but then ultimately if there were to be a difference of opinions then that would be resolved in the Tynwald setting.

13570 **Q918. Lord Lisvane:** But that could still be the outcome: that the Government might be voted down.

Mr Cretney: Yes. I would say the difference is that they would all have democratic accountability, whereas at the present time they do not.

13575 **Q919. Lord Lisvane:** No, I understand that.

Can I go back now to a theme that you raised earlier in your statement, which is about allowances and support? How far do you think support for individual Members – and let's take it to the Keys, because that is where the constituency work happens – ought to be expanded?

13580 **Mr Cretney:** In the time I have been a Member, it has changed considerably. I ceased to be a Member in April last year – was it April last year? No, it was before April last year – and up until then, for many years, the Members' secretariat were very good and would always carry out and support you in terms of constituency work. However, I believe a number of Members now do their own work – and I certainly was – via emails principally, and the requirement for the Members' secretary was less for Members than it previously had been.

13585 There are other services available in terms of research etc. via the Library facilities, but my own personal opinion is that the Members' secretariat is quite ample for those who require to use that service.

13590 **Q920. Lord Lisvane:** Can you explain to me how that works, how many people it involves and how it prioritises the requests that come to it?

13595 **Mr Cretney:** I think it is probably on a first come, first served basis in terms of Members going to the secretariat, although they may prioritise if there was a more urgent issue. I do not know that level of detail. But Members would prepare correspondence or whatever, they would go to the Members' secretariat, they would do hard copy letters or whatever on behalf of the Member, or whatever else was required, and then ensure that that was followed up.

13600 **Q921. Lord Lisvane:** So we are talking about literally a secretarial function; (**Mr Cretney:** Yes.) we are not talking about casework?

13605 **Mr Cretney:** No, we are not. No, in the Isle of Man, generally, Members carry out their own casework, albeit they can get assistance from the Library or the research officer within the Tynwald precincts, or the various officials.

Q922. Lord Lisvane: We all understand that casework can be extraordinarily demanding in terms of time, but if you are talking about a relatively small constituency, it is do-able, in your judgement?

13610 **Mr Cretney:** It is. I was a Minister for 18 years and it can become more of a pressure when you have ministerial responsibilities; you have got to juggle the various responsibilities. But, yes, I believe it is do-able.

13615 **Q923. Lord Lisvane:** Since first being elected in 1985, you have been re-elected six times. So, over that period, have you seen the weight of constituency work increase?

Mr Cretney: It varies. My constituency was a mixed constituency and so there were a large number of local authority houses, there were also a large number of private houses. So despite what might have been said earlier about there not being political parties on the Isle of Man, a

13620 Labour man would not be elected just for the sake of it. You have to appeal to a broad cross section.

13625 What I would say is that the problems facing people on a day-to-day basis ... My postbag was 90% housing issues across the range, but from time to time there were big issues in terms of, for example, part of my constituency had housing which was very old, very decrepit, in very poor condition, and we arranged for that estate to be completely rebuilt. Housing was principally the number one topic. Obviously, people have different issues in different parts of the constituency.

13630 **Q924. Lord Lisvane:** I can understand a certain cyclical or event-related workload, but what you are telling me is really, taking one thing with another, it has been reasonably constant over your experience?

13635 **Mr Cretney:** Yes. I would say it varies between town and rural constituencies, for example. There are different demands on a Member of the House of Keys in both. Mine had lots of private flats, for example, in some of which the conditions were challenging, whereas in the countryside there are different issues facing the Members who represent those areas. So I was kept busy more than perhaps in some of the other constituencies.

13640 **Q925. Lord Lisvane:** We are talking about South Douglas now, aren't we? (**Mr Cretney:** Yes.) You also talked about the pay and allowances. Do you think it is right that there should be a pegging of the basic rate to an official rank, a Civil Service rank? Is it a good way of doing it?

13645 **Mr Cretney:** Yes, I voted for that. What had previously happened was that we had parliamentary committees which had looked at salaries, we had external advisers who came to advise us and it was always a very controversial issue. What originally happened was that we set our own wages and then for it to be attached to a Civil Service spinal point, I felt was much more satisfactory.

13650 **Q926. Lord Lisvane:** I understand that the external advisers, if we are talking about the CPA delegation, reached an extremely generous conclusion?

Mr Cretney: They reached a more generous conclusion than the House of Keys or Tynwald were prepared to accept.

13655 **Q927. Lord Lisvane:** Turning to the additional payments – the emoluments – do you think that is appropriate that the rate of those is settled by a Tynwald committee?

Mr Cretney: Yes, again, in terms of the pension arrangements, that is now going to go to the Public Sector Pensions Authority.

13660 **Lord Lisvane:** So I understand.

Mr Cretney: Yes, they are going to look after that in the future.

13665 In terms of the allowance which I described – the expenses allowance, which is £6,707-odd – as I said earlier, I do think that it is overdue that that should be taxed. In fact, I think it would be better if it was part of the salary so it is more transparent in that manner. But that was used by different Members for different purposes – from buying lottery prizes for various organisations, supporting people in charities and things, to engaging their own secretarial support. Some Members would prefer to do that, for example, but it would not go very far, at £6,700, for secretarial support really.

13670 **Q928. Lord Lisvane:** No, I understand that.

Would it be more appropriate in terms of transparency for those allowances – both eligibility for them and the rates of the allowances – to be settled by an independent body, do you think?

13675 **Mr Cretney:** I personally would be quite content with that – for it to be settled independently. They have remained constant for quite some time, so I would see it that, if it were combined into the Members' salary, it would be more transparent and people would know, rather than, 'Oh, he gets this much, then he gets this much' – various add-ons. I think we need to be as clear as possible so people understand.

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Q929. Lord Lisvane: One of the add-ons which, in the view of a number of my witnesses, is quite contentious is the feeling that you can become a departmental Member if you want to and so really it is a matter of patronage, but of quite wide-ranging patronage. What is your feeling about that?

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Mr Cretney: Some Members have not been invited to be Department Members, but generally ... and certainly when Mr Bell became the Chief Minister, he used the expression which I introduced, 'Government of national unity', where we would all work together because of the challenges facing the Island and the world generally. It soon became apparent that that was not going to be a long-term solution.

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So not all Members have been Members of Departments, but yes, during Mr Bell's administration they have been invited, if they wish, to be Members.

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I think if we were to have the solution that I am proposing, it could well be that those who are doing the scrutiny – which I would see as the six – their time could be more preoccupied with the scrutiny role; and the 18 would then be sufficient to do the Department work, because on some Departments there are more Members than I think are strictly necessary.

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Q930. Lord Lisvane: That has been a theme of some of the evidence that has been presented to me, but let's take, first of all, the six –

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Mr Cretney: Sorry, if I could just add to that. (**Lord Lisvane:** Please do.)

I think you have spoken to Peter Karran. Peter and I are at one, and we were criticised by some, in saying that the scrutiny role should be properly rewarded. If you were going to undertake that role, then that should be paid on the same basis as if you were a Department Member, because it is of at least equal, if not more, value to a parliamentary setting.

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Q931. Lord Lisvane: Indeed, and I suppose, as you have just hinted, the argument is given additional force by the fact that it is a parliamentary role within a parliament. (**Mr Cretney:** Yes.)

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In terms of the way that the departmental Members system is perceived, presumably you would agree that one of the things that the Island needs to show in its governance is the very best of democratic norms, because, given the potential for criticism on a lot of fronts – which, again, has been raised in evidence; I do not say the potential for criticism because things are wrong, but the need to provide resilience against criticism – isn't it rather strange that somebody could come along and say, 'Hang on, you have got this elected House which should be calling the Government to account, but almost all its Members are inside the governmental tent!'? Isn't that a bit strange?

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Mr Cretney: I think the restriction on Members who are on a Department is more limited than has been suggested by others. For example, if there is a particular issue and you are a Member of the Department and you are strongly against it, you meet with the Minister, you explain either your predetermined position, which can take you out or, with his agreement, you can be removed from not supporting the Department.

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13725 That goes further. Members who are a Member of one Department but not Members of any other Department are free to scrutinise – and have done throughout all the time that I have been a Member. I would say the scrutiny role, if anything, has improved latterly in terms of the establishment of the standing committees on scrutiny to supplement the Public Accounts Committee. I would say that situation has improved, but I would agree with others that we can make further progress in that regard.

13730 **Q932. Lord Lisvane:** Having a departmental affiliation and loyalty, and at the same time putting the boot into another part of Government requires a certain flexibility of mind, doesn't it?

13735 **Mr Cretney:** Yes, and I think because the majority of Members on the Isle of Man are independent Members, that flexibility is necessary really.

There was a former leader of Government, Percy Radcliffe, who described Tynwald as 32 unguided missiles. So because there are so many different agendas, flexibility has to be incorporated really.

13740 **Q933. Lord Lisvane:** Let's just assume for the moment that the Big Bang change that you outlined to me earlier on does not happen and what you are after then is a sort of least worst acceptable outcome, what are the things that you would do with LegCo if it remained primarily in its present constitution?

13745 **Mr Cretney:** Its principal purpose is one of scrutiny so you could extend the scrutiny to, for example, take over the scrutiny which is currently undertaken by Members from both Branches of the scrutiny committees. Ironically, the Public Accounts Committee, other than Mr Cannan, I think the rest of the membership are Members of Legislative Council. Presently, I am a member by virtue of chairing the Social Affairs Policy Review Committee.

13750 So it may be that the role can be extended there. There is also European legislation which, although we have a unique relationship, we still have to be abreast of what is going on; it is very important. So further scrutiny, I would say, would be the principal purpose of the Legislative Council, if it were to remain; and I believe that would enhance its standing in the eyes of the public, because they would see it had a proper role.

13755 **Q934. Lord Lisvane:** But presumably if, indeed, scrutiny and challenge became the principal role, unalloyed by Government affiliation, of LegCo, you would need Members of the Keys, wouldn't you, because you simply would not have enough people on LegCo to provide that? We are talking about really quite a demanding function.

13760 **Mr Cretney:** Yes. Another way of looking at it is that there are, as James said earlier, a number of people on the Island who are experts in a number of areas and I do not think we make enough of the expertise which is externally available, potentially, to Tynwald. So it could be that the scrutiny role could be supplemented by external advice.

13765 **Q935. Lord Lisvane:** External advice or external participation?

13770 **Mr Cretney:** Both really. Again, I am flexible. Advice, principally, but if it was an issue that there was not sufficient membership within ... I understand the point you are making in terms of eight Members; it is quite a wide role. If there were not, then I would not have a problem with having independent members, perhaps without a vote ultimately, but being present, being part of it.

But, again, we just have to make sure we do not make it undemocratic. That would be the only concern.

13775 **Q936. Lord Lisvane:** Diluting the parliamentary position?

Mr Cretney: Yes, absolutely.

13780 **Q937. Lord Lisvane:** In terms of the way that people got onto LegCo, I have been given some dramatic and rather caustic descriptions of how the election process has worked in quite a few instances in the past. How would you deal with that?

13785 **Mr Cretney:** When I was first elected to the House of Keys in 1985, there was not the weeks and weeks of elections that took place in multiple ballots. Generally Members of Legislative Council were experienced parliamentarians who had been Members of the House of Keys for a considerable time; the exception being a former Attorney General who became a Member of Legislative Council, but generally it was Members with experience.

13790 That was broken some time ago. There are Members who have served one or two terms going to Legislative Council; there are people from outside. I know that there is an argument that if it is a scrutiny body, then perhaps lawyers can contribute usefully as part of the scrutiny function, but the other side to that is that their advice could be sought and we have advice also obviously from the Attorney General.

13795 **Q938. Lord Lisvane:** In terms of how people get onto LegCo – and you are in a particularly strong position to comment on this, having been a Member of the Keys and now a Member of LegCo – do you think that there is a great advantage in having former Members of the Keys on LegCo? Is this business of needing parliamentary experience rather overrated?

13800 **Mr Cretney:** I think it is a balance. I think it is important to have parliamentary experience on Legislative Council. I think, though, it has been devalued over the years, as I have described, with Members who have perhaps had one or two terms or have not had the experience. It used to be the case, when I was first elected, the Upper House was perhaps held in more respect than presently it is. I do believe that part of that is the electoral process which goes on these days for far too long and the public see it as much of a farce that it is taking so long.

13805 **Q939. Lord Lisvane:** There is a tension though, isn't there, between drawing on parliamentary experience – and I have a view about quite how necessary that is – and increasing the diversity, and in a sense the reach of LegCo, by bringing in people with experience from outside who do not wear the parliamentarian label?

13810 **Mr Cretney:** I just think that becomes an issue when you then have to discuss policy and financial resolutions. If their role was one which was purely scrutiny, without them being Ministers, without them being subject to the Tynwald debates on policy and financial resolutions, then people from outside, in my opinion, have much more to contribute in such a setting.

13815 **Q940. Lord Lisvane:** I can understand that there is an argument that they should not vote on financial resolutions, because there is not that direct connection with the taxpayer, but you are not telling me, are you, that people from outside will be less able to contribute on financial and policy matters?

13820 **Mr Cretney:** I am not questioning their ability at all; I am just saying their legitimacy ... In my opinion, if they have not faced the electorate, how is it that they can impose taxes on the electorate?

13825 **Q941. Lord Lisvane:** I quite understand.

13830 Might there be some virtue in a nominations commission? I am thinking now particularly about meeting a criticism which a number of people have put to me that Tynwald is perhaps too inward looking and you need to make it more diverse and to bring in expertise and new perspectives from outside.

13835 If you were to have a nominations commission which indeed was given the brief of doing that, and interviewed candidates and so on, and made nominations, but with exactly the same electoral college arrangement as now, although probably with a straightforward vote – the people who got the top number of votes would fill the places one by one – what would you think of that?

13840 **Mr Cretney:** In the Manx Labour Party's submission, we did suggest that may be one of the ways that could be considered, but we were saying that the Appointments Commission or a similar body – just as they do for public appointments within Government – could have names put forward to them for Legislative Council to be considered.

But I think you are then saying that then those names would be put before the Keys. Is that what you are saying?

13845 **Q942. Lord Lisvane:** Yes, I am.

13850 **Mr Cretney:** Having been around as long as I have – and perhaps I am a little bit cynical – there are, from time to time, games getting played behind the scenes and perhaps if names were put forward after having gone through the Appointments Commission or a similar body, maybe that might be a more transparent process. I mean, that sounds feasible.

13855 **Q943. Lord Lisvane:** It does, of course, have the \$64,000 question of who is actually going to do the nominating? How do you achieve some sort of independence? Have you got any thoughts about that?

13860 **Mr Cretney:** The Appointments Commission is an independent body; that is why it was suggested from us that that might be one such –

13865 **Q944. Lord Lisvane:** Of course, I have read the Manx Labour Party's submission, but it is one which in your personal capacity you endorse?

13870 **Mr Cretney:** Yes, of course. The Manx Labour Party is a broad church so I am probably a little bit more radical than some of the other members and that is why I presented my own personal views this morning. However, I completely endorse the views which we, together, put together in the other submission.

13875 **Q945. Lord Lisvane:** Sorry, I am not going to let you get away without giving me some thoughts on, if there were a nominations commission, what sort of people would – (**Mr Cretney:** Comprise it?) Yes, and would combine authority, credibility and independence?

13880 **Mr Cretney:** I think that the independence is very important and I think also that if they were electing people or nominating people to the House of Keys that, again we mentioned this, it should be representative of society as a whole rather than just a particular sector of society, and that obviously includes both sexes. We are underrepresented in both Branches in terms of female representation.

13885 So back to your question, in terms of independence, the one body we came up with was the Appointments Commission. There may be other ways to formulate a suitable independent, detached body. It is obviously difficult, though, in a small island situation; everybody knows everybody and there can be a challenge from time to time.

Q946. Lord Lisvane: Yes, absolutely.

13880 As you mentioned earlier on, you have had 18 years as a Minister. Can I turn to the structure of Government and particularly, as discussed with a number of witnesses, the silo phenomenon and the reluctance of some Departments to take account of what other Departments want to do – the implications for joined-up Government and for securing outcomes, rather than activity focused on each individual Department? What has been your experience of that?

13885

Mr Cretney: My experience has been that the situation which you describe does still exist, has existed in terms of various Departments going off in a non-joined-up manner. Anything that we can do to improve that ... I have heard the suggestion about the single legal identity: if that were to have that as an outcome – that Government did work more closely together without going off in all different directions – then I think that would be a good day.

13890

Q947. Lord Lisvane: That is not achievable at the moment, is it, by virtue of the Chief Minister – I am not personalising – the personality of the Chief Minister of the day and the Cabinet Office function under him? That cannot answer the question adequately, is really what you are saying?

13895

Mr Cretney: The Chief Minister always describes his powers as somewhat limited. I think the formation of the Cabinet Office was to try to supplement/work with the Chief Minister in terms of doing as you describe, but we had a resignation of the former Minister for Policy and Reform, so it indicates that there is still work to be done in terms of making improvements as we discuss.

13900

Q948. Lord Lisvane: What is your view on the assertion that a single legal entity would put too much power in the hands of the Chief Minister of the day?

13905

Mr Cretney: Every Chief Minister, as long as I have been a Member, has been described as a dictator and for some of them, not for one moment in real life could you apply that to the individuals. Their powers are, in my opinion, seen to be greater by the public than they actually are.

13910

It is one of hiring and firing; it is one of chairing a meeting of executive Government on a weekly basis; it is one of trying to influence within Departments to make sure things happen; but he is not a dictator – he or she.

Q949. Lord Lisvane: It is arguable that you lose credibility if you fire too often.

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Mr Cretney: Absolutely.

Q950. Lord Lisvane: If I can go back to this issue of departmental Members, a lot of people have said to me, 'Oh well there is too much for the Minister to deal with on his own' – and you have had a huge breadth of ministerial experience – and I found that a little strange because, okay, I accept the breadth of responsibilities in a jurisdiction like that of the Isle of Man is potentially and actually very great, but multi-tasking is something that Ministers surely are paid to do?

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Mr Cretney: Yes, absolutely.

13925

That is one of the reasons that I have always supported proper funding for a scrutiny role, because if people's decision to become a Department Member is financially motivated, then I think it should be equally important, if not more important, to have the parliamentary scrutiny role.

13930

There have been instances when I could easily have managed the ministerial role but I had Department Members –

Q951. Lord Lisvane: You had to give them something to do.

Mr Cretney: Yes, to put it crudely.

13935 **Q952. Lord Lisvane:** And you are arguing really for the parallel career structure? (**Mr Cretney:** Yes.) 'Do you want to go into Government or do you want to go into the specifically parliamentary functions of scrutiny?'

13940 **Mr Cretney:** Yes, and any modern democratic institution should embrace and welcome the scrutiny role.

13945 **Q953. Lord Lisvane:** My discussions with some other witnesses who have been Ministers, or are Ministers and are departmental Members, have taken a rather strange or surprising turn. If I can sum it up, it is that it has been said that you need the departmental Members because they can take care of things day by day that the Minister has not got time to focus on.

My response has been, 'Well, surely that is one of the things officials are there to deal with?'

13950 But the response in several cases has been, 'Oh, well, the officials are too hidebound and what you need is a political input.' I found that a very strange contradiction, in a way, because you expect a Minister to provide political leadership, lay down objectives and then say to the Department, 'Right, go on!'

13955 **Mr Cretney:** That is exactly how it should be. There has been, all the time since the ministerial system, a blurring for some people as to what their role is, and they do get involved in too much day-to-day stuff. For the Minister and the Department Members, their role is one of providing the policy for the officials to carry out.

It does get blurred. People do get involved in things which I do not believe they should. Perhaps that is either for their individual Ministers or for them themselves to consider, 'Is this what I am supposed to be doing?'

13960 **Q954. Lord Lisvane:** Is there an implication there about the quality of departmental officials?

13965 **Mr Cretney:** No! My experience of departmental officials has always been that they are very dedicated to their task. Obviously when we live in an environment where mistakes can be made, then nobody is infallible. However, I would say that the vast majority of them are dedicated to their task. I think the vast majority would also understand the benefits of sharing responsibility with lower ranking officers to make sure they come through in the future.

13970 So, no, I do not question, generally, the officials that are available for the Isle of Man Government. My blame would be on departmental Members or individual Members who do not understand what their role is.

Q955. Lord Lisvane: So yes, you would agree with the point that was made to me, that officials are fine but they tend to hang back or be inhibited because they do not know the extent of their responsibility?

13975 **Mr Cretney:** Yes.

Q956. Lord Lisvane: Which presumably is a situation compounded by departmental Members really getting down into quite detailed matters?

13980 **Mr Cretney:** Yes, obviously there is a scrutiny role within Departments and if you are a departmental Member with a particular responsibility you need to make sure things are going

right; however, it is the extent of that scrutiny, it is the extent of getting involved on a day-to-day basis, doing things that officials are really much better equipped to do.

13985 **Q957. Lord Lisvane:** I think we have covered a pretty wide canvas in the time we have got. Is there anything in the last couple of minutes that you would like particularly to say to me that we have not covered?

13990 **Mr Cretney:** No, just that I welcome your involvement here. Having been a Member for as long as I have, this subject has been a constant and I would like to hope that on this occasion we can make some progress. It has always been said, 'Oh, we are too busy with one thing or another,' or, 'It would cause problems in terms of stability for us to look at different things.' I do not accept those and I welcome your input and I wish you well with your task.

13995 **Lord Lisvane:** Well, you are very kind. There has been no shortage of people to tell me how many attempted reforms have bitten the dust in the past, which I find slightly daunting, but not overly daunting! Thank you very much indeed.

Mr Cretney: Thank you.

*The hearing was suspended at 12.14 p.m.
and resumed at 12.16 p.m.*

**EVIDENCE OF
Mrs Kathleen J Beecroft MHK,
Member for Douglas South**

14000 **The Chairman (Lord Lisvane):** Mrs Beecroft, thank you very much indeed for sparing the time to come and talk to me.

Mrs Beecroft: Thank you for the opportunity.

14005 **Q958. Lord Lisvane:** I much appreciate it, and also for the papers you sent in advance. Your paper setting out concerns about democratic deficit, power, patronage, collective responsibility, conflicts of interest, scrutiny and LegCo I think would give us a very substantial agenda, so shall we use it as our agenda and talk through these various subjects in that order? If you would like to start by saying something about democratic deficit.

14010 **Mrs Beecroft:** Yes, because I believe that we do not have an open, honest democracy on the Isle of Man. People are able to cast their vote freely, unhindered, in whatever way they want, but to me that is the end of the democracy because you have no say in what way the Government is going to be run by the next administration – because it is not formed until after the election.

14015 After the election, the Chief Minister is selected, he selects his Ministers etc. and then that is the Government formed at that point. Until then, nobody knows what way the Isle of Man is going to go, because they do not know who is going to be Chief Minister or even who is in the running for the Chief Minister. The current Chief Minister is from Ramsey – nobody in Douglas had a voice about that. To me, it is wrong; it is absolutely wrong. You have got no input into what is going to happen for five years, in reality.

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14025 **Q959. Lord Lisvane:** Although, making that geographical distinction, you would expect a Chief Minister from Ramsey or Peel or Port Erin, or wherever, to be exercising responsibilities on behalf of the whole Island.

14030 **Mrs Beecroft:** Absolutely, but my point is that the voters have had no say in who was actually going to be the Chief Minister, so somebody in Port Erin, Douglas or wherever had no say in the fact that the current Chief Minister is the one from Ramsey. They might not agree with his policies.

Q960. Lord Lisvane: So would you advocate election of the Chief Minister by the electorate?

14035 **Mrs Beecroft:** That is one way of doing it. Of course, you can have political parties, which is another way. Obviously, as leader of LibVan, that is my preferred option, which is why I went into a party in the first place – so that you stand on a manifesto together and everybody knows what you are about.

14040 The other way would be – and to me it is like a make-do – having a programme for government that is formed after, because it is going to be a while before we get political parties operating as such in a more general way on the Isle of Man; I think it is not going to happen overnight. In the meantime, I think it is obviously going to be a coalition and you are going to have allies of different sorts that would make up that coalition for Government, but there should be then a programme of Government produced that is agreed by everybody. That would form then the basis of your collective responsibility – you have all signed up to this, you have all agreed to it, it is published, the public know exactly what is going on and what can be expected of that Government. Then outside of that you should not have collective responsibility.

14045 At the moment, they sign up for whatever is the majority decision as you go along through the five years. There is no big plan, ‘this is what we are doing for five years, these are our big principles, we are all sticking to these.’ It just seems to be made up on a weekly or a monthly basis, depending on what is going on.

14050 **Q961. Lord Lisvane:** So a programme for government would get round the difficulty that when the Chief Minister is elected he – it has been ‘he’ up to now – would make a statement but would have to trim and amend and compromise in terms of forming his cabinet and, perhaps more than that, in terms of getting as many Members of the Keys on side as he could.

14060 **Mrs Beecroft:** But at least the public would know what direction it was going in. At the moment, if you have a Department where Ministers change, each Minister has a different political agenda – because they have been voted in as independents with different political agendas – and the Departments are in constant ... I would not say disarray, but they are changing all the time and the political priorities are changing depending on the Minister.

14065 There was one Department that had three different Ministers within two years and every time the direction of that Department got changed. That is such a waste of time, money and effort on behalf of the officers; it must be so frustrating for them, apart from wasting public money doing that.

But if you had a programme for government that everybody was signed up to –

Q962. Lord Lisvane: The new Minister would inherit.

14070 **Mrs Beecroft:** You would just carry on from where you left off. You would not be changing political direction all the time.

Q963. Lord Lisvane: Is the issue of the silo culture and whether that could be cured by single legal entity relevant to this?

14075 **Mrs Beecroft:** It is and it isn't. I think if you had a joined-up programme for government from the start, that would eradicate a lot of the problem that we have at the moment – and we do have problems with the silo mentality; there is nothing surer than that. But I must admit I am very cautious about the single legal entity, because I do feel it is putting too much power in the centre.

14080 The stated aim, once we had single legal entity, was to have several ... The Chief Minister, the Cabinet Office Minister and the Treasury Minister would be the three main Ministers at the core. Everyone else would be just junior Ministers. That is an awful lot of concentrated power. We have far too much concentrated power, in my mind, as it is already.

14085 **Q964. Lord Lisvane:** But isn't that offset, or could it be offset, by the programme for government, because the Chief Minister in a sense then becomes the proponent of the programme for government but he also quite quickly becomes its prisoner in terms of the approval by Tynwald?

14090 **Mrs Beecroft:** If you had the combination, that could be possible to sort that out, but just a single legal entity on its own – I think that is a very dangerous path to go down.

Q965. Lord Lisvane: Yes, I understand that.

14095 In terms of the way in which Members are associated with Departments, it has been described to me as being a Government party with the let-out – but I am not sure how much of a let-out it is – that a Member who is a departmental Member in Department A can nevertheless be a fierce critic of what is going on in Department B. Does that really happen, or is that a bit of a polite fiction?

14100 **Mrs Beecroft:** I think it is a bit of a polite fiction, to be honest. I am not tied by collective responsibility. I am in a Department. I was very careful which Minister I went in with to start with, and when I moved to a different Department – I was asked if I would go there – I got it in writing that I would not be tied to collective responsibility, because I will not be.

14105 **Q966. Lord Lisvane:** And was that any inhibition for the appointing Minister?

14110 **Mrs Beecroft:** No, it was not, actually, which was quite surprising. But Ministers vary, which is why you have to be careful, before accepting a position, that you are not going to be in a position where you are voting for something that you do not actually believe in and you cannot raise your voice – which does happen.

14115 **Q967. Lord Lisvane:** Yes, indeed. We have morphed seamlessly into your second subject, but before we leave the first, can I just explore the implication of having an Island-wide vote for the Chief Minister. Would one potential disadvantage of that be that the Chief Minister could say, right the way through his or her term of office, 'Well, you can do what you like because I have got an infinitely superior democratic mandate to any of you individual Members of the Keys'?

14120 **Mrs Beecroft:** I must admit I would actually prefer an all-Island vote for Members of Keys, because they always say the bigger the area, the bigger the politics and if you suddenly found that you had to represent the whole of the Isle of Man – which is what you are meant to be doing; we are meant to be national politicians ... But you tend to focus, or some do, on a very small area to make sure that they get elected by those same people in that small area again the next time. You could not do that if it was an all-Island vote for everybody.

14125 It is better now with the boundary changes, or it will be. At least you have got roughly the same number of people in each and you will have the same number of MHKs representing those constituencies, but I would have preferred larger constituencies.

Q968. Lord Lisvane: But isn't that, in a way, the classic tension between the caseworker and the parliamentarian?

14130 **Mrs Beecroft:** Yes, it is.

Q969. Lord Lisvane: And if there were an Island-wide vote, wouldn't that be a little disenfranchising to individuals in terms of having an identifiable parliamentarian to take up their concerns?

14135 **Mrs Beecroft:** Not really. I do not wish this to sound awful, but I get called by a lot of people throughout the Island anyway because they hear me talking about something, and I always say to them, 'You do need to go to your own MHK first as a matter of courtesy' – it just feels wrong treading on somebody's toes – but a lot of the time they say, 'Well, I don't even know who they are', or 'I don't like them', or 'They won't help me', and you end up actually working for an awful lot of people right round the Island anyway, even though you are supposed to be just there for your constituents.

14140 **Q970. Lord Lisvane:** If we can leave that and go back to where we were getting to in power and patronage and collective responsibility – if you would like to say something on those subjects that would be interesting.

14145 **Mrs Beecroft:** Yes. You are right to think that everybody was taking a position or doing whatever they were doing within Government because that is what they felt was the right thing to do, but there are instances, which I am sure everybody can recall, where people are worried about losing the uplift that they get from being a departmental Member, or on a board or whatever, and that has to have some sway. If you have got a family and a mortgage, it is going to have some sway with you; it is human nature.

14150 I was listening to Mr Cretney giving his evidence before and I do agree that the scrutiny role is very much undervalued here and I agree you should either be scrutinising or in Government, not both.

14155 **Q971. Lord Lisvane:** And the implication of what you are saying, which you presumably would support, is that if means could be found to have a serious alternative career with equivalent financial acknowledgement, that would be a very good thing for the institution.

14160 **Mrs Beecroft:** Yes, it has already been found: the budget is there. They budget for everybody having a position, so if all the positions were paid equally – you either scrutinise or you are in a Department, or whatever; you are all getting the same money – that takes it out of it. Scrutiny is such a valuable role, but I honestly do not think it is appreciated enough.

14165 **Q972. Lord Lisvane:** And if one were to do that, so that you would be reducing the number of people with ministerial either responsibility or loyalty, then you would have many more people available for the scrutiny role.

14170 **Mrs Beecroft:** You would, and actually, I brought a couple of pieces of paper with me today – I hope you do not mind – that I would like to refer to you so that you can maybe take my point, what I am trying to say as well. If you did not have so many departmental Members it would actually make it worthwhile taking motions to Tynwald, because there are times where you actually cannot win. You know before you go in. I have brought the one –

14175 **Q973. Lord Lisvane:** Yes, you have pointed this out towards the end of your paragraphs on collective responsibility.

14180 **Mrs Beecroft:** Yes, you absolutely cannot, and I have brought this one in to illustrate it. It was about the Sefton bailout. I have marked everybody who is a Minister, the Chief Minister and who is in the Departments. It is impossible to win. I got seven votes. The maximum I could have got with enforced collective responsibility was nine.

14185 That is not democracy when you go into the highest Court in the land and have no chance whatsoever of winning, because of collective responsibility, no matter what your case is.

14190 Subsequent to that debate, it was found that the loans were unlawful. The Minister subsequently resigned. The Treasury Minister had not agreed with it in the first place, we found out in the evidence from the committee. That was contained within that, but of course he and all his Treasury Members voted in favour of it, even though it did not have Treasury concurrence when it went to the Council of Ministers.

Q974. Lord Lisvane: Well, it would be very helpful to have that piece of paper afterwards, if you would.

14195 **Mrs Beecroft:** Certainly, you are more than welcome to it.

14200 But that to me just highlighted how wrong this collective ... It has gone on and on, because it is not just departmental Members: once it has gone through Treasury, the Treasury Members are tied as well. It is crazy when automatically you have lost before you open your mouth; or they have won before they open their mouths – whichever way you want to put it! But it is wrong.

14205 **Q975. Lord Lisvane:** Let me go back to the numbers game for a moment before coming on to conflicts of interest, which is the next subject of your paper. What is the minimum number of people you could see the ministerial system operating with?

Mrs Beecroft: The minimum number of Ministers?

14210 **Q976. Lord Lisvane:** Yes, Ministers and, if you want to call them, deputy Ministers or whatever, but without the almost blanket involvement of departmental Members.

Mrs Beecroft: I do not see why you would need departmental Members.

Q977. Lord Lisvane: Would you see that you needed a deputy Minister?

14215 **Mrs Beecroft:** Yes, possibly, but that would be it. It would depend which Department as well.

14220 **Q978. Lord Lisvane:** One of the difficulties would be, if you had a deputy Minister, assigning the loyalty, as it were. A Minister, okay, is going to be bound by collective cabinet responsibility; deputy Ministers, if they continued the present pattern of owing loyalty just to one Department. But nevertheless, if you add them both together you have still got a majority of the Keys.

Mrs Beecroft: Yes. As I say, I would be in favour of not having departmental Members.

14225 **Q979. Lord Lisvane:** But do you think that there should be deputy Ministers, if you move away entirely from the departmental Members system?

Mrs Beecroft: If it was structured carefully, but it would have to be structured very carefully.

14230 **Q980. Lord Lisvane:** What do you mean by that? What would have to be achieved?

Mrs Beecroft: So that it was very clear that it was only that Department, that they were not tied by collective responsibility with everything else: even though the fact they had their deputy Minister, the ministerial code did not apply to them in the fullest extent.

14235 **Q981. Lord Lisvane:** Right, I understand that. So you would have two tiers of responsibility: Ministers, absolutely clear, black and white; but with deputy Ministers, or whatever you called them, they would have the ... Sellar and Yeatman called it the 'occasional conformity rule', where they needed to support their own Department but apart from that, they could be free agents.

14240 **Mrs Beecroft:** Yes.

Q982. Lord Lisvane: And you would be happy with the way the Members worked out on that basis?

14245 **Mrs Beecroft:** Yes, I think so; that should work out okay.

Q983. Lord Lisvane: Let's move on to the issue of conflicts of interest – and you very helpfully gave me the paper about PAC from 2010 to ... No, this is 2014 to 2016 and I have seen an equivalent paper relating to 2010 to 2012. Would you like to say a word or two about that?

14255 **Mrs Beecroft:** Yes, and this is where I think if we did not have departmental Members etc. you would have a better and more able Public Accounts Committee. To me, the Public Accounts Committee should be a very powerful Committee and it should be a full-time role – it is that important – but at the moment it is not. You have got the Chair of the Public Accounts Committee who is in another Department and is Chair of the MUA. You have got all these different things that you have got to do.

14260 I do not know how you can actually concentrate your mind and cover all the topics adequately that you should be covering as the Public Accounts Committee when you have got all these other roles, and I think this is where if you did not have the departmental Members you would have sufficient people to form the scrutiny committees and do a very good job on them.

14265 I think it is just a shame. It is almost like watering the Public Accounts Committee down by having all these other roles that people have within it, apart from the conflicts of interest that means. Like the MUA, as you saw from that: they have not been able to be held to account by anybody because of the membership of the Public Accounts Committee.

Q984. Lord Lisvane: But the alternative career structure would fix that.

14270 **Mrs Beecroft:** Yes, it would allow for that. It would fix that, because you really do need that scrutiny; it is very valuable. Even if it shows that everything is being run absolutely perfectly, it is giving that reassurance to the public. It is their money that is being spent and they should be entitled to that assurance from a committee.

14275 **Q985. Lord Lisvane:** Good scrutiny makes for good government, as someone said.

Mrs Beecroft: Absolutely.

14280 **Q986. Lord Lisvane:** Turning to the issue of scrutiny, challenge, calling to account: at the moment, strictly speaking, the Standing Orders relating to the Policy Review Committees are quite limited. They are *ex post facto* and looking at a policy once it has been agreed and then saying whether it has been implemented effectively or not. That, on the face of it, is quite

constraining, although I have had evidence saying that actually committees follow their interests. What is your feeling about how scrutiny could be beefed up in the way that it is done?

14285 **Mrs Beecroft:** Apart from not having people who are in Government on the committee –

Q987. Lord Lisvane: Indeed, yes. Let's just talk about a new dawn: what would you like to see as part of that?

14290 **Mrs Beecroft:** I would like them to be able to scrutinise policy before it came into being.

Q988. Lord Lisvane: And how would they get hold of it, given that policy is generated in Departments? Or they would take, perhaps, part of the programme for government?

14295 **Mrs Beecroft:** Well, yes, this is where, if you have got the whole structure going correctly, you have got your programme for government, you know what is going to be flowing from that, and when Departments come up with policies that align with that programme of Government why wouldn't a scrutiny committee be allowed to have a look at it then? They might pick up on something that could either be made better before it goes to Tynwald for approval, or they
14300 might find something that is seriously wrong, which should be adjusted before it gets to any public vote and debate.

Q989. Lord Lisvane: Doubts have been expressed to me about a really muscular scrutiny role on the grounds that it might simply become opposition for opposition's sake.

14305

Mrs Beecroft: I think that is because people generally tend to judge politics by what we see in Westminster, and I do not wish to be rude but it does sound a bit of a bun fight at times in there and people go, 'Oh, we don't want that in the Isle of Man,' because we tend to be quite reserved and polite usually over here and not enjoy that sort of thing. I think that is what puts people off with it, thinking that you are going to be an opposition.

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It has been said that LibVan is just opposition: well, it is not. If we are opposition, then we are doing a really rubbish job of it because we actually vote with Government about 90% of the time. But of course the media do not report that, because it does not make good headlines going 'and everyone voted the same way' on whatever it is. The media focus, obviously, on the more contentious issues and the ones that we say we disagree with, because that makes good media coverage. People want to read that sort of thing – that is usually the more interesting bit for people. So people see us as constantly being opposed to Government, which is far from the fact.

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14320 **Q990. Lord Lisvane:** I should just say that you should not judge everything by Prime Minister's Questions, looking at Westminster.

Mrs Beecroft: Exactly, that is only the impression that we get on the television when we are sitting here. I know it is not like that. I have visited Westminster (**Lord Lisvane:** I know that.) and I really enjoyed it. Again, it is media impression that people pick up, so people pick up that this is what happens in Westminster, they pick up the fact that we seem to be opposing everything that Government do – which is far from the truth – and it is that perception.

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Q991. Lord Lisvane: The antidote to that perception, I would suggest, is probably looking at a select committee on a totally non-party basis, operating on an evidentially based technique, which presumably is what you would like to see. If scrutiny were beefed up here, that is the sort of approach you would like to see?

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14335 **Mrs Beecroft:** Absolutely, and I think that Southern Ireland actually have very good legislation, where they have the pre-legislation committees as well, so that the different parties and everyone get together and go through the draft legislation before it starts progressing, and hopefully iron out the problems and any difficulties that anybody has before it goes forward.

14340 **Q992. Lord Lisvane:** That is a proposition that I have put to a number of witnesses: that the consultation process, although that seems to be a great idea, does not actually produce all that much in terms of engagement, (**Mrs Beecroft:** No.) and perhaps one answer would be to collapse that into routinely having a draft Bill stage of pre-legislative scrutiny to which people from outside could contribute because they would be talking to a committee (**Mrs Beecroft:** Yes.) which was in a position to do something about the criticisms that they levelled perhaps at the draft legislation. (**Mrs Beecroft:** Yes.)

14345 From your responses, I think you would be quite happy with that.

14350 **Mrs Beecroft:** I would be very happy with that, yes, I very much would. We have got an awful lot of people who have got an awful lot of knowledge on the Isle of Man – we are very blessed that way and we do not take advantage enough of it. An awful lot of them would be more than happy to spare the time and come and talk to a committee like that on areas that they really do know about, and we should be listening to them.

14355 **Q993. Lord Lisvane:** Well, that brings us perhaps very neatly into the question of LegCo and its role. You say in your paper many MHKs and members of the public are very dissatisfied by the current system of both electing people as MLCs and their role, responsibilities and financial reward. Would you like to expand on that at all?

14360 **Mrs Beecroft:** Well, yes, because the MLCs have an equal vote on policy, on spending and everything else that happens in Tynwald. They do not have the public mandate to operate that and several times in this last 12 months they have actually overruled the elected Members by voting against something. Where the Branches are in disagreement it fails, so they have stopped things going through.

14365 Particularly, the one that really rankled was the one where the Chief Minister was only elected by the MHKs. Why should somebody who has never faced the public, as some of them have never done ...? Some have come through Keys and gone up to being an MLC, but some have never faced the public, and even if they have faced the public at one time they have given up their public mandate when they go up to LegCo. Why should they have the same voting on policies and spending as the elected Members?

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Q994. Lord Lisvane: One witness suggested to me that there was an element of a mandate remaining –

14375 **Mrs Beecroft:** Nonsense; absolute nonsense. Whoever said that, I totally disagree with them.

Q995. Lord Lisvane: Well, I did test that on the grounds that if you go to LegCo you are no longer in the Keys and somebody has been elected to take your place.

14380 **Mrs Beecroft:** Absolutely.

Q996. Lord Lisvane: Let's just test out this issue of LegCo and what sort of thing it might be. Would you like to see it elected?

14385 **Mrs Beecroft:** I think there are several options that could sort it out, and I am fairly open minded now as to which one. At one time I was very firm that it remained as it is but elected by

14390 the people. I am coming more and more round to the possibly unicameral system, where you have one Chamber, and that would give you the numbers as well – some in Government, some scrutiny, whatever. But I think as long as they are elected by the people, whether they are elected as LegCo Members or elected as a unicameral House of Keys I am really quite easy, provided it is democratic, which is not at the moment.

Q997. Lord Lisvane: You have introduced a bigger topic there: unicameralism. Let's just park that for a moment and come back to it.

14395 Let's assume LegCo continues in its current form, I take it that you would not like to see ... There is a perception, which perhaps is a little damaging in the eyes of some, that it becomes, as it has been described, a 'retirement home' for people from the Keys. Would you actually have a bar on people from the Keys sitting in LegCo?

14400 **Mrs Beecroft:** That is something I have not thought about, I will be honest about it. I think there are times when people have sufficient experience that they could be of benefit to LegCo and they are thereby benefiting the people, so I would hate to say no, just because you have been in Keys you cannot go into LegCo. What I do object to is them having equal say as elected Members.

14405 **Q998. Lord Lisvane:** Yes, I understand that.

14410 **Mrs Beecroft:** I object to them having the expenses allowance: because they have got no constituents, what expenses do they have? I object to them being paid the same. We are treated exactly the same and yet we are not the same; we have different responsibilities. They have a lot less responsibility than an MHK does, and yet they are treated at the same level.

14415 In the last year there have been two very senior advocates on the Island who have put their names forward, were nominated for MLCs. Their main role is meant to be scrutinising legislation, and yet neither of them was successful. The public were outraged about it, the fact that somebody else got elected to that place when ... How much more perfect can you have than somebody who is a qualified advocate scrutinising draft legislation? It just did not make sense. It makes no sense to anybody, particularly people outside and particularly when the voting went on and on and on because nobody could agree. It just gets embarrassing, it really does. You think, 'I don't want to be part of this, it's just too awful.'

14420 **Q999. Lord Lisvane:** I wonder if there is a way in which LegCo could be made both an engine of bringing in a broader set of skills and experience and possibly also an engine of greater diversity. I have suggested to some witnesses if there were a nominations commission which had the specific brief of widening and making more varied the skills and experience of LegCo, and indeed had a particular brief to seek nominations from underrepresented parts of the population – and I am thinking particularly of the representation of women in Tynwald, and we can perhaps come to that as a separate issue in a moment – it could still have its nominations voted on by the Keys but in a straightforward way so that the candidates with the most votes one by one filled the places that were available and we did not have this trying to get 13 votes problem. How would you see that as a –?

14430 **Mrs Beecroft:** It is an interesting concept. My immediate concern with that would be who would be the nominations commission.

14435 **Q1000. Lord Lisvane:** That is the key question.

Mrs Beecroft: Absolutely, because if you were not very careful you could find that they were just selecting people from the establishment who would just back up Government again. I think,

because we are a small Island, it gets quite tricky to have somebody in charge of a nominations commission who would not be influenced by the establishment.

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Q1001. Lord Lisvane: Yes, it would be possible though. Of course, I have no doubt you would need legislation to set it up and you could have criteria which were clearly set down. I am not suggesting that this should then become a field for judicial review, but nevertheless you could engineer matters so that it was as transparent as possible and the brief which they were given was one which had to be demonstrated.

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Mrs Beecroft: That would be quite good, and that would be quite good for such transparency to be there in a lot of areas – that we are lacking, unfortunately.

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Q1002. Lord Lisvane: Let's go back to that parked subject of unicameralism. Why do you think that might be a good idea?

Mrs Beecroft: Because it solves the problem. It is not that I particularly think it is a good idea. If they will not do this, then we are going to have to do that. You have only got so many options to solve the problem.

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Q1003. Lord Lisvane: You are talking about unicameralism almost as a threat, in that case.

Mrs Beecroft: No, it is just something ... I suppose because I was born here, my family go back a long time, and you have this tricameral system which is unique and you think, 'I don't really want to lose something that is so unique and so much part of your tradition.' But if it is not going to work in a proper democratic society then you have got to bite the bullet and do it.

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I suppose really some of that is just emotion rather than fact. Everyone wants to hang on to the traditions but you want them to be able to be updated so that they fit today's society, and if it cannot be updated then you have to say, 'Well, they have got to go,' because you cannot have a system that is not serving the people correctly.

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Q1004. Lord Lisvane: And you are making a choice, really, between incremental change and Big Bang.

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Mrs Beecroft: Yes.

Q1005. Lord Lisvane: Just before we leave unicameralism, how would you cope with the revising function? Otherwise, you would have a Chamber in which you had one shot at legislation and if you got it wrong you would repent at leisure.

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Mrs Beecroft: Well, again, you would either have people, once they were elected – have the same number; I do not think you could operate with any less, or very few less than the total number that we have now – you could have some who were purely for legislation, a committee purely for scrutiny etc. because you would have more people spare. Or you could go down the pre-legislation route, which I think would be my preferred option, actually, because I think it gives everybody a chance to iron out any difficulties, listen to all the options and consider all the options before it actually goes to voting.

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Q1006. Lord Lisvane: And if there were a single Chamber, you would see it as being of 24 Members still?

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Mrs Beecroft: No, as I say, still 32.

14490 **Q1007. Lord Lisvane:** It would be 32, forgive me, yes.

Mrs Beecroft: Yes, combine the numbers so you have sufficient to do all these different functions.

14495 **Q1008. Lord Lisvane:** And on an individual electorate basis? I know ideally you would go Islandwide, but –

Mrs Beecroft: I would certainly prefer larger constituencies.

14500 **Q1009. Lord Lisvane:** If you did not have that, the implication would be much smaller constituencies or multi-Member constituencies.

Mrs Beecroft: Yes, as I say, I would prefer larger constituencies.

14505 **Q1010. Lord Lisvane:** With, say, three Members each, or whatever, yes.

Mrs Beecroft: Yes. Six fours instead of 12 twos would have been much my preferred option, but we ended up with ... At least we have got a fair and level playing field now, which we did not have before. So again you vote for something that is solving the problem, even though it is not your idea of the ideal solution.

Q1011. Lord Lisvane: Fair in terms of population distribution.

Mrs Beecroft: Yes.

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Q1012. Lord Lisvane: So let's get back to the other parked subject of a moment or two ago: why aren't there more women in Tynwald?

Mrs Beecroft: Do you know, I do not know, and it is something ... It sounds pretty awful, actually, but it is something I never considered until people started asking me about it after I was elected, because I tend not to think about it and I never have. I just do what I think is the right thing, or I do my best in whatever I am doing, and I do not think, 'Oh, I'm being got at because I'm a woman.' It never crosses my mind, to be honest.

I tend to judge other people as you are either good at your job or you are not; whether you are a man or a woman is immaterial to me. I know people have said that, and I have been treated quite badly at times by some of the male Members in Keys and Tynwald, and they go, 'Oh, it's awful the way they treat you because you're a woman.' I think actually I would much rather they are treating me this way because they see me as a bit of a threat, because I am asking the questions that they do not want me to ask of them. So I would really rather think that it was because I was a threat that they were nasty to me, rather than because I was a woman!

14530 **Q1013. Lord Lisvane:** Point taken, but equally there is a perception issue, isn't there –

Mrs Beecroft: There certainly is.

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Lord Lisvane: – that a parliamentary body should be broadly representative, in so many ways, of the people it serves?

Mrs Beecroft: And I do agree with that. It sounds like I am saying both things, and I do not mean to; it is just that I do not tend to think – I never have until fairly recently, actually – about this being a woman's issue. I just think women do not want to do it; that is why they...

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But they do not want to do it. They do not put their names forward. It is not that they will not be elected. If you look at the number of candidates at the last General Election, percentagewise about the right amount got in. It is the fact that not enough women put their names forward.
14545 That is what you have to find out: why women do not put their names forward.

I think partly it is because it is seen very much as a male club – the boys gang together. I suppose I have always been a bit of a tomboy so it did not bother me, but I can see that it would be off-putting for some women.

14550 **Q1014. Lord Lisvane:** And what is the way round that? Of course, in this conversation we both accept that gender diversity is only one sort of diversity that can be represented in a parliament.

14555 **Mrs Beecroft:** Yes. I do not know. I think I have been quite heartened, since I became leader of LibVan, by the number of females who have come forward and are in council or have stood for us, so I think possibly because there is a female leader, they feel more comfortable. I do not know.

14560 **Q1015. Lord Lisvane:** Do you get the impression that there will be more women candidates in September?

Mrs Beecroft: I think so. I do – from what I am hearing, yes.

Funnily enough, a couple of years ago, after people started questioning me about this, I started think about why women do not. There was a programme on the television and they were exploring exactly the same thing but in the UK. Whatever you do, you tend to get bad press at times and you get things said about you in the media and people are gossiping about you – and the Island is very small and it is not pleasant unless you are prepared for it. The programme on television was saying that women worry about the effect that sort of thing is going to have on their children. Where the male point of view tends to be, 'Well, my children know I'm not like that,' and they do not worry, women tend to maybe overthink things and they are more concerned for their child's mental well-being for having seen and heard these things about their parents – and the women tend not to put themselves in that position where they could feel that they may be damaging their children.
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So that could be part of it, particularly with it being a small place – everybody knows everybody else and gossip does go round quite quickly. It can be very unpleasant.
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14580 **Q1016. Lord Lisvane:** That is a point that has been made to me as well, that particularly the rather aggressive use of social media can discourage people from really putting their heads above the parapet for election. What is your thought on that?

Mrs Beecroft: It can. I think you do have to be tough to go in for an election and to hold your ground in Keys and Tynwald; but I am not sure that that is a bad thing, because I think you need to be strong if you are going to be taking some difficult decisions on things at times. You cannot back away from it, but I do think that you could have a better way of doing it, rather than it being so aggressive.
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Q1017. Lord Lisvane: Perhaps that is a change which might be supported by a scrutiny role.

14590 **Mrs Beecroft:** Quite possibly, yes.

Q1018. Lord Lisvane: The candid friend does not have to be the fierce opponent.

Mrs Beecroft: Yes.

14595 **Q1019. Lord Lisvane:** We have almost run out of time, and I have found this hugely helpful, for which many thanks, but are there any areas we have not covered that you would like to say something about?

Mrs Beecroft: There is, if you do not mind.

14600 **Q1020. Lord Lisvane:** Of course, carry on.

Mrs Beecroft: It was my second example that I brought with me today. It comes back to the scrutiny and the openness and the transparency that I do feel that we are lacking, and the way that information can be given by Government, by Ministers particularly – or not given.

14605 I am sure you have heard of the Scottish Power ... (**Lord Lisvane:** Yes.) the All-Party Parliamentary Group report. That is quite critical of the Isle of Man and its regulator in that report and I asked a Question of the Treasury Minister ... It was 10th May. I brought it with me. I asked him:

What action is being taken following the criticism of the Insurance and Pensions Authority by the All Party Parliamentary Group in its report on Scottish Power's Cashback scheme?

He went through various bits about what had happened, but he ended up saying:

The FSA is continuing the work of the IPA in relation to the matters raised and until the FSA is in a position to conclude on this matter it remains an issue for them as regulators.

14610 We had the two bodies – we had the Insurance and Pensions Authority and the Financial Supervision Commission – and they were merged to form the new FSA, but it is all part of the same thing. It was two regulatory bodies became one and it is the regulator who is being criticised very strongly in this report, and yet he is saying it is up to the regulator when they have finished looking at it. This has been going on for years. It is not appropriate now for you to say the regulator can carry on looking at themselves. Somebody else should be looking at this, not putting it back to the regulator.

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Q1021. Lord Lisvane: Well, presumably that leads on to the question of how do you deal with that in a parliamentary –

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Mrs Beecroft: Well, I will tell you that: I will be bringing a motion to Tynwald in June about it, because he did not give me a satisfactory answer.

14625 **Q1022. Lord Lisvane:** Well, I was going to ask you first about the parliamentary means which are readily available to you to pursue that. Sometimes it can be a process of questioning, but if you run up against a brick wall then you might need something else. But it is possible, isn't it – I am not talking about this particular instance – that a revamped scrutiny system might well be the way in which such a matter is addressed?

14630 **Mrs Beecroft:** Absolutely. I will be asking for it to go to the Public Accounts Committee because that is the only appropriate Committee to look at this sort of issue, but I just think it is wrong that a Treasury Minister seems to feel that it is okay for a regulator to look at criticism of the regulator, particularly when it is a Westminster All-Party Parliamentary Group that is doing the criticising; it is not just somebody who has got a bee in their bonnet about something. They have taken a lot of evidence to produce this report and it does make you wonder whether ...

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This again comes back to the conflict of interest. It all flows through, all the time, all these different threads, because of some of the individuals involved with Scottish Power at the beginning in setting all this up. There are some quite ... shall we say 'high establishment figures'

14640 involved in this and it makes you wonder whether that is why they are allowing the regulators to look at themselves rather than looking at it more positively and openly and transparently.

Lord Lisvane: Well, I must be careful not to comment on specifics, but it is an interesting case study from the point of view of using parliamentary means to achieve an end.

14645 Thank you very much indeed. I have really enjoyed our conversation. I have found it extremely helpful and I am very grateful to you for sparing the time to come along.

Mrs Beecroft: Very grateful for the opportunity. I seriously wish you well and I look forward to seeing your report.

14650 **Lord Lisvane:** So do I! (*Laughter*) Thank you.

*The hearing adjourned at 1.01 p.m.
and resumed at 2.00 p.m.*

**EVIDENCE OF
Mr C Geoffrey Corkish MBE MLC**

Q1023. The Chairman (Lord Lisvane): Well, Mr Corkish, it is exactly two o'clock so let's make a start.

14655 First of all, thank you very much indeed for sparing the time to come and see me. As I think you know, our conversation, which can be very informal, is being live-streamed. Also *Hansard* are taking a record and when that has been finalised it will go up on the Tynwald webpages. And of course, although we are operating in a parliamentary precinct, this is not a privileged occasion so we can note that.

14660 Let me start by perhaps asking you about your views about the Legislative Council because, after a career in the Keys, you have made this transition.

What do you see as being the value that LegCo adds?

14665 **Mr Corkish:** Firstly, can I thank you for your kind remarks and I am pleased to be here. Can I also say that I welcome the review of what we do here; I think no matter what business, association or society we belong to, an independent review is always useful. So I welcome that and look forward to the outcome.

14670 I stood for public election to the House of Keys in 2006 because after a period of time I thought I wanted to do my bit for the country – and so I did. During that period and before that, of course, I knew of the Legislative Council; I was not sure exactly what they did, but had a rough idea.

There has always been, in my view, a healthy balance of ex-Members of the Keys coming up to Legislative Council; with a proportion of the membership – although perhaps not always equal – of people from outside, recommended by Members of the Keys to sit here. Hence we have a good overall view of what happens within and what happens without.

14675 Midway through my second term I stood for Council – I thought there was an imbalance and so stood for the Council. Why did I do that? Because I thought that Legislative Council were – and I use this term, but I don't know why I say it – a 'balancing body' within Government. They were not elected by the people: now, that is contentious in some cases. Nevertheless, because they were not elected by the people, there was a degree of independence and that independence of thought and action, ultimately, was divorced from what a Keys Member may find – an electorate pressure, hard to handle; and to review what happens with law-making in the Keys.

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14685 I will just mention in passing – and it is not entirely in answer to your question, but I will mention it in passing – there has been a question of late regarding a view of supremacy of the Keys over the Legislative Council. I do not believe that has ever been contentious, certainly in my time in Legislative Council, and I do not believe it has been in the past. But if you say it long enough and loud enough somebody may listen.

14690 So Legislative Council has been a responsible body which takes a detached look at what has been passed through the Keys and, because of its diverse make-up of past Keys' Members and Members from outside the Keys and from outside politics, I think it has an overall generality in what is good for the people and what is good for parliament.

Q1024. Lord Lisvane: You have acknowledged the contribution that people from outside the parliamentary world can make, but it seems to me you are putting quite a high premium on parliamentary experience.

14695 Is that really necessary in LegCo?

Mr Corkish: That is open to argument, but I think it is part of what is good for parliament. At the end of the day we stand for election for the good of the country; and that sounds a bit grand but nevertheless that is how I view it.

14700 And whereas the Keys are brought from all over the Island from public life, Legislative Council is not different in that either, but the fact is that people who have been in the Keys know exactly what is perhaps expected of politicians. Now, the politician can bring his or her experience of life into Departments and in committees, and they know what Government does; so I think there is a learning curve for people who come in and who may in turn decide to come out of Legislative Council and stand for Keys if needs be – there is nothing to stop that.

14705 I think it is coming back to that balance that people from the Keys ... I think we start off on the right foot when there is a knowledge of what Government is about.

14710 **Q1025. Lord Lisvane:** Don't take this amiss, please, because you have made the journey, (**Mr Corkish:** Certainly not!) but do you think there is risk of a perception that this process is about self-perpetuation rather than bringing in genuinely new blood from outside?

14715 **Mr Corkish:** I think – and we are being honest here – that there is. There could be an argument there, and there may be, that certain Members of the Keys, because they are answerable directly to the people, may think, 'Next time round I may not get elected, but I can be useful in the Legislative Council'.

14720 But importantly, that election to the Council rests with the Members of the Keys, who we rely on for their integrity in selecting a person who would be fit and proper to sit on the Legislative Council; which, historically, has been looked upon as being the elder statesmen – although I am certainly not elder, or a statesman either perhaps, but that is for other people to judge – but they have been looked upon as people who the Keys and the public could rely on at a second stage to manage Government.

14725 And if we look at management of Government as being, perhaps, a business – and I always did look at it as being a business, and the Keys and Legislative Council being a board of directors – I think there should be, and in my view there is, a great comfort in having a second tier of people who are relatively independent to look at and review legislature.

14730 **Q1026. Lord Lisvane:** If I take your parallel with a board of directors, LegCo are the non-execs?

Mr Corkish: Non-executive officers have been mentioned in debate somewhere; however, that is perhaps removing them a little bit more, because they are very much a part of Government as well.

14735 It would be perhaps difficult for Government to function without the added membership of Legislative Council. If you were to look at the membership of the Legislative Council and what they do, what they have done and the functions that they perform, it might be difficult for a single House if we are looking at unicameral, which we are not; but if we were, it would be difficult perhaps for Government to function.

14740 **Q1027. Lord Lisvane:** Let's come back to that in a moment in terms of the role of departmental Members; but do you think that the mix of skills and experience in LegCo at the moment is appropriate to the task?

14745 **Mr Corkish:** Unfortunately we do not have the comfort of choosing ... well we do, to a degree, but it depends who comes forward.

Q1028. Lord Lisvane: So there is a randomness about the process?

14750 **Mr Corkish:** There is a randomness about the process and it is up to the House of Keys to elect the best people for the job.

Q1029. Lord Lisvane: But they often have quite a problem and this goes on; and the process has been, in recent times, hideously spun out, hasn't it?

14755 **Mr Corkish:** (*Laughter*) Well, you are an outsider looking in and you are entitled to that view and I respect that view.

Q1030. Lord Lisvane: If you wish, I withdraw the word 'hideously', (*Laughter*) but it has been very lengthy.

14760 **Mr Corkish:** It has, and that is laid at the feet of the House of Keys. In fact the last time that the Keys elected a Member I think they did themselves a disservice. I was very upset and vented my views to certain Members who voted in a certain way, because that was *not* for the good, I did not think, of Tynwald. Nevertheless, the scope is there to do that.

14765 **Q1031. Lord Lisvane:** From your position as a Member of the Legislative Council, what is your view about the contribution the Bishop makes?

Mr Corkish: Another contentious story and again a history of people's views on that.

14770 I do not have to tell you where the Bishop's role here comes from – it comes from ancient times. The question should be would I like to see a Bishop retained or a Bishop not retained?

14775 I certainly do not see any reason why the Bishop is not retained here in Government, nor should his vote be taken away. I think, again, the comparison to you coming in here as an outsider looking at what we do, here we have a Lord Bishop who comes to the Isle of Man, who brings his own views and experience which is often a lot more valuable, perhaps, than many other people coming here to give another view. I have sat here in Legislative Council and in Tynwald many times and heard a valued part of the debate from the Bishop, which was completely divorced from any other view which would be given in the House of Keys or indeed the Legislative Council.

14780 So from personal experience, and not because I am a churchman, but I think there is a value there. The time may come, of course, that the Bishop, should he lose his vote in Tynwald – and that will be discussed as it has been in the past and will probably come up again. Should he lose his vote in Tynwald, the Church of England will look very closely at his purpose of being here in the Isle of Man and I would imagine – and I have heard this from other Bishops too – that if the Bishop's vote goes, so will the Bishop and the Bishopric of the Isle of Man .

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So marry those two together rightly or wrongly, there is a certain weight and a certain value to the Isle of Man, not only in Tynwald and the Tynwald precincts but also the Isle of Man status.

14790 **Q1032. Lord Lisvane:** I should perhaps declare at this point – and I really should have done it when I was talking to the Lord Bishop the week before last – that I am married to a Church of England priest. (*Laughter*) But I can guarantee that makes no difference to my independence of view on these matters. (**Mr Corkish:** Absolutely!)

14795 So, as you say, you would support the continuation of the Bishop's seat and the Bishop's vote?

Mr Corkish: Yes I would, for the reasons given.

Q1033. Lord Lisvane: I understand that.

14800 Can we move back to the subject which you touched on a moment ago, and that is the role of departmental Members. You have been, and you are, a departmental Member.

What do they bring to the Departments that they are associated with?

14805 **Mr Corkish:** Of course you would have, because of the Legislative Council membership, ex-politicians and non-politicians. So there may be two strands of what a departmental Member drawn from the Legislative Council could bring.

On the one hand there would be the politician who knows the way Government works and what Government expects, and then there would be the outsider brought into Legislative Council who perhaps is more in touch with the people from outside.

14810 I think, again going back to one of my original remarks, there is a quantity of independence from a Legislative Council Member who is not necessarily swayed by public opinion, which can be good or bad. And when I say that, I refer to social media which, if a view was wrong – and it often is – can sway a politician who is dependent on a public vote, and can be brought to bear and add weight to a departmental argument or discussion on a way forward.

14815 **Q1034. Lord Lisvane:** Yes, but you are describing a characteristic which can be as well deployed sitting in Legislative Council as being a departmental Member, surely?

14820 **Mr Corkish:** It has a use being a departmental Member in Legislative Council because if there is a legislative passage, as there would be here of a certain Department, then you would usually have a departmental Member of that Department who would be answering, first hand, questions from other Members of the Council.

14825 So there is a value there because we could not ask the Minister here, because the Minister would sit normally in the House of Keys; so the value there is that a Department Member is here on hand to answer questions directly from his fellow colleagues in Legislative Council.

Q1035. Lord Lisvane: Yes, but if you were to achieve that you would need many more people because you would need, in Legislative Council, a coverage of Departments.

14830 **Mr Corkish:** Not every Department would be covered, you are absolutely right; but in many cases it *would* be – and in many cases there would be Members of Legislative Council, such as I, who sit on two Departments. And so I would cover two Departments. That might happen.

Q1036. Lord Lisvane: Yes, I can see that.

14835 One of the things which I think is common ground is that the Isle of Man – in an uncertain and unpredictable world – needs to be able to show the highest adherence to the best norms of governance and parliamentary government, and so on. And it does strike me that somebody coming from outside – perhaps me, perhaps many other people – might see it as very odd that

there is only a very small minority of the elected House who are not associated with Government.

14840 Does that strike you as strange?

Mr Corkish: These are Members of the Legislative Council?

14845 **Q1037. Lord Lisvane:** No. We could talk about Tynwald as a whole, but let's just take the Keys for a moment. I think I am right in saying there are only four Members of the Keys who are *not* involved in Government?

14850 **Mr Corkish:** But is that not flexibility? Is that not giving power of speech and argument to Members outside who are not bound by a ministerial say-so from a Department?

14855 **Q1038. Lord Lisvane:** I think you can turn that argument on its head, can't you? (**Mr Corkish:** Probably!) Because you can then say that it blurs the boundaries of executive authority and responsibility, and it leads to the creation of a Government party which finds it is easier to get its way with this system, than it might be if there were a more effective system of scrutiny and challenge.

Mr Corkish: But overall regarding the Council of Ministers, as is often said, as a party of nine – they are *vastly* in the minority of membership within the Keys.

14860 So whether a person is in a Department or not in Department, there is still ample balance against a party such as the Council of Ministers who comprise of only nine.

14865 **Q1039. Lord Lisvane:** Plus, because of their ubiquity within the operations of Government any Treasury departmental Members or Cabinet Office, plus the ones who are associated with the particular policy which is under discussion – which, for Health and Social Care, might indeed be four or five Members.

Mr Corkish: There are certain Ministers who would give freedom of speech to their Members – but not all. Certainly Treasury would be expected to follow the route taken by the Council of Ministers.

14870 Having said that, has that been a problem in the past? I do not think so. I think we are all acutely aware of the 'party' reference to the Council of Ministers.

14875 What I have often said, and will continue to say, is because of the make-up of Government and because we have non-party politics, at the end of the day *always* the good of the Isle of Man in general is to be debated, *not* party politics. And I do not think that the 'CoMin party' has their own way that often.

14880 **Q1040. Lord Lisvane:** Let me just test that against the issue of perception because you would take it, wouldn't you, that nobody finds his or her way into a Department, either as a Minister or as a departmental Member, other than by the exercise of patronage? You could say it is selection, but it is patronage as well.

And doesn't the perception then say if somebody has been done a favour, there is the feeling – and it may be very much in the back of the mind, but nevertheless, there is a feeling – of payback?

14885 **Mr Corkish:** That is possible, but we come down to integrity.

The Minister involved would ask those people who are Members of the Keys or Legislative Council, and they would select from that number the people who they thought would suit their Department best – maybe people whose backgrounds would suit Health Services or Transport, or whatever. But it comes back again to integrity, and this is where the Legislative Council would

14890 come into play again because they can – or should and could, perhaps – be independent in their views. But integrity comes into play here and, as I say, some Ministers would be happy to allow freedom of thought and expression of thought in debate.

14895 **Q1041. Lord Lisvane:** Let's go back to the membership of LegCo and let us assume that there is a continuation of the tricameral system, which you are content with.

14900 Might one way of addressing the membership of LegCo be to have a nominations commission which put forward nominations – and nominations could come from MHKs and they could come from the public. But a nominations commission might be given a specific brief both to address the issue of diversity, perhaps, but also to secure so far as possible an appropriate mix of skills and experience. And the appointments would still made by the Keys, perhaps by a less convoluted method than at the moment.

Do you think that would have anything to recommend it?

14905 **Mr Corkish:** Without examining it, it is certainly an interesting point; but would that not be looked upon as being less parliamentary, less business-like and less weighty, perhaps, than using people who have already nailed their colours to the mast as a parliamentarian here in Tynwald?

If they are being picked up off the street, so to speak – if I have picked you up rightly – that for a certain matter of discussion you would select a number of people as you would for a public inquiry somewhere?

14910

Q1042. Lord Lisvane: No, I was thinking of something like that but that sounds like the random operations of a press gang, which I am certainly not suggesting.

14915 I am suggesting that this might be the way of addressing the appointment of Members of LegCo for a five-year term to deal with all the matters which come before Legislative Council, but through a device which could have as part of its brief increasing diversity and opening up access to membership of parliament to people who were not professional politicians.

Mr Corkish: But do we not have that now because of the diversity of membership we have in Legislative Council now?

14920 It is taking another step forward, I accept that, but do we not have the best of both worlds now by having people who have not been rooted in parliamentary life, who are coming here now and mixing with people who have? And sometimes that may be an imbalance, as there may be more people in Legislative Council who have not been through the parliamentary system.

14925 **Lord Lisvane:** To the extent that you do, I agree –

Mr Corkish: And that may be a little reckless, I would possibly suggest.

Q1043. Lord Lisvane: What, agreeing with you? (*Laughter*)

14930 To the extent that you do have those people who are extra or other to the parliamentary process, yes, I agree with you. The proposition that I was putting to you was more about setting that as a permanent arrangement.

Clearly, and I recognise this, the \$64,000 question is *who* is on the nominations committee; how do you avoid it being jobs for the boys and girls?

14935

Mr Corkish: And again I will say, without giving that thought – I would rather give a considered opinion – but in principle, I think, for the sake of being here today, I would probably say no.

14940 **Q1044. Lord Lisvane:** No to the proposition?

Mr Corkish: Yes.

Q1045. Lord Lisvane: Thank you very much.

14945 Can I turn now to scrutiny and the way in which it is done? Clearly, whether it is legislative scrutiny or whether it is policy scrutiny, this is something that LegCo have a particular *locus* in. And I know that you would like to keep the departmental Member system, so the resources in terms of people may be less than the scrutiny task would require.

14950 But is there scope, do you think, for beefing up the role of scrutiny, challenge and calling to account?

Mr Corkish: As you may know, I am Vice-Chairman of the Public Accounts Committee –

14955 **Q1046. Lord Lisvane:** Indeed, and I was going to ask you some questions about PAC in moment.

14960 **Mr Corkish:** And I have long thought that, whilst we have lots of other scrutiny committees – and it may be argued by some that we have too many scrutiny committees; you scrutinise too much and the easiest way to go forward is to make no decisions at all – but with regard to the Public Accounts Committee, which should be a strong committee looking after the spending of the public purse, I have long suggested that perhaps the Chairman of the Public Accounts Committee should be a totally independent Member of parliament, who has no other commitments at all, thus making that a paid position, but who is as independent as they could possibly be.

14965 **Q1047. Lord Lisvane:** I have explored with other witnesses the difficulties that have arisen when there have been conflicts on PAC.

14970 **Mr Corkish:** There have been conflicts and in the recent past, it is only because we had one Member on sick leave and another Member who was on extended sick leave – and that just exacerbated the whole system. Normally it works fairly well and I am not concerned so much about that.

14975 But I think the Chair of the Public Accounts Committee would have much more weight and the Committee would have more gravity, if there was an independent membership of the Chair.

Q1048. Lord Lisvane: Can I then move on to the way that PAC operates?

14980 In terms of selecting subjects for investigation – and I spoke to Mr Cannan this morning, who outlined how the Internal Audit function within Government is drawn upon by PAC – but could you say something about your perception of that? Do you feel that you are acquiring the targets that you should be acquiring?

Mr Corkish: Well one would say, as a Member of the PAC, yes, I hope we are doing that!

14985 Questions would be referred to us and there are many Members who would write to the PAC and say, 'I think you could look at this'. They may not give a reason but just, 'You could look at this'.

In the main there is a reason for the PAC to look at and explore and on occasion, in this very room, bring in departmental Members, or whoever, to answer questions directly. And on that basis it works very well.

14990 **Q1049. Lord Lisvane:** Departmental Members? That is interesting because one would think that the buck would stop not with the departmental Member but with the Minister or the accounting officer, the Chief Officer.

14995 **Mr Corkish:** Sorry, the people who would be brought in here to answer questions from the PAC would be the Minister and/or Chief Executive – I am sorry, I did not explain that. And then in that case a departmental Member who sits on the PAC would be excluded from that.

Q1050. Lord Lisvane: Yes, I understand that.

15000 Do you self-start on the PAC, because you were talking about working off the basis of references to you? Is that the main diet?

Mr Corkish: In the main, yes, if there are problems seen by Members – and sometimes from outside. That reference would probably come through the Keys; that would be the main start.

15005 We have a Government Auditor who would come to us once a quarter. We get a report every month from the various Departments and it gives us an inside view of what the Department is doing. So there are two checks here: the auditor looks at it and we look at it as well.

But in the main it would come from Members of the Keys or Legislative Council who have had a problem with a Department, or the spending, or a decision made which *they* thought was not in the public interest.

15010

Q1051. Lord Lisvane: When you say Government Auditor, that is somebody involved in the Internal Audit function within Government? (**Mr Corkish:** Yes.) And although KPMG are the auditors of Government, you do not talk to them?

15015 **Mr Corkish:** No, we do not talk to them, we have not had a *need* to talk to them.

If that answers the question, we have not had a need to answer them. They would talk to the Internal Auditor here, certainly; but the PAC would be – not to run ourselves down – on a lesser level than that.

15020 **Q1052. Lord Lisvane:** But if they are conducting a conventional audit, if they are operating a conventional audit function, you would expect them to produce a management letter each year which would be directed, no doubt, to the Chief Minister and the Cabinet Secretary.

Do you see that?

15025 **Mr Corkish:** Yes, I do, and perhaps that is a way forward for the PAC. And I think the PAC are looking to – and I can say this, as Vice-Chairman – ‘reinvent’ ourselves.

Again, as I said at the very beginning, no matter what group you are concerned with a review is always useful. And we do sit and look at our function and how it could be bettered, and that may certainly be a way forward.

15030

Q1053. Lord Lisvane: One of the problems of the PAC function, of course, is that although it ought to be *ex post facto* it is very tempting to get into current policy by means of previous actions.

Do you find there is mission creep there?

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Mr Corkish: There is mission creep ... there *could* be mission creep, but there is not. We are always *very* careful in the way that we conduct ourselves. So I can say, hand on heart, that has not happened to date.

15040 **Q1054. Lord Lisvane:** And I suppose the membership of Policy Review Chairs means that they actually have an interest in keeping PAC within its acknowledged territory?

Mr Corkish: Absolutely. And there would be plenty of advice given from the membership of the PAC to steer that Chairman, should he veer from that route.

15045

Q1055. Lord Lisvane: I think 'advice' may be a very delicately expressed concept! (*Laughter*)
(**Mr Corkish:** Indeed!)

15050 We have really run out of our time but I want to give you the opportunity to say anything to me that we have not covered in our exchanges, so please feel free to do that – or indeed to put in a note afterwards.

15055 **Mr Corkish:** I certainly may put one in afterwards – I notice that the next Member is here to speak. I only emphasise – and I am sure you have picked this up already – that you come from a larger parliament than we, whilst we are a lot older than that parliament, as you probably know. We live cheek by jowl here and, being a small community, we are in a fish bowl. The job of the politician I think is more stressful, perhaps, because we are so much more answerable to the people, which makes all these jobs so valuable – PAC, membership of the Keys and membership of the Legislative Council – because it has immediate effect. And I just emphasise the fact that it is a close relationship that we have here between parliament and the people.

15060 That has advantages and it has disadvantages too, but on the overall sway I think its advantages outweigh the disadvantages of being a Member of Tynwald, here – which has to perform.

15065 **Q1056. Lord Lisvane:** Indeed, yes.

I should just say that, personally speaking, having had experience of about 50 parliaments all over the world – large, medium and small jurisdictions – the one thing that I do not attempt to do is to impose what may have been my particular professional background in any other constitutional context, because you must have horses for courses, rather than simply hammering something into a constitutional construct which is not going to work.

15070 **Mr Corkish:** Absolutely, but because of that close relationship we have a self-regulating way of doing business here. It is very easy to step out of line but equally easy to be told *where* you are stepping out of line – and that is a good strength.

15075 **Lord Lisvane:** And that is a good note on which to finish.
Thank you very much indeed.

Mr Corkish: My pleasure and thank you, Lord Lisvane, and I look forward to reading your results. I hope you are enjoying your time on the Island.

15080 **Lord Lisvane:** Very much indeed.

*The hearing was suspended at 2.35 p.m.
and resumed at 2.36 p.m.*

**EVIDENCE OF
Hon. Philip A Gawne MHK,
Minister for Infrastructure and Member for Rushen**

Q1057. The Chairman (Lord Lisvane): Minister Gawne, thank you very much for sparing the time to come and talk to me this afternoon.

15085 As you will have realised from the previous session, it is a pretty informal conversation and our words are being live-streamed and *Hansard* are making a record which, when it is in its final form, will be put up on the Tynwald webpages.

May I start perhaps with the most general question of all? What about the tricameral structure? Tynwald is unique: is that a good thing?

15090 **Hon. P A Gawne:** I think the most important question to me is: does the parliamentary structure that we have in place work?

A good measure of that would be: what are parliamentary structures for? They are there to ensure that the public effectively gets some form of representation to deliver the best possible solutions. So if the public starts to lose trust in the institution, then you would reasonably, I think, be on a safe side of an argument in saying that perhaps this current system is not working as well as it should.

15100 My deep concern – and growing concern in the 13 years that I have been an elected representative of the people – is the increasing disillusionment that people have with political structures and political systems in the developed world, let alone the Isle of Man. So it is not a problem that is unique to the Isle of Man, but there is no doubt in my mind that Tynwald and Isle of Man Government are becoming less and less believed in by the people who have put us there. It is arguable that the decisions that have been taken by Tynwald and the Isle of Man Government are quite reasonable decisions, but that growing distance that is developing between the parliamentary structures that we have and the people is a deep concern.

15105 So, quite frankly, I do not think the vast majority of people in the Isle of Man really give two hoots as to whether we have a tricameral or a bicameral or a unicameral system. What they are interested in is what that system is delivering for them.

15110 I have noted – maybe this is something that has been going on for a long time, but it certainly appears to me that over the 13 years that I have been a Member of the House of Keys – we have gone from a far more collaborative and collective approach to problem solving, to a perhaps more divisive, Westminster style of politics, where one side's role seems to be to bring the other side down; as opposed to both sides – or not even having sides – all trying to work together for the collective good of the people that you represent.

15115 Whereas I do see a role, and a very vital and important role, for scrutiny – I think it is absolutely essential that we have an open and transparent system – I do not believe that we are necessarily getting that. I speak as one of the authors of the recent changes to the committee structure which introduced the new Policy Review Committees. I do not believe that that is what we are necessarily getting; what we are getting is political debate very much on a Westminster them-and-us style and not necessarily the insightful scrutiny that I had certainly hoped for.

15120 So, a typical politician's answer! Your question is relatively simple and I have answered probably several different questions. But whether a tricameral system is relevant or not to the future of the Isle of Man, I think, is probably for you to make recommendations on. The straight answer though is that the public do not believe in the system any more. Some people do but there is an increasing and growing number of people who are disillusioned and that is something I think we need to address.

15125 If we want to look at the history of the system that we have developed, or that has developed, on the Island, if we go back far enough we had eight Members of the House of Keys or eight Members of Tynwald representing the Western Isles of Scotland. So those who cling onto this great tradition of a thousand-year-old parliament, are they really saying that we should have the Western Isles back?

15130 I think there are possibly some pros and cons to that, but much more recently the Legislative Council was developed, effectively, as the henchmen for the Lord of Mann; they were the Council of Ministers of the day. Over a period of a hundred or so years they have developed a new role for themselves and certainly for much of the 20th century we had very significant constitutional reform which took place in the Isle of Man.

15135 So LegCo has transformed itself from the Council of Ministers of the day. Now it has adopted this role as a scrutiny body – a legislative scrutiny wing of Tynwald – and in doing so, Members of the House of Keys, in the very large part, seem to have abdicated their responsibilities for

15140 parliamentary scrutiny. So if you actually look at debates on the Bills that pass through Keys, they are usually very brief and it is very rare that you get any significant debate on any of the clauses. In LegCo it is a totally different system.

15145 Whether this clearly demonstrates that we must have LegCo, because where else would we get the scrutiny of legislation, or whether it says LegCo has sleepwalked itself into a new role, which is legislative scrutiny, and by doing so, Keys now focuses purely on politics and not on legislative scrutiny, and a new system could be created to allow Keys to actually start doing that legislative scrutiny instead ...

It is probably time you asked me another question! (*Laughter*)

15150 **Q1058. Lord Lisvane:** I was going to pick up your reference to, in effect, the development of adversarial politics and to say, I do hope that you will not use Westminster as a sort of all-purpose insulting term for adversarial politics, because Westminster has select committees which operate on a highly consensual basis. But if there is adversarial politics growing here who is on each side?

15155 **Hon. P A Gawne:** There is a Government side and a parliamentary side, I suppose you could describe that as. It is not as clear cut as that and I appreciate that. But I know that some of the contributors to your inquiry have suggested that there should be an absolute clarity that you are either in the Government or you are not. I still see that there is quite a valuable role to having parliamentarians who have a role in Government but also have the ability to have a scrutiny role as well.

15160 Actually one of the final comments made by Mr Corkish was something on the lines of the Isle of Man is a relatively small jurisdiction, we have got a small number of people trying to do the work of a functioning parliament. The worry is that, by creating separate roles for scrutiny and Government, you potentially then create extra work and you create an adversarial system which is not necessarily going to be in the best interests of good decision-making.

15165 I actually had the opportunity to attend – probably because I was foolish enough to volunteer! – a conference that the CPA held last summer. I think it was the second week of August, probably when most Members had far better things to do than attend parliamentary conferences! It was all about parliamentary scrutiny, and it was in the Isle of Man, in the Tynwald building.

15170 One of my particular political concerns is all about climate change. I worry deeply about what we are doing to try to address climate change. As part of my contribution to that conference, I explained that parliamentary scrutiny would be fantastic at working out who did what wrong at which stage; it would then be able to apportion blame at the various stages of what went wrong during the process; but it would not stop the thing going wrong. It would be there to tell you what happened and how it went wrong; and wouldn't it be fantastic if, in the Isle of Man, we could develop a system which gently allowed the Government to be nudged in the right direction by parliamentary scrutiny which had the ability to scrutinise or to make recommendations about emerging policy, rather than only commenting on things that have already gone wrong.

15175 **Q1059. Lord Lisvane:** Do you think – perhaps the implication of that is that you *do* think – that the current committee system, which you had a role in setting up, is too much 'hindsight is 20/20'?

15180 **Hon. P A Gawne:** Absolutely. There was a reason for that. It was felt that it would be inappropriate – and this was, I think, as a result of some of the thoughts of some people who are no longer in Tynwald now – that parliamentary scrutiny should only be about investigating confirmed Government policy, not emerging policy.

15190 I certainly would say, with hindsight, I think that was a mistake and we should be allowing the parliamentary scrutiny to look at issues that are developing rather than waiting until they have developed and either been successfully dealt with by Government, in which case parliamentary scrutiny rarely kicks in ... I cannot remember the last time a parliamentary Committee has produced a report to investigate why something worked particularly well! (*Laughter*) It is usually
 15195 when things do not work well or there is a perception that things did not work well, and then you get told why they did not work well.

Then you get into the position – and I know this all too well as Minister of the Department of Infrastructure – where parliamentary scrutiny results in additional layers of bureaucracy being created because a mistake has been made or the system has failed in some particular way,
 15200 therefore we need more robust systems in place; so you get the more and more robust systems in place, which often develops – well, has developed, in the Isle of Man’s context – into a situation where a capital project costs 20% to 30% more when done by the public sector than it would if it was done by the private sector.

Some of that is that inevitably the public sector is going to be more risk averse than the private sector because we have every single person on the Isle of Man as a stakeholder, all believing that they have a valid opinion that should be taken account of. So inevitably I think there is going to be a degree of cautiousness on the part of Government.

But I think it would be fantastic if we had a bit of parliamentary scrutiny of how Government runs its capital programme and why it costs so much more than if it was done by the private sector. Then I think the obvious conclusion – certainly the conclusion I have reached as a
 15210 Minister – is there are vast areas of red tape and bureaucracy that could be cut away, which would still allow some level of confidence in the system that we have in place to deliver good schemes, but could save the public substantial sums of money.

But it is not in the interests of parliamentary scrutiny to say, ‘Well, yes a mistake has been made here. Mistakes do happen. Let’s just allow that to be the case in the future.’ Parliamentary scrutiny almost has to come up with a solution for the mistake, and once it has come up with that solution, Tynwald almost feels compelled to say, ‘Actually, yes, this is an extra layer of red tape but the committee has found that this extra layer of red tape is needed,’ and I think that is possibly one of the reasons the public is becoming more and more disillusioned with some of
 15215 the structures that we have in place.

Q1060. Lord Lisvane: But surely this is something that Ministers can do something about, isn’t it? Because the scenario you are putting to me is there is committee criticism, so there is immediate haste to wrap everything in cotton wool to ensure that the same grounds for
 15225 criticism do not arise in the future; but surely a Minister who is on top of his job can say to a committee, ‘Well, that is fair criticism, but quite frankly, I am not going to add another 20% or 30% to my costs. This is not far enough up on my risk register to warrant that sort of reaction,’ and if that is the case the Minister is in a position to make the case publicly as well.

Hon. P A Gawne: I would agree up to a point, but we do not have a party political system in the Isle of Man.

I am going to do the classic political thing and do ‘on the one hand and yet on the other’: one very positive thing about party politics is it gives clarity to the public as to what a group of people believe in and what they are likely to do if elected. It also allows for policy generation,
 15235 which would not happen in our system of independents because there are not sufficient independents to be able to fund policy generation. It is all an individual process as opposed to some sort of collective process that could be funded through a party structure.

So, on the one hand, you have that sort of party structure and, on the other hand, you have the system that we have which is all independents, which means that we can be a little bit more pragmatic in our approach to political issues as they come; you do not have to follow a particular party dogma on every single issue.
 15240

In the left/right versions of political structures, it is pretty obvious what a left-wing politician is going to do when each issue comes along and it is pretty obvious what the right-wing politician is going to do.

15245 In the Manx context that is not the same because as an independent you can look at some of the attractive features of a policy that may well be a left-leaning policy, but equally you could adopt a right-leaning one when different circumstances come along.

Sorry for the very long-winded way of getting to the answer.

15250 Our structure is not party political, so we do not, as a Government, have a political mandate as such. Therefore, it is difficult for us when a scrutiny committee of Tynwald comes back with recommendations that Government should do such and such. It is difficult for us as a Government to say, 'Well, actually that may be what this Tynwald parliamentary scrutiny committee says, but as a Government, we think that that is a nonsense.'

15255 So I am not saying it is impossible but I think without having the clear mandate to govern, it is more complicated.

Q1061. Lord Lisvane: I think you are a little optimistic about the level of clarity which party structures can give to the business of government, but in a way you are saying that a scrutiny committee can say 'Boo' to the goose and make a recommendation which Government does not feel strong enough to make the intellectual case against. Is that what you are saying?
15260

Hon. P A Gawne: I think what tends to happen is that the issues as they arise ... You will know how politics works and how decision-makers can be influenced by public opinion. So public opinion can very easily be whipped up against a particular issue. A committee then investigates that issue; the issue is probably far more nuanced than the reporting can possibly allow to have been explained to public opinion; the committee then comes back and finds certain things and recommends certain actions.
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15270 The public already believes that the actions were wrong, because the papers or the radio, or whatever it is, will have indicated that in their simplistic reporting of the issue. The committee has then recommended how to fix the problem. How does Government then turn around and say, 'Actually we are going to object to this'? Because it may be as a single issue it is a hard thing to argue against.

Q1062. Lord Lisvane: I can well take your points.
15275

Hon. P A Gawne: Then when you get 20 or 30 of these, that is when you then end up with a position ... and this is perhaps where the real work of a parliamentary scrutiny committee perhaps needs to come in. What we tend to do, if we try to think of capital expenditure, policies and rules as a house, what we do is we keep adding extensions on to the house.
15280

15285 What we have not done – certainly in my time and certainly in terms of parliamentary scrutiny – is sat down and said, 'Is this house that has got all these little bits added onto it now suitable for the purpose that it was originally built for?' I suspect the answer would be, no, it is not and each little addition made sense for the particular problem that it was trying to address, but collectively the additions have created something that looks awful and is incredibly difficult to operate.

Q1063. Lord Lisvane: That seems to me to be a very compelling argument for having something like a programme for government –

15290 **Hon. P A Gawne:** Yes, I think that is an excellent idea.

Lord Lisvane: – because not only can it impose a degree of discipline on Departments, it can also mean that you do not treat the programme as a Christmas tree on which you can hang all

15295 sorts of extra stuff; and it also means that a scrutiny committee, if the programme has been approved by Tynwald, has got to make its recommendations within that umbrella of political approval.

Hon. P A Gawne: Yes, I think that is absolutely the right way to go.

15300 To be fair on the two administrations that I have been in on at the start as a Minister, the Brown administration, for the first time ever, developed some form of top-down policy making. In the period prior to Tony Brown being Chief Minister, policy was developed by individuals in directorates; the directorates would then send their policies into their divisions; the divisions would then consider these and pass them onto the Department; and the Department would then pass its policies on to the Council of Ministers who would generally approve the policies.
15305 The policy was made by the individual officer working at the coalface and all these different policies then fed in to provide some form of programme for government.

Q1064. Lord Lisvane: But in quite a random way?

15310 **Hon. P A Gawne:** In an extraordinarily random way.

Q1065. Lord Lisvane: And a non-prioritised way.

Hon. P A Gawne: In a wholly un-joined up way.

15315 So Tony Brown started from the principle of saying, 'Well, actually this really should be the job of the Government, surely? Surely we should create a programme.' So that did happen. It was not perhaps as clear a programme as it needed to be, but at least it was the first attempt to do that.

15320 Likewise, in the Allan Bell administration a similar exercise has been undertaken. But our programme for government still is loose enough to allow somebody – and I will name him because I am sure he would not mind – like Chris Robertshaw to believe that open Government reform means radically altering the current structure of local government and creating new structures; whereas I would take local government reform as meaning something quite radically different, which is about empowering existing structures and allowing them to reform themselves over a period of time so –
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Q1066. Lord Lisvane: Forgive me. If you have a programme for government which is debated – perhaps a full dress debate of a couple of days in Tynwald – that is exactly the sort of difference of emphasis that you can tease out.

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Hon. P A Gawne: Absolutely, and I think the next stage of developing a programme of government was the Bell administration. Our programme, though, was loose enough to allow flexible interpretation of some of these key issues and I think that is still a flaw in what we have done.

15335 In my personal opinion, I think that all Members of Tynwald, after the next Election, should be invited to spend possibly the two months following the General Election sitting down and working collectively to develop a programme for government, which as many people as possible could sign up to. That programme for government would then be developed, possibly issued in draft form to allow public comment and then, hopefully, be in a position to be debated either in
15340 the January or February Tynwald following the General Election.

Q1067. Lord Lisvane: Although that would be quite a delay. It is always true of administrations when they come in that they want to do everything in the last five minutes rather than in three months' time. (**Hon. P A Gawne:** Yes.) You might have to squeeze that timing a bit.
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Hon. P A Gawne: I would love to think that we could, but I am just working on the understanding that it took us a year, with 10 Ministers, to develop something akin to a programme for government, but which allowed that level of flexibility that I described in relation to local government and in many other issues.

15350 So I think that the important thing for me is to get as many Tynwald Members as would be willing to participate in that process; and, yes, ideally we would be able to develop that programme a lot more swiftly, but bearing in mind the Election would take place in September, the Chief Minister probably would not be in place until the middle of October at the earliest, then I would have thought you would need a month's worth of briefings and workshops and

15355 policy development to get to a stage where we had a draft programme for government.

I think it is important – going back to my very first point about why people are becoming disillusioned with politics – that, having got to the stage of a programme for government that Tynwald Members were satisfied with, we did actually go out and explain that programme to the people. And bearing in mind the month that we would be doing that would be December and the fact that many people choose to go and enjoy themselves at the back end of December, that is why January or possibly February would be the earliest you would have a programme for government in a form that would be able to be debated.

Q1068. Lord Lisvane: You have described a period over two administrations of incremental change. Do you think additional momentum will be given to that direction of travel by adoption of a single legal identity?

Hon. P A Gawne: Absolutely. I think it makes a lot of sense, but I think – going back to another point that I have made – over the course of the 20th century we had radical constitutional reform, but since we have developed the ministerial system there has been very little of any great weight by way of constitutional reform that has taken place since then. So we have created a new version of LegCo – of what Legislative Council used to be anyway – by creating the Council of Ministers, but we have not then developed the parliamentary bits to that.

15370 So the danger of single legal entity is it gives the Government greater control over political events because it just allows Government to work more effectively. So I think there would have to be some kind of balancing parliamentary change to ensure that the single legal entity Government did not run away with itself.

Q1069. Lord Lisvane: You could strengthen the scrutiny function, (**Hon. P A Gawne:** Yes.) because I have heard this argument deployed quite a bit, against a single legal entity – that it would put too much power into the centre – but surely that is open to the objection that if you do not give the centre the power to deliver that programme for government – which in our scenario has been approved by Tynwald, possibly with the addition of comments and input from the public, as you suggested ... that if the Government cannot do that then the Government is not in a position to govern.

Hon. P A Gawne: Absolutely, and do not get me wrong, I absolutely and firmly believe that full Government single legal entity is absolutely the right way forward. We must do it. It will overcome a whole range of problems which, even with the absolute clarity that we have now in Government that Departments of Government must work as a team, the law says something different. The law says to a director in my Department, 'You must look after this particular interest,' and then it may be that that interest then competes with a whole range of different other interests, but the law is effectively telling my director, 'You must do it this way' –

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Q1070. Lord Lisvane: Without a mechanism for reconciling.

Hon. P A Gawne: Absolutely. So single legal entity makes a whole load of sense and should happen, but parliament cannot then just sit back and expect –

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Q1071. Lord Lisvane: No, I can understand that the corollary is then that you have got to beef up the scrutiny process and you have got to make it equal to what might be a much more capable and joined up governmental function.

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Hon. P A Gawne: Quite right, and that beefing up can be beefing up in terms of development of alternative policy, not necessarily, 'Oh, look you have done this wrong and you have done that wrong and you have done the other wrong.' Let's have a parliamentary structure which allows for collaboration and improvement of existing, rather than identifying where Government has gone wrong.

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Q1072. Lord Lisvane: So you would see the candid friend, rather than the blame culture?

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Hon. P A Gawne: Yes, and maybe I am being naive but I genuinely believe that is what most people in the Isle of Man want. They want Government to deliver good things for them. They want to have hope in the future and they want to feel that there are going to be better times ahead.

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If half of the Tynwald Members are employed in, effectively, undermining the Government and pointing out where the mistakes are, that is hardly going to give people the confidence in the system. What would be a far better system ... and this is not to say that there should not be scrutiny and it is not to say that we should hide mistakes that happen from time to time, but what we should not be doing is getting to a position – and I know certainly from experience again in my Department, that officers effectively get to a point of thinking, 'Well, there is no point in me doing this fairly radical thing, which could probably deliver huge benefit and positive results, because if I do this there is a risk that I will get criticised heavily by a parliamentary committee, so I would be far better carrying on doing what I am already doing because nobody gets criticised for doing what they have done in the past.'

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Q1073. Lord Lisvane: But isn't that where ministerial leadership comes in (**Hon. P A Gawne:** It is.) and to say, 'Look, I do not care. I am going to back you up'?

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Hon. P A Gawne: That is what I have been doing, very much so, in my Department, but it takes a fairly bold and brave Minister to do that when the systems ... including, it is fair to say, the systems of reporting what goes on in Government are generally all about blame culture and another opportunity to have a go at the Government.

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It may be an incentive to be defensive but –

Q1074. Lord Lisvane: The media do tend to look at these things in a slightly different way perhaps, but I am just trying to think about how one would make the role of scrutiny committees more positive. If the next administration has something like the three main aims of growing the economy, balancing the budget and protecting the vulnerable, it would be open for a scrutiny committee to say to a Government Department, 'Look, if you did this this way you would more effectively meet that overarching aim.'

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Hon. P A Gawne: Absolutely. I am absolutely with you on that and I think again, having that programme for government – particularly a programme for government developed by as many Members of Tynwald who are willing to participate in that process – at least publicly debated so that the public had an opportunity to give some feedback on it and then hopefully going to Tynwald and getting a reasonable majority of Tynwald support, that allows both the

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15450 Government and, as you say, the parliamentary scrutiny functions to recognise that this was a collective decision –

Lord Lisvane: Essentially collaborative, yes.

15455 **Hon. P A Gawne:** – that this is the way forward for the Isle of Man for the next five years. Yes, obviously things change over a period of time and I am absolutely not saying that there should not be division where division is appropriate, and I am absolutely not saying that Members should not be able to forcefully debate issues – that is what politics is about – but I think we should not create structures which almost create division. We should be looking for structures which allow for us to develop the best possible solution for the people that we represent.

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Q1075. Lord Lisvane: And the silos are not helping?

15465 **Hon. P A Gawne:** No, and again we have probably in this last five years heard about more about the silo mentality of Government than we have for all the years of my life preceding that, and yet in my experience the eight years prior to this administration were incredibly silo-focused compared with the five years we have just had. This current administration is more collaborative than any I have ever seen, but perhaps because we are so collaborative it is more obvious when silo thinking is happening.

15470 Again, going back to the point about single legal entity, it is very clear that the current structures, the current legislation that Departments operate under almost require Departments to operate in silos. It makes it extraordinarily difficult to work together on certain issues, so I think that would be a big step in the right direction.

15475 **Q1076. Lord Lisvane:** Do you think the Chief Minister should be elected by popular vote?

Hon. P A Gawne: I think the issue is more about Government having a democratic mandate. Maybe it is because I am too eager to try to find collaborative ways forward, but as a member of Government I am regularly concerned that we do not have a mandate to govern. We have a mandate to be parliamentary representatives and then as parliamentary representatives we choose the Chief Minister and then the Chief Minister chooses his Ministers. And, unless a Minister does something very seriously wrong, parliament – or Tynwald – very rarely would call for a Minister to be removed

15485 So, effectively, the only sort of mandate that we get from the public is once every five years, and that mandate is to represent them in Tynwald, not to provide government. So I think somehow there has to be a democratic mandate delivered for the Government's programme. You could do that by directly electing the Chief Minister, and I have certainly supported that in the past.

15490 It does, though, create some difficulties as to how you would actually go about doing that and what sort of structures –

Q1077. Lord Lisvane: And what the platform would be on which the Chief Minister would stand?

15495 **Hon. P A Gawne:** Absolutely. Does the new Chief Minister become a presidential figure in the American sense? So there are lots of problems with that.

In my personal view, those problems are not insurmountable compared with the problem of Government governing without a mandate.

15500 **Q1078. Lord Lisvane:** Let me just go back to our programme for government discussion. If the popularly elected representatives of the people approve the programme for government, that is a couple of steps towards having a democratic mandate, isn't it?

15505 **Hon. P A Gawne:** Absolutely. So, again, this is why perhaps I was not as forcefully saying absolutely we should have a directly elected Chief Minister; because I can see that there is another way in which that democratic mandate could be delivered.

I heard Mr Thomas – he is always very mischievous, Mr Thomas – gently suggesting that he was a conservative when it came to direct democracy. The Swiss government is not seen as perhaps the most radical in the world, and yet in Switzerland an awful lot of decisions are taken directly by the people through referendum. We have now some incredibly advanced technology which would allow every single person in the Isle of Man to vote on practically every issue for next to no cost if we wanted, and if indeed the public wanted. I strongly suspect the public would not want that, but there are –

15515 **Q1079. Lord Lisvane:** It is about the degree of engagement. (**Hon. P A Gawne:** Yes.) There may be issues which simply do not interest people, (**Hon. P A Gawne:** Absolutely, yes.) but may seem actually quite important from this building.

15520 **Hon. P A Gawne:** Yes, so I am still to be convinced as to how direct democracy can be introduced in the Island, but I do see a role for it and potentially an increasing role in the coming years; and possibly some form of public vote on the programme for government could be allowed or generated.

The risk, though, then is that the programme for government, which could potentially be debated in January Tynwald ... if we are then engaging in a more extensive round of public awareness raising about what the policies actually mean, you could then find that January becomes February which becomes March or April, and we get back to where we were.

15530 **Q1080. Lord Lisvane:** But you have also got two potential hazards about submitting it to the public. One is that it is a 'take it or leave it', because you would not have the possibility for amendment as you would in Tynwald; and the other is if the outcome is 1% majority on a 30% turnout, what sort of public mandate is it going to be? You are going to be holed below the waterline before you even start.

15535 **Hon. P A Gawne:** Absolutely. So there are different systems where a participatory democracy works alongside a representative democracy, so you could have a situation where if 30% of the people turn out to vote, who are eligible voters ... But then again, I mention eligible voters, I qualify it by saying eligible voters: what about the disillusioned people who do not feel inclined even to register to vote? So there is another element that needs to be considered there.

15540 But let's say 30% of people turn out. Systems exist whereby the other 70% proportion is decided upon by representative democracy, effectively through Tynwald, so you could have a 30% result saying that 30% believes this or the other, and then Tynwald can take the rest of the decision. Tynwald would probably be influenced by a public vote, but not necessarily required to follow that public vote. Because I think again, what you have to weigh up as a public representative, first of all, is you are elected by people and you are there, to a certain extent, to represent their views, but you are also there elected by people to make the best possible decisions based on the evidence that is presented to you, and you know as a decision-maker you will have more opportunity to get more evidence than any of the vast majority of people making a decision in the public.

15545 So I think I certainly see for the medium future a clear role for representative democracy, but I see it being supplemented by more direct engagement with the public and using the fantastic technology that is now available to properly gauge public opinion.

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Q1081. Lord Lisvane: I think we have covered a very wide canvas in the time we have occupied. Is there anything in particular that you wanted to say that you have not had the opportunity to say?

15555 **Hon. P A Gawne:** I think in relation to the Legislative Council and, indeed, the size of Tynwald, it is very clear to me that at a time that we are, across the public service, cutting vast swathes of often leadership and middle management posts, for the parliament to then turn around and say, 'Well, it is okay for us to do it everywhere else and they will just have to manage' – and it is fair to say that senior management and middle management are struggling because of vast numbers
15560 that have been cut – 'but that does not apply to Tynwald' ...

I did actually put forward the motion in Keys – and I have to say I was more successful than I thought, but I was not as successful as I needed to be – that we actually get rid of the Legislative Council. That role could easily be fulfilled by a committee stage of legislative scrutiny in the House of Keys. Whilst it is nice that we have a larger number of Tynwald Members, it is not
15565 absolutely essential. So a slimmed-down Tynwald is a way forward – possibly a unicameral directly elected Keys with committee stage to legislation.

I speak as a person passionate about heritage and culture of the Isle of Man: I do not see the heritage argument for maintaining archaic structures in our parliament as being anything other than a smokescreen for people who do not want change. The heritage will continue. The fact that Tynwald has existed for a thousand years will carry on. For the vast majority of that
15570 thousand years we did not allow the people to vote: is that part of the ancient heritage of our parliament? In which case, let's go back to the House of Keys picking the next new Member for Rushen or wherever it is.

I think we need to think a bit more seriously about parliamentary structures. We need to look at where parliaments – particularly some of the new parliaments like the Scottish Parliament –
15575 are working more effectively, where people are believing in processes more, where the processes are working better. I trust that is part of your role – to have a look at how other parliaments work.

I do not think you would be doing us any favours by reporting back in the way that some committees and inquiries do, and recommending something that you think would be acceptable. It would be great if you would recommend something which will be perhaps a little bit
15580 challenging and perhaps outside many Members' comfort zones, because I think that is what we need. I think if we keep doing incremental change at a time when the whole world is changing very rapidly, we run the risk of being somewhat some distance behind everybody else and yet the great thing about the Isle of Man – the scale and the size of the Island – is that we could be
15585 world leaders when it comes to parliamentary structures, systems of government. There is a whole lot of really positive advantages for having small systems and we should be out there leading the world, not dragging along behind with some kind of wistful looks to our past and suggesting that in some way a thousand years – much of which was undemocratic – is
15590 something to be proud of.

Lord Lisvane: I think you can be confident that I will not be unnecessarily inhibited.

15595 **Hon. P A Gawne:** Good. Well, that is encouraging.

Lord Lisvane: Thank you very much indeed. Thank you for sparing the time and I found our conversation very helpful.

Hon. P A Gawne: Thanks.

The hearing was adjourned at 3.21 p.m.

Friday, 3rd June 2016

*The hearing of oral evidence was held in public at 9.15 a.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[LORD LISVANE *in the Chair*]

**EVIDENCE OF
Hon. Richard A Ronan MHK,
Minister for Environment, Food and Agriculture and Member for Castletown**

15600 **Q1082. The Chairman (Lord Lisvane):** Good morning, Minister Ronan. Thank you very much indeed for sparing the time to come and talk to me. Just a word or two about the terms of trade, as it were: we try and make this a sort of conversational exchange, rather informal, but our words are being live-streamed and *Hansard* are taking a transcript which, when it is finalised, will go on the Tynwald webpages. And although we are sitting in parliamentary precincts, of course there is no parliamentary privilege that attaches to what is said in here.

15605 Can I start, as I have started a number of these sessions, by asking you really the fundamental question. Tynwald has this unique tricameral structure: how well do you think that answers in terms of what the parliament has to do?

15610 **Hon. R A Ronan:** I think, first and foremost, it has served the Isle of Man very well over many years. Personally, I am a supporter of retaining that structure, although perhaps revisiting areas which I think would probably need tweaking. I do believe the system works well; it has worked well in the past and I certainly think it would serve us well going into the future.

15615 I think it is also important to recognise there has always been this public clamour to reduce the size of Government and make it simpler and smaller, which is always the public cry. I think, really, when you step back from this, the Isle of Man is a self-governing nation which needs to run everything that other nations run, except for defence issues and things like that. We are a national Government in miniature, but we have Departments, we have health services, we have all these areas that need running. So I think we need a governmental structure that can support this miniature Government in world terms but which has to run itself efficiently and properly, and I would be concerned to see a smaller type of governmental structure here on the Isle of Man.

15620 I am certainly not a traditionalist either, Lord Lisvane. I always describe myself as a realist, and I came into Tynwald with a very open mind. In my manifesto I said, about the Upper House, that we needed to create a clear definitive line between what an MHK does and what an MLC does. In my time here now we seem to be at cross-purposes sometimes and I think if there is going to be reform, probably that is where it needs to be. We need to actually look at what the Legislative Council does. I think it needs to be certainly more of a scrutinising body, but they have a very important role to play in this governmental structure as well, departmentally and what other services they bring to this Government structure.

15630 So, to answer your question, I think it works well.

Q1083. Lord Lisvane: Thank you very much. We can concentrate on LegCo perhaps in a moment and explore some of those issues you have raised, but let me just pick up the last thing you mentioned, which is, in effect, departmental Members. You have a particular perspective on

this, because you were a departmental Member in the Department of which you are now the Minister. I wonder if you could tell me what you think, from your now ministerial perspective, departmental Members bring to a Department. (*Hon. R A Ronan*: Generally?) Yes, generally; I am not talking specifically about your own Department now.

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Hon. R A Ronan: I think it is important to understand what the meaning of the word 'delegation' is, and I think every Minister has a different perspective on what delegation means.

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For example, I was a departmental Member of the Department of Social Care before it was broken up, under the then Minister Robertshaw. Minister Robertshaw's leadership was quite dictatorial. He did not really believe in delegation, which I found odd, although I went along with it because I was a brand-new Member and I wanted to learn. He did not believe in delegation, so I could not really see the point in having any departmental Members, because he was sort of a one-Member Department.

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I served on other Departments – the Department of Economic Development and the Department of Infrastructure – where the delegations I was given were fair, I believe, and I believed I had a decent remit to work with the Minister at the time.

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Certainly in my time as Minister for the Department of Environment, Food and Agriculture I believe that in appointing Members they should have full delegated responsibility for that area, although ultimately the final decision rests with me. And that is what I have tried to do. So, for example, we have got a motion coming through Tynwald this month on emissions strategy. Where this would normally, in historical terms, be led by the Minister, I felt it only right that I give it to the departmental Member, which is Mr Peake, because he has done all the work on it and I just believe that is how it should happen.

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So I think they are very important as long as they are used properly, and I think we just need to define the word 'delegation'. Delegation means what it says: they have responsibility for their areas. Across Government I do notice some MHKs/MLCs do not really do anything with that delegation, so there is a little bit of a fudge. This is where I was saying we need to create these clear, definitive lines: who has responsibility for what and ultimately who is the final decision-maker.

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This is one area where I believe the Isle of Man Government really ... well, many areas, where we need to sharpen our pencil a little bit to create clear lines, because there is all this crossover – which I would like to talk to you about later anyway.

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Q1084. Lord Lisvane: If delegation of the sort you describe is the practice, the logical result of that is you are going to end up with 20 Ministers, possibly more, out of 24, really – because if you have got individuals who are carrying political responsibility for a segment of a Department's business, that is what they are, isn't it?

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Hon. R A Ronan: No. You are talking about day-to-day working. For example, my area is in forestry and fishery and things like that. You are talking about the delegation of working with the people in those areas, you are talking about meeting people associated with those industries and those areas as well.

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What I said to you before was that it is clear that the structures within a Department are via departmental meetings. Something which we hold monthly is policy and strategy meetings, where decisions are brought; they are then discussed among the whole of the team, which is the departmental Members and the Minister, and ultimately the final decision-making is the Minister's. I think that system is right, but at the end of the day these delegated Members are bringing their recommendations with their officers to the policy and strategy-type meetings, and policies are driven that way.

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Normally, sir, 90% of the time these are quite clear, obvious areas we need to go into, but there are occasions, which I have done, which is overrule and take us in a general direction. So it

is pretty clear ... That is what I am saying. Let's look at the structure. Who is the final decision-maker? It is the Minister.

15690 **Q1085. Lord Lisvane:** But if you have political control – subject to the Minister's authority, I absolutely take that point – going down so low, in terms of the detail of what the Department is doing, where does that leave officials?

15695 **Hon. R A Ronan:** Basically, support. One thing I did do when I got into DEFA was to make it quite clear that we are a political Department of Government. I felt we probably were not before because there were different areas of the Department, officers, who were really loose in doing their own thing and they had no real idea of the political consequences and the political responsibilities.

15700 So what I did do quite early on was to create what I called a pyramid, where we had the political Members quite clearly driving policy, the senior officer team feeding into the political arena, but beneath that the officer structure, the day-to-day service delivery, going about their business but quite clearly having this link into senior management and then ultimately into the political Members.

15705 I felt before it was like the Red Arrows: it was just all over the place, there was no real control over it. I think everybody was well meaning, don't get me wrong; and if I am brutally frank with you, I see that right across Government. I do not really see 'What actually is our job? What actually is our role?' and one of the things we are is a political Department of Government, but we are here first and foremost to serve and represent the people. Sometimes I believe that we forget that.

15710 I know your role as well is to look at the whole structure. The actual structure, which has served us well, the tricameral system, if we pick it away, actually works well. It is the bits beneath that have fallen by the wayside. I do not believe it is anybody's fault here; I think that is just the way it has happened. It just needs tighter political and senior officer control.

15715 **Q1086. Lord Lisvane:** Taking that senior officer control, one theme that has emerged from a number of witnesses is that, with the level of day-to-day political involvement, officers are not clear what their remit is, how far they can go, and so what they tend to do is to play safe: they are risk averse; they step back because they think that the politicians, even very junior politicians, are going to carry the weight.

15720 **Hon. R A Ronan:** Yes, I would agree with that. I think generally across Departments historically officers are risk averse because of the potential pitfalls for them. You can see it in the scrutiny committees, the Public Accounts Committee and all the relevant other committees where, if you put one foot out of line, you can be hauled in. I can sort of understand that.

15725 I can only speak for myself, sir, really, that I have made it pretty clear what our job at DEFA is and any ultimate decision and responsibility lies with me and the political Members and senior management team. I believe that is what our job is. Beneath that, there are very hardworking people. They have a very important role to play. Risk averse? Very much so. I found that very much in my early days as Minister, but I would like to say I think I confidently broke that down within a few months.

15730 **Q1087. Lord Lisvane:** Well, that was a way in which the criticism perhaps was responded to in other evidence sessions when I have put it to people that actually that is the role of the Minister to say, 'Look, this is the aim of the Department – if what you're doing is your very best in order to advance that aim, don't worry about it, I'll back you up,' and that sounds to me like the culture you have tried to develop in your Department.

Hon. R A Ronan: Not tried to: have, sir.

Q1088. Lord Lisvane: Thank you very much.

15740 Shall we go back. You mentioned crossover issues a little while back. Would you like to enlarge on that?

Hon. R A Ronan: This is with Tynwald Members, or generally?

15745 **Q1089. Lord Lisvane:** I think you were raising it in the context of relations between Departments, was that? Forgive me if I misunderstood at that stage.

Hon. R A Ronan: No, it is quite all right. I think really, if we take certainly the senior management and tiers beneath this, what actually is their job? I think it is important that we have clear lines of what their job is, and that officers are able to multi-task themselves in areas like that, as long as that is the direction of the Department.

15750 In regard to political membership, I do believe there is a bit of a mishmash of responsibilities and who should be doing what, and certainly when it comes to the role of an elected MHK and a Member of the Legislative Council there needs, most clearly in my mind, to be a more clear definitive line on what their political and parliamentary responsibilities are.

15755 **Q1090. Lord Lisvane:** Shall we go back to the LegCo issue, which in a sense we parked a few minutes ago? You were talking about the evolution, the way that the overall, overarching structure is right but there are some things that need fixing within it. Is LegCo one of those things?

Hon. R A Ronan: I probably think there is a mixture of both; but mainly yes, I think it is LegCo. I think certainly in regard to their parliamentary role they should be definitely more of a scrutinising body. I think they are in danger of getting far too engaged in the day-to-day political debate arena. I suppose that is a consequence of the tricameral system, that they do have departmental responsibilities. I have it in my own Department; because of the size of our Government we have to, I suppose. But certainly I think in regard to their parliamentary role there needs to be more scrutiny of the work that is done and more – and may I say I have had this in my time as well – acting as senior advice.

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Q1091. Lord Lisvane: Candid friend?

Hon. R A Ronan: Very much so. They are not all like that – I would have some of the MLCs gone tomorrow, if I am truthful with you, because I do not really see what they do, and that is unfortunate. That is a minority, but certainly I do use them, I believe, in the right way – for advice and guidance, certainly. And it is a mix as well in regard to the make-up and membership of the Legislative Council. It has always been said it is a retired home for old horses, as we say over here: old politicians go into it. I think that is important. I think it is important that the Members who do step up – or step across, whichever way you want to put it – are there to be used as experience and advice; ‘wise owl’, I suppose you would say. But also, in regard to the other Members who come in from the outside, the business community and maybe community leaders, I think it would be better if it was a 50/50 make-up of that, which it is not, unfortunately – which is a real shame. I hope you will talk to me about the voting of the Legislative Council later; it is important.

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Q1092. Lord Lisvane: I am just about to, by your leave.

Hon. R A Ronan: I think it is important that we do get a mix of business and ex-politicians in there as well, to be used in the right way.

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Q1093. Lord Lisvane: Do you think it is just a bit cosy, ex-MHKs as MLCs?

15795 **Hon. R A Ronan:** It is at the moment, I think. Certainly a couple in there, you can see it as their retirement ticket, most definitely – only recently. I would like to think, where you see it ... You see these politicians thinking, ‘Right, I wouldn’t mind another five years at this, and this is a

15800 cashier number on the same pay,’ most definitely. And I will say on record that clearly happens, which is very, very unfortunate, because the role of a Legislative Council Member should be critical to the Isle of Man, not being seen as a ticket for retirement or moving towards retirement. That has happened, I think it has happened historically, and that is a shame, and that is where reform of that area probably needs to be addressed.

The current model of the structure of voting MLCs in is, I will say, of deep embarrassment to this Government and this Island.

15805 **Q1094. Lord Lisvane:** You are one of several who has made that point to me, so clearly that is something that needs fixing.

What about the breadth of skills and experience, particularly from outside, on LegCo: do you think that that could be improved?

15810 **Hon. R A Ronan:** Do you mean on the MLC side? (**Lord Lisvane:** Yes.) Yes, I do. Because of it being a scrutinising body – that is ultimately their main role; scrutinising legislation, etc. is their main role – then we should have the best, broadest experience in there, not just the people who see it as an easier ticket for them. So I would certainly encourage the continuation of senior experienced politicians continuing to move up and allowing freshness into the House of Keys, but I would also encourage more community-based and business leaders coming in – those type of men and women in here.

15820 **Q1095. Lord Lisvane:** You said ‘men *and* women’, so it could be an engine of greater diversity perhaps?

Hon. R A Ronan: Yes, another area which is of astonishment to me is the lack of women in here. It is a poorer place – undoubtedly poor place – with the lack of women in both Chambers. I do not understand it; I just do not understand it. Maybe that is something else, I do not know. I would welcome 50/50 tomorrow, if we could get it.

15825 **Q1096. Lord Lisvane:** It is just over 6% at the moment, and even in the much-criticised House of Commons it is 29%, so perhaps there is a lot of force in what you say.

15830 **Hon. R A Ronan:** It is how we fix it: at the end of the day, every five years they go to the polls and there are women who stand, and they just do not seem to get in – or they have not recently, certainly. Is it the quality? At the end of the day, the electorate have to vote in what they see as the best, and they should not just vote in a woman because it is a woman; a woman should be a good candidate. I know plenty out there who would do a fantastic job, but they do not wish to pursue that type of career – which, after five years in here, I can understand!

15835 **Q1097. Lord Lisvane:** And why is that?

15840 **Hon. R A Ronan:** Demand of the role, really. It is a 24-hour job, it is a very different sort of role, and I think the quality of a woman candidate probably sees it better than our male counterparts, who are more egotistical, probably. I do not know.

Q1098. Lord Lisvane: Let's go back to the role of LegCo, rather than its make-up. Do you think that it should have a role in financial and budgetary matters, because its Members are not directly elected?

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Hon. R A Ronan: Are we meaning in the Tynwald set-up here?

Q1099. Lord Lisvane: Yes: should they be able to vote on the Budget?

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Hon. R A Ronan: Yes, I do believe that.

Q1100. Lord Lisvane: And on the appointment of the Chief Minister?

Hon. R A Ronan: Yes, I do.

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Q1101. Lord Lisvane: And am I correct in taking the implication of what you say as that you do not think the Chief Minister should be popularly elected by the Island?

Hon. R A Ronan: Most definitely not.

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Q1102. Lord Lisvane: Why not?

Hon. R A Ronan: My deep concern is of who would get appointed. I think it is important to recognise the size of this Island and the importance of our national Government, and to have a popularly elected Chief Minister ... I can understand the call for it – democracy, it is the right thing to do, and nobody more than me supports that belief – but in this instance I think it is important that the elected Members from each sheading, parish, town, village who are elected are given the trust of them and they should have that vote, in my opinion.

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Q1103. Lord Lisvane: I suppose there is the counterargument – this is in support of the case you are making – that if a Chief Minister were popularly elected, he or she could say to the Members of the House of Keys, 'Well, actually, I have got a very specific political mandate and I'm not disposed to listen to very much criticism or suggestions that it should be any different.' I think it would be a presidential role.

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Hon. R A Ronan: I was just going to say, sir, it would be presidential and I think we would be going into a very dangerous area.

The Isle of Man is facing many challenges now and has done for many years, and more than ever now with the openness of the world and the strict financial regulations, which I absolutely support. We have got to make sure that our governmental structure is robust, rigorous and, more importantly, consensually fair. I think that is the only way we can run as a national Government within the world, and it would concern me having a dictatorial-type leader.

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Q1104. Lord Lisvane: What is your view about a single legal entity?

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Hon. R A Ronan: Principally, I agree. I will turn that on its head, if you don't mind: I think one of the things which I have supported and been quite successful at, certainly in my time as a Minister – I have done it within my Department – is to create this centrally driven policy. What has happened before is we have got nine legal entities – 10 it was at one point, if I remember –

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Q1105. Lord Lisvane: Before Health and Social Care were amalgamated?

15895 **Hon. R A Ronan:** Yes, and basically feeding policy upwards, separately all coming in, and I think the single legal entity would take that out. But I think there is potentially another way, where basically policies are driven down through Council of Ministers' committees, which I suppose is similar to a single legal entity, and fed down.

15900 But in principle, yes, I do support the idea of a single legal entity. It is working elsewhere in the world. It would dramatically change the departmental structure over here – something which I am open-minded to. I would need to be clearer on that, going forward. So yes, in theory and in principle, most definitely.

Q1106. Lord Lisvane: What are the dramatic changes that you would see in the departmental structure?

15905 **Hon. R A Ronan:** That is where I have a bit of greyness, if I am honest with you; I think most people have.

15910 Going back to what I said to you before about the size of our Government and we need all areas to be working and making our national Government work, if we were to have a single legal entity and create other types of departments which are smaller, whether that would be the system I am unclear. It is an area really where I think we just need to be careful, although the current departmental structure ...

15915 Yes, as I said to you, I am sorry to be unclear, but I am unclear exactly how that structure would work. I have been supportive to date of moving towards that structure. It sounds a little hypocritical maybe, but I suppose it is just nervousness on my behalf, really, where it would take us.

Q1107. Lord Lisvane: One thing presumably you could say is that it would create unitary government instead of federal government.

15920 **Hon. R A Ronan:** Yes.

15925 **Q1108. Lord Lisvane:** And if that were the case, do you think that there is force behind the argument that some put forward that that would put too much power in the hands of the Chief Minister?

Hon. R A Ronan: Yes, it would. Let's go back to the popularly elected Chief Minister: under that structure you are creating a super presidential-type Chief Minister, aren't you, with incredible – ?

15930 **Q1109. Lord Lisvane:** A combination of the two.

15935 **Hon. R A Ronan:** Yes, that is a really good point. Yes, you are. I would be in favour of giving the Chief Minister more powers anyway. I would be in favour of giving more responsibility to the structure beneath the Chief Minister in the committee structure which I talked about before, more responsibility and more policy driven – for example, where we have created a new Planning Subcommittee of the Council of Ministers, which is to have an overview of policy, whereas before it was getting fed in differently from different angles, and really what matters is the delivery of that policy to better the Isle of Man, its people and its economy. What you were getting was self-interest – you are getting it there. So there needs to be change. Single legal entity? Perhaps that would do that.

Q1110. Lord Lisvane: Thank you.

May I turn to scrutiny, which you have mentioned already, and that perhaps brings LegCo back into focus, but do you think that there is adequate challenge and calling to account at the

15945 moment? Do you feel challenged as a Minister, in a parliamentary sense, about what you are doing and how you are doing it?

Hon. R A Ronan: The scrutiny-type committees? (**Lord Lisvane:** Yes.) They are in place. Do I feel as though I have been scrutinised enough? I am hanging myself out here to dry: no. Why? Probably because the committees are not doing their job properly. Are they lazy? I do not know. The scrutiny I have had ... Maybe I am doing a fantastic job, I don't know, but I would like to have been scrutinised a little bit more on my policies and our Department's policies in a fair way, not a critical way: 'why are you doing this; where is this going to take your Department; where is this going to take the Isle of Man?' None of that. So what you have then is this divine right to do what you want to do.

15955 Scrutiny committees should really be not there as a criticising body first and foremost, but a helping hand to say 'How will that policy you have just done on that fishing ...' or whatever it may be ... 'How is it going to benefit the Island? How is that working with our international community?' None of that, and I would perhaps say that is quite ... I do not know why it has always been done ... I have only been in here for five years. I think possibly laziness, a lack of understanding of its role. Maybe it is a bit of 'them and us'. But no, I have seen very little of that.

Q1111. Lord Lisvane: So the implication of that would be that you would support a very clear brief, given in Standing Orders or by whatever means, to committees about what they were there for.

Hon. R A Ronan: I think it is there already; I just do not think they do it.

Q1112. Lord Lisvane: For the Policy Review Committees I think it is quite constraining because in formal terms, as I read it, they are there to see, once a policy has been put in place, how well it has been implemented. But that, if it were followed letter for letter, would be a very narrow role.

Hon. R A Ronan: Is this with the scrutiny committees now, their remit? (**Lord Lisvane:** Yes.) Well, you know more than me, in fairness. So, if that is the case, then yes, there needs to be a rewrite of that.

Q1113. Lord Lisvane: Equally, I have also been told that there has been an element of mission creep in that they have very happily moved into current issues. Have you seen signs of that?

Hon. R A Ronan: Oh, yes. There was one issue in particular where it was nothing to do with the direction of travel and the policy; it was to do with a personal issue, which is a shame.

Q1114. Lord Lisvane: And personal issues and personal agendas have also been part of the criticism of the current system that I have heard.

Hon. R A Ronan: There is an element of political membership in here I would probably describe as quite vile in their make-up, in their drive. I do not believe that some of the Members here ... It is not many, a quarter if you are lucky. Their objective is them, first and foremost; not what they were elected to do, which I find terribly distasteful and I struggle with that, sir, as a politician – as a human being. You hear all these stories before you are elected, about what politicians are like, and somebody said to me recently, 'Is it as bad as you thought it would be?' and I said, 'No, it's far worse.' It is, for me; that is my own take on it.

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Q1115. Lord Lisvane: Have there been any PAC inquiries that have covered your areas of responsibility?

Hon. R A Ronan: Yes, I think we had a Public Accounts once, yes.

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Q1116. Lord Lisvane: And what is your feeling about the way they went about that?

Hon. R A Ronan: Oh, I remember now. Yes, there was one. I thought it was relatively fair on the issue we were questioned on.

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Q1117. Lord Lisvane: And did they start from the Internal Audit report? How did it come to you?

Hon. R A Ronan: Yes, in fairness ... I am sorry for my memory, to be honest with you.

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Q1118. Lord Lisvane: No, do collect your thoughts.

Hon. R A Ronan: I have heard criticisms of the Public Accounts Committee but I have not seen it myself.

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Q1119. Lord Lisvane: And do you use Internal Audit extensively? I was told the PAC approve the Internal Audit programme across Government.

Hon. R A Ronan: Oh, okay. Do we use Internal Audit? I would hope that the Department is robust in its finances, and I certainly know ... Again, the definition and the clear roles that I mentioned before ... I think it is important that my senior officers and chief executive are dealing with this in a robust and open manner. On the finances of the Department and the regulations in regard to that, I believe we are extremely well run. I have monthly briefings on our finances and I have nothing to concern myself, and certainly through Treasury briefings and through Council of Ministers, and in regard to my own Department I have not had a concern at all. So I am sorry if I am not up to speed on that one, sir.

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Q1120. Lord Lisvane: Not at all. There was no criticism intended. Obviously, the risk framework and the internal audit framework are part of what you need to manage a Department effectively.

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Hon. R A Ronan: Absolutely, but it is having the trust and belief in the people in and around you to do that, and that is what I genuinely believe in. I am not a detail guy; I do not get involved in day-to-day stuff. I have seen Ministers and delegated Members just going head deep in the day-to-day officer role of areas, and I just think it is interfering.

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Q1121. Lord Lisvane: Well, this takes us back to your principles of delegation that we discussed at the beginning.

Hon. R A Ronan: Thank you, we have turned full circle. If you do not have the trust and belief, then you are going to be doubtful of everything around you. I would like to think that in my, it is coming up to, two years as a Minister, I have been successful in driving policy, driving change, pushing up through into departmental thinking. So in creating a team and working with a team in which I have nearly full ability and trust I do not need to get into that detail, and I think by giving the people the confidence and trust they take that responsibility on as well. Don't get me wrong, we have had our problems and we have had to deal with them, and in quite a robust way as well, but ... Okay.

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Q1122. Lord Lisvane: May I finish with legislation: in your time as Minister, have you been Minister in charge of any Bills?

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Hon. R A Ronan: Yes.

Q1123. Lord Lisvane: And what did you think about the process of scrutiny?

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Hon. R A Ronan: Scrutiny by ...?

Q1124. Lord Lisvane: Well, let's take it right back to the beginning. First of all, in terms of getting a slot in the legislative programme: was that a straightforward thing to do, or were there questions of priority to be sorted out?

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Hon. R A Ronan: We have a legislative programme as long as your arm.

Q1125. Lord Lisvane: But over the last 12 months or so you have had, in effect, a legislation business committee within the Council of Ministers, isn't that right?

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Hon. R A Ronan: Yes, quite rightly too. I think it is important that we drive through legislation that will ultimately help our economy, ultimately provide the care and support for the nation that is needed. There is legislation out there which people say are 'nice-to-haves', and they are; and we have got three or four that are nice-to-haves. I have had criticism over one in particular, but it had to take a backburner because at the end of the day there are only 24 hours in a day. We have some very skilled people who are drafting legislative work and they are stretched to the limit, and you do not really want to put them in that environment because we need them at their best to drive the best legislation for us going forward for many years. So I think it is important that the legislation is prioritised.

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How have I found the legislation? Personally, it is an area which I find quite difficult. I think that is just because of the make-up of myself – I am quite a heavily dyslexic man and things like that are quite troubling for me. But again, with support and the right people around me I find it okay.

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Q1126. Lord Lisvane: And did you feel that the Keys scrutinised it effectively?

Hon. R A Ronan: I find the toughest scrutiny is when it becomes a personal issue from other Members, where they see it as a them-and-us situation. The main scrutiny on the main areas has been fair, certainly in my time, and looking at other Members bringing Bills through ... It depends what the interest in it is. I think a lot of it – and this is my other point – if we are doing things for the right reasons and it is getting drafted for the right reasons and it was drafted correctly, it is pretty hard to pick holes in certain areas. So I find that area interesting, and this is where the importance of a robust and correctly run Legislative Council is critical.

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Q1127. Lord Lisvane: So, I may be adding two and two and getting five, but is your implication that it was pretty light touch in the Keys but it got more effective and thorough scrutiny in LegCo?

Hon. R A Ronan: That is how it is now, or that is how it should be?

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Q1128. Lord Lisvane: Well, I am drawing on your experience with that Bill.

Hon. R A Ronan: I have seen a few Bills come back from LegCo in my time, but it has not been many, not in the main areas of suggestion of change.

16100 In fairness, I think it works pretty well. It is just that I would like it if there was maybe time set
aside for legislation in the Keys, where Members of Legislative Council would sit down with the
mover of the Bill and say, 'Right, okay, do you understand what that means?' I would have loved
that to happen, and I think that would be a better structure, that network of support, because
16105 remembering what we are here for in the first place ... because there are flaws in Bills, which
there are and there have been and they have been pointed out to me. This is why I go back to
my manifesto and what the role of an MLC should be, fundamentally to scrutinise, help and
support.

16110 **Q1129. Lord Lisvane:** The sort of thing you are seeking might perhaps be met by a pre-
legislative stage, a draft Bill.

16115 **Hon. R A Ronan:** Yes, perhaps. I was just speaking personally, as someone who is ... There are
people, like Chris Thomas, who are outstanding in this area because that is what they are good
at. I am an outcome sort of person. I just make decisions and I trust and support my network
beneath me. I do think that the make-up of the 24 in the Keys ... You have got to remember we
are not all the same, and I think sometimes people stay quiet when really they probably need a
better understanding of it. So to have a structure of support, help and advice would probably be
useful.

16120 I do not think it is anything to be embarrassed about, because at the end of the day we are all
a mix of varying different people from different backgrounds, communities and work
backgrounds, and I think it is vitally important that we have that breadth of knowledge as well.
But going into an arena like that can be quite daunting, and there have been times when you
think with a lot of Bills, they just go through because they need to. There is not that sort of need
for scrutiny in the Keys but there are areas, with Health and other areas, where there maybe
16125 should be a little bit more scrutiny. This is where this Chamber, I believe, should play a more
important role.

16130 **Q1130. Lord Lisvane:** The area of your ministerial responsibility – and perhaps we can aim to
finish on this – is one which typically, in any sort of jurisdiction, produces a lot of delegated
legislation, statutory documents as you call them. Have you had experience of that?

Hon. R A Ronan: I missed the start of that, sir.

16135 **Q1131. Lord Lisvane:** The area of your ministerial responsibilities is one which in equivalent
ministries in other jurisdictions gives rise to a lot of delegated legislation – statutory documents,
in this system. Have you had experience of that?

Hon. R A Ronan: No, I have not.

16140 **Q1132. Lord Lisvane:** Oh, you've got off lightly, clearly!

Hon. R A Ronan: Yes. I am sorry if I do not understand that, but no.

I know you said there you were going to finish off. There are just a couple of areas I would
like to –

16145 **Q1133. Lord Lisvane:** Well, I was going to give you the opportunity. We have covered a pretty
broad canvas, but if there is anything that you would like to say to me that you have not had the
opportunity to do so, please do.

16150 **Hon. R A Ronan:** Okay. The voting in of Legislative Council Members I have said is a deep
embarrassment.

Q1134. Lord Lisvane: Yes, you used the word ‘embarrassment’ earlier on.

16155 **Hon. R A Ronan:** I think, really, one thing to me, as a simple sort of thinking person, is that the highest vote gets in, the bottom goes out. Why on earth are we going through this ridiculous, embarrassing process? If you top the poll, you are in; if you are bottom you go out and the next round goes on. It would be done in an hour, not ... How long was the last one? I cannot remember. How many months? I do not understand that, because there is no need for it.

16160 **Q1135. Lord Lisvane:** Point taken.

16165 **Hon. R A Ronan:** Competition: get it done. That is what it is, it is a competition – let’s have it done, dealt with. At the end of the day, it is up to each individual prospective candidate or person standing for that role to lobby and convince the Members of the Keys why he or she should have that role, and it should be dealt with on the day.

16170 Finally, sir, one of the reasons I stood was that for seven years I served as a local commissioner in Castletown and found that role incredibly frustrating, to the point in 2011 – Valentine’s Day 2011, I remember – I resigned out of sheer frustration at the lack of responsibility, and I remember when I stood down I called the role futile. Since my appointment I have made it my mission, my drive, to ensure that our local authority has responsibility for what I believe it should have, and this is something which I think, perhaps as a small nation and perhaps ...

16175 Something you may or may not be aware of is that for a hundred years plus the Isle of Man has been considering reforming its local authority structure. I passionately believe that if we created a better, perhaps more regionally focused local authority structure, that would massively help our national Government on a domestic level.

16180 This is where we talked about crossovers before, because what we have is ... Actually, what are we doing? We are elected national politicians but we are dealing with local issues. I can tell you, sir, in here there are Members of the House of Keys who I genuinely believe over 90% of their work is doing the work of a local commissioner, and they should be ashamed of themselves – and the parliamentary system supports that. We should, as a matter of urgency – and I really hope that your report will recognise it – have a stronger, more responsible, more decision-making local authority structure with full authority.

16185 I am not on about burning this through the rates; I am on about – like it happens in the UK – money is filtered down: go and deal with it. That would enable our national politicians to deal with national and international issues, and at the moment this is, I believe, the biggest weakness within our governmental structures, from local to national, because there is an awful lot ... Out of our 160-plus local authority members – which is a ridiculous amount, far too many – there are some awfully good people in there who should and would be dealing with local regional issues, delivering the services which national Government do now.

16195 When the Isle of Man went through its bad time after the War and after the tourism boom, basically the local authorities – who did have the responsibility in those days – simply did not have the money, resources. Things changed within the national Government structure and basically services were handed over. What central Government conveniently forgot to do in the boom times, from the 1980s onwards, was to hand that responsibility back. I am a passionate believer in the local authorities, not in the current form – it needs reform more importantly to help our Island and our governmental structure going forward, and if we do not tackle that we will never tackle the fundamental issues in here, which is why I keep saying to my constituents, ‘Why did you elect me? You elected me to represent you nationally and internationally. Why did you elect the nine commissioners locally? Why? To say hello to them in the street? No. You elected them to deal with the local issues.’ That, I would like to think, in my time, is starting to happen in my area but does not happen across the Island because of this cross-pollination of a politician.

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16205 I have said it a hundred times, sir: we need to create clear, definitive, defining lines of what our roles are, and as part of your review, I would robustly say to you: if we do not get the local authority structure sorted out, with proper delegated responsible service delivery, we will not sort out our central governmental structure.

16210 **Lord Lisvane:** I think you are taking me to the very edge of my terms of reference, but you are making a very powerful link between central and local, so thank you very much for putting that on the record.

And thank you very much for covering so much ground. I have found it very helpful and I am extremely grateful to you for sparing the time. Thank you very much.

*The hearing adjourned at 10.06 a.m.
and resumed at 10.09 a.m.*

**EVIDENCE OF
Mr Walter A Gilbey**

16215 **Q1136. The Chairman (Lord Lisvane):** Good morning, Mr Gilbey. Thank you very much indeed for sparing me the time to come and talk to me this morning. I thank you too for the email to Miss Norman, the Secretary of the Review, setting out the sorts of things that you might like to say over the next half to three-quarters of an hour. And thank you too for the extract from the 1999 Tynwald Companion, which sets out your distinguished career in Tynwald; I found that extremely helpful.

16220 If I could just say a word or two about how we will go about this, as you will have seen from the previous session it is a very informal conversational style. What we say is being live-streamed and is accessible to everybody outside this place; and *Hansard* are taking a record, and when that is finalised it will go up on the Tynwald web pages.

16225 So, let us begin. Perhaps you would like to say something about why you think that the system is fit for purpose at the moment.

Mr Gilbey: Basically, for the reasons set out in my letter to your Clerk.

16230 But if I might, before that, say how I utterly disagree with the previous witness in his statement that we should strengthen local authorities here. As you may have seen from my curriculum vitae, before we had the pleasure of coming and settling in the Isle of Man some 40 years ago, I was a member and chairman of the finance committee of the Berkshire County Council. I think it is perfectly ridiculous to strengthen local authorities here, because it would mean giving them more duties to do, which would mean they would need to employ staff. This must be inefficient, because you would have dozens of people employing road sweepers, employing all kinds of others.

16235 We have got to remember that although the Isle of Man is a proud nation, it is a small one and we should not forget that we are no bigger than a market town in terms of population, compared to the adjacent isles. I think it would be an utter mistake to strengthen the local authorities. I have always taken the view that Tynwald combines the duties of a parliament and of a county council and district council, and the local authorities here are equivalent to the parish councils in the adjacent isle, who, as you well know, really have very few duties but do represent the interests of the communities which elect them.

16240 So I am afraid I totally and utterly disagree with the last giver of evidence to you.

16245 **Q1137. Lord Lisvane:** Well, you will have heard me say to Minister Ronan that I felt he was taking me to the very edge of my terms of reference in respect of local government reorganisation, but thank you very much – I have noted that disagreement.

In your email you really talked about the fitness for purpose of the current system, and I wonder whether you would like to enlarge on what you see as some of the merits of that.

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Mr Gilbey: I think the current system is right, because it has a balance. As with the House of Lords in the adjacent isles, it has a delaying and revising duty but it does not have the powers of a full elected Chamber. I have no doubt at all that if the House of Lords was elected by some kind of universal franchise, you would have two Chambers which would be fighting each other like a cat and a dog fighting each other. It is much better that the second Chamber in any legislature should accept that it is a revising and delaying Chamber, saying, 'Whoa, have a second thought about this,' but not able to think as an equal with the primary elected Chamber. Therefore, I feel that the present system is totally satisfactory.

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As I am sure you are more than aware, over the years there have been all kinds of arguments for altering the present system in the Isle of Man, but fortunately, in my view, it has never come about – and I would say if it ain't broke, why mend it.

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Q1138. Lord Lisvane: Do you support the presence of ex-Members of the Keys on the Legislative Council?

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Mr Gilbey: Yes, I think that is perfectly reasonable, for two reasons: one, that hopefully they will have worthwhile experience of running a legislature in the House of Keys; and the second thing is that they will have experience in the running of Government Departments, which is very different to the running of private enterprise. In fact, when I was Minister for Local Government and the Environment I arranged for one of our senior civil servants to go and work in the private sector and for a person in the private sector to be drafted to our Department, because I do not think there is enough understanding between the private sector and the Civil Service as to their different ways of life and I think both need help to understand each other more.

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16275 **Q1139. Lord Lisvane:** Was that a successful exchange?

Mr Gilbey: I hope it was. I would not be able to boast that it was, necessarily, but I think the people concerned – and there were only two or three of them – found it very interesting.

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Q1140. Lord Lisvane: I would certainly support that sort of cross-pollination. I think that would be extremely useful.

What is your assessment of the range of skills and experience available in the Legislative Council?

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Mr Gilbey: I think you cannot judge for always. It certainly varies: sometimes, as with the House of Keys, you have a very able and experienced membership; other times this is not the case. I think if one looks back over the last 40 years there are times when in both Chambers we have had brilliant politicians, brilliant administrators – and here I should say that I think all Members of Tynwald should remember that they are directors, not executives, and the politicians should keep to policy and leave administration to the civil servants.

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Q1141. Lord Lisvane: That leads us perhaps towards the system of departmental Members. One of the things that I have found a little puzzling is that that seems to blur exactly the distinction you have just been making to me, so that you have a Department which has a Minister but it has affiliated Members who are politicians and who bring sometimes quite a fine

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level of detail, a political involvement, into a Department. I would have thought that is producing exactly the sort of confusion you have just been critical of.

16300 **Mr Gilbey:** Of course you have the same thing in the adjacent isles, where you have ministers of state and then other ministers under them, so I do not think there is anything very special in that, but what I feel is it is the way people conduct themselves. I believe that a politician at whatever level should deal with policy and leave management to the civil servants, because I think they are two different jobs.

16305 I know of one extraordinary case in the past where a Minister and the family went into his Department offices early in the morning and looked at their desks to see what work they were doing. That is an extraordinary extreme of the way that some people who should be dealing with policy start interfering with management.

16310 **Q1142. Lord Lisvane:** It reminds me of the quotation from Sir Humphrey Appleby when he asks the Minister's Private Secretary, Bernard, 'Do you mean to tell me the Minister's loose in the Department?' (*Laughter*)

16315 **Mr Gilbey:** Well, that was the case! This person was making themselves loose in the Department – absolutely right.

Q1143. Lord Lisvane: I am not sure your argument about the adjacent isles introduces an equivalence, because, for example, the Department of Work and Pensions, with a budget of £80 billion, has five Ministers, which is as many, if you call the departmental Members Ministers, as some Departments have in this jurisdiction.

16320 **Mr Gilbey:** Yes, but as I think I have suggested before, Tynwald really is not just a national parliament; it is carrying out the duties as well, and I think rightly so, of a county council and a district council. What is left – and I think it is right and should be this way – is the parish commissioners, who are equivalent to a parish council in the adjacent isles.

16325 **Q1144. Lord Lisvane:** Yes, I understand that.

Can I return to the Legislative Council and the way in which Members are voted on to it. We have the Keys operating as an electoral college, and the system, the rules, for the elections have, in evidence to me, come in for really quite severe criticism: embarrassment, the length of time it takes, and so on. Clearly that is something that would be quite easy to fix, if a fix was needed. But in terms of the way in which people get on to the Legislative Council, would you see any merit in a system of a nominations commission, entirely independent but with a brief to widen the range of skills and experience on the Legislative Council, and indeed to increase its diversity in terms of the background and knowledge and experience of the people who served on it?

16335 **Mr Gilbey:** Well, it is a very interesting idea, and I presume that you have in mind that this would be a committee, a body, who would make a recommendation to the Keys of – if there were, say, five vacancies – a list of 10 or 15 people and say, 'We have interviewed these people, we have looked at their curricula vitae and they are prepared to stand. We suggest that they are suitable.' I think that that would be a very good idea.

16340 Another thing, I quite agree – I think you said earlier that you would, quite rightly, do away with the ridiculous gaps. If they do not elect someone to the Legislative Council, it waits for weeks. I think if you had this prior body recommending a list of people, the Keys should jolly well sit there until they have elected them.

16345 **Q1145. Lord Lisvane:** And it could easily be a one-shot exercise –

Mr Gilbey: Well, I think it should be.

16350 **Lord Lisvane:** – where the results were from the highest to the lowest and, to take your example, if there were five places to be filled the five highest scorers would be elected.

16355 **Mr Gilbey:** Well, yes, indeed, it should be like the election of the Pope. They should stay there until sufficient people are elected. I think it is ridiculous coming back in a fortnight or a month and going on and on like that. I think it is one of the things that rather demeans the whole public attitude towards Tynwald.

16360 **Q1146. Lord Lisvane:** Thank you very much for reacting positively to the idea of a nominations commission, and I think it is important to call it a nominations commission, not an appointments commission, because the appointments would still rest with the electoral college. But what thoughts do you have as to who might be on such a commission, because of course that is the key question: how do you make it authoritative and sensitive to the issues but very clearly independent?

16365 **Mr Gilbey:** Well, I think you would have to have ... If there were, say, five people, one might be an ex-Member of the Keys, one might be an ex-Member of the Legislative Council, one might be a prominent business person, and another might be some other category that is thought suitable, so you have a real mixture of interests on that advisory committee to suggest a list of people who would stand for election.

16370 **Q1147. Lord Lisvane:** That is very helpful. Thank you very much.
In terms of the way in which Government is challenged, this issue of scrutiny has come up with almost all the witnesses I have discussed these issues with. Do you think, from your experience and from your current observation, that the Government is sufficiently challenged in Tynwald?

16380 **Mr Gilbey:** Well, I could not say now. In thinking back, on some things they were not, but that is up to individual Members. It is also up to the press and to the radio. And we must not forget that an individual has a right to bring a petition of doleance. So I think there are ways, but one would hope that in a small, largely non-party legislature there would be people who would challenge what they thought was wrong.

16385 **Q1148. Lord Lisvane:** And also if they were given an appropriate framework within which to do it, as, for example scrutiny committees.

16390 **Mr Gilbey:** Yes, as I understand it, unless everything has changed, an individual could move a resolution that a committee be formed to consider anything. So that is open to them. It is also open to the public to have a petition of doleance. So I would have thought there were ways that people could challenge, if they wanted to, and I would hope that if someone thought something was really important they would challenge it. Petitions of doleance – there has been one recently: a lady who has brought in a massive discussion about the welfare of animals. It shows that it is done and can be done.

16395 **Q1149. Lord Lisvane:** That presumably also represents a degree of outside public access to the parliamentary process.

Mr Gilbey: I think that people know what is going on through the press, the radio and their ability to attend and listen if they wanted, but in addition they can acquire or see on the internet copies of *Hansard* so they know exactly what is happening. I would have thought, in all fairness,

16400 if they are aggrieved by it they have a considerable number of ways of getting a remedy. One is to take it up with their MHK, or another MHK, or with an MLC. The next is to take it up in the press. And the third is, of course, the more complicated one of a petition of doleance.

16405 So I would have thought that anyone who is really aggrieved and feels strongly enough cannot possibly say they have not got the means to express their grievance and at least have it considered. It does not mean that whoever considers it in the end will ultimately agree with their arguments, but it does mean that at least it will be considered.

16410 **Q1150. Lord Lisvane:** Let me just be certain that we are using the same technical terms here, because I think a petition of doleance is a means of ... in a sense, a little bit like judicial review, a way of challenging the administrative decisions of the executive, whereas a Petition for Redress of Grievance has a wider use in terms of matters of policy and administration and whatever.

16415 **Mr Gilbey:** Yes, they are two different ones. I am sorry, I was really thinking of them as a whole, but you are of course quite right.

Q1151. Lord Lisvane: Well, in terms of access of the public to the parliamentary process, I suppose they are both doing the same thing.

16420 **Mr Gilbey:** Yes, I personally think that there is plenty of access if people want to use it, but that is up to them. I would have hoped in the first instance they would go to their MHK, or another MHK, or a Member of the Legislative Council, because certainly when I was in Tynwald I very much took the view that I was there to help and represent the public. To govern is to serve.

16425 **Q1152. Lord Lisvane:** Indeed. Well, the original meaning of 'minister' is servant, so that may reflect that issue as well.

Mr Gilbey: My Latin is not as good as yours, I'm afraid!

16430 **Q1153. Lord Lisvane:** Mine is derivative, I think it is fair to say.
May I just go back to the Legislative Council issue for a moment. From what you have said, you presumably support the continuing presence of the Attorney as a non-voting Member.

16435 **Mr Gilbey:** Yes, indeed, and the Bishop. This is a tradition. You have there two people who are not depending on election and they have both got a particular view and knowledge that they can express: the Attorney General on legal points and the Bishop ... And thank goodness we are still a Christian country. I think it is a very good thing one should have a Bishop there, as indeed they do in the House of Lords, to represent the fact that we are a Christian country and to represent the Christian denominations – all of them, not just the Church of England. I would regard him as the representative of all Christian denominations and faiths.

16440 **Q1154. Lord Lisvane:** Traditions are supported by those whom their critics call traditionalists, but we live in an age when traditions are constantly tested against perhaps changing standards. So, in addition to, as it were, the traditional role of the Bishop, what do you think, as a Member of the Legislative Council, he brings to the Council and to Tynwald – in addition to being emblematic?
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Mr Gilbey: I am not suggesting it at all as a tradition. I believe it is very valuable, because with the Attorney General, it means you have got your lawyer on the spot there, who can advise on legal issues. He is playing a valuable part.

16450 I also think – thank goodness the Christian Church is still important in our lives; we are a Christian country – that it is perfectly reasonable that the Christian faith should be represented in Tynwald by the Bishop.

16455 I do not see it as a tradition at all; I see them as valuable representatives of, one, the law, and two, the Christian Church. I can assure you I do not regard it as just having them there because that is what we have always done.

Q1155. Lord Lisvane: And presumably the Bishop – in addition to being representative, as you have described him – can exercise his judgement from a basis of a wider pastoral awareness of the Island and its population.

16460 **Mr Gilbey:** Well, one would hope so, yes, that he is representing a large group of people, indeed.

16465 **Q1156. Lord Lisvane:** May I turn to the overarching structure, the tricameral structure. A lot of these issues, particularly on legislation, can be seen in a bicameral mode, but when Tynwald sits as Tynwald Court it is unique among parliamentary institutions. What particular value do you see in that third Chamber, that combined Chamber?

16470 **Mr Gilbey:** Well, as I put in my letter to Miss Norman, the thing is that the Keys holds the power in Tynwald because it needs 17 votes if the two Chambers disagree, so in the ultimate the Keys holds the power, but you have the advantage that the Keys has to be very strong on it.

16475 I think it is a perfectly reasonable system. I cannot see any argument for getting rid of it. Again, I think people have talked about this for years and years but it has never been done. In my experience, the electorate are not pressing for it; the electorate are not really interested. I think I can say in my 18 years in Tynwald no one came up to me and said, ‘We must alter this system altogether.’ I do not think most people are discontent with it.

Q1157. Lord Lisvane: This is not the current topic in the bar of the Red Lion, as it were?

16480 **Mr Gilbey:** Well, I do not think it is now. It certainly was not in my time – I did not have people calling me saying ‘you must get this altered’ at all. Frankly, people’s concerns are much more about what you might call physical things – the roads, planning, all that kind of thing. I think most of the population are totally satisfied with our system and I think that is shown by the fact that, despite some people over past years saying, ‘Oh, it must be altered,’ it never has been altered.

16485 **Q1158. Lord Lisvane:** That might be the result of the difficulty of finding agreement on any way in which it might be altered.

16490 **Mr Gilbey:** Yes, but if you have a body of people ... if it is a board of directors and someone suggests changes, you need a majority of the board to agree, and this is the same thing. I know for a fact that a few people have suggested changes, but the fact is that the vast majority have always turned it down.

16495 **Q1159. Lord Lisvane:** Well, that is a very compelling argument, I must say.

16500 **Mr Gilbey:** Well, I think it is, because it is the way that any democratic organisation – whether it be government, local government or boards of directors or committees – is run by the majority vote. I think the fact is that over all these years no majority vote has come up for such a change.

Q1160. Lord Lisvane: We have covered quite a spectrum in the conversation we have had over the last half hour or so. Is there any area that you would like to talk about that we have not covered?

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Mr Gilbey: No, I think we covered the one that I brought up about Minister Ronan. I know him and his family well, but I must totally disagree with him on the idea of expanding local authorities. This came up when I was Minister for Local Government and the Environment and I was totally against it then, and fortunately it did not happen.

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As I said before, the fact is that we are no bigger than a market town, we are a proud nation but a small nation, and if you split it up, instead of having one Department of Government responsible for roads, you could have four or five local authorities. It would mean they would all have their own road sweepers, their own road maintenance gangs. The economics of it and overlapping would be most undesirable, in my opinion.

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Q1161. Lord Lisvane: You would lose the unitary focus?

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Mr Gilbey: In such a small community, because, as I say, we are no bigger than a district council in the adjacent isles, and to split everything up, I think economically and from the sense of management ... because each of these, if you had five of them, would need their director of highways and so on, where now we have one Department that deals with these things.

Lord Lisvane: Thank you very much indeed. I have very much enjoyed our conversation.

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Mr Gilbey: Thank you for letting me come and talk to you.

Lord Lisvane: It has been a pleasure and it has been most helpful. Thank you again.

*The hearing adjourned at 10.38 a.m.
and resumed at 10.46 a.m.*

**EVIDENCE OF
Mr R I S Phillips, Clerk of Tynwald and Secretary of the House of Keys, and
Mrs J Corkish, Third Clerk**

Q1162. The Chairman (Lord Lisvane): Welcome back, Mr Phillips, welcome back Mrs Corkish. I understand why Dr King, for very good reasons, is not with us this morning.

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This is the last scheduled session of oral evidence so there are a few loose ends I would like to tie up and some points that we agreed, I think, when we spoke the week before last that we would cover today; mainly committees and scrutiny.

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So may I kick off with the issues – let's start on a technical level perhaps – that arose in the evidence session with Mr Acting Attorney: questions of scope, instructions and so on, and you have seen the transcript of that. I wonder if you would like to give me your thoughts on where that discussion went from your perspective.

The Clerk: Yes, thank you very much for sending me the transcript, which I have read.

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I can declare a certain amount of agreement with him about the practical aspects of things. In terms of Private Members' Bills, for example, I think that one of the points there was that at the moment Standing Orders demand that the long title is authorised and then that is sent off to drafters.

16545 Now, my account of how that works is slightly different from the one that they have, which just shows you that human beings are very interesting. Normally my practice is that I talk to the Member, I draft the long title, then I ring up or email the drafters and say, 'Will this fly?' I am necessarily quite cautious, because although I am a barrister, I qualified in 1978 and I can tell you what the law used to be, not what the law is today. So I am fully aware of my own shortcomings in that respect.

16550 Normally, actually, it works quite well because I know enough to know how little I know. I can see that from a drafter's point of view – and I am not in any way criticising because we would all be in the same position – what looks good at first blush, in a general purposive approach to what you want to achieve, when you actually get down to the nitty-gritty and you talk to the Member about what he or she wants, you have second and third and fourth thoughts. And of course, that is necessarily the case: you would expect that, wouldn't you?

16555 So I think I am going to agree with them that although the system works well enough for it to be described as 'not broken,' it could be done better by having a general purposive motion, rather than necessarily confusing the issue. I think that in terms of the discussion of the legislative process that we have – and this occurred to me, as well, about amendments to long titles – sometimes there is confusion between when they are talking about the general principles and when they are actually talking about the detail, and you do not want the detail to muddy the waters, as it were.

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So I think there is quite a strong argument for saying that if a Member wants to put down a motion to ask permission to introduce a Bill, the motion should be very close to what a long title should be, but actually should be purposive: 'I would like a Bill to achieve these objects'; and it should not necessarily be in legal terms, because actually Members are not lawyers. You are trying to convince your colleagues and the public of what you are trying to do, so that is fine.

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Q1163. Lord Lisvane: And it would be an easier way of getting political endorsement at the start of the process.

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The Clerk: Absolutely so.

I should at this point mention one thing, which I am very aware of that maybe perhaps, with the greatest respect to my excellent colleagues in the Attorney General's office, they are not as acutely aware of, and that is that in many cases Members give permission to introduce a Bill on the basis that it is a Member's God-given right to have a Bill, and then vote it down at Second Reading. You hear people in debates say, 'I am going to vote for the introduction of this Bill, but I am not going to support it at Second Reading, because it is daft'!

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Q1164. Lord Lisvane: Well, there are resonances of the principles of the casting vote there, aren't there? That you cast a presiding officer's vote for further discussion, without expressing any merit on what that further discussion might achieve.

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The Clerk: I think you are very kind, Lord Lisvane, if I may say so, because the firmness of saying that 'we will not be supporting this at Second Reading' is something that they mean, but I think that they do, as it were, want to give somebody a go at convincing the House. And I think that is a very polite and eminently admirable prejudice, but it does not mean that it makes things efficient.

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Q1165. Lord Lisvane: *But* in the un-whipped, relatively un-party driven environment that we were discussing last time, it may be entirely appropriate to the circumstances?

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The Clerk: Absolutely, I think we need to bear in mind that in this particular parliament, debate really does convince people. So I am not in any way criticising that approach. I am

16595 mentioning it because I think when we talk about the structure we do need to bear in mind that that sort of attitude can influence the way in which things turn out.

In terms of their first point of items – if I can cut to the chase – yes, I think a purposive motive would be very good idea, and then the Bill could come back, and it would save quite a lot of technical time, which is not necessarily best applied at that particular point.

16600 If you are happy about that particular topic, I can move on, because I am aware that the clock is ticking and we have a lot of ground to cover.

16605 Amendments to the long title: as a fairly new boy from Westminster I was quite surprised at the way in which the long title is fairly routinely changed. It did occur to me then, and I still think, with the greatest of respect to Members of the House of Keys, that the free amendment of the long title is a subversion of the Second Reading debate. Why are you having a debate a Second Reading if you can simply change your mind subsequently? Procedure is there to get business done, not to get in the way, but nonetheless you do need to have some sort of cut-off rules to say ‘we have talked about this and we have agreed it’.

16610 The argument for allowing free amendment of the long title, and the reason why some Members attach great store by this, is that it does allow that practical sense of, ‘Well, your idea was this but my idea is that: let’s talk about it and see who we can convince.’ So amendment of the long title does allow several alternative approaches, *very* major difference in approach, to be debated at the same time and then for the House to make a decision.

16615 This was demonstrated in one of the many constitutional Bills that have been before the House in the last 20 to 30 years. In fact, my predecessor had a high old time drafting alternative long titles to one particular Bill. I think it must have been at clauses stage, so they had had the Second Reading, they had agreed in principle option A and then options B, C, D and E turned up at clauses, and it made for a very complex debate, which all the Members understood because it was about the structure of Tynwald and about voting for Members of the House of Keys, so it is their pet subject as it were, so they all got it. But nonetheless, it was again an unfortunate mixture of the general and the detailed, which is wasteful, of course.

16625 **Q1166. Lord Lisvane:** But in terms of the *déroulement*, as it were, there is powerful logic that says you settle the long title when you know what is in the Bill, so that you have dealt with it. If something has been added to the Bill which was outside the original scope, fine, you need to frank that with an instruction or some means of franking it; but you cannot really finalise the long title until you know whether the amendments – which would otherwise be outside the scope but have been franked by an instruction – have actually been made or not. That was Mr Acting Attorney’s point, I think.

16630 **The Clerk:** Absolutely, and I do like the idea of an instruction, because it gets over this problem.

I think the practice of the House, which was here before I came, and which is just a reflection of how it does its business, in a non-partisan way, of course, so we have to bear that in mind that what would be the usual channels in Westminster do not exist ...

16635 Privately, on another occasion, I did mention to you how the whips did in fact provide a very useful service in many ways and the process of legislation is one of those examples that you are more acutely aware of than I am. But we do not have that, so the tradition is that the long title is debated early on because you need to sort out which amendments are going to be in order or not.

16640 I think, again, your idea of an instruction gets over the problem very neatly, and I think that if we were to move to a situation where the long title was inviolate – ‘you have agreed it at Second Reading; this is what the Bill is going to be, you should have voted it down but you haven’t’ – but you can amend it, the flexibility of having an instruction would be most useful because then you could allow the House to sit down and talk about really what it actually

16645 wanted at a moment where alternatives could be given. It could have that flexibility that it quite rightly wants. And then once you have done that, you can go back to the drafting.

I think that it is not saying that the tail wags the dog, to have procedure to please the drafters, but I think we have to be realistic. We live in a very small community and resources are at a premium, and what we want to do is find a way for Members to be able to have a clear form of debate which gives them a clear result and then – whatever phrase you want for the technicians – get the technicians to go off and do their job and then come back saying ‘you have agreed it, this is what we are doing now.’

So I like the idea of an instruction. I think that would be very helpful to the House, as a matter of fact. I am very keen to separate the general from the particular in debate; I think that is a helpful process.

Q1167. Lord Lisvane: And presumably if a change of this sort were to be made, it would be essential to emphasise that it was a facilitating change, not a constraining one.

The Clerk: Correct, absolutely. I think it is in the nature of an instruction and the particular way in which we handle motions here, that it would be a very flexible tool. It is just one we have not thought of yet.

Q1168. Lord Lisvane: The third issue that I discussed with Mr Acting Attorney and his colleagues, I think you may have a rather more nuanced reaction to, the Salmon letter issue? *(Laughter)*

The Clerk: This is a very difficult point, isn’t it? There is a very complex interplay between the rights of what people used to call ‘the liberty of the subject’ and all that – we do not speak like that any more, but the rights of the citizen and the collision between that and privilege which nowadays tends to be asserted against the citizen more than against the state.

I am very cautious. If I had a simple solution to this problem you would have heard of it before now, I would have published. It is difficult, because it depends who you are criticising, and we must be very careful not to limit the ability of committees to have responsible scrutiny.

I was just chatting to Jo Corkish before we came about this point and she used the phrase ‘responsible scrutiny,’ which I like, so I am going to take it and pretend it is my own.

It is all about responsible scrutiny and you do need to judge each case on its merits. The position where you are talking about a chief executive whose personal qualities may be actually what is at issue, and the circumstances of a junior officer are totally different. The more senior you are the more responsibility you personally carry and although this does not happen very often, and I think we need to remember this is in the minority of cases, so we must be careful not to constrain committees just because of the very few cases that occur, not every year, but quite rarely. We need to be responsible in the way in which we use our powers or we will lose them. We need to convince our audience, both in the Chamber and outside, that we are fair, otherwise we will fail. So those are the two guiding principles that we must never forget.

Should there be a right of reply? It is tempting to say yes, but on the other hand a right of reply means a right to defame others. We need to think about the best and the worst, because if you do not cater for both, you will find yourself tripping up pretty soon.

Q1169. Lord Lisvane: Can I inject into your thoughts now the Enoch Powell dictum that a privilege that cannot be abused is not a privilege?

The Clerk: As ever, we speak in terms of hushed awe whenever he is remembered. Yes, a very wise remark.

It is up to us to convince the public for whom we work, namely the elected Members but also the public. I think that it is unfortunately the case that people who are criticised very often –

16700 particularly when the criticisms hit home – find refuge in attacking the process. That is just the fact of life. It is not special to Tynwald. It is not special to the House of Commons. But it is probably part of the process that any kind of committee that singles somebody out, and in an unusual way, will find itself complained of.

16705 The normal practice here is that you write to people and you give them an opportunity to write back, once they have read the draft report, and that was observed. People do not always take up the offer. I think it is fair that once you have written about somebody you should send them a copy of it and say, ‘This is what we are going to publish about you – have you got any comments?’ And I take your point that that is at the end of the process and there are disadvantages if they triumphantly produce from nowhere evidence that you have not heard of before, but as you said, that in itself is not being very helpful.

16710 **Q1170. Lord Lisvane:** And, of course, you can in the scenario you have advanced of sending that letter saying ‘we are going to criticise you, and this is your final opportunity’, and if you make that absolutely crystal clear, then producing any more rabbits out of a hat is actually not going to redound to their reputation.

16715 **The Clerk:** Yes. Most proceedings, whether it is a court or a committee, do have to draw a line and say, ‘the whistle has gone; we are now going to proceed to the next step’, otherwise you never get any business done.

16720 **Q1171. Lord Lisvane:** And what you have described, from what you say, I take it that you would think that that went about as far towards embodying the spirit of Article 6 of the European Convention on Human Rights (ECHR) in the process as you could reasonably go?

The Clerk: Yes. I mean, the jurisprudence around the ECHR is developing, as we all know, and we need to keep a lively eye on what emanates from Strasbourg.

16725 **Q1172. Lord Lisvane:** I quoted the *Case of A* to Mr Acting Attorney.

16730 **The Clerk:** Yes, absolutely, and it may well be that developments will be taken out of our hands, who knows? But I think we all need to have a very lively appreciation of, what I said earlier, which is that because privilege tends to be asserted against the citizen now, the courts’ attitudes are very much more restrictive about privilege than they might have been a few years ago.

16735 I cannot in fact criticise them for that, to be honest, because there are occasions when – with all due respect to Mr Powell – there are shocking abuses of privilege where people say things in debate. I think that the remedy now is that there is genuine shock among the other Members, but that is not necessarily an appropriate remedy that you can point to convincingly to satisfy others, or indeed the person who was spoken of.

16740 **Q1173. Lord Lisvane:** In a way – we have spent a bit of time on those technical issues, but I think it was highly worthwhile – that morphs very conveniently into another topic I was going to raise with you, which is about training for MHKs and perhaps, in a slightly different way, MLCs.

16745 **The Clerk:** You know and I know that the biggest challenge to training is lack of resources in terms of Members’ time. That is the biggest thing: getting Members to devote time to this. I do not criticise them for this, but there are so many demands immediately they are elected on them. They are given a tonne of information: some of it which they must have immediately, because they have certain statutory obligations in terms of data processing and things like that which they need to know about from the get-go. You cannot just say, ‘Oh, in another six months we will tell you.’ And it is a lot for them to process.

16750 How can I put this without sounding the wrong note? Quite rightly, Members come from all parts of society and they are a mixed bag, and that is how democracy works. So, what we do, we have to cater for, we have to design for everybody and it has to be a flexible thing. There are Members who turn up who know more than I do about parliamentary procedure; there are people on the other end of the spectrum.

16755 Members' training is a vexed issue, isn't it? I think we would always be willing to give Members training if they were willing to accept it, but I think we have to be realistic about the appetite for training about things where there isn't an absolutely direct need that you can point to, today.

16760 We are going to introduce Freedom of Information shortly and clearly we are going to need to tell Members about the change as it affects them. So I can imagine that we could certainly talk to them about that, because it is going to happen now.

But general training about how you should not dis people in debate, that sort of thing, actually it is the sort of thing you want to say at the start. You want to have it as part of your induction, but it is usually information given at a time when you are giving an awful lot of other information too.

16765 I remember when I was involved in induction in the House of Commons, we had the same problem as we have here. I am on very familiar territory to you: you know exactly what I am saying.

16770 **Q1174. Lord Lisvane:** Well, there is the concept of the golden hour, the golden day and the golden week right at the beginning of a Member's parliamentary career, when that is the time when the new Member is very receptive, but also very embattled in terms of the amount of information that he or she is being presented with.

16775 **The Clerk:** Absolutely right. And I also remember one occasion when – I can't remember after which election it was – Virginia Bottomley came along to a seminar for new members and said 'Oh, that's interesting!' and she had a decade's experience, maybe 15 years.

Q1175. Lord Lisvane: I remember the story.

16780 The sort of thing that I have got in mind is – and several witnesses have put this to me as being something that they see a need for and would like to do; now, there may be a jump from the aspiration to devoting the time at a stage perhaps when other things are competing, but I am talking now about three months, six months or longer into their parliamentary career – one on legislation and one on how you do effective scrutiny. Presumably both of those I have got in mind, the National Assembly for Wales have particularly majored on the techniques of legislative scrutiny. That might be something which, at not very great cost, could be factored into the programme?

16790 **The Clerk:** That is a very interesting idea. We will certainly consider that and have a look at the National Assembly's work. I think it was the Scottish Parliament who hired a QC to teach members how to ask questions. Now, QCs have a way of asking questions that does not necessarily translate that well into committee work and I do not know how far one should teach people that sort of skill. I am very pro training but you get into some very awkward territory quite quickly. What you do not want is to have too polished a performance, because we have to remember that what really matters is the contact with the people.

16795 I am always open to new ideas, but things that are done are in a partisan assembly do not always translate very well into a non-partisan assembly.

16800 **Q1176. Lord Lisvane:** I agree with you entirely and, in a sense, you have distilled what I absolutely do not see as being part of that sort of training. It is not about asking clever questions and maintaining pressure on a witness, for example, but more in terms of the scrutiny role:

being able to read a departmental budget, being aware of the statutory framework, being aware of, at its most basic, what the civil service ranks are and the sorts of jobs that people do at different levels.

16805 **The Clerk:** Now, I think here there is a lot of area in which we could improve. I have not yet asked for more money and more staff, which is possibly a mistake! *(Laughter)*

But of course, yes, I think that we could do a lot more of that. We do not have a very complex system of government because its size is human sized, rather than huge.

16810 **Q1177. Lord Lisvane:** Well, the scale is small, but complexities potentially are quite considerable.

16815 **The Clerk:** Oh, absolutely. Not least because a lot of what we do is a development of practice in England and Wales or Scotland and some of the law, particularly on handling data, for example, is complex. It is as complex as anywhere else, because that is the way it is structured. So there are some areas where, absolutely, Members do need instruction.

16820 I think this is something which really touches on the service we provide in terms of providing information. Jo was Head of the Information Service, actually – I don't know if you want to come in at this point? But I would very much like to beef up our support for Members in terms of research and guidance of that sort.

Q1178. Lord Lisvane: This is very helpful because this is the area I was going to come on to next.

16825 **The Clerk:** Yes, because I think that is really where – if I am picking up right – I think we could certainly add some value in a much more advanced way. But I am going to defer to Jo and see what she has to say about this.

16830 **The Third Clerk:** In terms of Members' training and development, I think that it is something we have considered. We were quite a new management team at the last general election, and we are much more established now and have had a bit more time to reflect on such things, and also more time to talk to Members about what they would like.

16835 A focus over the last five years has been introducing the use of electronic devices to support their work and that has worked quite well because we have taken time with individuals and small group sessions and so on to actually support them in learning how to make the best use of that. That has helped us with resources because we produce far less paper now and that kind of thing.

16840 I do think that there is more available to Members than sometimes we realise, and perhaps our role is actually a bit more signposting. We do provide support for Members by providing them with access to visits sometimes to other jurisdictions to see how things work and gain experience that way. But I do think we have certainly some support in terms of Government resources that we do not make the best use of that we could and those things are there available for Members.

16845 I also think that as a quite well established team now, we do also have some skills ourselves where we could provide perhaps some refresher sessions later on so that what you deliver in the first week you almost make a bit of an extension of some of those topics available, as you say, three months, six months later.

16850 In my role as Third Clerk now, I have more responsibility for that side of things so it is certainly something that I will be looking at for the new Members and returning Members who show an interest after this election.

Q1179. Lord Lisvane: Thank you very much.

Can we move on to the research aspect, unless you want to add anything on that?

16855 **The Clerk:** Not really, other than that we do, of course, as you would expect, talk to Members and ask them what they want. But in all parliaments it is the case that, for the reasons I was just referring to, there is a very wide range of what people actually want.

16860 **Q1180. Lord Lisvane:** And there is the difficulty too, that they do not know what they want until they know what the menu is, which is a perfectly fair reaction.

The Clerk: Yes. But this does take us on to research: I don't know what questions you particularly wish to ask me about that?

16865 **Q1181. Lord Lisvane:** Well, you were saying that you had plans for research and the research function and the way in which it supported Members.

16870 **The Clerk:** Well, I do not have very focused plans, because of course what we are about to have is a whole injection of potentially new Members. Any time that you redraw boundaries you have to expect change, and one of the challenges that we have to bear in mind in all of this, is that we really do not know who we are going to be working with from September onwards and that will colour a lot of the discussion about training, about induction.

I do take your point about the golden moments, but as Jo has said, if we can do this later on as well, to reinforce it, that is all to the good.

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Q1182. Lord Lisvane: CPD, in effect.

16880 **The Clerk:** CPD suggests there is a structure behind it, but I think that in the best traditions we do tend to do this sort of thing very much by the seat of our pants, because what we are trying to do is reflect – even though Members do not always know what they need or want – actually, they are the first port of call to ask for what they need or want.

16885 In terms of the research function, if I could wave a magic wand – no disrespect to the people who ... in fact every respect to them, I think we could use their skills better in the future. I think that one of the one of the things that we have developed is breaking down the barriers between those who are clerks and those were are not clerks, and what we have in mind is very much more of an involvement of people who are researchers now or who work in the library doing committee work as a clerk, and therefore bringing them into the fold as it were, and making much more intelligent use of their qualities. Because a lot of committee work is, of course, research work: you are going to draft the report, you need to guide the inquiry and it is a research function.

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I think that, although we are a pretty good, close-knit team, there are things we could do better, actually, without necessarily increasing our numbers hugely, because I do not think that is on offer because of the financial situation.

16895 **The Third Clerk:** Research has always been demand led, so if a Member comes and asks for a piece of research, certainly in my experience, and I have no reason to think it has changed, that has always been provided. Occasionally we have to ask them how quickly they want it, because we have got other jobs lined up, but as far as I know, if a Member has ever asked for something that is always provided.

16900 What we do not have the resources to do, which is a frustration, is more proactive putting stuff out there that we think might be of interest to Members.

Q1183. Lord Lisvane: Briefing notes and things of that sort.

16905 **The Third Clerk:** Yes. Having said that, when I first came there was a form of that service. We did not have the resources to continue that service, we stopped and we did not get any comments at all.

16910 **Q1184. Lord Lisvane:** I have had one or two comments of a nostalgic kind in evidence to me.

The Third Clerk: We used to send them circulars about things that were in the news, things that might be of interest to them and so on, but nobody came – certainly not to me when I was in that role – and said, ‘What has happened to my newspaper articles?’

16915 Part of the reason for stopping doing that is twofold: there is so much more out there, you cannot possibly hope to capture everything that a Member might be interested in any more; but also, Members now do have access, they have electronic devices themselves, they can keep up with them, their areas of interest on a general level themselves. Then I think they tend to come for us more for the more detailed kind of things. But it is always an area where you feel like you could do more, but you do have to use your resources wisely.

16920 We have made a lot more use, over the last five years, particularly with the policy review committees, of the research team as clerks. So previously, in the Information Service, we would very rarely get a request from a clerk for any research or information at all. With the policy and review committees, because there is a little bit more structure, you know which areas they are looking at, there has been definitely more use of the research service there. Speaking personally, because I know what the researchers can do, now I am a clerk I am asking them lots of questions and getting lots of help from them!

16925 So the potential is there, whether it is actually directly for Members or whether it is through clerks on behalf of Members for their committee work, I think we can make good use of that service, and the more the better.

16930 **Q1185. Lord Lisvane:** There is, is there not, a difference between the two types of providing research material to Members – leaving out answering specific questions for a moment? There is the one where you think that there is an issue that deserves a briefing, but basically what you are doing is putting a message in a bottle and you have absolutely no idea how it is used. But then there is another category which is the very focused one, for example, a briefing note on a new Bill. I do not know how much of the latter you do?

The Clerk: We do not do much of that. We take the briefing from the Department and –

16940 **Q1186. Lord Lisvane:** The explanatory notes.

The Third Clerk: They provide explanatory notes that are published, but they also provide a separate explanatory memorandum for Members.

16945 **Q1187. Lord Lisvane:** And an impact assessment?

The Third Clerk: That is something that is certainly requested as part of the making a Bill process. Whether it always finally happens I could not say for sure, but that is certainly part of preparing a Bill. A Department has to consider those matters.

16950 **The Clerk:** I think that we need to draw a line also between research of what I have to say was the old type, which is factual, and analysis. The service that Jo stopped was largely a gathering together of facts and putting them before Members. Now, Google has killed that dead and the reason why it is not much lamented is that it is out of date. People may be nostalgic, but it was also to a certain amount selective because it reflected the interests of the researcher, which is a point that one needs to be rather mindful of.

We just do not have the resources to provide detailed analysis, in an informed way, of every Bill. I just do not think we could do it, so we would necessarily have to be rather selective. Immediately, that raises some rather tricky issues.

16960 The House of Commons Library gets away with producing very good analytic papers, because it does it all over the shop, on everything, on any topic, lots of topics, and so therefore it neatly avoids getting associated with any particular question being particularly interesting, or any particular pressure group successfully bending their ears to say breast cancer is more important than prostate cancer or whatever it is. I do not want to get drawn into things, but you can what I am driving at.

16965 We have a pretty limited team but I would like to do better in terms of research, in terms of the analysis, which I think is perhaps something that we could aspire to do better.

Q1188. Lord Lisvane: Listening to you this morning and also observing Members in sittings of Tynwald, it seems there is a high degree of digital enablement, if I can use that rather ugly phrase!

The Clerk: We did the sums, and Jo has been the inspiration of this actually: we found it was cheaper to give Members iPads than to continue to give them paper. Although it was not cheaper for my budget, it was cheaper for the taxpayer, so we did it, and that is why people are pretty digitally enabled.

16975 And as you were discussing in connection with another matter, it is a very good way for a small jurisdiction to do better for less money. There is no doubt about it, it is the way forward.

16980 **Q1189. Lord Lisvane:** And clearly you have made very considerable progress.

The Clerk: Yes I have and I have to praise by my excellent colleague on my right for being the initiator and driving it through. Not just the idea, but also the delivery. *(Laughter)*

16985 **Q1190. Lord Lisvane:** Thank you very much.

Just before we leave these questions of support, it has been put to me – and you may find this less convincing than in the purely parliamentary environment – that MHKs need more help to deal with their constituents. At the moment they do not have much, do they? They are self-starting and self-supporting.

16990 **The Clerk:** They have £6,000 a year allowance tax-free to do with what they will and no account is taken of how they spend it, but that is designed to assist them to bear the costs of representing people. They have a Members' secretary, who essentially does typing –

16995 **Q1191. Lord Lisvane:** Who works for a number of Members?

The Clerk: Who works for any Member, she is a shared resource. Many Members make their own arrangements.

17000 One of the things that House of Commons clerks, traditionally at any rate, and clerks here, do not know much about is the connection between Members and their constituents. It is not part of our well-trodden paths. So I would be delighted to hear Members tell me what they need about this.

17005 It is a very interesting question. Unlike the situation that you are more familiar with, the Members' secretary is part of my Department, so I do have a managerial interest in this. I am very ready to listen to requests for change, because I think that what we have is set up for a system that does not exist any more. Most people are able to type their own letters –

Q1192. Lord Lisvane: And a lot is done by email.

17010 **The Clerk:** Indeed. Things have moved on, and I absolutely accept that we should perhaps rethink our service to Members in that respect.

17015 **The Third Clerk:** The other aspect, just before we move on from that, is that we were talking about the support for their constituency work and that is a small proportion of sometimes all of the things that they have to do. So they do get support in their Government Departments, where they have got departmental roles or Ministers or whatever. So we do not always have to cater for all of the Members in that respect, because some of them are not always working from this location.

17020 **The Clerk:** And of course it is also a *very* small society where Members have very close relationships with their constituents, who see them in the shops, who see them walking past and will talk to them, their phone numbers are published and so it is not in the same way as in a larger jurisdiction where a lot of the effort is actually getting into touch with your constituents. We have no problem about that, it is possibly because of that they have more work to do, I do not know.

17025 Again, I am very happy to be told by Members what they need and, provided they give me the resources, provide what they need, but they really do need to tell me.

17030 **Q1193. Lord Lisvane:** Might we move on to the big subject that we parked the week before last, and that is scrutiny: structure, techniques, resources and all of that.

17035 As a starting point the PAC and the three policy review committees. Now, I think we did briefly touch on the Standing Orders appearing to be quite constraining of the Policy Review Committees in that they assume that once a policy has been implemented what the committee has to look at is how effectively it has been implemented. But, as I have been told by a number of people, there is a certain amount of mission creep, and current events come into their ken. But there is a more fundamental ... I think if one is looking at the possibility of rebalancing Government and calling to account, which has got to be a very live issue in some of the things that I am looking at, there is an issue, an unanswered question about how you actually do that. Can you provide an alternative career structure in effect?

17040 **The Clerk:** Well, you will not be surprised if I say to you that the largest constraint on resources is Members' time.

Q1194. Lord Lisvane: That does not surprise me in the least.

17045 **The Clerk:** And it is a very familiar message across all parliaments, because considerable demands are placed on Members by the constituents, by their public duties all over the place, whether in government or outside.

17050 I do not have a solution for this very much, and the question of whether you have an alternative career structure is a political one, rather than a clerkly one. But I can say that it would be a direct method of addressing this essential problem, which is that rather too much is expected of Members who only have 24 hours in a day, and they do have very full diaries.

17055 The fact that they have public duties in Departments is a problem in terms of diarising meetings and so on. Technically, committees always take precedence, but life does not make it that simple. If an ambassador is coming to meet the Treasury Minister and the Treasury Members have ... well, they will not be on a committee, that is a bad example. But if they are going to meet in a Department and the Members of the Department have to be there, than they have to be there. We are small and our neighbours are large, so we have to be practical about things.

17060 **Q1195. Lord Lisvane:** In terms of time though, if one were – and I am hypothesising rather than giving you a glimpse of what I might be considering recommending! – really to take a bit of a machete to the concept of departmental Members, you could, in theory, free up a lot of Member time that could be used effectively for scrutiny.

17065 **The Clerk:** You could most definitely do that. In terms of what Members choose to look at the decision to restrict committees to developed policy was a political one. It was debated in Tynwald and it was a conscious decision taken by Members who were concerned that committees should not be an alternative form of government. That is a political view, and I am not going to comment on it, except to say that scrutiny is now regarded, as we all know, as an essential function of parliament. It is, for obvious reasons, a pretty growth area and the most effective form of scrutiny probably is to allow a committee to get on with it, within a fairly broad range of subject responsibilities.

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17075 Support for the PAC is provided in many jurisdictions by an office of budgetary control of some sort, whatever you want to call it – the National Audit Office (NAO) or whatever – and the PAC will look at those reports. One of the criticisms I think that we could level at ourselves is that the choice of subject matter is a bit haphazard. Now, that is always going to be true of committees. It is true in large jurisdictions like Westminster; it is true in small ones, that they can only ever have snapshots of pretty small areas really. It is the short straw if you are in front of the PAC at Westminster as a permanent secretary, because you could have got away with it, they might not have noticed, but they have. I think it is probably true to say that all PACs miss more than they spot because of the size of the job. But they have to be there in order to make people keep a lively interest in what could happen if they were spotted.

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17085 So do we do a good enough job? We can only guess. I think that if there was an NAO, clearly, that would greatly enhance the work of the PAC. But at the moment I think it is fair to say that it is fairly haphazard in its choice of topic to examine.

Q1196. Lord Lisvane: I am, as you can imagine, extremely sensitive to any potential recommendations that might involve substantial expenditure, because that is not the tenor of the times.

17090 I have been told that the PAC sees and can comment on, and even amend, the internal audit programme within Government.

The Third Clerk: They see all the reports that are produced by what used to be called Internal Audit, and I can't remember their new name ...

17095 **Q1197. Lord Lisvane:** The internal audit function.

17100 **The Third Clerk:** So they see all of the reports that are produced and if they see any areas they are concerned with in those reports then they will use that as a springboard to follow up with further investigation. But equally, they are also free to pick on any other topic or matter of interest that they see

17105 Just thinking about the structure and the way that the Policy Review Committees work now, in that each year at least annually they have an evidence session with the Minister and the Chief Executive of each of the Departments they scrutinise, I think that has broadened out the areas that are perhaps looked at, and made it a very much wider conversation when they have those sessions.

17110 But as a relatively new clerk, one of the things that I find a bit frustrating is the time it takes to do an investigation because of that issue with Members' time and only being able to schedule meetings quite far apart. The issues that you would want to look at, that are live at the time, you inevitably end up reporting months later, by the time you have been able to have enough

meetings and gather that information and exchange of correspondence and so on. So it is frustrating not being able to look at matters more quickly.

17115 **Q1198. Lord Lisvane:** We will come perhaps back to the broader scrutiny function in a moment. But in terms of PAC, if it is the case that they see the draft internal audit programme and can comment on it and even seek amendments to it, that seems quite an important power.

17120 **The Third Clerk:** I am not sure they see the programme or whether they just see the report. Jonathan would have to let you know because he is their clerk.

Q1199. Lord Lisvane: Well, let's not speculate now, perhaps.

17125 **The Third Clerk:** I think they do meet the auditor though: the Chief Auditor they meet with once a year and as far as I recall they do talk about the programme, so maybe that is where that thought has come from.

I am not sure whether they see a document though; Jonathan will be able to confirm.

Q1200. Lord Lisvane: Well, of course, we can follow that up.

17130 **The Clerk:** The person they are talking to works for the Treasury, and is not independent.

Q1201. Lord Lisvane: And there is not an easily identifiable function onto which could be grafted this sort of independent role, is there?

17135 **The Clerk:** You mean there is not an office that would – ?

17140 **Q1202. Lord Lisvane:** There are the public sector auditors, KPMG; there is the internal audit function within Government; but there is no other point of reference that could have this function grafted on to it.

The Clerk: No, you would have to set up a function. Whether it was shared with another jurisdiction, which has its own political ramifications, or whether you set up your own, and whether you would think it would pay for itself or not is a matter of how optimistic you are.

17145 **Q1203. Lord Lisvane:** Yes. The Comptroller and Auditor-General (C&AG), of course, always maintains – successive C&AGs indeed maintain – that they more than pay for themselves. But we are well aware of the use of figures as advocacy! *(Laughter)*

17150 What sort of support does PAC have once it is actually looking at something, in terms of from your office?

17155 **The Third Clerk:** Jonathan is the clerk and he is able to obtain information, commission any research which is required. They are also able to seek advice from external advisers, if they feel that is necessary to the investigation, and they can call witnesses and take evidence. It is a very standard support function, I suppose.

17160 **The Clerk:** We are meaner about calling outsiders to advise us than you would be used to, for simple budgetary reasons, actually. You can spend any amount of money on an expert and there are of course, as we all know, problems with selection of experts and their employment, so we have not really gone down that route very far. Occasionally we have had them, but it is quite possible for a year to go by and not have an external person advising any committees.

In terms of support for PAC, Jonathan is the clerk of the PAC. For traditional reasons, it is not me; it is him. He is very good at involving people in the research function as deputy clerks, and

17165 so he has had a number of people downstairs running inquiries under his guidance. Actually he has done pretty well that way. So he has, not in a formal sense, but in a practical sense, expanded the range of support available to the PAC.

17170 **Q1204. Lord Lisvane:** Let's go back to the main area of policy and administration, and presumably also expenditure scrutiny. I am talking about expenditure not *ex post facto* in the PAC sense. What people have been saying to me is against a background of general agreement that scrutiny is a good thing; they are also saying *but* when you set up a capable, articulate scrutiny function, there is a tendency for it to become a sort of camouflaged opposition.

17175 **The Clerk:** It was that fear which inspired people to put the restriction about developed policy in the Standing Order. This is a political question, and it is something which, I think, Members will need to discuss. Some people would say having an opposition, camouflaged or otherwise, was a jolly good thing. Others might disagree. I couldn't possibly comment! (*Laughter*)

17180 **Q1205. Lord Lisvane:** I will not push you into embarrassment in that sense, but might there be some merit in having – this again, reflects what people have been telling me in terms of what are the committees really there to do – a much clearer brief of the sorts of things they should be doing?

17185 **The Clerk:** We attempted this, in the sense that it was immediately made a policy that they would talk to every Minister at least once a year. That was not done before, so I think they have made their mark in that respect: that because it is on the list of things to do, it is done. It can be done well, it can be done less well, but it is done. And so every Minister has his or her day in court, and actually it has proved to be quite popular among Ministers because, of course, it is a very good platform for them to explain what they are doing. It is not like Question Time where people are interrupting them and they only get soundbites. You can have several developed paragraphs on why you are where you are at the moment.

17195 **Q1206. Lord Lisvane:** And to a competent and understanding Minister, that shop window for his policies and the challenges he faces can be politically extraordinarily useful. (**The Clerk:** Yes.) And, not to be too cynical about the process, you can try and exercise a certain amount of complicity in the endeavour on the part of the committee.

17200 **The Clerk:** Well, I do not think I am betraying any secrets when I say to you that, as you would expect, it is the practice of committees to let their witnesses know the topics of that are going to be touched on. (**Lord Lisvane:** Indeed.) Just as you were very happy to do with me, to tell me which rough areas ... There is no script as such, but there is no point in surprising people and not letting them have time to think about difficult subjects, so that of course is done.

17205 Is it complicit? I would not describe it as complicity exactly, but you are all there in the room for a common purpose, which is to ensure that the public has proper scrutiny and proper public information and analysis of what is going on in their name. So there is a lot more common purpose in scrutiny than people sometimes choose to remember.

17210 **Q1207. Lord Lisvane:** Could that commonality of purpose be strengthened by having some sort of system or some sort of procedure like the approval of a programme for government, which might be updated annually, for example? Such a thing used in the past to exist, as I understand it.

The Third Clerk: A programme for government used to exist in the past, in the format that there was a policy debate, usually annually in October. That was replaced by a system of

17215 Government reports. There was an annual report, a business plan from Government as a whole and Departments, and for a short time, for a couple of years, they were debated in Tynwald earlier in the year; and then there was an annual report updating on progress with the previous year's plan.

17220 That did not happen with this administration. Instead about a year and a half into the administration they produced an Agenda for Change document, which was their setting out of policy for this administration.

Q1208. Lord Lisvane: And that identified the balancing the budget, growing the economy and protecting the vulnerable strands?

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The Third Clerk: Yes. Then there was a first breakdown of that into a set of objectives, which was actually published on the Government website, and then they were tracked for a period of time. Then there was a follow-up report which went to Tynwald last year, which was sort of almost, 'This is where we are up to now and this is what we plan to do for the final year.' Again, based on the original Agenda for Change document from a couple of years previously, which developed some of the ideas further and also added the final set of objectives that they were hoping to achieve in the last 12 months.

17230 They were debated, but in between times I do not think Members have looked at those or revisited those necessarily, and that is certainly something that the Policy Review Committee that I clerk, when we are looking at the annual evidence sessions with the Chief Executive and the Minister, I will go through the last year's worth of that Department and put together a briefing note for the committee to say, these are the areas that have come up, these are the objectives that they have responsibility for and so on. But obviously what the committee chooses to ask questions on is then up to them, so they may like that, and pick some of those topics or they may have other topics that they are interested in.

17235 One thing you mentioned earlier about having scrutiny as a kind of separate role for Members, the only thing that I would say about that is that Members who have had experience in Government Departments know better what they are scrutinising. Without some Government experience, it is quite an impenetrable organisation to understand – you did obviously refer to how complex it is – and so I think that the scrutiny function is very important. I think from the outside, the fact that we sometimes have these apparent conflicts of people serving in Departments and scrutinising other Departments, it does just seem to work. Everybody accepts that it is fine to be in one Department, but then to be very challenging of another Department, even one that you may have served on previously, and Members do not hold back as far as that is concerned. It does help them, I think, to find some of the issues that they want to look at.

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The Clerk: That is, if I may so, a very, very well taken point. I think we have all had the experience of people in private, drawing on their Government experience to get to the nub of an issue and knowing where the weak links are. So I think what Jo has said is quite important.

17255 Taking on board your suggestion that maybe there should be a structure to the way in which committees operate, it is at first blush very attractive. Much as we do have a commitment to have Ministers in at least once a year, but I think that we also need to remember the way in which a lot of business is done here: because Members are generally all in Departments, they all generally know something of what is going on, and if they do not focus on something it could be because there is not much there at the moment of political controversy.

17260 I think we need to be careful that we do not set up structures where we go through the motions because there is no fuel in the tank. The fuel in the tank is actually political interest.

Q1209. Lord Lisvane: It always is, and you have got to be absolutely pragmatic about that.

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The Clerk: Exactly. If you are all in the same room to talk about x policy because you have got to be, then it is not going to fly.

17270 **The Third Clerk:** We do not have the resources to cover that kind of work anyway. We have sufficient resources, *just* on some occasions, to cover what Members are interested in doing. As we said, certainly the annual point of contact with Departments has focused them in looking at a broader view at that point.

17275 But if we were to try and impose more structure, which meant they were doing things that either they were not very committed to or it was just more paperwork for them, I just think we would drown.

Q1210. Lord Lisvane: I do take that eminently realistic point, but it is possible also to say that a parliamentary function is not complete unless you *are* doing x and y and z.

17280 **The Clerk:** Striking that balance is an art, isn't it? (**Lord Lisvane:** It is.) So, I agree with you but I say this really to discourage the people who have very tidy minds, who think this is how it is.

17285 **Q1211. Lord Lisvane:** Well I think we agree that parliaments, wherever they are, may seem to some people organisations, but because they are organisms they have to be treated like organisms and not always like organisations.

The Clerk: A photograph of the man who said, 'Politics is the art of the possible' is just behind you. (*Laughter*)

17290 **Q1212. Lord Lisvane:** Thank you very much for that reminder!

17295 You will have seen that the logical thread that I was trying to follow with a programme for government was to try and draw the sting of this potential opposition or camouflaged opposition, because if there were a programme for government, approved by Tynwald, that would be a given. The logic would be similar to looking at how a policy has been implemented because you would be dealing with a given, and you would be saying to a Department, 'How far and how effectively does what you are doing contribute to the achievement of *that* aim in *that* part of the programme?'

17300 **The Clerk:** Keeping up to date with what you are supposed to be working on is always an interest and one of the things that Jo has just done – a small change, but which is important – is the development of the policies record which, instead of being published once a year, you are going to have –

17305 **The Third Clerk:** We are hoping.

17310 **The Clerk:** You are hoping. Am I speaking prematurely or would you like to explain? Because actually that is a very good example of something that at officer level you can get on with – another initiative from my excellent colleague here – and make substantial changes about, without really breaking the bank in terms of resource.

17315 **The Third Clerk:** In terms of – and this is slightly moving away from Government policy – all the recommendations that are approved by Tynwald are reported on annually in October in a report which is laid before Tynwald, called the Policy Decisions Report. It is an update from Departments on progress with those decisions, again which Members can choose to ask questions about or whatever, but perhaps do not because it is laid once a year.

So I have been working with colleagues in the Cabinet Office and also in this office to look at how we make that information more readily available, more accessible. We are looking at a

17320 web-based, website solution for that at the moment, which we are hoping, if everybody is happy and agrees and all the right people say yes, that we will put in place for the next administration with probably a five-year history of things. So that is something we are looking at, at the moment.

17325 What you mentioned about the Government policy though, I think, speaking personally – the idea of having an annual update of what Government is trying to achieve and what progress they are making with that – the lack of that during this administration, in the structured way that it was available previously, i.e. a proper Government annual report, has been something which I think has caused frustrations.

17330 I was interested: one of the things which has happened in the last year, a couple of the Members mentioned in their evidence about having a subcommittee for legislative prioritisation, which they have established in the last 12 months. I would hope that similar initiatives are happening around other Government priorities because I think the challenge of overcoming the silos is to look at the central priorities of Government and to bring everybody to that. Because those things are not published – I am not saying they are not talked about – and Tynwald cannot then scrutinise something which does not exist, it is very difficult to actually challenge the overall policies of Government and the direction of travel. I do sense frustration from Members when you listen to them in debate on that because they feel they cannot get to the bottom of things and they do not really know what is planned and what is going on, unless they are in a particular Department or in a particular ministry.

17340 **Q1213. Lord Lisvane:** That is an aspiration which is clearly very widely shared, and the challenge is how to get from where we are to there, which is rather harder.

The Clerk: Some of the solutions, if you can find them, can be remarkably low level and simple in terms of what you publish and ...

17345 **Q1214. Lord Lisvane:** Yes, that is a point very well taken.

17350 Just one final question on committees and this is really related also to Member time, the Member resource; there is, understandably, a habit of setting up a select committee to do something, to look at something. We all know that that can be a politically demonstrative action (*Laughter*) – ‘we need to do something about it, let’s have a select committee’ (*The Clerk:* Yes.) – but it is arguable that that represents a dilution of Members’ time, additional tasks for scarce support resources and so on.

17355 Really, the basic question there is: could it be that a habit of getting one of the ‘mega committees’ to look at something, rather than setting up a select committee, simply to look at one narrow issue, would be a good way to go?

The Clerk: Well, we have already done that in the sense that the new structure was designed partly to achieve that objective because –

17360 **Q1215. Lord Lisvane:** It hasn’t been entirely successful in that respect, has it?

The Clerk: I think I am going to disagree with you and say that –

Q1216. Lord Lisvane: It was only a question, not an assertion.

17365 *The Clerk:* To say that there have been one or two references to the Economic Policy Review Committee: for example, there is a hotel where you are staying which is part of a large group that had some financial problems.

Q1217. Lord Lisvane: I have been hearing about that.

17370 **The Clerk:** And that was referred to the Economic Policy Review Committee, in the context of whether the Government should have given it financial aid. It carried out an inquiry and a report which was very effective. It was at the prompting of the Chief Minister that Tynwald referred it. It was exactly what you would expect the system to produce and it did very well.

17375 And there are other examples, I will not go through them, I have got the list in front of me, but there are examples. I think Jonathan King's note to you did point out that there are fewer select committees now than previously because of this.

17380 Is that a good thing? I think it is good partly from the resources issue because we always have to cut our cloth accordingly, but I think it is also good because there is developed expertise when Members have a subject area to look at, and there is no doubt that that is true.

Q1218. Lord Lisvane: From his note and from memory, I think additional select committee activity has fallen from a 50% add-on to a 30% add-on.

The Clerk: I think that is right, yes.

17385 **The Third Clerk:** I think as with all things you introduce a new idea, and it is an idea that by voting to change the system Members opened up this possibility of being able to refer things to the Policy Review Committees, and as they see that is successful, then they will use that option more, but it is not something that is going to change overnight and in parliamentary terms we are talking years, rather than months.

17390 There are occasionally issues which would not necessarily fall into those areas, but I do think it is an option that Members are thinking about and using more, and hopefully will continue to do so, assuming the committee structure remains the same.

17395 **The Clerk:** What has changed is that it used to be, when I first came here, automatic that you would have a select committee on something; and now it is not. You might well just refer it to one of the committees.

17400 You get a motion with a debate, if that is what you want – you can still have your little demonstration – but sometimes it does suit the politics to have a specific committee doing the work, not least because you can track what progress that particular inquiry is taking and when they report and it will not get buried. So I can see why people are still attached to using select committees, but it is done less.

17405 **Q1219. Lord Lisvane:** And of course, it depends on the subject, but it is potentially a less effective use of resources than employing the economies of scale of a committee that you have already got in business.

17410 **The Clerk:** Yes, not least because you can get Members in the room to do both the select committee subject and something else, and that happens.

Q1220. Lord Lisvane: Absolutely, and there are people who, by virtue of their service are already used to working with each other in a committee environment, which is not to be underestimated, the value thereof.

17415 **The Clerk:** Yes, although, and I am not going to give you examples, there are also considerations of avoiding the particular members on that committee.

Q1221. Lord Lisvane: It was ever thus! *(Laughter)* And probably a reflection of the organic nature that we were talking about a moment ago.

17420 Can I finish – because I think we are starting to run a little short of time – with the issue of petitions and public access to the parliamentary process. Now, I understand a petition for

redress of grievance is one thing, a petition of doleance is in effect a sort of judicial review proceeding? (*The Clerk*: Yes.) But if you would like to say a word or two about petitions for redress of grievance and how effective you think they are.

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The Clerk: There are two forms of petitioning Tynwald: you can have a public petition; and you can have a petition for redress of grievance.

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Petitions for redress of grievance are one of these revived ancient traditions that people are very attached to, quite rightly, because on Tynwald Day, our national day, in full view of the community – you are filmed and you are on the radio and so on – you can walk up the ceremonial way and give your petition to me, as Clerk of Tynwald, and I present it to the Governor who gives it to the Standing Orders Committee who vets it and then it is sent to Tynwald and it can be picked up and debated by any Member within five years.

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Now, what you cannot do with that procedure is shortcut other types of remedies. So if you could sue, you cannot petition.

Q1222. Lord Lisvane: A sort of rule of anticipation?

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The Clerk: It is more about comity actually, than anything else. But yes, it is out of the same area of thought.

Q1223. Lord Lisvane: It is a hierarchy?

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The Clerk: It is more to protect the courts, because it is not just if you have exhausted your avenues of appeal; it is if you have actually gone down there. What you cannot do is argue the toss with the judges by way of petition. If it is something that you can go to court about then you cannot petition about it, so it is about preserving the split of responsibility.

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It is for people who do not have anywhere else to go. Quite a lot of the time people have been to court and they have a particular grievance, and the way they get round it is that they petition about the subject. So if, for example, you have gone through a divorce and you, because you earn, are not able to have legal aid, but your wife who might be a housewife can get legal aid, she is advantaged in the process over you, because she gets the Government to pay her lawyer and therefore they can do things. It was perceived as an injustice.

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So you cannot petition about your own case but you can petition about the injustice and give it as an example your personal experience, and that is fine, because you are talking about policy. You can identify a structural injustice and remedy it. And that is quite good; it has been productive of a certain amount of quite good committee activity where people are made aware of this injustice. Whatever the result, at least the community is aware that this is something that is not necessarily going right. So that is petitions for redress.

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Generally, you can petition as a public petition, and we have just reformed the rules to make them much simpler. There used to be a lot of the old 19th-century rules, I think taken off the peg from the House of Commons to be honest, which really are of no relevance to modern life and we got rid of most of the rules. People can now petition by using a Member to present the petition and instead of having the petition read out, it is simply laid before Tynwald. Once it is laid it can be picked up and debated by anybody, as a paper before –

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Q1224. Lord Lisvane: Does that happen with any frequency?

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The Clerk: It has not happened yet because this particular wheel was only reinvented on 15th December last year, and we have not actually started the vehicle yet.

There have been one or two interesting possible uses of it. But it does have to have a Member to sponsor the petition, so there is a Members' filter there. So far, we have not had a petition under the modern system, but of course you could petition about pretty much anything

17475 if you wanted to. It has got to be decorous, so it cannot be defamatory, but it is much more open in scope than the Tynwald petition.

Q1225. Lord Lisvane: Does it attract privilege?

17480 **The Clerk:** I think it does because it is a paper laid before ...

Q1226. Lord Lisvane: Once laid.

17485 **The Clerk:** Yes, once laid it is a paper laid and therefore it is before Tynwald and for that reason the use of 'decorous' to filter out defamation means we would not allow an indecorous petition.

17490 We will wait and see what happens. Petitions of their nature come and go, in the sense of it is a useful procedure, people may be aware of them, they may forget about them. It is interesting that there is not a long line of people with petitions hammering at the door. I think everybody will have their own view as to why that is. I suspect it is no coincidence that we are in fact a very small society with a very effective system of representation by MHKs. So if you have got a grievance, you can go to your MHK as you could before.

So, there we are, that is petitioning.

17495 **Q1227. Lord Lisvane:** Well I think, as we are running out of time, that might be quite a good note on which to end.

17500 So, thank you both very much indeed for your help. And as this is my last scheduled hearing of oral evidence it is also a good opportunity to thank all of those who have given of their time and expertise to help me with my review: to the Secretary, Michelle Norman; to your staff, Mr Phillips, who have been extraordinarily helpful – I don't mean extraordinarily in a surprising way! (*Laughter*) – but in a very extensive way, and the *Hansard* team who have done and continue to do a marvellous job.

17505 I have been told by a number of witnesses that they will very much look forward to seeing my conclusions, to which my answer has been, 'So shall I!' (*Laughter*) But those are a few days and a small number of weeks away, but this has been an extremely enlightening experience, and I think it has armed me with what I need to conclude my review.

So thank you again.

17510 **The Clerk:** If I may end on a personal note, it has been a delight to work with you on this and see you on the Island and to introduce you to some of its delights.

Lord Lisvane: Thank you very much indeed.

The hearing adjourned at 12.08 p.m.