

Consultation on Tynwald Commissioner for Administration (Amendment) Bill

Closing Date: 24th November 2023

Douglas City Council Response

Issues to be addressed (or not) by the Bill

a. Appointment procedure and T&Cs

Issue:

The Act establishes a Selection Committee comprising the Chief Minister, Chair of the Tynwald Management Committee ("TMC") and Chair of the Public Accounts Committee ("PAC"). It has been difficult to comply with this in circumstances where two of these roles have been held by the same person and/or where a Member of the Committee is conflicted by, for example, knowing one of the candidates.

In practice, Terms and Conditions have been determined by the Selection Committee and Tynwald has been informed of these. E.g. Paper laid in June 2023, appended to the motion appointing the incoming TCA.

Proposed solution:

Redesign the Selection Committee to comprise three people, being –

- the Chair of the TMC, or another Member of that Committee nominated by that Committee
- the Chief Minister or another Minister nominated by the Chief Minister
- the Chair of the PAC or another Member of that Committee nominated by that Committee

Furthermore, align the Act with current practice, and provide that Terms and Conditions are to be determined by the Selection Committee, and subsequently laid before Tynwald.

Response: - Agree that this is a pragmatic way forward to address any known/perceived conflicts, however in relation to bullet point 2, if a conflict exists with the Chief Minister then the matter should be referred to COMIN.

b. Before a TCA investigation: Timescale for Departments' own complaints mechanisms

Issue:

The Act provides that, before coming to the TCA, a complainant has to complain to the Department (or other "listed authority") and get them to investigate the matter first. The Act assumes that the Department will respond within a month, and allows the TCA to extend this to three months "in exceptional circumstances". The outgoing TCA advises that a one-month turnaround has never been achieved and that three months has become the norm; particularly when reaching the final stage, normally requiring a senior/chief officer to review evidence and consider their decision.

The outgoing Commissioner recommends that, with a new realistic timetable; the discretion to extend might also be removed, to reduce delay and indefinite rolling periods.

Proposed solution:

Change the timescales in the Act so that they are more realistic (i.e. three months) and remove the discretion to extend to reduce delay.

Response: - Agree that three months is a realistic timeframe and also agree that the discretion to extend be removed. It is extremely frustrating for the complainant to wait up to 9 months to receive the final response to their complaint from the TCA.

c. During a TCA investigation: protection against suit for defamation

Issue:

The Act protects the TCA against being sued for defamation in respect of their published reports, but not in respect of drafts which they may circulate as part of the process of producing a report, or other communications in the course of carrying out their prescribed duties.

Proposed solution:

Extend the protection to cover drafts, and more generally, all communication with the TCA in the course of their duties under the Act.

Response: - Agree

d. After a TCA investigation: ex gratia payments

Issue:

In circumstances where the TCA makes a finding of maladministration and considers that a Department should give an *ex gratia* payment to a complainant, Departments (and other "listed authorities") cannot do this, because they lack the legal power to do so.

This reform has been requested by the outgoing Commissioner.

No scope is envisaged for the Commissioner to determine quantum, only to make a recommendation following a finding of maladministration.

Proposed solution:

Give Departments and other listed authorities the general power (as opposed to an obligation) to make *ex gratia* payments, where this has been recommended by the TCA after a maladministration finding.

Response: - Disagree that there should be a general power to recommend an ex gratia payment, if this is done then there should be a cap on the level payable and Local Government must be given the vires under the TCA Act.

e. Scope: Manx Care, and Health and Social Care Ombudsman Body

Issue:

As a Statutory Board, Manx Care is subject to investigation by the TCA. However, Manx Care also has its own Ombudsman Body, leading to potential duplication of effort.

In turn, the Health and Social Care Ombudsman Body ("HSCOB") is considered to be a peer ombudsman – parallel to the TCA – and, as is currently the case, should not therefore be a listed authority under Schedule 2 of the Act.

Proposed solution:

Make it clear that complaints about Manx Care should go to the Health and Social Care Ombudsman Body ("HSCOB") and not to the TCA. Clarify, if necessary, that HSCOB is intentionally not a listed authority.

Response: - Agree

f. Rejected complaint: appeal

Issue:

Under the Act, if the TCA refuses to undertake an investigation, they are required to give reasons for the refusal. In the event that the refusal was irrational or otherwise unlawful, the complainant would have a remedy by way of petition of doleance. In 2016, before the TCA service was up and running, the Environment and Infrastructure Policy Review Committee recommended that where the TCA refused to undertake an investigation, the complainant should have an avenue of appeal other than doleance. This recommendation was accepted by the CoMin response to the Committee, and on 21st July 2016 it was approved by Tynwald.

Proposed solution:

Unfortunately, neither the Policy Review Committee report, nor the Government response, addresses the fundamental questions of what sort of person or body should hear the appeal, and how it would be paid for. In the first five years of operation of the service many complaints have been rejected, but none has been challenged by way of doleance, and neither has any

complainant complained that there is no other avenue of appeal. It would be recommended that this proposal, despite having been approved by Tynwald, should be abandoned.

Response: - Disagree, there should be some form of appeal / tribunal process set-up.

g. Decision not to investigate a Complaint

Issue:

It should be an obligation for the TCA to prepare a statement of reasons as to why a complaint is disqualified. Presently, whilst the giving of reasons is required, it is only 'best practice' to provide a written statement, and to lay this before Tynwald. The current TCA chooses to outline their rationale in a document laid before Tynwald. Making it a statutory obligation, as opposed to best practice, would be preferable for certainty, transparency and compliance.

Proposed solution:

There should be a Written Statement of reasons for not investigating a complaint, to be routinely laid before Tynwald, as a statutory requirement.

Response: - Agree

h. Decision not to investigate a Complaint

Issue:

In the event of a conflict of interest, a need may arise to appoint a Deputy (or Acting) Commissioner. Such an individual would be in exercise of the TCA's powers under the Act, and it would be appropriate that the consent of the Selection Committee, and Tynwald, be sought. This is foreseen as on an *ad hoc* basis, rather than a standing deputy.

Proposed solution:

The Office of the Clerk of Tynwald facilitates the administration of the TCA role; and has identified the need for clarity, insofar as the Bill should make clear that;

The Selection Committee: -

- (i)** must appoint a TCA
- (ii)** may appoint a Deputy
- (iii)** may appoint one (or more) Acting TCAs to act in the event of conflict
- (iv)** All being subject to Tynwald approval.

Response: - Agree