

# **Government as a Single Legal Entity**

## **The Plans behind the Plan**

**Tristram Llewellyn Jones**

**Civil Liberties Campaigner**

**Douglas, 12 November 2014**

# Allan Bell – Tynwald July 2014

*' We have engaged Sir John Elvidge, who was the architect of the Scottish government model, to carry out a review of our current Government structure '*

# The Big Debates

**Invitation Only**

***'Purpose and nature' of government'***

**Electronic voting on abstract topics**

# Tynwald Motion 18 November

**The Chief Minister to move –**

***'That Tynwald endorses the report into Government as a Single Legal Entity by Sir John Elvidge and requests the Council of Ministers to report to Tynwald, by no later than June 2015, with recommendations on the means of implementing the proposals contained in the report.'***

# Who is Sir John Elvidge?

**Former Permanent Secretary to the Scottish Government**

**Fellow of Carnegie UK Trust**

***'Carnegie UK Trust seeks to improve the lives and wellbeing of people throughout the UK and the Republic of Ireland through influencing public policy and demonstrating innovative practice.'***

**Architect of *'Scotland Performs'***

# Sir John Elvidge

## NESC & Carnegie Enabling State seminar Ireland, October 2014



[https://www.youtube.com/watch?feature=player\\_detailpage&v=Qo8Yc\\_epQhs](https://www.youtube.com/watch?feature=player_detailpage&v=Qo8Yc_epQhs)

# What is 'Scotland Performs' ?

*'The idea of a framework of **outcomes** was explicitly based upon the experience over about a decade in the Commonwealth of Virginia, in the United States. The key point of focusing government on **outcomes**, rather than inputs or outputs, is driven by a concern about the effectiveness of government. Senior civil servants in Scotland had been engaged in discussions in preparation for advising whatever government which emerged from the 2007 elections which had come to conclusions which also emphasised the importance for government performance of a clear focus on outcomes. .'*

# What is 'Scotland Performs' ?

*'The Scotland Performs framework introduced in 2007 was produced through a **brief and intensive interaction between civil servants and senior Ministers**. There is now all party agreement that a national outcomes framework should be given statutory force and legislation has recently been introduced before the Scottish Parliament. The Scottish framework has been described by Professor Joseph Steiglitz, one of the members of the Sarkozy Commission and a leading expert on measuring national **wellbeing**, as one of the three best examples in the world of a framework for assessing national success which captures the dimensions of success which cannot be measured solely through Gross Domestic Product .'*

Sir John Elvidge, Government as a Single Legal Entity , Tynwald report



# Outcomes for the Isle of Man?

Governments can secure positive future outcomes.

deliver better outcomes for citizens

framework of outcomes

outcomes-based policy making.

outcomes-based approach

Targets and outcomes

measurement of outcomes

outcomes would be desirable.

# What is an 'Outcomes' based policy

The '*plan, do, check, act*' quality audit cycle.

The state *plans* the '*outcomes*',

Creates policy ensuring people *do* achieve the '*outcomes*'.

Audits data to *check* people achieve the '*outcomes*'.

*'Acts'* to refine the process.

**Democracy?**

**Who set the 'outcomes' in Scotland ?**

**The Government or the people?**

# Scotland's 16 National Outcomes

NATIONAL PERFORMANCE FRAMEWORK				
<p><b>THE GOVERNMENT'S PURPOSE</b> To focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth</p>				
<p><b>HIGH LEVEL TARGETS RELATING TO THE PURPOSE</b> Growth   Productivity   Participation   Population   Solidarity   Cohesion   Sustainability</p>				
STRATEGIC OBJECTIVES				
WEALTHIER & FAIRER	SMARTER	HEALTHIER	SAFER & STRONGER	GREENER
NATIONAL OUTCOMES	We live in a Scotland that is the most attractive place for doing business in Europe			NATIONAL OUTCOMES
	We realise our full economic potential with more and better employment opportunities for our people			
	We are better educated, more skilled and more successful, renowned for our research and innovation			
	Our young people are successful learners, confident individuals, effective contributors and responsible citizens			
	Our children have the best start in life and are ready to succeed			
	We live longer, healthier lives			
	We have tackled the significant inequalities in Scottish society			
	We have improved the life chances for children, young people and families at risk			
	We live our lives safe from crime, disorder and danger			
	We live in well-designed, sustainable places where we are able to access the amenities and services we need			
	We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others			
	We value and enjoy our built and natural environment and protect it and enhance it for future generations			
	We take pride in a strong, fair and inclusive national identity			
	We reduce the local and global environmental impact of our consumption and production			
	Our people are able to maintain their independence as they get older and are able to access appropriate support when they need it			
	Our public services are high quality, continually improving, efficient and responsive to local people's needs			

# An 'Outcomes' based policy

**This type of statutory monitoring presents one set of issues with anonymised data for the whole population. For example, the gathering of anonymous statistical data on school exam results in order to improve school performance. But, to gather personal data for use on an individual basis is an entirely different matter.**

***'Almost 8,000 youngsters in the Highlands have been given a 'Child's Plan' ' - seemingly as a result of using personal data gathered on individual children. Whether the gathering and use of this data passed any test of necessity is surely the key concern regarding the use of the 'wellbeing' threshold definition.***

# An 'Outcome' for children:

***'We have improved the life chances for children, young people and families at risk'***

Scottish Government

**One example - the 'Wellbeing outcome'**

**The Scottish Government arbitrarily decided that every individual child's 'wellbeing' is the responsibility of the State**

**Every child is being assigned a 'Named Person' to oversee the child's 'wellbeing'.**

# The Named Person

**'Outcomes' for individual children**

**Every child assigned a 'Named Person'**

**Statutory definition of 'wellbeing' created**

**Midwives, Health Visitors and Teachers  
routinely record 'wellbeing' information about  
the child**

**Information is 'shared with a child's Named  
Person at the first sign of risk to wellbeing'**



# Did the 'wellbeing' of Scottish children improve?

**No to the Named Person**



[http://www.youtube.com/watch?feature=player\\_embedded&v=GCofcLKTJe8](http://www.youtube.com/watch?feature=player_embedded&v=GCofcLKTJe8)

**Holyrood, Edinburgh, March 2014**

# The Named Person and the law

***'A child has a wellbeing need if the child's wellbeing is being, or is at risk of being, adversely affected by any matter'***

Children and Young Persons (Scotland) Act

# NO2NP

**'Scotland Performs' relies on the illegal gathering of personal data**

**The Scottish Government is being taken to court under Human Rights and Data Protection Laws**

# The Named Person's legal power

***'The Children and Young Person Bill will negate any requirement for consent prior to information sharing about a risk to a child's wellbeing.'***

Health and Social Care Data Sharing  
Information Architecture Review

**Over 200 wellbeing '*Indicators*' for children**

***'Difficult temperament'***

***'Child behaviour problems'***

***'Parent has a 'Has a different perception of the problems/risks'***

**Pause for thought . . .**

**What will our society be like in twenty years if the state starts taking such a close interest in our children?**

# Could this happen in the Isle of Man?

- ◆ **Current child protection law is the Children and Young Persons Act 2001**
- ◆ **The state can legally intervene if:**
- ◆ **A child is *'suffering, or likely to suffer, significant harm'***
- ◆ **A higher *'threshold'***

# Isle of Man '*outcomes*' - Children Bill 2010

The Isle of Man '*outcomes*' experiment.

5 '*outcomes*' for children:

- *Being healthy*
- *Staying safe*
- *Enjoying life and achieving*
- *Making a positive contribution*
- *Prospering*



## Children Bill 2010

- ◆ **Rejected by the public consultation**
- ◆ **Bill canceled by the Minister**

**but . . .**

- ◆ **The policy still went ahead – ultra vires**

**And the 'outcome' of the 'outcomes' was . . .**

**The 'outcome' of the 'outcomes':**

**The '*outcomes*' policy triggered a huge rise in needless early interventions in local families by Children's Social Services**

# Referrals to children and families social services

Case type	Description	historic	2010/11	2012/13	2013/14
Contacts	A log of concern	2000	2403	1876	2198
Referrals	A contact resulting in referral	150	895	729	1385
Initial assessments	A referral warranting a more detailed investigation	30	498	701	646
Core assessments	A IA needing further investigation	20	132	329	366

# Child Protection reality

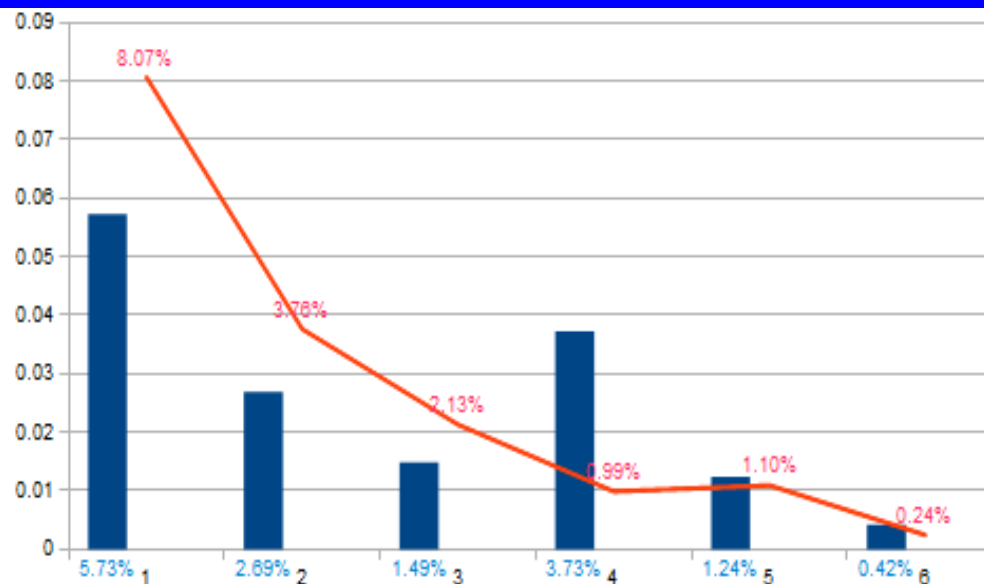
- ◆ **Last 3 years:**
- ◆ **Average 26 children entered on the register each year**
- ◆ **Average 40 on the register at any one time**

Tynwald written answers

# Breakdown of 2013/14 statistics

- ◆ **1385 referrals**
- ◆ **170 Children in Need identified**
- ◆ **188 Child Abuse inquiries**
- ◆ **25 new child protection cases**
- ◆ **1027 needless referrals**

# How the Isle of Man compares to England



Percentage of Children under 18	Log of a Concern	Referrals	Initial Assessments	Core Assessment*	'Needs' identified	Child Abuse Inquiry	Child requires protection
<b>Isle of Man one year to April 2014:</b>	<b>12.81%</b>	<b>8.07%</b>	<b>3.76%</b>	<b>2.13%</b>	<b>0.99%</b>	<b>1.10%</b>	<b>0.24%</b>
<b>England one year to April 2014:</b>		5.73%	2.69%	1.49%	3.73%	1.24%	0.42%
<b>England one year to April 2014:</b>		<b>Isle of Man</b>					
Children in England	11478900	17162					
Log of concern		2198					
Referrals to social services	657800	1385					
Initial Assessments	308500	646					
Children in 'Need'	427700	170					
Child Abuse Inquiry	142500	188					
Child Protection Register	48300	42					

# Social Affairs Policy Review Committee

## The Speaker:

*'early interventions can not only cause a lot of work for social workers who are distracted from genuine child protection issues, but it can be extremely traumatic for the family where it is an unwanted early intervention – a needless referral.'*

# Social Affairs Policy Review Committee

**Data Protection Supervisor:**

*'Initial assessments are not benign and can be damaging and distressing to the child and family concerned'*



# The Big Debate

**Let's convince the public . . .**

**. . . by softening them up with  
leading questions !**

# Leading Questions – The Big Debate

## Yes Prime Minister



[http://www.youtube.com/watch?feature=player\\_detailpage&v=G0ZZJXw4MTA](http://www.youtube.com/watch?feature=player_detailpage&v=G0ZZJXw4MTA)

# Leading Questions – The Big Debate

***'I trust Govt to look after my personal information'***

# Leading Questions – The Big Debate

***' I would like to be In control of my personal information rather than the Govt. '***

# Leading Questions – The Big Debate

***'I shouldn't have to keep telling  
Government the same information'***

# Leading Questions – The Big Debate

***'I believe early intervention in the community would better protect the vulnerable.'***

# Leading Questions – The Big Debate

*'I would like to access more joined-up services in my community'*

# Leading Questions – The Big Debate

**Which question was Government seeking the right answer to?**



# ***“I shouldn't have to keep telling Government the same information”***

***'In 2008 Elizabeth Dove (a pseudonym) saw her GP to ask what could be done about her depression. Some time later Dove had a dispute with her local council, a matter entirely unrelated to her health. Pursuing her complaint to the Isle of Wight council, she submitted a request under the Data Protection Act to be sent all the information the authority held on her. To her dismay, she received sensitive data from her GP health records. It came from officials at the local council's housing department - with whom she had the dispute. It turns out that her health data was held on a joint council and primary care trust system "Swift". She hadn't consented to her health records being shared with the local council.'***

# Early Intervention - Kayley Hutton

*'During a "risk assessment" process, Ms Hutton, 25, told doctors that she - like hundreds of thousands of other people - periodically suffers from depression and anxiety issues. Despite being praised for her parenting skills by midwives and health visitors, she was banned from attending her local hospital, Perth Royal Infirmary and told she could only give birth at Dundee's Ninewells, as it had mental health facilities. To make matters worse, she was then told that she would be forbidden from leaving hospital with her newborn son Duncan, now 16 months old, until she had a meeting with her support worker, a social worker and a health visitor. Ms Hutton requested to see a 120-page dossier which contained notes made by 'named persons'. To her amazement, it detailed a casual conversation she had with Kaiya's nursery teacher about the way her daughter had woken up that morning.'*

# THE PROBLEM WITH 'OUTCOMES'

**Your personal '*outcomes*' become a matter of the states personal interest – whether you like it or not.**

**The state is there to enforce the '*outcomes*' it wants you to achieve – not the ones you personally want**

# Human Rights Act – our protection from interference

***'The European Convention on Human Rights was agreed in the aftermath of the Second World War. British lawyers played an instrumental role in the development of the Convention, and the UK signed up in 1951.'***

Liberty

***'The rights enshrined within the Act are designed to protect the individual against any abuses by the State.'***

Cabinet Office, Isle of Man

# Human Rights Act

***'One of the fundamental principles underlying the European Convention on Human Rights is the principle of subsidiarity, which is an idea derived originally from the social teaching of the Catholic church (which was subsequently hugely influential among Continental politicians and intellectuals involved in the post-War reconstruction of Europe)'***

Aidan O'Neill QC

# Human Rights Act

***'Catholic social teaching proclaimed that the State should not presume to arrogate all power to itself, but should respect the nature of society as a commonwealth by permitting power to cascade down to the lowest level . . . '***

***“the State cannot and must not take away from families the functions that they can just as well perform on their own or in free associations; instead it must positively favour and encourage as far as possible responsible initiative by families.”*** Aidan O'Neill QC

# Human Rights Act

*'In a totalitarian society, uniformity and conformity are valued. Hence the totalitarian state tries to separate the child from her family and mould her to its own design. Families in all their subversive variety are the breeding ground of diversity and individuality. In a free and democratic society we value diversity and individuality. Hence the family is given special protection in all the modern human rights instruments including the European Convention on Human Rights (art 8).'*

Baroness Hale of Richmond, House of Lords

# Human Rights Act

## Article 8:

*'Everyone has the right to respect for his private and family life, his home and his correspondence.'*



# T & Another v Secretary of State

**Article 8 is:**

***'essentially to protect the individual against arbitrary interference by public authorities'***

***'The public must not be vulnerable to interference by public officials acting on any personal whim, caprice, malice, predilection or purpose other than that for which the power was conferred'***

# Huber vs Germany

**For the State to act in a particular way there must be:**

***'a pressing social need'***

**The measure must be the *'least restrictive'* to achieve a legitimate aim**

# Data Protection

***'The compulsory intervention to impose contested well-being outcomes (that) will fall foul of data protection principles and the EU directive.'***

Allan Norman, Social Worker and solicitor

# Data Protection

*'Information sharing is permitted in two situations:*

*a) with consent; and*

*b) where it is necessary'*

*' . . . if a child is considered at risk of significant harm, consent should be sought unless the process of doing so would result in additional harm.'*

Allan Norman, Social Worker and solicitor

# Data Protection

***'I am able to affirm from my own knowledge of circumstances in Scotland that single legal identity strengthens rather than weakens understanding of data protection principles, while allowing effective data sharing where there is a statutory power to do so in compliance with data protection principles.'***

Sir John Elvidge, Government as a Single Legal Entity , Tynwald report

# Data Protection

***' . . . personal data must be processed lawfully. For a public body to process personal data lawfully it must be mandated to do so by statute, if it was to do otherwise then it would be acting “ultra vires.”***

Isle of Man Data Protection Supervisor

Government as a Single Legal Entity , Tynwald report

# The Haringey Judgment

**In the Haringey judgement two parents successfully took the local authority to judicial review after child abuse proceedings were illegally commenced against them. The court found that the *'initial data-gathering exercise was unlawful'*. The borough had raised statements, without the parents' consent, that were *'erroneous'*.**

# Legal Challenge to the Named Person

**The Scottish Government is being taken to judicial review over the statutory powers it created for the Named Person to share personal information on a child's wellbeing without the consent of the parents.**



# **A statute to share information**

**Minimum information necessary**

**Pressing social need**

**No arbitrary interference**

**Necessary under the Human Rights Act**

**If there is no statute . . .**

**Government must seek your consent for your personal information**

**You must be able to refuse without fear of consequences**

# What must happen

**Personal information can be very powerful in the wrong hands**

**It can be misused and abused**

**Tynwald must hold Government to account over its statutory powers to collect and share information**

# What must happen

**Personal information can be very powerful in the wrong hands**

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# Searching Questions

**Who do you think is best at looking after your child?**

**You or the Isle of Man Government?**

## **A final thought . . .**

**Do our children and young people need an 'outcomes' policy?**

**Why not 'aspirations & incentives'?**

# MiCard



MiCard

Why do they want a photo?

Who will control the information?

How long before it becomes an ID Card?