

## Response to the **SINGLE LEGAL ENTITY Consultation** by Tristram Llewellyn Jones

I have taken an interest in political issues in the Isle of Man since 2007 responding to a number of public consultations and submitting evidence to select committees. Recently, I have also taken an interest in Scottish politics focussing, in particular, on the '*Named Person*'<sup>1</sup> policy. Arising from this interest I have met with politicians, campaigners and legal advisers in Scotland who have insight into the workings of the Scottish policy machine.

It is my observation that the dissatisfaction in Manx politics stems from a democratic deficit. The root cause of this is that, due to the lack of party politics, the electorate are not in control of the policies that the Government puts forward.

The problem is that the Council of Ministers (COMIN) does not, itself, decide the overall direction of travel of the policies of the various departments. Rather, it reacts to a series of papers '*presented*' to COMIN for approval. The underlying policies often appear to have been worked up from officer level and invariably have their origins in policies already implemented by Whitehall.

A good example of this would be the '*Every Child Matters*' policy which was initially presented to the Manx Public in the Children Bill 2010 consultation. The policy was rejected by the public in the consultation and the Bill was subsequently cancelled by the Minister for Education and Children. However, the '*Every Child Matters*' policy was, nonetheless, implemented by the civil service.

The policy has led to the significant overloading of Children & Families Social Services due to needless referrals. The matter is under investigation by the Social Affairs Policy Review Committee and their recommendations for corrective action have been endorsed by Tynwald.

The underlying problem with the whole débâcle is that the policy was not created and owned by the politicians. Although the right democratic processes of public consultation and ministerial action were followed, the policy direction was, in reality, owned and controlled by the civil service.

The proposal for the '*Single Legal Entity*' will, in my view, exacerbate this problem as it will centralise even more policy making in the hands of the unelected civil servants.

The Isle of Man Government has, frankly, been credulous in giving attention to Sir John Elvidges proposals. He was engaged,<sup>2</sup> possibly at the whim of a single politician, for a sum of £25,000. It is not a high quality report. The basic proposal is that the Isle of Man copies the Scottish civil service by aping their system of performance management termed '*Scotland Performs*'.

What is not appreciated in the Isle of Man, but is understood by political observers in Scotland, is that the '*Scotland Performs*' programme is basically an American import termed '*Virginia Performs*' imported from the State of Virginia. Sir John Elvidge's report to Tynwald does state that '*3.2.4 The Scotland Performs framework introduced in 2007 was produced through a brief and intensive interaction between civil servants and senior Ministers.*' In effect, a major change in the way the Scottish Government now forms up its policy was introduced via the back door.

Sir John Elvidge, aside from his report, may be an articulate proponent of '*Scotland Performs*' but it

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<sup>1</sup> [N02NP – 'Say No to the Named Person' campaign.](http://no2np.org/)  
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<sup>2</sup> Oral Question No 3. Tynwald, 18 November 2014.  
<http://www.tynwald.org.im/business/hansard/20002020/t141118.pdf>

has to be recognised that this is not the result of his own original thinking. We are being sold 'Virginia Performs' just as it was sold to Scotland. Doubtless, behind the political strategy are consultants and reps from software companies waiting in the wings to win lucrative IT contracts which underpin all the performance management policies which ensue.

There appears to be another assumption that things have gone well in Scotland under the 'Scotland Performs' programme. In reality this is not the case. Scottish Police have been subject to sustained criticism <sup>3</sup> having been centralised under the 'Police Scotland' system. The 'Curriculum for Excellence' has lumbered the school system with a vast performance management system of data gathering that has swamped teachers with utterly needless bureaucracy. <sup>4</sup> Even worse than 'Every Child Matters' is the 'Named Person' policy where every child will be assigned a state appointed guardian, with wide powers to gather information on the child which is performance management in all but name. This has been widely criticised and is presently subject to Judicial Review in the Inner Court of Session.

In his report Sir John Elvidge argues that the Isle of Man *'is facing challenges of an increasingly complex nature against the backdrop of a rapidly changing external environment'*, that it needs *'strategic agility'* and that a *'Single Legal Entity could provide the framework to make the workings of Government more coordinated and flexible, with an emphasis on working across and breaking down internal boundaries.'*

In response to this I would argue that the Isle of Man Government's problems are twofold. First is the unwillingness of the elected politicians to sit down and formally decide what the policies of the Isle of Man Government should be. Second, is the inability to make common sense decisions when they are needed.

What the public most want from Government is well run public services. How effective these are is fundamentally a matter of having good quality professionals such as doctors and teachers and having enough of them. Handing the civil service, on a plate, a complex system of performance management is not going to solve, for example, problems at GP surgeries caused by insufficient doctors. Nor is it going to boost the performance of schools due to the difficulty of getting high quality teachers to relocate to the Island.

We hear a lot about breaking down the 'silo mentality' but where is the evidence that a single legal entity will make civil servants work more closely together when that is needed? Maggie Mellon, Non-Executive Director at NHS Health Scotland, gave evidence to the Social Affairs Policy Review

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<sup>3</sup> Police Scotland facing accountability crisis, Scotsman, 30 March 2014

POLICE Scotland was last night facing an accountability crisis as the country's single nationwide force celebrates its first anniversary. There are claims the force is not being subjected to proper democratic scrutiny and that councils are not doing enough to influence police strategy and budget. The General Secretary of the Scottish Police Federation, which represents 18,500 of the country's police officers, has admitted the single force lacks local accountability. Calum Steele has claimed local authorities are not doing enough to hold Police Scotland to account and there is widespread concern from councillors themselves, who believe the abolition of joint police boards has robbed them of a powerful mechanism to influence how the police operate.

<http://www.scotsman.com/news/politics/top-stories/police-scotland-facing-accountability-crisis-1-3358276>

<sup>4</sup> Academic refuses to back down over Curriculum for Excellence criticism, Scotsman, 13 April 2012

THE academic who co-wrote a critical report on the introduction of the country's new school curriculum has hit back after the Scottish Government dismissed his research.

... Published earlier this week by Stirling University's School of Education, the report said the implementation of Curriculum for Excellence (CfE) had been mixed, with some schools adopting a "tick-box" approach, and doing the minimum required of them.

<http://www.scotsman.com/news/education/academic-refuses-to-back-down-over-curriculum-for-excellence-criticism-1-2230551>

Committee on 25<sup>th</sup> June 2015. Regarding Sir John Elvidge's reforms she said that in Scotland 'government still works in silos despite many years of saying they are not going to do that any more' and there is still a 'major issue with central government, not joining things up'.

Who are we to believe regarding the efficacy of the 'Single Legal Entity'? The highly paid consultant brought to the Isle of Man to argue that it breaks down barriers within government or the professional on the board of NHS Scotland who says, from experience, that it does not?

An additional feature of the 'Single Legal Entity', with its performance management system, is the gathering of personal data. I noted the consultation states that '*the Scottish model where the national outcomes framework is 'elaborated' into 50 national performance indicators, which are tracked through data as close to real time as possible and published online*' and that the Data Protection Supervisor has said '*that if the Isle of Man Government were to become a single entity this would not in itself permit personal data to be processed where no statutory power to do so existed, nor would it affect how personal data would be shared. This is because the existing legal position provides for data sharing where it meets specific purposes, not whether it conforms with particular organisational structures.*'

The 'Scotland Performs' system is based on collecting a huge amount of personal data on individuals. This has become an intrusive and controlling system. For example, **Kayley Hutton**<sup>5</sup> was prevented from taking her new born baby home, apparently after false reports were raised by her child's Named Person. She had not consented to the reports nor had she the opportunity to correct the information in the reports. When she made a subject access request under the Data Protection Act she received a 120 page dossier of personal information on her. The information has been raised and shared without her consent and she was directly compromised as a result. In the absence of consent were the necessary statutes in place to enable the information gathering and sharing?

As regards Data Protection it is comforting to know that creating a 'Single Legal Entity' will not allow a single database of all our personal details or indeed a series of linked databases as in Scotland. However, it is a simple reality that in the Isle of Man the Data Protection Supervisor does not have powers of compulsory audit. There is very little to protect us from officers and others snooping on our personal data and acting against us as a consequence of that.

Included at Annexe A is the answer to written question 16 of the February 2014 Tynwald which reveals a wide number of non statutory information sharing agreements. I am not aware of any attempt to have these properly regulated by Tynwald. I would be very concerned, therefore, that a 'Scotland Performs' type system is introduced in the Isle of Man without the necessary statutory regulation or safeguards.

The Digital Strategy was launched in the June 2014 Tynwald. It is very much about linking all our personal data to what they call a '*primary "electronic ID"*'. All that Government then has to do is tack on some form of entitlement card and you have a fully

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<sup>5</sup> EXCLUSIVE: State snoopers tried to separate devoted mum from her baby, Scottish Express, 6 August 2013

Kayley Hutton's distressing ordeal is the first example of how the controversial plans to introduce a 'named person' with legal rights and responsibilities for every Scottish child could have disturbing consequences. The mother-of-two, who also has a six-year-old daughter Kaiya, believes she was unfairly targeted by the authorities because of bizarre comments made by officials ordered to snoop on her family. 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.

<http://www.express.co.uk/news/uk/420116/EXCLUSIVE-State-snoopers-tried-to-separate-devoted-mum-from-her-baby>

**fledged Identity Card system.** The Strategy states says that *'Enabling data sharing is key'* and speaks of *'challenging historic, complex regulations and legislation.'* By that, of course, they mean statutory regulation as well as paying lip service to the Data Protection Act which Government is notoriously sloppy at following.

The proposals for the *'Single Legal Entity'* coupled to the *'Digital Strategy'* do require extensive statutory regulation coupled with explicit consent from each and every one of us before any data is uplifted. These legal facts are not even mentioned.

In his report Sir John Elvidge argues that *'it would be expected that a greater number of policy decisions which currently sit within Departments would be agreed collectively by the Council of Ministers'*. Note that it is a case of COMIN 'agreeing' policy decisions created by the civil servants – not vice versa! In the consultation it states that *"Sir John suggests that a collective approach to political decision making under a Single Legal Entity would likely see a greater shift on the continuum towards collective decision making as the strategy setting would be focused on decisions that span the traditional boundaries that currently exist"* and raised the idea *'of an integrated civil service structure with a clear, single point of authority.'*

It is clear that, behind the opaque and abstract civil service language the *'Single Legal Entity'* would give the civil service much greater sway over the policy direction of the Isle of Man Government. Moreover, the policy creation would be in the hands of a very few senior civil servants.

None of this is going to improve the lot of the ordinary public who have intrusive and needless programmes like *'Every Child Matters'* foisted on them by unaccountable civil servants. None of this will help make the basic common sense decisions that will mean we have enough doctors to shorten waiting times and create longer consultations. None of this will do anything for the child whose education suffers as a result of being in a class of 30 children with the teacher being unable to help that child with a reading difficulty. These types of real problems, which the public would dearly like to see improved, will still be there with a *'Single Legal Entity'* and an *'outcomes'* policy because what is really missing is the necessary political control over the civil service.

The real reason the *'Single Legal Entity'* is being promoted locally is because senior civil servants in the Isle of Man sense an opportunity to grab more power from the politicians. The reason it is being promoted from Scotland is because of vested interests waiting in the wings to market, in the Isle of Man, lucrative performance management programmes created in America.

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