

Positive Action Group

P A G Submission to CoMin Consultation on the Tynwald Commissioner for Administration – A Draft Bill

1. Introduction

Positive Action Group (P A G) wholeheartedly agrees with the opening remarks of the Chief Minister in the Introduction (1.1) to the consultative document, in saying;

"There is a need for the Isle of Man Government to demonstrate publicly that it requires public bodies to be open to independent scrutiny of their administrative processes and decisions....."

P A G supports the introduction of an independent Tynwald Commissioner for Administration (TCA) but questions the logic of linking the proposed legislation with that of the Tynwald Auditor General Bill, believing that such a link ought to be made with the so far unfulfilled promise to introduce an Access to Information Bill as both relate to listed authorities interaction with the public.

2. Summary of P A G recommendations

- i) the post of TCA is a made full time appointment from the outset.
- ii) careful consideration is given to the perceived role of the TCA in dispute resolution
- iii) the TCA be given broad discretionary powers in accepting complaints that may be regarded as out of time
- iv) that once the Draft Bill is passed any complaint that has arisen in the previous 12 months be considered by the TCA

- v) any non-disclosure notice for evidence is fully justified
- vi) complaints involving the UK government be permitted
- vii) complaints about educational establishments be allowed
- viii) a definition of IOM residency be incorporated in the Bill
- ix) a time limit be imposed for the TCA to lay any report before Tynwald
- x) direct access for complainants to service of the TCA be allowed

2. P A G Comments about Summary of the Provisions

a) Appointment of TCA

The proposal to make this a part time post of 26 hours per month is inadequate and indicates a lack of commitment for the appointment. Compare this with the proposal for a Tynwald Auditor General which will be a full time post with a fully staffed office and a likely financial cost of £1 million p.a.

The promise to monitor the work load and productivity of a part-time TCA, with no staff support at a likely financial cost of £30,000 p.a., will not be responsive enough to any demand that may exceed those limits.

This will inevitably lead to frustration with the Office of the TCA and dissonance between Government and users of the service. Complaints need to be dealt with in a timely and effective manner and restricting the postholder to 26 hours per month will inevitably mean frustration for all concerned.

P A G believes that there is a precedent in coming to this conclusion.

At paragraph 4.2.7(e), in referring to the pressure of work on part-time Police Complaints Commissioner, the Tynwald Select Committee on the

Petition for the Redress of Grievance of Roy Redmayne in its Report stated;

"Quite plainly the 26 hours per month provided for this part time post are totally inadequate"

Similarly at Appendix 2 (The Impact Assessment Version, Number 1) of the consultative document refers to the "Nature of the Problem" and states that the figure for unresolved complaints *"could rise once the public and Officials know that the Commissioner is available to assist"*

P A G strongly recommends that the post of TCA is mad a full-time appointment.

b) Investigations

At 5.3.2 reference is made to the Commissioner mediating complaints. This implies that both parties to a complaint have willingly agreed to the involvement of the TCA.

At clause 7(5) of the Draft Bill the role is to resolve the complaint or request.

This will be an important distinction in the expectations of complainants for the outcome of the service.

P A G recommends that a clear statement about the perceived role of the TCA be made within the legislation

c) Complaints

(i) At 5.4.6 a time limit of 12 months is suggested for a complaint to be made and this is specified at Clause 13(1)(a) of the Draft Bill.

A complainant may be disadvantaged by that time-scale because any decision to complain to the TCA will be determined by the speed of response from the listed authorities to an original complaint.

P A G recommends that the TCA be given broad discretionary powers to accept complaints which may be considered out of time according to the Bill.

(ii) At 5.4.10 it implies that no complaint with a listed authority will be considered until after the date the TCA Bill is passed.
This imposes an unfair and arbitrary restriction on a complainant's access to the service

P A G recommends that any complaint made to a listed authority in the 12 months prior to the Passing of the Bill may subsequently be considered by the TCA

d) Evidence gathering

At 5.5.9 and Clause 22(7) the Chief Minister may issue a non-disclosure notice to the TCA.

P A G recommends that a full justification for such an action be given to all parties to the complaint

3. P A G Comments about the Draft Bill

a) Clause 11 excludes certain matters from investigation under the Act

i) included in those at 11(2)(a) are *"matters certified by the Chief Minister to affect relations or dealings between the Government and any other government or international organisation"*

Such a limitation may disadvantage Manx residents in a dispute with the U K government as that country's legislation contains a similar clause.

It effectively means that a 'black hole' may be created for a limited number of complainants who, as citizens of a Crown Dependency, regard themselves as British citizens.

P A G recommends that much tighter drafting of this sub clause be considered

ii) at 11(2)(h) the exclusion of complaints about instruction, conduct, curriculum or discipline at educational establishments disadvantages certain complainants. No justification is given for this.

P A G recommends the removal of this particular sub-clause

b) Clause 12(3) limits complainants to those resident in the Island. No definition of residency is provided

P A G recommends that a definition of residency is given to avoid any possible challenge to interpretation.

c) Clause 18(1) requires the TCA to lay a report of an investigation before Tynwald. No time constraint is specified

P A G recommends that a realistic time limit is imposed within the Draft Bill for such reports to be submitted to Tynwald.

d) As drafted the Bill does not require complaints to be made to the TCA via a member of the House of Keys. This is wholly appropriate for a small jurisdiction where most MHKs are Departmental members.

P A G strongly supports direct access by complainants to the TCA service.

Conclusion

Positive Action Group welcomes this important piece of legislation and waits with anticipation to the consultation document for an Access to Information Bill

**Positive Action Group
23rd October 2009**