

Memorandum by Tristram C. Llewellyn Jones, Positive Action Group member, Isle of Man.

Introduction

1. The Positive Action Group (PAG) is a political lobby group in the Isle of Man which encourages people to have an interest and involvement in Isle of Man politics. The group is active, as our website's (1) 'previous events' page shows. Our Charter lists specific areas we lobby our government over including an Ombudsman, Freedom of Information and Conflicts of Interest.

2. I am a member of this group and I lobby the Isle of Man Government against the introduction of the e-Borders scheme and proposed reform of the Common Travel Area (CTA). I individually responded to the 'Strengthening the Common Travel Area - Consultation Paper' (3) and with my Member of the House of Keys (MHK) and the Isle of Man Chief Secretary's Office (CSO) about the local impact of these schemes. I have submitted Freedom of Information (FOI) Requests to the UK Border Agency and the Ministry of Justice. I raise awareness of these issues in the local press and give interviews on local Manx Radio. Recently I was invited to submit written evidence to the Tynwald Standing Committee on Constitutional Matters and will give oral evidence to the Committee on 2 November 2009.

Executive Summary

3. I am a member of this group and I lobby the Isle of Man Government against the introduction of the e-Borders scheme and proposed reform of the Common Travel Area (CTA). I individually responded to the 'Strengthening the Common Travel Area - Consultation Paper' (3) and with my Member of the House of Keys (MHK) and the Isle of Man Chief Secretary's Office (CSO) about the local impact of these schemes. I have submitted Freedom of Information (FOI) Requests to the UK Border Agency and the Ministry of Justice. I raise awareness of these issues in the local press and give interviews on local Manx Radio. Recently I was invited to submit written evidence to the Tynwald Standing Committee on Constitutional Matters and will give oral evidence to the Committee on 2 November 2009.

4. The issues I raise arise as a consequence of the Isle of Man's external relationship with the United Kingdom. These issues highlight aspects of the relationship that, arising from my lobbying, do concern me. Some aspects of the Ministry of Justice's policy and practice, relating to your Inquiries focus, relate to issues of Good Governance. This memorandum follows the principle that the Ministry of Justice wishes to set the example in establishing open and accountable relationships between the UK and the Crown Dependencies. Specific areas of concern arising from my lobbying are a potential conflict of interest arising from the establishment of the Chief Secretary's Office, Freedom of Information requests concerning relations between officials of the UK Government and their Isle of Man Government counterparts, record keeping by UK Government Departments, and the role of the Parliamentary and Health Service Ombudsman in handling local residents complaints.

The Chief Secretary's Office

5. The Crown's relationship with the Isle of Man is described in a 'Background briefing on the Crown Dependencies' (4) where it is stated that 'The Crown is ultimately responsible for the good government of each Island' and reference is made to the Kilbrandon Report which stated 'that there were areas of uncertainty in the existing relationship and that the relationship was complex.' As a member of the public I confirm the relationship seems opaque. It is unclear who makes the decision as to whether a specific piece of UK legislation is appropriate for the Isle of Man. The Isle of Man Chief Secretary's Office website (5) states that 'The Office supports the good government of the Isle of Man by providing professional advice and services to the

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political leaders of the Government, the Chief Minister and Council of Ministers, and to the Lieutenant Governor.' This statement is particularly interesting because it confirms that the Chief Secretary's Office is positioned between two jurisdictions that are politically different but constitutionally united.

6. Chief Officer Group meetings are chaired by the Chief Secretary and the minutes are published on that office's website (5). As of 30 September the latest available minutes are for May 2009. The minutes of the Summary of Proceedings of the Council of Ministers are published on the Isle of Man Government website (6) and as of 30 September the latest available minutes are for June 2009. These minutes often state that 'Council considered a paper submitted by the Chief Secretary' - a standard phrase used to describe matters arising in Westminster for consideration by the Isle of Man authorities.

7. My concern about the Chief Secretary's role relates to the political independence and autonomy of the post. The minutes of Council of Ministers meetings indicate that the Chief Secretary's Office processes matters arising in Westminster as a result of UK political action. The minutes seem to indicate that the Chief Secretary acts as the conduit for matters arising in Westminster which the UK Government wishes to see progressed locally. A grey area potentially exists where the Chief Secretary exercises political discretion as to whether a matter arising in Westminster is appropriate for the Isle of Man.

8. For example, in April 2009 the UK Home Office launched a public consultation 'Protecting the Public in a changing Communications Environment' (7). This UK project proposes that Communications Services Providers (CSPs) collect personal communications data for further processing and analysis. Human rights, privacy and data protection issues arise from the proposal which, although primarily related to possible legislation in the UK, potentially will affect local residents. For example, the Isle of Man fixed telephone network exists as part of the main UK network. Therefore, UK collection of data on that network means that local residents' communications may be monitored by the UK authorities even though primary legislation to allow this may not exist locally.

9. Being concerned about these UK Home Office proposals I wrote, on 15 May 2009, to the Chief Secretary's Office asking if the Public Consultation would be progressed in the Isle of Man. On 8 June the Chief Secretary's Office wrote to me indicating they had not previously been aware of this issue and that they would consider the implications for the Isle of Man. The Public Consultation was not extended to the Isle of Man and, as such, local communications providers were denied the opportunity to comment on potential legislative matters which may directly affect local residents.

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10. The question arising from this situation is who made the political decision not to extend the Public Consultation to the Isle of Man, and where was the democratic scrutiny of that decision? Reference is not made to this issue in either the Chief Officer's or Council of Minister's Minutes to date. No public record exists to suggest that the Chief Secretary's Office did other than make a political decision about whether local residents should be consulted about an issue, arising in the UK, that may directly affect them.

11. I also question how, with a combined post of Chief Secretary and Secretary to the Lieutenant Governor, the post holder can avoid bias towards UK Government policy. The January 2008 Summary of the Proceedings in the Council of Ministers (8) states that:

'Council considered a paper submitted by the Chief Secretary updating Council on the current position in relation to both e-Borders and the Common Travel Area (which are inter-related) and seeking Council's further agreement on how to proceed'.

I have two main concerns about these programmes. Firstly that the Chief Secretary's Office is not taking into account the data protection concerns about e-Borders expressed by the UK Information Commissioner (9) and secondly that the Chief Secretary's Office seemed unaware of the constitutional implications, subsequently raised by the House of Lords Select committee on the Constitution, (10) of the possible requirement for passengers to carry passports between the Isle of Man and the UK.

12. *In April 2008 I started corresponding with the Chief Secretary's Office, via my MHK, to raise these concerns. I became aware of a pattern in the responses from them. All the replies were informative but failed to take account of any balanced local arguments that need to be represented in a democratic society. What seemed to be continually stated were the prevailing views of the UK Border Agency. The balanced argument, typically found in a Westminster committee, was not evident. This position only changed when Lord Goodlad, Chairman of the Constitution Committee, wrote (10) to the Isle of Man Chief Minister asking for his views on Clause 46 of the Borders, Immigration and Citizenship Bill. The Chief Minister's response dated 2 March 2009, some 13 months after the Chief Secretary's paper, is the first indication of political oversight of issues which clearly had the potential to affect local residents. Had the Chief Secretary's Office been tasked with fully reflecting local residents' concerns then this position might have been arrived at some time earlier.*

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13. I am concerned that a conflict of interest arises from the Chief Secretary's dual role and that this may adversely affect local residents if there is inappropriate political interference from the UK Government. In order that the Chief Secretary can fully represent the political interests of the Isle of Man Government it might be more appropriate if the Lieutenant Governor's Secretary was a UK appointment only and not combined with a local Isle of Man Chief Secretary's position.

Freedom of Information and Record Keeping

14. Arising from my concern about the implications of the e-Borders programme on local residents I submitted a Freedom of Information request to the Ministry of Justice asking for information relating to a meeting held on 5 December 2007 between the Isle of Man Chief Minister and Michael Wills MP. The request was poorly handled. I received several holding replies and a final refusal (11) under Section 27 (1) (International Relations) of the Freedom of Information Act 2000. The Isle of Man is not a sovereign State but belongs to the Crown and shares common constitutional relations. How then, can we have an international relationship with the UK? The letter stated that:

'Disclosure would be likely to undermine the relationships the UK Government' has with the Crown Dependencies' and 'disclosure would be likely to result in officials being less willing to provide free and frank advice to Ministers'

British Citizens resident in the Isle of Man are effectively prevented from scrutinising what now presents as a key component of our Government – the relationship between the Chief Secretary's Office and the Ministry of Justice.

15. The paucity of information regarding relations between UK Government Departments and the Isle of Man is also concerning. On 4 March 2008 Michael Wills MP made the following statement in a written answer (12):

'There are regular meetings between officials in the Ministry of Justice and their counterparts in the Isle of Man and it would not be possible to list each one. Some of these meetings have taken place in the Isle of Man, some in the Ministry of Justice and some in other Government Departments. In general no formal or permanent record of

these meetings is kept and most often action points are agreed between the respective officials.'

Michael Wills MP then goes on to describe a range of meetings at which many issues affecting the Isle of Man were discussed. All of these would be of interest to both local residents and locally elected politicians. However, such information is seemingly only accessible to the Ministry of Justice, the Chief Secretary's Office and the Isle of Man Council of Ministers.

16. An issue of poor record keeping was also noted by the Treasury Committee (13) reporting on the failure of the Icelandic banks. They commented:

'We note with concern the suggestion that the paucity of information provided by the Financial Services Authority may have impeded the ability of the regulators in the Crown dependencies to safeguard their own financial systems. This is a particular concern given the close working relationship that appears to have existed between the Financial Services Authority and the Financial Services Commission of the Isle of Man in relation to previous situations such as that surrounding the failure of Bradford & Bingley just days earlier. We recommend that the Financial Services Authority review its existing powers and strategy for dealing with other jurisdictions, and reports on its efforts in this respect.'

Keeping records of meetings is basic good practice. The Ministry of Justice surely has a role to play in setting best practice across Whitehall so that meetings between UK Government Departments and their Isle of Man Counterparts are properly documented.

17. The Ministry of Justice oversees the good governance of the Isle of Man. Modern, open, transparent and accountable government surely requires that local residents and their elected politicians are fully informed about legislative matters that may affect them. The Isle of Man currently has a non statutory Code of Access to Government Information (14) but necessarily this excludes matters arising in the UK. The only potential channel for such information is the UK Freedom of Information Act which, of course, specifically excludes this type of information too. As an issue of good governance there is a need for the Ministry of Justice to address this situation. The Isle of Man is constitutionally united with the UK but politically different. This means that UK legislation may be inappropriate for our smaller jurisdiction. Proposed UK legislation

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needs proper local scrutiny with the opportunity for local debate. The lack of access to information about relations between UK Government departments and the Isle of Man counterparts is concerning.

The role of the Ombudsman

18. Local residents do not yet have recourse to a parliamentary ombudsman. On 6 August the Council of Ministers launched a public consultation (15) on a proposed Tynwald Commissioner for Administration who would be the local ombudsman. The following exclusions are proposed:

(a) matters certified by the Chief Minister to affect relations or dealings between the Government and any other government or international organisation;

and

(b) action taken in any country or territory outside the Island by or on behalf of a listed authority.

19. I contacted the UK Parliamentary and Health Service Ombudsman to establish if they can process a complaint from an Isle of Man resident who is directly affected by the conduct of a UK Government Department. In an email dated 29 September they confirmed:

'in order for the Parliamentary Ombudsman to consider a complaint about a UK Government department, it would need to be referred to us by a Member of Parliament (MP).'

Westminster M.P.s do not represent local residents so any decision by an M.P. to process a local resident's complaint would be at that politician's discretion. This

situation is highly unsatisfactory as a number of contentious UK policy initiatives may affect local residents. These include the e-Borders programme, Reform of the Common Travel Area (3), cancellation by the UK of the Reciprocal Health Agreement (16) between the two jurisdictions and the proposed Interception Modernisation Programme (7). British Citizens who are adversely affected by actions taken by UK Government departments should surely have equal right of access to the services of the UK Parliamentary Ombudsman wherever they reside.

Conclusions

20. I conclude that the management of the UK's relationship with the Crown Dependencies by the Ministry of Justice creates a democratic deficit as regards open, transparent and accountable Government. British Citizens resident in the Isle of Man, and local politicians outside the Isle of Man Council of Ministers, are denied the opportunity to properly scrutinise legislative matters arising in the UK because:

a) No formal or permanent records of meetings between the officials of the Ministry of Justice and the officials of the Isle of Man Government are kept.

b) The Freedom of Information Act Section 27 (1) (a) excludes information relating to relations between the United Kingdom and any other State even though the Isle of Man is not a Sovereign State but a jurisdiction of the British Crown.

c) British Citizens resident in the Isle of Man have no recourse to the UK Parliamentary Ombudsman regarding complaints about UK Government Departments.

d) The Isle of Man's Chief Secretary's Office is potentially politically autonomous as the post is also that of Secretary to the Lieutenant Governor who represents a different jurisdiction.

Recommendations

21. I ask the Justice Committee to consider the following changes to the Ministry of Justice's management of its relationship with the Crown Dependencies:

a) Instructing officials of the Ministry of Justice to make formal, permanent minuted records of meetings with the Crown Dependencies Governments and their officials.

b) Establishing best practice for record keeping for all Government departments that deal with the Crown Dependencies.

c) Amending the Freedom of Information Act to allow access to minutes, briefings and any other records of meetings arising from the relationship between UK Government departments and the Crown Dependencies.

d) Amending the Parliamentary Commissioner Act 1967 so that British Citizens in the Crown Dependencies can use the UK Parliamentary Ombudsman to resolve a complaint against a UK government Department.

e) Review the role of the Secretary to the Lieutenant Governor to establish whether a conflict of interest arises from the holder of that office also being the Isle of Man Chief Secretary.

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