

GD 2016/0041



Isle of Man Government

Reiltys Ellan Vannin

Council of Ministers

**Response to the Environment and Infrastructure Policy Review
Committee Second Report 2015-16 – Statutory Procedure for
Complaints against Local Authorities**

To be laid before July 2016 Tynwald

7 June 2016

To the Hon Clare Christian MLC, President of Tynwald, and the Hon Council and Keys in Tynwald assembled

Foreword by the Minister of Infrastructure

The Council of Ministers welcomes the Report of the Environment and Infrastructure Policy Review Committee on a Statutory Procedure for Complaints against Local Authorities. The Council of Ministers and the Department of Infrastructure have considered the Report of the Committee in detail and are grateful to the Committee for the comprehensive Report and recommendations made.

The response to the Report has been provided by my Department, though some of the recommendations are only for the Council of Ministers. The Department has reviewed the findings of the Policy Review Committee, and is in broad agreement with the five recommendations contained within the Report.

The first recommendation is that Tynwald requires the Council of Ministers bring forward an amendment to the Tynwald Commissioner for Administration Act 2011 by 31st December 2016 to make a provision for a right of appeal against a decision not to investigate.

The second recommendation is that Tynwald calls on the Council of Ministers to undertake whatever work is necessary to ensure that a Tynwald Commissioner for Administration is appointed before 31st December 2016.

The third recommendation is that the Council of Ministers must ensure that the Decision Status is correctly reported in the annual Tynwald Policy Decisions Report and that items are not removed before they are actually completed.

The fourth recommendation is that recommendations not completed within 12 months of their approval by Tynwald must be updated to provide an expected completion date and the reason for delay explained.

The fifth recommendation is that any recommendation of the Tynwald Commissioner for Administration, approved by Tynwald, must be actioned within 12 months, or sooner if specified, and that they will not be marked as completed until the Commissioner is satisfied.

The Council of Ministers notes the Committee's recommendations and conclusions.

A handwritten signature in blue ink, appearing to be 'P A Gawne', with a long horizontal stroke extending to the right.

**Hon P A Gawne MHK
Minister**

Part 1: General Response to the Report of the Environment and Infrastructure Policy Review Committee – Statutory Procedure for Complaints against Local Authorities

This investigation was undertaken by the Committee in response to a letter of referral from Mr David Quirk MHK on behalf of his constituent Mr J R Hamilton. The request focused around an investigation into the provisions of the Local Government Act 1985 for the Department of Infrastructure to investigate a complaint about a Local Authority, particularly an apparent lacuna with respect to effective remedy in the event a complaint is upheld. Mr Hamilton asked specifically that consideration be given to:

An Independent Tribunal/Authority to be established with mandatory powers to investigate, report and make recommendations in relation to complaints against Local Authority Members or its Officers, on matters of wrongdoing, maladministration, misconduct or any other of their actions or comments in the process of undertaking any of their duties or functions but not limited only to failure to act, but also to the manner in which they have acted in any discussions, processes or associated matters.

The Committee also considered legal opinion received from Mr Hamilton and provided by Simon Goldberg, of Trinity Chambers, Newcastle upon Tyne which supported the assertion that there was a lacuna in Section 4 of the 1985 Act.

The Department of Infrastructure and the Chief Secretary, Mr Will Greenhow, were asked by the Committee how they perceived the apparent lacuna and what solutions they would propose. This report sets out those responses.

The key conclusion of the Committee was that the investigation of complaints about any function or actions of a local authority, member or officer should be undertaken by an independent third party; the Committee also concludes that a Tynwald Commissioner would be the most relevant body to be that third party.

Five recommendations have been proposed by the Committee; the Department's response to those Recommendations is below.

Departmental Response to the Recommendations of the Report:

Recommendation 1:

That Tynwald requires the Council of Ministers to bring forward an amendment to the Act by 31st December 2016 to make provision for a right of appeal against a decision not to investigate.

Commentary/Response: The Department would support this recommendation. The proposal would strengthen the powers available to members of the public.

Recommendation 2:

That Tynwald calls on the Council of Ministers to undertake whatever work is necessary to ensure that a Tynwald Commissioner for Administration is appointed before 31st December 2016.

Commentary/Response: The Cabinet Office, in conjunction with the Clerk of Tynwald's Office, is to progress the appointment of a Tynwald Commissioner through the use of existing Tynwald Standing Orders, to be selected from the membership of the Legislative Council, subject to the will of Tynwald. This appointment will be made by December 2016 and will initially be for a trial period of twelve months to provide the opportunity to assess the efficacy of this approach.

The Department of Infrastructure has made its views known in the course of this investigation, and remained of the view that Inquiries under Section 4 of the Local Government Act 1985 would "be best conducted by a wholly independent body or person". The Department therefore supports this recommendation but has no comment on the timeframe required to implement this.

Recommendation 3:

That the Council of Ministers must ensure that the Decision Status is correctly reported in the annual Tynwald Policy Decisions Report and that items are not removed before they are actually completed.

Commentary/Response: The Cabinet Office asks the Departments listed under 'lead Department' on the report to complete what action has been taken and the decision status for all allocated Tynwald policy decisions towards the end of the parliamentary year. The description of what action has been taken must be in agreement with the decision status. In order to assist Departments, the Cabinet Office issues guidance notes at this time.

The Department of Infrastructure understands that this recommendation is for the Council of Ministers to instigate, but recognises that the Department will have a role in making sure of the accuracy of the items on the Tynwald Policy Decision Report.

Recommendation 4:

That recommendations not completed within 12 months of their approval by Tynwald must be updated to provide an expected completion date and the reason for delay explained.

Commentary/Response: Under the present system, the Cabinet Office asks Departments to complete what action has been taken against a Tynwald policy decision on an annual basis. Should this recommendation be agreed by Tynwald, the Cabinet Office could in future include a requirement for the lead Department to also give an 'expected completion date' in the response, together with the reason for any delay.

The Department of Infrastructure understands that this recommendation is also for the Council of Ministers to instigate, but determines that it would assist with this in future by following any guidelines put in place to ensure this.

Recommendation 5:

That any recommendation of the Tynwald Commissioner for Administration, approved by Tynwald, must be actioned within 12 months, or sooner if specified, and that they will not be marked as completed until the Commissioner is satisfied.

Commentary/Response: The Department understands and supports the intention of this Recommendation but notes that major changes, such as those involving the creation of new primary legislation, may require timescales in excess of 12 months.

Summary

The Department has reviewed the Report of the Environment and Infrastructure Policy Review Committee – Statutory Procedure for Complaints against Local Authorities which reported in May 2016 and accepts all 5 Recommendations.