

**MANAGEMENT AND MEMBERS' STANDARDS  
COMMITTEE**

**FIRST REPORT FOR THE SESSION 2007-08**

## **MANAGEMENT AND MEMBERS' STANDARDS COMMITTEE**

**Hon D M Anderson MHK Acting Chairman (Glenfaba)**

**Hon A V Craine MHK (Ramsey)**

**Mr T M Crookall MHK (Peel)**

The remit of the Committee is stated in Standing Order 6.5

6.5. The Management and Members' Standards Committee shall -

- (1) consider and report on any matter which concerns the business, precincts or facilities of the House which is not within the remit of any other Committee of the House or the Speaker alone;
- (2) represent the House in all matters brought before any chambers of the Legislature other than legislation, and to report thereon from time to time to the House;
- (3) consider and report upon any matter that may from time to time be referred to the Committee by the House, or by a Member, which relates to the conduct of a Member;
- (4) consider and report on such standards and such privileges of the House and of Members as have been, or in the future should be, recognised as necessary and desirable for the proper and effective discharge of the duties of the House and its Members.

*Copies of this Report may be obtained from the Tynwald Library, Legislative Buildings, Finch Road, Douglas IM1 3PW (Tel 01624 685520, Fax 01624 685522) or may be consulted at [www.tynwald.org.im](http://www.tynwald.org.im)*

*All correspondence with regard to this Report should be addressed to the Secretary of the House of Keys, Legislative Buildings, Finch Road, Douglas IM1 3PW.*



## MANAGEMENT AND MEMBERS' STANDARDS COMMITTEE

### FIRST REPORT FOR THE SESSION 2007-08

#### Mr Speaker and Manx National Heritage

#### PART 1 -

#### BACKGROUND

- 1.1 This Report relates to events concerning Mr Speaker that took place at a meeting of the Manx National Heritage (MNH) Trustees on 10<sup>th</sup> May 2007. Mr Speaker is a Trustee by virtue of holding the office of Speaker of the House of Keys.
- 1.2 A Laxey resident, Mr Skillicorn, wished to purchase a small amount of land (10 x 19 feet) from MNH to erect a garage extension at Cronk-e-Chule, Laxey. This matter had been discussed at an earlier meeting in April 2007, at which Mr Speaker was not present. At that meeting the Lord Bishop had suggested the land could be leased to Mr Skillicorn, rather than sold to him.
- 1.3 Mr Speaker indicated in a letter to the Director of MNH (dated 23<sup>rd</sup> April 2007 and found in Appendix One) that he agreed with the suggestion of the Lord Bishop.
- 1.4 The matter was further discussed at a meeting of the Trustees on 10<sup>th</sup> May 2007. The Chairman of the Trustees ruled that Mr Speaker should withdraw from the discussion claiming that he had a conflict of interest being both a

Trustee and the constituency Member for Garff, which includes Laxey. This Mr Speaker most reluctantly agreed to do, in order to permit the matter to be decided.

- 1.5 On 26<sup>th</sup> June 2007 a motion was on the Order Paper of the House of Keys to refer this whole matter to the Keys Management and Members' Standards Committee to investigate whether the action of the Chairman of MNH affected the privileges and duties of a Member of the House of Keys.

- 1.6 The motion is reproduced below:

*In the Keys*

*26<sup>th</sup> June 2007*

*"The Honourable Member for Rushen (Mr Gawne) to move -*

*That the action of the Chairman of Manx National Heritage (on whose board of trustees Mr Speaker is required to serve ex officio) in demanding that the Speaker should leave a meeting of the board at which matters affecting his constituency were discussed, be referred to the Management and Members' Standards Committee to consider whether that action affects the privileges and duties of Members and of the House, and to report."*

- 1.7 The motion was not reached at this, the last sitting of the House before the Recess, and Mr Speaker accordingly referred it himself to your Committee. Mr Speaker being Chairman of the Keys Management and Members' Standards Committee withdrew from the Committee whilst it was examining this matter. The Secretary of the House of Keys (who normally acts as Clerk to the Committee) also withdrew as he had offered the Speaker advice concerning this matter prior to it being referred to the Committee. The

clerking of the Committee was allocated to another Clerk who had had no prior involvement in the matter.

- 1.8 Your Committee invited both Mr Speaker Rodan and Mr Martin Moore (Chairman of Manx National Heritage) to submit written evidence for its consideration. The documentation submitted by Mr Speaker Rodan will be found in Appendix One. Mr Moore declined to provide those papers which contained legal advice received from the Attorney General's Chambers and produced only one piece of evidence to your Committee (a letter dated 22<sup>nd</sup> May 2007) from himself to Mr Speaker Rodan, which was already in your Committee's possession.

**(All correspondence with Mr Martin Moore (or his legal advisor) will be found in Appendix 4 of this Report)**

- 1.9 Given the extensive and comprehensive nature of the written evidence received, your Committee determined it was unnecessary in this case to take oral evidence.

## **PART 2 -**

### **CHRONOLOGY**

- 2.1 For the ease of understanding the issue and following its development a chronology is given below which focuses on the main events. Consequently, not all the correspondence to be found in the appendices will be referred to in the chronology.

- 2.2 **Each of the letters or e-mails referred to in this chronology is to be found in Appendix One of this Report in date order.**

**2.3** The Government has issued guidelines concerning matters of conflict of interest/bias. These are principally the 'Corporate Governance Principles and Code of Conduct - October 2005', the 'Document Approved by the Council of Ministers for Inclusion Within the Government Code - September 2006', and a letter from the Chief Secretary dated 16<sup>th</sup> February 2007 concerning perceived Bias in Administrative Decision Making attached to which were Staff Guidance Notes. It should be noted that only the 2005 Code has been approved by Tynwald; none of the other documents have been laid before, or approved by Tynwald. Reference to these three documents will be made in the chronology.

**(Copies of these three documents will be found in Appendix Two of this Report)**

**2.4 Chronology:**

**23<sup>rd</sup> April 2007 -**

Mr Speaker wrote to Mr Harrison, the Director of MNH, proposing that the suggestion of the Bishop at the Trustees meeting in April 2007 to lease the land to Mr Skillicorn should be agreed by the Trustees at their next meeting as a sensible way forward.

**27<sup>th</sup> April 2007 -**

Mr Speaker's letter was acknowledged by Mr Harrison without comment, other than stating the letter would be passed to the Chair of MNH.

**10<sup>th</sup> May 2007 -**

MNH Trustees met to discuss this matter. The Chairman ruled that Mr Speaker should withdraw when this matter was discussed since the

Chairman felt he had a conflict of interest. Mr Speaker reluctantly did so, but under strong protest.

The perceived conflict centred around the fact that Mr Speaker was a member of the MNH Trustees and Mr Skillicorn was a constituent of Mr Speaker, the implication being that Mr Speaker supported Mr Skillicorn in order to secure his vote in 2011.

The position of the Speaker, in the view of the Chairman of MNH, contravened the MNH Code for Conduct and Corporate Governance which included part 6 of the 'Document Approved by the Council of Ministers for Inclusion Within the Government Code - September 2006' that relates to Members of Statutory Boards and other Statutory Bodies.

**(This Code will be found in Appendix Two of this Report)**

In an earlier draft of this Report your Committee referred to the Chairman "asking" Mr Speaker to withdraw which we were satisfied was, on the part of the Chairman, a categorical demand. Concern was expressed in the legal opinion, which we cite below (see page 18) that this point was not clear and should be put beyond doubt. Examination of the correspondence indeed makes it plain that the Chairman's actions were far more than a polite request, but a ruling, as he himself states on several occasions in his letter to Mr Speaker dated 22<sup>nd</sup> May 2007, and we so find.

**(A copy of this letter will be found in Appendix One of this Report)**

**On 14<sup>th</sup> May 2007 -**

Mr Speaker wrote to the Chairman of MNH to express his shock at this allegation. Mr Speaker argued that he had proposed a practical solution to the difficulty as a Trustee and that he was not an advocate for Mr Skillicorn's

proposal. Mr Speaker further argued that he had not contravened paragraph 6.31 of the September 2006 document since Mr Skillicorn was not a member of his family, did not live in the same house or share any business interests with the Speaker.

**22<sup>nd</sup> May 2007 -**

The Chairman of MNH replied to Mr Speaker's letter of 14<sup>th</sup> May 2007 arguing that as Chairman of MNH it was his responsibility to ensure the Code of Conduct was correctly applied and that his ruling that there was a conflict was designed to protect both the position of Mr Speaker and that of MNH.

The letter informed Mr Speaker that advice had been sought from the Attorney General's Chambers and that with the benefit of that advice the Chairman had acted properly.

**23<sup>rd</sup> May 2007 -**

The Chairman of MNH circulated a letter to all MNH Trustees outlining his views concerning the duties and responsibilities of political and non-political Trustees of MNH with regard to conflict of interest. In this letter he sought to justify the legitimacy of his ruling that Mr Speaker must withdraw and argued that this action was designed to ensure the MNH Code for Conduct and Corporate Governance was strictly upheld.

Mr Speaker wrote to the Chairman of MNH acknowledging receipt of his letter of 22<sup>nd</sup> May and requesting a copy of a letter sent by the Chief Secretary to the Chairman of MNH said to have been received on 17<sup>th</sup> May 2007.

**24<sup>th</sup> May 2007 -**

Mr Speaker wrote to the Attorney General, enclosing the correspondence referred to above, seeking assistance in resolving this matter and requesting a meeting to discuss the matter. A meeting took place in the week beginning 4<sup>th</sup> June 2007, between the Attorney General and the Secretary of the House, at which the Attorney General indicated that he could not become involved in the allegation of libel, (which Mr Speaker had by then made).

**25<sup>th</sup> May 2007 -**

Mr Speaker wrote again to the Chairman of MNH pointing out several errors in the Chairman's letter to all Trustees, and indicating that his comments amounted to a serious defamation of Mr Speaker, alleging that he had given support to a constituent's request to purchase an area of land for private development, at odds with his duty as a Trustee. Mr Speaker required the Chairman to correct the factual errors in his letter to the Trustees and to withdraw any assertion or implication that Mr Speaker had tried to abuse his position as a Trustee of MNH by promoting the interests of a constituent for political gain.

**31<sup>st</sup> May 2007 -**

The Chairman of MNH replied to the Speaker's letter of 25<sup>th</sup> May 2007 denying he had accused Mr Speaker of abusing his position and indicating that he intended to take further advice from the Attorney General before making any further comment.

**7<sup>th</sup> June 2007 -**

The Secretary of the House wrote to the Attorney General, following the meeting referred to above (see 24<sup>th</sup> May 2007), with a suggested analysis of

the relevant passages in the 'Code of Conduct' which are designed to avoid conflicts of interest.

The Secretary argued that it was for the individual Member, and not the Chairman, to decide whether participation in a discussion of a matter could raise the issue of bias, and that such consideration rested upon paragraph 6.31 which he believed did not apply in this case, with the consequence that there was no requirement for the Speaker to withdraw from discussion of the matter.

The Attorney General wrote to the Chief Secretary in response to an e-mail from the Chief Secretary dated 29<sup>th</sup> May 2007, indicating that he did not feel able to comment on this specific case since one of his staff had already been advising the Chairman of MNH; because Mr Speaker had intimated that he might take proceedings for defamation against the Chairman, that aspect of the matter had become one of private rather than public law, and therefore outside the scope of the Attorney General's Chambers.

**12<sup>th</sup> June 2007 -**

The Chairman of MNH wrote to Mr Speaker having taken further advice and concluded that his ruling that Mr Speaker must withdraw was entirely appropriate and in accordance with the 'Code of Conduct'.

**14<sup>th</sup> June 2007 -**

Mr Speaker wrote to the Chairman of MNH seeking clarification as to whether the Chairman was or was not withdrawing the allegations of bias made in his letter of 23<sup>rd</sup> May to the MNH Trustees.

**19<sup>th</sup>-21<sup>st</sup> June 2007 Tynwald Court -**

Mr Speaker asked the Chief Minister a question (Question 17) concerning the 'Corporate Governance Principles and Code of Conduct' and the appendage to it 'Document Approved by the Council of Ministers for Inclusion within the Government Code - September 2006'. (The appendage had not been approved by, or laid before, Tynwald).

The Chief Minister confirmed that this appendage did apply to Members of Tynwald when acting as members of a Department or Board; that it was binding on all Members in the sense that it was the standard of conduct expected by the Council of Ministers; that it did not automatically debar Members from participating in discussions concerning a matter that related to their constituency; and that the application of the Document would require the individual Member to exercise a degree of self-policing. The Chief Minister added that the Minister or Chairman would have the general duty to ensure good governance, and if the Minister or Chairman felt there was a potential conflict and the Member did not, the matter should be deferred until there had been a resolution of the disagreement.

**(The Question and a copy of its answer will be found in Appendix One of this Report immediately following the letter dated 14<sup>th</sup> June 2007)**

**21<sup>st</sup> June 2007 -**

The Chairman of MNH wrote to Mr Speaker responding to his letter of 14<sup>th</sup> June 2007 and entirely denying the accusation of defamation. He indicated he would make no further comment pending legal advice.

**25<sup>th</sup> June 2007 -**

The Director of MNH e-mailed the Attorney General regarding a motion on the House of Keys Order Paper for 26<sup>th</sup> June 2007, which sought to refer the actions of the Chairman of MNH in excluding Mr Speaker from the discussions, to the Keys Management and Members' Standards Committee to consider whether that action affected the privileges and duties of a Member. The Director of MNH wished to know whether the Attorney General felt such a motion might be prejudicial to any Court action that might be pursued by Mr Speaker, particularly in the light of the fact that Mr Speaker was Chairman of that Keys Committee.

**26<sup>th</sup> June 2007 -**

The Attorney General replied to the e-mail from the Director of MNH indicating that he was not aware that any legal action had commenced, that his Chambers could not be involved in such legal action since it would be a matter of private law, and that the motion before the Keys would not prejudice any such action. The Attorney also indicated that if Mr Speaker considered it inappropriate for him to Chair the Keys Committee investigating this matter he would act accordingly.

The motion on the Keys Order Paper was not reached and Mr Speaker, therefore, referred the matter to your Committee himself.

**9<sup>th</sup> July 2007 -**

Your Committee commenced its investigations.

## **PART 3 -**

### **EXAMINATION**

**3.1** The motion, which was referred to your Committee in the manner indicated above, requires consideration of whether the Chairman of MNH acted in a way that affected the privileges and duties of a Member of the House of Keys. In practice this requires an examination of whether his action was appropriate and consistent with the constitutional position of a Member of the House, and whether he acted correctly in applying the various guidelines he cited as justification for his ruling that Mr Speaker should leave the meeting. Each of these issues will be examined in turn:

**3.2 Was the Position Taken by the Chairman of MNH Appropriate and Consistent with the Constitutional Position of a Member of the House?**

1. It is the view of your Committee that the action taken by the Chairman of MNH in excluding Mr Speaker was neither appropriate nor consistent with the constitutional position of a Member of the House of Keys serving on a public body. It did amount to adversely affecting the ability of a Member of the Keys to discharge his functions.

2. In general terms, Members of the House of Keys have two constitutional rôles that are relevant in this matter:

(a) To represent the interests of his/her constituency/constituents. The Member is elected to represent the interests of his/her constituency/constituents. The electorate have mandated that Member to speak for them.

- (b) To participate in policy making as a mandated representative of the people. A Member is elected to serve not only the interests of his/her constituency, but also the whole Island and participate in policy making.
3. It is inappropriate that Members should always be debarred from participating in discussion of a matter for the reason only that the interests of their constituents/constituency may be involved when they are making policy as members of a public body.
4. On some occasions participation in policy making and representing the interests of a constituency/constituent will be appropriate whilst in others, particularly if the Member is seeking to promote the interests of a particular constituent or group within the constituency, it may not be. In circumstances where a Member is seeking to promote the interests of a constituent or groups in the constituency, the Member may choose to speak during the discussions but not to vote. It would be constitutionally inappropriate to prevent a Member from speaking. The decision as to whether to speak and vote or only to speak must rest with the Member.
5. In this dual rôle, there can be the potential for a conflict of interest or for bias. In such a case, Members should not seek to use their position as a Member to influence public policy making for their own benefit, or to favour one constituent or a group of constituents with whom they may have some family, close personal or business links or to win the political support from such people.

To assist all those who sit on public bodies in maintaining the highest standards of propriety, impartiality, integrity and objectivity, the Government

has drawn up two documents. The first of these is the 'Corporate Governance Principles and Code of Conduct - October 2005' and the second is the 'Document Approved by the Council of Ministers for Inclusion Within the Government Code - September 2006'. The former was approved by Tynwald, but the latter was neither laid before, nor approved by, Tynwald.

This may be particularly necessary in a small jurisdiction, such as the Isle of Man, where conflicts of interest may be more likely to arise because of its size.

6. This Code clearly identifies that it is the responsibility of the individual Member to determine whether a conflict of interest does exist. Paragraph 6.31 of the 'Document Approved by the Council of Ministers for Inclusion Within the Government Code - September 2006' states:

*"Members should consider whether participation in discussion or determination of a matter would suggest a real danger of bias....members should assess whether they, a close family member, a person living in the same household as the Board member, or a firm business or organisation which the Board member is connected with are likely to be affected more than the generality of those affected by the decision in question."*

**(The Code will be found in Appendix Two of this Report)**

It is evident from this extract that the emphasis is on the individual Board member to determine the situation, and whilst the Chairman may offer guidance or raise the matter for the member to consider, ultimately the Code indicates it is the responsibility of the member in question.

7. In this particular case, the Speaker was, as a Trustee of MNH, involved in taking a decision which related to the interests of one of his constituents (Mr Skillicorn), but there is no evidence that his rôle in the process was motivated

by a desire to achieve a satisfactory outcome for the constituent or gain political support from him.

Indeed, Mr Speaker was proposing that the land in question be leased to the constituent rather than sold, which was the request of the constituent. This compromise meant that MNH would still retain ownership of the land and that Mr Skillicorn would simply be allowed to lease it, which from his point of view, would not have been as preferable an outcome as being able to purchase it from MNH.

With regard to the issue of political support, the next General Election is over four years away and the implication that Mr Speaker may have acted in the way he did to gain the vote of Mr Skillicorn is most unfortunate. Neither was Mr Speaker related to Mr Skillicorn, living in the same household as Mr Skillicorn or engaged in any business with him. No other members of Mr Speaker's family were involved in such relationships with Mr Skillicorn. It seems, therefore, perfectly reasonable that Mr Speaker should have participated in the discussion and to exclude him amounts to undermining the constitutional rôle of a Member of the House of Keys to participate in public policy making.

8. The logical conclusion of excluding Mr Speaker from this discussion is that any Member should be excluded from being involved in making policy on any matter that affects his or her constituency/constituents. To exclude a Member from involvement in public policy making on the grounds that the Member has a constituency interest and rôle is to deny the basic function of a Member. Members must be able to be involved in both public policy making and to bring to bear on that decision making their knowledge of

circumstances in their constituencies. It is up to the individual Members' judgement to determine when it is appropriate not to vote on a matter because of constituency interests.

### **3.3 Did the Chairman of MNH correctly interpret the Guidelines?**

1. It is the view of your Committee that the Chairman did not correctly interpret the various guidelines in this situation. His failure to properly interpret these guidelines hindered a Member of the House of Keys from properly discharging his duties.
2. Paragraph 6.31 of the 'Document Approved by the Council of Ministers for Inclusion Within the Government Code - September 2006' which forms part of the MNH 'Code of Conduct and Corporate Governance' states that:

*"Members should not participate in discussions or determination of matters in which they have a direct pecuniary interest."*

#### **(The Code will be found in Appendix Two of this Report)**

There is no evidence that this was the case in this situation and therefore it was unnecessary for the Speaker to withdraw.

Furthermore, Paragraph 6.31 establishes criteria for determining whether there is a real danger of bias or perceived bias. These are that when a Member is involved in a public body seeking to consider a matter that Member, or a close relative, should not be a close family member, living in the same house or involved in a firm, business or organisation with a constituent whose interests are involved in the decision. In this case none of these criteria applied.

3. The Code requires that The Member might be expected to:

*“consider whether participation in the discussion or determination of a matter would suggest a real danger of bias.”*

**(The Code will be found in Appendix Two of this Report)**

It does not impose upon the Chairman this rôle, and the rôle of the Chairman would be simply to ask the Member to consider the matter should the Chairman feel there may be a problem.

4. Finally, in a judgement on 12<sup>th</sup> February 2007, Deemster Kerruish indicated that the test which will be applied by the Courts to determine perceived bias in relation to administrative decisions is that set out in the judgement of the House of Lords in *Lawal v Northern Spirit Limited (2003)* which is:

*“whether the ascertained relevant circumstances would lead a fair-minded and informed observer to conclude that there is a real possibility that the decision-maker was biased.”*

In this case, there was, in our judgment, no such possibility and therefore the action of the Chairman of MNH seems to us to have been unjustified.

**(An extract from this Judgement is located on page 2 of the letter issued by the Chief Secretary dated 16<sup>th</sup> February 2007, which will be found in Appendix Two)**

5. The Chairman of MNH seeks to justify his actions by arguing it is his responsibility, as Chairman, to ensure correct governance is applied within MNH. Paragraphs 6.12 & 6.15 of the ‘Document Approved by the Council of Ministers for Inclusion Within the Government Code - September 2006’ do indicate the Chairman has a responsibility for ensuring the highest standards of propriety within the organisation, but this does not require the Chairman to decide that Members should be excluded from discussions because of

potential bias or conflict of interest. It is plain from Paragraph 6.31 that the responsibility lies with the individual Member.

## **PART 4 -**

### **CONCLUSIONS**

- 4.1 Your Committee concludes that the action taken by the Chairman of MNH to exclude Mr Speaker from the item relating to the possible sale of land did affect the privileges and duties of a Member of the House by Keys.
- 4.2 The action was neither appropriate nor consistent with the rôle of a Member of the House of Keys serving on a public body. Members of the House of Keys are elected to represent the views of their constituents and participate in public policy making. Guidelines exist to assist the Member in determining when conflicts of interest may arise and it is up to the individual Member to apply these. The exclusion by the Chairman of MNH of Mr Speaker in this instance prevented the Member from properly being able to discharge his duties both with regard to his constituency and public policy making.
- 4.3 Your Committee further concludes that the Chairman of MNH did not correctly interpret the various guidelines when he did exclude Mr Speaker. The various guidelines plainly indicate that it is for the Member of a public body to determine whether a conflict exists, and the Chairman's rôle is to do no more than request that a Member should consider the matter in order to ensure good governance of the particular public body.
- 4.4 Given the fact that the Secretary of the House of Keys was unable to provide a legal opinion concerning the conclusions reached by this Report, your

Committee determined to seek legal advice from an Advocate. Mr Alan Gough, of Gough and Company, was retained to provide an opinion. He concluded that:

*“In all the circumstances, I think the Report reaches the correct legal conclusion for the correct reasons.”*

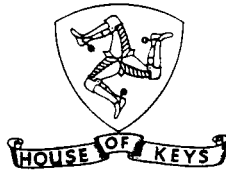
**(A copy of Mr Gough’s Opinion may be found in Appendix 3 of this Report)**

D M Anderson  
(Acting Chairman)

A V Craine

T M Crookall

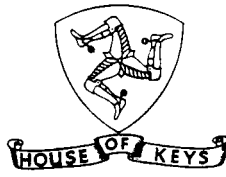
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**FIRST REPORT FOR THE SESSION 2007-08**

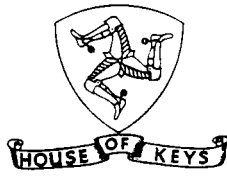
**APPENDIX 1**



**MANAGEMENT AND MEMBERS' STANDARDS  
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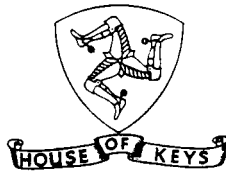
**APPENDIX 2**



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**APPENDIX 3**



**MANAGEMENT AND MEMBERS' STANDARDS  
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**APPENDIX 4**

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