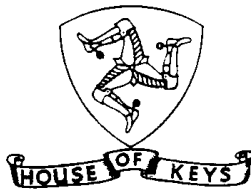


**The Position of Mr Speaker as a Trustee
of the Manx Museum and National Trust**

**MEMORANDUM BY THE SECRETARY OF THE HOUSE
AND COUNSEL TO THE SPEAKER**



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1 Before the House at this sitting is a Report from the Management & Members' Standards Committee on the issue raised in the motion from the Hon Member for Rushen, Mr Gawne, which appeared on the Order Paper for 26th June 2007. The motion was not reached at that sitting, but Mr Speaker subsequently referred the issue to the Committee, as he was entitled to do.

2 In the circumstances, Mr Speaker, though a Member of the Committee, recused himself from meetings considering his reference. I had advised Mr Speaker on the matter prior to the reference being made, but as Secretary of the House it was my function to arrange for the Committee to meet and to clerk it; at the outset of their very first meeting, however, I readily agreed with the Committee that I too should take no part in their work in view of my previous involvement. For the rest of that meeting, and subsequently, one or other of my colleagues has therefore clerked the Committee.

3 I have now seen the Report of the Committee, and I feel it incumbent upon me to lay a short Note before the House on matters which I feel are of importance, and to which I owe it to the House to draw attention.

4 The Speaker of the House has a statutory duty under section 3 of the Manx Museum and National Trust Act 1959 to serve as a trustee. He does so as a trustee in the full and usual sense, but he does so because he is Speaker of the House of Keys, and he therefore unavoidably comes to the task with the attributes which are characteristic of his office as Speaker, one of which is that he will have been elected to represent a constituency.

5 This situation was very well known to the legislators who passed the 1959 Act, and who must therefore have contemplated that there would inevitably be a duality of rôles involved, that of an active politician with a representative mandate from his electors, and that of a trustee obliged to act as such. In other words, the statute contemplates that there will be occasions on which there is a material interface between these two functions.

6 I think there can be no dispute that if that interface leads in any particular instance to a *conflict* between the two rôles, and there is the possibility that the Speaker could actually be in breach of his legal obligations as a trustee, then of course he must consider his position carefully and he may wish to seek advice. But I believe that a considerable amount of caution must be used before reaching the conclusion that this or that circumstance involves such a conflict of duties.

7 I offer that view to the House because it clearly emerges from the judgment of the High Court, given on 12th February 2007 *In re Manx Museum and National Trust*, which dealt at length with the issues arising in connection with actual or 'perceived' bias when exercising public law functions.

8 At paragraph 139 of his judgment, His Honour the First Deemster cited with approval the observation of the English High Court in *Regina v Secretary of State for the Environment, ex parte Kirkstall Valley Campaign Limited* that:

“The law needs to strike a proper balance between protecting confidence in impartial decision-making and discouraging fanciful and unmeritorious allegations of bias.”

And at paragraph 141, is cited the endorsement by the Judicial Committee of the House of Lords¹ of the view that, in answering the question whether a fair minded and informed observer would conclude that there was a real possibility of bias, it is right to proceed on the basis that:

“a reasonable member of the public is neither complacent nor unduly sensitive or suspicious.”

¹ (the equivalent for the United Kingdom of the Judicial Committee of the Privy Council for the Isle of Man)

9 The *Manx Museum* case, as Members will recall, concerned the position of the Minister of Local Government & the Environment in relation to a planning appeal involving a property within the Minister's constituency, the owner of which was one Suzanne Shimmin. His Honour the First Deemster observed, at paragraph 146 of his judgment:

“The fact that Ms Shimmin was a constituent of the Minister and the subject property was situate within the Minister's constituency, did not jointly or severally in themselves require the Minister to delegate his functions. Whilst exercising care and restraint, a Minister in a compact jurisdiction such as ours must be appropriately robust and not overly sensitive.”

(Members may also recall that the Deemster concluded that there were *other reasons* why in the circumstances of that case “a fair minded observer would be led to conclude that there was a real possibility of bias on the part of the Minister” - paragraph 152 of the judgment. What is important for present purposes is to note the general criteria adopted, which are what are referred to by the courts when examining subsequent situations.)

10 Turning to the present case, I must respectfully agree with the Committee's conclusions that it is plain that the 2006 document issued by the Council of Ministers, and relied on as the justification for excluding Mr Speaker from a trustees' meeting, did not in fact cover the situation that occurred; nor did it authorise the chairman of the board of trustees to act in relation to the Speaker as he did.

11 In fact, it is quite clear from the 2006 document that it is for the individual trustee to assess whether he or she is in a position in which there is a real or probable conflict between their duty as a trustee and their other interests. This reflects indeed the general position in regard to trustees. As matters stand, it is only the courts who have jurisdiction to pronounce definitively on the discharge of a trustee's obligations in a particular situation, unless there is specific provision otherwise.

12 The recognition that business undertaken in the context of a Member's dual rôle (i.e. when the Member is acting in a public law capacity as well as being an elected representative) may involve a careful balancing exercise, is consistent with the acceptance at paragraph 4.30 of the Government Code that:

“As the defender of individual interests, a Minister is entitled to raise constituency or small issues which may involve him in procedural and managerial details [in his Department].”²

13 Now this mix of roles – that of representing constituents and that of exercising Ministerial powers - is in principle very parallel to the mix which occurs when a Member of the House is serving as the trustee of a statutory trust by virtue of the Member's office, as is the case with Mr Speaker as a trustee of the board of the Manx Museum and National Trust. In neither case should there be any automatic assumption that, once a constituency matter becomes part of the business being considered, the Member must withdraw from it.

14 Naturally, if Members of Tynwald are willing to accept particular restrictions or protocols affecting their conduct, they are entirely free to do so. In this context, it is right to point out that neither the 2006 document issued by the Council of Ministers, which has been relied upon to justify the action by the chairman of the trustees, nor the Staff Guidance in 2007 which has also been referred to, has been laid before Tynwald; still less have they actually been approved by the Court. And there can be no argument that the 2005 Code of Conduct, which *was* approved by Tynwald, could have justified the chairman's action.

15 I believe that there is therefore the most serious objection to the Presiding Officer of the House being forcibly prevented from discharging his statutory duty, without either clear authority in law or in a document approved by Tynwald, and on the alleged basis merely of guidelines issued by the Executive.

² This is not one of the changes to the re-issued Code, but was in the original text and has remained.

16 Where, as here, the Speaker has tasks put upon him by public law, he is in my opinion accountable only to the courts or to this House for the exercise of his discretion in discharging them.

Malachy Cornwell-Kelly

5th November 2007

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November 2007

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