

**MANAGEMENT AND MEMBERS' STANDARDS
COMMITTEE**

**SUPPLEMENT TO THE
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.

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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

SUPPLEMENT TO THE FIRST REPORT FOR THE SESSION 2007-08

Mr Speaker and Manx National Heritage

PART 1

Background

- 1.1 The Committee published a report on the matter of Mr Speaker and Manx National Heritage in early November 2007. Mr Speaker had been excluded from a meeting of the Trustees on 10th May 2007 because the Chairman of Manx National Heritage felt that Mr Speaker might have a conflict of interest, or that there could be a perception of such. Full details of this matter will be found in Part 1 Background, of the Committee's Report.
- 1.2 A motion to receive this Report was originally to be placed before the House of Keys at its sitting on Tuesday 13th November 2007 and the Report was published in accordance with the Standing Order requirements, being circulated to Members of the Keys one week previously and to the press and interested parties immediately thereafter.
- 1.3 Because a number of Members of the Keys were unavoidably absent from that sitting, the Committee resolved to delay moving that the Report be received by the House until Tuesday 27th November 2007.

1.4 On Friday 23rd November 2007 Mr Martin Moore, Chairman of Manx National Heritage, wrote to the Acting Chairman of the Committee (and copied his letter to all Members of Tynwald) indicating that he felt the Committee had not acted correctly in that it had reached its decision without having all the evidence before it. In particular, he felt that the Committee should have examined the full text of the legal advice provided by the Attorney General on this matter.

(A copy of this letter may be found in Appendix A of this Supplementary Report)

1.5 The Committee had, in a letter dated 12th September 2007, requested that Mr Moore release these papers, but he had declined to do so, instead suggesting the Committee should approach the Attorney General for copies of them. This the Committee had not done for two reasons. Firstly, that Mr Moore had insisted all along that the advice was fully translated into his letters to the Trustees, particularly that dated 23rd May 2007 which will be found in Appendix 1 of our Report. He said in his letter of 12th June, annexed to the Report:

"I can confirm that the letter I sent to all Trustees dated 23rd May 2007 accurately presents the advice I have received on this matter."

That being the case, the Committee took the view that there could no special advantage in merely seeing the advice in its original form. There was no reason to think that Mr Moore, an advocate himself, had not replicated the advice accurately in his letters.

Secondly, it would have been inappropriate for the Committee to have approached the Attorney General for consent to see the advice when, at the time, Mr Moore apparently wished to abide by the convention that such advice is not disclosed.

- 1.6 Your Committee subsequently received copies of correspondence between Mr Moore and the Attorney General in which Mr Moore requested that the legal advice be made available to the Committee and the Attorney General consented to do so.

(Copies of the correspondence between Mr Moore and the Attorney General dated 21st November 2007 and 23rd November 2007 respectively may be viewed in Appendix A of this Supplementary Report)

- 1.7 On receipt of Mr Moore's letter of 23rd November 2007, the Committee met and with the knowledge that Mr Moore was now content to release the full text of the legal advice he had received, decided to delay moving the motion that the Report be received until it had seen the full text of the advice received by Mr Moore. A letter (incorrectly dated October 2007 but sent on 26th November 2007) was sent to Mr Moore, at both his Manx National Heritage and business addresses seeking that this information be provided. This letter also asked Mr Moore to provide copies of the minutes of the Trustees' meeting at which Mr Speaker had been excluded and a copy of the MNH Code of Conduct.

- 1.8 Mr Moore was subsequently requested, in a letter dated 4th December 2007, to provide copies of any other advice he had received from any part of Executive Government on this matter, for example advice received from the Chief Secretary or her Office.

1.9 The Committee was disappointed by the delay in receiving the information which Mr Moore had indicated he was now willing to provide. When the legal advice was requested from Mr Moore, the Committee's Secretary was informed by Mr Moore that he would be off island for a few days to attend a funeral, but would ensure it was provided upon his return. By 7th December 2007 the advice had not been received and the Secretary to the Committee wrote again requesting that it should be forwarded to the Committee. By 12th December 2007, there had still been no information provided by Mr Moore and the Secretary then wrote again requesting that it be supplied by Monday 17th December at 12 noon. This letter crossed with one from Mr P Morris, the advocate acting for Mr Moore, who requested certain information be provided for his client. The Committee responded to this letter on 14th December 2007, re-affirming that the information requested was required by Monday 17th December 2007. This letter was hand delivered to the offices of Dickinson Cruickshank on the morning of December 14th 2007.

On Monday 17th December 2007 the Secretary received a telephone call from Mr Morris's secretary informing him Mr Morris had been engaged in other urgent matters and had not yet seen the letter of December 14th 2007. The Committee's Secretary requested that a response from Mr Morris be received by Tuesday 18th December 2007. During the afternoon of that day a letter was hand delivered from Dickinson Cruickshank informing the Committee that a full submission, including the requested papers, would be delivered:

"by close of business on Friday 11th January 2008."

The explanation for the delay was that the matter:

"Is being dealt with by the Senior partner at Dickinson Cruickshank....and he is currently fully occupied on another matter."

(A copy of the letter from Dickinson Cruickshank dated 18th December 2007 will be found in Appendix B of this Supplementary Report)

Your Committee can only view the delay in supplying the information which Mr Moore had indicated that he was willing to supply as most regrettable and one which caused further delay to the Committee being able to consider this additional evidence and resolve the matter.

(All the correspondence referred to in paragraphs 1.7 to 1.9 can be viewed in Appendix B of this Supplementary Report)

1.10 Copies of the requested papers, including the legal advice, and the accompanying written submission from Mr Moore were eventually received by the Committee on 10th January 2008.

(Copies of the papers submitted by Mr Moore may be found in Appendix C of this Supplementary Report. The legal advice will be found in Appendix 4.1 of these papers)

1.11 A chronology of the events from 23rd November 2007 to 10th January 2008 will be found in Appendix F of this Supplementary Report.

1.12 When your Committee became aware that Mr Moore intended to submit a full submission to the Committee, we resolved, in the interests of fairness and balance, to offer Mr Speaker an opportunity to make a further submission should he so wish. Mr Speaker indicated that he did not wish to make any further submission to the Committee.

Part 2

Evaluation

- 2.1 The submission provided by Mr Moore was comprehensive, including many documents that the Committee had already viewed as well as the requested legal advice and other papers which the Committee had not seen. The principle papers received which the Committee had not seen were the legal advice, the Manx National Heritage Code of Conduct and the minutes of the Trustees meeting of 10th May 2007. All documents submitted by Mr Moore were examined by the Committee.
- 2.2 With regard to the legal advice given to the Chairman of Manx National Heritage by the Attorney's Chambers, your Committee believes that Mr Moore was quite correct in his insistence all along that the advice received from the Attorney General's Chambers was fully translated into his letters to the Trustees particularly that dated 23rd May 2007 which will be found in Appendix 1 of our Report. As noted in paragraph 1.5 above, in his letter of 12th June, annexed to the Report he stated:

"I can confirm that the letter I sent to all Trustees dated 23rd May 2007 accurately presents the advice I have received on this matter."

The full text of the legal advice received from the Attorney General's Chambers does not, therefore, change the opinion of the Committee on this whole matter.

2.3 We also note that Miss Norman of the Attorney General's Office was of the opinion that the summary of the legal advice was an accurate reflection of that advice. In an e-mail to Stephen Harrison, dated 12th June 2007, she comments:

"I think that the advice has already been sufficiently set out in Martin's letter to the trustees."

(A copy of this e-mail may be found in Appendix 4.0 of the written evidence provided by Mr Moore located in Appendix C of this Supplementary Report)

2.4 A copy of the text of the legal advice was also sent to Mr Alan Gough of Gough & Co, who provided the Committee with legal counsel on the written submission received from Mr Moore, including the text of the legal advice.

2.5 With regard to the text of the legal advice received by Mr Moore from the Attorney General's Chambers, Mr Gough concluded that:

"The letter from the Chairman to the MNH Trustees of 23rd May 2007 was clearly based upon that advice and in the main it repeats the advice given."

This was the letter in which Mr Moore set out, in summary form, the legal advice. Mr Gough goes on to indicate that there were two instances where the text of the advice was deviated from in that letter, but neither changed the meaning of the advice given.

(A copy of the Gough & Co advice can be found in Appendix D of this Supplementary Report)

2.6 To the Committee this is a crucially important factor. We have been heavily criticised by the Chairman of Manx National Heritage for not obtaining the text of the legal advice earlier. In part, our justification for not doing so was that the advice had been summarised by the Chairman himself and the comments from Mr Gough simply re-enforce our position.

2.7 In the evidence received from Mr Moore, we have noted a previously unseen letter from the Chief Secretary to the Chairman of Manx National Heritage, dated 23rd May 2007. This letter, which has also been received directly from the Chief Secretary with her permission to quote from it, was in response to a request from the Chairman of Manx National Heritage for further clarification of managing potential or perceived conflicts of interest in accordance with the Government Code concerning Conflicts of Interest. In her reply, the Chief Secretary noted:

“So far as politicians are concerned it is not generally accepted that a conflict exists if the matter under discussion concerns a part of the Member’s constituency unless he has a pre-declared position which would indicate a conflict. Very often constituency MHKs have local knowledge which assists with resolution of problems and their presence is therefore to be encouraged when discussions take place about their constituency.”

This advice supports the conclusions reached in the Committee’s Report. A Member of the House of Keys serving on a public body can and should take part in discussions in that body relating to a constituency matter unless there is some clear evidence to indicate a conflict of interest, or perceived conflict, exists which we believe in this case there was not.

2.8 Furthermore, the letter from the Chief Secretary also indicated that if there was any suspicion that a conflict may exist, the Chairman of the relevant public body should discuss this with the Member concerned before the meeting and that discussion of such a matter in a full meeting of a public body should only take place if the Chairman and Member could not reach agreement. In this case, regrettably, no such discussion occurred between Mr Moore and Mr Speaker beforehand. Had it done so, then the matter may have been resolved at that stage and thus avoided the protracted consequences that followed from Mr Moore requesting the Speaker leave the meeting in question.

(A copy of the letter from the Chief Secretary will be found in Appendix 4K of the submission from Mr Moore which is located in Appendix C of this Report. The copy obtained from the Chief Secretary directly will also be found in Appendix C as the last page of that appendix))

2.9 In Mr Moore's submission there are many references to the fact that Mr Speaker, when acting as a Trustee, was not acting in a parliamentary capacity. For example in paragraph 111 of his submission, Mr Moore states:

"Mr Rodan's position as an MHK was the source of his appointment as a trustee, no more. Once appointed he was a trustee like any other."

(See paragraph 111 on page 24 of Mr Moore's submission which will be found in Appendix D of this Supplementary Report)

However, the Committee wishes to point out that Mr Speaker is a Trustee of Manx National Heritage by virtue of his parliamentary position as Speaker of the House of Keys, and as such he has the right to attend meetings and be involved in the decision making process. It over simplifies the case to view Mr Speaker as simply an “ordinary” Trustee. He is a parliamentary officer and MHK and when participating in the work of Manx National Heritage he cannot be divorced from that position and neither should he be expected to be.

2.10 Mr Moore also argues that it was his responsibility as Chairman of Manx National Heritage to ask Mr Speaker to withdraw because of the possible conflict of interest since he is responsible for the good governance of the Trust. The Committee fully appreciates the importance of the Chairman needing to ensure the good governance of the Trust. However, we reiterate that it is clearly the case that the Government and Manx National Heritage Codes of Conduct do not justify his action in asking Mr Speaker to withdraw from the meeting. Mr Moore was correct to point out to Mr Speaker that there may be a possible conflict of interest, but no more. It is the responsibility of the Member to determine whether such a conflict does exist and in this case Mr Speaker determined that it did not. Therefore, Mr Speaker had every right to continue to be involved in the discussion and decision making regarding the sale of the land and the Chairman had no right to exclude him from doing so. The advice received from Gough & Co supports this position. In it Mr Gough states:

“As I see it, all of the real guidance in the Code and legal precedents place the onus on the individual member to address any potential conflict of interest and to act accordingly. The Chairman has a duty to bring potential conflicts to the attention of the relevant parties so they may consider their position. In this case the Chairman was right to draw the Speaker’s attention to the potential problem. He was right to refer to the guidelines. Where he erred, in my view, was to exclude the Speaker from the meeting. He had no authority to do so.”

(See page 2 of the Gough & Co advice which may be found in Appendix D of this Supplementary Report)

2.11 Finally, Mr Moore argues that the Committee should withdraw its Report on this matter and produce an entirely new report which addresses the matters he raises. Gough & Co in their advice to the Committee also suggested that course of action. However, the Committee is unable to do so because its first Report has already been laid before the House of Keys. Therefore, it is procedurally appropriate for a Supplementary Report to be produced which does address these matters, and this document fulfils that role.

Part 3

Conclusion

3.1 Having examined the evidence received from Mr Moore and taken advice from Gough & Co, your Committee are satisfied that the conclusions reached in their original Report were correct; namely that the action of excluding Mr Speaker from the Trustee’s meeting on 10th May 2007 was neither appropriate nor consistent with the role of a Member of the House of Keys serving on a public body, and that the Chairman of Manx National Heritage did not correctly interpret the various guidelines when he excluded Mr Speaker.

3.2 Our conclusion is supported by the independent legal advice obtained from Gough & Co which concludes by stating:

“The nub of any advice is that the Speaker was wrongly excluded from a meeting that he had a right to attend and be involved in. That right derives from his role as a Trustee and that role is his as of right by reason of his parliamentary position.”

(See page 3 of the Gough & Co advice which will be found in Appendix D of this Supplementary Report)

3.3 This whole matter has taken a considerable amount of time to examine and the Committee does feel that once the dispute had developed it could have been resolved much more speedily if the Chairman of Manx National Heritage had been willing to sit down and discuss the situation with Mr Speaker to seek an amicable resolution. As we note in paragraph 2.8 above, it would have been even more appropriate had the Chairman discussed this matter with Mr Speaker before the Trustee’s meeting, thereby possibly avoiding this time consuming episode.

3.4 A copy of the draft findings of the Supplementary Report were provided to Mr Speaker Rodan, Mr Moore and Mr Alan Gough. They were invited to submit comments. Their comments are appended to the Supplementary Report in full.

(The comments received may be found in Appendix E of this Supplementary Report)

3.6 Finally, the Committee would like to correct a small factual error which appeared in paragraph 1.2 of the main Report. In that paragraph it was noted that Mr Speaker was not present at the meeting of Manx National Heritage Trustees held in April 2007 when the question of the purchase of the land at Laxey from Manx National Heritage was first raised. In fact Mr Speaker was present at that meeting. The confusion seems to have arisen because he was unable to remain after the meeting to view the plans with the other Trustees, although he did subsequently do so. A letter clarifying this matter was submitted to the Committee by Mr Speaker, dated 3rd December 2007.

(A copy of this letter may be found at the end of Appendix E of this Supplementary Report)

D M Anderson MHK

(Acting Chairman)

A V Craine MHK

T M Crookall MHK

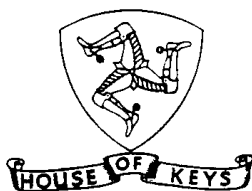
March 2008



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

APPENDIX F



MANAGEMENT AND MEMBERS' STANDARDS COMMITTEE

CHRONOLOGY OF EVENTS 23rd NOVEMBER 2007 TO 10TH JANUARY 2008

- 23rd November 2007 Mr Moore wrote to the Acting Chairman of the Committee (copied to all Members of the House of Keys).
- 26th November 2007 The Committee Secretary wrote to Mr Moore requesting copies of the legal advice, the MNH Code of Conduct and minutes of the Trustees meeting of 10th May 2007.
- 27th November 2007 The Acting Chairman advised the House of Keys that the motion to receive the Report would not be moved since the Committee was seeking further evidence.
- 4th December 2007 The Committee Secretary wrote to Mr Moore asking for copies of any further advice he had received from any part of Executive Government.
- 7th December 2007 The Committee Secretary wrote again to Mr Moore requesting the documents asked for in earlier correspondence now be provided.
- 12th December 2007 The Committee Secretary wrote again to Mr Moore requesting the documents asked for in earlier correspondence be provided by 17th December.
- 12th December 2007 Letter received from Dickinson Cruickshank on behalf of Mr Moore requesting certain information.
- 14th December 2007 The Committee Secretary replied to letter received from Dickinson Cruickshank and repeated the deadline for submission of requested papers of 17th December 2007.
- 17th December 2007 The Committee Secretary received a telephone call from Dickinson Cruickshank indicating the deadline would not be met due to other pressing business.
- 18th December 2007 Letter received from Dickinson Cruickshank indicating the requested information would be provided by close of business on 11th January 2008.
- 19th December 2007 The Committee Secretary wrote to Dickinson Cruickshank expressing surprise that the requested documentation would be delayed until 11th January 2008.
- 10th January 2008 The requested documentation was received from Dickinson Cruickshank.

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