

TYNWALD COMMISSIONER
FOR
ADMINISTRATION

FOURTH ANNUAL REPORT
JULY 2021

1. Introduction

This is the fourth Annual Report by the Tynwald Commissioner for Administration (“the TCA”), covering the second half of the 2020 calendar year and the first half of 2021.

Last year, I reported that I had changed my methodology, and that in 2019/20 I had not registered any cases which were clearly outside my jurisdiction. On reviewing this, I found that few of the complainants accepted the decision on jurisdiction without further correspondence, so that, from January 2021, I have reverted to registering all complaints. This year’s figures in Appendix 1 include the unregistered cases, from which it can be seen that 13 cases were rejected, although one has a policy element which may constitute a complaint within jurisdiction, once Departmental/internal procedures are complete. One case from 2020 has been closed, as the matter has not been pursued by the complainant within a reasonable time. I analyse in more detail below the reasons why these cases were out of jurisdiction. Appendix 2 lists the position with 7 current cases, including the review of local authority complaints procedures, on which I have yet to report. There are 3 live cases which may result in an investigation once internal complaints procedures have been followed. Appendix 3 contains a list of all Reports or Statements laid before Tynwald in the year under consideration in this Report.

2. Development of the office

I reported last year on the limited impact which the expansion of my jurisdiction to the Statutory Boards had had. As can be seen from Appendix 1, the only complaint received in respect of any Statutory Board in the last 12 months was one against the Office of Fair Trading which was rejected. I mention this in more detail in my analysis of the rejected cases.

Prior to the first lockdown in March 2020, it was agreed that I should advertise for an assistant, but I then had to suspend the recruitment process. The post was re-advertised in September 2020 and Mrs Heather Kent, who was one of the people who had earlier expressed interest, applied and was appointed from 1 October 2020, following a selection process with a panel which interviewed 5 potential candidates. I am extremely grateful to the Clerk of Tynwald’s Office for all the work they put into this exercise, both in the administrative assistance provided and in providing members of the interview panel. Mrs Kent is a company secretary who has a wealth of useful experience. She brings fresh insight to the casework but also carries out research and, as will be seen, pursues unresolved issues with considerable tenacity.

3. Extension of jurisdiction to Local Authorities

The expansion to include local authorities, joint boards and joint committees has had far greater impact than that to Statutory Boards. Prior to 1 July 2020, the Department

of Infrastructure's Local Government Unit sent a letter on my behalf to all of those to whom the TCA's jurisdiction was to be extended, seeking details of their complaints procedure. A gold star goes to the first to respond, the Western Civic Amenity Site, which had a fully developed complaints procedure which required only slight amendment to refer to the right to complaint to the TCA. Over time, others sent in complaints procedures, many of which required some amendment, and I received some invitations to visit local authorities and speak to the Commissioners. I have visited Douglas Borough Council, which, as might be expected, has a well-established complaints procedure. I also spent some time with the Local Government Unit. Its role is limited, because although it can provide advice, local authorities make the decisions and can obtain and rely on advice which conflicts with that which the Department received from the Attorney General's Chambers and which the Department is obliged to follow. That said, more creative use could be made by the relevant Department of the powers in sections 4, 4A and 5 of the Local Government Act 1985 to improve standards on the part of local authorities.

In the first tranche of replies, there were several either indicating that the authority had a limited complaints procedure for dog fouling, or that there was no need for a complaints procedure because the authority had never received a complaint. In one case, the collective memory for this assertion went back 50 years. The procedure of another authority allowed for complaints against elected members, but not their officers, and bizarrely enabled an elected member to complain about an elector. Many authorities either overlooked or ignored the letter from the Department. At my request, the Department sent out a follow-up letter in the Autumn and also followed it up with a meeting with the Clerks with limited effect. A further reminder was sent on 5 January, which resulted in some responses, occasionally with procedures which required amendment to comply with the Tynwald Commissioner for Administration Act 2011 ("the Act") and others which admitted not having a complaints procedure, but promising to devise one.

Subsequent to this, Mrs Kent has pursued local authorities with dogged persistence and has communicated with all the authorities who had not sent responses: we are aware that 4 local authorities still have no complaints procedure, 11 have procedures which still require some amendment to comply with the Act and, surprisingly, 6 local authorities have no website. Even those that have, do not necessarily display information on the complaints procedure on their website or, if they do, the information is well hidden. Some websites give the names of the Commissioners, but not their contact address. The name and address of the Clerk is usually shown. This leads on to another concern. Not all Clerks have an official email address, or if they have, do not use it for official business. I have received emails from what are clearly personal email accounts which gives rise to concerns with ensuring confidentiality and compliance with GDPR.

Going forward, once the local elections are over, Mrs Kent will renew her efforts to get all local authorities operating a published complaints procedure compliant with the Act. Several authorities have requested that I visit them to explain the role of the TCA, and the Clerk to Ramsey Town Commissioners offered to organise a meeting involving the Clerks of the local parishes. It is my intention to take up these

invitations but my ability to do so, has been affected, initially by the two lockdowns at the start of the year and more recently by the impending local authority elections. Early responses to the original letter indicated that a number of Clerks considered that a standardised complaints procedure might be useful. I have considered this suggestion and can see the administrative advantage but a procedure for Douglas, Onchan and Ramsey would be too bureaucratic for Michael or Santon. It is, I think, something that would require further thought.

4. Cabinet Office Review

In my last Report, I referred to amendments to the Act to rectify some of the problems which have arisen. I had understood that instructions had been given to the Attorney General's Chambers to draft a Bill last year but, from recent correspondence with the Cabinet Office, I understand that the Legislation Sub-Committee of the Council of Ministers deferred the drafting and delivery of the Bill from the 20/21 legislative session to the next administration.

In the meantime, Mr Chris Thomas MHK, put down a Motion for the April sitting of Tynwald. The Motion proposed a review of the TCA by a committee which, if supported, would not have reported until April 2022. In the event the Motion was deferred and subsequently amended. The revised Motion proposed that:

"Tynwald

- a) directs that the Tynwald Commissioner for Administration's annual report on the general exercise of the Commissioner's functions is laid for debate at the July ordinary sitting of Tynwald with any general recommendations the Commissioner may have arising from the exercise of those functions; and
- b) requires that the Commissioner includes in the report a review of the following matters: i) governance; ii) scope of duties; iii) adequacy of financing; iv) operations; v) system for reporting; vi) co-operation from bodies which are investigated; and vii) follow-up by listed authorities of investigations and reports of the Tynwald Commissioner for Administration."

I had the opportunity to discuss the revised Motion with Mr Thomas and, as a consequence, by agreement, an amendment to the Motion, proposed by Mr Speaker, was passed providing for the additional information proposed in (b) above to be included in the Report laid before the ordinary July sitting of Tynwald in 2022 and in subsequent reports. Mrs Kent has been looking at the information provided in reports by similar bodies and the best way to collect the necessary data as well as devising policy statements, drafts of which I intend to share with the Tynwald Management Committee once it is reconstituted after the General Election.

Whilst I regret the delay in amending the Act to remedy some of the deficiencies, it does offer the possibility to incorporate other changes, should that be necessary.

Following the inception of Manx Care, the Health and Care Transformation Team within the Cabinet Office has begun a review of its complaints procedures as part of

the Transformation Programme. This will be a major task with the intention of revising the complaints regulations (currently the National Health Service Complaints Regulations 2004) and subsequently a full review of the complaints procedure, which is likely to require primary legislation. The TCA has been identified as a “key stakeholder” and I have met members of the Transformation Team to discuss the document. The TCA will continue to be a consultee going forward.

5. Completed cases

In this year to 30th June 2021, I have lodged three Reports and one Statement. One has involved planning for which the Department for Environment Food and Agriculture is responsible. Two have been against the Department of Health and Social Care/IRB and the remaining one related to National Insurance, which is now the responsibility of the Treasury, although at the date of action subject to the complaint, responsibility for the administration of National Insurance on the Island lay with the Department of Health and Social Security.

- a) I lodged a Report for laying in March 2021 in respect of a complaint by Mr L who had complained that DEFA had failed to investigate his concerns that his neighbour had damaged his property and had trespassed on it, in the course of converting the loft for which planning permission had been granted. Although I was in no doubt that Mr L had suffered loss as a consequence of this neighbour’s action, I was not satisfied that there had been maladministration by the Department. The neighbour’s conversion had not been fully compliant with the plans but enforcement was not possible because by the time Mr L complained he was too late as there was a limitation period. Mr L’s property was in an area where building control was the responsibility of the local authority which, at the time of the complaint, was outside my jurisdiction.
- b) In March 2021, I lodged with the Clerk for laying before the April sitting of Tynwald, a statement under section 14 of the Act in respect of a complaint made by Mr K about delay by the Health Independent Review Body (IRB) in concluding their investigation into his complaint. Initially, the then Chief Executive of the Department of Health and Social Care agreed that the Department was responsible for funding the IRB, so if the delay was a consequence of inadequate resourcing, the Department would be responsible for the delay. His successor accepted the logic of this, and her office obtained information for me from the IRB. At no point was any attempt made to prevent me investigating this complaint, but before my enquiries were completed, I received another complaint about delay by the IRB. I set out to follow the same procedure but was informed by the then Acting Chief Executive that the IRB was independent of the Department and that accordingly I had no jurisdiction to investigate. I was provided with advice obtained from the Attorney General’s Chambers, which confirmed the Department’s position, but I obtained no satisfactory answer to my questions about funding of the IRB, nor about legal liability for actions or negligence by

the IRB, given that there was no evidence of a separate legal identity. Having been unable to investigate the second case, I reviewed the position of Mr K's complaint and concluded that the two cases could not be distinguished and that I had no jurisdiction to investigate either case. For that reason, I lodged the section 14 statement, setting out the difficulty.

- c) In March 2021, I also reported on the case of Mr G, who complained about actions by social workers from the Department of Health and Social Care in respect of his (now) late wife. The complaint, which I did not uphold, related to a period of respite care provided for Mrs G. Mr G had made clear that the household income was insufficient to fund this and had understood that there would be no charge, but he had been sent an account for a sum in excess of £1,000. Following investigation under Departmental Complaints Procedures the account was withdrawn but Mr G remained unsatisfied. At the start of my involvement, I enquired of the Department whether the Social Care IRB should investigate but was told that the Department would prefer me to investigate because the IRB would not be perceived to be independent.

Although I did not uphold the complaint, I have been struck by the inconsistent views of the Health and Social Care limbs of the Department.

- d) I have lodged the Report in respect of a complaint made by Mr B to be laid before this, the July, sitting of Tynwald. Mr B's complaint is a historical one, in that he maintains that for a period dating from 1988 until he reached retirement age in 2001, officers in what was then the Department for Health and Social Security denied him his right to pay National Insurance as a self-employed flying instructor and that, as a consequence, he failed to qualify for the Manx Pension supplement (MPS). National Insurance is now the responsibility of Treasury. As my Report shows, I am satisfied that when Mr B came to live on the Isle of Man in 1987/88, he registered for tax purposes with Treasury but did not make a similar application to the DHSS in respect of his National Insurance nor did he request those responsible for National Insurance in Newcastle to transfer his record to the Isle of Man. At that time, perhaps confusingly, DHSS were also responsible for issuing Work Permits and Mr B (or his accountants) did obtain a work permit which describes him as a "self-employed flying instructor" but that was neither a registration for National Insurance nor an indication that the Department in considering such an application would accept that he was genuinely self-employed. In 1995, DHSS in Newcastle alerted Mr B to his deficient National Insurance record and it was only then that his record was transferred to the Isle of Man. At that point Mr B paid voluntary contributions for 3 years (the Notice stated that he needed to pay 6 years) and he paid nothing thereafter. He was credited with 5 years entitlement because he was not in employment between 1996 and his retirement but that combined with the 3 years' contributions which he paid still only gave him a history of 8 years' Manx contributions, whereas 10 years of payment or credit within the Isle of Man National Insurance system was required to qualify for MPS. I have, therefore, rejected his complaint.

6. Rejected Cases

As explained above, since January 2021 each case has been registered before any decision is made as to whether it should be investigated. As Appendix 1 shows there were 4 cases where the complainant was an employed or former public servant whose complaint concerned occupational pension or other personnel issue. There were 3 complaints connected to the closure of the border. In two of the cases the complainant was not Isle of Man resident. Another expatriate complainant resident in an EU country complained about delay in receiving his Manx pension from Treasury, which might have been Brexit-related and there were 2 complaints about the Courts or Tribunals. Two cases were about medical treatment. In one of these, the Health IRB had declined to investigate, as did I. The other I rejected in part, because it concerned the appropriateness of treatment which seemed more suited to the Health IRB. However, I have left open whether I *might* have jurisdiction in respect of a complaint that a policy decision by the Department as to the type of care to be provided could amount to maladministration. This case is still being investigated by the Department.

One case which caused me some concern was one made by a non-resident couple about the decision of those administering the Financial Services Ombudsman Scheme in the Office of Fair Trading not to admit the complaint. Although the jurisdiction of the TCA is subject to territorial qualifications in respect of those who may complain¹, there is an exception if the complaint relates to actions taken in relation to rights and obligations which accrued or arose in the Island. The complaint related to an insurance policy with an Island registered insurance company, so *prima facie* it appeared to come within the TCA's jurisdiction. I was concerned about investigating another Ombudsman, but section 3 of the Act defines "relevant supervisors" to include not only adjudicators under the Financial Services Ombudsman Scheme ("the FSOS") but also the Isle of Man Office of Fair Trading in respect of its functions under the FSOS. One of the excluded matters which the Commissioner must not investigate is "an act or omission of a relevant investigator if the act or omission relates to the discharge of the relevant functions of that investigator"². I was, therefore, precluded from investigating the complaint. It did, however, seem strange that the parent Department of the Office of Fair Trading (DEFA) had dealt with the internal complaint with the Chief Executive making the final decision on it, rather than referring it to Senior Adjudicator under the FSOS.

¹ See sections 13(3) and (4)(b) of the Act

² See section 11(2)(d) of the Act

7. Current Caseload

The current cases are detailed in Appendix 2 and I do not propose to provide a comment on each of them. There are two outstanding cases from 2018, both of which are against planning decisions. One is a continuation of the complaint TCA1801 on which my predecessor reported. All 2019 cases have been completed, the Report on the final one (TCA1903) being lodged for this month's sitting. Of the 2020 cases, the investigations in two of them have been completed and the Reports should be lodged for Tynwald sittings after the General Election. What is worth noting is that, of the cases received after 1 July 2020, 3 involve local authorities. One is concerned with restrictions placed on those returning from England to sheltered accommodation after quarantine was introduced. The other two concern the probity and integrity of local authority behaviour, with suggestions of bias. There is also a complaint about the level of consultation with individuals adversely affected by changes in designation of land in the Eastern Area Plan.

8. Finance

One of the matters raised by Mr Thomas MHK in his Motion referred to in Section 4 above was finance and, in the debate, he referred to the difficulty he had had (when he was the Minister for Policy and Reform in the Cabinet Office, which was originally responsible for funding the TCA) in obtaining £10,000 to £15,000 to fund the office. In that year, my predecessor and I were limited in the hours we could work each month by financing constraints and an unrealistic estimate that the hours required would be in the region of 10 per month. The budget is now managed by the Clerk of Tynwald's Office, and I am very grateful for the administrative support in operating it and for providing the figures which I set out below. The financial year, of course, runs from April to March, whereas the Report runs from 1 July to 30 June so I provide three different figures:

April 2020 – March 2021 expenditure was £24,062.

April 2021 – June 2021 expenditure was £6,261.

July 2020 to June 2021 expenditure was £24,010.

If the TCA is to deal with cases more expeditiously, as well as carry out the necessary work with local authorities to explain and educate, I consider about 30 hours per month is more realistic, with Mrs Kent working much the same. That would require a budget of between £35,000 and £40,000: this assumes that the Legislative Buildings will still be available for meetings with complainants and others at no cost and that storage facilities will continue to be provided. The inception of the office of the Tynwald Auditor General might provide an opportunity to re-evaluate how the office of the TCA can best carry out its functions and whether sharing of some resources would be more cost effective.

9. Conclusion

It is perhaps not surprising that Covid-related restrictions were the subject of a number of complaints, but I have rejected most of them because the affected complainants were not Island residents, but were persons prevented from visiting.

The complaints which have been accepted in the last 12 months have been more varied, but have highlighted issues in structures of which I was previously unaware. I had not appreciated that the Department of Infrastructure's Local Government Unit had until recently no statutory power to ensure compliance by local authorities and could only advise and cajole. As might reasonably be expected, the larger authorities, have robust processes which are well-advertised, but in smaller authorities, the complaints procedures are not easily found and, in some authorities, do not exist. Mrs Kent and I have been applying a soft touch where local authorities are concerned, but if the Act is to apply equally to all of them, persuasion may not be enough. I understand that some experienced Clerks have left over the last 3 years and in some local authorities, the Clerk is the only staff member, working from home, with inadequate resources and little experience. I am aware that other Clerks are willing to help and provide mentoring, but this appears to be an *ad hoc* arrangement. The Clerk needs not only to deal with day-to-day Commissioners' business, but to ensure compliance (amongst other things) with GDPR and the Seven Principles of Public Life. Whether small local authorities can comply with the various requirements without, at least, sharing resources is a political decision. Apart from occasional meetings organised by the Department, attendance of which is voluntary, there seems to be no proper training or standard-setting,³ so I see the TCA over the next year playing a critical role in educating the local authorities, if the number of future complaints is to be contained.

I would also ask the Department of Infrastructure look critically at ensuring that all clerks have access to and use the gov.im network for communications, where the local authority does not have its own internal network. If guidance could be provided as to the basic acceptable content of each local authority's website, it would help transparency of the activities. Each local authority needs to have a website for the benefit of local residents and so that information can be disseminated more effectively to and between authorities. Only once this is achieved will it be possible to gauge the level of satisfaction with local authorities.

Angela Main Thompson OBE
Tynwald Commissioner for Administration
30 June 2021

³ The power to prescribe performance standards is contained in section 4A of the Local Government Act 1985, and the standards are enforceable under the default powers contained in section 5 of that Act.

APPENDIX 1⁴

CASES RECEIVED AND REJECTED/CLOSED BETWEEN 1 JULY 2020 AND 30 JUNE 2021

DEPARTMENT OR OTHER PROPOSED RESPONDENT	SUBJECT-MATTER	REASON FOR REJECTION
Cabinet Office	Immigration decision	Delegated function from Lt Governor, out of jurisdiction and complainant not IOM resident
Governor in Council	Closure of borders under emergency powers	Out of jurisdiction
OFT/Financial Services Ombudsman Scheme	Failure to investigate complaint	Out of jurisdiction and not IOM resident
DEFA (2002)	Complaint about failure to enforce planning regime	Closed as not pursued by complainant
DHSC** (2004)	Complaint about medical care	Out of jurisdiction, matter for IRB complaint
Courts** (2008)	Disagreement on inquest decision	Out of jurisdiction
DHSC ** (2009)	Complaint about provision of maternity care and post natal care received.	Two aspects to complaint, medical treatment element rejected, but policy issue may result in an investigation if pursued.
Body not listed in Schedule 2 of TCAA 2011 ** (2010)	Personnel complaint	Out of jurisdiction
Advocates Disciplinary Tribunal/IOMFSA ** (2101)	Refusal to investigate allegation of professional misconduct	Out of jurisdiction and not IOM resident
Local Authority Joint Board** (2102)	Personnel complaint	Out of jurisdiction
Public Sector Pension Authority** (2103)	Complaint re pension award and subsequent Pensions Ombudsman decision	Out of jurisdiction as personnel matter, and has in any event been adjudicated upon by the Pensions Ombudsman
DHSC/ The Treasury** (2105)	Complaint re delay in remittance of state pension	Out of jurisdiction as internal complaints process not exhausted and not resident in IOM.
DHA/Public Sector Pension Authority** (2106)	Complaint re pension award	Out of jurisdiction as personnel matter

⁴ From 1 January 2021, *all* complaints received are registered before making the decision to accept or reject. In the Tables below complaints received between 1 July 2020 and 30 June 2021 are distinguished by **.

IOM Government/Tynwald**(2107)	Complaint re access to property during border restrictions	Out of jurisdiction and not IOM resident
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APPENDIX 2
CURRENT CASELOAD AT 30 JUNE 2021

DEPARTMENT (OR OTHER PROPOSED RESPONDENT)	SUBJECT-MATTER	CURRENT POSITION
DEFA (1816)	Complaint re refusal of interested party status and subsequent complaints re enforcement	Ongoing
DEFA (1822)	Complaint about refusal to take enforcement action re unsafe structure	Ongoing
DEFA (2001)	Complaint about grant of planning consent	Ongoing
Cabinet Office ** (2003)	Complaint about designation of land under Eastern Plan	Ongoing
Local Authority ** (2005)	Complaint re failure to follow complaints procedure and public standards	Ongoing
Joint Local Housing Authority ** (2006)	Complaint re inappropriate measures against Covid19	Ongoing
Local Authorities and Boards ** (2007)	Review of complaints procedures	Ongoing, but not a complaint
DHSC (Health IRB) ** (2009)	Complaint about maternity care and post-natal care received	See App 1, element relating to policy may be pursued
Local Authority ** (2104)	Complaint re planning objection by Local Authority	Ongoing, awaiting outcome of LA's internal procedure
DHA**(2108)	Re actions of Chief Constable	Completion of internal process awaited, but likely to be out of jurisdiction

APPENDIX 3
CASE REPORTS/STATEMENTS LAID 1 JULY 2020 – 30 JUNE 2021

DEPARTMENT	CASE NO.	SUBJECT-MATTER & DATE OF LAYING REPORT OR STATEMENT
DEFA	TCA 1909	Planning and Building Control. 26/02/2021
DHSC	TCA 1904	Complaint re Social Worker support and benefits. 08/03/2021
DHSC	TCA1824	Re delays in investigation by IRB. 31/03/2021
The Treasury	TCA1903	Complaint about National Insurance and consequent failure to pay pension supplement. 30/06/2021

