



**TYNWALD STANDARDS AND
MEMBERS' INTERESTS
COMMITTEE**

**SECOND REPORT FOR THE
SESSION 2023/24**

**WHISTLEBLOWING: MEMBERS OF
TYNWALD AS PRESCRIBED
PERSONS**



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Introduction

1. The Department for Enterprise is consulting on a series of proposals about whistleblowing. Among them is a proposal to make Members of the House of Keys, or all Members of Tynwald, prescribed persons for the purposes of whistleblowing legislation. The consultation closes on 1 March 2024.¹
2. This proposal, if implemented, could affect the relationship between Tynwald Members and public servants. That relationship is regulated by the Members' Code of Conduct and Required Standards of Conduct and is to that extent a matter within the cognisance of this Committee. We have therefore discussed this matter and have decided to share our discussion with Tynwald by making a report.
3. This report makes no recommendation but we would encourage both the Department for Enterprise and Tynwald Members more generally to take account of the following points in considering this policy.

What is a prescribed person?

4. Whistleblowing legislation provides that if an employee discloses a "relevant failure" to their employer or to a "prescribed person", the disclosure is "protected". If an employee suffers detriment as a consequence of a protected disclosure, the employee can seek a compensatory award from the Equality and Employment Tribunal and there is no cap on the sum which may be awarded.

Arguments in favour of making Tynwald Members prescribed persons

5. In the UK, MPs are prescribed persons.² (This is the only argument offered by the Department for Enterprise in its consultation paper.)
6. Employees approach Tynwald Members about employment-related issues already. Where an employee does this, it is desirable that the employee should be protected from detriment.

¹ <https://consult.gov.im/economic-development/whistleblowing-to-prescribed-persons/>

² See Public Interest Disclosure (Prescribed Persons) Order 2014 (SI 2014/2418)
<https://www.legislation.gov.uk/ukSI/2014/2418/made>

7. Disclosures to Tynwald Members may already be protected if they are “exceptionally serious” – see section 56 of the Employment Act 2006. It is not fair to place a burden on employees of deciding whether their issue is “exceptionally serious”.
8. Tynwald Members have a legitimate interest in understanding what is going on between employers and employees in the Island. Protecting disclosures could generate a useful flow of information to Tynwald Members.

Arguments against making Tynwald Members prescribed persons

9. Most prescribed persons are regulators of some kind and therefore have some direct capability to address relevant failures.³ Tynwald Members are not. Where public sector employers are concerned, Tynwald Members have an indirect capability insofar as their role involves scrutinising public service delivery outcomes. Where private sector employers are concerned, Tynwald Members have no capability to act. If Members were prescribed persons for the purposes of whistleblowing, this could aggravate public misunderstanding of Members’ capability in these circumstances, and could set up expectations of action which Members would be unable to meet.
10. Moreover, where public sector employers are concerned, Tynwald Members are actively discouraged from taking an interest in employment matters. The Required Standards of Conduct (Annex 4 of the Standing Orders) provides:

Members of Tynwald must not:

- *allow any staff member (especially a Tynwald staff member) to canvass their support in relation to a staff matter;*
- *otherwise interfere with staffing issues, except through the appropriate channels, namely –*
 - *(in the case of Tynwald staff) the Clerk of Tynwald in the first instance and, if the response is unsatisfactory, the Tynwald Management Committee by way of its Chairman, the Speaker and*
 - *(in the case of other public servants) the relevant Chief Officer and, if the response is unsatisfactory, the Chief Secretary.*

To prescribe Members for the purposes of whistleblowing would run contrary to this provision and could encourage public sector employees to think of Tynwald Members as appropriate advocates in staff disputes.

11. The Select Committee on Whistleblowing which reported in 2021 wrote:

[54] Using government bodies as prescribed persons also has the potential to create a conflict of interest both for Isle of Man public services employees and private sector organisations making disclosures as many of them will work for, or closely with Government. We conclude that, there is

³ [SD 2021/0001](#)

a requirement to mitigate the risk of conflicts of interest and to simplify the regulations relating to prescribed persons in our Island community.

[131] As in the UK, many of the Prescribed Persons, to whom protected disclosures may be made, are Government Departments, Boards and offices. The difficulty with this, for Isle of Man Government officers, is that the prescribed persons do not provide an alternative reporting option, it will be a person in their Department. The only alternative offered in the policy is the Audit Advisory Division, also part of government. The policy highlights the Manx Industrial Relations Service and Protect but these bodies are not prescribed persons and so can only provide advice.⁴

Like the regulators who are already prescribed, the majority of Tynwald Members are, or may at any moment become, part of the Government in some way. Therefore adding Tynwald Members to the list of prescribed persons does little to mitigate the risk of a conflict of interest.

12. Tynwald Members often serve in various capacities which may or may not conflict at one time or another with the action which a whistleblower may expect of them. For example in the Equality and Employment Tribunal case of *Ranson v Department of Health and Social Care*, one of the alleged protected disclosures was made by Dr Ranson (when she was working in the Department of Health and Social Care) to Hon Alex Allinson MHK at a time when he was Minister of a different Department. The Tribunal heard that Dr Allinson spoke to the then Minister of Health and Social Care, Mr Ashford, but that Mr Ashford would not have divulged a Minister-to-Minister discussion to Miss Magson; there was no evidence that Mr Ashford had passed on the message to Miss Magson; therefore no detriment could have resulted; therefore it was not necessary to decide whether the disclosure was protected.⁵ This illustrates some of the pitfalls which could arise if legislation directly provided for – and, by implication, encouraged – the making of whistleblowing disclosures to Tynwald Members.
13. Where a disclosure is made to a Tynwald Member by a public sector employee about something happening in a public body, the natural thing for the Tynwald Member to do is to raise the matter with the Minister (or perhaps the Whistleblowing Officer, or another officer, within the public body concerned. If this is done with the consent of the whistleblower no harm is done – but in those circumstances, the whistleblower could have approached the relevant Minister (or other person within the public body) direct. However, if the reason the whistleblower had approached the Tynwald Member in the first place was because they feared reprisal if they made a disclosure within their own Department, that puts the Tynwald Member in a very difficult position. The Tynwald Member will wish to see the problem sorted out but also to protect the identity of their source. Clearly, this sort of scenario can already arise and Members are able to manage it, for example by signposting the employee to another route such as a prescribed person if one is available. However, if Tynwald Members

⁴ [PP 2020/0199](#)

⁵ See paragraphs 269 to 284 of the liability decision of May 2022
<https://www.judgments.im/content/ET%2021-20%20Dr%20Rosalind%20Ranson%20V%20Department%20of%20Health%20and%20Social%20Care.pdf>

were themselves prescribed persons for the purposes of whistleblowing legislation what is at the moment a difficult position would acquire new legal significance.

14. Clause 10 of the Employment (Amendment) Bill currently before the Keys proposes that the Department for Enterprise should be able to impose a duty on a prescribed person to produce an annual report on disclosures they have received. If Members of Tynwald were to be prescribed, that would open the way to the Department compelling them to produce annual reports. The Department would not be able to require annual reports which enabled identification of individual workers or employers, but nevertheless the existence of a reporting regime of this kind could deter constituents from approaching MHKs.

J P Watterson (Chairman)
D H P Caine
T M Crookall
M E K Haywood
R W Henderson
R J Mercer

February 2024

The remit of the Tynwald Standards and Members' Interests Committee can be found at paragraphs 4.1 to 4.8 of the Schedule to the Standing Orders of Tynwald Court. The Members of the Committee are Mr Speaker (chair), Mrs Caine, Mr Crookall, Dr Haywood, Mr Henderson and Mr Mercer. The powers, privileges and immunities relating to the work of a committee of Tynwald Court include those conferred by the Tynwald Proceedings Act 1876, the Privileges of Tynwald (Publications) Act 1973, the Tynwald Proceedings Act 1984 and the Standing Orders of Tynwald Court. Correspondence about this Report should be addressed to the Clerk of Tynwald, Legislative Buildings, Finch Road, Douglas, Isle of Man, IM1 3PW.