

GD 2025/0023



Isle of Man
Government

Reiltys Ellan Vannin

Council of Ministers'
Response to the Economic Policy Review
Committee – Second Report for the Session
2024-25: Attendance of Witnesses

April 2025

To the President of Tynwald, and the Hon Council and Keys in Tynwald assembled.

The Council of Ministers acknowledges the report of the Economic Policy Review Committee (EPRC) on 'Attendance of Witnesses' and responds to the four conclusions and two recommendations in turn.

It is important to note that the Department of Infrastructure was not approached for comment prior to publication of the Committee's report.

It is the view of both the Department of Infrastructure and Council of Ministers that requesting the attendance of an individual officer, without reference to a Minister, is not conducive to good scrutiny or effective accountability. Good scrutiny is based on the long-established democratic principle of accountability of Ministers to the legislature.

As there appears to be some confusion or disagreement about the appropriate relationship between government and committees in this area, Council would welcome the opportunity to work with Tynwald to draw up appropriate guidance on the attendance of officials before Tynwald committees, in finding a constructive outcome from this episode.

In formulating this response, the Council of Ministers called on the expertise of Dr Mark Egan, a former Greffier of the States of Jersey and a former House of Commons Clerk.

It is important to note that the Minister for Health and Social Care, Mrs Christian MHK, was Chair of the Economic Policy Review Committee during the period covered in the report and has accordingly recused herself from consideration of Council's response.

**Hon David Ashford MHK
Minister for the Cabinet Office**

General Response to the Report

Conclusion 1

1. The first of the Committee's conclusions states:

"The handling of this matter by the Department of Infrastructure was unacceptable. It was a discourtesy to this Committee and arguably a contempt of Tynwald Court."

Failure to inform the Minister

2. The Department and the Council of Ministers do not accept this conclusion. There were acknowledged failings on the parliamentary side which were not covered in the report, which accordingly gives rise to a lack of balance.
3. Neither the former Minister, Minister Crookall MHK, nor the Department's Chief Officer were in copy in the invitation sent to Mr Cobb to give evidence to the Committee sent on 20 September 2024. This in itself was a breach of courtesy and sits at odds with the principle that it is *Ministers* who are accountable to parliament. The Committee could have chosen to write to the Minister indicating that it wanted to ask questions in a public session about operational matters at the airport and indicating that it wished to hear from the Airport Director.
4. This is the usual way in which parliamentary committees liaise with government to arrange oral evidence and the decision not to pursue this course lies at the heart of the subsequent issues, for which the Committee then chose to blame the department.
5. The Chief Officer of the Department was subsequently informed by the Clerk of Tynwald that while it may be within the Committee's remit to seek to have individual officers appear in front of the Committee, it was not appropriate to invite the officer directly without informing either the Chief Officer or the Minister themselves. This oversight, which he agrees reflects the normal way of working and respects constitutional norms, is not covered in the Committee's report.
6. The Council of Ministers agrees with the principles regarding Ministerial accountability outlined below in the United Kingdom Osmotherly rules:

Civil Service Code Obligations

9. Civil servants who give evidence to Select Committees do so on behalf of their Ministers and under their directions.

*10. This is in accordance with the principle that **it is Ministers who are accountable to Parliament for the policies and actions of their Departments. Civil servants are accountable to Ministers.** It is for this reason that when civil servants appear before Select Committees they do so, on behalf of their Ministers and under their directions because it is the Minister, not the civil servant, who is accountable to Parliament for the evidence given to the Committee.*

Summoning of Named Officials

*11. Parliament has powers to call any individual to give evidence. **However, in accordance with Ministerial accountability, where evidence relates to Government policy or action, it is given by Ministers or officials on their behalf.** Officials providing evidence to Select Committees do so under Ministerial agreement and instruction. Further guidance on the position of Accounting Officers and senior responsible owners is set out in pages 7-9.*

*12. When a Select Committee indicates that it wishes to take evidence from any particular named official, including special advisers, the presumption is that Ministers will seek to agree such a request. **However, the decision on who is best able to represent the Minister rests with the Minister concerned.** It remains the right of a Minister to suggest an alternative civil servant, or additional civil servant(s), to the person named by the Committee if he or she feels that would be a better way to represent them. **If there is no agreement about which official should most appropriately give evidence, the Minister can offer to appear personally before the Committee.***

13. If a Committee nonetheless insists on a named official appearing before them, contrary to the Minister's wishes, the formal position remains that it could issue an order for attendance, and request the House to enforce it. In such an event the official, as any other individual would have to appear before the Committee but, in all circumstances, would remain subject to Ministerial instruction and the Civil Service Code. This would be a very exceptional action.

These rules have long been accepted as underpinning the relationship between the government and scrutiny committees in the UK and are broadly respected in most Commonwealth jurisdictions as they reflect constitutional theory and law in Westminster-style systems and the statutory basis on which Ministers are charged with the administration of the public service.

7. The Committee's report talks of Ministers and Chief Officers being "entitled" to attend, with named officers "summoned" by committees to give evidence. Whilst acknowledging the right and precept of parliament to use its statutory powers to summon the attendance of witnesses, there seems to be little recognition of the principle of Ministerial primacy. Council of Ministers supports the position as outlined in the following paragraphs of the Osmotherly Rules:

*4. The Civil Service Code makes clear that civil servants are accountable to Ministers who in turn are accountable to Parliament. It therefore follows that when civil servants give evidence to a Select Committee they are doing so, **not in a personal capacity, but as representatives of their Ministers.***

5. This does not mean that officials may not be called upon to give a full account of government policies, or the justification, objectives and effects of these policies, but their purpose in doing so is to contribute to the process of ministerial accountability

not to offer personal views or judgements on matters of government policy - to do so could undermine their political impartiality.

Contempt

8. It is surprising and disappointing that the Committee has referenced the offence of contempt of Tynwald Court in the context of this episode. The Council of Ministers takes its responsibilities in respect of Tynwald Court extremely seriously. In this case, no formal summons was issued by the Committee for the attendance of a witness so it is difficult to see how an offence of contempt could have arisen. As per the Tynwald Proceedings Act 1876 a contempt can only be decided by the Court or the House, not a committee. Acting in this way is not likely to promote good scrutiny or instil confidence in the legislature if people asked to participate in scrutiny are to stand publicly accused of committing an offence because of a disagreement about how to conduct an inquiry.

An unclear convention

9. The principle that civil servants are accountable to Ministers, and Ministers are accountable to Tynwald is a well-established democratic principle. It therefore follows that when civil servants give evidence to a committee, they are doing so, not in a personal capacity, but as representatives of their Ministers.
10. The Department emailed the Office of the Clerk of Tynwald on 26 September to clarify that its understanding of this convention, so that it is usual for a Minister and Chief Officer to attend alongside another official who has been requested to attend, was correct.
11. The email from the Clerk to the Committee (Appendix 4 of its report) agreed that *"where operational staff are asked to appear before a Committee, it is generally appropriate for them to be supported by a senior officer."* "However", he went on, *"I would expect a witness at the level of an Airport Director to have the capability and confidence to appear on their own."*
12. Unfortunately, this response missed the point of the important constitutional convention that lay at the heart of this dispute. The capability and confidence of the Airport Director in being able to sit in front of a committee was not in doubt. The issue was that the Minister should have been approached first to decide who was best placed to answer the Committee's questions, in accordance with established constitutional convention, as set out above.
13. It is also worth noting that this is the first time that any Tynwald committee had requested that the Airport Director appear without any political support.
14. The Council of Ministers is also of the view that the justification given as to why the Airport Director should appear before the Committee on his own was inadequate. The report states, *"as Mr Cobb is about to leave and this is likely to be the Committee's last chance to hear from him, the Committee felt that the best use of its time would be for Mr Cobb to appear as the only witness."*

15. The conventional, and courteous, approach to asking people to attend a committee hearing is to set out the nature of the committee's inquiry and the reason why the person being invited can assist with that inquiry. This approach was not followed on this occasion. It was unclear why the Committee wanted to hear from the Airport Director and what he might be asked about, other than the vague reference to it being a "*last chance*" to hear from him. Committees do not customarily hold exit interviews with departing staff. In this case, there was nothing in the Committee's request which suggested it was purely about operational matters within the cognisance of the Airport Director. Questions about broader strategic or political matters are the responsibility of the Minister to answer.
16. The Council of Ministers is surprised at the assertion in paragraph seven of the Committee's report that "*parliamentary Committees are in charge of their own procedures*". In fact, committees operate within a procedural framework which is set by the legislature as a whole. However, Council recognises that Committees are responsible for decisions about their inquiries and can decide for themselves who to invite to give evidence, whether in public or in private, on any particular topic. However, this broad right to conduct inquiries as they wish is caveated by constitutional conventions concerning the separation of powers and the accountability of ministers to the legislature, as set out in the UK's Osmotherly Rules. Although those rules do not formally apply in the Isle of Man, the principles upon which they are based are a cornerstone of political frameworks across the Commonwealth and have generally been followed in the way Tynwald has operated in the past.
17. As there appears to be some confusion or disagreement about the appropriate relationship between government and committees in this area, Council would welcome the opportunity to work with Tynwald to draw up appropriate guidance on the attendance of officials before Tynwald committees, so something constructive results from this unfortunate episode and there are clear constitutional norms to be referred to in the future.

Difficulties identified

18. Paragraph two of the report asserts that: "*As at 10:43[am] on Thursday 26th September 2024 – two weeks and a day before the agreed date – there was every reason to expect that the hearing would go ahead and no indication of any difficulty.*"
19. This is correct as at 10:43am, but 17 minutes later, at 11:00am, the Department had contacted the Clerk of Tynwald's Office to clarify the usual convention around a Minister and Chief Officer attending in support of officers.
20. Further exchanges occurred thereafter, and the difficulties were shared via email and off the record. The Council of Ministers therefore refutes the allegation that there were no indications of any difficulty in advance of the scheduled hearing.

Conclusion of the Council of Ministers

21. In conclusion:
 - The Committee's request to call the Airport Director on his own, because it was his last chance to speak to the Committee, was unclear in purpose and risked

drawing the Airport Director into areas of questioning outside of his remit and formal responsibilities

- It was discourteous to the Minister not to even inform him of this approach when the Minister is the person accountable to Tynwald
- Having found out about the situation, the Minister made efforts to resolve matters, offering to appear before the Committee alongside the Airport Director to assist its inquiry, in accordance with well-established constitutional principles
- It is not appropriate for committees to by-pass Ministers and to seek evidence from officials who are accountable to the legislature through Ministers, not on their own account
- The allegation that the Department's handling of this matter arguably amounting to a contempt of Tynwald Court is unfounded and is refuted in the strongest terms
- The Council of Ministers would welcome the opportunity to work with Tynwald to draw up appropriate guidance on the attendance of officials before Tynwald committees.

Conclusion 2

22. The Committee's second conclusion asserts that:

"As a result of the Department's mishandling of this matter, a valuable opportunity has been lost to obtain to capture the experience of an outgoing Airport Director for benefit of the parliamentary record."

23. The Committee had within its powers the ability to request a written submission from the departing Director, but it is understood that this was not pursued, nor did the Committee take up the Department on its offer to answer or forward any questions the Committee may have wished to ask at the hearing.

24. There is still to this day no clarity on what "experience" the Committee was seeking to capture or which of the Committee's ongoing enquiries this evidence would have formed part of.

Conclusion 3

25. The former Minister acknowledges that it was unfair on the Committee and its supporting staff to have asked the Airport Director to inform the Committee of his non-attendance the day before the hearing itself. The Department and Council of Ministers therefore acknowledges the Committee's third conclusion that:

"If the Department had wished the Committee to reconsider its position of inviting the Airport Director to appear alone, such a request could and should have been made well in advance of the intended date of the hearing. In fact no such request was made."

26. The context is important however. The confusion arose due to the Airport Director being approached without the knowledge of the Minister – an invitation which was accepted, again, without the knowledge of the Minister. This then left the unfortunate scenario of the Airport Director having confirmed attendance to appear at a time which was not suitable for the Minister due to a funeral. An offer was made to reschedule to enable the Minister to attend but this was after Mr Cobb had left his post as Airport Director and was therefore not accepted. The Council of Ministers notes that although

not Mr Cobb, an Airport Director was in place and available to meet to discuss operational issues alongside the Minister. Given handover had occurred, any salient points would have been able to be conveyed, so it is most surprising that this was not taken up.

Conclusion 4

27. The fourth conclusion suggests that:

"If the Department had intended to negotiate for the hearing to go ahead on condition that the Minister and Chief Officer were allowed to participate, the scheduled time of the hearing should have been kept clear in the Minister's diary on the basis that parliamentary duties should take precedence."

The Council of Ministers of course accepts the principle that parliamentary duties take precedence. However, on this occasion it was not possible to keep the Minister's diary clear, as suggested by the Committee, as he had a funeral to attend (and in any case, the Committee had not made the Minister aware in the first instance). The Council of Ministers notes that Mr President takes a sympathetic approach to these matters and has granted leave of absence (from Tynwald sittings) to Members to attend these sad and important occasions.

Response to Recommendations

Recommendation 1	<i>That Tynwald is of the opinion that the handling by the Department of Infrastructure of the Economic Policy Review Committee's planned public oral evidence hearing with the outgoing Airport Director in October 2024 was unacceptable.</i>
Commentary	For the reasons outlined above, the Council of Ministers disagrees with this recommendation as written and proposes an amendment which provides balance and learning for all parties. This episode has revealed that there is scope for improving the way in which parliamentary committees engage with witnesses and/or Departments and vice versa. Should the Clerk of Tynwald's Office update its guidance document for witnesses it is suggested that considerations be given to the principles outlined in the Osmotherly Rules adopted by the UK Government. Tynwald need to develop rules of its own on arranging evidence sessions and principles, in conjunction with Government – with Government determining an equivalent to the UK's Osmotherly Rules, which reflect the unique position of Tynwald. The Council of Ministers would welcome the opportunity to assist with this work. In the meantime senior civil servants will be reminded that when invited to attend oral evidence sessions they should inform the relevant Minister and not assume that the Committee has made the Minister aware.
Response	Amend <i>"That Tynwald is of the opinion that the handling of the Economic Policy Review Committee's planned public oral evidence hearing with the outgoing Airport Director in October 2024 by both the Committee and the Department of Infrastructure was regrettable; and that clearer rules and guidance should be established in respect of officers and Ministers attending parliamentary committee oral evidence hearings."</i>

Recommendation 2	<i>That Tynwald re-affirms the principle that parliamentary duties are to take precedence.</i>
Commentary	The Council of Ministers is unsure as to why this recommendation has been included given that it does not directly relate to the episode in question, nor the content of the report itself. Had the Minister been invited from the outset and chose not to attend without good reason, then there would be sense to its inclusion.

	Notwithstanding, the Council of Ministers recognises this principle and wholeheartedly reaffirms its support for it. It would however be beneficial for this principle to be documented rather than existing as an unwritten rule. It is suggested that the principle be qualified to clarify that parliamentary duties take precedence over routine government duties but not personal matters, for instance.
Response	Accept