

**15. Constitutional and Legal Affairs and Justice Committee –
Third Report 2020-21: Role of the Attorney General –
Amended motion carried**

The Chairman of the Constitutional and Legal Affairs and Justice Committee (Mrs Poole-Wilson) to move:

That the Constitutional and Legal Affairs and Justice Committee's Third Report for the Session 2020-21: Role of the Attorney General [PP No 2021/0107] be received and the following recommendations be approved:

Recommendation 1

That the recommendation made by Stephen Wooler to redefine the relationship between the Attorney General and the Director of Prosecutions as one of superintendence, with prosecutions being brought in the name of latter, be formally implemented without further delay.

Recommendation 2

That the legal advisor to the executive be entirely separate from the legal advisor to Tynwald and its Branches.

Recommendation 3

That the Government conduct a review in order to identify effective solutions to address the issues raised in this report; and that it report back to Tynwald by December 2022.

[GD No 2021/0053] is relevant to this Item.

2105 **The President:** We now move to Item 15, the Constitutional and Legal Affairs and Justice Committee, Role of the Attorney General. I call on the Chairman of this Committee to report.

The Chairman of the Constitutional and Legal Affairs and Justice Committee (Mrs Poole-Wilson): Thank you, Mr President.

2110 In 2019, the Committee decided to look at the role of the Attorney General. Before I talk about what prompted that review, it is important for me to be clear on the record today that our review should in no way be seen as a criticism or reflection on the performance or conduct of the current incumbent, (**Several Members:** Hear, hear.) and neither are the Committee's conclusions and recommendations to be taken in that way. On the contrary, our review concerned the structure and scope of the role, not its execution by the current officeholder, and we are grateful to the
2115 current learned Attorney for his evidence and input throughout our inquiry.

Our review, Hon. Members, was prompted by a number of factors, namely: (1) the considerable scope of the role and range of duties involved; (2) the growth in the amount and complexity of our body of law, which in turn has necessitated the expansion of areas of expertise within the Attorney General's Chambers and makes it impossible for any post-holder to maintain extensive knowledge of all areas of the law; (3) the need for the Attorney General's role as
2120 currently structured to have to take action in all three parts of the constitution, (1) advising the executive, (2) advising and sitting as a member of the legislature and (3) acting as the prosecutorial authority; and finally, the consequential potential for conflicts of interest to arise and even absent
2125 actual conflicts, the problem of the perception of such conflicts.

Hon. Members, the role of Attorney General can be traced back a number of centuries, but since Revestment in the 18th century, the Attorney General has been a Crown appointee, tasked with maintaining the constitutional propriety of the Isle of Man and ensuring statutory powers are not exceeded. Since then we have seen, particularly in recent decades, considerable changes
2130 in terms of the volume and complexity of the law and the ever-broadening scope of duties

assigned to the role of the Attorney General. Yet there has not been a full review of the scope of the role to ensure that it remains appropriate in light of these changed demands.

2135 In the course of our inquiry the Committee considered the recommendations of the Wooler Review from 2012 and looked at the 2005 Council of Ministers' Report on the appointment of the Attorney General, as well as taking evidence from the current learned Attorney.

2140 The 2005 Report provided a useful opportunity to capture at the time the broad duties of the role. A role description at the time listed a total of 11 duties, including acting as a prosecutor in the Court of General Gaol Delivery, advising and representing the Crown and Government, advising on matters of public interest, drafting legislation and attending sittings of Legislative Council and Tynwald. In his evidence to the Committee in 2019, the current Attorney General submitted to us in draft an amended list of duties reflecting the further development and expansion of the role. The list, which runs over two pages, is set out in our Report and sets out the duties already mentioned as well as specifying a number of statutory duties and a range of international duties that are part of the role, plus the expanded remit of Chambers, including for matters such as procurement.

2145 In our Report, we note that even in 2005 it was acknowledged that the duties of the Attorney General were becoming increasingly burdensome. Inspection of the current list of duties reveals a role that is clearly far beyond the reasonable scope of any full-time position which is to be executed to a high standard by a single person. The current incumbent in his evidence agreed that
2150 the increasing scope of the role is problematic, saying:

We do tend in the Isle of Man to cram everything into as many hats as we can and [give it] to one person and say 'get on with it', so it could be that there is a better model for delivery.

Hon. Members, your Committee agrees.

2155 We also recognise that although he was not tasked with a review of the role of the Attorney General, Stephen Wooler's review into the functioning and operation of the Attorney General's Chambers does offer some ideas to assist with revisiting the scope and structure of the role of Attorney General. For example, as recommended by Wooler, the majority of the day-to-day business should be managed by the heads of the Chambers' divisions and their teams. This would allow the Attorney General to focus on his or her core responsibilities with any matters of significant importance or sensitivity being elevated for the Attorney General's consideration where this is deemed necessary. We also suggest that formalised implementation of Wooler's managerial structure within Chambers would assist with resilience in relation to the Attorney
2160 General's position.

2165 Wooler recommended that a second Crown Officer be appointed as an assistant Attorney General in order to have someone in post who would be capable of deputising should the Attorney General become absent. Whilst not an exact reflection of Wooler's recommendation, the role of Solicitor General was introduced as a second Crown Officer and we heard in evidence that the Solicitor General shadows the Attorney General.

2170 Hon. Members, the Committee considers that it is neither necessary nor desirable for the Attorney General to have a formal, permanently appointed deputy. However, we do consider that the second Crown Officer post is an important role that should be retained and that the scope of both Crown Officer roles be looked at and redefined appropriately to assist in addressing the current challenges of scope and conflicts inherent in the Attorney General's role. We reflect this in our conclusions.

2175 We also reflect in our Report and conclusions the importance of the Crown Officer status of both the Attorney General and Solicitor General roles. We acknowledge the value of this status, which for the avoidance of doubt gives primacy to the maintenance of the rule of law in the Island, and supports the post-holder to act as an independent legal spearhead to prevent or interfere with any abuse of executive power or any breach of the Island's constitutional principles.

2180 The Committee's concerns are thus both with the overly broad scope of the Attorney General's role as currently cast and the issue of conflicts linked to the combination of the current range of functions. Of particular concern is the close link between the executive and prosecutions as a result of the Attorney General's presence in meetings of the Council of Ministers and his ultimate responsibility for prosecutorial decisions. The problematic nature of the close relationships between these roles was acknowledged by the learned Attorney in his evidence to us, when he said:

In the world where perception of independence and impartiality is of increasing importance ... I consider and agree with Wooler's recommendation that the time has come, to use his words:

to underline the fact of appropriate separation in the Isle of Man by requiring prosecutions to be brought in the name of the Director of Prosecutions.

2185 We also note that Wooler's recommendations were accepted by the Council of Ministers and the Attorney General in evidence to us explained that in February 2016 he received approval in principle to making this change from the then Minister of the Department of Home Affairs, but the Department has not yet progressed this matter.

2190 Thus, our first recommendation is that the recommendation by Stephen Wooler, to redefine the relationship between the Attorney General and the Director of Prosecution as one of superintendence, with prosecutions being brought in the name of the latter, be formally implemented without further delay.

2195 Our Report also looks at other tensions and potential conflicts within the Attorney General's role and discusses some ideas to assist in developing solutions as part of a future review. I will not today repeat all of the matters and conclusions. However, a couple are important to highlight.

First, we recognise and fully support the importance of the presence of a Crown Officer in meetings of the Council of Ministers as an important element in safeguarding the interests of the Manx public and the constitutional propriety of the Isle of Man. We also conclude that removing the perception of conflicts is as vital as preventing real conflicts.

2200 One particular manifestation of where there is an inherent tension is when the Attorney General is asked to move Bills as a Member of Legislative Council. No matter how much care the learned Attorney takes to make clear that in such situations he is not speaking for himself, there is a risk of perceived conflict, as most legislation seeks to implement policy objectives, and given his attendance at the Council of Ministers, at which he is exposed to the policymaking discussions of Government, it is conceivable that the Attorney General would face difficulties in relation to moving legislation.

2210 In evidence, the Attorney General stated, 'I ought not to be there promoting ... Government policy.' Again, we agree, (**The Speaker:** Hear, hear.) and in the Committee's view, any challenges the Government may occasionally experience finding a Member of Legislative Council to move a piece of legislation could be addressed without treating the learned Attorney as a last resort for moving Government Bills.

2215 We also acknowledge that having the Attorney General as a Member of Legislative Council currently allows Members the chance to seek legal clarification on technical aspects of a Bill. However, we question whether it is necessary for the Attorney General to be a sitting Member of Legislative Council in order for such advice to be available, particularly given the practice of Members in both the House of Keys and the Legislative Council of asking the legislative drafter for such technical clarification.

2220 In a similar vein, the Attorney General is not present in sittings of this Hon. Court to engage in any political debates; rather, he is present to answer questions we may have in relation to the lawfulness or constitutionality of a matter of business. We considered whether it would be valuable for the Attorney General to remain a Member of Tynwald, and on balance concluded that it would not. As I mentioned previously, given the considerable scope of the law today, it is important to recognise that any person would naturally be restricted in the quality of legal advice

2225 that can be provided in response to spontaneous questions. The current learned Attorney agreed, telling us in evidence, 'It is clearly very, very difficult to provide legal advice in the moment.'

2230 We do recognise that there is benefit in Hon. Members being able to ask questions of the Attorney General, but suggest that this could be better facilitated by having the Attorney General able to be summoned to the Bar of Tynwald for the purpose of answering a question, building in advance notice so that the Attorney General is able to provide a considered and thus more meaningful response.

2235 As a separate point, we considered the tension involved in the Attorney General having a role as legal advisor to the executive and to Tynwald. As I stated earlier, this is not a reflection at all about the performance or conduct of the current incumbent. The Committee also recognises the importance of Crown Officer status. Nonetheless, advice may be sought not only on the state of the law, but on the legal implications of policy or particular actions; and there is of course room here for different legal opinions. **(Mr Robertshaw: Hear, hear.)**

2240 Given the fundamental importance of Tynwald and its Committees' role in scrutinising the executive, it is, we believe, important that Tynwald, individual Members and its Committees, be able to access reliable legal advice which is free from both real and perceived conflicts. Thus, our second recommendation is a point of principle that the legal advisor to the executive be entirely separate from the legal advisor to Tynwald and its Branches.

2245 Hon. Members, I wish to stress at this point that our recommendation 2 is about a matter of principle. The Committee recognises that if this recommendation is supported there will need to be careful consideration as to how this is implemented and we would expect that all of the implications be fully thought through as part of any review that takes place.

2250 I would also like to emphasise that in bringing forward this recommendation, as I have said, we do not seek to question the integrity of the current officeholder or the central importance of their Crown Officer status and the associated duty to uphold the rule of law. Also, this is not about trying to have this Hon. Court resume its now historical judicial functions by having it adjudicate between the legal advice provided to the executive and any advice given to a Tynwald Member or Committee.

The Speaker: You're no fun, Jane!

2255 **The Chairman:** It is about recognising that there are times when Tynwald and its Committees may wish to seek legal advice and that in the Committee's view it is preferable for that source of advice to be separate from the source of advice to the executive. This is because, first, the reality is that there will always be different interpretations of the law. To use the old adage, ask two lawyers and get three opinions – four, five, carry on. *(Laughter)* And second, that separate access to legal advice will not only prevent perceptions of conflict, but importantly it will enable Tynwald and its Committees to enhance their work.

2265 It seems, Hon. Members, to be better recognised today than perhaps was once the case that effective scrutiny work by Tynwald Policy Review Committees and the Justice Committee can make a constructive difference to reform and progress. Our recommendation 2 should be seen in the light of this recognition. Ensuring Tynwald and its Committees function as well as possible, including enabling separate access to legal advice, ultimately has the potential to benefit all of us in our work here for the Island.

2270 Our final recommendation is important, as whilst we have identified a number of issues we have not sought to prescribe how the issues should be addressed and are mindful that how this is achieved should be thought through well. The Committee recognises that any change to the scope and structure of the role of the Attorney General deserves full and considered review with proper consultation with all stakeholders. Thus, our third and final recommendation is that the Government conduct a review in order to identify effective solutions to address the issues raised in this report and that it report back to Tynwald by December 2022.

2275 Mr President, Hon. Members, I earlier highlighted a number of factors that drove this inquiry. Significantly is of course the need currently for the Attorney General to act in all three parts of the constitution and the consequential potential for conflicts of interest to arise. Hon. Members will have seen from our Report that whilst we drew a number of conclusions, we do not seek your approval of those conclusions, although we would hope that they are taken into consideration in
2280 any future review. The motion before you today is that you are asked to receive our Report and approve our three recommendations with a view to addressing the matters we have identified. We have brought forward these recommendations in the same spirit as our previous Reports, which is to seek to achieve improvement and positive change and we seek Hon. Members' support to enable this.

2285 Mr President, I beg to move.

The Speaker: Hear, hear.

The President: I call upon the Hon. Member for Douglas East, Mr Robertshaw.

2290 **Mr Robertshaw:** Thank you, Mr President. I am very happy to second our esteemed Chair in her submission of the Report.

I will just add a couple of points. I was listening carefully to Mrs Poole-Wilson's submissions and that was just one particular point about not having the AG attending automatically Tynwald, and that in fact legal advice could come to the Bar of Tynwald as appropriate. I think it is important that that actually would both help the AG and the Court in a sense that his or her word, the AG, whoever the AG is, becomes ever more complex and more specialist, and rather than necessarily the AG coming forward him or herself that the person with the speciality could represent the AG at the Bar of Tynwald, and I think that would be helpful.

2300 Secondly, my second point, just to ... Oh, I must make a comment about if you ask two lawyers/advocates an opinion you get three answers. Mr Quine helpfully suggested that we would also get five bills. *(Laughter)*

A Member: Five big ones!

2305 **Mr Robertshaw:** Five big ones!

The issue I just want to raise that I think is important is this issue about as the Social Policy Review Committee work has expanded and become ever more serious that, to follow up Mrs Poole-Wilson's comments, it must be helpful to have an opinion come in in certain circumstances from an independent standpoint. After all, that is how we work in here. We have the executive and we have the parliamentary side, and it is the tension, the healthy tension between the two that ultimately has us arrive at changes in policy or legislation. There is no singularity in that. If there was, I think we would not do as well as we achieve now. So I think that is a particularly important point to make.

2315 I think that the Attorney General is burdened at the present time, when both sides, the executive and the parliamentary side, are grappling with issues, that the Attorney General becomes the singular point of opinion, which is unfortunate and not the right way.

So with that, Mr President, as I say, I am happy to second, I think as the Chairman has already more than successfully covered the waterfront.

2320 Thank you very much.

The President: I call upon the Attorney General.

The Attorney General: Thank you, Mr President.

2325 Hon. Members, I welcome the Report of the Constitutional and Legal Affairs Committee into the role of the Attorney General for the Island; a role which I have the privilege to have held since

2013. I would firstly like to thank the Chair, my dear friend, Mrs Poole-Wilson, for her kind and understanding comments and some sympathy for the role which I play as Her Majesty's Attorney General in its scope and in the work which I have to carry out.

2330 The office of Attorney General is one found in many, if not most, common law jurisdictions and is invariably at the heart of government. Their common feature is that they attract a range of demands from the different branches that make up the government; and they have to be managed with professionalism and integrity. A second common feature is that they are not policy ministers; their role is to provide impartial and objective advice to assist the formulation and
2335 implementation of policy.

Having said that, they sit within a range of different constitutional arrangements – some being elected parliamentarians; others, as in my case, appointed as Crown Officers, whilst some may be directly appointed and salaried by the administration.

2340 The point I am making, Hon. Members, is that there is no 'one size fits all' model of an Attorney General; the key requirement is that the arrangements meet the various, often competing, needs in the best way possible; and respond sensitively to those needs as they change. In our case, Hon. Members, the question is: what is right for the Isle of Man today and for the foreseeable future?

As the Chair of the Committee has mentioned, I provided the Committee with my own views to assist it in its deliberations, and I hope I did so in a constructive and open manner.

2345 It follows from what I then said that I have no difficulties with recommendations 1 and 3, both of which flow naturally from the Wooler Report in 2012, that necessarily focused on a number of issues which were then of pressing concern in Chambers; whilst at the same time flagging up some of the wider and longer-term requirements.

2350 I explained to the Committee my wholehearted acceptance of recommendation 1 and the reasons why it had not gone forward as quickly as I had hoped. I am pleased to note the Government's acceptance of this recommendation 1, so hopefully we can now make progress.

2355 However, in saying that, the next steps are the fleshing out of the precise nature of the superintendence including the delicate question of any power to direct the Director of Prosecutions and also legislation will certainly be necessary. Oversight of prosecutions has a bearing on the Attorney General's wider role and this work would dovetail with what is proposed as regard to the review under recommendation 3.

2360 In the context of a review, I entirely agree with the Committee that for many of the reasons outlined in its Report, the time is ripe to examine the current volume and pattern of work within the Attorney General's Chambers as well as the extent and scope of the statutory duties which I personally bear as Her Majesty's Attorney.

2365 A key purpose of any such review exercise would be to build on the Wooler Report and ensure the structure of Chambers delineates appropriately between the routine work of advice to Departments and Offices of Government on the one hand and those which, on the other hand, require by reason of their novelty, complexity or government importance, personal input from the Attorney General or my fellow Crown Officer, the Solicitor General. So, subject to the views of this Court, if such a review was initiated I would be happy, along with my staff, to play a full and supportive part in that review. It is in my view be the natural place for in-depth consideration of the conclusions that underpin each of the Committee's recommendations.

2370 Since the direction of Chambers was reset by Wooler in 2012, and my appointment in 2013, I have made various changes in structure in Chambers as the demands for our shared legal services have expanded significantly since that report. Those changes have been accompanied by a strengthening of the administrative arrangements that facilitate better management information to underpin decision-making; although I do accept, Hon. Members, that there is still some way to go.

2375 Transparency has increased through the publication each year of information about the nature and extensive scope of the work we do. My aim was to better inform the Manx public and also you, Hon. Members.

2380 Recommendation 2 appears linked to a cluster of conclusions appearing at the end of paragraphs 68 and 85 in the Report. Their combined effect would be radically to alter the role of the Attorney General in a way that has the potential to impact on the whole machinery of government.

Without commenting in detail on the Committee's observations in their Report, I reiterate that I am personally amenable to constructive proposals for improving the Island's existing structure of governance but, as I urged the Committee, we must be wary of change for change sake.

2385 We also need to be very clear how alternative structures would replace the existing ones and also importantly what the cost would be. A key consideration in my mind is that changes in approach should not result in our existing shared legal services becoming unduly fragmented and that the current inbuilt resilience, which has taken some years to develop, is still retained.

2390 In my opinion, all the issues raised by recommendation 2 ought to be picked up in a wider review of the role of the Attorney General and the Solicitor General contemplated by recommendation 3.

2395 However, I would offer some observations about themes which permeate the Report, and which in part that the Chair has made comment or reference to. I speak first about the possibility of conflict of interest, both in relation to the different branches of the executive; or the different branches of the Crown.

Hon. Members, I do not think we can forget that in our small Island, perceptions of conflict of interest are perhaps inevitable, especially when offering a shared legal service which is available to all arms of Government and it is perhaps difficult to come up with a satisfactory solution, if that is needed. That solution would have to successfully dispense with a continuing perception. All that I can say to Hon. Members, as I have said before, is that in practice conflicts of interest hardly ever or rarely become a problem.

An important factor is that the Crown, in all its manifestations, is indivisible. Where Government faces challenge or significant policy decisions, many competing factors are likely to be in play, including the legal implications of various factors and options available.

2405 Administrators and policymakers are responsible for identifying and weighing the competing factors, and my role and that of my team of legal staff is to provide them, when asked, with a legal analysis. If the advisory lawyers at the moment diverge in their views on a matter material to a decision, it is likely to be escalated and there comes a time where I or the Solicitor General may provide a definitive view. The relevant policy Minister or, if appropriate, Ministers collectively, must then decide the policy issue based on the legal advice provided. The different positions of individual Departments are subordinate to the overarching interests of the Crown as determined by Ministers collectively. All these matters are for consideration.

2415 There is, however, one clear lesson to be learned from the Committee's Report. Despite the efforts to improve transparency, there remains – irrespective of the outcome of the review – an urgent need to improve the understanding of the role of the lawyers in Chambers and the roles of the Attorney General and Solicitor General.

Whether the Attorney General should continue to be a Member of Tynwald Court was also identified by the Committee as being an issue to be addressed by the review.

2420 I entirely agree the time has come to consider this. Of course, it has long been the case that the Attorney General has no vote in relation to parliamentary business. However I would note from recent press comment that this fact does not appear to be appreciated by the public, so clearly there is a job to do, if nothing else, to educate the public, as I have said, as to the role of the Attorney. Even if the Attorney's advisory roles are to be retained, it does not necessarily follow that he or she must be a Member of Tynwald or Legislative Council; or let alone in permanent attendance. Ultimately it is, of course, a matter for Members to determine whether constitutionally the Attorney be a Member of Tynwald or not and if not then to promote such a legislative change, which of course you will all appreciate would be subject to Royal Assent.

2425 With regard to the source of advice, the Committee's view again is based upon a belief that the Attorney General is either conflicted or perceived to be conflicted by being both the lead

2430 source of legal advice to in particular the Council of Ministers whilst at the same time also being available to Tynwald to offer legal advice to Tynwald Court and Hon. Members when called upon to do so.

I do have difficulties, which I expressed to the Committee, in regard to the concept of the Attorney General having any real or perceived conflict of interest when advising the executive and separately providing legal advice to Hon. Members.

2435 My view has always been that the legal advice from the Attorney and from the Attorney General's Chambers to the various arms of Government, as I have said, is indivisible; by that I mean that the legal answer given to any arm of Government ought to be the same given that is given to any other arm and that same principle applies whether the advice is provided to the Governor, Tynwald, Council of Ministers, or individual Departments.

2440 As public servants, the Attorney and Solicitor General as Crown Officers, and also each of the lawyers in Chambers, all of us owe an overarching duty to the Manx public to act with candour. This duty is reinforced in the case of the Attorney General and Solicitor General by each being obliged to act in accordance with our oath of office.

2445 None of us has any personal, financial or political interest in the matters we have to advise upon. In the unlikely event of that happening, professional obligations would require us to recuse ourselves, just like any other lawyer.

The Committee's proposed solution is an independent legal resource available to Members separate and distinct from any governmental or Crown source, although it is not clear whether that lawyer would be instructed by individual Members or by Members collectively.

2450 We do not have, Hon. Members, on the Island the concept of resourced opposition parties to Government as part of our constitutional arrangements. That said, all Members have a common goal, which is to advance the interests of the whole of the Island.

2455 The control or challenge to the executive's implementation of agreed policy decisions is achieved by a range of Tynwald Scrutiny Committees which are themselves able to obtain legal advice as they require either from Chambers or indeed externally.

The Committees can and do call upon the Attorney to explain the legal advice which they may have been provided in relation to matters the Committees are considering. The adequacy of this arrangement is again one which the review might consider.

2460 I do believe that great caution should be exercised so as to avoid bringing about a scenario where an Attorney stands before Tynwald being pitted against a legal view obtained externally with perhaps a contrary view that would then result in Tynwald being expected to reach a determined legal outcome. That interpretation of law is, Hon. Members, for the judiciary, and we are all familiar with the doctrine and importance of the separation of powers which underpins any responsible and democratic jurisdiction. With this caution in mind, I again consider that this is a matter to be considered carefully under the review under recommendation 3.

2465 In concluding, I offer a final note of caution; namely that while it is entirely appropriate for Tynwald to initiate this inquiry, there must be due regard throughout any review for the fact that the Island's Attorney General and Solicitor General are appointed by the Crown, the interests of which must be accorded due weight and cannot simply be assumed.

2470 Thank you, Mr President.

The President: I call upon the Hon. Member for Ramsey, Dr Allinson.

2475 **Dr Allinson:** Thank you very much, Mr President.

I would like to thank the Committee for a very interesting Report. I would just like to make a few brief comments and ask the Chair to respond to those in her summing up, if she does not mind.

2480 The Chair and the Committee have created a Report which in my mind has some very pertinent questions, but perhaps does not come up with a huge number of adequate solutions for them, which is why I am quite happy with recommendation 3 in terms of a further review. The reason I

say that is, as the Attorney General has said, in a small jurisdiction I think all of us get quite used to having several different roles, and so my question really for the Chair is are we trying to fix here a genuine problem or more a perception? Because I think those two are very different in terms of the impetus we put behind this.

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On a small island it is very difficult sometimes to get those degrees of separation that we may strive for in terms of separation between the legal aspects and the actual governance aspects of what we do as politicians and what we do in terms of government. And we have seen that create conflict, particularly in England, with the creation of the Supreme Court and then having advisers for Government being pitted against the Supreme Court's decision and meeting a stalemate.

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One of the main recommendations, in recommendation 2, is that the legal advice to Tynwald as a whole and its Branches would be different to the legal advice being given to Government, and I can understand some of the reasons behind that. But I am trying to think through in practice how that would work, and I think there would be, as the Hon. Member of Council, Mrs Jane Poole-Wilson has said, if you ask two lawyers you will get two different opinions so are we setting up a state whereby Tynwald would be an audience for a legal debate between two different opinions, and what would we then make of it? We want an answer to a question, and would we get that by having that difference of opinions? I do not know the answer to that, so I would really appreciate that.

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I think there is this real issue between can you be embedded in a system and still be independent? I think the Attorney General has stated that since he is a Crown appointment he believes he can be. Do you have to have that separation? When you have that separation you have, by default, a lack of engagement in that process and that can cause confusion. Whilst I think there is, from a superficial viewpoint, an inherent conflict of interest by having people involved in different parts of the parliamentary process, I do not necessarily see that as a bad thing that needs to be changed automatically.

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What I am slightly concerned about, particularly with recommendation 2, is the ramifications of that are quite significant constitutional reform by the back door. We are talking theoretically about taking the Attorney General either out of CoMin or out of Tynwald or, in fact, out of both, if you carry on down the line, and that is my slight concern with the way I could see things happening through what the reform is meant to start off with. Now, I do not know the answer to those and I am certainly not saying that would happen, but I would be very grateful if the Chair, in her summing up, could perhaps address some of my concerns.

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Mr President, I would also be very grateful if we could take and vote on each recommendation separately.

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Thank you.

The President: I call upon the Hon. Member of Council, Miss August-Hanson.

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Miss August-Hanson: Thank you, Mr President –

The President: One moment, Miss August-Hanson ... I have a motion here, under Standing Order 3.12, that the recommendations be debated as one but voted separately. Does anybody wish to second that motion?

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Mr Cannan: I will second.

The President: Mr Cannan, okay.

Very good, I thank Hon. Members, and is the Court content with that to be done?

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Members: Agreed.

The President: Thank you, Hon. Members.

2535 We will continue with the debate and when we get to the vote towards the end, I will put each recommendation separately.

Miss August-Hanson, you may continue.

Miss August-Hanson: Thank you, Mr President.

2540 Back on 22nd October 2019 I looked to bring a Private Member's Bill forward to look at introducing a law, essentially, that would prevent the Attorney General from introducing and amending legislation on behalf of Government, and I put that on hold in that sitting following discussion between myself and the Chair of the Constitutional Legal Affairs and Justice Committee, my colleague on Council, Mrs Poole-Wilson. At that time, I was very concerned about the impartiality of the position itself, not the post holder, who I do have a deal of respect for, but the position and the ability to introduce legislation which he is able to do and also able to table amendments as well to draft laws.

2550 As there has been some discussion about recommendation 2 that the legal advice to the executive be entirely separate from Tynwald and its Branches, what I would like to do is – by the way, I am very supportive of recommendation 2 – just walk Tynwald through the compromise, as I saw it at the time, of not removing the Attorney General from Tynwald Court entirely but just limiting the powers that the Attorney General has based on the remit, the job role. I will do that now, if Hon. Members will bear with me.

2555 Removing the right to move a motion or an amendment in Tynwald and the Legislative Council, I made a statement that it is most certainly not a reflection on, again, Her Majesty's current Attorney General, but a reflection of the mood of some Members of Tynwald Court, myself included, on the role of the AG and his powers in our parliament. The Attorney General's Chambers states that the role of Her Majesty's Attorney General consists of, and I quote,

Providing legal advice to the Lieutenant Governor, the Council of Ministers, Government Departments, Statutory Boards and Offices within Government; representing those persons and bodies in Courts and Tribunals when taking legal action on their behalf and defending the same against civil actions brought against them. The role also involves supporting Government Departments, Statutory Boards and Offices with procurement advice, administration and drafting of tenders and negotiation of contracts.

In all of that, I do not see Tynwald or Legislative Council.

2560 There have been those questions as to whether or not the role itself has the appropriate degree of impartiality. Sharing of amendments by drafters with Government officers before they are signed off, that has been evidenced; drafters refusing to aid parliamentarians in producing the amendments that the parliamentarians are looking for, that is an issue. These discussions have been had between Tynwald and the Attorney General's Chambers and those concerns are still very much alive so they cannot be swept under the carpet in relation to this particular debate, because I feel that it is incredibly important to add that into the mix. So I do apologise if I upset anybody by mentioning that but it is fact, it is reality, it is happening.

2570 There is no vote for the Attorney General, as we know, but in being able to put forward a motion does that post-holder then have a preference as to how other Members place their votes? I am not talking about the specific Attorney General, but any other Attorney General that may be incumbent because we cannot really legislate or change things based on personalities. There are two ways that the Attorney General might move a piece of legislation in *our* Branch, in another place, in Legislative Council, and that has been brought about in response to the need not satisfied by our statutory framework but brought to light by the judiciary or prosecutions, or if the drafters have found some technical abnormality that sort of catalyses fixtures of past mistakes or that the post-holder has been told to do so by the executive, that can provide no good reason to turn it down should the executive reassure them that it is not political. And we have a number of pieces of legislation that have indeed become quite political as they travel through the Branches, as we know, like, for example, the Communications Bill, which was moved by the Attorney General in

2580 Legislative Council, and that did become political. The Attorney General handled it extraordinarily well but it was political.

So I have questioned the ability to provide the executive with a rather convenient solution here to difficult pieces of legislation that they do not necessarily believe a Legislative Council Member might be able to do in the same way as an Attorney General perhaps would, and the credibility that goes with the Attorney General providing that solution. So does it outwardly look like the Attorney General approves of these Bills? Is he promoting them because it says so on the document? Is he an expert on the matter? Has he advised the executive on legal matters in relation to that piece of legislation, his drafters have they written them? Yes, they have. Is the Attorney General duty bound to put forward the best possible case for the approval of that Bill? Yes.

2590 Looking to the history, there was a time for heritage and a time for Revestment. Legislative Council was once a place for bigger beasts, the place for policy making. There is no founding document that states that the Attorney General might move motions or amendments in Council or in Tynwald but instead it is laid out in the history of custom, practice and precedent. The role was created in the early 1400s by the ruling family to aid captains and lieutenants to oversee administrative duties and manage domestic governance, in 1765 to 1919, and that was when it was first recorded that the Attorney General had a seat on Legislative Council. The commission reported to George III on the Constitution in 1792.

2595 The report goes on to specify the composition of Council according to the Deemster, the Clerk of the Rolls and the Attorney General. All three accounts include the Attorney General as having a 'right to a seat and a right to a voice'.

In 1887, the Attorney General moved the Poor Relief Bill, and in 1888, Second Reading of the Local Government (Theatres) Bill. That was when Deemsters could also move legislation. Deemster Drinkwater moved another Local Government Bill the following year, and then there were reforms in 1919. The Attorney General continued to move legislation as a Member of LegCo, like the First Reading of the Pharmacy and Dangerous Drugs Bill in 1921. From 1971 to present, the Isle of Man Constitution Act 1971, and that stated that:

The Attorney General shall cease to have the right to vote either in Tynwald or in Council, but he shall continue to be a member of both such bodies with, save as aforesaid, the same rights to speak therein as heretofore.

2610 So just digging a little bit deeper into those words: 'with, save as aforesaid, the same rights to speak therein as heretofore.' They are quite significant. The 'rights to speak heretofore' are taken to include the right to move motions, so that is where that comes from, although they are not laid out in that particular fashion.

In 1972, the Attorney General moved the Recognition of Divorces, and Legal Separation Bill and no one really queried that right. So why then deprive him of his right to vote but not to move motions? It is a bit of a history lesson there.

2615 But going back to the present day essentially the Attorney General has a very complex and multifaceted role. It is a busy Chambers, as we know, and we heard it is growing, changing and evolving. LegCo has also become a bit of a different beast as well, it is more about legislative engineering than it has been perhaps before – does legislation work? How does it work? In what context? That type of thing. It is not necessarily entirely about policymaking, it is becoming something new and a little bit different, something perhaps a little bit more evolved.

2620 Going back to the role of the Attorney General, the oath itself is sacrosanct, but what does the pledge actually involve? It talks about Government, it does not really discuss parliament and the role of parliament, and so again, it does not really exist, it is not really there. The Queen, the Lieutenant-Governor, the Government, the vulnerable – a very admirable oath. However, in that speech it does not make reference to our parliament, not particularly. It is something that has just evolved over time and has become what it has become now, but it is not necessarily something that people have decided on at some point in time and then it evolved based on that decision. It

is something that has just evolved and changed and become what it has become. It has not necessarily been reviewed or looked at. That is why I believe that perhaps now is the time to do that, and I am very excited to hear that the Attorney General is supportive of some form of review.

2630 Essentially, I am extraordinarily happy that the Chair of the Constitutional Legal Affairs and Justice Committee has brought this Report. I am slightly concerned that recommendation 2, at this point in the debate, hearing from a number of Members already, including Her Majesty's Attorney General, that that might end up going by the wayside. Perhaps down the line there is some form of a solution in terms of being able to move motions and moving Government motions
2635 because I think that is perhaps a real concern. I do not think that it has particularly come from anywhere, I do not think it has any foundation in some decision that perhaps was made at any point in time.

 In Jersey and Guernsey, the Attorneys General are not elected Members: they have a right to speak but they do not have a right to put amendments and motions forward in parliamentary
2640 sittings. Scotland's current Advocate General is a member of the House of Lords, and does have the right to vote and place Bills. Attorneys General typically have very differing roles, depending on where you are looking. In New Zealand, we see a hark back to a different time. The Attorney General takes the form of a political and legal officer, simultaneously also a ministerial position,
2645 chief law officer of the Crown, responsible for the supervision of New Zealand law and advising the Government on legal matters, so both political and apolitical with multiple hats. Australia presently sees a party politician, an elected Member, a Liberal member of the House of Representatives. There is so much going on elsewhere and around the world and it is a bit of a mixed bag but I would say that perhaps this is the time to have a look at that and whether or not it works well for our parliament. We can have a look at varying different jurisdictions and perhaps
2650 come to some form of conclusion. Maybe there is some kind of compromise to be had, is what I am saying essentially on that second recommendation.

 But I do congratulate the Committee on its work and thank the Chair, Mrs Poole-Wilson, for having done exactly what she said she would do back on October 22nd 2019.

 Thank you, Mr President.

2655

The President: I call upon the Hon. Member for Arbory, Castletown and Malew, Mr Cregeen.

Mr Cregeen: Thank you, Mr President.

 I would like to thank the Committee for their Report. The role of the Attorney General is an
2660 important one. It has been in existence, as the Committee points out, since the Revestment. The functions undertaken by the role have been expanded over time though, and so it is right that we should stop and take time to consider whether what we have now is still fit for purpose.

 We should not underestimate the value of the role as a Crown appointment. As with other
2665 Crown appointments, the Attorney General is able to exercise their functions independently, and without fear or favour because they are exercised in the name of Her Majesty. This separation should not be underestimated in a small jurisdiction. We should also be mindful that as a Crown appointment, engagement and consultation must be undertaken with Her Majesty, through the Ministry of Justice, in respect of any proposed amendments to that role.

 As the Committee has pointed out, the scope and range of the functions of the Attorney
2670 General has been added to over time. The list of functions provided to the Committee by the Attorney General as set out in the Report is extensive and, as acknowledged by the current Attorney General himself, there are only so many hours in the day.

 Turning to the detail of the Report, Mr President: the Council of Ministers takes no issue with
2675 the recommendation that the relationship between the Attorney General and the Director of Prosecutions be redefined to give a further layer of independence for prosecutions. It is important to say though, that this will have a financial implication. The establishment of a separate office will require investment and we must be prepared for that.

2680 In respect of the second recommendation, this subject has been the focus of further
discussions between myself and the Committee. The Tynwald Committee is keen for the principle
that the legal adviser to Tynwald be separate from the legal adviser to the executive to be
acknowledged by Tynwald. As has been noted in its response, the Council of Ministers is of the
view that this matter requires further consideration. In particular in respect to exactly what advice
is required. The Council of Ministers alone notes that the Attorney General will already handle
2685 matters of conflict within his Chambers where there are disputes between Departments. This
principle will have constitutional implications. Council urges caution therefore in this matter, and
I will be moving an amendment later on behalf of Council of Ministers which seeks further clarity
before agreeing on the principle.

2690 Finally, the last recommendation for a review, the Council of Ministers supports the
Committee's recommendation that a review is undertaken to identify effective solutions to the
issues raised in this Report. It is important though that we tread carefully, Mr President. There are
many issues to be considered which are fundamental to our constitution. It is right that our
Tynwald Committee has considered this matter carefully and has come to the conclusion that the
functions undertaken by the Attorney General in his role are considerable and should be subject
to review. The Council of Ministers is supportive of the recommendation.

2695 I will be moving an amendment to recommendation 2. I have discussed the matter with CLAJ,
and while we are broadly in agreement in most areas of their Report, we have been unable to find
a way through this. I would like to say though that I am grateful to the Committee for their time
in attempting to seek a resolution, prior to the sitting of Tynwald.

2700 In their Report the Committee sets out that Tynwald should have its own legal adviser separate
to that of the executive. The principal argument from the Hon. Committee Members is that it
removes the perception of conflict or indeed issues of actual conflict and that this will support
better scrutiny of the executive.

2705 Mr President, as the Council of Ministers has set out in its response, the Attorney General
already handles conflict on a day-to-day basis. That practical reality on the scale and scope of the
public service is the advice often actually provided by the Attorney General but it is given in his
name. There is a division of the AG's Chamber which is dedicated to advisory services. It already
handles advice and disputes between the different parts of Government. It seems to me that
establishing a separate legal advisor specifically for Tynwald will create two things: a whole new
team of lawyers, a more confrontational style of scrutiny where one legal team's advice is pitted
2710 against another.

I am aware that the Constitutional and Legal Affairs and Justice Committee is keen that the
principle of a separate legal adviser is agreed in this first instance but it seems to me, following
the logic set out in the Report, that agreeing to this means that the Attorney General will no longer
be required to sit in the Legislative Council or Tynwald, and so even just agreeing to the principle
2715 may have a significant constitutional impact.

That is why, Hon. Members, I believe that the principle in question and the detail which
surrounds the implementation should be subject to a further review, particularly on the
implications of the changes, before being brought back to this Hon. Court for further
consideration. That is why I beg to move the amendment standing in my name. It is only fair that
2720 Tynwald has all the information before it makes such a significant decision, even if it is only on
principle.

Mr President, I would like to sincerely say that it has been a pleasure dealing with the
Committee, and I do not mean that in a Sir Humphrey type of way. *(Laughter)* Working together,
I think that we have made some major improvements in our legal and justice systems, and I would
2725 like to thank the Committee for all their work, even to the Hon. Member ... what's his name? ...
Mr Robertshaw!

Thank you, Mr President, I beg to move the amendment standing in my name:

To leave out all the words in Recommendation 2 and to add the words: 'That the independent review of the role of Her Majesty's Attorney General consider the most appropriate means of the provision of legal advice to Tynwald and its Branches and to the Executive.'

The President: I call upon the Hon. Member for Glenfaba and Peel, Mr Harmer.

2730 **The Minister for Policy and Reform (Mr Harmer):** Thank you, Mr President. I will be brief, but I would like to second the amendment.

I think, yes, we understand there are issues that need an independent review; and I think a number of things, the complexity around how independent legal advice or whether you have four opinions or five opinions, it could get *very* complex. So I do think an independent review is absolutely the right thing to do.

2735 Thank you. With that, I beg to second.

The President: I call upon the Hon. Member of Council, Mrs Sharpe.

2740 **Mrs Sharpe:** Thank you, Mr President.

I stand before you as a Member of the Council of Ministers' Sub-Committee for Justice. Mr President, can you hear me?

The President: Yes, we can hear you. Can you hear us?

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Mrs Sharpe: Thank you, Mr President.

I stand before you as a Member of the Council of Ministers' Sub-Committee for Justice. Before I address the amendment put forward by the Hon. Minister for Justice and Home Affairs, I would first like to thank the Hon. Member of Council and Chair of the Constitutional and Legal Affairs and Justice Committee, Mrs Poole-Wilson, and the Committee members for this Report into the role of the Attorney General, which I read with great interest.

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Personally, there is no doubt in my mind that in principle the legislature should have access to legal advice which is completely separate to that of the executive. That is the recommendation of the Commonwealth Parliamentary Association in their recommended benchmarks for democratic legislatures, and it is simply good governance. **(Two Members: Hear, hear.)**

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In terms of Council of Ministers' amendment to recommendation 2, I understand the Committee's reservations because the Committee wants a definite agreement from Tynwald that the legal adviser to the executive be separate from the legislature, and the amendment says 'Tynwald *notes* the conclusion that the adviser be separate.' However, I do not necessarily have a problem with the word 'notes' at this stage.

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The amendment states that Tynwald notes the Committee's conclusion that the legal adviser to the executive be entirely separate to the legal adviser to Tynwald and its Branches. It also acknowledges the potential conflict inherent in the current dual role. In other words, Council of Ministers admits the *truth* of there being potential conflict inherent in the current dual role, and it notes there will be practical implications of any change – which there will be.

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For example, does Tynwald employ a permanent separate person or have someone on a retainer who answers questions when needed? What are the knock-on effects of the learned Attorney and his role with Legislative Council and Tynwald Court as legal adviser if this legal advice is to be given by someone else? As Mrs Poole-Wilson herself said, the duties of the Attorney General stretch over two pages of the Report and any change, as the learned Attorney says himself, will be radical.

2770

So back to the amendment. It notes that the review undertaken by the Council of Ministers should consider the practical implications of any change, which is sensible, given the huge range of knock-on effects of any change to this dual role. As I have said, Mr President, I am committed to the separation of legal advice given to the executive and the legislature, and at the same time

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I have no issue in supporting the amendment, which I think strikes the right balance between the need to explore the potential conflict in the current dual role and the knock-on effects of making changes to that role.

Thank you.

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The President: I call upon the Hon. Member for Ramsey, Mr Hooper.

Mr Hooper: Thank you very much, Mr President.

'I have been advised that ...' Five words that can often swing a debate in this Chamber.

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'I have been advised that I do not have the powers under the Animal Welfare Act to do the things that I need to do.' It turns out, actually, you do. Sometimes you get different opinions when you ask the same lawyer the same questions, which is somewhat bizarre.

This really is about equality of arms. It is about saying how do you as a backbencher effectively challenge the Minister that stands up and says 'I have been advised that ...'? I am looking forward to the Minister for Health's answer around the Regulation of Care Act, the Question that I tabled yesterday, because I strongly suspect it will start with the phrase, 'I have been advised that ...'

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How does one challenge that? How do you say, 'Actually, I think you might be wrong there, can I maybe get a second opinion on this?' Well I can, but only if I go to the person who provided the first opinion. If I want a second opinion from a GP I do not go back to my original GP, I get a second opinion from somebody else. And quite often it turns out that some of these disputes are not really about the law, they are about policy, because quite often the law *does* let you do a variety of things. It is just that the people implementing it have a particular preference. 'I would *prefer* to do it this way.' 'It would be better if I did it *that way*.'

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It is not quite the same as saying the law *requires* me to do it in a particular way. So sometimes actually the answer you get will be wholly dependent on the question you have asked, and that is the bit we never get to see in this Hon. Court. We never get to see what question was actually asked of the Department in order to generate that advice.

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So this idea of a separation, I think, is quite important and it is an important principle to get established. Do you believe in an equality of arms or not? (**A Member:** Hear, hear.) Read through the Attorney General's job description, it is actually quite interesting. The job description that went out for the job advert back in 2013 was quite specific as to the role of the Attorney General:

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[he] acts as legal adviser to the Government of the Isle of Man, is responsible for the drafting of Bills for introduction into the Legislature, and represents the Crown in the prosecution of offences on the Island.

There is no mention of Tynwald in that statement.

So then I thought, maybe it is hidden away on the website somewhere, because there is a detailed description of the Attorney General's role again on the website, and once again it repeats the phrase that:

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HM Attorney General in the Isle of Man ... acts as a legal adviser to the Lieutenant Governor, the Council of Ministers and the Departments of the Isle of Man Government ...

It then says:

HM Attorney General is *ex officio* a non-voting Member of the Legislative Council and ... a Member of Tynwald Court.

No mention of *advice* to Tynwald.

Go into the Division that actually deals with some of the advice and again it talks about:

Providing legal advice to the Lieutenant Governor, the Council of Ministers, Government Departments, Statutory Boards and Offices within Government.

2815 Even the Minister for Justice actually, when he spoke, said that the Attorney General's
Chambers very often provides advice to different parts of Government. But so far no one from the
Council of Ministers has acknowledged that the Attorney General has a role in providing advice to
Tynwald Members. It is not present *anywhere* I can find, even though actually we all generally
accept that he does in fact have that role and performs it quite adequately. So this really is about
2820 a mindset, I think. Do you believe in that equality of arms or not?

Some of the constitutional questions that have been raised I think are perhaps a step too far,
with some of the issues that have been teased out. I mean, if we do not have the Attorney General
to move Bills in Legislative Council, the world will end. I would argue that if you cannot convince
one Member of Legislative Council to move your Bill, you are not going to convince five or six of
2825 them to support it. So really you are starting off with a really bad argument there, Council of
Ministers, I think you might need to rethink that. And as to this idea that providing a better
equality of arms will result in a more confrontational style of scrutiny, I must offer my sincere
apologies to this Hon. Court for being such a shrinking violet over the last five years. **(The Speaker:**
Hear, hear!)

2830 I do not believe that actually providing backbenchers with better quality of advice or better
equality of arms will result in any difference in style. You might result in a better *quality* of debate,
a better *quality* of scrutiny, it is not going to make us any more aggressive or confrontational
around some of the policies that CoMin are bringing forward.

So for me, I do not think I can support the amendment to recommendation 2, largely because
2835 actually I think it is an important principle that we nail down *now*. This equality of arms *is*
important. But also because of some of the remarks that are made by the Ministers moving the
amendment. They talked about how an independent review is important. I agree with them, which
is why the Committee recommends an independent review in the first place. But what we are
recommending an independent review of is *how* – how you do these things – that is what is
2840 important. The decision on whether we *should* do these things are not, that is our decision to
make. I would argue that the answer to that question is yes, we should do these things.
(A Member: Hear, hear.) *How* we do them, that is what we need more information on, that is
what we need more detail on.

I completely agree with the Hon. Member for Arbory, Castletown and Malew when he says
2845 Tynwald must have *all* the information on such an important subject. That is the purpose of the
review, go away and tell us *how* you do this; and if it turns out that the 'how' is unacceptable then
you do not do it. But actually that is what we need the information on, whereas the Council of
Ministers' amendment actually is quite subtle, because it does not say let's figure out how we do
this, it says let's go and figure out whether we even *want* to do this.

2850 Well, that is the whole purpose of the Committee Report. We have established **(A Member:**
Hear, hear.) that actually, there is a strong argument *for* doing this. I have not heard a strong
argument for *not* doing it. So, Hon. Members, I would encourage you to support all of the
recommendations that the Committee has put forward, all the recommendations on the Order
Paper. Support that concept of an equality of arms, support a better quality of scrutiny, a better
2855 quality of debate in this Hon. Chamber and take something off the Attorney General's plate. He is
busy enough as it is! Give him five minutes to focus on the rest of the 157 hats that he wears and
all the other jobs that he is responsible for, and I think perhaps we would see an improved policy
here.

So, Hon. Members, please, I urge you to support all of these recommendations.

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Two Members: Hear, hear.

The President: I call upon the Hon. Member for Douglas Central, Mr Thomas.

2865 **Mr Thomas:** Thank you, Mr President.

Recommendation 1 of the Committee has a certain structure. We talk about a report, an investigation which has not as yet been implemented, and it needs implementation. Fully supportive of that.

2870 Recommendations 2 and 3 have a similar structure, but I think recommendation 2 in particular perhaps is slightly flawed by use of one word. In other words, recommendation 2, because of the inclusion of the word 'entirely' might read like too grand a conclusion, given that we are about to have a review set up in recommendation 3. So I am more happy with the logic of recommendation 1 where there is a review and then a conclusion, rather than the idea that we start an investigation in recommendation 3, having already decided that something has got to be
2875 entirely separate.

The point I make on that is the same one as I made the last time the Committee came with an excellent report, which was to do with the Advocates' Disciplinary Tribunal and the status of the Law Society. Basically, I said the simple fact is there are differences that come from the scale of the Isle of Man; and there are different arrangements in Scotland and Jersey than there are in
2880 England; and there are differences between Northern Ireland and in England, and so on, for similar reasons of scale. I do not know the answer to it, I do not know what is suitable.

I completely agree that we have to have equality of arms and I completely agree that we have got to have independence – perceived independence and actual independence. We have got to think this through. But I always like to think that Dr Allinson is not inscrutable. He was trying to
2885 work out whether I am inscrutable and I think we might be coming from the same point in this, which is that I like to think we have not made any conclusions before we have a proper, independent review. So I am delighted that we are voting on 2 and 3 separately. Fully supportive of 1. I quite like the Council of Ministers' amendment to 2, except in one way and that is why I have done a further amendment that is being circulated.

2890 Is it? Okay. Thank you.

The reason I am uncomfortable with merely the Council of Ministers' amendment is currently if we combine the Council of Ministers' amendment, which I say absolutely embeds already that the idea there has got to be no perception of conflict and no actual conflict, it is a bit wrong for Government to be *conducting* a review into that very matter. So therefore my amendment is a
2895 very simple procedural one. I basically amend recommendation 3 in the light of recommendation 2 from the Council of Ministers' amendment being accepted to say that, rather than Government conducting the review, it establishes an independent review to think through exactly what this excellent Committee Report means and make it practical and realistic and suitable for the scale.

2900 So mine is a very simple amendment to recommendation 3 and to me it builds on the fact that it is absolutely wrong for Government to be conducting an investigation itself into the way that Tynwald gets independent legal advice and Members get independent legal advice. In actual fact, to defend Council of Ministers and Government on this occasion, my amendment actually builds on the very clear words I heard from Minister Harmer.

2905 Minister Harmer talked about establishing an independent review. He did not talk about conducting the review. He talked in his speech about conducting an independent review, so that was the notion behind why I have just changed it very slightly so that the recommendation 3 would read 'That the Council of Ministers establish an independent review ...' rather than Government conducts the review itself.

2910 One other point, just to build on another argument that Mr Hooper outlined to do with the Attorney-General's role in taking Bills through. I just want to put another proposition on the table that I hope the independent inquiry that is established can consider in this respect. I do think it is a very important matter. I have floated this in the Standing Orders Committee and they thought it was a wacky idea. So therefore I am even more moved to float it on the floor of Tynwald.

2915 I think at this stage because the Legislative Council is a very small committee, we have got to think about the value of every individual member of that committee; and if we take out the possibility of the Attorney General moving legislation, we reduce the size of the committee of

independent scrutinisers of legislation. If we combine that with the fact at the moment that we have the very archaic principle that we have to have a proposer and a seconder who are there to speak for the Department, effectively we have reduced the size of the committee down to sort of independent people from nine to seven. In other words, if you want to get an amendment through in the Legislative Council, effectively with a proposer and a seconder taken out, you have got to get five votes for your amendment from the seven that are free; whereas, if you are the Government sticking with the proposer and the seconder who are already taken out, because they have proposed and seconded every clause, you only need to get an extra three out of the seven. So my point is, the wider we –

The President: Mr Thomas, would you give way to Miss August-Hanson?

Mr Thomas: Of course, yes.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

It is just to correct what the Member for Douglas Central said there in relation to proposers and seconders in Legislative Council, reducing the numbers that perhaps may or may not be able to contribute or vote. If you propose or second anything in Legislative Council, you still have the opportunity to not vote for it, it just means that you are putting it forward.

There has been concern raised about the Attorney General moving pieces of legislation in Legislative Council before, and there will continue to be down the line. It is not because of the person that is the incumbent that is the role at the moment, it is just because of the role itself and whether or not it is appropriate. Really, pieces of legislation, it is most appropriate that they are moved by elected Members of Legislative Council, surely? (**Two Members:** Hear, hear.)

Thank you, Mr President.

The President: Mr Thomas.

Mr Thomas: Thank you very much, Mr President, and I appreciate the intervention.

It is lovely to think that you would propose something or second something and then vote against it. I do remember slightly before Miss August-Hanson became a Member of the Legislative Council, that Michael Coleman was pilloried for that very action. He did actually second it and then got convinced by other people's arguments and voted against it. It is quite a difficult political position to take, but it is very refreshing if that is how every Member of the Legislative Council sees it, that you would support an argument for it and then be persuaded by other people's arguments against it.

I just think in the process of modernising the arrangements we have to think whether or not it is just a waste of time having a proposer and a seconder when we could have either just one of those functions; or we could just have the Department itself making the proposal inside our legislative committee that has got the detailed expertise to consider the legislation in front of it. Effectively, through having a proposer and a seconder, we are taking out independent scrutiny. But all I am saying is this is on the table for taking out a degree of independent scrutiny in terms of numbers, we are reducing the potential of opposition from an intellectual basis and potentially making the legislation not as completely scrutinised as it might well be.

So, anyhow, all I am doing is putting it on the table. That is not, as such, anything to do with the motion, except that I do believe we do need to have an independent review scrutinised. Mr Hooper and Miss August-Hanson have suggested another dimension and I do think that is something that we should include in the terms of reference if this independent review is established.

With that, I beg to move, and hope there might be a seconder:

To leave out the words 'Government conduct a' in Recommendation 3 and to insert the words: 'Council of Ministers establish an independent'.

2970 **The President:** I call upon the Hon. Member for Ayre and Michael, Mr Cannan.

The Minister for the Treasury (Mr Cannan): Thank you very much, Mr President. An interesting debate, indeed.

2975 Referring to the recommendations that have been moved, obviously, recommendation 1 seems to be well accepted. It is indeed recommendation 2 that seems to be causing some conflict or indeed misinterpretation.

I think I want to just pick up on the points that the Hon. Member for Ramsey, Mr Hooper, raised where he tried to sort of suggest that the Attorney General's role and duties to Tynwald were somewhat unclear. I think the Report itself determines that under the Crown Officer status:

The Attorney General owes his first allegiance to the Crown. In essence, this means that his primary duty is to represent and act on behalf of Her Majesty in the best interests of the Manx public whilst upholding the rule of law and protecting the constitutional propriety of the Island. It is important to recognise, therefore, that the Attorney General holds responsibilities in respect of all of the institutions and bodies established under the authority of the Monarch: the Lieutenant Governor, the Isle of Man Government, Tynwald and its Branches, and the Courts.

2980 So I think that is perfectly clear in terms of the Attorney General's responsibilities.

2985 The Hon. Member for Ramsey also then goes on to suggest that by accepting recommendation 2 it is the will of Tynwald that we establish this and then an independent review should just merely look at how the role is then appropriately established. Well, I have to fundamentally disagree. I think it is right that we do properly look further into this recommendation. I think the Report is incredibly light in this area. It simply really builds on a basis of perception as the primary reason why there should be some separation, and I have yet to really see ... I accept Miss August-Hanson's issues around the Attorney General bringing forward legislation in person, and maybe that does need some form of review. But the issue really boils down to, I think, this issue of perception without substance.

2990 Therefore that leads one on to considering all the complications of having two separate legal advisers to one Chamber, or one adviser to the Government and one adviser to parliamentarians. Lots of issues automatically arise, including who is right on a point of law in the middle of a major piece of legislation or a major piece of debate. If Tynwald votes on a recommendation by an external adviser, or Council of Ministers is defeated and Tynwald accepts it, who then accepts
2995 responsibility should that piece of legislation be then challenged at a future date, and somebody ends up in court with a petition of dolence or being sued on another matter?

3000 So there are lots of issues, I believe, that need resolution. The Hon. Member who moved is shaking her head, but she does not explain that in the Bill. The reason why I seconded Dr Allinson's move to have these voted on separately is because I think he raised a number of valid points. I think he may not have raised that specifically but that was the type of issue, I believe, that he was referring to.

3005 I think if you are going to take this forward and say, actually, that is what we want on the basis of Mr Hooper's recommendation, without having studied it further, whether that be independently or whether that be by the Government – and I would find it possibly slightly strange that the Government is going to do that. But, nevertheless, I think the matter needs a great deal of further consideration and should not be an automatic assumption that this is what Tynwald wants. There are a lot of complications potentially surrounding this type of role. And bear in mind that Tynwald is now continually growing its own empire, it has got an Auditor General, Tynwald
3010 Commissioner for Administration, and it gets advice, of course, on matters of order from the Clerk, and now will move into a further position where itself as a body receives external legal advice on a basis one assumes to challenge the Government's statements and positions.

I remain unconvinced at this moment that this is a sensible way forward, and I therefore would urge Hon. Members to consider the amendments from the Council of Ministers; and, if not that, from the Hon. Member, Mr Thomas sat next to me, in order to find a proper way forward here and not just accept that on a basis of perception we should appoint an external legal adviser.

The President: I call upon the Loayreyder.

The Speaker: Gura mie eu, Eaghtyrane.

Well, yes, I must admit I was not expecting quite so much vociferous argument. Some of it has been really stimulating and well-informed, and other parts of it have been ... entertaining!

One of the questions I think we really need to ask ourselves in this debate is: do we believe that there is a difference between the Government of the Isle of Man and the parliament of the Isle of Man? Now, in 1765, there was no real difference. You can scroll forward all the way to 1918/1919 there was no difference. This parliament was really just an organ of the Government of the Isle of Man. The Governor was its head. He presided over this place. He presided over the executive and they were much one and the same.

Now we have moved so far in the last 150 years with the election of Members of the House of Keys and the removal of the Governor from the executive, but some of these little hangovers – and we will come to another one of them later, Hon. Members in the Order Paper – do still stick out like sore thumbs when it comes to international best practice. And do we or do we not, as a jurisdiction say, every time we go abroad, that we are a jurisdiction that stands up to the highest standards of international best practice? The wording that we have here in recommendation 2 is a reflection of the Commonwealth Parliamentary Association benchmarks. Benchmarks that are recognised from Botswana to Uganda, from Bermuda to the Falkland Islands. It does not matter about the size of these institutions, the way that they do it is done differently, but this is a fundamental principle that is delivered.

So I think we need to start explaining to the public more about how we are different as a parliament from as a government. The roles of parliament and government are different, even though of course in a parliamentary democracy members of the executive are from the elected House, and that is absolutely right and proper. But there are different roles. The amendment as it stands does say this is *how* it should be done, not *if* it should be done; and of course Members down the line have the right to say that how it should be done can be rejected, but the principle *really* must be established.

I have heard a number of wonderful attempts to confuse matters in terms of an antagonistic scrutiny system that will automatically flow from this, and I think we need to take that with a pinch of salt. If opinions conflict between the Attorney General and independent external advice, let's not pretend that this does not already happen on occasion. There is occasion where external advice is sought by Committees, on occasion, and put up against the Attorney General's Chambers. Now ultimately, *in extremis*, you have got the courts to decide these issues, and that is fine.

But really what this is about in this place, in parliament, this is really about raising the questions that arise from different legal advice. Why is it different? What are the issues that are raised? What are the interpretations that are raised? And that can really only lead to a better quality of thought around legislation, a better quality scrutiny of legislation and a better product of legislation. *That* is what we are about.

I really do implore Hon. Members not to act today in voting on this as agents of the executive but vote as parliamentarians to show that parliament is different from Government. That this is a fundamental principle of democracy and should not be diluted in that principle by the practicalities but, by all means, let us when the time comes debate and reflect on whether the practical way of delivering this will work. But that is for down the line.

Hon. Members, you are required to make an important decision today. The empire-building accusation of the previous speaker, we have at the moment in the office, if you count the *Hansard*

3065 staff, 24 people in the Office of the Clerk of Tynwald to scrutinise the work of over eight and a half thousand civil servants. I do not think that this is a particular *empire* here. This is something that we all need to do better at.

This Court was elected to do a job as parliamentarians and those of you going back out who will be standing again need to reflect on that role as a parliamentarian. Many want to be part of Government but your first duty is to the people and to parliament.

3070 I ask Hon. Members to vote on recommendation 2 in that spirit.

The President: I call upon the Hon. Member for Middle, Mr Shimmins.

Mr Shimmins: Thank you, Mr President.

3075 It has been an interesting debate. I, too, would like to thank the Committee and its Chair for all their hard work.

I just want to rise about the question of competing legal opinions and one is right and one is wrong, because in my experience it is never that black and white, (**The Speaker:** Hear, hear.) in many aspects. And even then, when some legal things are settled, then there is an appeal which changes that decision. So I take slight issue with my hon. friend, Mr Cannan, in terms of that kind of right or wrong opinion.

3080 Just as one little perhaps aid, as people weigh up the pros and cons in this debate, a practical example for me about how the learned Attorney can heavily influence the outcomes of debates, I would take you back to the Eastern Area Plan, which was quite a long and I felt very detailed debate and there was a question about whether the Plan could be amended, if you remember, and at that point the Council of Ministers, really struggling, they called a time out, because they were so concerned that the Plan was going to fail. They quickly convened with their legal adviser, they came back in and asked the Attorney General a question, and the answer to that question was heavily contested by other Manx advocates, okay?

3090 Now, I am not saying that the answer to the question was right or wrong, because we do not know that until it ends up in some sort of court. But the reality is the learned Attorney, his opinion carries enormous weight in this Court. I just give you that as an example which might help you as you consider which way you would vote, particularly on recommendation 2.

But thank you, Mr President.

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Mr Robertshaw: Hear, hear.

The President: I call upon the Hon. Member for Arbory, Castletown and Malew, Mr Cregeen.

Mr Cregeen: Thank you, Mr President.

3100 I think on that recommendation 2, speaking to Mr Thomas's amendment –

The President: It has not been seconded. (**Mr Cregeen:** Oh, sorry.)
Hon. Member, Mrs Barber.

3105 **Mrs Barber:** Thank you, Mr President.

I am happy to second the amendment in Mr Thomas's name. Interestingly, though, we are not on necessarily on the same side of the debate because I would be in favour of recommendation 2, but in favour of his amendment to recommendation 3 to supplement that decision in recommendation 2. I think Mr Hooper has outlined very ably, and I am not going to repeat all of the points he makes, about why it is so important for us to be able to break down the point around 'I have been advised'. I think we have come up with that a lot over the last year in a number of different circumstances, in a number of different scenarios. I think it is absolutely appropriate then that when we look at recommendation 3 in that light we also make sure that we have an

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3115 independence in terms of how we implement that to make sure it achieves that true independence I think we are all seeking.

So yes, I am happy to second, possibly not on the terms he was hoping, (*Laughter*) but we are where we are.

So thank you, Mr President.

3120 **The President:** I now call upon the Hon. Member, Mr Cregeen.

Mr Cregeen: Thank you, Mr President.

3125 Speaking to the amendment from Mr Thomas: I think this is the reason why myself and the Committee were at those deliberations, because of that wording about the principle of this matter and how it actually works out. I think the amendment from our hon. colleague, Mr Thomas, actually works well with the amendment that has come in from myself and I would ask Hon. Members to support both the amendments.

3130 I would just have a little point with Mr Speaker saying they are scrutinising eight and a half thousand civil servants. I will just put a bit of word out there that maybe not every one of them is getting looked at every day by members of the Tynwald Office.

The Speaker: Of course not, they could not possibly!

3135 **The President:** I call upon the Hon. Member of Council, Mrs Sharpe, who wishes to speak to Mr Thomas's amendment.

The Deputy Clerk: She is still on mute, Mr President.

3140 **The President:** I believe you are on mute, Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President. In fact, due to the time lag which exists remotely, I need ... Hello, Mr President, can you hear me?

3145 **The President:** Yes, we can hear you, Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

Due to the time lag, I actually need to speak to the amendment to recommendation 2 put forward by the Council of Ministers, because –

3150 **The Deputy Clerk:** She has already spoken to that.

Mrs Sharpe: – it is in fact an entirely different one –

3155 **The President:** Mrs Sharpe, you have already spoken to that amendment, so you are not permitted to –

Mrs Sharpe: Mr President, the amendment to recommendation 2 put forward by the Council of Ministers is in fact an entirely different amendment to the amendment I was emailed by the executive and spoke to. So –

3160 **The President:** I am afraid – Mrs Sharpe, just one moment – you cannot now speak to that amendment. You can only speak to Mr Thomas's amendment. Do you wish to contribute?

3165 **Mrs Sharpe:** No, Mr President. I just wanted to put on record that I was in fact sent the wrong amendment to number 2 and so I spoke to the wrong amendment and I wish to just put that on record.

The President: Point taken, Mrs Sharpe. Thank you very much. Right, may I please now ask the Chair to respond.

3170 **Mrs Poole-Wilson:** Thank you, Mr President, and I would like to thank everyone who has participated in what has been an interesting and worthwhile debate, I think.

First of all, thank you very much to my seconder, Mr Robertshaw. I think his explanation of why we are not losing anything, necessarily, by not having the learned Attorney in sittings, provided he can come forward to offer explanations, is spot on, and I think actually he made the key point earlier on which has subsequently been picked up by a number of people, which is the importance of Tynwald and its Committees being able to bring forward its work on an independent basis and properly informed. (Mr Robertshaw: Hear, hear.) That, Hon. Members, is the essence of our recommendation 2 and I will speak more to that picking up the points that others have made.

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3180 I would like to thank the learned Attorney for his input, his evidence, his co-operation, his engagement with the Committee throughout. We have found it enormously helpful. And as I have said, and I will reiterate, none of what we have brought forward is a reflection on his personal performance or conduct.

I recognise completely the point he made about there is no one-size-fits-all model as we look around the world when it comes to how the role of Attorney General is structured and delivered upon. I also think he made the important point that the role must meet our needs as they change, and I think a number of people have spoken to the fact that the time is right for us to have this now independent review, because I think I and other Committee Members do support Mr Thomas's amendment to recommendation 3.

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3190 I think in terms of recommendation 1 that is fully supported by everyone. I do not really need to speak to that. The learned Attorney points out now would come the work of fleshing out the role of superintendence. I agree with him it would have to dovetail with a review. How we deliver on that again is part of the *how*, not the principle *that*. Again, I would draw the parallel with recommendation 2. We are accepting some principles today, we are looking to the review to flesh out the practicalities of the 'how'.

3195 I would also like to acknowledge at this point that the Committee absolutely recognises the huge amount of work that the current Attorney General and his Chambers have already undertaken to improve transparency and effectiveness and we absolutely, and I am sure all Hon. Members, welcome the continued commitment of the learned Attorney to build on that and to keep seeking continuous transparency and improvement.

3200 The learned Attorney, along with a number of other Hon. Members in relation to recommendation 2 questioned the potential effect. Hon. Members, I must stress, like others have, that this is a point of principle. The how, the what it looks like, the what it means in practice, that is very much for recommendation 3 and the review. It is absolutely open for this Hon. Court to look at what is then recommended about the implementation and agree or disagree.

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3210 So I do not think we should be getting hung up at all today on trying to worry for ourselves about the full ramifications and implications of a point of principle. You either accept a point of principle or you do not. Then you get into the how you deliver the principle. I think the Hon. Member for Ayre and Michael, Mr Cannan, said the report was light – deliberately so. Deliberately so; because we judged as a Committee it was not for us to now try and weave through every single detail of how. The learned Attorney will attest to the fact that in private discussions we did have some consideration of different ideas, different models, different things that could happen, but the ultimate decision was that was not for the Committee to drive. It was for the Committee to flag the issues and to suggest a way forward, and then an independent review would be the right way to consider the how to implement change.

3215 I also would like to just pick up one more matter that the learned Attorney touched on and
that is I agree with him wholeheartedly: improved education and awareness, not only within this
Hon. Court, but more broadly in the public domain, would absolutely assist everyone.
(**The Speaker:** Hear, hear.) Hon. Members, we have all been approached by individuals, and
indeed there was an article in the press only just this week about understanding why, for example,
3220 a prosecution decision is taken forward or not. It behoves us all, and the public more broadly, to
have a much better understanding of the role of our Crown Officers, the role of Tynwald as
parliament, the role of Government and how our justice system works, to help them have trust
and understanding of all of these important arms of the state.

Finally, I would just touch on the point made by the Attorney that the Crown is indivisible. We
3225 absolutely recognise that and we recognise that when we raise the issue of conflict, actual or
perceived, we are not questioning individual integrity of any officeholder, we are not questioning
the importance of the Crown Officer duty. But legal advice, as others have said, can be more than
one perspective and it can be from stating a long-established state of the law which no one would
question because it is so long established, to starting to ask how an area of law is developing which
3230 a number of people would question and which is likely to come under further development
through cases before courts.

Critically, when it comes to scrutinising the actions of the executive, which is a huge role that
Tynwald and its Committees play, we are often looking at the implications of policy and actions
and the legal implications of that or the legal advice that was provided in order to determine a
3235 course of action. It would be wholly wrong of Members of this Hon. Court simply to accept at face
value the 'I was advised that'. (**A Member:** Hear, hear.) If we are going to be effective and get
much better outcomes, and indeed in a constructive way, it is better that the quality of the
thought process for individual Members of this Hon. Court and its Committees is properly
informed by access to suitable advice. But I would like to thank the learned Attorney for his
3240 constructive support and input throughout.

Dr Allinson, thank you for your comments and questions. I agree, we are a small jurisdiction,
but actually we have to ask the question should that stop us acting on some fundamental points
of principle. We do not think it should any more when it comes to the Wooler recommendation
about prosecutions. Again there we must be thoughtful about the how and I would say that is
3245 where the review is vital.

He also raised the issue of the Supreme Court and legal advisers to Government. I think again
we have to be very clear and distinguish between these. Our courts and the Supreme Court are
the ultimate arbiters of the law. What they say stands. Now, you or I or a member of Government
might not like it, we might have our own view, but that is not the point. We do not make ... well,
3250 we write legislation, but when it comes to interpreting that legislation, that is the job of the courts,
not us. I think we need to be very clear, and again, at the heart of our Report and at the heart of
what we are trying to do here is support and reinforce that fundamental separation of powers.

Thank you to Miss August-Hanson for her commentary and her support for recommendation
2 as the Committee has brought it forward. I recognise she flagged some other matters in her
3255 contribution, and it would be my hope that in the independent review, if that is approved by this
Hon. Court, that the *Hansard* of today is taken into full account and the opportunity taken to
consider all points of feedback from Members today.

Turning to the Minister for Home Affairs and Justice, thank you very much for his consideration
throughout. Again I would reflect that the Justice Committee has had a very constructive and
3260 welcome engagement in looking at this Report and looking at our recommendations. And as he
said, I do not really think we are at odds with each other, but we do seem to have got ourselves
tangled up in this merging and murky merging of the idea that you cannot look at a point of
principle without looking at how it is all going to work – you can! (**A Member:** Hear, hear.) You can
agree some fundamental principles, like upholding of human rights. Then you might look at how
3265 you are going to do that, but it should not stop you upholding a point of principle. So I understand
that people are concerned about some of the realities of delivery, but again I would like to

reassure Hon. Members that the review is there to look at all of that and to bring back some sensible recommendations to this Hon. Court on the how.

3270 So I cannot support the proposed Council of Ministers amendment to recommendation 2. I think it is important that we vote on that point today and allow the review then to take its course into the how.

I would like to thank Mr Harmer's contribution. I think it was he who specifically mentioned that the review should be independent, which is welcome, and I think that also paves the way for Mr Thomas' amendment to recommendation 3.

3275 I would like to thank Mrs Sharpe for her support and her reference to the CPA Benchmarks, and again that is very helpful.

Mr Hooper of course spoke with his customary clarity and nailed it. I do think we need to not confuse the impact of informed legal advice with the style of us in debate. They are two separate things. What I do think is informed legal advice feeding into the scrutiny process stands a chance of delivering us more accurate, informed debate, which can be no bad thing at all. He, too, made the point that there is a distinction that we can agree a principle today, but that does not stop us looking at the how we do it and considering whether we are comfortable with the how we do it in due course.

3285 Thank you to Mr Thomas for his engagement. He flagged the word 'entirely' as a word he was not *entirely* comfortable with. Again, I would say to him it is a matter for the review. If the review comes back and says, 'Well, you can deliver the principle of what we're looking for in the following way', I think Hon. Members could see that. So again, I would not get hung up on that, but I would like to thank his sensible amendment to recommendation 3 that I think picks up what the Government was proposing and that the Committee supports.

3290 He did talk about the position of the Attorney General not being able to move legislation or second legislation, and it then affecting the ability of Legislative Council to scrutinise. I would like to say to that point, really, that we recognise that the Attorney General absolutely should not be speaking on matters of policy anyway (**A Member:** Hear, hear.) and that is precisely why the Committee has a concern. I think other Members of the Hon. Court, including the learned Attorney, recognise it is entirely inappropriate for him to look partial at any point when moving legislation. So I am not sure it is a fundamental concern.

3300 Mr Cannan, thank you for your contribution. We do not question, as I have said, the status of Crown Officer, but we also recognise that there is more than one legal opinion on different matters and, as I have already said, it is important that when Tynwald is scrutinising the executive, it is able to access proper legal advice.

I thought his commentary about petition of doleance, again I think there is a danger that we merge too many themes and end up slightly confused. A petition of doleance is about reviewing an administrative decision, not about how we pass law in our Branches. So the point about is any piece of legislation compatible with human rights is a legitimate question which anybody moving a Bill absolutely would want to have reassurance on by taking legal advice that they were comfortable on that. That is I think where legal advice becomes important, and that will generally be the executive who is wanting to reassure themselves on that point.

3310 I did think the comment about Tynwald continuously growing its own empire was quite telling. Hon. Members, our aim as a Committee has always been to improve what we do for the good of the Isle of Man. I do not think there is anything to be feared in that. On the contrary, I think we should welcome it. So let's not be in fear of high-quality, well-advised, excellent scrutiny, (**A Member:** Hear, hear.) if it delivers better outcomes, if it delivers them more quickly than waiting for things to go wrong, so much the better, (**A Member:** Hear, hear.) actually.

3315 Mr Speaker, thank you for your contribution. I think you made an important point again about the importance of distinguishing between government and parliament. These are separate arms of the state with an equally important role in good governance for the Island. This is about the separation of powers and so I agree with him that we have to be a little bit careful and take with a pinch of salt some of the comments that have been made today about how this will all involve

3320 us becoming a court of law. No it won't! That would go against the separation of powers. We will
not be in here deciding on points of law. We are not qualified to do so, we do not have the *vires*
to do so. What we are talking about is good, informed executive decision making and good,
informed scrutiny of that.

3325 I would also like to highlight something that Jersey in fact conducted its Review of the Roles of
the Crown Officers in 2010 and came up with the practical solution that its scrutiny panels, should
it access separate legal advice and that advice differs from the advice of the Law Officers, it would
be practically sensible for there to be a discussion to see what scope there is for resolution, and I
think that is entirely sensible and entirely practical, and there would be nothing to stop that
(**Mr Robertshaw:** Hear, hear.) in terms of the how we deliver that. So we are not doing something
wacky or out there by suggesting that we allow for this process and this informing to be part of
3330 our parliamentary process.

Mr Shimmins, I think you illustrated very well, yes, how do you know which legal opinion is
right and wrong: you do not, until you have had it tested in a court of law. But I do think your
illustration around the Eastern Area Plan spoke volumes, so I thank you for referring to that. I also
think it illustrates why it would be important for a Member of Tynwald or its Scrutiny Committee
3335 to be advised before a debate. I think that is much better than us trying to manage what can be
complex issues on the hoof at times. Again, our recommendation 2 speaks to that.

Mrs Barber, thank you for your 'I have been advised' emphasis – I agree – and for seconding
Mr Thomas's sensible amendment. I think we do have an opportunity in the way we move forward
to be more effective and so, Hon. Members, I would encourage you today to vote for the three
3340 recommendations in the form that the Committee put forward, excepting Mr Thomas's
amendment to recommendation 3. And with that, Mr President, I beg to move.

The Speaker and another Member: Hear, hear.

3345 **The President:** Now, Hon. Members, we come to the voting on this Item, Item 15. The motion
is as set out on the Order Paper. To that motion, you have two amendments. The Court has already
decided that the separate recommendations should be debated as one, but voted separately. I
will therefore put the recommendations one by one.

I put first recommendation 1. All those in favour, please say aye; those against, please say no.
3350 The ayes have it. The ayes have it.

We move to recommendation 2. To this you have an amendment in the name of Mr Cregeen.
I put to you first the amendment. All those in favour, please say aye; all those against, please say
no.

A division was called for and electronic voting resulted as follows:

In the Keys – Ayes 11, Noes 11

FOR

Dr Allinson
Mr Ashford
Mr Baker
Mr Boot
Mr Cannan
Mr Cregeen
Mr Harmer
Mr Peake
Mr Perkins
Mr Quayle
Mr Thomas

AGAINST

Mrs Barber
Mrs Caine
Mr Callister
Mrs Christian
Mrs Corlett
Mr Hooper
Mr Moorhouse
Mr Quine
Mr Robertshaw
Mr Shimmins
Mr Speaker

3355 **The Speaker:** Mr President, in the House of Keys, 11 for, 11 against. The motion fails in the Keys.

In the Council – Ayes 1, Noes 8

FOR

Mr Henderson

AGAINST

Miss August-Hanson
Mr Greenhill
The Lord Bishop
Mrs Lord-Brennan
Mrs Maska
Mr Mercer
Mrs Poole-Wilson
Mrs Sharpe

The President: In Legislative Council, 1 for, 8 against; the amendment fails.
I now put to you recommendation 2 as on the Order Paper. All those in favour, please say aye; those against, please say no.

A division was called for and electronic voting resulted as follows:

In the Keys – Ayes 18, Noes 4

FOR

Mr Baker
Mrs Barber
Mrs Caine
Mr Callister
Mr Cannan
Mrs Christian
Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Hooper
Mr Moorhouse
Mr Peake
Mr Perkins
Mr Quine
Mr Robertshaw
Mr Shimmins
Mr Speaker
Mr Thomas

AGAINST

Dr Allinson
Mr Ashford
Mr Boot
Mr Quayle

The Speaker: Mr President, in the Keys 18 for, 4 against.

In the Council – Ayes 8, Noes 1

FOR

Miss August-Hanson
Mr Greenhill
The Lord Bishop
Mrs Lord-Brennan
Mrs Maska
Mr Mercer
Mrs Poole-Wilson
Mrs Sharpe

AGAINST

Mr Henderson

3360 **The President:** In Legislative Council, 8 for, 1 against. The recommendation carries.

We move to recommendation 3. To this you have an amendment in the name of Mr Thomas. I put to you first the amendment. All those in favour, please say aye; those against, please say no. The ayes have it. The ayes have it.

3365 I put to you recommendation 3 as amended. All those in favour, please say aye; those against, please say no. The ayes have it. The ayes have it.

Finally, I put the entire motion, as amended. All those in favour, please say aye; those against, please say no.

A division was called for and electronic voting resulted as follows:

In the Keys – Ayes 20, Noes 2

FOR

Dr Allinson
Mr Ashford
Mr Baker
Mrs Barber
Mrs Caine
Mr Callister
Mr Cannan
Mrs Christian
Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Hooper
Mr Moorhouse
Mr Peake
Mr Perkins
Mr Quine
Mr Robertshaw
Mr Shimmins
Mr Speaker
Mr Thomas

AGAINST

Mr Boot
Mr Quayle

The Speaker: Mr President, in the Keys, 20 votes for, 2 against.

In the Council – Ayes 9, Noes 0

FOR

Miss August-Hanson
Mr Greenhill
Mr Henderson
The Lord Bishop
Mrs Lord-Brennan
Mrs Maska
Mr Mercer
Mrs Poole-Wilson
Mrs Sharpe

AGAINST

None

The President: In Legislative Council, 9 for, none against. Therefore, motion carried.

3370 Hon. Members, I think this is a good time to take a tea break. It is just coming up to 20 past five, so we say 10 to six we shall return.

*The Court adjourned at 5.19 p.m.
and resumed its sitting at 5.50 p.m.*