

PUBLIC ACCOUNTS COMMITTEE (PAC) OF TYNWALD
MEMORANDUM OF GUIDANCE FOR OFFICIALS REQUIRED TO APPEAR

INTRODUCTION

1. This paper is intended to give guidance to officers who may be called upon to give evidence before, or to prepare memorandum for submission to, the Public Accounts Committee of Tynwald. The advice given must necessarily be of a general nature and, in particular cases of difficulty, officers should consult their own department or where appropriate, the Government Officers' Association.

THE PUBLIC ACCOUNTS COMMITTEE

2. On the 17th November, 1982 Tynwald adopted a report of its Select Committee on the desirability of establishing a Public Accounts Committee. The recommendations of that report were that:-
 - i) Tynwald should appoint a Standing Committee to be called the Committee of Public Accounts to examine the accounts showing the appropriation of the sums granted by Tynwald to meet the public expenditure and of such other accounts laid before Tynwald as the Committee itself may think fit, and to report thereon to Tynwald with power to take evidence etc;
 - ii) the Committee of Public Accounts should consist of -
 - a) a Chairman to be selected by Tynwald;
 - b) a panel of 5 other members of Tynwald;
 - iii) the Chairman of the Committee of Public Accounts should not be a member of a Board or other body, the accounts of which may be considered by the Committee;
 - iv) the quorum of the Committee should be the Chairman and 2 other members, no member to sit when the accounts of any Board or other body of which he is a member are being considered;
 - v) papers should be sent to Treasury;
 - vi) the Chairman of the Committee of Public Accounts be paid as if he were the Chairman of the Board.
3. Under the provisions of Section 3 of the Tynwald Proceedings Act 1876 witnesses may be summoned to appear before the Committee to give evidence and to produce to the Committee papers, documents or records receivable or produceable in evidence, and pertinent to the matter of the Committee's enquiry. The attendance of witnesses and the production of papers, documents or records, may be enforced in the same manner as in the case of witnesses or persons summoned to appear personally, or to produce documents before a Court of Justice. The Committee may, if it so wishes, examine witnesses on oath.

4. For the purposes of the above "document" includes, in addition to a document in writing
 - a) any map, plan, graph or drawing;
 - b) any photograph
 - c) any disc, tape, soundtrack or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced there from; and
 - d) any film, including any microfilm, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced there from.
5. Where any person summoned to appear, or give evidence, or to produce any papers, documents or records, before the committee, refuses to answer any question that may be put to him, or to produce any such papers, documents or records on the grounds that the same is of a private nature and does not affect the subject of enquiry, the Chairman of the Committee may excuse the answering of such question or the production of such papers, documents or records, or may order the answering or production thereof.
6. Every person summoned to appear to give evidence, or to produce any papers, documents or records before the Committee, shall be entitled in respect of such evidence or the disclosure of any communication, or the production of any such papers, documents or records, to the same right or privilege as before the High Court.
7. In seeking evidence relating to its enquiries the committee is not restricted to summoning civil servants and it may seek evidence from contractors, or from other bodies outside Government. In practice however it may be expected that the Committee will seek the bulk of its evidence from the Accounting Officers of departments. With the agreement of the committee, Accounting Officers may be supported by other officials (particularly where the Accounting Officer is not the Chief Executive), who may join in giving evidence.
8. The duties of an Accounting Officer are defined in the Financial Regulations made by the Finance Board under Sections 3 (b) and 3 (e) of the Finance Board Act 1961. Among his other responsibilities he is responsible to his Board for the propriety and regularity of his department's expenditure and for prudent and economical administration. He must ensure that correct financial procedures are followed and that the public funds, for which he is responsible as Accounting Officer, are properly safeguarded. Similar care must be taken of stores of any public property.

9. An Accounting Officer must ensure that, in the consideration of policy proposals relating to the expenditure or income for which he is Accounting Officer, all relevant financial considerations are taken into account and where necessary brought to the attention of departments with appropriate emphasis and in an appropriate form. These considerations include the need for economy and the avoidance of extravagance or waste. Similarly he must ensure that in the implementation of expenditure programmes as authorised by boards, proper regard is given to economy and the avoidance of waste. The Accounting Officer is responsible for ensuring that specific Treasury sanction for the expenditure has been obtained in all cases where it is required and for ensuring that adequate machinery exists for the collection, and bringing to account in due form, of all receipts of any kind connected with the votes and accounts for which he is responsible.

SUMMONING NAMED OFFICIALS

10. As noted above, the committee has the power to summon any officer to appear and give evidence before it. In practice however, it may be expected that the Committee will normally proceed on the basis of requests for departmental witnesses and evidence rather than through the exercise of formal powers.
11. Officers appearing before the Committee do so on behalf of their department. It is desirable, therefore, for departments to be consulted as to which officials should appear to give evidence. Should the Committee invite a named official other than the Head of Department to appear, the Head of Department concerned if he did not wish that officer to represent him, he might suggest to his Board that another official could more appropriately do so, or that he himself should give evidence to the Committee. If the Committee insisted however on a particular official appearing before it, it could issue a formal order for his attendance. In such an event the officer concerned would have to appear before the Committee.

PROVISION OF EVIDENCE

12. The general principle to be followed is that it is the duty of every officer to be as helpful as possible to the Committee and that any withholding of information should be limited to reservations he may have about the need to consult his Chairman before disclosure of that the evidence sought is of a private nature and/or does not affect the subject of the enquiry. Officers should therefore be as forthcoming as they can be (within the limits set out in this paper) when requested to provide information whether in writing or orally. This will also help to secure that the reports of the Committee are as soundly based on fact as possible.
13. Because officials appear on behalf of their department, officers may wish to clear written evidence and briefing with their department prior to any appearance before the Committee. It may only be necessary for departments to be consulted should there be any doubt amongst officers on the policy to be explained to the Committee. However, departments are ultimately responsible for deciding what information is to be given and for defending their decisions as necessary and Boards' views should therefore always be sought if any question arises of withholding information which the Committee is known to be seeking. It is hoped the Committee will give sufficient notice to officers to enable them to undertake appropriate consultations.
14. The Committee's request for information should not be met regardless of cost or of diversion of effort from other important matters. It might prove necessary to decline requests which appear to involve excessive costs or to involve an unreasonable amount of extra work. In such cases the Accounting Officer should consult his Board immediately before complying with the request.

ACCURACY OF EVIDENCE

15. Officers appearing before the Committee are responsible for ensuring that the evidence they give is accurate. They are reminded to take particular care to see that they are fully and correctly briefed on the main facts of the matters on which they expect to be examined. Should it nevertheless be discovered subsequently that the evidence unwittingly contained errors these should be made known to the committee at the earliest possible moment.

OPEN SESSIONS

16. The Committee often admits the public and press to its hearings. Officers may therefore wish to ascertain from the Clerk to the Committee beforehand whether their evidence is to be given in public session. Advice on the treatment of confidential information in oral evidence is referred to in paras 30 and 31 below.

STATUS OF INFORMATION SUPPLIED

17. Once information has been supplied to the Committee it becomes "evidence" and it is entirely within the competence of the Committee to report and publish it or to refrain from doing so. Letters addressed to the Clerk to the committee, however informal, are strictly speaking "evidence" and liable to be published.

INTER BOARD RESPONSIBILITIES

18. Generally speaking, the subjects of enquiry by the Committee will fall clearly within the responsibilities of particular departments. Occasionally, however, the Committee may enquire into subjects which span the work of more than one department or where departmental responsibility is not self-evident. In these cases it may be advisable for officers of all the departments concerned to keep in touch in the preparation of their evidence e.g. by exchanging drafts.
19. On occasion the committee may seek evidence from a particular officer who is not on the staff of the department which is responsible for the matter under enquiry but who, in his professional capacity, has a special knowledge of the subject under review. In these circumstances it may be advisable for the officer concerned to ensure that both his own department and the department responsible for the matter under enquiry, are aware that he has been asked to give evidence and are advised of the likely nature of that evidence.

LIMITATIONS ON THE PROVISION OF INFORMATION

Collective Responsibility

20. Officers who are called as witnesses whether in closed or open session should preserve the collective responsibility of departments for the decisions they have taken. No indication should normally be given therefore of the level at which, or the manner in which, a decision was taken or the nature of any discussions between individual Members of the Board which led to that decision. Where a formal dissention by one or more Members from a decision of the Board has been minuted, the officer should advise the Board that the Committee may request him to disclose the same when giving evidence. Only if the Board instructs him to withhold that information should he do so, giving the reason for non-disclosure to the Committee.
21. The Committee may ask an officer to give details of advice which was given in confidence to his Board forbids him from disclosing the same should he withhold that information. Similarly, where the Committee seeks access to documents relating to inter-Board exchanges on policy issues the officer should only withhold those documents if one or more of the departments concerned refuse to consent to their release. In either case the officer should advise the Committee of the reason for non-disclosure.

POLICY

22. The Public Accounts Committee is a non-political Committee the function of which is to take evidence, normally in public, deliberate in private and report, with general recommendations where appropriate, to Tynwald on the result of its enquiries. So far as Board policies are concerned therefore official witnesses, whether administrative or professional, should as far as possible confirm their evidence to questions of fact relating to existing Board policies and actions. Officer should be ready to explain what the existing policies are and the objectives and justifications as the Board sees them for those policies and to explain how administrative factors may have affected both the choice of policy measures and the manner of their implementation. It is open to officers to make comments which are not politically contentious but they should, as far as possible, avoid being drawn without prior Board authority into the discussion of alternative policies. If official witnesses are pressed by the Committee to go beyond these limits they may consider suggesting that the questioning be addressed or referred to the appropriate Board. If there is a likelihood of a material issue of policy being raised by the Committee in its questioning of official witnesses officers may wish to consult their departments beforehand.
23. The Committee may invite civil servants to discuss the professional or technical issues underlying controversial policies. This may raise particular problems if the Committee discusses issues of technical or professional judgement which bear upon controversial policy questions. When this is so, officers may find themselves in the difficulty that their own judgement on the professional issues has, or might easily appear to have, implications critical of the Boards policies. In these circumstances officers should not go beyond explaining the reasoning which in the Board's view justifies its policy. If the witness is asked for his own professional judgement on the issue, or his judgement of the view that Government would be likely to take, he should qualify his answer by referring to the political aspect of the issue and advise the Committee that matters of a non-professional/technical nature should be referred to the appropriate Board.

ADVICE GIVEN BY LAW OFFICER

24. There is a well-established convention that the advice given by Law Officers to departments is confidential. For this reason, it is only when Law Officers expressly authorise the disclosure of advice they have given, or themselves report to the Committee, that such advice should be revealed.

SUB JUDICE MATTERS

25. The Committee is subject to the rules by which Tynwald regulates its own conduct and that of its members. It should normally be possible therefore to work on the assumption that if a matter already before the Courts seems likely to come up for discussion before the Committee, the Clerk to the Committee will have drawn the attention of the Chairman to the relevant rules of Tynwald relating to the discussion of sub judice questions. The Chairman has an overriding discretion however to determine what is appropriate in the hearing of evidence.
26. Officers should take care in giving oral or written evidence on matters which may become the subject of litigation but which as yet do not strictly come under the rules which preclude discussion on sub judice questions. Such caution should be exercised whether or not a Board is likely to be a party to the litigation. If such matters seem likely to be raised when the Committee takes evidence officers should first consult with HM Attorney General's Chambers, or with their Board's own legal advisers for advice on how to handle the questions which might arise.

REPORTS COMMISSIONED BY BOARD OF DEPARTMENTS

27. On occasion the Committee may make requests to see copies of reports commissioned by departments. Such requests may cause difficulty in that the reports may come from a variety of sources ranging from a purely internal working group to a major outside Committee or body, but where publication was not intended. In these circumstances officers may wish to seek the views of their Board as to the extent of any disclosures. They also may wish to discuss with the Clerk to the Committee the possibility of a report being provided on the understanding that it is treated in confidence or of the information being provided in an alternative form, e.g. in a memorandum form the Board in place of the report itself.

DOCUMENTS RELATING TO THE INTERNAL ADMINISTRATION OF BOARDS

28. Information about a Board's organisational structure such as directories or organisation charts, should be provided to the Committee if it is requested. Requests for evidence which goes beyond the description of the existing organisation of a Board and which deals with the responsibilities of individual officers, particularly in relation to specific cases, should be viewed in the context of the need to preserve collective responsibility and the advice that officers should not reveal the level at which a decision was taken.

COSTS

29. Although the general principle to be followed is that it is the duty of officers to be as helpful as possible to the Committee due regard should be had to paragraph 14 of this paper and the Accounting Officer should be prepared to advise the Clerk to the Committee where his Board believes a request for information will involve excessive costs so that the Committee may take this into account in reassessing its request.

TREATMENT OF EVIDENCE

30. The general aim of officers should be to assist the Committee by disclosing to it whatever official information it may require for the carrying out of its functions and information should not be withheld unless there are good grounds for so doing. It may be however, that particular information requested by the Committee or other information which a Board considers might have a relevant bearing on the Committee's enquiries, should only be made available in the Board's view on the basis that it will not be published and will be treated in confidence. Where this is so, the officer should inform the Clerk to the Committee that the Board consider this information should only be made available on this basis explaining the reasons in general terms. In considering the submission of confidential evidence to the Committee, officers should remind their departments that the final authority as to whether or not evidence should be published rests with the Committee.

31. It would clearly be inappropriate for any evidence which a Board wished to be treated as confidential to be given at a session of the Committee to which the public and the press are permitted. Accordingly if it appears likely that topics to be discussed at a forthcoming public session of the Committee are such that the witnesses would only be able to give substantive answers if they could be treated in confidence, the Board should advise the Chairman or the Clerk of the Committee explaining why this is so. If, despite such an approach, the Committee questions an officer in public session on what he considers or knows his Board to consider as confidential matters, or if such matters are raised unexpectedly, he should inform the Committee that he does not feel able to answer the question on the grounds of confidentiality. He should not himself suggest that the Committee should go into closed session.

PROCEDURE FOR AVOIDING PUBLICATION OF CONFIDENTIAL EVIDENCE

Where confidential written evidence is submitted to the Committee on the understanding that all, or part of it, will not be published this understanding should be made clear in the covering letter to the Clerk to the Committee accompanying the evidence.