GENERAL PURPOSES & FINANCE COMMITTEE

Report to Chief Pleas 22nd February 2007

REPORT FROM THE BRECQHOU LIAISON SUB-COMMITTEE

Attached is a Report from the Brecqhou Liaison Sub-Committee which GP&F bring, without recommendations, for the consideration of the House.

Deputy Peter Cole
Acting President, GP&F

REPORT OF THE BRECQHOU LIAISON SUB-COMMITTEE TO THE GENERAL PURPOSES AND FINANCE COMMITTEE

1 This is the report of the Brecqhou Liaison Sub-Committee to the General Purposes and Finance Committee of Chief Pleas.

Introduction – creation and remit of the Sub-Committee

2 The Sub-Committee was established at the Chief Pleas meeting held on 19th April 2006. The following members of Chief Pleas were elected to the Sub-Committee: Sieur Donnelly (Chairman), Sieur Guille, Sieur Gomoll and Deputy Armorgie. The Sub-Committee is a sub-committee of the General Purposes and Finance Committee. Its remit was to explore the relationship between Sark and Brecqhou, but excluding issues relating to Seigneurial rights and privileges, Sark constitutional law and Isle of Sark Shipping. The Sub-Committee was to report back to the General Purposes and Finance Committee before taking any proposals to Chief Pleas. The Sub-Committee was expressly prohibited from reaching any agreement with Brecqhou itself.

Meetings

3 An initial meeting was held on Brecqhou between the members of the Sub-Committee and Sir David and Sir Frederick Barclay on 26th April 2006. The Sub-Committee has since met with Advocate Gordon Dawes, instructed on behalf of Sir David and Sir Frederick Barclay. There have also been exchanges between the Committee and Advocate Dawes, who has assisted with the preparation of this document.

Sark and Brecqhou – the historical background

4 Sark's history is unusual amongst the Channel Islands because of the break in that history and what amounted to a new beginning with Queen Elizabeth I's 1565 grant of the Island by Letters Patent to Hilary de Carteret, Seigneur of St Ouen, Jersey.

5 Obviously the Island of Brecqhou already existed and indeed was known as the *Ile des Marchands*. It appears as such on contemporary maps. The historical origins of the dispute with Brecqhou date back to 1565.

The Brecqhou perspective

6 Sir David and Sir Frederick Barclay say as follows:

a) that Brecqhou was not a part of the fief of Sark;

b) that it did not form a part of the grant to Hilary de Carteret but formed a part of the Jersey Fief de Vinchelez;

c) that Brecqhou is not referred to by name in the 1565 grant (nor any other island or islet), nor in the Letters Patent granted by King James I in 1611. They say that an Island the size of Brecqhou would have been mentioned in such a document if it was to have been included in the grant when judged by equivalent forms of Crown grants of the time (eg Crown grants of the Isles of Scilly in 1570);

d) that in 1565 Brecqhou was already in the separate ownership of the Le Marchant family (hence the *Ile des Marchands*) and paid no revenue to the Crown at the material time, unlike Sark, as evidenced by the 1581 Extente of Crown Revenues;

e) that Brecqhou eventually fell into the ownership of the Seigneur of Sark on or after 1681, when Royal Court proceedings brought by Rachel Le Moigne, widow of James Le Marchant, against the Seigneur were abandoned;

f) that the seigneur would have acquired prescriptive title to Brecqhou but not as part of the fief of Sark;

g) that Brecqhou was sold by Dame Sibyl in 1929 to Mr and Mrs Angelo Clarke. The conveyance states that "*Je la dite Sibyl Mary Collings comme dit est, ai vendu, baillé, cedé, délaissé et totalement transporté de moi et de mes hoirs en fin et perpetuité d'héritage ... l'ile de Brechou, anciennement l'ile des Marchands* ...,". By the conveyance the Dame purported to grant to Brecqhou the right to vote in Chief Pleas (by transferring the right from a tenement she owned – we do not believe it is disputed that Brecqhou was never a Sark tenement) and "… *promet et m'oblige pour moi et mes hoirs envers les dits acqué et leurs hoirs de leurs tenir la dite ile franche et quitte de toutes rentes, chefrentes, et autres redevances, sauf droits seigneuriaux*." The conveyance also referred to Brecqhou not being sold without the "*congé et license*" of the Dame without actually specifying any payment;

h) that because it was not within the Fief of Sark, the attempted reservation of Seigneurial interests was void and of no effect.

The Sark establishment viewpoint

7 There is, of course, an opposing viewpoint which we call the Sark establishment viewpoint for want of a better description. This is represented by the Seigneur's position in the litigation with the Barclay twins which was as follows:

a) that Brecqhou formed a part of the territory granted to Helier de Carteret in 1565;

b) that the issue had been decided in the Royal Court proceedings of 1681;

c) that the 1611 Letters Patent also extended to Brecqhou;

d) that at all times since 1675 (when the Court of the Seneschal was established) the Court of the Seneschal had had jurisdiction over Brecqhou;

e) that Brecqhou had been conveyed in 1929 as a part of the Fief of Sark;

f) that the Seigneur was entitled to treizième in respect of Brecqhou;

g) that the Barclay twins were bound by the provisions of the conveyance to them.

8 The Royal Court proceedings brought by the Barclay twins commenced in March 1996. We understand that the proceedings were prompted by the strictures of Sark's law of primogeniture (forced inheritance by the eldest son of an impartable tenement). The Barclay twins claimed that Brecqhou was not a part of the fief of Sark and therefore the law of primogeniture did not apply.

9 When the Sark case of *Surcouf v de Carteret* was decided by the then Bailiff, Sir de Vic Carey, on 24th September 1999 the issue of primogeniture appeared to become, from Brecqhou's perspective, academic, given that long leases of Sark realty were confirmed as being valid. In other words a long lease of Brecqhou could be made and the strictures of primogeniture lawfully avoided. We understand that it was the Home Office (then responsible for Channel Islands business) which brought the solution to the attention of the Barclay twins.

10 We understand that the Barclay twins no longer wished to pursue the proceedings and, accordingly, in 2000 the proceedings against the Seigneur were, by consent, dismissed and the counterclaim withdrawn without evidence being heard. At that time the Barclay twins were conceding that Brecqhou was a part of Sark. However, we understand that any concession made at the time in private law proceedings might not have resolved the public law question of the relationship between the islands. Again we express no view, but in any event there are other issues as set out below.

Issues that have arisen since

11 Issues that have arisen since have included the extent of Chief Pleas' powers to legislate for the foreshore, harbour and waters of, and around, Brecqhou. It had been proposed to regulate all commercial activity; there was concern on Brecqhou that it was intended to interfere with the daily life of that island. More recently issues have arisen such as the proposal to introduce a property transfer tax, including an "anti-avoidance" provision which would lead to a substantial annual tax for Brecqhou. In other words, and from Brecqhou's perspective, taxing the solution which led to the conclusion of the proceedings in 2000 which again would resurrect the issue of testamentary freedom (or the lack of it) in Sark. The debate concerning the constitution of Sark itself led to disputes concerning the future form of Chief Pleas. The Barclay twins petitioned Her Majesty in Council towards the end of 2005 with the consequence that Chief Pleas had little choice but to withdraw the then draft Projet de Loi, given that it contained a proposal for the assembly which was not compliant with the Island's obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms 1950, nor under the UN International Covenant on Civil and Political Rights 1976. There is an ongoing dispute concerning the constitutional role and powers of the Seigneur.

Our role

12 Our role is certainly not to solve, or even to investigate, any of the above issues; indeed we were expressly told not to. Our role is instead to explore the relationship between Sark and Brecqhou in a much more general way with a view to making a recommendation as to the future of that relationship.

Alternatives

13 It seems to us that there are broadly two alternative routes which the relationship between Sark and Brecqhou can take. It can either continue as it is now or agreement could be reached with Brecqhou as to the future guiding principles of the relationship. We explore both options and the advantages and disadvantages of each course.

If the relationship between Sark and Brecqhou continues as it is - disadvantages

14 We identify the following disadvantages:

a) the dispute with Brecqhou creates bad feeling, it is divisive and time consuming - at a time when Chief Pleas has an increasing volume of complex business to deal with;

b) the dispute with Brecqhou acts as a restraint upon Chief Pleas – arguably Sark would have had a differently composed future assembly if agreement had been reached with Brecqhou prior to the Brecqhou petition of 2005. For as long as the dispute lasts Sark will be scrutinised very closely by Brecqhou;

c) linked to the above is the likelihood of further litigation either at Privy Council level, in Europe or in the Royal Court. The Human Rights (Bailiwick of Guernsey) Law 2000 is now in force, which means that the Convention has been incorporated into Bailiwick domestic law for the first time. It is an uncomfortable reality that Brecqhou has much greater resources than Sark when it comes to litigation, at a time when the Law Officers seem likely to begin charging Sark for their services;

d) the dispute with Brecqhou has economic consequences for Sark; eg it is unlikely that the IOSS freight contract would have been lost, but for that dispute;

e) Sark does not benefit from the technical and diplomatic assistance with Brecqhou might otherwise provide.

If the relationship between Sark and Brecqhou continues as it is - advantages

15 We identify the following advantages:

a) if Sark were to win the argument with Brecqhou over the question of its jurisdiction then Chief Pleas would have or retain (depending on which side of the argument you stand) legislative powers as full as those over the Island of Sark itself;

b) these powers would include the power to impose taxation, duties, license fees and other tariffs or charges. Such fiscal measures could only be imposed at the same rate (ie the same method of calculation) for Brecqhou as for the Island of Sark but, at least potentially, significant revenues could be generated for the Island of Sark (subject to likely challenges from Brecqhou);

c) Sark would not have compromised on an issue of constitutional principle, it would be maintaining the status quo from its perspective.

<u>If agreement is reached - disadvantages</u>

16 We identify the following disadvantages:

a) it may be difficult in practice, even if any agreement is expressed to be non-binding, to resile from it, unless there is a change of circumstances justifying such a change, for example if Brecqhou's circumstances changed and it became more dependant upon Sark;

b) such an agreement may not be politically acceptable to HM Government and/or Guernsey – although it is anticipated that the view of both would be sought before any agreement was entered into.

<u>If agreement is reached - advantages</u>

17 We identify the following advantages:

a) Sark and Brecqhou have many common interests in terms of their relationships with Guernsey and the United Kingdom, they are undoubtedly stronger standing together than divided;

b) Brecqhou is a potentially very powerful ally of Sark at a time when the outside threats to Sark's way of life (not least from Guernsey) are apparent;

c) Sark has a much better prospect of retaining its current level of autonomy with Brecqhou's support, recent examples of cooperation in this sphere have included opposition to Guernsey's proposals to legislate for Sark regulated financial services directly by States of Guernsey Ordinance, bypassing Chief Pleas;

d) Brecqhou is likely to be able to provide know-how, advice and other support, again enhancing Sark's capacity to retain its identity and assert its will as a community. There is a particular concern that as Guernsey takes more legislative powers Sark's position will be threatened. In any conflict of interest between Guernsey and Sark it is like that Guernsey departments and legal advisers will put Guernsey's interests before Sark's. Sark would benefit from Brecqhou's support in such circumstances;

e) Sark's economy is likely to benefit substantially from any *rapprochement* between the islands. What is lost (or rather not gained, because it is an opportunity cost rather than requiring any true outlay) by way of new taxation is likely to be more than made up by increased trading links and the like.

The form of agreement

18 There are various forms of agreement that could be reached. Any agreement could be enshrined in legislation, even an Order in Council. This would be time-consuming and costly to obtain. It would also been time-consuming and potentially costly to undo or even amend. An agreement could, instead, take the form of a legally binding contract between Sark Chief Pleas and the owners of Brecqhou. Finally, an agreement could take the form of a memorandum of understanding (MoU) which would take a similar form to that of a binding contract but express itself not to be legally binding. We understand that it is a common form used between governments; an example is to be found in the Memorandum of Understanding and Supplementary Agreements made between the United Kingdom Government and the devolved administrations in Scotland, Wales and Northern Ireland. Obviously there is no question of devolution in this context in the sense that there is no proposal to devolve power as opposed to exploring the scope for agreement as to how power should be exercised. We understand there is no objection in principle to such an MoU from the Department for Constitutional Affairs or the Guernsey Law Officers.

Precedents

19 There are precedents within the Bailiwick for agreement being reached between constituent Islands as to their governance. The relationship between Guernsey and Alderney is governed by the Alderney (Application of Legislation) Law 1948 and the States of Guernsey (Representation of Alderney) Law 1949. Closer to home, the relationship between Guernsey and Jethou was the subject of a policy letter to be found in Billet d'État XVI of 1994 at p 874 from the then States Advisory and Finance Committee (copy appended to this report together with the related resolution). They said this:

> "The Committee's initial thought was that all Guernsey legislation, including that relating to taxation, should be extended to Jethou in the event that the States agree to become the head tenant. However, after further consideration it has become apparent to the Committee that the advantages of so doing would be outweighed by disadvantages.
>
> The tenancy of Jethou is very different to Herm. Herm lends itself to day-trippers and is able to provide facilities for tourists. Jethou however, has no beaches, access is far more difficult and variable and being much smaller than Herm, has less to offer by way of facilities. There is no opportunity to derive any substantial revenue from visitors. It is understood that the two previous tenants who afforded access to visitors did not make any profit from the venture.
>
> The costs of maintaining the infrastructure and facilities on Jethou are substantial. If income tax was levied on Jethou residents then it would not be unreasonable for them to expect to receive the full range of Guernsey services. Providing services could be extremely costly for Guernsey. For example, if there were young people on Jethou provision might have to be made for their education.
>
> Having regard to those factors, the Advisory and Finance Committee does not recommend the extension of all Guernsey legislation to Jethou and, in particular, does not consider that it would be in Guernsey's interest to bring Jethou within the Guernsey income tax area certainly not before the 25th May 2007."[1]

[1] Paras. 5 – 8. We understand that a new lease of Jethou is in the process of being negotiated. We are not aware of any proposed change in the status of Jethou.

20 It is clear therefore that the special position of Islands within the Bailiwick has been recognised before and accommodated, whether by legislation, agreement or understanding.

Discussion

21 It is possible and, we suggest, desirable, to put to one side the narrow legal arguments because plainly there are two sides and any dispute would be both very costly and lengthy to determine either way. We do not believe that it would be in the best interests of either Island to continue the dispute; on the contrary we believe that Sark in particular has much to gain from agreement with Brecqhou. It is a question of finding a *modus vivendi* acceptable to both Islands, the Bailiwick and the Crown.

22 We believe that Brecqhou does derive some benefit from being associated with Sark and from being within the Bailiwick of Guernsey, even if those benefits are not particularly tangible. However, the simple maintenance of law and order and the preservation of an orderly society in the close neighbourhood of Brecqhou is a benefit to that island. The wider infrastructure of the Bailiwick in terms of ability to deal with a major incident is again available to Brecqhou should the need arise, as unlikely as that may be. We think it is right that Brecqhou should make some contribution to the revenues of Sark. We therefore propose that Brecqhou should continue to pay the property tax on the same basis as at present, and indeed any other Sark tax which it has historically paid.

23 Equally, it must be acknowledged that Brecqhou is both separated geographically and financially self-supporting. Brecqhou has provided and paid for all of its own infrastructure and services, ranging from roads, to lighting, water, water treatment, waste disposal, medical services, education, fire fighting, transport and obviously bears the cost of maintaining that infrastructure. Brecqhou does not *cost* Sark anything in terms of public expenditure.

24 However we see no reason why Sark should formally or legally surrender the jurisdiction it claims over Brecqhou. Indeed, we understand that Brecqhou is willing to recognise that jurisdiction if agreement can be reached as to how it should be exercised on a day-to-day basis. At the same time Sark has little genuine interest in governing the day-to-day life of Brecqhou. Both Islands should "live and let live" in our view. The added benefit of no formal surrender of jurisdiction means that there would be no change to the constitutional legal status quo so far as Sark was concerned and therefore the Crown. We say that both Islands can benefit if agreement can be reached.

25 What Brecqhou appears to seek is largely to be left to get on with it whilst also offering the prospect of being a powerful and helpful ally to Sark given the extent of the Islands' common interests. Brecqhou is already in a special position given that many purely Sark domestic legal regulations have no actual or practical application on Brecqhou, and never have had. Recent expressly agreed exemptions for Brecqhou include the non-application of the capital tax (see an attached letter from Adrian Guille, then President of the General Purposes and Finance Committee to Sir David Barclay dated we believe 16th January 2003 (the date is incomplete in our copy)) effected through (again we believe) the Direct Taxes (General Provisions) (Sark) Ordinance 2003 and control of occupation through the Housing (Disapplication from Brecqhou) (Sark) Law 2001 (which disapplied from Brecqhou The Housing (Temporary Provisions) (Sark) Law 1976, which itself controlled the erection of dwelling houses as well as the control of occupation of dwelling houses). In other words there is also a precedent for Chief Pleas dealing with Brecqhou differently given its special circumstances.

26 There is a sense more generally that Sark is reaching a defining moment in its history. What is at stake is the future of Sark as an independent and vibrant community, able to support and defend itself and its interests. Brecqhou shares so many of those interests that we believe the two islands can and should put aside their differences. In addition we believe that Brecqhou can make a valuable contribution to the establishing of a viable Sark economy. Better to have a powerful friend than a powerful enemy in circumstances where the cost to Sark would be comparatively minimal or nothing in terms of actual outlay.

27 We therefore recommend that agreement be reached between Sark and Brecqhou by way of memorandum of understanding addressing the following matters:

<u>Heads of agreement</u>

28 We identify the following areas where agreement seems desirable:

i) **Jurisdiction of Sark institutions in respect of Brecqhou:** We understand that Brecqhou would agree (subject to what follows) not to challenge the jurisdiction of Chief Pleas to make legislation which extended to Brecqhou nor would it challenge the jurisdiction of the Court of the Seneschal.

ii) **Existing taxes:** We believe that Brecqhou should continue to pay the property tax, as provided for in, and defined by, the Direct Taxes (Sark) Law 2002. We understand that this too is acceptable to Brecqhou.

iii) **New taxes, license charges and other fiscal measures:** We believe that any new taxes, license charges and other new fiscal measures should not be extended to Brecqhou because of its geographical separation and self-financing status. Obviously if circumstances change then the issue would be reviewed. To the extent that new or increased administrative charges are levied by Sark institutions for the use of their services or facilities then we see no reason why Brecqhou should not pay them if Brecqhou uses them. We would exclude Brecqhou though from any new tax such as a property transfer tax or any anti-avoidance provision linked to it. Such document duties are, in reality, a tax rather than a mere charge to cover administrative expenses.

iv) **Legislating for Brecqhou:** We believe that Sark legislation should only extend to Brecqhou when the public interest requires it. Much Sark legislation has no relevance for Brecqhou. We identify in particular those areas of purely domestic concern such as sewerage, horse-drawn vehicles, invalid carriages, caravans, the black list legislation, tractors, noise abatement, harbours, noxious weeds, liquor licensing, refuse and litter, natural amenities and land control, control of dogs, mental treatment, licensing of vessels, motor traffic, arguably education, catering, pilotage, bicycles, mental treatment and the like. By contrast we believe that international law as it applies to the Bailiwick should apply in Brecqhou; likewise Bailiwick-wide legislation, whether financial services legislation or criminal law. By contrast, we see no need for Sark to legislate for day to day life on Brecqhou, whether in respect of its harbour, landing places, foreshore or otherwise.

v) **Existing and future legislation:** There is a dispute concerning what existing Sark legislation applies to Brecqhou. Brecqhou would say none, the Sark establishment would say all. It is very rare that Brecqhou is mentioned by name in any legislation. Occasionally there is reference to Sark and "its dependencies". More often than not there is simply reference to the "Island of Sark". We suggest that the spirit of what legislation and measures should extend is clear. Existing and future Bailiwick legislation would apply in Brecqhou. Existing Sark legislation would only apply where there was reference to "dependencies" or Brecqhou was expressly named or the measure related to criminal law.

vi) **Consultation:** When it is proposed to make new legislation which is intended to extend to Brecqhou (ie because it falls within the criteria identified by the MoU) we suggest that there should be a consultation process whereby a letter setting out the proposals and any draft legislation is sent to Brecqhou inviting representations within a stated period, perhaps not less than 28 days. We suggest that, as a matter of course, the Chief Pleas agenda and papers should continue to be sent to Brecqhou as at present. It would be useful, we suggest, to have the input of Brecqhou concerning, in particular, legislation being promoted either by Guernsey or the DCA.

vii) **Access and egress:** We are conscious that Brecqhou seeks certain assurances concerning access to, and egress from, Brecqhou. The use of helicopters to travel to and from Brecqhou has been a feature of Brecqhou life since approximately 1966 when Leonard Matchan acquired the island and operated a variety of helicopters from it over the years. The presence of the Brecqhou helicopter is a benefit to Sark and the Bailiwick generally; it is available to the emergency services and has been used for many medical evacuations and searches.

viii) **Control of development:** There is an issue as to whether Sark control of development legislation has any application to Brecqhou (the legislation refers only to "*this Island*" see The Development Control (Sark) Law 1991). We suggest that if it applies it should not be enforced given the fact that Brecqhou is wholly separate from Sark. We suggest that assurances are sought instead that buildings will not rise above a certain height or be built immediately adjacent to the Sark coastline and that certain uses will not be made, eg industrial uses, in default of which Sark would reconsider enforcing or establishing control of development measures for Brecqhou. Equally, we are aware that Brecqhou is concerned as to the nature and extent of present and future building development on the West coast of Sark. Again we suggest consultation with Brecqhou when development is proposed on Sark which will be visible from and/or affect Brecqhou. It is this kind of mutual understanding which would form the basis of the future relationship.

ix) **Marine conservation:** As and when and if Sark creates marine conservation zones Brecqhou wishes to be included.

x) **Elections and Chief Pleas:** We see no reason why Brecqhou should not play a full part in Sark politics on the same basis as any other inhabitants of Sark. There was some question in our mind as to whether any resident of Brecqhou elected to the new Chief Pleas should be restricted in terms of what he or she could vote upon; ie whether he or she could vote on issues not relating to Brecqhou (a similar issue arose in the Westminster Parliament relating to Scottish MPs). In practice we think it would be impracticable to enforce such a division and it is unlikely that many issues will turn on a single vote.

xi) **Not legally binding:** If any agreement is to be made which is not legally binding then this, of course, cuts both ways. Both islands will preserve their positions; although we anticipate that with the passage of time the MoU may acquire the force of constitutional convention in the same way that Guernsey's own relationship with the UK depends in large part upon such understandings.

Conclusion

29 We recommend that agreement with Brecqhou be reached in the interests of both islands. We have a draft which Brecqhou has seen and would be willing to agree with Chief Pleas. The draft is subject, of course, to any amendments which Chief Pleas would wish to make and subject also to the draft being seen by HM Procureur and the DCA.

30 We remain at your disposal to clarify any matters or else to discuss matters further with Brecqhou.

Sieur John Donnelly (Chairman)
Sieur Colin Guille
Sieur Stephan Gomoll
Deputy Paul Armorgie

Dated

GENERAL PURPOSES AND FINANCE COMMITTEE

Report to Chief Pleas 22nd February 2007

MEETING WITH H.M. PROCUREUR ON CHARGES FOR LEGAL SERVICES

Information Report to Chief Pleas on the meeting with H.M.Procureur and the States Treasurer concerning Sark's contribution toward costs of Legal Services from St James' Chambers.

Members of the GP&F Committee, the Finance Sub-Committee, Deputy A Guille (President of the Development Control Committee) and the Sark Treasurer met with H.M.Procureur and Mr David Clark, Guernsey States' Treasurer, at Charles Frossard House on Wednesday 24th January.

H.M.Procureur explained that since 1947 the costs of the Crown Law Office at St James' Chambers have been met by Guernsey. Currently this is around £2.4 million a year and is expected to increase with the trends for more and more complex legislation and an increasingly litigious society. With the downturn on Guernsey's income in consequence of changes in Corporation Tax, there is additional pressure on all departments to reduce their costs.

Sark makes frequent use of St James' services for advice, drafting and, when necessary, representation in court. Some of this work arises from our being part of the Bailiwick, and this will continue to be done at no charge to us. Nor will we be charged for advice requested from time to time by Sark Committees, Island officers and Mr Beaumont in his constitutional role as Seigneur.

However, where legislative drafting arises from decisions of Chief Pleas for purely local laws, then it would be unfair for Guernsey's taxpayer to continue to bear this cost and from now on we are asked to pay at the rate of half of a legislative draftsman per year, approximately £30,000, paid in the following year. This workload and the rate we pay will be kept under review, but it is anticipated that the peaks and troughs of demand will even out over, say, a three year period. We will also have to pay for representation in court by Crown Officers at the rate of £195 per hour. This is the rate at which court costs can be charged and so in the event of a successful case in which we were awarded costs, this is the rate at which they would be claimed, bringing the net cost to Sark to zero. (And of course in the event of *losing* a case and costs being awarded *against* Sark, we would have to pay both sides' costs at this rate).

We are of course free to hire lawyers from the private Bar if we prefer.

We are awaiting detailed costing from Guernsey and therefore, we anticipate that a Report with recommendation will be brought to Chief Pleas in the near future.

Deputy Peter Cole
Acting President, GP & F

GENERAL PURPOSES AND FINANCE COMMITTEE

Report to Chief Pleas 22nd February 2007

MANDATES FOR A NEW FINANCE COMMITTEE AND A REVISED GENERAL PURPOSES AND ADVISORY COMMITTEE

Following Chief Pleas' decision in January to convert the Finance Sub-Committee into a stand-alone Finance Committee, and for the GP & F to revert to being the General Purposes and Advisory Committee, members of the GP&F and the Finance Sub-Committee met to recommend Mandates.

Sieur Raymond and his Sub-Committee asked that the new Finance Committee function be expanded to include the area of commerce in its mandate and title. We therefore offer the House an alternative form to include this if that is the wish of the House.

Items in the mandates (apart from that referring to commerce) have been taken directly from the old mandates without any changes to the wording. The proposed Mandates are attached for the:

General Purposes & Advisory Committee
Finance & Commerce Committee
Finance Committee

Proposition 1
That Chief Pleas adopts the proposed Mandate for the General Purposes and Advisory Committee.

Proposition 2
That Chief Pleas adopts the proposed Mandate for the Finance and Commerce Committee.

Proposition 3
That Chief Pleas adopts the proposed Mandate for the Finance Committee.

Proposition 4
That the General Purposes and Finance Committee request the Law Officers of the Crown to prepare the necessary legislation to put these Propositions into effect.

Responsibility for Island insurance is currently held by the GP & F Committee. It is proposed that this responsibility be returned to the Douzaine who were previously responsible for insurance because they make daily use of most of the island's insured plant and equipment.

Proposition 5
That responsibility for the island's insurance be taken over by the Douzaine and recorded on their Mandate.

Deputy Peter Cole
Acting President, General Purposes and Finance Committee
26 January 07

Proposition

That Chief Pleas request the Constitutional Committee 2007 keep the public aware of the issues which they are addressing in respect of the "The Reform (Sark) Law 2007" and take into account the attached Joint Opinion of Leolin Price CBE QC and Evan Price.

Proposer: John Donnelly

Seconder: Claire Hester

15 January 2007

Channel Islands – Constitution of Sark

JOINT OPINION

It is convenient for us to set out in this Opinion our conclusions about some of the important, and immediately relevant matters, raised with us: -

1. At its 4 October 2006 meeting Chief Pleas decided in favour of Proposition 2 (to have prepared for its consideration a draft *projet du loi* changing the composition of chief Pleas to accord with Option A). As explained below the decision was based on a fundamental mistake about the result of the opinion poll undertaken in September 2006.

2. At its 9 August 2006 meeting Chief Pleas had agreed that it would feel bound by the result of the poll (which it then authorised) if voter turnout exceeded 60% (as it did) and there was at least a 20% majority for one of the polled options. The voting was 44% for one option and 56% for the other (i.e. for Option A), giving Option A a 12% majority. Electoral Reform Services, who conducted the poll, reported this as a 1.27 ratio; we understand that this was represented to Chief Pleas at the 4 October 2006 meeting (treating it as a 27% majority) as achieving the minimum 20% majority for Option A, and Chief Pleas when

considering the matter appear to have understood that the minimum 20% majority had been achieved for Option A. But that was a mistake. The majority was only 12%. The decision to go ahead with preparations for Option A was based on a fundamental misunderstanding and, if our understanding is correct, what was a factual misrepresentation of the poll result.

3. It was also assumed – at the August and October meetings – that the Lord Chancellor would not advise the Queen to give Royal Assent to a *projet du loi* introducing a change in the membership of Chief Pleas which was not Option A; and that this was because the Lord Chancellor and his DCA had formed a view that only Option A would provide compliance with ECHR Protocol 1 Article 3. But in forming that view the Lord Chancellor and DCA were, in our considered and definite opinion, mistaken; and this constitutes another flaw undermining the decision at the October meeting.

4. The decision at the October meeting was that a draft *projet du loi* should be prepared for further consideration at a further meeting of Chief Pleas; and, because of the flaws referred to above, it cannot be right to regard Chief Pleas as already bound to proceed with Option A. There is no binding decision to that effect and nothing to stop any other Option being preferred.

5. The membership of Chief Pleas, historically comprising only tenants, has of course changed; and there is a feeling amongst all of the islanders that further change is appropriate. It also appears that there has been in Chief Pleas a strong impression that Sark is **required** to make a further change in the membership of Chief Pleas. In our opinion, however, there is no obligation requiring Sark or its Chief Pleas to make any such change. The Lord Chancellor's letter of 7 May 2006 to the Seigneur refers to

> "the level of criticism that is faced by **Sark** and UK for the apparent failure to resolve the **fundamental** criticisms that the constitution of Chief Pleas is in breach of ECHR".

The same letter says –

> "As Privy Counsellor with responsibility for the Channel Islands I would like to be able to demonstrate to the Privy Council that **Chief Pleas** is doing everything that it can to meet the December target and to give Sark the ECHR compliant reform which is must have. **It is the UK** which is vulnerable to an ECHR challenge".

6. Sark is not, and the Bailiwick of Guernsey (which includes Sark) is not, part of the UK. The UK government is not the government of Sark (or of Guernsey). The Queen is the sovereign of Sark but not as part of the sovereignty of the United Kingdom. The UK Government committed **itself** to the ECHR Treaty obligations and has, in its assumed role of representing Sark in its international relations, committed **itself** on Sark's behalf. Chief Pleas has, over the years, consented to the incorporation of ECHR treaty obligations into the

law of Sark, but it is the UK Government **and not Sark** that is a High Contracting Party with the consequent treaty obligations.

7. Sark - Chief Pleas for Sark - might therefore, **without breach of any obligation binding on it**, refuse to make any change in the membership of Chief Pleas as "required" by the Lord Chancellor and DCA, and might, for example, insist that any change which it will contemplate is in the form of a variant of Option C, probably Option D, representing a continuation of the constitutional development which produced the present combination of Tenants and Residents in the membership of Chief Pleas. What would be the consequences, or the probable reaction of the Lord Chancellor, if Chief Pleas were to adopt that position?

8. Our first observation is that we would expect the Lord Chancellor to treat that situation as requiring reconsideration of his established attitude; and, in that reconsideration, we would expect him to be persuaded that Option A is not the only ECHR-compliant Option; that for the special circumstances of Sark Option D is ECHR-compliant; and that accepting Option D is therefore acceptable and much better than a continuing impasse and "political" friction. We ask those instructing us to note that both Option C and Option D can properly be considered to be "universal suffrage" in the sense that everyone who has the right to vote has the ability to vote for all of the candidates.

9. In our opinion, for much the same reasons as those expressed by Nigel Pleming QC (in his opinion of 9 June 2006), the special circumstances of Sark provide good reasons to retain the inclusion of Tenants in the membership of Chief Pleas so that Option C – or, as we prefer, Option D with residents as the majority of its members – will be ECHR-compliant. These special circumstances can be summarised as follows: -

(1) For over 3 centuries, Tenants, as members of Chief Pleas, have been closely and continuously involved in the government of, and law-making for, Sark under the Royal Charter of 1565 and Letters Patent of 1611.

(2) As independent members of Chief Pleas, elected by all the voters but specifically required to be Tenants, the Tenant members of Chief Pleas can provide a bulwark against any one group, employer or company being able to achieve effective control of Chief Pleas.

(3) Tenants are long term residents of the island, closely concerned with and involved in the administration and government of the island and contributing more of their time and energy than other islanders who work outside the island. Tenants carry out a wide variety of work for the

island, much of it voluntary, in the absence of a paid civil service.

(4) Their experience, as Tenants, in the running of the island, when new laws are being considered in Chief Pleas is of special value. So too is their political awareness and long familiarity with the working of Sark government. Their accumulated knowledge and experience of the running of Sark and of its history and their informed reaction to, or sponsorship of, proposals for change are of special value when any proposals for change are under consideration. Residents voting for, or sitting as, members of Chief Pleas may be more influenced by short-term or temporary considerations than Tenants.

(5) Tenants, as members of Chief Pleas, can function, in the unicameral Chief Pleas, as providing a sort of equivalent for the revising or tempering opinion which is provided in the UK by the House of Lords; but the population of the island is too small to make it practical to have, and incur the cost of running, a second chamber.

(6) The Tenants have played, and will continue to play, a vitally important part in the evolutionary development of

Sark; its political and constitutional development as well as its economic development in the modern world.

10. In the situation canvassed in paragraph 7 above, we do not consider it likely that the Lord Chancellor will be advised that the UK government has legal authority or constitutional power without the consent of Chief Pleas, to impose upon Sark constitutional change involving an Option A reform of the membership of Chief Pleas. The formal arrangement of such imposition would require inventiveness. An Act of the UK Parliament would not be suitable; because Sark is not part of the UK. An Order in Council could not logically be by statutory instrument authorised by an Act of the UK Parliament. An Order in Council made in the name and on behalf of the Queen as Sovereign of Sark would be an antique curiosity and itself a curiously inconsistent mechanism for imposing supposedly ECHR-compliant constitutional change: inconsistent because the Council involved does not include a representative of Sark and in practice is not convened with any Counsellor(s) in attendance except the Lord Chancellor.

11. Interestingly, a challenge to the electoral qualification for voters in New Caledonia, a French colony, was challenged in the European Court of Human Rights in 2005 (see *Py v France (Application No. 66289/01, final Judgment delivered 6 June 2005)*. In that case it was held that the particular electoral qualification (requiring 10 years' residence) was justified and was not disproportionate in the

circumstances where the residence requirement had been a key factor in appeasing previous conflict. There were 'local requirements' warranting the restriction and therefore no violation of Py's rights by barring him from voting in the referendum on self-determination, as he did not satisfy the special residence requirement established for the referendum. His not being qualified to vote in the referendum was not a breach of his rights under the ECHR.

12. The appropriate Court procedure to challenge

* either the Lord Chancellor's refusal to advise the Queen to give Royal Assent to, for example, Option D,

* or the Lord Chancellor's view that only Option A will provide ECHR-compliant reform of the membership of the Chief Pleas,

is, in our opinion, by judicial review in proceedings in London. There is, of course, some risk that the challenge might be unsuccessful; but, as our considered and definite opinion is that in the special circumstances of Sark Option D clearly provides compliance and Option A is not the only ECHR-compliant choice, our assessment is that the challenge ought to, and would, succeed.

13. The Lord Chancellor might perhaps adopt the view that, even if other Options are, or can be regarded as, ECHR-compliant, he will only

support Option A and Royal Assent will therefore be available only for Option A. If so, and if that view is clearly and firmly asserted, our opinion is that in a judicial review it ought to be, and would be, declared that this view as adopted by the Lord Chancellor cannot properly frustrate the legislative preference of Chief Pleas (and Sark) for Option D. The Lord Chancellor, like the UK government of which he is a member, is not part of the government of Sark and in such circumstances his declared political partisanship for Option A cannot provide a rational basis for refusing to advise Royal Assent for Option D.

14. If the Lord Chancellor were to carry his partisanship as far as securing an Act of the UK Parliament or an Order in Council to impose Option A, how would the Sark opponents of this mount a legal challenge and in what forum? In an earlier Opinion leading counsel referred to the possibility of petitioning the Privy Council. But Sark opponents would not want to appear to be providing any sort of recognition or acceptance that the Privy Council has any legislative role or function over Sark, particularly as in relation to the Queen's authority over Sark the only Privy Counsellor who in practice exercises any advisory function is the Lord Chancellor (with assistance from his UK Government department, the DCA). It therefore now appears to us that the challenge to any such Act of Parliament or Order in Council would appropriately be in Sark: by proceedings in the Court of the Seneschal claiming that the particular Act (or Order in Council) is not

part of the law of Sark. Appeal would be to the Royal Court in Guernsey with a possible further appeal to the Queen in Council (i.e. to the Judicial Committee of the Privy Council).

15. The dual position of Seneschal, as head of the judiciary and chairman of the Chief Pleas, is itself, in our opinion, unlikely to survive a challenge under the principles established by the European Court of Human Rights. The Lord Chancellor's own position in the UK has, in recent years, been the subject of considerable debate and as a result the UK Government has made significant changes to that position. In essence, the argument is that a person with power in the legislature or executive branches of the Government should not at the same time be an active member of the Judiciary. There are respectable arguments that can be put to defend the status quo, but in our opinion, the Lord Chancellor is unlikely to accede to those arguments in the light of his acceptance that his own position, as speaker in the House of Lords and head of the judiciary is untenable and has accepted reform that removes from him both of these roles, leaving him solely as a party politician. It may be appropriate for any reform of Chief Pleas to include a requirement that the members of Chief Pleas elect a speaker or chairman from amongst their number and for the judicial role to be separated from the role of speaker or chairman of Chief Pleas.

16. Faced with a legislative initiative from Westminster as canvassed in paragraph 14 above, Sark might expect a sympathetic reaction from

Guernsey and Jersey where the independence or near-independence of each of the Channel Islands is greatly prized as part of a special constitutional birthright which is to be jealously guarded against attack and erosion.

17. We add that in a written answer (see HL Official Report 3rd May 2000, Col 180WA) to a question raised by Lady Strange in the House of Lords on the circumstances in which the UK Government might intervene in Dependencies, Lord Bach maintained that "the Crown" was responsible for good government in those Crown Dependencies and that if there was a 'grave breakdown or failure in the administration of justice or civil order', then "the Crown" could use its "residual prerogative powers" to intervene in the internal affairs of the Dependencies. Were Chief Pleas to reject Option A, could it be properly be claimed that there had been a 'grave breakdown or failure in the administration of justice or civil order'? Our answer is, "No".

18. The legislative process in Sark is somewhat surprising and merits debate with a view to change. At present, after a proposed change in the law has been approved by Chief Pleas, a *projet du loi* is drawn up by the Attorney General's office in Guernsey. It is submitted to the DCA in the UK. The DCA then submit it to the Privy Council which submits it for Royal Assent. At each stage of this process, reports and opinions are expressed by the body making the submission. No representative from Sark is a party to the reports and opinions. The

committee of the Privy Council that considers the matters on behalf of the Council is formed by the Lord Chancellor, his representative in the House of Commons, currently Harriet Harman MP, and the Lord President of the Council. Startlingly, the reports and opinions expressed at each stage of the process have no input from Sark and are not put before the Chief Pleas for them to consider.

19. We have already set out that Sark is not a part of the UK; we believe that the DCA has no constitutional position or power in respect of Sark. In addition, while Sark has permitted and continues to permit the Bailiwick of Guernsey to legislate in the area of criminal law, Chief Pleas has retained for itself the power and right to legislate in the area of civil law. As a result, our view is that where the *projet du loi* concerns civil law, the Bailiwick of Guernsey is properly regarded as having no constitutional power in respect of Sark.

20. In our considered opinion, the position of the UK's Lord Chancellor in relation to Sark is that of a member of the Queen's Privy Council; and not as Lord Chancellor of England or as a member of the UK Government. On that basis his letter of 7 May 2006 to the Seigneur (document 13 with our instructions) was, in our considered opinion, inappropriate. Its inappropriateness is highlighted by the sentence quoted in paragraph 5 of this opinion:

"It is <u>the UK</u> which is vulnerable to an ECHR challenge"

The letter is saying, in effect, that the UK Government has made a treaty commitment and is vulnerable to challenge for what the Lord Chancellor and his DCA regards as failure to meet that commitment in respect of Sark and the membership of Chief Pleas. Since Chief Pleas selected Option C the Lord Chancellor has been pressing for Sark to help him – and the UK Government – to avoid failure to meet the UK Government's treaty commitment. There is an obvious conflict between what the Lord Chancellor wants done in order to protect the UK Government and any tendency by Sark (Chief Pleas) to refuse co-operation. His advocacy of Option A, and only Option A, is for UK Government advantage (or avoidance of disadvantage) and not for the advantage or interest of Sark. If there were to be an impasse, with the Lord Chancellor refusing to advise Royal Assent for an Option – Option D – acceptable to, and chosen by, Chief Pleas (and, we say, ECHR-compliant, notwithstanding DCA's apparent view to the contrary) this conflict of interest would feature in the judicial review process of the Lord Chancellor's decision to support Royal Assent only for Option A.

21. We are invited to consider whether any, and what, arrangements might be made in an attempt to entrench the rights of Tenants to have as members of Chief Pleas, deputies who, though elected by the whole electorate, must be Tenants. A *projet du loi* to give legislative effect to, for example, Option D could include an express "constitutionally entrenching" provision to the effect that any subsequent variation of

Chief Pleas membership and in particular a variation which reduced the proportion of elected members who must be Tenants or the rights, power and qualifications of individuals who are properly described as Tenants shall not be part of the laws of Sark unless, before or within 3 months of the vote in Chief Pleas to make that variation, it receives the support of an independently conducted poll of Sark electors and in that poll at least 75% of qualified voters cast their vote and at least 75% of those who cast their vote support the variation.

22. We comment that the removal of Tenants as members of Chief Pleas, as under Option A, leaving every qualified resident with one vote for a single category of deputies would not necessarily achieve in the small island of Sark, with its (relatively) tiny population and tiny number of electors, the advantages reasonably expected from such a "democratic" arrangement. For example, a group of residents might engineer the election of a sufficient number of Chief Pleas members to enable that body to pass laws of apparent but temporary economic advantage (for example, in relation to the management or conduct of investment sales or management). The specific element of Tenants in the membership of Chief Pleas ensures – or, at least, provides the basis for hope – that the long-term interest of the island is not left out of account. We add that, with a single category of elected members in Chief Pleas and (as in Option A) none required to be Tenants, there could soon be pressure for payment of members and for government of Sark to become more expensive than hitherto. If so, the modern

prosperity of the island and its attraction for internationally operating investment and financial business could easily be impaired.

23. In the very special circumstances of Sark we are inclined to favour the view that changes in the operating political and constitutional arrangements should not be made without compelling cause, but some attention may be needed to govern: -

(1) what is the quorum of Chief Pleas;

There may be members, whether Tenants or more probably just residents, whose work is largely outside the island. Presumably the quorum for business should under Option D require the presence of a specified number of Tenants and a specified number of Deputies who are not Tenants.

(2) qualification for voting in elections to Chief Pleas;

We would not be surprised if a longer minimum period of residence (now one year) were thought appropriate as qualification for voters.

LEOLIN PRICE CBE QC

EVAN PRICE
10 Old Square
Lincoln's Inn

15 January 2007

15 January 2007

Channel Islands – Constitution of Sark

APPENDIX TO JOINT OPINION

Some further observations

A. There is concern in Sark that laws arising from external sources should not be brought forward for incorporation into Sark law unless specifically requested by Sark. This concern is affected by the tendency in Westminster to confuse, in relation to Sark, the functions or powers of "the Crown" and those (if any) of the UK government. When the UK government acting in the name of the Crown undertakes international obligations of any kind, it may **for itself** undertake obligations in respect of Sark; but it is not the government of Sark; and such obligations are binding on it and not on Sark. To any extent that they are treated as binding on or in Sark, that must be a matter of subsequent acquiescent recognition in Sark; but without making the Queen **as sovereign of Sark** a contracting party to the international treaty creating the obligations. It would, of course, be more appropriate in terms of international law, to adopt different formal procedures in such a case; for example to ensure that the UK government does not undertake any obligation in respect of Sark without having obtained prior express authority - consent or

approval – of Chief Pleas to the particular UK undertaking in respect of Sark.

B. That sort of formality, as between the UK and Sark, has not been part of what may be described as the anomalous ways of Sark law-making and government: anomalous according to what is generally today regarded as consistent with "democratic" accountability.

C. Even after Chief Pleas in Sark has approved some proposal for Sark legislation, it is the Attorney General of Guernsey who submits the *projet du loi* to the DCA and reports whether he considers it to be Human Rights compatible and appropriate for submission to the Privy Council (i.e. for Royal Assent by the Queen as Sovereign of Sark). **Chief Pleas do not have access to that report**; and in terms of proper constitutional accountability that, in our opinion, is unacceptable.

D. The DCA – department of the UK government, and not part of the government of Sark – considers the proposed law: to see (for example) that the proposed Sark law does not involve any breach of the **UK's** international obligations. For this DCA consideration or review of the proposed law, there is no participation or representation by Sark or the Channel Islands; and in terms of proper constitutional accountability that, in our opinion, is unacceptable.

Lord Chancellor, a minister in the DCA (currently Harriet Harman) and the Lord President of the Council (but the Lord Chancellor's letter of 7 May 2006 to the Seigneur is some evidence that the Lord Chancellor assumes personal responsibility for what is treated as the Committee's decision). There is no Sark and no Channel Island representation on the Committee; and, in relation to Sark that, in our opinion, is unacceptable.

F. The process does not involve full and proper participation, by voters or by Chief Pleas, in the legislative process for Sark and is not properly compliant with ECHR rules.

G. Where the DCA or Lord Chancellor refuses to recommend the proposed law to the Queen for Royal Assent, that refusal, in our opinion, is constitutionally unacceptable without the concurrence from Sark, i.e. without the concurrence of Chief Pleas.

H. Although Sark is (to an extent) part of the Bailiwick of Guernsey the role of Guernsey and Guernsey officers in the legislative process described above is potentially inconsistent with Sark's constitutional position. Of course there is a certain economy in being able to rely on the expertise of Guernsey's law officers in respect of, for example, money laundering and financial services; but to the extent that this

reliance undermines or risks undermining the proper accountability (via Chief Pleas) of Sark government to the Sark electorate it is constitutionally unacceptable.

I. We have already in the main part of this Opinion expressed our views about the position of the Lord Chancellor in relation to Sark and the mixing of the Seneschal's role as both Judge in Sark's Court of Justice and Chairman or Speaker at meetings of Chief Pleas. In these matters reconsideration and constitutional change and re-definition are urgently desirable if the government of Sark is to be, in our opinion, properly organised and compliant with modern standards, attitudes and usage.

LEOLIN PRICE CBE QC

EVAN PRICE
10 Old Square
Lincoln's Inn

15 January 2007

SHIPPING COMMITTEE

CONSTITUTION:

A President who shall be a sitting member of Chief Pleas.
Up to four members, not less than three of whom shall be sitting members of Chief Pleas, one of whom should be a member of the General Purposes & Finance Committee and one of whom should be a member of the Tourism Committee.
Up to 2 non-voting members who shall not be members of Chief Pleas but who shall be elected by Chief Pleas.
A quorum shall consist of three voting members.

MANDATE:

(a) To advise Chief Pleas on the provision of a year-round shipping service for the carriage of passengers and freight between Guernsey and Sark, and services to and from other ports as appropriate.

(b) To advise Chief Pleas on the level of fares and freight rates compatible with the interests of Sark residents and the right of the Shipping Company to make a reasonable profit.

(c) To liaise with the Tourism Committee and the Shipping Company on the presentation of a proposed timetable of shipping services for the following calendar year.

(d) To ensure, with advice from the Harbourmaster, that any such timetable makes due allowances for the arrival and departure of vessels from and to Jersey.

(e) From time to time have elected on to the Committee persons having expert knowledge.

(f) To exercise the powers and duties conferred on to it by extant legislation.

(g) To exercise the Shareholders interests of Chief Pleas in the Isle of Sark Shipping Company.

(h) To undertake, as and when required to do so, the purchase of any new vessel financed solely by, and on behalf of, Chief Pleas.

(i) To have in place all finance required for such a project and to have final accounts on its completion laid before a suitable Chief Pleas meeting.

(j) To obtain legal advice for the implementation of any transactions of contracts involved in such a purchase and incur such reasonable costs as may be required.

(k) To employ an independent Marine Surveyor for Chief Pleas throughout the build of any such vessel including all trials and until the vessel is handed over to Chief Pleas on completion.

(l) To liase and consult with all persons appertaining to the building of the vessel.

(m) To present written Reports to Chief Pleas throughout the construction of the vessel including costs, until the vessel is completed.

CURRENT MEMBERS:
Deputy G.T. Gurden, President
Sieur J.C. Brannam, MBE, Vice President
Deputy J.C. Carre
Sieur W. Raymond

The Shipping Committee.

Under the terms of the Mandate of the Shipping Committee it is specified that the Committee shall be formed of up to 4 members, one of whom shall be on the G.P.& F. and one on the Tourism Committee. Currently I am the person who is a member of the last two, although I have resigned my membership of Tourism as from today. Should this Committee continue it will be necessary for this House to appoint a member of the Tourism Committee to the Shipping Committee to fulfil the terms of its mandate.

Now why do I say "Should this Committee continue"? And why have the committee brought forward no recommendations for membership?

The situation is currently frustrating and nonsensical. Until such time as the Island Constitution is changed then, as I understand it, Chief Pleas do not have the right of ownership of any properties or other assets, and these, most specifically the Shipping Company Shares, must therefore be held on behalf of Chief Pleas by Trustees. These Trustees currently elect the Sark Directors of the Company, who form 50% of the Board of Directors. The Shipping Committee has been informed in no uncertain terms by both these parties that the business of running the Company is the exclusive province of the Executive Directors, overseen by meetings of the full Board at regular intervals. What then is the role of the Shipping Committee? Members will recall that it has been disbanded in the past but was re-instated, firstly to deal with an abortive new boat purchase, but secondly to provide a political facility whereby the Sark Directors could make a Report to Chief Pleas. Now the Company is owned by Sark that part of the Shipping Committee mandate which refers to the purchase of a new vessel has become redundant, as the Company itself oversees such matters. And if the sole remaining purpose of this Committee is to provide a conduit through which the Sark Directors may report to this House, then why should a full Committee be required? Would not a spokesman suffice? If it were perceived that there could be a conflict of interests, should a Director of the Company, being also a member of Chief Pleas, give a direct report then one person – possibly even a Trustee, would suffice.
What happens at the moment is that the true (and most sadly ineffectual) position of this Committee is not appreciated by the Sark residents. The Committee take a fair share of the public complaints and brickbats while being unable to effect any remedial action. This does not make membership of this Committee an attractive proposition. We are supposedly there "to exercise the Shareholder interest of Chief Pleas" (and I quote.). We do not know how this is to be attained.

I cannot at this late stage make any formal proposition to this House. I leave the matter to you for your discussion.

G.T. Gurden

REPORT on The Decision Taken by Chief Pleas to Suspend the Projet de Loi entitled "The Reform (Sark) Law 2007"

At the January Chief Pleas Meeting Members voted to suspend their previous decision taken on October 4th 2006 in relation to the composition of Chief Pleas. The proposition in question was as follows:

Proposition 2

That Chief Pleas instruct the Law Officers of the Crown to prepare the necessary draft legislation to incorporate Option A in relation to the composition of Chief Pleas to replace Option C. For the avoidance of doubt Option A is that all 28 seats are 'open' and all members are elected by universal suffrage.

Having taken that decision Chief Pleas Members failed to consider and react to the views of the public who already had, in two Opinion Polls, expressed their preference to the composition of Chief Pleas as detailed in the above proposition. Members did not take into account the unarguable fact that in both Opinion Polls there was a firm majority vote for Option A.
This decision caused much disquiet amongst the public and has done the reputation of the Government of this Island as viewed by this community much damage.

Both Deputies and Tenants have been approached by members of the public who have expressed concerns that when asked by Chief Pleas as to what they want, Chief Pleas then totally ignores their views. We must now take a critical look as to where that decision has taken us and what can now actually be achieved by that decision.

Composition of Chief Pleas

It seems unlikely, due to the public feeling over the way Chief Pleas handled this issue, that the public would now support anything other than Option A. Maybe in time this might change but this itself must be looked at more closely. In choosing Option A it was a vote not against the Tenants but against the system of how Members actually get their seats. It certainly is not against the individuals who make up the Chief Pleas but the fact that the large majority of Members in Chief Pleas arrive there by inheritance of a Tenement or by purchasing a Tenement. In other words, without being elected. Whilst this has always been the case we in Chief Pleas had accepted that this could not continue and began remedying the situation, a process that has taken several years and a great deal of public participation.

It must be remembered that, with public support, we had in fact decided upon a composition of Chief Pleas, but alas the legislation was challenged before it was placed before the Privy Council and then was subsequently recalled by Chief Pleas to reconsider the way forward.
Chief Pleas once again addressed the composition of Chief Pleas with all Options put back on the table for discussion and finally two remained:

- The Rang/Harris proposal (Option Z) whereby a certain number of seats were reserved for Tenants and Deputies and the rest of the seats available were open for either Tenants of Deputies.
- Option A : complete universal suffrage with no reserved seats.

We must ask ourselves if is it remotely possible now that the public would substantially change the view already expressed to anything other than universal suffrage with no reserved seats? In

light of all what has gone before us, we believe the answer to be no and what is more the argument for anything else has, in the perception of the public, been lost.

The Role of the Seigneur and Seneschal

Much was made of these areas in the draft legislation that they may face a challenge if they were not perhaps reviewed again in light of further legal opinion.

Chief Pleas Members must remember that they were adamant that these two roles would remain as close to what we currently have and in fact both have had changes. Chief Pleas revisited both these areas twice and still again remained adamant that they were staying in the legislation as drafted. Will these roles be challenged? It is possible. However, whether any challenge would be successful is a matter of legal opinion. How many more legal opinions are we to seek before we actually move forward? What happens if at the Easter Chief Pleas Meeting we are all circulated another legal opinion? Do we stop everything again?

Many Members of Chief Pleas have been approached by the public who have expressed concerns as to the latest decision taken on this lengthy process and have asked for a Public Meeting. This was held on Saturday 3rd February in the Island Hall. The meeting was well attended and in nearly two hours of discussion it became apparent that the public were disappointed and outraged that Chief Pleas had not immediately taken action in light of the result of the majority vote given in the Opinion Poll for Option A.

We put forward the following propositions:

Proposition 1

That Chief Pleas rescind the decision taken at the Christmas Chief Pleas Meeting held on January 17th 2007 "that Chief Pleas suspends its decision taken on the 4th October 2006 in relation to the composition of Chief Pleas".

Proposition 2

That Chief Pleas approve the Projet de Loi entitled "The Reform (Sark) Law, 2007" as submitted to the Christmas Chief Pleas Meeting held on January 17th 2007 and direct the Constitutional 2007 Committee to consult with the Crown Officers immediately as to the steps necessary for implementation of the Projet once it becomes law and that the Committee should bring back proposals to Chief Pleas.

Proposition 3

That the Mandate of the Constitutional 2007 Committee approved at the Christmas Meeting held on January 17/18th 2007 be amended to read "That Chief Pleas directs the Constitutional 2007 Committee to bring the necessary Draft Ordinances to enact the Projet De Loi entitled "The Reform (Sark) Law 2007" once it becomes law to Chief Pleas.

Proposed by

Peter Cole

Deputy Peter Cole

Seconded by

Adrian L. Guille

Deputy Adrian Guille