

Sark News

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SARK'S CONSTITUTION

Sark News was born out of the desire to expose the reality of feudal government in Sark and the need for change. That need has been recognised by the English Court of Appeal and the role of Seneschal must now be reformed.

On Tuesday 2nd December 2008, the English Court of Appeal gave judgment in the appeal by Sir David and Sir Frederick Barclay against the High Court judicial review judgment of earlier this year. Each of the three judges (Lord Justices Pill, Jacob and Etherton) agreed that the office of Seneschal was not compliant with the requirements of Article 6 of the European Convention on Human Rights that “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law”.

Lord Justice Pill held that the position of the Seneschal, sitting alone, as constituting the sole court of justice in Sark fell the wrong side of what was Convention compliant. His close involvement in all proceedings in Chief Pleas, which might well give rise to litigation, made a concurrent role as Chief Judge on the Island inappropriate.

Lord Justice Jacob went further. For him: “If one were starting from scratch there can be few who would think the new Reform Law of Sark satisfactory ... to confer by heredity upon an unelected man the positions and powers of the Seigneur contained in the impugned Order would be going too far by the standards of modern democratic governance

... And the powers of the Seneschal, although his/her position is not by virtue of heredity, would similarly not be now adopted if ... starting out with a clean sheet for a territory with no history”.

Lord Justice Jacob went on to point out that Sark had 450 years of history, but although starting with a wish to uphold the Reform Law he agreed with Lord Justice Pill as regards the role of the Seneschal as Judge. It was not Convention compliant.

Neither Lord Justice Pill or Lord Justice Jacob believed that the role of either Seigneur or Seneschal breached Article 3 of the First Protocol to the Convention, the obligation to “... hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”. But Lord Justice Etherton disagreed as to the Seneschal. In his view the Seneschal’s role in Chief Pleas also constituted a breach of Article 3 of the First Protocol to the Convention. For him, the powers of the Seneschal under the Reform Law “taken as a whole, are capable of enabling suppression of free and appropriate debate within Chief Pleas by elected members on topics they or some them wish to raise”.

Lord Justice Etherton referred to there being no clearly practicable means for the

elected members of Chief Pleas to control abusive or otherwise incorrect exercise by the Seneschal of his powers as President. They had no powers to dismiss or suspend him. Furthermore "... the particular features of the Sark constitution under the Reform Law and the social and constitutional standing of the Seneschal in Sark are obvious disincentives for elected members to challenge the rulings and conduct of the Seneschal as President". The Lord Justice referred to the many positions held by the Seneschal under the Law and how: "Critically, under the Reform Law, the only court on Sark is the Court of the Seneschal ... The elected members will doubtless bear in mind the possibility that at some point in the future they may have to appear in court before him ...". Lord Justice Etherton was in a minority on this point.

The Court of Appeal will now grant a declaration to the effect that the role of the Seneschal under the Reform Law is not Convention compliant because of the Article 6 breach only. However, both sides sought leave to appeal to the House of Lords but this was refused by the Court of Appeal and they will now petition the House of Lords directly for permission to appeal.

This judgment, if it stands, is of enormous significance for Sark and both Bailiwicks. Sark will be expected by the United Kingdom government to amend the Reform Law to address the role of the Seneschal and the Article 6 breach. The Court of Appeal declined to say how that should be done, but one obvious solution is to take away the judicial function from the office of Seneschal - although Lord Justice Etherton did not regard this as sufficient to avoid infringement of Article 3. He suggested instead that the giving up of the Chief Pleas role by the Seneschal "would still leave him with an impressive variety of public functions ... those remaining functions, as a group (having) a coherence reflecting the kind of public service for which judicial independence and integrity are desirable". In other words

the Seneschal would not be President of Chief Pleas but would keep his other functions.

The case is likely to go to the House of Lords some time in the first half of 2009. Meanwhile it is always open to the new Chief Pleas to take the initiative and reform the roles of both Seigneur and Seneschal. The Seigneur indicated his desire to see his office reformed in a letter to the Ministry of Justice in November 2006. It may well be that the newly elected Chief Pleas will agree that it is undesirable in this day and age to concentrate so many functions and so much power in the single unelected and largely unaccountable office of Seneschal. Time will tell, either way; but the critics of the office of Seneschal will today feel vindicated.

IS THIS SARK'S SUB-PRIME MORTGAGE?

Has Sark lost nearly 70% of its net reserves?

Chief Pleas has invested £957,000 of the island's financial reserves in Sark Shipping. The island also stands as guarantor of the shipping company's £500,000 bank loan. This means that Sark has a total of £1,456 million of its net reserves tied up in Sark Shipping. According to the latest island accounts, the total net reserves amount to £2.1 million. In other words, if Sark Shipping goes into liquidation, Chief Pleas' will have lost just under 70% of its net reserves, leaving the island with reserves of £643,000 – less other listed liabilities which would give a net figure of only £547,000.

It would be an understatement to say that in today's market conditions, the balance sheet valuation of Sark Shipping's assets, namely its ships, is a gross overestimation. In reality, if the ships were put on the market now, they would be virtually unsalable – worth nil.

With the company listing grossly overvalued assets to balance total liabilities in

the order of £1.7million, no wonder the very recently “retired” board of directors was extremely reluctant to produce company accounts for public scrutiny.

Even if disallowing the investment and loan from Chief Pleas, Sark Shipping still has net debts to the order of £243,000 and trading losses around £120 - £150,000. Since these large liabilities cannot possibly be balanced by the value of the company’s three ships in today’s market, it therefore it appears that Sark Shipping must be trading insolently.

If Sark Shipping is trading insolently and therefore unlawfully and the directors are aware of it and haven’t notified the insurers, the directors risk being made personally liable in any liquidation to contribute to the debts of the company. The insurance cover itself would be at risk of being revoked, which begs the question of payment of any liability for any accident or loss at sea.

The outcome of Dr Spencer’s shipping review was always a foregone conclusion. Appointed by the Lt Governor, Dr Spencer’s decision was never likely to go against the wishes of Guernsey’s and Sark’s establishment. Unfortunately, Dr Spencer did not fully take into consideration either Sark Shipping’s balance sheet or its historical trading losses (except for the period during which they had the Brecqhou freight contract). As a result, he imposed on the islanders a monopoly run by a loss making enterprise.

Recently, Adrian Guille and William Raymond resigned from their positions in Sark Shipping. Along with the Island Trustees who condoned their every move, they were the people directly responsible for putting Sark’s reserves into a shipping company which but for the duration of the Brecqhou freight contract was never a viable operation. If Sark Shipping indeed goes broke, the Island of Sark will, as a direct result, lose 70% of its financial reserves and with it the capital with which it might have been able to invest in a new shipping company.

Even more alarmingly, as Sark Shipping is wholly owned by the Island of

Sark, the Island ought to present accounts consolidated with those of Sark Shipping which would again show the true capital position. Sark’s “investments” would prove to be nothing of the kind. The reserves would be shown to be illusory. The Island’s accounts would also have to set Sark Shipping’s annual losses of approx. £150,000 against its net income of some £200,000 per year. The state of the Island’s finances would have a very different complexion.

MISSING FROM THE ACTION

The newly appointed Sark Shipping supremo Robert Tylour has, apparently, disappeared off the surface of the island. This seems strange in view of the fact that the company is in choppy waters, to put it mildly, and the new captain’s strong hands are needed on the bridge. Does his absence signify that the intention is to do nothing, say nothing until after the election? Are there forces at work trying to avoid Sark Shipping being an election issue? We only ask.

THE SEIGNEURIE GARDEN TRUST BENEFACTOR

What exactly is the benefit?

A newcomer to the island, few people on Sark had heard of Mr Charles Maitland until he announced he would stand for election as Conseiller in Chief Pleas. It is, however, abundantly clear from Mr Maitland’s manifesto that he has jumped on the bandwagon of the anti-Brechou brigade.

In this manifesto, Mr Maitland has a lot to say about himself, albeit without giving too much away. He unashamedly beats his own drum by portraying himself as a successful serial entrepreneur but is sparing with the factual details, not naming any of the businesses he has been involved in. Were they successful? Was, for instance, the nursing home he praises himself for, run as a charity or run as a profit-making enterprise?

There is no substance to Mr Maitland’s manifesto. He glibly promises to support small businesses. He favours the preservation of old Island buildings as a priority. He believes Sark Shipping should be supported. All these are fine notions but they urgently require new capital in order to be

made a reality. Is Mr Maitland prepared to provide that? He also wants all employees from off the island to be vetted, in other words he wants more regulation. How does that, in practice, tie in with supporting small businesses?

There is no doubt Mr Maitland is a clever man. He has been able to secure the lease for the Seigneurie gardens, on the basis of which, we are led to believe, he is going to make some unspecified gift to the island. In that case, is the trust in the Island's name or in his and his wife's? He alludes to profit-making schemes at the Seigneurie that would benefit the whole Island and create well paid jobs but why is the electorate to believe Mr Maitland is some kind of Santa Claus? The details of his "gifted contribution" are still, a long time after the announcement of this "gift", totally unknown to the public.

You have to be suspicious of someone who arrives on the island, generously (apparently) donates an unspecified gift and then wants to be a member of Chief Pleas – all within two years. By his own portrayal he is an opportunistic wheeler-dealer from the UK. So what, may one ask, brings him to Sark? He claims to have all the answers for the future of the island – does it present Mr Maitland with further opportunities for wheeling-dealing? Is he to be the new occupant of the Seigneurie, for example?

Mr Maitland is an unknown quantity with a somewhat inconsistent track-record. If he wants the people of Sark to vote for him, he needs to clarify what his qualifications and intentions are. If he wants gratitude for a generous gift, please would he clarify exactly of what his gift consists. In our view, it is impossible to trust Mr Maitland until such a time as he has fully explained himself and, indeed, proved beyond any doubt that his intentions are not self-serving. His manifesto and his CV bear the hallmarks of the "I'm alright" mentality that for too long has been dominant amongst those entrusted with the running of Sark's economy; taking out without putting anything back in - a 'scorched earth' policy that leaves nothing of value behind. Candidate Maitland, you have some convincing to do!

WHOSE DICTATORSHIP, CONSTABLE?

Letters to the Editor....

On Saturday 15th November, Sark News received this e-mail from Sark's Constable, Mr Alan Blythe:

"May I just say that your latest Sark News is so full of antagonistic crap, circulation of this rag should be halted immediately! The list of possible candidates makes it so obvious who sucks up to your dictatorship"

Please look beyond Mr Blythe's crude language and rather hazy grip on spelling, and concentrate instead on the message from Sark's somewhat inarticulate Constable: Circulation of Sark News should be halted immediately because he disagrees with this publication's contents. This raises a few questions:

- Is it not expected of the Constable that he remains above politics?
- Does the Constable's reaction mean that he would treat people differently, depending on their political views?
- Gagging the press is a technique favoured by all police states. A free press and editorial freedom is the guardian of democracy and the sooner Alan Blythe understands that, the better.

The law getting involved in politics is in itself one of the hallmarks of a dictatorship. Trust and impartiality is essential when enforcing the law and Mr Blythe's e-mail therefore proves that he is a highly unsuitable Constable. We can only hope that Sark's "long arm of the law" takes more care when arresting people than he does with his unfortunate written presentation. It is time for Mr Blythe to go – and go quickly.

Sark News is more than happy to print any response to articles in Sark News. We cannot guarantee to publish all responses and reserve the right to edit pieces both for length and content.

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