

## **THE DUAL ROLE OF THE SENESCHAL**

At the Mid-Summer 2010 Chief Pleas meeting, the General Purposes and Advisory Committee received the agreement of the Assembly to instruct the Crown Law Officers to begin to draw up legislation for separating the Dual Roles of the Seneschal. This has become necessary as a result of legal action in the UK taken by Sir David and Sir Frederic Barclay.

The 'dual role' refers to the Seneschal being both President of Chief Pleas, and the senior Judge/Magistrate in the Sark Court. Although this is broadly similar to the position of the Bailiff in both Jersey and Guernsey, which like Sark have taken steps to ensure that no-one's Human Rights can be threatened, it is said to be non-compliant with the European Convention on Human Rights (ECHR).

Chief Pleas will debate the separation of the Seneschal's role at the Michaelmas meeting before putting forward legislation for Royal Assent.

Here is an outline of what the Seneschal's job involves, with each aspect described in more detail below.

The Seneschal has a **non-judicial role** and a **judicial role**. It is these which are to be separated.

### The non-judicial role consists of the following aspects:

1. President of Chief Pleas
2. Island Trustee
3. Returning Officer
4. Focal /contact point for Government House
5. Focal/contact point for external correspondence between Sark and other jurisdictions/governments and organisations
6. Organiser of Royal Visits, other VIP visits and significant Island Events such as Liberation day celebrations.

### The judicial role consists of the following aspects:

1. Judge – for all civil cases
2. Magistrate – for all criminal cases
3. Coroner – sudden or suspicious death
4. The functions of a Notary Public for Sark

## NON-JUDICIAL ROLE

### 1. President of Chief Pleas

**1.1** By law the Seneschal is the President of Chief Pleas and a Member (non-voting and with no voice) of the Chief Pleas. This role is by far the most time consuming of the Seneschal's work.

**1.2** Work for the next meeting starts as soon as the last meeting ends. A file is maintained for each meeting and also of any matter to be raised at the next meeting, carrying forward any unfinished business of the last meeting.

**1.3** Between meetings, the President must remain alert to what is happening on Sark and elsewhere, especially in the legislative programme of the States of Guernsey, in order to work with the Committees of Chief Pleas to satisfy their requirements in relation to items for the Agenda of the next or subsequent meetings.

**1.4** Before the closing date for agenda items, the President of Chief Pleas may be consulted by Committees about the reports they intend to place before Chief Pleas, often with special regard to the formatting of propositions to ensure that the propositions correctly reflect the conclusions of the report. The President's wide experience of Chief Pleas' history and his familiarity with legislative and other matters affecting Sark help him to facilitate the smooth running of Chief Pleas' meetings. In exceptional circumstances, a Presiding Officer could be appointed from the Assembly to chair a meeting.

**1.5** When all the reports and supporting papers are confirmed and the closing date and time is passed, the President puts the agenda together, listing the reports in a sensible order. The order of the Agenda can be changed during a meeting by request of a Conseiller and a simple majority in favour (*see Rules of Procedure*). It is customary to deal with items such as election of Constable etc at the head of the agenda. These are followed by any Projet de Loi for the Bailiwick and/or Sark, followed by Ordinances and then by reports dealing with other issues for debate and resolution. Information reports are generally kept until last, as are documents laid before Chief Pleas. The notice in French is produced and signed by the Seigneur and Seneschal for display along with the agenda in the two official notice boxes.

**1.6** When the agenda order is finalised the Committee Secretary uses it to number each reports with its agenda item number; he prints the required number and provides the President with 50 copies for distribution. Note is made on the agenda of any papers to be supplied late and the President ensures that late papers are sent out in the required time. It is also not unusual for urgent items to be added after the official closing date and this requires the production of an addendum listing any extra items for debate and resolution.

**1.7** Prior to Chief Pleas the President keeps himself up to date with any developments relating to items being discussed as business of the day so as not to be caught unawares by changes of detail on the reports or the amendment by committees of their propositions. He must also be prepared for Questions Not Related to the Business of the Day to be tabled ahead of the meeting and for any proposals by members to amend committee propositions or to amend Projet de Loi or Ordinance.

**1.8** The meeting: The President must have a complete grasp of the Rules of Procedure and to enforce them as required and the same for the Constitution and Operation of Chief Pleas Committees and Committee Mandates, as he may have to guide the assembly on procedural matters during debate. The President ensures that that the business of the day is dealt with in an expeditious manner while remaining flexible to allow matters to develop as business is debated so the right outcome is achieved, including the reordering of the agenda if circumstances warrant it.

**1.9** At the conclusion of the meeting the President must ensure that all the necessary actions are completed. The series of actions that need to be taken to complete the business include:

**1.10** Humble Petitions to Her Majesty: when a Sark Projet de Loi is approved the President must produce a Humble Petition, have it signed by the Seigneur, the Seneschal and the Prévôt and send the necessary copies of the Petition and Projet de Loi to the Bailiff for onward transmission to the Privy Council. When urgent, the President will deal with HM Procureur's Chambers, the Bailiff's Chambers, Government House, the Ministry of Justice and the Privy Council Office.

**1.11** Bailiwick Projet de Loi: when Bailiwick law is approved by Chief Pleas the President must inform the Bailiff's Chambers in writing that the law has been approved, and when (infrequently) a Bailiwick law is not approved or requires further amendment.

**1.12** Sark Ordinance: when a Sark Ordinance is approved by Chief Pleas the President must transmit a copy of the Ordinance to be placed before the Royal Court. The Royal Court will review the Ordinance to ensure that Chief Pleas has not exceeded its law-making powers; were this to happen the Royal Court has the power to annul the Ordinance. Notices are produced for display in the Public Boxes.

**1.13** A Decisions Sheet is produced immediately after Chief Pleas has concluded, usually within 48 hours, to enable persons to know what decisions Chief Pleas took at the meeting and ahead of the production of the Minutes of the Meeting which can take significantly longer to produce. The decision sheet goes out over the President's signature and he is responsible for checking and approving drafts produced by the Committee Secretary. These are sent to Chief Pleas Members and uploaded onto the Sark Government Website; they are also circulated by the President to the Lieutenant Governor and others.

**1.14** Minutes: the draft of the Minutes is prepared by the Committee Secretary and the President checks them for accuracy especially regarding voting and propositions which become resolutions of Chief Pleas. After any necessary further drafts they are passed to the Greffier to check them for accuracy before both sign them off and copies are circulated to Chief Pleas Members and others. Copies for the Lieutenant Governor and Bailiff are sent under a covering letter from the President, requesting the Lieutenant Governor's approval for expenditure approved by Chief Pleas and not covered in the Budget.

## **2. Island Trustee**

**2.1** The Seneschal is one of four Trustees of Island Properties who currently hold land on behalf of Chief Pleas. In addition the Seneschal is usually one of the Trustees specified in the law when a property such as 'Vieux Clos' is governed by an Order in Council. Island Trustees are responsible to Chief Pleas for the control of all Island properties unless the day to day management and maintenance is delegated to a Committee of Chief Pleas under the 2008 Reform Law. Island Trustees meet when necessary to discuss maintenance issues and to conduct site visits to Island properties. They make agreements to rent or lease parts of the property portfolio and check to see that the various covenants are being kept.

### **3. Returning Officer**

**3.1** The Seneschal is the Returning Officer for elections held for seats on Chief Pleas; the Deputy Returning Officer is the Greffier. The Deputy Seneschal plays no part in Elections so that he can deal with any Court challenges that arise from the election. The Seneschal is responsible for the organisation and conduct of General Elections and By-Elections, a significant task involving at least two months work leading up to the election, and planning for the eventuality of a tie and a rerun of an election. This work is done before the polls open after which the Seneschal carries out a watching brief on the conduct of those persons he has selected to carry out the procedure on Election Day and those with statutory functions such as the Constables. Once the polls are closed the Seneschal ensures the procedures for the conduct of the count are in place and oversees the conduct of the count. He is involved again when the count is complete and the forms have been filled in ready to announce the result; a reserve set of counters must be ready to take over should a recount be necessary.

**3.2** The Seneschal arranges all aspects of the election from producing the Ordinance calling the election, calling for candidates, printing voting slips, publishing notices of candidates and where polling is to be held. Afterwards, results must be published and paperwork secured until such time as the successful candidates have been sworn into office, ensuring that the relevant papers are destroyed unread.

### **4. Focal /contact point for Government House**

**4.1** The Seneschal is in regular contact with Government House by telephone, email and letters on a wide range of often confidential matters concerning His Excellency in relation to Sark.

### **5. Focal/contact point for external correspondence between Sark and other jurisdictions/governments and organisations.**

**5.1** United Kingdom: contacts include from dealing with the UK Ministry of Justice (MoJ) and the Privy Council, usually in relation to the progress of Projet de Loi, always with the knowledge of the relevant Committee of Chief Pleas. Often correspondence arrives from other UK Government Department/Ministries via Government House and the Bailiff's Chambers for the information or action of Chief Pleas or its Committees.

**5.2** Guernsey: a good deal of correspondence with various Departments of the States of Guernsey for review and directing to the Committees concerned. When a decision from a Committee is required it is routed via the Seneschal to the department concerned. This process also keeps the Seneschal informed of matters that may arrive in due course for consideration by Chief Pleas.

**5.3** Bailiff's Chambers: regular contact with the staff of the Bailiff's Chambers in relation to Bailiwick Prôjets de Loi progressing through the States of Deliberation and any effect such legislation will have on Sark; there may be a requirement for Bailiwick law to be approved by Chief Pleas. When Bailiwick Prôjets de Loi are required to be approved by Chief Pleas, early copies are sent to Sark to be included in the Agenda for a Meeting. Sometimes the Bailiwick authorities have to move quickly to approve legislation to be sent for Royal Assent outside the usual time scales.

**5.4** HM Procureur's Chambers (St James' Chambers): contact with the legislative draughtsman both for Bailiwick Laws and Sark Laws and Ordinances. The Chambers are also the legal advisors to Chief Pleas and are responsible for much legal advice to the Seigneur and Seneschal.

**5.5** Press interviews, on non political matters, with journalists visiting Sark and, as Returning Officer, on matters surrounding an election. Provision of written information to journalists and telephone and email enquiries.

## **6. Organises Royal Visits, other VIP visits and significant Island Events such as Liberation day celebrations**

**6.1** With the Seigneur the Seneschal deals directly with Government House in regard to Royal and UK Ministerial visits. For Royal Visits a Constable's Committee is formed; both the Seigneur and Seneschal sit on the Committee and oversee the programme. There is always a Royal Visit recce party ahead of the visit to discuss the programme and security aspects. For Ministerial visits usually only the Seigneur and Seneschal are involved with organising the required programme in conjunction with the political leadership of Chief Pleas.

**6.2** The Seneschal sits on committees set up to deal with official visits and celebrations.

## **JUDICIAL ROLE**

### **A1. Judge**

**A1.1** The Seneschal performs the role of Judge for all civil cases that are required to be heard in Sark's jurisdiction and is the senior Judge. He is assisted by a Deputy Judge, the Deputy Seneschal and two Lieutenant Seneschals. A Lieutenant Seneschal may take a case where the Seneschal or Deputy Seneschal are conflicted, or the case is legally complex. Lieutenant Seneschals are appointed by the Lieutenant Governor on the recommendation of the Seneschal and Bailiff.

**A1.2** Many Civil Courts are held to deal with routine and non-contested issues such as Liquor Licensing, registration of conveyances of tenements and freeholds, and the registration of leasehold properties. This involves a great deal of reading. The simple cases mostly come directly to Court with little preamble but more complex cases may need to be tabled and adjourned, then a Directions hearing held to determine dates for exchange of documents etc prior to the substantive case taking place. On some occasions several days are needed to hear evidence and arguments from both parties. Once the Court has concluded, judgement is made. In complex cases the judgement may be handed down at a later date as it may take days to compile, by reviewing written notes, listening to recordings of proceedings, reading through bundles of statements and authorities and other documents provide to the Court by Advocates for the parties, before writing up the judgement.

**A1.3** Cases that are being taken by a Lieutenant Seneschal require administrative assistance and the Seneschal provides this in conjunction with the Greffier.

**A1.4** One of the more difficult areas to deal with is family issues such as appointing Guardians, granting Judicial Separations and making Maintenance and Custody Orders where children are involved. Whilst these are not frequent they are stressful to all concerned and need particularly careful thought and consideration by the judge before decisions are made.

### **2. Magistrate**

**A2.1** The Seneschal has limited powers of sentencing as a magistrate under the 2008 Reform Law, as was the case under the 1951 Reform Law. Usually, crimes that attract a small sentence can be dealt with by the Seneschal but where his powers under the Reform Law limit sentencing, cases can be remitted to the Royal Court for sentencing at the appropriate level. When a case is remitted the Seneschal must hear evidence in order to make the decision to remit. The limited sentencing powers of the Seneschal make it unlikely that a Lieutenant Seneschal would ever take a criminal case except possibly when both Seneschal and Deputy Seneschal are conflicted.

### **3. Coroner**

**A3.1** The Seneschal's Court also acts as a Coroner's Court for any sudden or suspicious deaths where the Doctor is unable to certify the case of death. When medical and/or police decide that a death is suspicious or the cause of death cannot be ascertained, the Court is assembled to open an Inquest. At this initial hearing the Court will hear from the Constable in regard to identification and the Doctor in regard to medical issues. If a post mortem is necessary the Court must give permission for the body to be removed from the jurisdiction and grant permission for the post mortem to be conducted. The Court must refuse permission for burial or cremation until the results of the post mortem and police enquiries are completed, although the Court always attempts to sit as quickly as possible to help reduce family distress. In cases of sudden death involving foreign nationals, cross-border police investigations may be involved.

**A3.2** Inquests often take three sitting of the Court to deal with and conclude, especially where the circumstances involve persons outside Sark's jurisdiction.

### **4. Notary Public for Sark**

**A4.1** By Law the Seneschal is designated as the maker of Powers of Attorney and Affidavits for the jurisdiction. He also certifies signatures and documents and in this respect is used by Sark Fiduciaries; Seneschal's signature is recognised by the Legalisation Department in Guernsey for both Hague and Non Hague Convention Countries; certifies documents to be sworn; takes Oaths and Declarations; acts as a Commissioner for Oaths for the jurisdiction.

**A4.2** With the Greffier's Office, the Seneschal's Office also counter-signs documents for the general public such as passport applications etc.

## **CONCLUSION**

The majority of the Seneschal's time is spent on the non-judicial aspects. His office is open to the public to seek advice on a wide range of issues. The Seneschal is on call 24 hours a day and is often called outside office hours; much time is spent in the office outside the notified hours.

In recent years there has been an increase in the number of Administrative Courts, for Liquor Licence extension of hours, gaming permissions and to register Orders of Her Majesty in Council that are sent to Sark for registration. The Court sits to administer Oaths of Citizenship and conduct the ceremony involved and to administer Oaths of Office as required. A further increase has been that of registering and giving effect to leases.

Between June 2007 and the 30<sup>th</sup> June 2010 around 200 separate sittings of all types of cases in administrative, civil and criminal Courts; a small proportion of them were heard by the Deputy Seneschal or the Lieutenant Seneschals. Often the Court will sit on one day to hear several cases. This total does not include Courts which are booked but do not eventually take place as a result of settlements out of Court or cases being dropped for lack of evidence etc. Nonetheless, setting up all cases requires pre-hearing work by the Seneschal who must consider whether each case will be heard by him, the Deputy Seneschal or a Lieutenant Seneschal with the requisite permissions being granted for the Lt. Seneschals or for cases to be held in other jurisdictions.

Laws and Ordinances form the basis of all that the Seneschal does in carrying out his numerous functions; however, much is governed by custom and practice and much has to be learned about how Sark works. Like many appointments it is not just what one knows but where information can be found that is just as important, and the Seneschal must develop a good working relationship with the many persons and organisations to whom he turns for advice and assistance.