

# SARK ELECTIONS 10<sup>th</sup> DECEMBER 2014

## REPORT OF THE INDEPENDENT OBSERVER: HOWARD KNIGHT

### Introduction

1. I was invited by the government of Sark to be the Independent Election Observer for the fourth election of Conseillers following the changes made to Sark's form of government in 2008.<sup>123</sup>
2. As part of the process leading to that appointment, I had submitted an outline proposal describing the scope and methodology I envisaged would be appropriate and necessary for such independent observation<sup>4</sup>. I described:

### The Task

- to assess the extent to which the December 2014 election in Sark respects fundamental freedoms and principles, characterised by equality, universality, political pluralism, secret but free, transparency and accountability.

### The methodology

- to consider the extent to which action has been taken to implement any recommendations from previous election observations
- to use appropriate and adapted elements of the comprehensive, consistent and systematic election observation framework and methodologies that have been developed internationally for example by OSCE/ODIHR in Europe, Central Asia and North America.

### The test

- *"The will of the people, freely and fairly expressed through this election, provides the basis for the authority and legitimacy of Chief Pleas"*

### The outcome

- To report on the election held on 10 December 2014
  - To make any recommendations about action that could and should be taken to improve performance
3. Further, I confirmed that such observation would require my presence on Sark during the week of the election as well as undertaking background research in advance, including a

---

<sup>1</sup> Sark's Consolidated Law 2008. [www.gov.sark.gg](http://www.gov.sark.gg)

<sup>2</sup> I initially responded to a notice on the Linked-In IDEA Network advising that Sark intended to appoint an Independent Election Observer and invited expressions of interest from suitably qualified individuals.

<sup>3</sup> For the avoidance of doubt, the Independent Election Observer is an unpaid appointment, but with the government of Sark meeting reasonable and modest expenses.

<sup>4</sup> Appendix 1

requirement to talk to representatives – elected, appointed and official – of the UK and Guernsey governments.

4. I am pleased to say that my outline proposal was agreed and that the government of Sark left it entirely within my discretion as to how I would undertake the observation. Through its representative, it also confirmed that it would use its best endeavours to secure and ensure my access to any specified documents, premises and persons.

## The government

5. Chief Pleas, the governing body of Sark, has 28 members called Conseillers. All were elected in 2008, but half agreed, after a lottery, to serve only two years. Thus, subsequent elections which take place every two years are for 14 members. This election was to replace those who had served 4 years, 2010-2014.
6. Most democratic structures have a separation between the non-executive (ie elected members responsible for strategy, priorities, policies, governance and accountability) and executive (ie appointed officers, responsible for managing the day-to-day operations and providing expert advice to the non-executive board). However, it is not unusual to have a blurring of that distinction at high-level in some structures, for example with directly-elected mayors.
7. Sark has an adult population of 550-650. Thus, in the particular democratic model of Sark, conseillers can be non-executive, executive and actually undertaking the day-to-day administrative functions. It is also possible to be non-executive, executive and quite separately employed or otherwise involved in the same sector of operation. This raises quite significant challenges for conflicts of interest, which are not easily avoidable.
8. There has been considerable debate about the structure of governance on Sark, both before the legislative changes which led to the new arrangements in 2008 and since. These arrangements are unique to Sark.
9. I was aware of the continuing debate about this model of governance, including both direct and indirect legal challenges to the settled arrangements. It would be impossible for me to ignore the wide-ranging views of both citizens and interested external parties on these issues – after all, such views would also colour the perceptions of the electoral process.
10. However, for the purposes of this observation and any report, I took the preliminary view that it would be inappropriate to comment on this relatively new electoral structure, but that it might not be inappropriate to comment on how it is operating – or perceived to be functioning – against the touchstones of a healthy, active, participatory democracy.
11. During the course of my observation, I did receive a number of representations – many conflicting - suggesting changes to the governance and electoral structure. [Quite coincidentally, the House of Commons' Library published a Standard Note on *Voting Systems in the UK*<sup>5</sup> on the day after Sark's intended election day. Also see *Voting Systems: the*

---

<sup>5</sup> Voting Systems in the UK. SN/PC/04458

<http://www.parliament.uk/business/publications/research/briefing-papers/SN04458/voting-systems-in-the-uk>

*Jenkins Report*<sup>6</sup>.] I did not get a sense that any of the proposals made commanded significant, let alone majority, support.

12. Further, I was able to take note of new committee arrangements being implemented by Chief Pleas as a result of its consideration of the Crowe<sup>7</sup> and Kniveton<sup>8</sup> reports, although it appears that these changes were not widely known or understood.
13. Taken all together, I came to the view that it is too soon to comment on the structure of governance and that, in any event, any such review in due course should be properly commissioned and should not be the responsibility of an independent election observer.

## The election

14. My proposal had assumed that there would actually be an election on 10<sup>th</sup> December 2014. The election had been appropriately called for 14 normal vacancies and for 2 by-elections.
15. It had already been determined that this would be a single election, with a ballot amongst the 16 receiving the highest votes to determine the 14 who would serve 4 year terms and the two – receiving the 15<sup>th</sup> and 16<sup>th</sup> highest number of votes - who would serve two year terms.
16. However, only 16 valid candidate nominations had actually been made. The Returning Officer, having sought advice from the Law Officers of the Crown, decided that a ballot should be held to determine who should serve 4 year and 2 year terms of office. The majority of candidates supported that method of resolution. Thus, although an election would be unnecessary, a ballot would be required to determine the terms of office of the particular candidates.
17. This raised two questions:
  - Was it still relevant to examine the arrangements for the election, despite the fact that the most important elements (voting, counting etc) would not be taking place? The answer to this was 'Yes'. It would be important to examine the arrangements, if only to inform the efficient and effective administration of future elections. Further, it would be important to establish whether any aspect of the election arrangements had had any influence on there being just 16 candidates for 16 vacancies.
  - Was the fact that there were only 16 candidates the result of pure happenstance or of conspiracy and corrupt practice? Every attempt should be taken to try to establish the facts.

## The election observation

---

<sup>6</sup> Voting Systems: the Jenkins Report. Research Paper 98/112  
<http://www.parliament.uk/business/publications/research/briefing-papers/RP98-112/voting-systems-the-jenkins-report>

<sup>7</sup> [http://www.gov.sark.gg/Downloads/Reports/Belinda\\_Crowe\\_Report.pdf](http://www.gov.sark.gg/Downloads/Reports/Belinda_Crowe_Report.pdf)

<sup>8</sup> [http://www.gov.sark.gg/Downloads/Reports/A\\_Vision\\_for\\_Sark.pdf](http://www.gov.sark.gg/Downloads/Reports/A_Vision_for_Sark.pdf)

18. In consequence of the fact that there would no longer be an election, I determined that my Election Observation would concentrate on the following aspects:
- (1) The arrangements made for the election
  - (2) The conduct of the ballot to determine which candidates would be deemed to be elected for four year terms and which two candidates would serve two year terms
  - (3) The investigation and resolution of any formal complaints
  - (4) Whether 16 confirmed candidates only was the result of happenstance or corrupt practice
  - (5) To secure views and concerns about the general nature of democracy and the electoral process on Sark, but not to be concerned with the recently determined structure of the government of Sark.
19. In order to undertake the observation – especially in respect of (4) and (5) above – it was important to ensure that Sark citizens had the opportunity to make their representations and their views known.
20. Before my arrival on Sark, I had published a press release on the Sark government website and released to the wider media, and given broadcast interviews on radio and TV in which I had invited every citizen to either submit their views in writing (via –e-mail) or contact me to arrange to meet in person.
21. I identified individuals representing a wide spectrum of views or representing a range of particular functional interests (eg candidate, civic society organisation, NGO) and arranged to meet them in person, either one-to-one or in small groups.
22. I also arranged two public meetings, one afternoon and one early evening, in different venues to enable me to ask questions on a variety of issues and to receive any other representations or views. Notice of these meetings was posted on public notice-boards and the government website.
23. In addition, I took the opportunity to talk to people in various public settings (for example, Island Hall, hotel and public house) and in people’s homes where I was pleased to be able to accept kind and generous hospitality offered by a number of families. I am sorry that I could not accept every invitation.
24. On my departure from Sark, another communication was sent to all households in which I offered to receive any further e-contributions in the following week. I confirm that I did receive a number of further submissions. The majority of these contained thoughts on issues that had been raised either in the small group or public meetings. It was encouraging that so many people had reflected on those matters. Some people wrote to say that they had changed their position having reflected on the debate.
25. In total, I estimate that I met or had written exchanges with more than 20% of the adult population. Let me take this opportunity to thank everyone for their written and oral contributions and for the spirit in which they were made. Despite people holding widely differing views on these issues, every contribution was made positively and in good spirit.

## **The arrangements made for the election**

26. I would like to thank the Returning Officer, Lt. Colonel Reginald Guille MBE, both for his time in answering all my questions and for providing full access to his immaculately filed papers. I was immediately able to examine all the documentation I requested.
27. I am happy to be able to confirm, without any hesitation or reservation, that the arrangements that had been made for the conduct of the election – from determining the timetable, to constructing the Electoral Register, to inviting and checking nominations and then preparing for the printing and security of ballot papers, election day arrangements, conducting the count and declaring the results – were excellent.
28. However, there are a number of issues to which the government of Sark, in consultation with its citizens, might wish to give further thought and then come to decision for implementation or otherwise.

### **Election Timetable**

29. The election timetable was extremely tight. Chief Pleas were advised of the timetable on 1 October and that timetable became public with the publication of the minutes. However, the formal Notice of Election was published on 14 November, providing just 4 days for the submission of nomination papers and just 19 days for the electorate to know who the candidates were before the intended December 10<sup>th</sup> polling day.
30. If there is to be such a tight timetable, it is not unreasonable to ensure that as much notice of that timetable as possible is given. Potential candidates ought to be given the opportunity to present themselves to the electorate, and the electorate ought to have time to give considered thought to the merits or otherwise of the candidates.
31. There are legal provisions (eg election takes place in December), conventions (eg election takes place on a Wednesday) and physical constraints (eg time required to commission and receive ballot papers). All these factors – subject to any changes that might result from consideration of other matters, as below – are known now.
32. Therefore, it should be possible to consult on, determine and publish in 2015 the timetable for the next election, rather than waiting until 2016 to initiate the process for consideration of the timetable.

**Recommendation:** *Returning Officer should submit proposals for the next Election Timetable to Chief Pleas, with a view to being able to publish such timetable during 2015.*

### **Electoral Registration**

33. A rolling electoral register is maintained by the Greffier. All citizens aged 17 years and above (although not entitled to vote until 18 years) and who have been ‘ordinarily resident’ for 24 months are allowed to register. I believe that the appropriate steps had been taken to remind citizens to register for this election and that the register as maintained reflected citizen registration.

34. However, it was clear that the register was not comprehensive. For example, it was noticeable that not a single person from Brecqhou was registered although it is known that some individuals certainly qualify as ordinarily resident.
35. Given the lack of other data-bases, it is not easy to cross-check the draft register with other information to establish whether the register is accurate or not. (How many people are currently ordinarily resident on Sark? Is it c500+ or c600+ or...?) Given the small population – and, from experience, what I might describe as Sark inquisitiveness – this is not as great a problem as it would be for a community with a larger population.
36. However, the government of Sark might wish to reflect on whether the rights and responsibilities of being ordinarily resident on Sark extend to an expectation that there is a duty to register. If so, how might that duty be promoted? If it is a duty, are there any sanctions for failing to register?
37. Further, it is noted that there is not yet an agreed definition of ‘ordinarily resident’.<sup>9</sup> Currently, the Greffier exercises his judgement, leaving any person aggrieved at not being so defined to appeal to the Court to determine. It is clear that there ought to be a clear definition of ‘ordinarily resident’. Should that definition also apply for other purposes? (For example, tax).

**Recommendation:** *The government of Sark should (1) initiate a citizen discussion on ‘the duty to register’, exemplifying practices from other countries, including those that operate sanctions; and (2) propose for consultation and, in the light of any responses, determine a definition of ‘ordinarily resident’.*

### **Voting:**

38. Whilst undertaking such consultation on registration (above), it would also be possible to consult on the merits or otherwise of ‘compulsory voting’. The UK Parliament Library has just published an information note on the issue, which provides a useful summary.<sup>10</sup>

**Recommendation:** *The government of Sark should consider whether ‘compulsory voting’ should be included in any consultation on election arrangements.*

### **Ballot Paper:**

39. Like Guernsey and Alderney, ballot papers in Sark do not provide the opportunity for a candidate to provide a brief description. This seems unnecessarily limiting and based on the assumption that electors will automatically know the personal merits and the policy platform of each candidate just from their name.

---

<sup>9</sup> *Securing Sark’s Future* January 2014 identifies the importance of addressing this issue – work in progress

<sup>10</sup> Compulsory Voting

<http://www.parliament.uk/briefing-papers/sn00954/compulsory-voting>

**Recommendation:** *The government of Sark should consider whether ‘the ballot paper should provide the opportunity to have a short candidate description’ should be included in any consultation on election arrangements.*

**Postal, proxy, assisted and mobile voting:**

40. There can be assisted voting for an individual elector where the particular circumstances determine that to be appropriate. (For example, a blind voter might be assisted to complete the ballot paper.) In the event of such assistance, a record is kept of the particular circumstances and the action taken.
41. There is provision in the law for both postal and proxy voting. There is no current provision in the law for mobile voting, that is where representatives of the polling station staff visit the elector to enable a vote to be cast, although there was such a facility prior to 2008.
42. Sark’s electoral timing is intended to coincide with its maximum resident population. But, it is simply the case that people are increasingly mobile – I’m not aware that Sark citizens are any different - and, thus, increasingly likely to be physically absent on polling day. Further, it is likely that some citizens, through age or illness, are likely to become increasingly physically immobile and would effectively be disenfranchised if voting can take place only in the polling station.
43. I think it appropriate to take action now to counter the potential for small but increasing disenfranchisement.
44. Secure postal voting is administratively complex and would require an extended election timetable. For those reasons, I do not recommend that Sark should consider providing for postal voting.
45. It would be reasonably straight-forward to implement a system of mobile voting for the small number of electors who are physically unable to get to the polling station. However, this would become more complex if, for example, medical endorsement were required to determine entitlement.
46. Although it has obvious drawbacks – for example, an elector is required to disclose their voting intention to another elector – I do recommend that Sark should introduce a provision for proxy voting, which would provide the opportunity for those physically unable – whether by absence or disability – to vote on polling day itself. To avoid abuse or the opportunity for corrupt practice, I suggest that any elector is only allowed to be the proxy for a maximum of two other electors.

**Recommendation:** *The government of Sark should consider whether ‘the introduction of a provision for proxy voting’ should be included in any consultation on election arrangements.*

**Candidates and nominations:**

47. Chief Pleas decided to publish a leaflet<sup>11</sup> designed to help potential candidates get a better understanding of what being a Conseiller actually involved, particularly in the context of its new committee arrangements.
48. It was clear to me that the intention was entirely benevolent. Therefore, it was interesting to note that some recipients perceived the intention as *'to put off potential candidates'*!
49. Having been involved in the initiation, design and management of a variety of schemes at local and national levels intended to recruit, nurture, develop and train new potential candidates – particularly from under-represented groups – it would be a surprise if I didn't welcome Chief Pleas' initiative.
50. Sark has its own under-represented groups, with younger candidates being noticeably absent.
51. When the new committee arrangements have bedded in a little, I think there is every benefit to be gained from initiating some form of out-reach programme to citizens – which, by definition will be of significant assistance to potential candidates – about the way government and governance on Sark actually works. There are many examples of such programmes in the UK, and Sark should be quite shameless in borrowing from the best.

**Recommendation:** *The government of Sark consider whether it should initiate a programme designed to increase knowledge about the government and governance of Sark, including for potential candidates.*

52. The Returning Officer had published a daily update on the receipt of valid candidate nominations, during the period between the opening and closing of nominations. Most democracies operate a system whereby valid nominations are only published – together – once the time for nominations has closed.
53. Some people perceived that daily publication might act as a discouragement to others who might be considering nomination, but had yet to reach a decision. Others suggest that it might be an encouragement to those considering nomination.
54. I am not convinced that there is any great advantage or dis-advantage either way. However, it does seem to me that such decision should not be left to the discretion of the Returning Officer.

**Recommendation:** *The government of Sark enable public consultation on whether there should be a daily publication of valid candidate nominations or whether valid candidate nominations should remain confidential until the close of nominations at which a single list of candidates should be published. A decision should be taken in time to implement at the next election.*

## **Candidates' communications:**

---

<sup>11</sup> *'Interested in standing for election to Sark Chief Pleas?'*

55. Although every candidate had the opportunity to have their personal statement or manifesto published, the majority did not provide one. Various views and reasons were given:
- *'There was to be no election; therefore, it wasn't needed.'*
  - *'Everyone knows me and my views.'*
  - *'If I told people what I really thought, they'd be put off voting for me.'*
56. I believe that electors are entitled to expect that candidates will tell them something about their values, vision, policies, priorities and the personal skills they would bring to being a Conseiller. They should also have the opportunity to question candidates.
57. Obviously, it is entirely up to candidates as to whether they wish to publish a statement or participate in any hustings. Electors are then entitled to take a view on whether they do and what they say. However, it is only fair to report that, when this matter was discussed in group meetings and one-to-ones, some people felt that submitting a manifesto/personal statement should be an integral part of the nomination process itself.

**Recommendation:** *The government of Sark should continue to encourage and to provide the opportunity for candidates to publish their 'manifesto'. It might also wish to consider encouraging a civil society organisation or group to arrange hustings or debates at the next election.*

#### **By-elections:**

58. Because of the timing of the vacancies, two by-elections were to be held on the same date as the substantive election. Further, it had been determined that:
- There would be a single election for all 16 vacancies (14 + 2 by-elections) in accordance with the law.
59. There are obvious advantages and dis-advantages for each of:
- A single election, with a ballot determining those who serve whichever terms of office, and
  - Two separate elections held contemporaneously.
60. From the evidence I received, what I can say is that:
- Some candidates had a clear preference for a 2 year term and yet stood for election knowing that their aspirations were against the odds!
  - There were some potential candidates who, for family or work reasons, could only consider election for a 2 year term and, because the odds were against such an outcome, chose not to stand for election.
61. With the benefit of hindsight, it could be argued that there might have been real competition for the by-election vacancies if they had been conducted separately. However, as the outcome of an equality of candidates and vacancies in such a large election is so unusual, if not unique, outside those countries which might be considered to have 'elections without democracy', I do not believe that there is any significant positive outcome to be gained from conducting separate elections.

**Recommendation:** *The government of Sark re-affirms that any by-elections falling to be held on the same day as a general election should form part of a single election, with the ballot outcome determining which successful candidates serve which terms of office.*

### **Marked Register:**

62. In the interests of transparency, in many jurisdictions – including the UK – a marked register is published, which identifies who has voted at the election (ie attended a polling station in person, or submitted a postal vote, or posted by proxy) but not how they voted.

**Recommendation:** *In the interests of transparency, the government of Sark should be minded to ensure the publication, with availability for continuing inspection, of a Marked Register confirming the identity of those who did and did not vote at an election. A decision should be reached following public consultation with a view to enactment at the next election.<sup>12</sup>*

### **Returning Officer:**

63. As I have already stated, the arrangements made for electoral registration and the conduct of the elections and the ballot were fully in accordance with the legislative provision. However, it would be remiss of me not to note that some citizens believed that there could be a perception of ‘conflicts of interest’ and ‘not sufficiently independent of the government establishment’, although they had no specific complaint to make about the actual performance by the Returning Officer of his responsibilities.

64. It is clearly the case that the Returning Officer must perform the responsibilities efficiently and effectively, without fear or favour, and should be seen to be sufficiently independent.<sup>13</sup>

65. On an island such as Sark, it is always going to be difficult to avoid perceived or real conflicts of interest. There have been no formal complaints about the performance of the current incumbent. Any independent election observer would inevitably see it to be within the observation remit to assess whether the functions had been undertaken effectively and fairly.

66. If, at any time, there were a perception of a lack of independence or too great a conflict of interest, it would be open to the people and government of Sark to make arrangements for an independent appointment of Returning Officer. This would inevitably mean a non-

---

<sup>12</sup> If such proposal is supported, this would be best achieved by way of amendment to “The Reform (Election of Conseillers) (General Provisions) (Sark) Ordinance, 2008” see, Section 8 (3).

<sup>13</sup> In the UK, the ERO (who is often a council chief executive, although the day-to-day management functions are undertaken by other staff) is, for these purposes, a crown servant, whose pay and rations and resources for undertaking the task are paid by the local authority, with the Electoral Commission providing some commentary on performance. Suffice it to say that it is extremely difficult to comprehend the accountabilities or to understand the particular responsibilities for taking action where there is a failure of performance, generally or otherwise.

resident and would bring with it other problems of finance, accountability and practical management.

67. I do not see any reason, nor have I received any evidence, to suggest that such an independent appointment is currently necessary.

### **The Ballot:**

68. Together with a German TV crew and an ITV freelance reporter and various local dignitaries, I observed the ballot to determine which successful candidates would serve 4 and 2 year terms respectively. All but one of the candidates were present; his place being taken by his nominated representative.

69. Using suitably high-tech equipment – numbered table-tennis balls and an egg-tray – the ballot was undertaken transparently and without objection.

### **Objections:**

70. To the best of my knowledge, there were no formal complaints about the election process nor about the conduct of the ballot and the publication of the results.

### **A healthy, active, participatory democracy?**

71. If the role of the Independent Election Observer in 2014 had been limited to the election and processes only, and not giving any further consideration to the relatively recently determined governance structures, it is clear that a clean bill of health would have been issued.

72. However, there were only 16 candidates for 16 vacancies.

73. And this outcome had to be seen against a backdrop of public comment over many years which many would feel had gone well beyond that which might be called '*a full and frank exchange of views*.' Any regular reader of *Private Eye*<sup>14</sup> over many years would have been left in no doubt about the strength of the differing views being expressed about a wide range of governance and economic and social issues, although may still have been at a loss to know whether the views being commonly reported commanded wide support, or whether the views of the majority of Sark citizens were being obscured.

74. Further, there had been legal action which had precipitated governance change. It was only in October 2014, that the UK Supreme Court gave its judgment<sup>15</sup> on certain matters which

---

<sup>14</sup> It might seem strange to refer to one, relatively small circulation, satirical UK magazine in this context. However, it is not amiss in a context where the world's financial regulators are being held to account for, apparently, ignoring reports of misconduct in international banks and other financial institutions over a similar period in the same magazine.

<sup>15</sup> R (on the application of Sir David Barclay and another) (Respondents) v Secretary of State for Justice and the Lord Chancellor and others (Appellants) and The Attorney General of Jersey and The States of Guernsey (Interveners). [2014] UKSC 54 on appeal from: [2013] EWHC 1183.

raised fundamental questions about the constitutional relationship between the United Kingdom and the Bailiwicks of Guernsey and Jersey and about the constitutional relationship between the courts and a representative or democratically elected legislature, in this case Sark.

75. For the avoidance of doubt, let me be clear that I have no intention of being dragged into either legal or policy debate. But, as your Independent Election Observer, I have to be concerned with whether this election was conducted within a healthy, active, participatory democracy.
76. However, it would be arrogant and going well beyond the remit if my comments on this were presented as comprehensive or definitive. I had the opportunity to take a snapshot and listen to the (widely differing) views of a significant proportion of the electorate. I have tried to distil the issues and concerns into my reflections set out below.

**Was the fact that there were only 16 candidates the result of pure happenstance or of conspiracy and corrupt practice?**

77. I did not meet anyone who ever anticipated that, having established the governance arrangements from 2008, there wouldn't be an election because the number of candidates matched the number of vacancies.
78. I did meet people – and received written submissions from people - who variously alleged:
- *The establishment organised that there would only ever be 16 candidates.*
  - *People were put off by postcards saying there were going to be further legal challenges which would require the governance structures (and, therefore, Conseillers on Chief Pleas) to be changed.*
  - *There were people wandering around with completed nomination papers to be submitted at the last moment if required.*
  - *Economic pressure and threats were made to people to stand.....or not to stand.*
  - *The Registration Officer had sets of completed nomination papers in his office, ready to be submitted as and when necessary.*
  - *One significant employer had, through his agent, made it clear that no employee or contractor should stand for election, as this would be contrary to the strategic aims of the wider campaign being waged.*
79. What was noticeable was that not a single person making such a claim had a scrap of evidence to support the assertion.

80. Where particular individuals were named as participants or influencers, I sought them out and put the allegations directly to them. In each and every case, without exception, there was a robust denial.<sup>16</sup>

81. I established the number of candidate nomination forms that had been requested and had been completed and returned in each election<sup>17</sup>. Prima facie, the number of forms (30) issued in 2014 did not produce an alert that there would only be just sufficient candidates or, in other circumstances, that there might have been fewer candidates than vacancies.

82. I sought out a number of individuals who had requested nomination forms but had not gone on to complete or submit them. In each and every case, without exception, the individual stated that it had been her or his own decision not to become a candidate and, further, that no external pressure had been placed on them not to stand. The individuals concerned each gave me different, but persuasive, reasons why they had reached their decisions.

**All I can say is that, despite every effort to uncover evidence to support the view that only 16 candidates being nominated had been the outcome of malign practice or influence, I found none.**

**I did not uncover any conspiracy nor any corrupt practice.**

**In the absence of evidence to the contrary, I can only conclude that just 16 candidates being nominated was the result of happenstance.**

**No-one foresaw it.**

**No-one I spoke to believed it to be a good outcome.**

**It was not a good result for a healthy democracy.**

## **Who said it, rather than what is being said**

83. Sark faces enormous challenges in a fast-changing world. There are big challenges about its economy, healthcare, education, law and order and welfare. Its economic, environmental and social sustainability is under threat. Those things, which its people treasure as unique, might well be simply undermined by the failure to address the key challenges, like land-reform, affordable energy and sustainable transport.

84. There are big, often difficult, choices to be made. Without action, Sark could drift in to a situation where the lack of a sustainable economy leads to younger people departing and the island becoming a sort of off-shore residential care facility for wealthy pensioners.

---

<sup>16</sup> Given the strength with which some assertions of malpractice were made, I fully expect that some, on hearing the denial, will reiterate those immortal words of Mandy-Rice Davies *“Well, he would say that, wouldn’t he?”*

<sup>17</sup> In 2008, 57 completed nomination forms were returned. From those 57 candidates 28 were elected. In 2010 there were 21 candidates with 14 elected, in 2011 by-election there were 6 candidates with 4 elected, in 2012 there were 22 candidates with 14 elected, in 2013 by-election there were 7 candidates with 4 elected and in 2014 there were 16 candidates for the 16 seats.

85. The Channel Islands as a whole have considerable dependence on the financial services' industry. Recent UK, Europe and world-wide events – with a renewed emphasis on personal and corporate financial and tax transparency – will have a significant impact. Thus, the reputation of Sark will be crucially important to the wider Channel Islands as well as to the UK.
86. There are many voices which are expressing their concerns about these issues and their preferred policies to address them. Those competing visions and policies go to the heart of the democratic challenge.
87. I can understand why some people might seek to use their financial firepower to promote their cause economically (through their ownership and control of local enterprises), through the law (the courts and the distribution of solicitors' letters) and use of their own (or perceived to be their own) media.
88. Let me say that, apart from everyone who was already won to that cause – intellectually or economically – I found that, for the rest of the population, the language and style of the *Sark Newsletter* appeared entirely counter-productive to promoting a sensible discussion about the economic and governance challenges. I hope the owner/ editor of the Newsletter might pause for reflection and use his undoubted talents and skills to promote real debate and discussion about policies, not personalities.
89. Similarly, I was very shocked by the nature and tone of some letters sent by lawyers on behalf of particular clients. These seemed to have little to do with righting any wrong but everything to do with the intimidation of individuals for not sharing a common view. They have no place in a civilised democracy.
90. Some people expressed a clear view that they wanted things to be just like they used to be. But, nostalgia isn't what it used to be. The former economy of the island and the governance arrangements worked for a minority and were tolerated by others, but provide no basis for a thriving Sark in the 21<sup>st</sup> century.

**What really concerned me in nearly all the discussions I had with citizens – in public meetings, in small groups, in one-to-ones – was that their perceptions were overwhelmingly determined not by the merits or otherwise of the case, but on who was seen to be making the case.**

**It was as though nearly everyone had come to accept that each and every discussion and contribution had to be seen through, what I call, 'the Barclay prism'.<sup>18</sup>**

**This is not indicative of a healthy democracy.**

91. Competing visions and values need to be debated on their merits, not on who is making a particular case.

---

<sup>18</sup> Named after the Barclay Brothers – the wealthy, but somewhat reclusive, twin brothers who bought the lease of the island of Brecqhou more than 20 years ago and who have been in several legal disputes with the government of Sark. As significant investors in Sark enterprises, they are seen by some citizens to be inappropriately using economic leverage to secure their personal economic and social ambitions – whatever they might be.

92. Further, Sark needs to have the skills of people, who currently perceive themselves to be in diametrically opposed camps, working together to tackle the island's key challenges.

## What Sark can do next

93. Sark needs a government which can develop a vision for the island in 10, 20 and 30 years' time, a strategic plan to match the vision and leadership with organisational capacity to deliver the plans.<sup>19</sup> The successor of the Crowe<sup>20</sup> and Kniveton<sup>21</sup> reports – "*Securing Sark's Future*" – is the key agenda item for Chief Pleas.

94. Ensuring that the key components of this vision and the strategy for delivery are robust must be the priority for securing citizen engagement and citizen ownership. From discussion with citizens and civic society groups, there appears to be a real lack of knowledge about what is actually happening as a result of Crowe and Kniveton and a perception of a lack of engagement about the key issues.

95. Further, the government needs to develop and secure a medium-term financial and budget strategy to underpin its contribution to those plans. The current budgetary strategy is unsustainable.

96. Sark has a relatively new form of governance. Structurally, it may or may not be fit for purpose – only time may tell.

97. However, there are clearly some challenges – some arising from history, some from the very nature of the size of the island and the context of its wider governance. These include:

- *A culture of secrecy, rather than transparency*
- *A failure to understand the importance of engaging citizens appropriately in discussions about the key policy challenges before reaching a decision.*
- *A lack of media skills with an outward-facing focus.*
- *A governance process that is not under-pinned by Nolan principles.*
- *The sheer difficulty of avoiding conflicts of interest in a small community where individuals may play many roles and have a number of responsibilities, because that is how the island economy works.*
- *A perception that, although the structures might have changed, the same people are pulling the strings.*
- *Looking backwards, rather than looking forwards.*

98. The government of Sark does have to take ownership of the responsibility for

- being pro-active about communicating what is happening
- becoming transparent
- developing its own guidance about declaring and avoiding conflicts of interest, and

---

<sup>19</sup> Starting from a consultation and survey in 2012, the Sark government has adopted a Vision.

[http://www.gov.sark.gg/Downloads/Reports/A\\_Vision\\_for\\_Sark.pdf](http://www.gov.sark.gg/Downloads/Reports/A_Vision_for_Sark.pdf) As the report notes, it is a first step.

<sup>20</sup> [http://www.gov.sark.gg/Downloads/Reports/Belinda\\_Crowe\\_Report.pdf](http://www.gov.sark.gg/Downloads/Reports/Belinda_Crowe_Report.pdf)

<sup>21</sup> [http://www.gov.sark.gg/Downloads/Reports/A\\_Vision\\_for\\_Sark.pdf](http://www.gov.sark.gg/Downloads/Reports/A_Vision_for_Sark.pdf)

- engaging citizens.

99. Chief Pleas might have to look outside its own membership in order to find individuals who can mediate or gain the confidence of citizens and organisations with differing perspectives sufficient to deliver productive policy engagement processes.

100. I strongly believe that by being brave in adopting such a strategy, Sark can move to become a dynamic, healthy, participatory democracy.

## **In conclusion**

I would like to thank everyone who contributed to this election observation, especially all those people who were prepared to be completely open – both orally and in writing - about their experiences and perceptions of the election process on Sark, and about their fears and hopes.

Any errors are my responsibility. It had been my intention to secure an earlier delivery of this report. The fact that it is later than intended is also entirely my responsibility.

Finally, I would like to thank Kath Jones, Senior Administrator, for her entire contribution – hospitality, administrative arrangements, providing answers to wide-ranging questions and more – to this independent election observation.

**HOWARD A KNIGHT**

**March 2015**

### SARK SKELETON

#### The Task

- to assess the extent to which the December 2014 election in Sark respects fundamental freedoms and principles, characterized by equality, universality, political pluralism, secret but free, transparency and accountability.

#### The methodology

- to consider the extent to which action has been taken to implement any recommendations from previous election observations
- to use appropriate and adapted elements of the comprehensive, consistent and systematic election observation framework and methodologies that have been developed internationally eg OSCE/ODIHR in Europe, Central Asia and North America.

#### The test

- “The will of the people, freely and fairly expressed through this election, provides the basis for the authority and legitimacy of Chief Pleas”

#### The outcome

- To report on the election held on 10 December 2014
- To make any recommendations about action that could and should be taken to improve performance

### TO LOOK AT

Background and Context – legal and political

Legal framework and election system

Election administration

Voter registration

Candidate registration

Campaign environment and finance

The media

Participation

Complaints and Appeals

Transparency and observation

Election Day

- Environment
- Materials and organisation
- Opening
- Procedures
- Closing
- The count and tabulation
- Declaration

Post-election

## **The Process and Programme**

### **Monday 8th**

Arrival

### **Tuesday 9th**

Meet Returning Officer

Legal framework and election system

Election administration – examine detailed arrangements

Voter registration – examine detailed arrangements

Candidate registration – examine detailed arrangements

Be available to receive any representations or comments by any person (eg candidate, agent, elector) on the election arrangements (This is quite separate from the pursuit of any grievance through any complaints procedure or the courts)

### **Wednesday 10<sup>th</sup>**

Attendance and observation of the process of opening the polling station

Observation of voting

Observation of the process of closing the polling station

Observation of the count

Be available to receive any representations or comments by any person on the conduct of election day and the count (This is quite separate from the pursuit of any grievance through any complaints procedure or the courts)

### **Thursday 11<sup>th</sup>**

Be available to receive any representations or comments by any person on the conduct of election day and the count (This is quite separate from the pursuit of any grievance through any complaints procedure or the courts)

Provide a brief statement of preliminary findings and conclusions

Departure