

Independent Enquiry as Directed by Chief Pleas on 27th August 2020

Appointing Authority Chief Pleas represented by: Conseiller Sam La Trobe-Bateman
Conseiller John Guille
Conseiller William Raymond

Assisted by: Treasurer Sarah Hudson
Chief Secretary Zannette Bougourd

Appointee: Andrew Ozanne OBE
BA(Hons) Dip Arch(Oxford) RIBA MCI
Arb ADR, Registered Adjudicator (ACA).
Mediator (ADR)

Terms of Reference:

1. The decision to decommission the Bon Marin, and the subsequent decision to purchase the MV Star Riviera.
2. The circumstances surrounding the purchase of the Corsaire des Isles including the financial transactions in connection therewith and the decision taken by the Board with particular reference to the availability of funds and the risks caused by the closure of French borders due to COVID 19.
3. In connection with the purchase of the Corsaire des Isles, the timing of the finance provision by the Bank and the Banks participation in the transaction.
4. The decisions and actions made by Chief Pleas regarding financial guarantees, and variation thereof, including Committee input and recommendations.
5. An analysis of the company's financial position as submitted to the Board leading to the notification of impending administration proceedings.
6. The reasons for the delays to the refurbishment of the Sark Venture, resulting in a potential single point failure and a reduced and unreliable service. Following this report, a detailed review of the current MOU will be undertaken to enable the Board of IoSS to deal with the day to day running of the Company whilst protecting the shareholder's financial position.

Historic timeline of events and actions:

February 2018 - Reference a meeting with Finance and Resource. Mr Yan Milner Managing Director (MD) of Isle of Sark Shipping Company (IoSS) stated that the Bon Marin was licensed for another two years, until the end of 2020 season. Excerpt from minutes below:

"SBJM advised that he had met with Mr. Burnard. Following its survey, the Bon Marin's licence has been renewed for another two years so it will be able to operate for another two seasons. This is encouraging news and gives time to look for a replacement vessel. It was reported that Mr. Y. Milner, Managing Director, is already searching for such a vessel

and is looking at one in France. It will be necessary to have talks with the Harbours & Shipping Committee and loSS about new boats and their financing”.

Late 2018 - loSS identified Star Riviera as suitable replacement for Bon Marin, approx. cost EUR 1.35 million.

January 2019 - loSS notified Chief Pleas (CP) and Harbour and Shipping Committee (H&SC) that the Bon Marin had another 18 months service due to construction issues, adding that the MD of loSS “should be able to persuade the Marine and Coast Agency (MCA) to issue a further certificate”.

April 2019 - loSS had agreement in principle for up to GBP 2 million loan from Bank. Proceeding with Star Riviera purchase, no survey carried out at this time as to the vessel's condition and compliance. I note that the MD of loSS remained of the opinion that the Bon Marin service certificate would be extended. Conseiller John Guille offers to contact a surveyor to try and progress matters.

July 2019 - MD of loSS, states “still hoping for extension for Bon, but she has an out of service date of 21st August”. I note that Bon Marin Survey report was available at this time but held by loSS who refused to release report to the relevant Sark Committees and CP.

September 2019 - loSS not able to obtain relevant “documentation to confirm construction standards” are met for the proposed new vessel the Star Riviera. Stating “the boat is too old to meet MCA standards”.

October 2019 - Although loSS continue to endeavour to pursue the purchase of the Star Riviera, I note loSS have sourced another suitable vessel which was less expensive and was considered would meet MCA construction standards. The vessel identified was the Corsaire des Isles, at a cost of EUR 775,000. Sea trials and an appropriate survey had, by this time been carried out. I note and it is important that the MD of loSS records his concern “that it is unlikely that loSS will get a declaration of partial survey” for classification of any vessel built in France.

1. The decision to decommission the Bon Marin, and the subsequent decision to purchase the MV Star Riviera.

It was understood by Sark's Policy & Finance (P&F) and Harbour & Shipping Committee (H&S) during 2019 that the certification for the Bon Marin de Sark (BMdS) would be extended during 2019. However, on the 21st August 2019 the Bon Marin de Sark was officially withdrawn by the Isle of Sark Shipping Company (loSS) as an active service vessel. There is no specific event that I can rely on as to why loSS advised on the 21st August 2019 that the Bon Marin would not be recertified as service vessel. I accept it is a matter of fact and that it consequently caused Chief Pleas (CP) considerable concern in terms of resilience of the essential shipping service for the community of Sark. **(Appendix 13).**

I consider the lack of detailed communication at this time was regrettable and without evidence to the contrary a breach in the Memorandum of Understanding (MoU) **(Appendix 2)**. I note and this is relevant to the undertaking that the Agreement was to be reviewed “after a period of three years from the date of its signature or at such earlier time at the instigation of the Finance and Resources Committee”.

The MoU was signed by loSS dated 18th September 2018, which I have assumed to be the date of commencement.

I could not find evidence or proof of the decision making process by the MCA not to certify the Bon Marin. However, I accept that this was the case, but regrettably was not communicated to either CP or P&F. I accept that the decommissioning of Bon Marin caused legitimate concern to CP and P&F in terms of the loss of resilience in the context of the Service Level Agreement dated the 10th August 2018 (**Appendix 12**).

The IoSS was endeavouring to address the concerns of P&F and the evidential risk of loss of resilience as in January 2019 a boat referred to as the MV Star Riveria was considered to be a suitable replacement for the Bon Marin and at the time was readily available.

There appears to have been protracted discussions without conclusion until P&F requested the appointment of an appropriately qualified Marine Surveyor to carry out both a mechanical and structural survey. The request by CP was in my opinion reasonable in the circumstance as CP were being asked to 'guarantee' a bank loan for the purchase of the vessel. There appears to be an early (technical) misunderstanding between what CP considered as an essential survey and the 'Gap Analysis' being undertaken by IoSS on instruction of the appropriate authorities (**Appendix 14**).

IoSS (in accordance with the MoU) in July invited P&F to a presentation of their 'Scoping Study' at the offices of Carey Olsen.

I have not been able to determine the motive or reason why Conseiller John Guille was asked to leave the presentation as it is my understanding that P&F were legitimately proposing an independent scoping study, the costs of which would be met by P&F. Conseiller John Guille is an elected member of CP, P&F and H&S and has appropriate skills and qualifications and would have in my opinion been able to contribute to the understanding of the expressed objective of the meeting.

There appeared to be no reasonable explanation at the time and therefore this issue remained unresolved and consequently contributed to a growing 'misunderstanding' between CP and IoSS.

I note the decision was made in October 2019 by IoSS to abandon the proposal to purchase MV Star Riveria, due to the age of the vessel and that the necessary 'paperwork' could not be obtained. The owners of MV Star Riveria had not released the relevant documentation requested by IoSS and that the age of the vessel and the construction specification was found to be unacceptable to the UK Licensing Authorities.

To conclude on this point, and whilst I accept that the Board of IoSS would have been aware that a vessel constructed in France would not be able to operate in UK waters unless it received the appropriate certification to meet the MCA Construction Standards. I am however not clear whether this was appropriately communicated at the time to CP and P&F or as to the implication of IoSS seeking to raise the required funds to purchase the vessel.

Again, I consider this to be a lack of appropriate communication addressing the continuing concerns of CP and P&F regarding potential future loss of resilience in relation to the SLA. It is evident that the IoSS in accordance with the requirements of the MoU and SLA were endeavouring to find a feasible and viable solution and I note the email dated the 5th November from IoSS to CP stating that the possible purchase of MV Star Riveria had been set aside.

2. The circumstances surrounding the purchase of the Corsaire des Isles including the financial transactions in connection therewith and the decision taken by the Board with particular reference to the availability of funds and the risks caused by the closure of French borders due to COVID 19.

Corsaire/loSS report timetable	
23 rd January 2020	loSS notified P&F that purchase of Corsair des Iles was going ahead, requested guarantee from CPs for loan of GBP 300,000 to fund purchase of boat.
24 th January 2020	Report and survey.
2 nd February 2020	Purchase update.
6 th February 2020	Email from NatWest confirming early repayments without penalty.
7 th February 2020	loSS agree purchase delay with 20% deposit. Due delivery date 18 th -31 st March.
17 th February 2020	CP agree guarantee.
13 th March 2020	loSS notify Dr of awareness re service levels and possible staff reductions.
16 th March 2020	CP notify loSS Guernsey now classify France as Group A country.
16 th March 2020	Waiting for correct paperwork from NatWest.
17 th March 2020	Passenger on Guernsey testing for Covid-19.
18 th March 2020	loSS chasing hard for loan guarantee to be signed.
20 th March 2020	loSS request service level reduction for duration of Covid-19.
24 th March 2020	Transfer of funds to marine agent in France.
26 th March 2020	Request for financial forecast.
26 th March 2020	Email from PB noting that without purchase cash flow would be much better.
27 th March 2020	Financial report – no cash flow report.
31 st March 2020	Purchase completed 15 days after France closed borders.
3 rd April 2020	Request to P&F for financial support.
3 rd April 2020	Copy of letter from loSS to SOG ?
3 rd April 2020	Company cease trading 30 June without GBP 550,000.
3 rd April 2020	Email from YM stating loSS had approached Guernsey.
3 rd April 2020	Email from Sarah re SOG loan scheme.
6 th April 2020	Guarantee signed.
7 th April 2020	PB notes GBP 1.5m balance in CP account at year end
7 th April 2020	Guarantee received by NatWest.
7 th April 2020	PB States forecast have gone to NatWest.
7 th April 2020	Email from WR to PB outlining CP commitments and inability to underwrite loSS
8 th April 2020	PB continue to pursue NatWest for assistance.
8 th April 2020	Cease trading without support end April.

Late in 2019, loSS identified a suitable replacement vessel of more recent construction than the MV Star Riviera and at a reduced purchase price. I can find no evidence (in the form of a survey or 'Gap Analysis') that the MV Corsaire des Isles would achieve or would not achieve the appropriate UK certification. I understand that the expertise on the loSS Board considered it would be achievable, but I can see no confirmed evidence to confirm that it would be achieved. Again, I cannot understand why there was not a more robust and formal communication between loSS and CP and P&F in line with the proposition put to CP in February 2019 to guarantee a loan of GBP 300,000 which CP approved.

I note the following:

Reference below: Extraordinary Meeting of Chief Pleas 19th February 2020 – Extract
(Appendix 15)

Agreement to Purchase and Loan Guarantee for Isle of Sark Replacement Passenger Vessel Corsaire Des Iles 2 - Policy and Finance Committee Report considered – Propositions carried

To consider a Report with two Propositions from the Policy and Finance Committee entitled 'Agreement to Purchase and Loan Guarantee for Isle of Sark Replacement Passenger Vessel Corsaire Des Iles 2'.

Proposition 1:

That Chief Pleas approves the purchase of the vessel currently named Corsaire des Iles 2, by Isle of Sark Shipping Company Ltd, for the price of EUR 740,000.

Proposition 2:

That Chief Pleas authorises the Chairman of the Policy and Finance Committee to execute a guarantee to the lending Bank to Isle of Sark Shipping Company Ltd in an amount of GBP 300,000.

"The Deputy Speaker: We will move on to Agenda Item 2, to consider a Report with two ²⁰ Propositions from the Policy and Finance Committee entitled 'Agreement to Purchase and Loan Guarantee for Isle of Sark Replacement Passenger Vessel Corsaire Des Iles 2'. I would like to ask Conseiller Sam La-Trobe Bateman to introduce the Report.

Conseiller La Trobe-Bateman: Thank you very much. ²⁵

Not much to add, really, to this Report. I hope you have all read the business case that has come from Sark Shipping. It is quite detailed. I think it covers most of their potential risks for purchasing a new vessel like this. It is a second-hand vessel, but it is, I think we all agree, a necessity. We need this boat for the season.

The purpose really for this Chief Pleas is for us to guarantee the loan. The company does have ³⁰ enough money to cover the whole purchase of the boat but feel that actually, if they use all that money, it leaves them in a pretty delicate position, should something unforeseen happen. So, by going to the Bank and getting a loan, it keeps the business a lot more afloat.

So they are essentially asking for a loan of £300,000. They are putting in £350,000, so the total cost is £750,000 for this new boat. That includes quite a large sum for updates for ³⁵ necessities to bring it up to bring it up to code for the MCA. At the moment it is currently licensed under the French flag, and by bringing it here it has to come to the MCA, which is the EXTRAORDINARY MEETING OF CHIEF PLEAS, WEDNESDAY, 19th FEBRUARY 2020.

UK Authority. I think that there will be a few changes, so that £135,000 which they have got for contingency in there is to do any of that.

So we are asked for a £300,000 guarantee. This does not have to be ring-fenced out of our ⁴⁰ reserves; it just has to be made available, should they default - which I cannot see them doing.

That is pretty much all I have got to waffle about for that.

One thing I would quickly draw your attention to is the draft timetable. I know this a bit off-topic for the loan, but this is a draft and I think that you should all study it and make sure that everybody on the Island studies it and gets back to Sark Shipping, because when the

boat is here ⁴⁵ and tested, it will probably be amended slightly. They are aiming to get the boat, if everything goes well with the category, with the MCA inspections, to be in operation for 1st May.

Thank you.

The Deputy Speaker: Thank you very much. ⁵⁰

Are there any questions from the floor? Would anyone like to put any questions to Conseiller La Trobe-Bateman?

Conseiller Sandra Williams, thank you.

Conseiller Sandra Williams: I would just like to clarify, Sam, that the Isle of Sark Shipping are ⁵⁵ contributing £450,000, not £300,000? (**Conseiller La Trobe-Bateman:** Sorry, yes.) That is fine. And that we are being asked to guarantee the loan of £300,000; which is the £750,000.

And also, if I could confirm that yes, Conseiller La Trobe-Bateman is right, we have had lots of debating going on over the last few weeks about the schedule. We have moved things around already on the schedule, to try and suit everybody. We have had meetings with the carters, the ⁶⁰ Shipping Committee, and we feel that what we have put forward is workable. So yes, that is an interesting point. Thank you.

The Deputy Speaker: Very good. Are there any other comments or questions from the floor regarding the Report? No? ⁶⁵

In which case we will go to the vote, if we may.

So Proposition 1 is that Chief Pleas approves the purchase of the vessel currently named *Corsaire des Iles 2*, by the Isle of Sark Shipping Company Ltd, for the price of Euros 740,000. Could we have a show of hands for those in favour, please? And those against? **Carried unanimously.**

Moving on to Proposition 2, that Chief Pleas authorises the Chairman of the Policy and ⁷⁰ Finance Committee to execute a guarantee to the lending Bank to the Isle of Sark Shipping Company Ltd in an amount of £300,000. Those in favour? Those against? **Carried unanimously.**

Thank you very much indeed".

***Please note text on pages 4, 5 & 6 contain numbers ⁽⁷⁰⁾ which were within document copied from and have no relevance in the context of this report.**

At this point, I note that there was no mention of the nature of the loan as to whether it was to be a 'secured loan' (by that I mean what the lender would require in terms of an asset, property or money as collateral to get funding) and consequently what the 'security' would or might be. Or whether it was agreed as an unsecured loan (and by that I mean a loan given without an asset as security by the funder).

I therefore note that IoSS had proceeded with the intention to purchase prior to receiving confirmation from CP/P&F regarding security. This was evidenced by the fact that IoSS paid a non-refundable deposit of 20% to the owners of *Corsaire* on the 7th February 2020 in the sum of EUR 148,000.

I cannot ignore the role played by the NatWest Bank in agreeing to provide what appears

from the evidence available at the time an 'unsecured loan' simply on a guarantee from CP who themselves had no security against the assets of IoSS. I would have expected the Bank to have undertaken reasonable steps to have established the assets and liabilities in the short-term control of CP, as CP in the event of the financial failure of IoSS and its inability to repay the loan would quite possibly be due to the same economic cause that would impact on the revenue income that CP relied on. Noting that CP did not and could not be expected to hold a significant percentage of annual revenue in reserve. I address this in more detail in the next section (Terms of Reference: 3).

Timeline (in brief) Ref: Purchase of MV Corsaire Des Iles

3 rd February 2020	Email to YM giving deadline given for purchase confirmation.
19 th February 2020	CP agree loan and purchase deposit paid.
19 th March 2020	Full amount paid into Brokers escrow account (travellers into the Bailiwick need to self-isolate for 14 days. Decision taken to undertake purchase remotely.
23 rd March 2020	Sale process begins - due to extension of French and Bailiwick lockdown rather than taking one day to complete the process extends (although non-reversible) and we finally get papers back 31 st March 2020.
24 th March 2020	Guernsey announce lockdown, Sark close borders. Initially for a two week period.
7 th April 2020	Lockdown extended for a further 14 days.

I note that in early February 2020, IoSS were given a deadline by the broker Atlantic Marine Services S.A.S for the completion of the purchase/sale of the Corsaire des Iles.

I have copied for ease of reference the email below from:

"Atlantic Marine Services [mailto:snp@atlantic-marine-services.fr] (sent: 03 February 2020 14:33) to: Yan Milner Subject: CORSAIRE DES ILES II. Reference Sale contract

*Atlantic Marine Services S.A.S.
3rd February 2020*

Hi Yan,

Following our various exchanges from last September 2019, including sale negotiation, inspection afloat and in drydock by yourself and 2 other surveys carried by David Shaw & Derek Levy etc.. it is time to declare and confirm your purchase of the CORSAIRE DES ILES II without any subject or issue.

We have drafted a Memorandum of Agreement here attached including Buyers obligation to declare or not the final decision as regards to the purchase of CDI II within Thursday 6th Feb, 4pm French time and deposit to be lodged without delay.

As time is running and Sellers have taken delivery of 2 NB & do not intend to run the CDI II for the 2020 season, we would like to avoid any prejudice having the CDI II on Owners arms still during this upcoming season.

We thank you in advance for your earliest confirmation & should you have any questions as regards to the contract & addenda, please do not hesitate.

Kind regards,

Jessica RIDING
Atlantic Marine Services S.A.S."

I note the MD Yan Milner approached the owners and brokers to move back the delivery date (purchase date) in order to ensure they would have the funds to cover the deposit and the obtain approval for the loan and purchase from CP. I have been advised by CP that they were not aware that the approach to the owners to delay had taken place and if they had been they would have felt reassured that this concern had been addressed.

IoSS discussed delivery dates with both the owners and brokers (Jean-Luc & Erwan), regarding delivery (noted as between the 10th and 20th February) due to the contracted penalty.

IoSS propose the following solutions:-

- a). Delivery the 30th or 31st March 2020 : 20% deposit EUR 148,000
- b). Delivery the 17th March 2020 : 15% deposit EUR 111,000
- c). Delivery the 3rd or 4th March 2020 : 10% deposit EUR 74,000

I note that at the time, Covid-19 and the possibility of disruption to the forthcoming season was considered a risk but as stated by IoSS was "*not seen as a showstopper*" with regard to the purchase in line with the published IoSS strategic objective to build resilience and achieve operating efficiencies.

I have earlier referred to the approval for the purchase of the vessel and the agreement to guarantee the loan which was passed by Sark CP 19th February (**Appendix 16**).

At that time, the agreement to guarantee the loan appeared to be unconditional and there was no mention or request that the loan be secured. However, it was reasonable to expect that a guarantee by CP acting on behalf of the people of Sark of the magnitude of GBP 300,000 would require some security. I believe, the Bank having advanced an extra £50,000 by way of an overdraft facility must have already taken into consideration that the loan would be drawn down and consequently the security taken.

Subsequently the Bank sought a 'Letter of Comfort' (LoC) directly from the Sark Treasure. The effect of the LoC was to convert a guarantee of a secured loan for 50% of the purchase price of an asset into a guarantee for a loan to finance IoSS general expenditure. A financial review at the time carried out by CP ruled out the possibility of CP being able to agree to the LoC, (I note the Loan was not drawn down).

All would have been well had the Bank taken the security over the Corsaire des Iles. As it was the Bank could not take the security as the vessel was not on the UK register. The Corsaire des Isle remaining in France and not able to be 'reflagged' for UK waters added a significant complication.

Deposit of EUR 148,000 was paid into Atlantique Marine services escrow account. In addition loSS had by that time spent in excess of GBP 10,000 on surveys travel etc.

The purchase was progressing and I note that arrangements were put in place for a crew to travel to St Malo on the 22nd March 2020 to complete the sale and collect the vessel. The balance of the funds was transferred by loSS to Atlantique Marine on the 19th March in the sum of EUR 592,000.

It is in my opinion a coincidence that on the 19th of March the States of Guernsey announced that all travellers entering the Bailiwick would be subject to 14 days self-isolation and at approximately the same time France announced, 'lock down'.

See extract below:

"The first case in the Bailiwick was confirmed on 9th March, after which the CCA enacted the Emergency Powers (Coronavirus) (Bailiwick of Guernsey) Regulations 2020, coming into effect on 18th March: the first of a number of emergency powers regulations introduced in the States of Guernsey's response to the pandemic. The statutory instrument enables the Medical Officer of Health to implement emergency measures enforceable by law, the first of which mandated that anyone arriving in the Bailiwick from anywhere self-isolate for 14 days upon arrival from midnight on 19th March".

Following the confirmation of a case resulting from on-island transmission on 24th March, the States of Guernsey announced in a live broadcast that it was implementing a 'lockdown' for an initial period of two weeks from 00:01 on 25th March, whereby restrictions would be placed on people's freedom of movement, enforceable under the statutory instrument, the Emergency Powers (Coronavirus) (Control of Events, Gatherings and Meetings) (Bailiwick of Guernsey) Regulations, 2020.

Sark also closed its borders on midnight 24th/25th March.

I have examined the decision of loSS to proceed with the purchase of the Corsaire in the context of the emerging situation at the time. What I consider is and was important, did the loSS Board of Directors have sufficient knowledge and guidance from their Executive Directors and did they give due consideration to the material facts and available evidence in the circumstance prior to deciding to proceed with the purchase?

The loSS Board in their review of the financial position of their Company would I do not doubt taken into detailed consideration the availability of finance to not only secure the purchase of the new Vessel but also the ongoing expenditure required to run the Company including the liabilities to creditors. It was undoubtedly a difficult time.

I refer to the response below received from the Managing Director (March 2020) on behalf of the Board of Directors:

- * *We needed the new vessel to take the Company forward in the future.*
- * *All indications were, from information we were receiving was that the lockdowns etc. would be short term rather than extended (cruise ships we deal with were still keeping bookings live for April and May).*
- * *We had contacted Atlantique Marine Services and been assured that in the worst case scenario it was likely we could re-sell the vessel back into the French market.*
- * *Also in the assumption that there would not be a problem with the agreed loan the financial situation for the Company would not be catastrophic.*

* *At this stage (mid/late March) we had a firm buyer for the Bon Marin and two interested buyers for the Sark Belle.*

My conclusion is that on the evidence before me if they had pulled out of the Purchase Agreement in late March (before the 24th) IoSS would have lost the EUR 148,000 deposit and the costs incurred in surveys etc.

It is evident that the IoSS Board were mindful that when things did 'open up again' (even if it was, after an extended period), the longer-term cost savings and efficiencies would be essential for long term viability and sustainability. As demonstrated in their strategic Business Case (**Appendix 21**).

A material event occurred on the 7th April when The States of Guernsey (CCA) announced an extension to the lockdown from the 8th of April for a 14-day period, reference extract below:

"The States of Guernsey can confirm 'lock down' restrictions will remain in place, following a 14-day review. The only change to the current restrictions is that non-essential retailers will be permitted to carry out home deliveries, provided this is done in line with guidance to mitigate the risk of spreading the coronavirus. This change will come into effect at 00.01 Wednesday 8th April. The restrictions will be kept under review. Due to the late hour of this direction, it is acknowledged that Islanders will need to complete vital actions in regard to safety, security and contractual obligations i.e. properly securing building sites to make safe for a minimum 2-week period, securing and locking of vulnerable property equipment, Islanders going through the house move on the day of exchange i.e. contracts have been signed, furniture is in transit to new home and the legal obligation to vacate".

Changes were made to restrictions on businesses, taking effect from midnight on 8th April, to allow non-essential retailers to carry out home deliveries, providing strict social distancing and hygiene measures are followed and no more than two employees are on the premises. These changes were recognised as phase one of the phased lockdown exit strategy announced ten days later.

It is with the benefit of hindsight that I can reflect on the decision making process and with a review of the most recent IoSS Financial Report that the IoSS Board decision had proved to be for the better.

Reference from a Report prepared by the MD of IoSS:

"As things have turned out we are now in a position where we have the new vessel (paid for in full) due to be collected from St Malo 4th November. At the end of September our balance against forecast was +£122,413 against a forecast of -£219,982. And as of today we have over £50K in the Bank and have not drawn down on the loan".

The Report also includes reference to the 'pay roll' support from the States of Guernsey, the proceeds from the sale of the Bon Marin and support from CP (circa £35,000).

I have also referred to the June paper titled: '*IOSS objectives, schedule and the impact on the financial forecast*'. The information demonstrated in my opinion that a proper process had been undertaken to establish the key issues identified as lifeline cargo, passenger revenues and financial viability/sustainability (**Appendix 18**).

The question had been raised as to whether the payment of the non-refundable deposit was good practice in the circumstance. I have formed the opinion that IoSS had little or no

alternative but to secure their chosen vessel by paying the 20% (non-refundable) deposit on the 7th February with an assumed delivery at the end of March if they were to maintain and improve the resilience and increase capacity as required in the Service Level Agreement. The extent of the effect of the pandemic on operating revenue at that time was not reasonably predictable. However, they had a responsibility to consult with CP and P&R a matter I comment on in more detail later in this Report and particularly at the time due to what CP perceived to be a significant threat to sustainability due to the non-availability of the Sark Venture as essential works had been suspended.

I note IoSS had reported on the increasing cost of operation and maintenance of the Sark Belle and extensive searches had not found a comparative vessel at an affordable price. The option of building a new vessel had earlier been abandoned, which was fortunate in the circumstance.

The decision and consequential actions taken by the Board of IoSS must be considered in the context of their business case which was presented to P&F with two propositions entitled '*Agreement to Purchase and Loan Guarantee for Isle of Sark Replacement Passenger Vessel Corsaire des Isles 2, dated 7th February 2020*' (**Appendix 1**).

There are two specific points that I have paid particular attention to, firstly it is stated that '*The Bank require the Chief Pleas undertakes to guarantee this amount*' (GBP 300,000).

The second is the urgency and I quote "*with the impending visitor season the replacement vessel is essential to maintain the service to the Island*" (the business case was attached).

Having read this, I therefore concluded from the information available at the time that as stated the IoSS Board had allocated the sum of GBP 450,000 from the company cash reserves (as demonstrated in their accounts) and that they had agreed to repay the Bank loan of GBP 300,000 from operating profits once the vessel had come into service.

This I believe is a reasonable assumption and an assumption on which CP received the authority to instruct P&F to proceed.

Finally on this point, and noting that the Bon Marin had been decommissioned and that the earlier decision to purchase the MV Star Riveria had been abandoned the Board of IoSS were reasonable to take the action they did in order to comply with the SLA and be able to maintain what can be considered an essential service. However, I repeat my concern that P&F and CP should have been better informed by IoSS in the lead up to the decision making to proceed with the completion of the purchase. P&R acted correctly in their response to IoSS that they did not have authority to support the required loan without the approval of CP. I comment in more detail later in this Report. I do not believe CP were aware of the purchase using in effect virtually all available funds plus the £50,000 agreed overdraft facility. It appears it became apparent to CP when the Bank request the LoC.

Both CP and IoSS demonstrated that in the circumstance they acted reasonably and promptly on the information available.

In my opinion the question of whether the parties acted diligently is a matter of conjecture as it would be reasonable on review of the available financial information to, in my opinion seek a meeting between representatives of all parties, CP, P&F and IoSS earlier than the 17th of April 2020 when a 'teleconference' was held.

Present were:

Representatives from Sark:

Sam La Trobe-Bateman (SLTB) Chairman
William Raymond (WR)
John Guille (JG), Deputy Chairman
Amanda de Carteret (AdeC),
Simon Couldridge (SC),
Phil Long (PL)
Sarah Hudson (SH), Treasurer, ex officio
Zannette Bougourd (ZB), Chief Secretary, ex officio
Emma Fawson (EF), Committee Support Officer

IOSS representatives:

Peter Gill (PG)
Paul Burnard (PB)
Yan Milner (YM)
Andy Cook (AC)
Mark Dunster (MD)
Richard Graham (RG)

What is evident was that following the CP Meeting on the 19th February the Chief Secretary to CP with Conseiller Sam la Trobe-Bateman did act diligently on the 20th February in seeking the advice of the Crown Advocate, Anthony Ellis regarding the purchase of the Corsaire des Iles before the Bank had released the further loan requested by IOSS.

The email from Natwest stated:

Following on from my (Natwest and IOSS) meeting with Yan and Paul, I have been asked to get in contact with you in regards to the Chief Pleas Guarantee for the Isle of Sark Shipping Company.

Firstly, there are two possible routes that can be taken, this is based upon whether The Chief Pleas opts to take legal advice or whether they decide to waive legal advice.

- **1) If Legal Advice is taken -**
 - 1) *we will require a form completed which confirms the follows;*
 - Name of Partner/solicitor
 - Name of Firm
 - Address
 - Signed by Chief Pleas representative
 - 2) *The Bank will arrange for details to be sent across to your solicitor and they will advise the guarantor of their entitlement to details of Isle of Sark Shipping Company's Obligations.*

- **2) If Legal Advice is waived -**
 - 1) *We will require a 'Waiver of Legal Advice' form signed by Chief Pleas representative and witnessed by a bank employee*
 - 2) *Requirement for a Chief Pleas representative to meet with a bank employee in order for us to make the guarantor aware of their entitlement to details of Isle of Sark Shipping Company's obligations.*
 - 3) *Chief Pleas representative to read and sign Guarantee document which must also be witnessed by a bank employee*

If this option is taken, the bank will also require confirmation of The Chief Pleas entering into this guarantee & confirmation of who the representative is that will sign the guarantee and that they are empowered to do so - (in the form of minutes meeting)

On the 16th April ZB & WR sought further advice from the Law Officers regarding the proposed letter of comfort:

From: Ellis, Antony <Antony.Ellis@gov.gg>

Sent: 16 April 2020 17:41

To: Chief Secretary Zannette Bougourd <zannette.bougourd@sarkgov.co.uk>; Conseiller William Raymond <william.raymond@sarkgov.co.uk>

Subject: Confidential & Legally Privileged [LOC-WORK.FID29330]

Hi Zannette, Hi William

Thanks for the email Zannette. I have now spoken to both of you on this topic and respond as requested.

I am focussing principally on the constitutional / legal aspect in relation to the (ir)regularity of signing a letter of comfort in favour of the bank (LoC) [such as the draft that you emailed to me] in the context of the existing authority given by Chief Pleas to enter into a Guarantee in favour of the bank [, such authority given in Item 2 Proposition 2 which was passed by Chief Pleas in February 2020].

Executive Summary

It may not be sufficiently defensible for the Chairman of the Policy and Finance Committee (nor any other representative on behalf of Chief Pleas of Sark) to execute any document relating to IoSS (of the nature of the LoC) other than the Guarantee (already executed I understand on 6 April 2020) without first obtaining specific, express, fresh authority from the Chief Pleas for that purpose.

As such, there is a risk if any person purported to enter into the LoC on behalf of Chief Pleas that this would be outside of the scope of Proposition 2 and could therefore potentially expose the signatory (and others involved in any decision to sign the LoC) to sanction or other adverse measures or proceedings being taken against them, or even potentially render the LoC invalid for being ultra vires.

This issue could be definitively resolved if the Chief Pleas passed a specific Proposition that the LoC do be entered into (or fail to pass such a Proposition in which case, naturally, it would not be executed).

A related commercial / timing observation

Although not a legal issue, as I was involved in the team that put in place the Guernsey Disruption Loan Guarantee Scheme, as discussed, it does occur to me that if and to the extent that the IoSS would or might be eligible to apply and receive a loan under the same, then that would seem a logical avenue to exhaust first. The GDLGS was established for the precise purpose of being available to eligible businesses adversely affected by the pandemic. My understanding is that the IoSS cashflow issue is directly referable to the pandemic.

Proceeding by means of the GDLGS could be a more expeditious route to addressing IoSS's cashflow requirements [and incidentally perhaps present less risk to the Sark public purse (as I understand that this lending is guaranteed by States of Guernsey and I am not aware of any mechanism to recoup from any of Bailiwick Government)].

I seem to recall that the GDLGS is only for New Lending and not to replace existing lending. I presume from what you say that this is a new (and unexpected) lending requirement and for this reason also it would not be wise to inadvertently conflate the vessel purchase finance with cashflow issues occasioned by the pandemic.

I hope that this email chimes with what we discussed.

If you have any further queries or comments then please let me know.

Thanks

Kind regards

Antony Ellis
Crown Advocate

In my opinion it was late in the day for the NatWest Bank to seek a retrospective '*letter of comfort*' from CP. I consider it to have been naïve on the part of the NatWest Bank that P&F

could simply have issued a 'letter of comfort' in the circumstance. Bearing in mind the effects of Covid-19 on both the revenue income of IoSS and the predictable drop in revenue available to the Isle of Sark. Notwithstanding the additional costs involved in managing the pandemic.

Put simply, P&F and CP could not reasonably be expected to sign a 'letter of comfort' presented by the Bank in the context of the existing authority given to CP (by the people of Sark) to enter into a guarantee in favour of the Bank as authorised in item 2, Proposition 2 which was passed by CP in February 2020.

Furthermore, the advice given by the Crown Advocate was precise and clear. Without first publishing a request at an Extraordinary Public Meeting of CP and then seeking a majority approval noting that individual members of CP could have been personally liable.

CP had no alternative in the circumstance but to seek further approval from the people of Sark.

It is interesting to note with reference to 'Coursaire Purchase Update 31st January 2020' (**Appendix 4**) I quote:-

"The Bank have confirmed that we will be able to take the loan for £300k and confirmed that the money guaranteed will not be ring fenced in the Sark finances. We expect to have the Heads of Terms by the end of the first week of February".

I also note and I quote "the initial reports from both Surveyors are encouraging and no major issues have been highlighted. The Bank have also undertaken a condition and valuation survey that can/will be used against any loan".

I consider that IoSS was acting responsibly and I again quote from the 'Coursaire Purchase Update 31st January 2020' where it explains its actions at that time as follows:-

*"Before taking any further steps we will be waiting for the Surveyors full reports. Once the reports have been assessed and the company is confident that the vessel could be put into operation and that any finance required obtained the company will apply to P&F for permission to spend the money for the purchase and apply for any approval required from CP for guarantee against any Bank loan" (all part of **Appendix 4**)*

CP and P&F had an absolutely fundamental duty to protect the finances of the Island of Sark and the purchase of the new vessel was a substantial transaction. It was evident that CP felt that they were excluded from the acquisition process and in their words felt they were "playing catch up". This could have been avoided if 'front line' communication had been maintained.

3. In connection with the purchase of the Coursaire des Isles, the timing of the finance provision by the Bank and the Bank's participation in the transaction.

I note that IoSS paid a deposit of 20% to the owners of Coursaire on the 7th February (EUR 148,000) with an anticipated delivery date at the end of March 2020. It later became apparent that this was not achievable due to the inability to 're-flag' the vessel.

I can appreciate that CP felt that the Island was placed in jeopardy with reliance on the Sark Belle and the Sark Viking as the Bon Marin had been abandoned as a service vessel. The Sark Venture which had (earlier) been anticipated to be back in service during March 2020 once re-certification by the Maritime and Coastguard Agency (which had been

booked during the first week of March) had been completed. However, re-certification was delayed beyond the control of IoSS due to national 'lock down'.

It is important to note that the situation regarding the effects of Covid-19 was evolving and the States of Guernsey ordered at midnight on the 24th March 2020 'Lock Down'.

With the benefit of hindsight it is easy to be critical. However, I have reviewed (as stated in Section 2 above) the risk evaluation concerning the potential loss of the deposit. It was not clear whether the owners of the Corsaire had been approached regarding a possible delay to completing the purchase when the French President, Emmanuel Macron announced strict confinement measures on the 17th March 2020 and 8th April 2020 announced that the 'lock down period' in France would be extended and on 13th April President Emmanuel Macron extended the 'lock down' for a further month.

Delivery of the Corsaire could not therefore be reasonably expected to occur by the end of March. As a result it was essential if IoSS was to avoid losing the deposit paid on the 7th February 2020 in the sum of EUR 148,000 that a finance package be agreed with their Bankers with the support of CP and P&F in the knowledge that there would be a dramatic decline in revenue.

In summary:

Covid-19 global lockdown timetable	
23 rd January 2020	Wuhan in lockdown.
30 th January 2020	WHO global public health emergency.
1 st February 2020	First death outside China.
9 th February 2020	Deaths exceed SARS.
26 th February 2020	First death in USA.
8 th March 2020	Italy regional lockdown.
13 th March 2020	WHO Europe now centre of pandemic.
16 th March 2020	France imposes nationwide lockdown and closes borders.
17 th March 2020	EU ban on non-essential incoming travel.

In order to complete the purchase of the MV Corsaire des Iles, IoSS required a 'secured loan guarantee' from CP in the amount of £300,000. The loan in principle (as earlier stated without mention of 'security') was agreed by CP on the 19th February 2020.

Following advice from St James's Chamber the guarantee documentation was approved and was signed on the 6th April 2020.

Understanding the thinking of the IoSS Board with regard the financing of the purchase is critical and I consider was a legitimate major concern for CP and P&F. In summary, IoSS proceeded with the purchase without communicating their intentions with CP and P&F and prior to receiving the loan guarantee paperwork, in the knowledge of the Covid-19 lockdown in France. Having extended the agreed overdraft facility by a further GBP 50,000 they did in simple terms spend their companies reserves, including, (it would appear from what I have seen) the employees funds being held to pay income tax and social security.

I have tried to understand the position that CP were in during the emerging financial situation in early-April 2020.

Conseiller William Raymond received on the 17th April 2020 (also issued to all loss Directors) a copy of an email from IoSS to their Bank ref: Request Funding under States Loan Guarantee Scheme (**Appendix 3**). It appears from what I have reviewed that this was the first time that CP were fully aware of how serious the financial situation was. CP suggested having reviewed the IoSS Financials (a snap shot view at the time as the March accounts had not yet been published) that action needed to be taken. In crude terms the IoSS Bank account was showing 'empty'. CP sought a review of establishment costs with little potential other than redundancies of non-essential staff. I can appreciate the concerns of CP at the time as they were not fully aware of the full extent of the IoSS commitment regarding the purchase of the Corsaire whilst noting that CP was fundamental to the process having on the 6th April confirmed agreement to guarantee the Bank loan of £300,000.

There is some clarification of the situation at the time in the email from the Bank and IoSS dated 20th April 2020 copied to Conseiller Raymond Ref: Permission to speak to Chief Pleas (**Appendix 19**) and the email from IoSS to their Bank dated 22nd April 2020 Ref: IoSS funding (**Appendix 23**).

I can find no evidence in the IoSS exchanges with their Bank that the Bank was aware at the time of negotiations that the vessel had not yet been considered with regard 're-flagging' by the appropriate UK Authority. Which would put CP potentially in jeopardy in terms of recovery of loss (requiring the resale of the vessel IoSS had committed to purchase) in the event of insolvency of IoSS. It should be remembered that CP had a very limited budget with which to 'run' Sark.

IoSS in notifying CP that they may become insolvent and go into administration not only threatened the 'lifeline service' but would put severe pressure on the ability of CP to raise the revenue required to maintain the Island. It is understandable why CP felt they as a Government were under threat and I have not been able to determine why IoSS made the decision when they did or at least not until they had received a response from the Bank which was due in a matter of days.

I believe from what I have seen that CP were not fully aware of the rapidly developing situation until IoSS gave permission to their Bank to speak with Conseiller Raymond and Treasure Sarah Hudson by email dated 17th April 2020. Ref: Permission to Speak to Chief Pleas. (**Appendix 22**).

I have reviewed the letter from CP and the IoSS to NatWest Bank dated the 14th April 2020 (**Appendix 17**) which reads:-

"Dear Rafael

Please take this letter as confirmation that:

- The Bank may rely on the £300k Chief Pleas guarantee dated 06/04/2020 to support the loan evidenced by the facility agreement between IOSS and the Bank dated 18/02/2020, which will be partially drawn (up to £200,000), notwithstanding that the full conditions on which the loan had been agreed have not been able to be completed: which includes but is not limited to the charge over the vessel to be purchased.*
- It is accepted that the Bank is still to take a charge over the vessel as security and that this will be completed within a reasonable timeframe as soon as practically possible.*

- Chief Pleas also acknowledges that the vessel has already been purchased and that the proposed drawdown of the loan facility is to release funding to the IOSS to support ongoing cashflow requirements. It appears on the 24th March 2020 IOSS transfer the full payment to the Marine Agent in France with regard to the acquisition of the Corsaire before CP had issued a letter of comfort to the NatWest Bank with regard to the required guarantee. The letter above from the Bank lacks detail and I am critical of how the Bank appears to have transacted the business of the Loan in the circumstance and therefore can see why CP is fully justified in their criticism of the process surrounding the Loan Agreement (and the Guarantee Agreement).

The Bank's understanding of the situation is clarified in an email "Dear Paul and William" dated 20th April from RBS International (**Appendix 19**) which in my opinion was late in the day. The email refers to a 'disconnect' between the "Board and Chief Pleas as shareholders" and goes on, "it is very important that a cohesive approach by all to ensure a successful journey ahead".

For reference I have added the following paragraph to my Summary.

I cannot ignore the role played by the NatWest Bank (noting that they were both the appointed bankers for IOSS and CP) in agreeing to provide what appears from the evidence available at the relevant time an 'unsecured loan' simply on a guarantee for £300,000 from CP who themselves had no security against the assets of IOSS. I would have expected the Bank to suggest taking alternative security from IOSS as was eventually done. I have to observe that I think that the Bank had much more in the way of information than CP. A comprehensive review to have been undertaken at the time by the Bank to suggest taking security against alternative assets held by IOSS, as was eventually done. I assume therefore that the Bank had more in the way of information than CP.

Again with hindsight it may have been preferable for CP to have been invited by the IOSS Board to have a closer involvement in the 'loan' negotiations earlier in the process.

However, I do remain concerned that the NatWest Bank did not set out the requirement for 'security' at the very beginning, which would have enabled CP to include for a 'security' provision in their initial Proposition to the people of Sark.

4. The decisions and actions made by Chief Pleas regarding financial guarantees, and variation thereof, including Committee input and recommendations.

There does not appear to be a specific date or event that led to CP and P&F losing confidence in the management of IOSS, a situation made worse by the quickly emerging issues surrounding the Covid-19 pandemic.

In my opinion it is clear that the concerns expressed by CP were legitimate. As they expressed it "their lifeline service was in jeopardy". This was not just in terms of a perceived failure in the SLA but in relation to the material effect it would have on the Sark community and economy but also in terms of their reputation as a Government. In turn, IOSS were using their best endeavours to provide a robust service that would have resilience and offer the security required by CP, P&F and the community of Sark.

There was a clear breakdown in 'frontline' communications which evidently not only added to the mutual lack of confidence but also introduced an element of

misunderstanding of intentions and objectives. This at the time caused CP to challenge the actions of IoSS in the context of the broad range of very serious issues that Sark as a community were facing and could be facing. CP was very much aware of the potential consequences as they carried out their fundamental duty to protect the community of Sark. I cannot fault CP for their endeavour to do the best in the situation.

I am in no doubt that the Board of IoSS was competent in understanding financial matters pertaining to their business.

I understand why CP and P&F formed the opinion that IoSS had failed in part to comply with the MoU and consequently the objectives of the SLA could not be maintained. I also understand that it is simply not practical when managing a shipping service in a difficult and frequently changing set of circumstances to refer to and practice the various requirements set out in the MoU.

The concerns expressed by CP regarding financial guarantees and variations thereof were legitimate. Especially as in my opinion the variation which in effect converted the guarantee from being for CP of 'minimum risk' into potentially a 'major risk' in the context of Sark's limited financial reserves. Therefore, I can see why CP came to the conclusion they did at the time that "in effect the state of the finances of IOSS, placed the entire burden of their finance requirements on CP." As they expressed it "their lifeline service was in jeopardy."

It is apparent there was a breakdown in what I have referred to as 'dispatches from the front-line' in a rapidly changing situation which evidentially not only added to the mutual lack of confidence but also introduced an element of misunderstanding of intentions and objectives.

My conclusion on this specific point is that matters although they may not have been solved would have been greatly improved if there had been a robust and reliable line of communication. The situation was in my opinion not helped by the NatWest Bank as stated in the section above. CP acted properly in the circumstance, they sought appropriate advice on the 16th April) from Crown Advocate, Anthony and acted on that advice.

5. An analysis of the company's financial position as submitted to the Board leading to the notification of impending administration proceedings.

I have included the timetable below for ease of reference.

Guernsey lockdown timetable re IoSS	
9 th March 2020	First case in Guernsey.
19 th March 2020	Guernsey imposes 14 day isolation for all travellers.
23 rd March 2020	Last passenger sailing IoSS.
24 th March 2020	Guernsey enters lockdown.
29 th May 2020	First passenger sailing with social distancing.
1 st June 2020	Passenger sailings resume with timetable.

As source documents I have referred to the following:

Report prepared by IoSS dated 3rd April 2020. Titled: '*Urgent financial support for the Isle of Sark Shipping Company Limited*', Prepared by the MD and Financial Director (**Appendix 20**). Purchase Ledger Aged Creditors for ISLE OF SARK SHIPPING COMPANY LTD (Summary) dated 4th May 2020, the Balance Sheet run date 4th May 2020 and the funding requirement as follows:

	Due date	Amount
Funding requirement:		
Bank overdraft at 04/05/2020		209,682
Employee ETI Qtr 1	30/04/20	8,912
Social Security	30/04/20	7,966
Creditors due by 6 May - as attached, excluding Sark Treasurer and Guernsey rent		19,265
Barclaycard direct debit being collected 29 April - ticket refunds		<u>12,272</u>
		258,098
Less: Bank deposit maturing on 6 May		<u>55,545</u>
Funding requirement		<u><u>202,553</u></u>
 Overdraft facility following maturity of deposit		 200,000

(This may reduce to £150,000 because it was only increased to £200,000 in the expectation of the company drawing down £200k of the agreed loan facility, which is not now happening).

The above information was issued under cover of the email below to CP following the request by CP for the detailed financial information needed in order for them to undertake their responsibility as the governing authority of the Isle of Sark correctly and with due diligence.

The financial reports demonstrated that at the beginning of May 2020, without additional capital IoSS would not be able to sustain trading.

“From: Paul Burnard
Sent: 04 May 2020 08:31
To: 'Conseiller Sam La Trobe-Bateman'; Yan Milner
Cc: Conseiller Sandra Williams; Gill; Andrew Cook; Mark Dunster; 'rgraham@cwgsy.net'; Policy & Finance
Subject: RE: IOSS current situation.”

“Good morning Sam

Please find attached the information requested. I am not sending you the detailed debtors report, as that could constitute a breach of GDPR.

Whilst I understand why you have requested the Balance Sheet (Statement of Affairs) and asked about judgment debts (there are none) it is not that which is important at this stage – as previously advised it is the short term cash flow requirement.

You are implying that the granting of the requested facility from NatWest is a mere formality but it is nothing like that and, as you are aware, they will want to engage with CP in regard to security and support.

The board has no great wish to start Administration proceedings, HOWEVER, most regrettably, we are not able to wait in the hope that other moneys arrive, but are obliged to pay debts as they fall due, failing which we will be in breach of the solvency test as set out in Section 527 (1)(a) of The Companies (Guernsey) Law, 2008. This includes crew ETI and Social Security contributions which – as again you are aware - are now overdue for payment to SOG.

The Directors are obliged to act within the Law which makes clear the obligations placed upon them, as well as the penalties and personal liability for non-compliance.

Unfortunately, we do not have the leeway or right to do any other. We feel sure that the Shareholders would not unwittingly be directing us to knowingly break the law”.

The decisions of the IoSS Board have to be considered in the context of the unique effect of the Covid-19 pandemic on the revenue of IoSS with lockdown occurring on the 24th of March 2020. In understanding the situation that IoSS found themselves in I have found it useful to refer to a chain of emails instigated by Paul Burnard (Executive Director) dated the 2nd of April, the 30th of March and the 27th of March 2020.

The lead up to the notification by IoSS of impending 'Administration proceedings' is best understood by reference to a chain of emails instigated by Paul Burnard dated the 9th April, 8th April and emails instigated by Yan Milner (Managing Director) dated 8th April and the 3rd of April to P&F which attached a 'Pandemic Cash Flow Forecast - freight only updated the 9th April 2020' (I note that the email date was the 3rd of April yet the financial forecast is dated the 9th of April).

I am of the opinion that all parties understood the significance that the pandemic would have on the fall in revenues generated through visitors and the inevitable loss of revenue through personal taxes due to people 'being laid off' etc.

The concern that CP had is best expressed with reference to the personal view of Conseiller William Raymond I quote:-

“my own view is that we should safeguard the community here ensuring that they are cared for and fed before we alleviate the banking position of IoSS. I realise of course that the freight service is key to the aim, but that operates at a positive gross margin”.

(Reference email from Conseiller William Raymond to Paul Burnard, Executive Director, Sarah Hudson, Treasurer, Yan Milner, Managing Director and P&F, cc. Conseiller Sandra Williams dated the 7th of April **(Appendix 6)**).

In summary, the situation at the beginning of April (8th April) that the IoSS was facing is best understood by reference to an email from Yan Milner, Managing Director dated the 8th April 2020 at 1546pm to Conseiller William Raymond, Paul Burnard, Executive Director of IoSS, Sarah Hudson, Treasurer and P&F with a copy to Sandra Williams **(Appendix 6)** as follows:-

“as is indicated in our forecasts we are unlikely to be able to continue any operations including the cargo service beyond the end of April or sooner. The company's financial liabilities will continue to grow in spite of our best cost saving efforts”.

I have paid little attention to the exchange (email dated 8th April 2020) between, Paul Burnard and the Treasurer, Sarah Hudson with copies to Conseiller Sandra Williams, regarding 'the accusation that IoSS was 'blackmailing' CP and P&F.

With reference to the email exchanges between IoSS, CP and P&F, it is apparent that tension was increasing as CP endeavoured to maintain their parliamentary obligations as the government of Sark and as IoSS endeavoured to maintain the 'lifeline service' which they could no longer do in terms of the Service Level Agreement (SLA) due to the ramifications of the Covid-19 pandemic. With reference to the Memorandum of Understanding (MoU) **(Appendix 2)** there was no achievable resolution that could meet the objectives of both parties without significant compromise.

By the beginning of May I have no doubt from the exchange of emails instigated by Paul Burnard, Executive Director on Monday the 4th of May and Yan Milner, Managing Director on the 3rd of May (**Appendix 7**) their assessment that IoSS could become insolvent and if so, the legal obligation was placed on the Directors of IoSS to start Administration Proceedings.

I am also of the opinion that CP were legitimately entitled to request a current balance (Statement of Affairs) with detailed information regarding IoSS current assets and liabilities as justification for IoSS stating that they were considering placing the company into Administration whilst noting that this was before an application had been made for assistance within the States of Guernsey Loan Scheme.

With reference the email from Yan Miller to Conseiller Sam La Trobe-Batemen cc Conseiller Sandra Williams, Paul Burnard, Conseiller John Guille, Andrew Cook, Mark Dunster and Richard Graham titled '*IoSS current situation dated Sunday 3rd May 2020*' provides an insight to what was happening (**Appendix 7**).

I am of the opinion that IoSS had very little space in which to manoeuvre bearing in mind their commitment to purchase the new vessel and their obligations to re-establish as best they could the SLA in principle, if not possible in practice.

The IoSS instigated a conference call Board Meeting on Monday the 20th of April 2020 (**Appendix 8**) provides insight as to how I have formed my opinion.

The position held by CP is explained in a Minute of Meeting dated 17th April 2020 which I quote as follows:

Conseillier William Raymond: - "The proposition was to enable the company to borrow to purchase the boat as a secured loan. The boat was purchased without the loan. The guarantee was executed on 6th April. The bank have offered £200,000 less £50,000, but the comfort letter the bank wish to be signed states the bank may rely on the £300,000. The letter says to release funding to IOSS. The risk analysis carried out looked at this as a secured loan on a boat. The chances of it being called upon were remote on this basis. However, the funds now being requested are to meet normal expenditure. The exposure has gone from nil up to £300,000. This is viewed with concern, risk to public funds. This is no longer a secured loan on a boat."

IoSS Financial Director Paul Burnard responded as follows:- "At the time the loan was taken out, the circumstances of current situation re: virus were unknown. The bank says it has accepted that they (the bank) can take charge of the vessel now owned by the company. If the company default on the loan, the company has the vessel."

Conseillier William Raymond responds: - "that the original proposition was for a secured loan and that loan is now unsecured. Chief Pleas exposure is now considerably greater."

Both CP and P&F were reasonable to consider that Sark would remain in 'lockdown' for the main revenue generating summer season and therefore the concerns expressed by CP were justified when they became aware that the Board of IoSS (having paid the deposit and faced with the loss of that deposit) had little alternative other than rely on CP to support their purchase of the vessel on the 31st March 2020. It appears that IoSS did not realise that it was not a simple matter for P&F to provide the 'Letter of Comfort' to the IoSS Bank as they did not have the authority to do so. It would require the approval of CP.

In summary IoSS were reasonable to assume that their anticipated revenue income was to be greatly reduced to an amount where costs would out-weight income and therefore had

no alternative but to seek loan finance. Their initial forecast showed that they would require funding of GBP 200,000 by the end of the second quarter of 2020. Their Bank approved funding, however, it was on condition that CP and P&F signed a '*letter of comfort*'. This would enable the purchase of the Corsaire des Iles II to proceed.

It was reasonable that CP and P&F without first seeking legal advice from the (Guernsey) Law Officers would not agree to simply signing a '*letter of comfort*' which was intended to give an assurance to the Bank that if IoSS failed in their contractual obligation to the Bank then CP would step in.

The borrowings were to cover not only payroll and the normal obligations of IoSS but also to the States of Guernsey in respect of income tax and social security contributions for quarter one which amounted to GBP 50,637. IoSS successfully negotiated a repayment programme whereby they undertook to pay the contributions in three monthly instalments.

Whilst P&F had refused to sign a '*letter of comfort*' they agreed to lend funds to IoSS to enable it to meet its payroll costs. However, P&F refused (I believe reasonably in the circumstance) to advance monies to meet other commitments to suppliers, which included the States of Guernsey whilst noting at that time IoSS was being supported via the Payroll Co-Funding Scheme.

At the time that P&F made the decision I have not been able to determine whether or not they were fully aware of the consequences that IoSS would be unable to meet its debts and would be obliged in law to begin an administration process as the Directors would have no alternative but to declare the company '*insolvent*'.

It is my understanding that P&F, in view of the unfolding and pending financial situation approached the IoSS Bank directly which resulted in the IoSS being provided with a loan of £350k and an overdraft facility of GBP 220,000.

Both the loan and overdraft facility were guaranteed by CP facilitated by a mortgage secured against all of the five company vessels.

I also note that the bank required CP, P&F to inject a further GBP 30,000 into IoSS to meet immediate financial needs.

Whilst acknowledging that the arrangement increased the financial exposure of CP and P&F it was secured against the vessels and therefore was no longer an unsecured loan.

It must be remembered that the duty of CP and P&F was to manage and maintain service in the best interest of the residents of Sark, the obligation of IoSS was to endeavour to operate what had become in the true sense of the noun a '*lifeline service*' with regard to freight and passengers.

Although IoSS had the survey for the Sark Venture booked for the 6th of April 2020 and they were only advised in late March, that the Marine Coastguard Agency (MCA) would no longer be undertaking surveys but would delegate extensions to the issuing Authorities.

However, due to the abrupt cessation of passenger revenue and consequential reduction in cargo revenue during 'lock down', the decision was made to suspend the remaining work on the Sark Venture which at the time was reliant on outside contractors including the commissioning of the engines, associated electrical works and specialist welding.

The loSS accounts at this time show that the company was trading at a GBP 169,254 loss with mounting cash liabilities due in April and with no prospect of release from lockdown which would have provided some revenue.

I also note that staff hours were reduced from the contracted minimum of 38 hours to 30 hours per week. In my opinion, it was reasonable for loSS to maintain some crew members as it must be remembered that at any time the crew could be required to isolate.

On the 28th of June at the end of 'lock down' Guernsey residents were in the unique situation as travel within the Bailiwick was 'unlocked'. loSS revenues returned, however, I can appreciate the concern of CP and P&F that the resilience to the service had been diminished with the suspension of works to the Sark Venture. The resilience of the service being provided by loSS was largely reliant on the Sark Belle and the cargo vessel, Sark Viking.

The Marine Coastguard Agency declined to travel and inspect the Sark Venture where works remained incomplete (reference email received from MCA to the Managing Director of loSS dated the 18th of August 2020) (**Appendix 9**).

For further reference I have attached a copy of the presentation (PowerPoint) presented in the Island of Sark titled '*Plans for 2020*' **Appendix 11**. I do not consider when bearing in mind the circumstances in which they were operating that the loSS mismanaged the finances or the operation and management of the company.

The decisions of the loSS Board have to be considered in the context of the unique effect of the Covid-19 pandemic on the revenue of loSS with lockdown occurring on the 24th of March 2020. The financial position that loSS was facing at the time they gave notice to CP of impending 'administration proceedings' was not caused by the financial effects of Covid pandemic in itself. From my review of the financial information available the 'solvency' issue related to the timing of payments made by loSS prior to the Guarantee Agreement being in place, at the end of the first quarter (March 2020). It was a matter for loSS to manage their financial obligations as they consider prudent in the circumstance.

The Bank had indicated limited relief for the solvency problem, but required Chief Pleas to agree that the existing loan guarantee could be converted to support an alternative borrowing on overdraft to fund ongoing loSS expenditure. As stated earlier the financial exposure as assessed by CP had increased by £300,000 as it was no longer a secured loan and consequently a risk to public funds.

The Directors of loSS in advising CP of the potential of going into 'administration' acted in accordance with the legal requirements placed on them individually. I have endeavoured, without success, to ascertain the involvement of the loSS and CP Bank (Nat West) at the time the Directors of loSS formally notified CP of the possibility of going into 'administration'. The Bank who had received notification of a request for support under the States of Guernsey Loan scheme was due to respond in a matter of days to the revised request for funding and proactive dialogue may have avoided the necessity for loSS to advise CP of the pending possibility. Whilst in the event of loSS becoming insolvent it would have provided a 'breathing space' to maximise realisations and asset values without at the time increasing liabilities in the interest of creditors it would in my opinion been a drastic act. loSS were aware of their liabilities at the critical time the final payment of EUR 592,000 was made to Atlantique Marine on the 19th March 2020.

I note that it was approximately 5 weeks between the payment to Atlantique Marine and the notification by the loSS Board of the possibility of the company going into Administration. Whilst it is not the job of CP to run the company they as the Government of Sark would have benefitted from closer dialogue with loSS. Sharing of the principles of the risk assessments

being undertaken by IoSS would have allowed CP to seek reassurance that there would be sufficient resilience to protect the passenger and freight services to and from the Island due to the level of forecast losses.

6. The reasons for the delays to the refurbishment of the Sark Venture, resulting in a potential single point failure and a reduced and unreliable service.

I note that the initial intention and consequently the information from IoSS was that the Sark Venture would be out of service for 4-6 weeks returning to service before the end of February. The reliance on the Sark Belle during the winter months was of legitimate concern to CP and CP notified IoSS of their concern. However, the work on the Sark Venture was not progressed (as I believe was originally intended by IoSS) and the non- return of the Sark Venture remained a matter of considerable concern for CP.

On the 20th of June 2020 when the Bailiwick was released from 'lockdown' it is evident that the Board of IoSS under the direction of their Managing Director and Finance Director advised that as there was no certainty as to how long the 'Bailiwick travel bubble' would remain open that it would be prudent to accumulate a cash reserve before re-commencing work on the Sark Venture. The IoSS had been in discussion with the Managing Director of Travel Trident to enable the charter of one of their two Trident vessels in the event of the Sark Belle or Sark Viking breaking down.

As referred to earlier MCA had advised that they would not travel to Guernsey to undertake the necessary survey.

I note that the Sark Venture did not re-enter service until late October 2020. This delay was due to the lack of availability of a suitably qualified States of Guernsey Weights and Measures Inspector. CP has advised that they were not aware of this reason for delay. It should also be noted that in order to retain the guarantees for the engines it was necessary to have them commissioned by an off-Island Engineer.

It is important to recognise that IoSS was endeavouring to find a practical solution for the undertaking of a 'lightship and incline' survey, an 'in water survey' and engine commissioning (necessary to ensure continuity of engine warranty) on the Sark Venture, in order to maintain at the very least a 'lifeline cargo service'.

Closing Comment:

In the context of this inquiry I have considered the role and responsibilities of CP as Sark's Government which is to develop and administer the legislation and regulations of the Island. They assume an essential role in promoting good governance and their purpose is to make good decisions on behalf of the people of Sark.

Essentially, they must balance demands and prioritise policy managed within a limited budget.

During the preparation of this report I have met with representatives of CP and P&F and I consider that they have acted competently and reasonably in the performance of their role. The evolving situation before them as a governing body required decisive action. The use of the term 'a lifeline service' was not an exaggerated term in the circumstance and delay in decisive decision making would have been indefensible. The options for CP were limited. They felt that they were not being kept up to date by the IoSS Directors and that the 'lifeline service' on which their community of Sark depended on was in jeopardy, a

community that they were accountable to. A responsibility, from what I have reviewed during this enquiry, that they as a democratically elected body took very seriously.

IoSS from the evidence presented to me by the Managing Director and the Financial Director believed they were keeping their 'shareholders' (CP) informed in a timely manner, whilst endeavouring to manage a potential operational and financial crisis in the best interest of their company.

CP did not fail the people of Sark. The Directors of IoSS did not fail their company. However, there was a failure in 'front line' communications which facilitated an element of mistrust. It must be noted that I make these observations with the benefit of understanding the situation and the events after they had happened. Conseiller Raymond as a member of CP with the support of his colleagues and the Treasurer was for the benefit of all in responding expediently to what was a rapidly emerging potential financial crisis for the 'lifeline' service that Sark relied on.

Both CP and IoSS were faced with trying to predict outcomes which in the situation of a world threatened by an unprecedented pandemic were quite simply unpredictable.

Furthermore, for completeness I have given consideration to the role and performance of the Board of Directors of IoSS and I have applied the principal that the duties of Company Directors are owed primarily to the relevant company and that the Directors at all times are to act in the best interest of that company, to exercise independent judgement, to avoid conflict of interest, to act for proper purposes and to exercise reasonable skill and care.

The Executive Directors kept their Board informed and the Board supported the recommendations of their executive during negotiations with their Bank and the States of Guernsey (States Guarantee Scheme). I have however been critical with regard the timely exchange of detailed financial information between IoSS and their 'owners' CP on behalf of the people of Sark. Which I believe was a contributory factor to the confidence lost by CP in the ability of IoSS to maintain a reliable and regular service for freight and passengers at the time IoSS committed to the purchase of the Corsaire.

It is also important that I have applied the principal that the only time that Directors may owe duties to someone other than the company are when the company begins to enter financial difficulties.

In this case the duty that IoSS had extended to act not only in the best interests of the company but also to include a duty to consider that act with proper regard for the interests of its creditors.

To conclude on this point I consider that IoSS had an effective Board of Directors with relevant skills and knowledge of corporate governance.

My conclusion which I have expressed in my closing comment to this report relates to the relationship between the Board of IoSS and CP as I consider there was an evident failure in appropriate communication in the circumstance and although there was an agreed MoU and SLA there appears to have been a lack of a true understanding of the needs, objectives and concerns of Chief Pleas.

I thank the parties to this Enquiry for their co-operation and assistance.

Undertaken by:

Andrew Ozanne OBE. BA(Hons) Dip Arch(Oxford) RIBA MCI Arb ADR, Registered Adjudicator (ACA). Mediator (ADR).

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