

Essay for Media Release

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Re: The Steam Packet D  b  le – a Constitutional Crisis?

On 18th February 2021 it was announced by the Manx Government that an Isle of Man Steam Packet crew member had tested positive for Covid-19.

This in turn led to attention being directed as to the Covid measures which were or which ought to have been in place for Manx workers on the Island's sea carrier.

This Government has hitherto consistently pursued a policy of local elimination of the virus and has repeatedly stated that the closed border policy is the Island's best form of defence, the most effective way of keeping the community free from Covid.

In such context it was clearly important that there were robust and effective health and safety policies in place for those individuals working on the vessels who would potentially be mixing with UK crew as well as passengers travelling on the ferry to the Island.

The Government's initial response to the Steam Packet employee positive case was that all Manx crew were and had been subject to an official Direction Notice since March 2020.

The Direction Notice apparently exempted Steam Packet crew from the current entry restrictions to the Island.

Direction Notices and Entry Certificates are made under the Public Health Protection (Coronavirus) Regulations 2020, breach of which is punishable by up to 3 month's custody or a fine not exceeding £40,000.00.

The Island's Chief Minister Mr Howard Quayle, on 19th February 2021, summarised his understanding of the relevant Direction Notice for Manx crew as follows, *"You come off the boat, you go home, you isolate at home with your family and then you go back to work. You can't go out and about, that is clear and has been from day one"*.

In effect this meant that the Government believed that approximately 80 Manx crew had not been in any shops, cafes or walking the Island's streets since the Direction Notice was first issued to the Steam Packet in March 2020.

Let us for the moment accept that the Direction Notice or Entry Certificate, whichever it was, did in fact precisely reflect what the Chief Minister said.

Unfortunately, that was not the understanding of the Manx crew, for it transpires that the crew were apparently blissfully unaware of the need to self-isolate between shifts.

Mr C. Bowen, Chief Officer of the Ben-My-Chree vessel stated on 27th February 2021, *"So far as we were aware, so far as we were told, the Direction Order that was put in place by the Government for key workers didn't concern us, we weren't to self-isolate, we were fine because we were Isle of Man residents"*.

The Chairman of the Steam Packet Company, Mr Lars Ugland, subsequently defended the company and countered that the protocols with regard to self-isolation of Manx resident crews had been adhered to correctly.

However, it should be remembered that in 2018 the Manx Government bought the Steam Packet company for £124 million and it is now effectively nationalised with directors appointed by Tynwald, the Manx Parliament.

In a speedy attempt to remedy the uncertainty surrounding Covid procedures applicable to Steam Packet Manx crew, new measures including vaccination of the crew and testing at the beginning and ending of shifts have been implemented since the end of February 2021.

Regrettably, such measures came too late to stop a serious outbreak of Covid spreading like wildfire throughout the Island. A further lockdown was introduced on 3rd March 2021 and subsequently thousands of Manx residents have been ordered to self-isolate, hundreds have tested positive for Covid-19, all schools are closed and many businesses instructed to shut.

Dr Henrietta Ewart, the Island's Director of Public Health, has stated that it is her opinion that the current outbreak of Covid-19 is directly linked and can correctly be traced back to the original Steam Packet case from 18th February 2021.

There are two important issues to consider in this matter.

Firstly, does any political responsibility for the current Covid outbreak rest with the Government?

On the one hand, it could be argued that if the Direction Notice or Entry Certificate was clear and accurate, the responsibility for failing to ensure compliance lies with Steam Packet management. For example, who received the Direction Notice or Entry Certificate from the Cabinet Office, whose responsibility within the company was it to properly explain the Notice to Manx crew, was each individual crew member given a physical copy and was the Chairman Mr Ugland personally aware of the contents of the Notice?

If the Directors of the Steam Packet were aware of the contents of the Direction Notice/Entry Certificate, it beggars belief that they did not know that up to 80 of their own Island based crew had not been isolating at home between shifts for the last 11 months.

On the other hand, it could be sensibly argued that the Manx Government was extraordinarily naïve to believe that 80 crew had been compliantly self-isolating for up to 14 days between shifts throughout the whole of last year.

Given that crew shifts are often on the basis of one week on, one week off, this would basically have meant that sea-going staff would have had no life outside of work. They would not, for the last 11 months, have been able to go to the supermarket or pub or play sport for example.

This belief is perhaps even more unrealistic and unbelievable given that a key worker Entry Certificate would ordinarily require self-isolation to take place in premises not occupied by other persons not in the key workers travelling party.

In other words isolation must usually be completed at a place with those who have travelled with the key worker or alone.

Unfortunately, it appears that the partners and children of the Manx crew in fact continued to reside with crew throughout the last 11 months.

There is also apparent confusion as to the specific documentation provided to the Steam Packet by the Cabinet Office.

The Chief Minister referred to a Direction Notice. However, a Direction Notice for resident arrivals is different from a key worker Entry Certificate which is ordinarily granted to non-residents.

In any event, the Government's Travel Notification Service (TNS) was, since 2020, tasked to carry out checks on those ordered to self-isolate. Why did the TNS apparently never carry out any checks on the Steam Packet crew, given the blindingly obvious risk of transmission from ferry crew to the Island's wider community?

Additionally, in response to claims from members of the public that Manx and UK crew were mixing on board Steam Packet vessels, Dr Ewart stated on 20th January 2021 that since the start of the pandemic the Government had regularly reviewed arrangements for groups of employees including the Steam Packet and also flight crew.

Significantly, on 5th February 2021, only 12 days before the index Steam Packet case was announced, Dr Ewart stated that Public Health was working with the Steam Packet to try to reach a point, *"in terms of the Isle of Man staff who **might potentially** otherwise have to be in permanent self-isolation when they are off duty"*.

This telling comment appears to flatly contradict the Chief Minister's later assertion that it had been clear from day one that Manx crew had to be self-isolating at home on the Island between shifts.

Dr Ewart's comments perhaps cast some light as to why self-isolation checks had never been carried out all along.

In the circumstances, many right-minded people will reasonably conclude that the Government ought to shoulder some blame for the current Covid outbreak on the basis of apparent ambiguity regarding the legal isolation requirement and/or on the basis that spot enforcement checks whether by phone or physical visit had not been carried out

and/or on the basis that proper enquiries ought to have been made from a very early stage with Manx crew and management as to the practical arrangements for staff when off-shift.

The second issue, of fundamental constitutional importance, relates to the Chief Minister's subsequent handling of the crisis.

Following the publication of a letter from a Steam Packet crew member in relation to the alleged breach of the Direction Notice, the Chief Minister stated that he was, "*having it investigated*".

On 1st March 2021 the Chief Minister stated, "*I have taken advice on whether there is any prosecution that can be made on this and the answer was no*".

Mr Quayle glibly stated that there had been, "*a misunderstanding*".

This now raises a number of significant constitutional issues.

Under the important principle of the **Separation of Powers**, the functions and responsibilities of the Police, Prosecution, Parliament, Executive and the Judiciary are necessarily distinct and independent.

A breach of Coronavirus Regulations is a criminal offence. Only the Police should investigate such offences and only Prosecutors at the Attorney General's Chambers should advise on whether there ought to be a prosecution in Court against an individual or company.

Instead, it appears that the Chief Minister has conveniently by-passed such bodies and asked other persons to investigate possible criminal offences and advise on breach of Coronavirus Regulations.

If that is what has happened then both the investigation and advice could potentially be unconstitutional and *ultra vires*.

Equally, if it is the case that the Chief Minister asked Mr Ugland or any of the Steam Packet directors to carry out an investigation into whether criminal offences have been committed, that too would be wholly inappropriate. Let us not forget that the directors of the Steam Packet are political appointees, directly appointed by the Government. In such circumstances any report or findings from the Steam Packet may amount to little more than a corporate whitewash.

It is simply unacceptable for the Chief Minister to sit as judge and jury on potential criminal matters.

Then there is the **Ministerial Code** to consider.

Amongst other things, the Code states that there is an "*Overarching duty on ministers to comply with the law, including international obligations, to uphold the administration of justice and protect the integrity of public life*".

In addition, the Code states that ministers must observe the principles of accountability and openness. *"Holders of public office should be as open as possible about the decisions and actions they take"*.

In such context, it can legitimately be asked whether the Chief Minister will confirm who carried out the investigation, who gave the advice not to prosecute and why has he not freely divulged and published the findings of such investigation?

There is also the crucial consideration of confidence in the **Administration of Justice**. Central to this concept is that the law must be applied fairly and equally to everyone.

For example, the Deemster's Oath states *"I do swear that I will without respect of favour or friendship, love or gain, consanguinity or affinity, envy or malice, execute the laws of this Isle justly betwixt our sovereign Lady the Queen or her subjects within this Isle, and betwixt party and party as indifferently as the herring backbone doth lie in the midst of the fish"*.

No one is above the law. No person. No company. No Government Department.

Public faith in the criminal process also requires that justice is not only done but is seen to be done; in the eyes of the Manx public but also in the perception of those looking at the Island from countries abroad.

Any cabinet minister found to have acted unconstitutionally or significantly breached the Ministerial Code or damaged confidence in the administration of justice would be expected to consider resignation. As yet we do not know whether any of these things have happened.

Some might conclude that the Government's handling of the Steam Packet issue has been an accident waiting to happen. That there were manifest dangers when far-reaching decisions are made on the hoof by a tiny clique of ministers and civil servants rather than being subject to full and proper parliamentary debate, scrutiny and democratic oversight.

For too long during this pandemic it has appeared that we have been governed by an elite cocooned in a bubble of self-congratulation and mutual back-slapping, detached from the emotional suffering, financial hardship and enormous disruption their decisions have caused to ordinary people.

The conspicuous context of these constitutional issues is that to date at least 60 persons have been jailed on the Isle of Man for breach of Covid Regulations; 48 in 2020 and 12 in 2021.

Take for example the startling case of the 5 visiting welders from Doncaster who were jailed by the Manx Courts in October 2020 for going into Tesco instead of self isolating at their hotel in Douglas (ironically just after coming off the Steam Packet ferry).

The uncompromising approach adopted by the Constabulary was to arrest and interview. Subsequently the Attorney General's Chambers advised to charge and the Courts passed sentences of 14 days immediate custody on each welder.

In the eyes of the authorities there was no misunderstanding. There was no mercy. It was black and white. Almost a strict liability offence, you either were self isolating or you were not. According to the Chief Minister, Steam Packet Manx crew were under an identical legal obligation to self-isolate at home on the Island between shifts.

Undoubtedly, some of those 60 jailed persons will now be indignantly wondering why they were prosecuted and sent to Prison but not the Steam Packet crew. Perhaps the Chief Minister will consider petitioning the Queen via the Island's Lieutenant Governor for pardons to be granted to those 60 persons under the Royal Prerogative?

I am not for one moment seeking to blame the hardworking men and women who crew the Manx ferry and fast craft and who appear morally blameless in this matter.

Assuming that the Chief Minister's understanding of the Direction Notice is correct, it appears that around 80 Manx crew have unwittingly been breaking the law not once but apparently on a weekly basis for the last 11 months, right under the noses of the Manx authorities.

How many of us have inadvertently been rubbing shoulders with Steam Packet crew in Marks and Spencer or McDonalds or at the NSC over the last year?

At the moment we do not know why the law does not seem to have been applied consistently and fairly.

And so we are left with the real appearance of double standards. We are left with the suspicion of political expediency. We are left with the uneasy feeling that the decent men and women of the Steam Packet are being used as scapegoats for Government failings. We are left sceptical that the current lockdown was delayed in an attempt to save face and avoid any admission of border failure. And we are left with more than a whiff of abuse of process.

Now is not the time for Yes Minister obfuscation. Asking the Chief Secretary of the Civil Service to carry out a further review is like the Chief Minister asking a best friend to mark his own homework. An utterly pointless and self-serving exercise.

This is not a minor misunderstanding, rather it has all the hallmarks of being a monumental blunder. The failure to put in place and enforce proper Covid procedures for Manx shipping crew represents not an insignificant oversight but rather a gaping hole in our defences which has ultimately led to disastrous consequences.

There are members of the public who feel badly let down and justifiably angry and are fed up to the back teeth with sanctimonious twaddle. Now is the time for the Chief Minister to stand up and be counted, not to disgracefully demonise the Steam Packet crew and characterise them as the villains of the peace. For it appears to many residents

that this third lockdown was entirely avoidable and would not have occurred but for this Government's glaring omissions.

The lurking suspicions about this matter can only be dispelled by a rigorous and impartial inquiry. Such investigation of those involved ought to be carried out promptly by a Committee of Tynwald or off-Island legal counsel.

Given the current community chaos, draconian restrictions on cherished civil liberties and the enormous financial cost to the taxpayer of yet another lockdown, the Manx public have the right to know the truth.

At a media briefing on 3rd March 2021 Mr Quayle stated, *"Measures in place will only work if everyone keeps to the rules. Someone thinking that the rules don't apply to them can have massive effects. Please do the right thing"*.

This mantra applies equally to the Chief Minister.

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