

# Retirement of the Admiralty Judge from the Confederation of the Cinque Ports

Peter Sherred

Among recent changes of personnel within the Confederation of the Cinque Ports Lord Clarke has retired from the post of Admiralty Judge with effect from April this year after nearly a quarter of a century in the post. Lord Clarke (more properly Baron Clarke of Stone-cum-Ebony PC) succeeded the previous occupant of the post of Admiralty Judge, Gerald Darling RD QC, in 1997. Gerald Darling, who died in 1996, had been elected leader of the Admiralty Bar in 1978 and in 1979, on the invitation of Queen Elizabeth the Queen Mother, the then Lord Warden, he was appointed to the ancient post of Admiralty Judge of the Cinque Ports. Following his death, a memorial service for him was held in The Temple Church in London on 21st November 1996. Sir Alastair Aird, GCVO, who had served in the Queen Mother's household since 1964, had succeeded Sir Martin Gilliat upon his death in 1993 as her Private Secretary. He was made an Honorary Bencher of the Middle Temple. Upon Gerald Darling's death Sir Alastair asked the Treasurer of the Middle Temple, Michael Sherrard QC, for an idea about who should succeed Gerald and Tony

Clarke was suggested, and then duly appointed by the Queen Mother as Lord Warden.

The Admiralty Judge is supported by a Deputy and Surrogate Judge Official and Commissary of the Confederation of the Cinque Ports and when he was appointed Admiralty Judge, Gerald Darling's Deputy and Surrogate was George Henry Youden former Senior Partner of local law firm Stilwell and Harby. Upon George Youden's death and after consultation with Clarence House, I had the privilege of being appointed in his place by Gerald Darling. The Judge Official and Commissary of the Court of Admiralty of the Cinque Ports (to use the full title) is appointed by the Lord Warden and until the early years of the twentieth century presided over sessions of the Admiralty Court on behalf of the Lord Warden. Although still entitled to act in that capacity, in practice the position is now an honorary and ceremonial one. Once appointed, Lord Clarke confirmed my continued appointment as Deputy and Surrogate Judge. Lord Clarke has served the Confederation well over the years of his office and he and Lady Clarke have graced many occasions, such as Speaker's Day, with dignity and style.



*Lord Clarke, Admiralty Judge of the Cinque Ports and Surrogate Judge Peter Sherred*

Anthony Peter Clarke (known as Tony) was born in Ayr to Harry and Isobel Clarke. He was educated at Oakham School and subsequently attended university at King's College Cambridge where he read economics and law. He was called to the Bar at Middle Temple in 1965 and practised at 2 Essex Court where he developed a commercial and maritime law practice and subsequently he enjoyed a distinguished career in the law until his retirement in 2017.

He took silk, becoming a QC (Queen's Counsel), in 1979 until he became a judge in 1993. Between 1985 and 1992 he sat as a Recorder in both civil and criminal courts and was for several years in the 1980's Head of Chambers becoming a Bencher of the Middle Temple in 1987. His practice was commercial and maritime and included both advocacy and, as time progressed, arbitration, working as both counsel and arbitrator. He undertook several cases in Hong Kong and Singapore as a silk. He played a part in a good number of shipping inquiries during these years and of local interest this included the Herald of Free Enterprise in which he acted as counsel for the owners.

In 1993 Tony Clarke became a High Court judge and was appointed a Knight Bachelor. He was allocated to the Queen's Bench Division and succeeded Mr Justice Sheen as the Admiralty Judge in 1993. He sat in the Admiralty Court, the Commercial Court and the Crown Court, trying commercial and criminal cases respectively. Five years later Tony Clarke was promoted to the Court of Appeal of England and Wales in 1998 and was sworn of the Privy Council. Shortly after he led the Thames Safety Inquiry and in the following year as Lord Justice Clarke, he conducted the judicial inquiry under the Merchant Shipping Act 1995 into the collision on the River Thames between two vessels, the Marchioness and the Bowbelle, which took place in the early hours of 20 August 1989 resulting in the deaths of 51 people. 131 people were on board the pleasure boat Marchioness when it was hit by the dredger Bowbelle. Among its findings the judicial inquiry into the disaster found that poor lookouts on both vessels were responsible for the collision and it specifically discovered that the captain of the Bowbelle, had drunk six pints of lager on the afternoon before the collision. Further, the inquiry found the Emergency Services had no contingency

plan for such a disaster. In its published report 30 river safety recommendations were made including a requirement that all older vessels on tidal rivers should be brought up to modern safety standards. All the recommendations made by the Inquiry were accepted by the then government. By January 2002, the Royal National Lifeboat Institution introduced four lifeboat stations on the River Thames.

In 2005 Tony Clarke became Master of the Rolls and so head of Civil Justice. This involved presiding in many significant civil cases and commercial disputes (including arbitration) and a wide range of public law cases and procedural disputes. He was chairman of the Civil Justice Council and the Rules Committee and promoted the Review of Civil Cost carried out by Lord Justice Jackson in 2009 which was subsequently in large part brought into force. His tenure of office as Master of the Rolls ended in 2009 the year in which it was announced that he would be created a life peer being duly gazetted with the title of Baron Clarke of Stone-cum-Ebony, in the County of Kent. He took his seat as a crossbencher in the House of Lords on 1 June 2009.

Tony Clarke was one of the first eleven justices appointed to the new Supreme Court (when it was instituted in 2009 as the final court of appeal in the United Kingdom



*Marchioness Disaster 1989*

replacing the House of Lords which had previously been the final court of appeal) and he had the distinction of being the first High Court judge to be appointed directly to that court when it came into existence on 1st October 2009. The Supreme Court is in the building in Parliament Square immediately opposite the Houses of Parliament and was previously known as The Middlesex Guildhall. A Grade II\* listed building it was initially an administrative and court centre for Middlesex County, and later served as a Crown Court building, until the establishment of the Supreme Court. Tony Clarke remained as a Supreme Court justice until retiring at the end of September 2017. During this period he regularly sat in the Judicial Committee of the Privy Council, which remains the final court of appeal for a number of Commonwealth countries. The Supreme Court (and the Privy Council) only hear cases which the Court concludes involve questions of public importance. These include, not only criminal and public law cases, but commercial cases, including maritime and general commercial cases and those involving insolvency, arbitration, and private and public international law. During his illustrious career in the law Tony Clarke has taken part in many decisions of considerable significance, both between 2005 and 2009 when he was Master of the Rolls and between 2009 and 2017 when he was a Justice of the Supreme Court. On ceremonial occasions with the Confederation of the Cinque Ports Tony Clarke was easily distinguishable from all others because of the distinctive Supreme Court robe he wore.

Lord Clarke sat in the House of Lords until his retirement from the House on 14 September 2020. As a member of the Shipwrights' Company, he was an Assistant from 2000 and Prime Warden for 2014–15. He was appointed to the Court of Final Appeal of Hong Kong in April 2011 as a non-permanent judge.

Tony married his wife, Rosemary, in 1968 and they have three children, Ben, Thomas and Sally. Lord and Lady Clarke live in retirement in Rye, East Sussex, one of the “two antient towns” of the Confederation of the Cinque Ports.

He is succeeded as the Admiralty Judge by Sir Nigel Teare who sat as a judge of the Queen's Bench Division from 2006 until his retirement from the High Court in September 2020. He was the judge in charge of the Commercial Court and the Admiralty Judge. During a distinguished career on the Bench he decided many of the most high-profile cases of recent years across many different business sectors and now acts as an arbitrator in London. We welcome him to his post with the Confederation and look forward to seeing him from time to time in Dover as and when Confederation events are held in our Cinque Port town.

Members of Dover Society will recall that Pat Cunningham, who lived in the town and who had been the Admiralty Sergeant from 2004, died in January 2020 and an article on him was included in the March 2020 Newsletter (no 97 p. 45ff). He has been succeeded as Admiralty Sergeant by Jon Bartholomew, who has been Town Crier of Hastings for many years and is a qualified Toastmaster. He served as Town Sergeant of Hastings for several years and had previously served in the Military Police before returning to civilian life.

Historically, in each of the Cinque Ports and limbs the Lord Warden, as Admiral, appointed a *droit gatherer* to notify his staff in Dover immediately a wreck occurred, or flotsam or jetsam was recovered along the coast of the Confederation ports. *Droit gatherers* would keep records of the goods recovered and expenses incurred by the salvors so that the respective claims of the Lord Warden and the Ports could be

determined. The Sergeant of the Admiralty was the principal *droit gatherer* and had responsibility for those functions within Dover, as well as for enforcing orders of the Admiralty Court. The Admiralty Sergeant is, today, a purely honorary position whose main role is to bear the silver Admiralty Oar before the Lord Warden on ceremonial occasions.

The Registrar and Seneschal of the Cinque Ports since 2005 is Ian Russell MVO MA MSocSc, formerly Director of Central Services and Solicitor to Hastings Borough Council. He provides administrative advice and support to the Lord Warden and, as Clerk of Dover Castle, plays an ongoing part in the induction of each new Deputy Constable. Ian also acts as Webmaster for the Confederation of the Cinque Ports website. He had previously served as Joint Solicitor to the Confederation from 1991 to 2020.

The current Joint Solicitors are Christine Barkshire-Jones, recently retired as Chief Legal Officer and Monitoring Officer of Hastings Borough Council and Robert Cowan, Enforcement and Litigation Solicitor with the same Council. The Joint Solicitors handle the day-to-day administration and financial affairs of the Confederation as well as providing legal and procedural advice and they monitor Parliamentary legislation to ensure that the Ports' unique role and position remains protected.

Lord Clarke was the second Admiralty Judge to whom I have had the privilege of being the Judge Surrogate, a position I have held since 1992 when my appointment was sanctioned by the Queen Mother as Lord Warden. Lord Clarke has been a most affable and very approachable individual in his role of Admiralty Judge, a post he has discharged with dignity and grace. Indeed, he was very generous in his role of a Supreme Court Justice when he invited members of the

South Foreland Rotary Club to a personal tour of the Court building. Such was the response that at least two tours had to be organised both of which he personally led and gave much time to the visitors, particularly in answering their questions. Also, he accepted an invitation to be a guest speaker in Dover where he gave a talk about the history and development of the Supreme Court, and he was happy to take questions following his talk and provide detailed answers.

The Cinque Port Town of Dover particularly and the Confederation as a whole will miss him and his wife Rosemary for the contributions they have made, individually or together, to the ceremonial occasions at which they were loyal and regular attenders, and they are to be thanked for their long service and commitment to the Confederation and their support of the Lord Warden, the Lord Boyce, to whom I leave the final words of this tribute:

"As might be surmised from above, Tony Clarke is an extraordinarily distinguished lawyer and so I felt both delighted and privileged when he agreed to be my Admiralty Judge when I was appointed Lord Warden in 2004; and it was an honour to have him alongside me at my Installation in 2005. Since then, we – together with his wife Rosemary - have become firm friends; and we have shared many occasions both in the Cinque Ports and elsewhere – such as my becoming an Honorary Bencher of Middle Temple, at his instigation, or my speaking at his Installation as Prime Warden of the Shipwright Company. He is a most affable and sociable companion – belying the fact that he was reckoned to have one of the sharpest legal minds in the country when he was in practice - and he has an abiding affection for, and loyalty to, the Cinque Ports which I know will continue in his retirement. We shall miss his presence at our Confederation gatherings."