

In the matter of St Michael and All Angels, Withyham

## Judgment

### Background

1. By a petition dated 17 November 2010, a faculty is sought for the sale of a set of four fourteenth century Italian paintings, reputed to be by Nicolo di Pietro Gerini, depicting scenes of Christ's Passion: the washing of the feet, the betrayal in the garden, the mocking and the flagellation. The petition is brought at the behest of the PCC of St Michael and all Angels, Withyham, the petitioners being the Reverend Adrian Leak, priest-in-charge, Ms Rosemary Cadogan-Rawlinson, churchwarden, and Mr John Gower, assistant churchwarden.
2. The paintings were given to the church in 1849 by Edward Ottley. At some time in the 1990s they underwent cleaning and restoration at the Courtauld Institute, at which time a value was ascribed to them of something in the order of £750,000. A decision was taken that their value was such that they could no longer be kept in the church and thus a faculty was obtained from my predecessor, the late Chancellor Quentin Edwards QC, on 15 May 1997, for the set of pictures to be taken on loan by the Leeds Castle Foundation for a period of eight years. On 15 September 2005, I authorised a variation to the faculty by which the period of the loan was extended by a further eight years, subject to the PCC's right to terminate on giving six months' notice.
3. On 9 February 2010, I authorised a further variation to the faculty, this time permitting the removal of the set of paintings from Leeds Castle, where they had been on public display, to Sotheby's in London for the purposes of a valuation, subject to conditions addressing safe carriage and insurance. A current provisional valuation of £1 to £1.5 million has been placed on the pictures.

### Public notice

4. Public Notice of the petition took place between 1 December 2010 and 5 January 2011. This was slightly more than usual, the period being extended by order of the registrar for the avoidance of doubt following a query concerning the original notice and the fact that the deadline for response fell between Christmas and New Year.
5. The Public Notice elicited letters from Mr Simon Costen (dated 13 December 2010), Mrs Anne Clark (28 December 2010), Mr Robert Clark (28 December 2010) and Mrs Ann Haigh McVitty (5 January 2011, although incorrectly written December). Each of these correspondents received from the registry a letter informing them of their right to become a formal objector, and each replied stating that they wished me to take the contents of their respective letters into account when considering the petition. Mrs Haigh McVitty made some additional comment, which I also take into account.

6. By letter dated 8 February 2011, Mr Leak responded on behalf of the petitioners to the points made in the foregoing correspondence. I should like to express at the outset my gratitude to Mr Leak, and to the authors of each of the letters, for the measured, articulate and sincere manner in which they have sought to advance their arguments, and for the mutual respect extended for those of differing views.

#### **Statutory consultees**

7. The matter was referred to the Church Buildings Council whose opinion was recorded in a letter dated 4 October 2010 from Jonathan Goodchild, its casework and law officer. The CBC noted the advice of its predecessor organisation, the Council for the Care of Churches, in relation to the proposed loan to Leeds Castle. The letter helpfully sets out the provenance of the pictures, giving a possible alternative attribution to Spinello Aretino (active by 1373-1410). I interpose to add the suggestion in an email from Sotheby's dated 8 October 2010, that they may have been commissioned from Aretino for the cathedral in Arezzo, and that further research is necessary to verify attribution. The CBC letter speaks of the pictures being brought to England by William Young Otley (1771-1836) and passing to his brother Warner Otley, whose second surviving son Edward Otley gave them to the church in 1849. Originally they hung in the chancel and for a time during the incumbency of one of the Earls de la Warr, they were removed to the chapel at Buckhurst House. In 1920, they were installed in the Lady Chapel in the church.
8. The CBC notes that the paintings have been associated with the church for just over 150 years, a comparatively short period having regard to the lifetime of the church. The CBC seems to dissociate itself from the earlier view of the CCC that the paintings may have been introduced as objects of devotion and acknowledges that there is no documentation to support this, and that they have certainly not been so used in recent years. This is raised in contradistinction to a fourteenth century Florentine painting which forms part of an altarpiece at the east end of the church, which the parish rightly recognises as serving a devotional purpose integral to the sanctity of the place and incorporated into its overall aesthetic appearance and setting. The CBC is of the opinion that the presence within the church of copies of these paintings could be said to render the originals redundant.
9. The CBC suggests that at best there is only an insubstantial link between these paintings and the overall history of the church; and that were Leeds Castle no longer to act as custodian of the paintings, an 'unreasonable burden' of care and security would fall on the PCC. The CBC therefore recommended the grant of a faculty for the sale of the paintings. It considered, however, that every effort should be made to keep the paintings in the public domain and would want the sale restricted to a public institution in Great Britain. I note however that in the email of 8 October 2010 (to which I have already made reference), Ms Arabella Chandos, Senior Director, Old Master Paintings, Sotheby's, indicates that any such institution would be unlikely to be able to pay the full international market value of the paintings. The compromise which she suggests would be to seek a private sale to such an institution for a specified period after which they would be sold at public auction without restriction.
10. The Diocesan Advisory Committee, in a certificate dated 15 October 2010, recorded that it had no objection to the proposal but commented that it lacked the expertise to comment upon market conditions in international art.

### **The petitioners' case**

11. The petitioners' case has been set out in various documents over a lengthy period suggestive of considerable thought and reflection in the framing of the present proposals. I have been assisted by the following documents: a Memorandum to PCC Members dated September 2009; a Statement of Need and Statement of Significance, both dated June 2010; a Progress Report dated October 2010; and an extract from the Parish Magazine dated December 2010. The overall approach is helpfully summarised in Mr Leak's letter of 8 February 2011. The Memorandum evidences research undertaken as to the manner in which the proceeds of sale might be applied, based on the assumption, the correctness of which I will need to address below, that the only feasible means would be for the capital to be held by the Diocesan Board of Finance, with the interest accruing to the parish year on year. The recent article in the parish magazine seemed to envisage the establishment of something by the name of The Edward Otley Trust.
12. The petitioners' position can be simply stated. The pictures were a relatively recent gift to the church. They were not commissioned for it, nor do they form part of its internal architecture or scheme of decoration. There is no historic nexus between the paintings and the church or parish; they serve no current liturgical or devotional purpose and it is unlikely that they have ever done so. The most that can be said is that they have sometimes been referred to as illustrative of Christian teaching in the context of the occasional sermon. The pictures were removed from the church nearly fifteen years ago. Reproductions now hang in the Lady Chapel. Due to their value, the cost of insurance and the climatic conditions within the church, there is no realistic prospect of the originals ever returning. There seems little interest within the parish for seeing the originals: the take up of free admission tickets to Leeds Castle apparently is negligible. It seems that the dissonance between this situation and that pertaining to the works of Zubarán at Auckland Castle which the Church Commissioners had proposed selling for £15 million could not be more marked.
13. Mr Leak points to the financial position within the parish which, though challenging, is not dire. Put shortly, the parish is no longer able to make an annual allotment to its reserves; rather those reserves are being gradually eroded by a year-on-year shortfall of income against actual and anticipated expenditure. The parish is heavily dependent upon the success of its annual fête to come close to breaking even. I note, with approval, the commitment of the parish to meet its contribution to diocesan funds as a first charge on its income. The parish anticipates future capital expenditure in excess of £20,000 on resurfacing of churchyard paths, and of £2,500 in restoring the Lady Chapel altarpiece. These seem to me to be very conservative estimates. In addition there are uncosted proposals for other major repairs to secure safe public access and to make provision for the elderly and disabled, as well as an anticipated overhaul of the organ.
14. Mr Leak is clear that the ministry of the Church of England in the parish is compromised by the current financial position, and would be enhanced were the predictable income stream to be increased and capital to become available.

### **The letters of objection**

15. I have already commented upon the dignified manner in which the letters of objection were written. Their content is nuanced. None demonstrates implacable opposition to the sale on conservation grounds. On the contrary, the points raised are focussed on the finances of the

parish and the nature of Christian stewardship. I hope I will not do an injustice to the individual writers if I take the matters raised generically.

16. *Art as an investment:* It is suggested that the international art market may well be more buoyant than other more conventional financial investments, and that in the long run the parish would be better served by retaining the pictures, the increase in whose capital value is likely to outstrip a money fund comprising the proceeds of sale. It is also suggested that the current climate of austerity is unlikely to be a favourable time in which to sell works of art. Against that it will be noted that the advice of Sotheby's has been sought and, among other things, they have commended a period of at least twelve months during which further work will be undertaken to establish definitively that these pictures are the missing panels from Arezzo cathedral and attributable to Aretino, and to generate international recognition in the art market.
17. It is obvious to me that the petitioners have taken appropriate professional advice at all stages of this process and I can confidently predict that they will continue to do so. By placing the pictures with Sotheby's, their value is likely to be enhanced whether or not they are ultimately sold. Whilst the art market can be seen in certain circumstances as an 'inflation proof investment', assets which are tied up in works of art cannot be put to use. Although their capital value might rise, they produce no income. It is a matter of judgment whether the time has come for the capital asset to be realised so that it can begin to benefit the parish, and even if a faculty is granted, the sale – if it happens at all – will take place at such time as is considered most propitious by the PCC acting on professional advice. Even a nest egg will have to hatch at some time.
18. *Failure to reach reserve:* The point is raised that if the pictures do not reach their reserve price, then the parish will be lumbered with their future custodianship and the heavy cost of insurance. It is recognised that they are too valuable to be put back in the church. I consider this to be a remote contingency, and were it to arise the likelihood is that Leeds Castle would have them back on the same terms. Certainly the correspondence indicates reluctance on the part of Leeds Castle to see them go.
19. *Professional fees and capital gains tax:* Any sale at any time will give rise to ancillary costs. I am confident that prudent petitioners will ensure that every possible CGT advantage is taken by dint of the charitable status of the PCC, and I note that Sotheby's has generously agreed to restrict its commission to 2%, being a substantial discount on its usual commercial rate.
20. *Effect on parochial giving:* It is suggested that were the parish to sell this substantial asset, then the regular giving of the parish, and the particular giving for special appeals, would cease or diminish. Reference is made to fêtes, bridge parties, quiz nights etc. Concern has also been expressed that were the sale to take place, then the size of the parish quota would increase with higher demands from the diocese. The latter possibility can properly be discounted, not least because this parish has been diligent, and arguably sacrificial, in meeting its parish share; and the former is a question for subjective judgment. It is arguable that parishioners might be more generous if the PCC demonstrates prudent and pragmatic husbandry of its own resources.

21. *Division within the parish:* Although expressed in different ways, the writers of the letters all suggest that were the paintings to be sold, there is likely to be a rift in the parish, which would be unpleasant and, perhaps, unchristian. However much we strive for the consensus paradigm, legitimate differences of opinion do exist and not every decision can be unanimous. I am heartened by the honest and respectful way in which opposing views have been expressed within the current faculty proceedings and consider that although there may well be disappointment in some quarters if the paintings are sold, it will not lead to alienation or loss of goodwill.
22. *No dire financial need:* It is said that there is no desperate financial emergency in the parish, and that other methods of fund raising should be adopted before the paintings are sold. The resurfacing of the churchyard paths, for example, is a recurring maintenance item, the cost of which should be spread over a number of years. The organ overhaul might be the subject of a discrete fundraising appeal. Restoration of the Lady Chapel altarpiece is not urgent. I shall return to this aspect of the case in greater detail later in this judgment.
23. *Inappropriate use of proceeds of sale:* At least one letter refers to questionable motives for the sale, such as help with community projects, repair of Withyham rectory and the provision of a stipend for a resident priest. There is force in these arguments, although there is no evidence before me as to terms or conditions which attached to the original gift of the paintings to the church. In the event that a faculty is granted, conditions can be imposed as to how the proceeds of sale are to be held and utilised.
24. *Lack of consultation/congregational decision:* It is clear to me that the muted criticism of the PCC for failing to consult is misplaced. The parish priest prepared and circulated memoranda at various times as I have recorded above, and that he was a little circumspect in dealing with the parish's finances is understandable. Decisions concerning the fabric, content and finances of the parish church are properly for the PCC to make and not the wider congregation. The PCC is elected annually and has clearly defined statutory functions under the Parochial Church Councils (Powers) Measure 1956.

#### The law

25. The law relating to the disposal of church goods was revisited relatively recently by the Court of Arches in *Re St Peter's, Draycott* [2009] Fam 93; [2009] 2 WLR 248, Cameron (Dean) sitting with Gage and Bishop Chs. That case concerned a proposal to dispose of a font to a private collector who had offered £100,000 for its acquisition and a further £10,000 for an exact replica to be fabricated and installed. The Court of Arches reversed the decision of Briden Ch at first instance granting a faculty for the disposal of the font. The appeal court's reasoning was (i) that the font was in regular use; (ii) that it was the only item of aesthetic value in the church; (iii) the petitioners had failed to adduce sufficient evidence of financial emergency.
26. The following principles can be extracted from the caselaw, all of which were reaffirmed by the Court of Arches in *Re St Peter's, Draycott*:
- i. a good and sufficient reason must be proved before any faculty is granted: *Re St Gregory's, Tredington* [1972] Fam 236 at 240;
  - ii. the onus of proof lies on the petitioners: *Re St Helen's, Brant Broughton* [1974] Fam 16 at 18;

- iii. the jurisdiction should be sparingly exercised: *Re St Gregory's, Tredlington* [1972] Fam 236 at 247 and *Re St Mary the Virgin, Burton Latimer*, 10 October 1995 (unreported) at p 7;
- iv. in the case of a sale of church property redundancy is one possible ground but it is not an essential ground nor is it the only possible ground: *Re St Gregory's, Tredlington*;
- v. the following, non-exhaustive factors, will be relevant to the exercise of the jurisdiction of the Consistory Court, although the result of each case will depend upon its particular facts:
  - a. the reason for the sale,
  - b. the proposed use of the proceeds,
  - c. the historical or artistic significance of the item,
  - d. the connection (if any) between the item and the church: *Re St Giles, Lincoln*,
  - e. the financial resources of the parish (as to which see paragraph 28 below for a fuller discussion);
- vi. a relevant fact indicating that a faculty should not be granted might be that the property is part of the heritage and history not only of the church but also of all the people, present and future, of the parish: *Re St Mary the Virgin, Burton Latimer*, at p 7;
- vii. provided the requirements of r 26 of the Faculty Jurisdiction Rules 2000 are satisfied, petitions for the disposal of church property may be determined on written representations, and the earlier indication to the contrary given by the Court of Arches in *Re St Gregory's, Tredlington* at page 246 (which pre-dated the Rules) is no longer good law, although there may be circumstances where a hearing in open court is desirable: *Re St Peter's, Draycott* at paragraph 35.

27. On the specific question of the resources of the parish, the Court of Arches in *Re St Peter's, Draycott* highlighted the distinction between 'financial need' on the one hand and 'financial emergency' on the other. However, that wholly valid comment needs to be read in context, falling as it does within paragraph 76 of the Court's judgment which provided a summary of the Court's reasoning in departing from the conclusion of the experienced Chancellor in the Consistory Court below. The paragraph in its entirety reads as follows:

We have reluctantly concluded that in assessing the weight of the petitioners' case of financial need for funds in order to carry out repairs, Briden Ch was too readily persuaded that this amounted to a "financial emergency". There is a substantial difference between "financial need" and "financial emergency". We regard the words "financial emergency" as meaning an immediate pressing need to carry out urgent critical work for which funds are not, or cannot be made, available. His view of the "financial emergency" then coloured his approach to the balancing of the points for and against sale of the font so that he did not put clearly into the balance all the factors in favour of retaining the font. He certainly affirmed that "the importance attached to the font within the listing is, however, a significant factor pointing towards its retention within the building". Additional factors are: (i) the font is part of the heritage and history of the church and of all who have been baptised in it; (ii) it was given expressly for the administration of the sacrament of Holy Baptism and has been in use for that purpose since 1861 and is not redundant; (iii) it is a fundamental feature and principal asset of a fine church; (iv) the proposal for sale arose out of an opportunistic offer by a collector and there is no evidence that it would have been pursued without that unsolicited offer; (v) the inevitable consequence of a sale at auction would be that the font would pass into private ownership and would no longer be accessible to the public; (vi) the church would be diminished in interest by the disappearance of a work of considerable architectural, artistic and historic importance. Consideration of these factors should, in our view, have led the chancellor to hold that notwithstanding their present lack of funds the petitioners had not discharged the weighty standard of proof required to justify the sale of the font.

28. I do not read the judgment of the Court of Arches as elevating the existence of financial emergency to a decisive or determinative status. On the particular facts of the *Re St Peter's, Draycott* case it was of some significance because all of the other factors strongly militated in favour of the retention of the font: the nexus between the font and the heritage and history of the church, the fact that it was not redundant and continued in regular sacramental usage, and that it was a fundamental feature of the church which would be adversely affected by its removal. It was the strength of these countervailing considerations which led the Court to criticise the Chancellor's assessment of the financial situation in the parish as part of the overall balancing exercise which he was undertaking. Were it to be otherwise, a cautious PCC would never be able to divest itself of any property unless it could prove immediate and dire financial emergency. This would be antithetical to the 'stitch in time' prudence in effecting repairs promptly before degeneration in the fabric causes the cost to increase exponentially. That said, the more compelling the reasons for retention, the greater the need for detailed scrutiny of the financial position.
29. I am fortified in this interpretation by a series of first instance decisions in recent years. In *Re St Columba, Warcop*, Carlisle Consistory Court, 21 December 2010 (unreported), a faculty was granted for the sale of a painting. Chancellor Tattersall QC, at paragraphs 39 to 41 relied on the following features: (1) that for more than 50 years the painting had been housed in Bowes Museum and that it had no significant connection with the church save that for some years it hung in the vestry; (2) that it had no significance in terms of the worship or other spiritual activity within the church; and (3) that the lack of any meaningful connection between the painting and the church was a sufficient 'special reason' to rebut the presumption against sale. His observations on the indebtedness of the parish were conditional, and expressed only 'if it were necessary for me to find that there was a financial emergency ...'.
30. In *Re St Mary, Grafton Regis* (30 June 2005, unreported), Coningsby Ch indicated that although in *Re St Gregory's, Tredington* both the redundancy of the object and a financial emergency in the parish had been proved, these two factors were not necessarily conditions precedent to be demonstrated in all such cases. Similarly, in *Re St Giles, Lincoln* (2006) 9 Ecc LJ 143, Lincoln Consistory Court, also concerning a faculty for the sale of a painting, Collier Ch commented that a chancellor:
- will not be fettered in the exercise of [his] discretion by requiring in addition to redundancy, evidence of dire financial need in connection with the repair of the church building which could only be resolved by the sale ... but will consider all the evidence and then exercise his discretion.
31. Collier Ch expressed the law similarly in *Re St John the Baptist, Stainton-by-Langworth* (2005) *The Times*, 26 May, a case concerning silverware which had been kept in a bank vault for upwards of fifteen years and had not been used in living memory. The Court of Arches in *Re St Peter's, Draycott* cited both *Re St Giles, Lincoln* and *Re St John the Baptist, Stainton-by-Langworth*, noting in paragraph 63 that in *Re St Giles, Lincoln* any connection between the painting to be sold and the particular church was 'virtually meaningless' and the painting was effectively redundant and, in paragraph 64, that the silverware was redundant and unlikely ever to be removed from the bank vault. The Court of Arches quoted with approval the statement of Collier Ch in the latter case that:

the more valuable the [object], particularly having regard to its artistic and historic value the weightier will need to be the reason before the court in its discretion concludes that it is a sufficient reason in all the circumstances to allow a sale.

It commended as correct what it described as Collier Ch's 'gradation of proof' and did not in any way criticise the chancellor's reasoning, determination or final order in either of the cases.

### Assessment

32. Applying the law as I have summarised it to the facts of this case, I have carried out the balancing exercise bearing very much in mind that the burden of proof lies on the petitioners and it is not easily discharged. I have had regard not merely to the high value of the paintings, but also to the fact that they are not currently in use, nor is there any realistic prospect that they will return to the church at any time in the future. I have come to the clear conclusion that in this case, all relevant factors point in favour of the grant of a faculty. I have particular regard to the following:
- i. that the pictures were not commissioned for the church but were introduced by way of gift relatively recently in the long history of the building having previously hung in the private household of the donor;
  - ii. that the pictures were not part of any decorative, artistic or architectural scheme in the church, nor were they integral to its aesthetic or general appearance;
  - iii. that the pictures serve no liturgical function or canonical requirement. They formed no part of the mission or ministry of the Church of England in the parish;
  - iv. that the pictures have been on permanent loan to a secular historic property for nearly fifteen years;
  - v. that the value of the pictures is such that the church could not afford to insure them were they to be returned, and in any event the conditions within the church are unsuitable for their continuing display and conservation;
  - vi. that there appear to have been no conditions attaching to the gift of the pictures;
  - vii. that good quality replicas now hang in their place in the Lady Chapel;
  - viii. that the DAC and CBC both commend the sale;
  - ix. that the grounds of objections in the various letters relate to the financial resources of the parish and not to the disposal of the pictures *per se*;
  - x. that although there is at present no dire financial emergency in the parish, in the sense that it already has to face an unaffordable liability for extensive works to the fabric of the church, it has demonstrated that it is only covering its continuing annual expenditure by digging progressively more deeply into its reserves. It has recognised that this is likely to continue and it has identified that prudent financial management can utilise the income and/or capital derived from the proceeds of sale to secure the financial future of the church for generations yet to come;
  - xi. that the precise timing of the disposal and the application of the proceeds of sale are matters which can be addressed hereafter once the principle of disposal has been judicially resolved. The granting of a faculty does not compel a sale, merely permits one to occur if and when the time is right and in circumstances most advantageous for the parish.

### Proceeds of sale

33. I turn next to the question of what is to be done with the proceeds of sale. The petition proceeds on the basis that the proceeds of sale are to be lodged with the Diocesan Board of



Finance as (effectively) custodian trustee with the PCC acting as managing trustee. The memorandum to PCC members dated September 2009 makes reference to the *Broadwater* judgment (presumably *Re St Mary's, Broadwater* [1976] Fam 222, Chichester Consistory Court) and to seeking advice from the diocesan secretary of another diocese.

34. To my mind, this is not a case where the DBF would ordinarily be involved as custodian trustee. Whilst the provisions of section 6 of the Parochial Church Councils (Powers) Measure 1956 automatically vest certain property in the DBF, this only arises automatically in respect of land and of personal property held on permanent trusts. The paintings would only be held on permanent trusts if such trusts were imposed when the gift was originally made. There is no evidence to this effect and thus, in my judgment, the paintings are simply part of the moveable goods of the church which are vested in the churchwardens and the provisions of section 6 of the PCC (Powers) Measure do not arise. Likewise, the Incumbents and Churchwardens (Trusts) Measure 1964, which makes similar provision in respect of property held by the incumbent and churchwardens on trust, are again of no application because the vesting provisions of that Measure also only apply to land and personal property held on permanent trusts.
35. The case of *Re St Mary's, Broadwater* (above) concerned a fifteenth century jousting helmet which was an accoutrement to a tomb in the parish church, although for many years it had been safely deposited in a bank vault. After a contested hearing, a faculty was granted and Buckle Ch ordered the proceeds of sale to be held by the DBF to apply the income in paying a stipend for a curate, which had been the parish's stated financial need precipitating the sale. Any excess was to be used for the PCC's general purposes or for what the DBF considered to be more useful pastoral work in the parish. The chancellor reserved to himself power to approve the application of capital, if required, for the acquisition of a dwelling for the curate.
36. It would appear that the determination of Buckle Ch as to the application of the proceeds of sale was founded upon the inherent discretion of the court: certainly the judgment makes no reference to any statutory or other authority. Chancellorian discretion, even that exercised by one of my distinguished predecessors in this diocese, does not create a binding precedent. Each case turns on its own facts. I tend to the view that parishes today have a greater autonomy than might have previously been the case. Where a parish exercises fiscal prudence, mindful of its contributing to the central costs of the diocese and the support of less fortunate parishes within it, it ought to be trusted with making wise decisions on the proper use and investment of proceeds of sale even of high value assets. There being no legal requirement to involve the DBF as custodian trustee, I consider that a more nuanced bespoke proposal can be put in hand for this parish which will meet its future needs, balancing both income generation and protection of capital. It would, of course still be open to the PCC itself to invest in CCLA/COIF managed funds, and in many ways such a course might be advisable. I do not, however, intend prescribing what any future proposal should be, but would envisage a proper trust with express powers of advancement and winding up, and not one necessarily bearing the name of Edward Ottley.
37. It is fair to indicate at this stage, however, that the court would need considerable persuading that the proceeds of sale should be applied in any of the following ways: repair or redecoration of Blackham Church or churchyard (since this is a different building and curtilage from those to which the paintings were given and for which any resultant benefit is

deemed to accrue); discharge in whole or in part of the incumbent's stipend (since this is an obligation which falls on the Church of England centrally); resurfacing of the access road to the rectory (since the gift was doubtless intended to benefit the church building not the rector or rectory); and general community works in the parish (since the paintings were given to the church rather than the locality). However, use of the proceeds of sale of the paintings in the discharge of legitimate objects would, providentially, release other funds of the PCC for some or all of the purposes which I have identified as not being appropriate.

38. In all the circumstances, I propose to reserve to this court any decision as to how the proceeds of sale are to be applied, and there is to be no distribution of the proceeds of sale, except as relates to professional fees and expenses, until such approval is given. I do so for two principal reasons. First, I recognise that the sale may not take place for some while. Sotheby's require several months in order to research the pictures and increase the level of familiarity in the international art market. Secondly, the economic climate is in a state of flux and the parish will need to take advice on when the most opportune moment would be to offer the paintings for sale, having regard to the respective return on the paintings themselves and other forms of investment. The parish's plans as to the use to be made of its capital and income may well evolve and develop in the intervening period.

39. I therefore order that a faculty pass the seal on condition:

- i. that the paintings are not offered for sale until further order of this court, such order to be given upon the petitioners or their successors having satisfied the court that the timing of the sale is prudent and the method of the sale is appropriate. If, as is likely, it is to be by way of sale at public auction, the reserve price is to be agreed by this court in advance;
- ii. that the proceeds of sale are not to be disposed of by the parish (save for professional fees and other expenses attaching to the sale) until the court has approved of how the capital and interest are to be allocated;
- iii. that the faculty is to be valid for ten years in the first instance, such period to be extended indefinitely upon application to this court.

I do not propose placing any restriction as to the terms of sale as suggested by the CBC since I am satisfied, for the reasons given by Sotheby's, that this might well result in the paintings not achieving the best price possible. As charity trustees, the PCC are obliged to realise the full value of any assets to be sold.

40. As with any other petition the costs, including the registrar's correspondence fee are to be borne by the petitioners.