

Neutral Citation No: [2021] ECC Lon 1

IN THE CONSISTORY COURT

Diocese of London

IN THE MATTER OF St James (Prebend St) Islington

-and-

IN THE MATTER OF FACULTY NO 3783

Proposed rebuilding of the church organ, involving its pipework being turned to face the nave, and associated structural alterations including a new loft deck with a cantilever platform, new concrete padstones, new steel beams, new joists and a plywood structural deck

-and-

IN THE MATTER OF

A Petition of Fr John Burniston, Isabel Nisbet and Hilary Roden (the Petitioners) and Objection by Eric Sorensen and Alastair Hume (Parties Opponent)

Judgment of the Chancellor

JUDGMENT

Etherington Ch:

1. I was asked by the Diocese of London in my capacity as Chancellor of the Diocese of Norwich to determine a petition for a faculty to rebuild the organ of St James, Prebend St, Islington, involving its pipework being turned to face the nave with associated structural alterations including a new loft deck with a cantilever platform, new concrete padstones, new steel beams, new joists and a plywood structural deck. I was asked because both the Chancellor and Deputy Chancellor of London were unable to hear the case for good reason. The rebuild involves reconstituting what is presently a pipe organ into a pipe organ with electronic enhancements: a hybrid, although retaining the majority of the pipework.

2. During the time in which a date for the hearing was being found, I became the Chancellor of the Diocese of London and I heard and have judged the petition in that capacity.
3. The faculty petition is contested. Eric Sorensen and Alastair Hume are both Parties Opponent. There are also other Objectors, whose views I have taken into account in reaching my decision.
4. With the consent of the Petitioners and the Parties Opponent I gave directions for the hearing of this petition to be conducted using a remote platform instead of face-to-face in the church or at some other physical location. The reason for this was to avoid on the one hand the unnecessary risk of both transmitting infection from, or being infected with, the Covid virus or facing unacceptable delay in waiting for a time when a normal face-to-face hearing became possible on the other.
5. I am grateful to the parties for the constructive way in which they have approached the hearing, notwithstanding the fact that they have very different views as to whether this faculty should be granted. In particular, the summarising of their respective arguments in skeletal form has been very helpful to the court.

THE PARTIES

6. The petition is dated March 3, 2020. The Petitioners are the vicar, the Reverend John Burniston, and churchwardens Isabel Nisbet and Hilary Roden. The estimated cost of the proposals is £230,000 – including a 10% contingency. The Parties Opponent are Eric Sorensen and Alastair Hume. Eric Sorensen resides within the ecclesiastical parish, is on the electoral roll and worships at the church. His wife, Susan, is an Objector, a member of the Parochial Church Council, and indeed its treasurer. Alastair Hume also resides within the ecclesiastical parish, is on the electoral roll and worships at the church. He is the assistant PCC treasurer. They are trustees. Both Parties Opponent and Mrs Sorensen clearly have the requisite interest allowing them to be Parties Opponent and an Objector respectively.
7. Andrew Brownell has written a letter questioning the proposals. His association with the church is historical and he now lives in the United States of America. He was the organist for four years so I have had to consider whether he has a sufficient interest to object to the proposals.
8. The Faculty Jurisdiction Rules 2015 (as amended) defines an “interested person” at Rule 10.1 (1). Mr Brownell is clearly not within Rule 10.1 (1) (a) to (g). I have a residual discretion under Rule 10.1 (1) (h) to admit as an Objector anyone who appears to me to have a sufficient interest in the subject matter of the petition.
9. Mr Brownell is entitled to have some interest in the debate about the renewal of the organ, which is hardly surprising given he was the organist there for four years. I find, however, that he does not have a “sufficient interest” in the subject-matter of the petition. He has not explained any present connection with the church or the organ and he resides abroad. Some of the matters he raises will be considered in any event

because they are clearly part and parcel of the issues relevant to the case. He is obviously entitled to deny views wrongly attributed to him and I have noted his observations in that regard. I decline, however, to use my residual discretion to admit or treat him as an Objector.

10. Nicola Stanhope objects to the cost of the proposals and, as a resident in the ecclesiastical parish and an elector on the electoral roll for the church, as well as having family connections with the parish, she plainly has a sufficient interest. I will take her views into account.
11. Mark and Nora Hodge are longstanding members of the congregation and clearly have the requisite interest. They dispute whether, first, the organ as proposed is needed and, second, whether the cost can be justified. I shall take their views into account. Both of these issues are additionally at the centre of the objections of the Parties Opponent.
12. Vera Taggart is a member of the Parochial Church Council (PCC), the electoral roll officer and the Deanery Synod representative. She objects to the proposal. She agrees that a sum capped at £100,000 would be justified to restore the organ but believes that so much money should not be spent on one project and that money should also be spent on addressing the church's climate responsibilities. I shall take her views into account.

THE PETITIONERS' CASE

13. The proposals in respect of the organ are the conclusion of a period of works which have included lighting changes and the provision of a new sound system together with WC facilities and a small kitchen area. The Petitioners say that these works caused controversy at the time but are now both accepted and appreciated: see https://www.ecclesiasticallawassociation.org.uk/judgments/reordering/islington_stjamestheapostle2016ecclon2.pdf.
14. There is unanimity that the organ is in need of renovation. The present organ is a pipe organ built by Gray and Davison in 1885. They were large-scale manufacturers of church and cathedral pipe organs. The Petitioners say, and it was not disputed, that two rebuilds in 1937 and 1989 had certain unfortunate consequences. The 1989 rebuild was also of historical interest because it was made possible by the last direct funding from the Clothworkers Company before it relinquished its patronage of St James' in the same year. The first rebuild by Monk and Gunther introduced an electro-pneumatic action. Hill, Norman and Beard were responsible for the second rebuild which made more fundamental changes. The Petitioners say that this primarily increased the volume at the west end of the church, introduced undesirable tonal effects and was apparently influenced by a particular fashion prevalent at the time.

15. The Petitioners say that plans to renovate and rebalance the organ have been actively pursued since 2013 and they say they have taken the opinion of a number of first-class organists and others.
16. Their petition has several objects: to fulfil the church's responsibility to care for this organ, to ensure the church has the best organ it can reasonably afford, to have an organ which can properly support the congregation at Sunday worship and an organ that will be more attractive to visiting musicians, singers, choirs and small to medium-sized ensembles.
17. The proposals were evolved by a sub-committee appointed by and including the vicar. It is said that the work would begin as soon as the faculty is granted and last for 7 months.

The Church

18. The church was built in 1875 by the Clothworkers Company (itself founded in 1528) on a plot of land owned by the Company. It is a small church, partly because of the size of the plot and partly because of financial limitations at the time.
19. It is not a listed building and whether it will or may be in the future is not a matter of present interest or concern to the court.
20. The church has a long history with the Clothworkers Company, its former patron. Relevant to this case is a legacy left to it. William Lambe was Master of the Clothworkers in 1569-70. A bust of Lambe, bearing the date 1612, stands above the (internal) west door of the present church. St James' Islington, was built in 1875 by way of replacement for Lambe's Chapel which had its origins in a pre-reformation chapel purchased by Lambe in 1542 following the dissolution of the monasteries.
21. The church was a modest building which had no organ at its creation, relying instead on a harmonium for instrumental accompaniment. The church still benefits from the Lambe Trust for the repair and maintenance of the building. That trust is now a sole trust under the control of the London Diocesan Fund. St James' has a relatively young congregation and has in recent years made music a key part of its mission. Numbers at Sunday services are estimated to be around 45 congregants.
22. It has an interesting, if somewhat quirky, interior. There has been reference in the papers to a possible adverse effect on its interior by rotating the organ, although this was not pursued in the oral hearing. I will consider whether this a genuine issue later on in this judgment.

The Petition

23. The petition is supported by a majority of the PCC but opposed by a minority who include the treasurer and assistant treasurer of the PCC, namely Mrs Sorensen and Mr Hume.
24. Consideration of the future of the organ has been ongoing for approximately ten years. Since nobody disputes that the organ is in need of refurbishment, I am not

going to analyse every step in this process but concentrate on the period 2017-2019. The important issues have been the location of the organ, the consequential issue of volume, the question of its tonal quality and the significance of the organ in the musical life of the church. All of these issues are contentious.

25. The chosen builder is Modular Pipe Organ Systems Limited (“MPOS”) and the director with principal responsibility for the work is Paul Mortier who gave evidence at the hearing. The choice of MPOS is also contentious and at the heart of this dispute is the failure to seek a tender from Tarquin Wiggins of Tarquin Wiggins Limited, a company that builds, restores, tunes and maintains pipe organs until too late on in the timetable imposed by the PCC. Mr Wiggins maintained the St James’ organ for some 17 years.
26. Allied with the choice of builder is the cost of the works. MPOS has offered to complete its part of the works for a sum substantially in excess of that put forward by Tarquin Wiggins in his outline proposal. There is no suggestion that for what MPOS is proposing, the tender is inflated in any way. The real issue, again contentious, is whether the church needs the works proposed by the Petitioners.

The Role of the Court

27. It is beyond doubt that a faculty is required for alteration to the placement and workings of an organ such as this one. Organs can be the most costly objects (both to purchase and maintain) in a church.
28. The faculty jurisdiction is one which generally deals with whether or not to permit something. It is not its function to manage churches or instruct PCCs as to how they should spend money. So, for instance, whilst I understand entirely as an individual what Vera Taggart says in her objection, that the money would be better spent on reducing the church’s carbon footprint, it is not my role to make those kind of decisions for the church unless, of course, the PCC is proposing heating improvements or the like, when I might well consider imposing conditions to help achieve the least damage to the environment. I should also add in fairness to the Petitioners that they say that at this present time the money could not usefully be spent in that direction in any event.
29. The issues that are within the court’s purview in this case are (i) the allegation that the processes resulting in the selection of MPOS were so flawed that I should intervene either to refuse the petition outright or adjourn it whilst a new tender process takes place (the “process” objection) (ii) the allegation that the church does not need the organ proposed and that the Petitioners are either being disingenuous in suggesting the contrary or so mistaken that the court should intervene (the “need” objection) and (iii) the allegation that the cost of the proposals is so far beyond what is necessary that I should refuse them in their present form (the “cost” objection). There is an obvious overlap between (ii) and (iii).

THE PROCESS OBJECTION

30. Alastair Hume complains that there was no competitive tendering bid as the three principal bids were not comparable as the specification for each was different. Eric Sorensen, who also has this objection and additionally possesses considerable experience in the field of project management, points out that the costs in each proposal varied very widely.
31. Mr Hume further complains that the church's incumbent organ builder was not invited to bid for the work, as is customary. Eric Sorensen also makes this complaint.
32. Finally, in respect of process, Mr Hume says that there has been a lack of clarity as to the cost of the MPOS proposal with different sums being given at different points. Eric Sorensen also makes the same point.
33. Eric Sorensen adds that there was no guide to the PCC or congregation as to benchmark costings.
34. Both Messrs Hume and Sorensen would wish the tendering process to be reopened to permit Tarquin Wiggins' tender to be considered by the PCC.
35. The Petitioners respond by saying that the proposal is the culmination of a long period of discussion involving numerous PCC meetings and 3 congregational meetings.
36. They accept that their understanding of what was required evolved over that period. Some options were explored and then dismissed.
37. They say the process has been handled impartially with the intention of seeking the best option for St James'.

Introduction

38. I have considered the witness statements and exhibits placed before me. I also directed that the parties prepared an agreed understanding of what figures were referred to in the documentation and discussions and what they represented. I am grateful for this. There was cross-examination of the vicar on this issue and it seemed to me to be the best way of avoiding confusion.
39. I have decided in this judgment essentially to consider the position post-2017 when Dr Christopher Batchelor reported to the PCC and the pipe organ quotations had been obtained. I will consider how the MPOS solution re-emerged and examine the issues surrounding Tarquin Wiggins.

The pipe-organ options

40. By 2017, it appears to me that there was general agreement that the existing organ should be retained and that any options of replacing it were no longer being actively considered. I also accept that there was unanimity that the organ had to be refurbished in a significant way because it had developed problems that needed rectification. The nature and extent of them varied according to who examined the

organ and some opinions necessarily had a subjective element. This is not unusual. I have read a number of observations by organists and advisers and, on the balance of probabilities, I am satisfied that the current location of the organ causes some real issues with both volume and tone as well as a degree of inconvenience to organists and musical performers.

41. There is disagreement between the parties as to the degree of problem posed by these issues of tone and volume and to the way in which any such problems could be solved.
42. The approach of seeking quotations for different degrees of refurbishment and enhancement with which Dr Batchelor was connected is in my view an entirely reasonable way to proceed. Whether that can then be further progressed to a competitive tender of the specific refurbishment chosen may depend on which option has been preferred.
43. Tenders were received from Nicholson's of Worcester and FH Browne from Canterbury. The Petitioners then explored again the option of a combination organ, which became their chosen course. Dr Batchelor was unable to continue as their adviser because, as I understood it, his own professional body is concerned only with pipe organs and he was its immediate past-chairman. I understand entirely why consideration of a combination organ precluded his further involvement. Thereafter, the vicar and his sub-committee sought advice and assistance from Rhidian Jones as its consultant. Mr Jones is an experienced organist and regularly accompanies the Cantallini Chamber Choir which sings at St James'.

The four levels

44. The Petitioners had previously divided the options into four categories. These, and their respective costs, were set out in a booklet distributed for the congregational meeting of February 3, 2019.
45. The cost of simple replacement of the electronic interface was described as Level 1. Its cost was said to be £20,000. There is no mention made of Value Added Tax (VAT), but, in any event, this option was clearly never going to be adopted by the PCC as it could never have answered the needs of this organ.
46. The Nicholson solution was described as Level 2. This would have involved refurbishment and repair of the organ *in situ*. In the view of the Petitioners this would not have answered satisfactorily the issues surrounding sound and tone (too loud, too shrill) and some of the issues facing an organist playing in its present location, which were mentioned both in the papers and orally in evidence. The cost was said to be approximately £105,000 plus VAT.
47. The Browne option was described as Level 3 and was put at approximately £200,000 plus VAT. This was a more sophisticated solution and did include rotating the organ so that it spoke more directly to the congregation by facing the south aisle. I am not

entirely clear as to whether the additional works necessary to achieve the rotation were included in this quotation.

48. The MPOS option was described as Level 4 and was said to be some £162,000 plus VAT, which, by my calculation would be £194,400. In the petition it was described as being £200,000 with a £20,000 allowance for unexpected costs. The Parties Opponent argue the correct figure is £209,000 plus an allowance for overrun. I do not think much turns on the allowance for excess costs, particularly as some allowance for additional expenditure would need to be made with any proposal that was finally adopted and any proposal ought to factor that eventuality in at some stage. Details of the structural works necessary to turn the organ successfully were definitely not included in the information to the congregation because the vicar said so in his evidence. They were not included on the faculty petition either, but the position has now been rectified to a certain extent in evidence at least as regards its maximum cost.
49. An option put forward by David Wells coming in at a likely £400,000 (inclusive of VAT) was the most costly and rejected as being too expensive.

Tarquin Wiggins

50. In my judgment, a good deal of the unhappiness that has been caused by the proposals has crystallised around the failure by the Petitioners, and particularly the vicar, to ask Mr Wiggins if he wished himself to tender and I found some of the evidence as to why this happened had inconsistencies. I shall need to set this out in some detail. In the final analysis, however, I also have to decide whether this failure has damaged the tendering process and, even more fundamentally, whether I should compel the Petitioners to consider his proposals, even at this late stage, when a clear majority of the PCC has already decided to adopt the MPOS solution.
51. Mr Wiggins maintained the existing organ for the church as already stated over a period of seventeen years and would know its virtues and vices as an instrument.
52. I accept the vicar's evidence given during the hearing that the real reason why he gave no thought to Mr Wiggins was that he had not considered him to be a builder and restorer as opposed to a maintainer of organs and the person responsible for ordering their proper tuning. He was cross-examined about whether additionally he had sought to denigrate Mr Wiggins' abilities as someone who could carry out the kind of refurbishment being contemplated at St James'. He denied this vigorously. I accept that by the time of the hearing he certainly appreciated that the evidence about Mr Wiggins clearly showed that any denigration of his abilities would be wholly misconceived given the very favourable references about him and his work that the Petitioners have exhibited. The Petitioners do, however, maintain their position that the references relate to works different in scope and complexity from those they are requesting.

53. The vicar said that what, in my judgment, a reasonable person might well construe as being his poor view of Mr Wiggins' abilities in the wider field of organ building as emanating not from his own personal knowledge but rather from his recollection of a conversation he had with Dr Batchelor in which his understanding of what Dr Batchelor had said to him about Mr Wiggins became what he, the vicar, wrote about Mr Wiggins – in other words, not the vicar's personal view, but that which he understood to be Dr Batchelor's view. Dr Batchelor denies absolutely that he said anything dismissive of or derogatory about Mr Wiggins.

54. This is the relevant evidence:

- a. On January 29, 2020 the vicar wrote to one of the Parties Opponent, Mr. Alastair Hume. He included in it a quotation from a note he had sent to Eric (Sorensen) who is the other Party Opponent the day before. The quotation included this observation about Tarquin Wiggins: *Tarquin Wiggins: Whilst it is true that Tarquin has been tuning the organ at St James' for many years, Christopher Batchelor (ex Harrison and Harrison of Durham) was pretty dismissive of his skills in doing anything more. Whilst it is true that he has re-arranged some organs in the area over the last ten years, the work is generally not well-regarded and Christopher Batchelor (whom we recruited on the advice of Alastair) was quick to dismiss his name as a serious contender for the work here.*
- b. Alastair Hume exhibited a response from Dr Batchelor which read: *...it has been suggested that I said that Mr Wiggins was incapable of doing anything other [than] tuning an organ. This is not the case. I have to say I have never inspected or played any of Mr Wiggins' work and I would not make a qualitative judgment from such a position... from my first meeting at St James', it was clear that Mr Wiggins no longer tuned the church organ and that any relationship between him and the church had ceased. I think Mr Wiggins had moved to the south west, but that need not have precluded him from undertaking any proposed work on the organ. In most instances the resident organ builder is asked to tender for upcoming work, but at this juncture nobody was in-post. The vicar did not suggest Mr Wiggins and over the following weeks we arrived at a list of three organ builders including Browne's of Canterbury, David Wells of Liverpool and RS Young of Rugby, the last being known to the vicar. Dr Batchelor also wished to emphasise that it was not his idea to rotate the organ. He explained that as Managing Director of Harrison & Harrison, organ builders, he had made such suggestions on several occasions but that on this occasion the advice did not come from him and that the vicar had stated it was his own idea. In a separate email to Isobel Nisbet, one of the Petitioners, Dr Batchelor confirmed the gist of his understanding about Mr Wiggins as set out above and added: *...when I arrived on the scene, a committee was in place, Mr Wiggins had not been**

invited to tender, Nicholson's had submitted a report and there was a desire to update the organ significantly, possibly with digital stops, and perhaps a whole division. I provided a report at the behest of the vicar and went on to request a report from FH Browne, Richard Young and David Wells. The situation was far from ideal, with Richard Young withdrawing from the project and David Wells quoting a high price, leaving FH Browne and Nicholson's. There was a shift towards an instrument with significant digital dimensions and at that point, in my role as Past President of the Institute of British Organbuilding, I left the project.

- c. In evidence, after being pressed in cross-examination, the vicar said the explanation was that he had never really thought of Mr Wiggins as an actual organ builder and also thought he had retired from his work as an organ tuner.
- d. This was as a result of a letter received by the vicar from Tarquin Wiggins on August 5, 2018. It is on headed notepaper of TARQUIN WIGGINS LTD which states underneath "Pipe Organ Builders and Restorers, Tuning and Maintenance". In the letter Mr Wiggins says: *as you may know, in May last year we moved to Ross-on-Wye and I have been looking for a company to take over my tuning and maintenance business.* He then explains that due to the considerable goodwill etc over the years he has been looking to find an organ builder/tuner to take over his work for the church and recommends a particular company. He says: *I have not sold my business to them, but am putting you in touch with each other, because I know their craftsmanship will ensure that the instrument is maintained to the best possible standards...Thank you for the trust you have put in my company. I will greatly miss coming to visit, but have very much enjoyed working for you over the years.*
- e. Whilst it appears that it was the tuning and maintenance work that Mr Wiggins was giving up and not his building/restoration work and whilst of course he had no need to make that clear beyond doubt given the purpose of his letter, I can see how the vicar might have interpreted this letter and the move to Ross-on-Wye as an effective retirement from his London work and perhaps his work altogether. This was an unfortunate misunderstanding, but no-one's fault. Given the other evidence, I do not judge it to be the principal reason he was not asked to tender, but it would have tended to confirm any view the vicar had already formed that there was no point asking Mr Wiggins for a quotation.
- f. The Parties Opponent have submitted a number of references and examples of Mr Wiggins' work and, indeed, John Norman, who was called as an expert witness by the Petitioners in his role as an organ adviser (giving evidence in his own right and not on behalf of the Diocesan Advisory Committee – "DAC")

said that he had known Tarquin Wiggins for many years and was acquainted with his recent work at St Luke's, Enfield and also his work at St Mary's, East Barnet (diocese of St Albans) and St Clement's, King Square. John Norman commented that, like all organ builders, there are some things that Tarquin is good at and some that are not really his speciality or for which he has not been trained. He also adds that whilst Mr Wiggins is not currently accredited by the IBO, he may not have chosen to apply.

- g. There were references from those who have used Mr Wiggins, saying they had *always been completely satisfied with his work* and spoke of his *offering a clear programme of work at a competitive price with a clear timescale* and completing the major works *in a timely manner and [to] an excellent standard*. There were further highly complimentary references. I have also read the Project Evaluation Report in respect of St Luke's Enfield describing the project as *a resounding success* together with a reference in respect of those works speaking of Mr Wiggins in glowing terms.
- h. Mr Wiggins is not required to prove anything to this court but it is right that I place on the record that I am sure from the evidence that he is an organ builder who produces excellent work and from all reports is a person with whom it is easy to work and who completes what he has agreed to do on time and within budget. Dr Batchelor has not given evidence but, even from the correspondence, I am satisfied that Dr Batchelor would not have dismissed his work or reputation. Dr Batchelor explained in the correspondence that he had never inspected or played any of Mr Wiggins' work. It is acknowledged by everyone that Dr Batchelor is a distinguished, respected and experienced adviser.
- i. Having heard the vicar give evidence on this point, which includes, as with any witness in any hearing, assessing not only the content but also the demeanour of the witness, I find it probable that the vicar misinterpreted what was said to him and aligned it with an inaccurate view he had already formed that Mr Wiggins either did not do this sort of work or not at the level likely to be required.
- j. I take into account the custom of inviting the resident tuner or builder to provide an estimate which Dr Batchelor describes as *standard etiquette*. There seems to be an issue as to whether Mr Wiggins was the resident tuner at the material time but he certainly had been in the immediate past and for a considerable period of time. It clearly would have been courteous, at the very least, to invite him to tender at the appropriate time. I do not find, however, that a failure so to do would vitiate the tendering process unless there could be shown to be an improper (including dishonest or corrupt) reason for having omitted to ask him. I have not seen any evidence that would persuade me that this was the case.

- k. The issue I have to consider is whether it lies within the court's power in those circumstances to compel the PCC to consider further his outline proposal or indeed to allow him to provide a complete tender and, if so, whether I should exercise that power.

Like-for-like tendering

55. Apart from the issue of Mr Wiggins not being invited to bid for the contract, the second major issue raised by the Parties Opponent is that there has been no competitive tendering process for the work on the organ in that the three principal bids received were not comparable as the specification for each was different.
56. It is true that each of the bids represented three alternative ways of approaching the issue of how, and to what extent, the organ was repaired and refurbished. I accept the Petitioners' submissions that this was part of a long journey to reach a decision and one which went through a number of iterations. Projects vary in their ability to be open to competitive tendering in respect of their price. In some instances, such as decorating a house, the possibility of obtaining directly comparable quotations of price is easier to achieve. At the other extreme, commissioning a work of art or sculpture or an iconic building may be much easier to compare as different projects or visions carrying a certain cost rather than as directly comparable in a like-for-like analysis.
57. As the parties have found in arriving at their (different) positions, there are two parts to considering comparable costs: the cost of the particular project being considered and the comparable costs others might quote for the same work, if that is possible to ascertain. In this petition, the PCC chose the MPOS alternative and the evidence suggests that there was no other builder then with comparable expertise for the particular option finally chosen by the PCC.

The clarity of the respective costs

58. It would have helped when discussing the likely cost of tenders if those presenting the figures had adopted a uniform approach as to whether the figures were inclusive or exclusive of VAT. I accept that it was not an intentional device to give a false impression of costs, but when dealing with VAT that is not reclaimable in respect of large sums of money, comparing quotations which include VAT with those that do not can give a misleading impression.
59. In order to assess the significance of any lack of clarity in the figures and any shortcomings in the process as a whole, I have looked carefully at the PCC Minutes that have been submitted covering the discussions had by its members and its votes. It is necessary for me to rehearse what I judge to be the principal features of those discussions.

The PCC discussions

60. **The meeting of September 4, 2017.** This is a useful starting point as the vicar recapped the previous discussions. He reported on the condition of the organ and set out the likely steps necessary if the organ was to be restored. He referred to the Nicholson's quotation which he said was "nearly £150,000" which was higher than the actual quotation as I understand it, although that was clarified later. He suggested that another report be sought from an organ specialist and specifically suggested Walkers of Suffolk. He also suggested that a hybrid option should be further explored. Mr Hume, himself a musician of note, offered to contact Dr Batchelor to look at the organ.
61. **The meeting of November 27, 2017.** The vicar summarised his discussions with Christopher Batchelor and reviewed the options including that of turning the organ. Measurements of the present organ chamber were required to assess whether there would be space for some additional 16' reed pipes which were considered to be essential to the rebuild. This became a significant feature later on when considering the MPOS option. There was also a discussion about the William Lambe trust and for what this could and could not be used.
62. **The meeting of July 9, 2018.** The vicar sought permission to ask three organ builders to quote for the project. After discussion, it was agreed that the organ builders should visit to prepare quotations. The estimated date of completion was to be in time for the William Lambe festival in 2020.
63. **The meeting of October 24, 2018.** The vicar noted three reports received from three different organ builders and that the quotation from David Wells had been discounted as too expensive. Mr Hume wanted to know why the three quotes seemed so different from each other. The vicar said that all of them had received the same brief but had responded with different solutions. Susan Sorensen said the quotations all seemed very expensive and Alastair Hume gave six reasons why in his view the organ did not need an investment of this kind. Another PCC member reminded the PCC that Tarquin Wiggins, described as "our tuner", had warned that the transmission system might fail at any time. She said the decision was whether the organ should just be repaired or improved. Everyone agreed that St James' should continue to be a church that worshipped using an organ and that quotations should include a break-down of the different elements being suggested. Mr Hume raised a possible option of purchasing an organ second-hand. There was agreement that the congregation should be consulted in the New Year.
64. **The meeting of November 26, 2018.** The vicar said he had approached Paul Mortier of MPOS in order to widen the options for consideration and gave the PCC a copy of the record of Mr Mortier's visit on November 23, 2018. The vicar said he thought the cost of possible work by MPOS was likely to be less than the estimates from Nicholson's and Browne's. [In the event it was higher than Nicholson's and roughly the same as Browne's]. Susan Sorensen questioned whether such spending as was

likely to be involved was excessive simply to accompany Sunday worship. The vicar put forward his vision of the organ being used for different purposes supporting an enhanced musical mission for the church. He gave a number of examples of what he meant by this. The Minutes record that there was “general support for this vision” but that a “great deal more work on the development of the organ would be needed...”

65. **Meeting of February 20, 2019.** There had been a meeting of 20 members of the congregation and the vicar said there was “overwhelming support for retaining the organ”. He also reported a visit to Nottingham to hear a digital hybrid organ which had been useful although they were not quite comparing like with like.
66. **Meeting of May 23, 2019.** At this meeting Isobel Nisbet asked whether it would be necessary to tender for a second time as the proposal had changed slightly. This was doubtless a reference to the MPOS proposal. She said the recommendation of the diocese was not to invite tenders again as the diocese could not recommend a better provider. The outline proposal from Tarquin Wiggins had clearly been received by this meeting. Alastair Hume asked how the proposal from Tarquin Wiggins sat within the discussion. He rehearsed the arguments for considering it. The vicar said he (Tarquin Wiggins) had cared for the organ for many years but had not completed restoration projects on this scale before. A PCC member asked if Tarquin Wiggins was proposing something similar to Paul Mortier and Alastair Hume said the main difference was the digital enhancement and that Tarquin Wiggins’ proposal would be less disruptive, taking much less time.
67. There was discussion and some disagreement about how enthusiastic the congregation had been at the most recent meeting. Isobel Nisbet said it had come down to two points of view: whether to undertake a once-in-a-generation overhaul or whether the church needed such an elaborate instrument. Susan Sorensen thought people were intimidated by the complexity of the issue. The vicar thought the congregation was prepared to trust the judgment of the PCC working group and that he thought the choice was between doing the best that could be done or leaving bigger problems for future PCCs. He thought it was logical to spend a relatively small amount more substantially to improve the sound and flexibility of the organ. Susan Sorensen said she had tried very hard but felt it was a matter of conscience and she could not support spending such a large sum of money – over £200,000 – on a single instrument which she believed could not be justified. The vicar pointed out that the cost of restoring the organ without enhancement was still likely to be in the region of £150,000.
68. Susan Sorensen was also concerned that advisers about the proposal stood to benefit from it, but the vicar said it had been necessary to consult with Paul Mortier in some detail because no-one else in the country could provide the advice on the type of organ proposed and that the DAC had approved this approach and said the likely cost of the adaptation of the console together with renovation and rotation of

the pipework would be about £150,000 and that the digital enhancement would cost approximately £24,000. No-one asked whether this was inclusive or exclusive of VAT and no-one asked whether the cost of the rotation of the pipework included the cost of structural alterations to the platform.

69. Susan Sorensen said she thought there were further options (not just Tarquin Wiggins' proposal) that could be considered. Other PCC members re-iterated what is now the argument of the Petitioners for this proposal. It would appear from the discussion that the proposal from Tarquin Wiggins was substantially cheaper than all the other estimates but was only in brief outline at this stage.
70. There was a vigorous debate and Susan Sorensen said that with such large sums of money there should be a Resolution and said the PCC needed to decide whether it was committing to the precise expenditure. The vicar said he wanted to submit the proposal to the DAC on the understanding that it was still in a "slightly raw" form. The vicar proposed a Resolution that the MPOS scheme would be submitted to the DAC on the understanding the cost of the project would be up to £174,000 plus VAT [i.e. £208,800] with a contingency of up to 10% [i.e. £229,680]. Mr Hume put to the vicar in his cross-examination before me that the PCC had budgeted for an overall cost of £239,000 but the vicar said he was not familiar with that figure.
71. Susan Sorensen proposed an amendment that the PCC approve the repair to the organ subject to a cap of £100,000 which was VAT inclusive. It seems to me that this would effectively have killed the MPOS proposal and excluded all of the other full tenders unless the costs were significantly reduced, particularly if the £100,000 included an element for contingency costs.
72. The minutes record both that the amendment was rejected by 7 votes to 2 and that the vicar's Resolution was carried by the same majority of 7 votes to 2.
73. **The meeting of July 1, 2019.** This was held to confirm the vote on the previous occasion as it transpired that one of the papers had not arrived before the previous meeting with 7 days' notice. There was further discussion. Susan Sorensen confirmed that the William Lambe Trust had confirmed that the PCC could draw on the fund for all elements of the project as the organ formed part of the fabric of the building. The vicar announced that there was an additional cost which was the structural alterations required to turn the organ which were estimated at £20,000. The arguments of the previous meeting were either repeated or taken as read. There were a few additional points on both sides. Susan Sorensen tabled the amendment she had proposed from the previous month. The vote was closer on this occasion with 5 votes in favour and 4 against. On the substantive Resolution, the vote was again in favour by a slightly reduced majority of 6 votes to 3.

My conclusions about the process objection

74. The process objection featured prominently at the hearing as would have been expected. There were some mistakes made in the process as have been identified.

There has been some amateurishness in the presentation of figures, particularly in respect of whether VAT was or was not included, but I am satisfied that the PCC was in possession of the relevant information about other bidders by the time it voted and knew the likely cost of the MPOS scheme (Susan Sorensen herself refers to it as in being in excess of £200,000). The PCC also knew there were additional structural works to be completed and which may be covered by the contingency figure and essentially had to make an important decision as to whether to opt for the enhanced proposals urged by the vicar (which included turning the organ to face the south aisle) or opt for a repair and restoration which was somewhat less ambitious in its scope. I have avoided the characterisation that on occasion and with restraint each side used to describe the proposal they did not favour because it seems to me that both are perfectly respectable arguments.

75. The PCC considered this matter on two separate occasions and each time it did so after discussion and argument and by a majority of 7-2 on the first occasion and 6-3 on the second.
76. I do not consider that the failure to ask Tarquin Wiggins to quote for the works vitiates the process that was followed, even though it was discourteous, however unintentionally.
77. I have considered very carefully the request of both of the Parties Opponent for me to allow Tarquin Wiggins to put in a proper and detailed proposal and estimate at this late stage. This would mean adjourning my determination of the petition, possibly for some time, with reconsideration by the DAC and the potential for another contested hearing if the PCC decided to continue with the MPOS proposal.
78. In my judgment, this would not be an appropriate course to direct. The indication from the outline proposal is that Mr Wiggins' scheme would be another example of the more basic option favoured by the Parties Opponent and which has already been rejected by the PCC. Given that the proposed cost is substantially lower than even that of Nicholson's, this suggests to me that the proposal in detail must inevitably fall short of what the PCC has decided it wants. I should say for the sake of completeness that I was less impressed by the Petitioners' argument that there was no suggestion by any PCC member that Tarquin Wiggins should be considered until late on in the process because, whilst that is true, it was the primary responsibility of the sub-committee formed by and including the vicar to consider properly that possibility.
79. Second, whilst Dr Batchelor made clear that in most cases the resident tuner or builder is asked to tender if they wish to be considered for works on the organ for which they are or have been responsible, it is not a legal requirement.
80. Third, I do accept that the letter from Tarquin Wiggins to the vicar was taken by him to indicate that Mr Wiggins was retiring to Herefordshire.
81. Whilst I accept and respect that the Parties Opponent are and remain opposed to the MPOS proposal, given the likely decision of the PCC even after the submission of a full proposal from Mr Wiggins, and the fact that MPOS cannot be expected to

maintain its present tender indefinitely at the same price, it is my judgment that a good deal of time will be wasted without advancing the present position much further and with the distinct possibility of worsening it.

82. I also considered the objection from the Parties Opponent that there were no like-for-like estimates. I have already indicated why I judge that, given the way in which this proposal developed, like-for-like tenders in respect of the MPOS proposal were not realistic and may not have been for the purely pipe-organ proposals either. Each organ building company was submitting estimates in respect of their chosen solution. Although mention was made to the experts in the hearing as to a possible company or firm that did work similar to MPOS it was not actively pursued in light of the response. The Petitioners have said they were advised at the time that MPOS in effect occupied a unique niche in respect of the particular expertise and experience it has. I directed before the hearing that enquiries be made as to possible alternatives. The vicar said that Edward Dove (Organ Design Ltd) had now been contacted and gave a ball park figure somewhat larger than that of MPOS and the other company mentioned by Alastair Hume, which I do not think it necessary to name, appeared to have submitted its most recent accounts as a dormant company.
83. I have concluded, therefore, whatever the shortcomings of the process adopted by the Petitioners in this faculty petition, and there were some, they are insufficient to cause me either to refuse or adjourn it on that ground.

THE NEED AND COST OBJECTIONS

84. These objections overlap considerably and I am going to deal with them together.
85. I have read all that has been said by the Petitioners and the Parties Opponent in respect of both of these objections.
86. In brief, the Petitioners say that there is a desire to take a once-in-a-lifetime opportunity to correct the errors of approach they say occurred in the previous rebuilds, provide a better quality of sound and tone in the organ and improve the burgeoning connection between this church and music and musicians which itself is supported by the increasing significance of music in this geographical area, exemplified by the Islington Proms.
87. The Parties Opponent, on the other hand, contend that the proposals of the Petitioners are considerably more sophisticated than is necessary. They maintain that with proper refurbishment the organ can properly remain in its present position, perhaps with some additional arrangements, and that a perfectly acceptable sound can be achieved. They view the role the Petitioners' proposals envisage in establishing St James' more centrally as part of a musical centre as being over-optimistic and, as far as the organ itself is concerned, they also say that a digitally enhanced organ of the kind envisaged by the Petitioners would not in any event attract organists of the first rank.

88. I found the arguments of the Petitioners that were put forward by the vicar on the one hand and Messrs Hume and Sorensen on the other to be vivid, entertaining and focussed. I have thought back a number of times whilst considering my decision to the maintenance of classic cars in private ownership mentioned by one side and the vicar's reminder of a particular parable which I remember well from my days of R I 'A' level on the other.
89. As the hearing continued, I found myself remembering how the parable of the Rich Fool (Luke 12:16-21) is preceded by a person in the crowd trying to enlist Jesus' help in settling a family financial dispute (Luke 12: 13-14): "And one of the company said unto him, Master, speak to my brother, that he divide the inheritance with me. And he said unto him, Man, who made me a judge or a divider over you?"
90. At first sight, that may not seem applicable to this particular case since, clearly, I am a judge being asked to give judgment. Nevertheless, I have concluded that whilst some of the issues raised by the Parties Opponent are matters the Consistory Court should properly decide, others are really the business of the PCC and not for me.
91. One issue clearly for the court is whether the process leading up to the petition was conducted in such a way that I should intervene and set it aside. I have already stated that whilst it was not a perfect process by any means I do not find, in the final analysis, that it was defective or improper to the extent that the court should intervene.
92. Whether the church considers it has a need for the project proposed is in the first instance a matter for the PCC and the congregation. Some of the excellent arguments on both sides that I heard are issues between adults who are charged with administering the affairs of this church. The Parochial Church Councils (Powers) Measure 1956 imposes a duty upon the PCC to cooperate with the minister in promoting in the parish the whole mission of the Church – pastoral, evangelical, social and ecumenical. The PCC is responsible for the financial affairs of the church and the care and maintenance of its fabric. Every PCC is a charity because the advancement of religion is a charitable purpose under the Charities Act 2011. Those with an income of £100,000 or more are required to register with the Charity Commission and even those with a lower income, which do not have to register or submit annual returns, are in all other ways regulated in the same way as a registered charity.
93. When considering any alteration to a church, special considerations apply if the church is a listed building covered by the ecclesiastical exemption to listed building consent. Specific considerations apply in that instance which are set out in the leading case of *In Re St Alkmund, Duffield* [2013] Fam 158 (Court of Arches). The court must ask itself:

(1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historical interest?

(2) If the answer to (1) is “no”, then the presumption is to be in favour of the status quo but it can be rebutted more or less easily depending upon the nature of the proposals.

(3) If the answer to the first question is in the affirmative, it is necessary to ask how serious the harm would be;

(4) Then, it is necessary to assess how clear and convincing is the justification for the proposals;

(5) Generally, the greater the harm, the greater the benefit that will need to be demonstrated to justify the proposals and, importantly, in the case of a building that is listed grade 1 or II, if serious harm would result then the justification would need to be exceptional.*

94. This building is not listed. That does not mean, however, that any proposal, regardless of its effect on the building, is acceptable. In this particular case, I am satisfied, and nor was the contrary urged upon me as a major objection by anyone, that the organ rebuilding (including its repositioning) will not have any detrimental effect on the building as a whole and certainly not one that would justify my refusing the petition.

95. However, I must clearly make an assessment as to whether the proposals would have an unacceptable effect on the significance of the organ itself. The attitude of both the Petitioners and the Parties Opponent to this topic was somewhat ambiguous and I understand why. This Gray and Davison instrument sits in the scale of significance somewhat betwixt and between importance and irrelevance. No-one argued that it was of such significance as an instrument that the proposals should fail for that reason alone. There was no sustained argument that it should be got rid of altogether. Generally, the parties took a similar stance, saying that it was worth keeping, worth restoring and certainly worth maintaining. On occasions, both sides either elevated its importance somewhat on the one hand or were more dismissive of it on the other and sometimes the same witness did both, but I am satisfied that all the parties broadly accepted it should continue as the church’s organ and that it needed attention. Indeed, at times, I wondered whether a parable or fable concerning an argument about something which was the subject of so much disputation that it eventually degenerated beyond use to anyone might be apposite. Mr Wiggins, amongst others, has warned about particular aspects of this organ that on any view really do need urgent attention.

96. I considered carefully what the DAC and John Norman said about the significance of the organ. The DAC has recommended without reservation that I grant this petition. One of the issues it has considered is the importance of the organ as an instrument. In its written reasons for the recommendation, the DAC said:

At the October 2019 DAC meeting the proposal for the rebuilding of the organ and the turning of the pipework so that it faces the nave was presented to the Committee.

At that point, it was felt that the appearance of the completed organ would be unsatisfactory and the applicants should be asked to redesign the case. In December 2019 several DAC members visited the church to discuss the scheme in more detail and it was suggested that the design of the organ should be developed further and additional information submitted. Further information was submitted in January 2020 and when presented at the January 2020 DAC meeting the Committee were able to recommend the proposal. It was noted that turning the pipework would allow the player to be closer to the nave and allow more sound to be directed in more directions. It was also noted that the organ is not a particularly significant example by Gray and Davison, mainly due to the rebuilding that took place in the 1930s, and that nothing historic would be destroyed as part of these works.

97. In its written advice to me the DAC recommended the proposal. I have therefore concluded that there is nothing in the petition which indicates I should refuse this petition in order to protect the historic significance of the organ.
98. The Petitioners have at considerable length set out a range of reasons why they wish to seek permission for this proposal. They include the historic problems with this organ, the issues involving tonality and volume, the inconvenience to performers of the present arrangements and the wish to alter its positioning, the desire to increase the attraction of the church to musicians and to allow the church to take a greater part in the musical events which appear to be blossoming in this part of London and the opportunity, probably occurring only once in a generation, to rebuild and position the organ in a way which will maximise its contribution to the musical life of this church. The Parties Opponent say that the works as a whole are unnecessary and expensive and that alternatives which in their view satisfy the true needs of the church are or could be available. They are sceptical about the claims made by the Petitioners about the benefits to the musical life of the church and the contribution of that feature to the Petitioners' proposed scheme.
99. If I considered the proposals of the Petitioners lacked any merit or were irrational or were without justification, I would refuse the petition. However, if there are competing reasonable views about what should happen, the decision in my judgment is one for the PCC as to which scheme they choose, subject to the ability to pay for it (to which I will turn shortly) and provided there is nothing suspicious or improper in the estimate put forward by the chosen provider. If the DAC had not wished to recommend the proposal to me one way or the other or had positively cautioned me against it I would clearly have wanted to give anxious consideration to why this was. In this case, as I have made clear, the DAC positively recommends my granting of the petition. Indeed, it is clear that the Petitioners have involved members of the DAC in the development of the proposals and adopted suggestions made by it. Naturally, when individual members of the DAC make site visits and give their views or suggestions they do so in their capacity as individuals who are

members of the DAC and that is always made clear. It is the DAC itself which makes the final decision whether to recommend the proposals or not.

100. I come therefore to the evidence I heard from John Norman, who is the current organ adviser to the DAC but gave evidence before me as an expert witness in his own right, from Paul Wren who is the specialist consultant on electronic organs to the DAC and was also giving evidence as an expert witness in his own right and from Paul Mortier who is a director of MPOS, the organ builder for the proposed work. He, of course, was in part a witness as to fact but also an expert in the particular type of rebuilding and digital enhancement that is proposed.
101. John Norman explains in his written evidence that the concept of using loudspeaker-based technology to augment an existing organ was utilised between 1930 and 1960 but that the hybrid organ has struggled to achieve commercial success. In 2019 he advised that MPOS was then the only company offering this type of instrument. He says that more recently, Organ Design Ltd led by Edward Dove have marketed a similar technology but, as far as he is aware, it has not yet completed an installation. He agrees with the quotation in the Minute of the 2019 meeting at which he was present that it is desirable to *reconstruct the layout of the organ so that it speaks largely into the... aisle*. He goes on to say, having reviewed the history of the organ's alterations to date, that he does not believe the proposals will damage the artistic inheritance of the parish. He observed that, if at some future date the additional stops stopped working or were taken out, the organ would still be usable for its purpose. He thought that the 1990 console was a good example of its period and noted that the MPOS proposals included its retention.
102. When cross-examined by Mr Hume as to whether discontent had really been expressed about the present quality of the sound produced by the organ, Mr Norman said that he had heard comments to that effect.
103. Mr Wren in his written evidence says he has always felt there is a place for hybrid instruments. He observes that in the past, some churches have had to accept the limitations of a modest pipe organ or purchase a larger electronic organ when neither option was perhaps the answer. He also says that a problem with hybrids is that it usually meant employing two different companies to produce one organ with accompanying difficulties when there are any problems as to who was responsible for what. He says that in contra-distinction to that, Paul Mortier comes from a pipe organ building background but also has considerable electronic experience and so can undertake both aspects of the installation. He says that MPOS has a "significant portfolio" of such instruments both in this country and abroad that incorporate an electronic organ with additional pipe ranks. He has himself seen two such examples: at St Luke's in Sevenoaks and St Peter's in Nottingham. He had some concerns with these instruments due to their size and level of volume, but he found the "marriage" of the electronics with the traditional pipes and the quality of the work to be impressive.

104. As he pointed out, the proposal here is to enhance what will still remain essentially a pipe organ with additional electronic stops and he notes that the choice of digital samples to blend with the existing pipes, together with careful speaker placement and individual note regulation, will be the key to a successful and versatile instrument.
105. In cross-examination by Mr Hume he said that the organ at St James' is modest but voiced strongly. This made the tone harsh. Softening the sound would lose some of the impact and in his view modest expansion with electronics would benefit the quality and tone. Mr Hume observed that one person's 'harsh' may be another person's 'bright'.
106. Paul Mortier gave evidence last of the three witnesses. He was cross-examined by Mr Hume. My very clear impression of him was of a calm, competent and extremely straightforward person who gave his evidence clearly and answered questions asked of him thoroughly and with good humour.
107. In his written evidence he sets out his impressive professional background and explains from his pipe organ beginnings how he and four others founded MPOS to specialise in combination organs. He holds a Masters degree in electrical and electronic engineering. He completed advanced courses in signal processing and control systems. He undertook contract organ building for JW Walker & Sons Ltd (including at the Brompton Oratory and the Royal Hospital Chelsea), Peter Collins Ltd and Percy Daniels Ltd. MPOS has completed 14 combination projects worldwide, the most recent of which was for the Anglican Cathedral in Singapore in 2019. He charted the increasing utility of combination organs as the technology progressed with the particularly important development of allowing traditional pipe organ voicing to be applied to electronic instruments. He says, echoing Mr Wren, that for the final result to be as effective as possible the design, construction and voicing of both pipe and electronic parts should be carried out by the same team.
108. He had initial contact with the vicar in 2010 at the MPOS workshop which was in Norfolk at that time. He was then contacted by the vicar again in 2018 and visited St James' to listen to the organ and form an initial impression. His impression was that the organ sounded forced and overly loud in the chancel in order to provide sufficient volume in the nave. He says: *it seemed as though all the stops had been made loud, even those that should have been relatively gentle.*
109. He says he found that dynamic problems were made worse by the Swell box being of limited effect. He says: *the only 16' pedal stop is a quiet Bourdon buried deep in the organ so there is no solid foundation for the instrument.* He concludes that if the organ remains in its present location then these tonal problems will remain. His opinion is that the Great pipe work should be relocated into the nave in the south aisle allowing the wind pressure to be reduced which would maintain sufficient power for the nave without the sound being forced, allow the pipes to speak in the same space as the people singing (congregational singing at St James' is without a

- choir), create space in the chamber to lift up the Pedal Bourbon pipes so they can be heard more clearly and allow the arch from the organ chamber to the south aisle to be unblocked, permitting sound to come through.
110. He considered Dr Batchelor's report which noted that changes to the organ had left *even the most gentle stops quite loud* and also suggesting relocating pipework to the south aisle. His specification was refined over several months following discussion with the Petitioners, Rhidian Jones, who was advising the PCC after Dr Batchelor felt he had to withdraw, and John Norman. His final specification is not intended to make the organ louder but, rather to utilise such features as the additional stops to increase the control the organist has over the dynamics, particularly when playing quietly, making some improvement to the range of tones available. He also deals with the replacement of some mechanical parts of the organ necessary to address the tonal issues flowing from the relocation.
111. He says his aim is to consider *what stop specification, in which location, would meet the musical needs of the parish both now and [in] the foreseeable future, regardless of whether the stops are pipe or electronic*. He says that his approach is to think of the organ as a whole, incorporating nearly all of the existing pipework with a few additional stops. He says this *shows at heart there is a good instrument here that is severely undermined by some of its component parts and particularly by its present location*.
112. In cross-examination by Mr Hume, Mr Mortier told us that he was himself an organist. He said in respect of the Nottingham church (St Peter's), which had been visited by the Petitioners, that it was not a dissimilar situation to St James' with problems of sound and location and he explained the particular solution MPOS employed. He agreed that budget and space were usually the two main constraints together with how urgent the need was. Mr Hume commented that the Petitioners' proposal seemed to be a very big hammer to crack a very small nut. Mr Mortier's view on the tone was that because of the location, the organ was effectively speaking 'round the corner' and that this problem would always remain. Mr Mortier said it could sound much better. Mr Hume suggested it would be possible to make it reliable in its present location. Mr Mortier said he understood the point but that sound which could be beautiful was hampered by this speaking round a corner effect.
113. Mr Hume made the point that others could take a different view as to the requirement for St James' and Mr Mortier agreed. Mr Mortier pointed out that if the organ was turned to the nave where it could sing rather than shout, some of the pipework would not fit because of the slope of the roof and that required a particular solution to allow the organ to sound its best. He said that if the overriding wish was that the organ stayed where it is, then clearly different considerations would apply. He said he approached the problem from the point of view of producing the best sound from the organ. Mr Hume said his approach as a trustee was what did the church want the organ to do and what was the most cost-effective

way of doing it. Mr Mortier said that this was a decision for the parish. He said he understood what was wanted was both congregational singing and invited choirs and other performers. His aim was to make the best use of the existing pipework for the needs of the parish that he had been told about. He agreed it was for the parish and trustees to decide if that was a good use of the funds.

114. I put a question to Mr Mortier: would it in his view be possible to turn the organ to speak to the nave without the electronic enhancements. He said it was quite possible to do that without the electronic additions. He thought, however, that some of the electronic enhancements were necessary and referred back to the 16' pedal stop being effectively lost at present. Support for some of the deficient pedal stops would give the sound that was produced a proper foundation, "a good solid floor", and thereby give an unaccompanied congregation (ie without a choir) more confidence to sing. Some of the other additional enhancements would be useful to accompany a choir. He told me the electronic element accounted for around £20,000 to £30,000 of the cost.
115. In respect of need, I have come firmly to the conclusion that the Petitioners in what they have proposed for the organ have presented a perfectly rational argument supported, as the evidence shows, for the changes they have requested. The objectors are not large in number (although of course it is the quality rather than the quantity of any objections that matters) and this proposal has now been in the public domain for some considerable time. The arguments in opposition are also perfectly rational as the submissions in court have demonstrated. It is my judgment that in a situation like this, particularly when the church is not a listed building and the organ has no especial significance in its own right, the decision is for the PCC, having consulted with the congregation. I am satisfied the Petitioners did receive sufficient advice of quality in formulating proposals that the PCC was entitled to consider against the objections put forward particularly by Mr Hume and Susan Sorensen. In the end, the PCC agreed with the Petitioners' proposals by a clear majority on two separate occasions and I find no proper basis for the court to reject that decision. It is even less a matter for the court to say that the Petitioners should spend their money on some other project altogether.
116. The final element is cost. The figures I have used to inform my decision and judgment on this aspect are these. The MPOS proposal inclusive of VAT is, by my calculation, £208,800 which I shall call £209,000. There is a 10% contingency sum to be added on to this which makes the total £229,900 which I shall call £230,000. The vicar has been clear that the costs for the necessary structural alterations which he described rather elliptically as being "still in development" can be met from the contingency element. I would suggest the Petitioners finalise that cost of that element promptly and report it to the PCC. Since they say they are ready to proceed if and when permission is granted, they must be able to compute this reasonably easily.

117. Given the conclusion I have reached on the issue of need and the significance of the choice made by the PCC there are two remaining matters in respect of the cost. First, whether there is any reason to think that the MPOS quotation is unreasonable for what is proposed. That was not suggested to Mr Mortier in cross-examination and, given the range of quotations for the 'pipework alone' options, it does not seem to me that it properly could have been. The second question is whether the PCC has sufficient funds at its disposal to pay for what it wants to do.
118. I am satisfied it does have that money. A good deal of it (approaching £145,000 on my calculation) comes from the William Lambe Trust and I directed that enquiries be made to the diocese about its use for this project. I am grateful to Susan Sorensen for her help with this topic and Sarah Walters, LDF Trust Accountant, for her helpful information explaining that the William Lambe Trust is a sole trust belonging to the London Diocesan Fund. The view of the Trust is that the accumulated income of the William Lambe Trust (c.£142k as at 31 March 2019) can be used towards the full cost of the organ repairs, including the element of enhancement. The organ is considered part of the fabric and fittings of the church building and the cost of enhancing the organ is to allow the organ to be repaired to a state in which it is fully suitable for the current and future needs and ministry of the church. Additional funds have also been secured from savings in other areas and the Richard Cloudesley Trust.
119. I have not taken into account any views attributed to anyone about the propriety of St James' holding substantial assets and nor did the alleged content of such views influence my decision in any way.

CONCLUSION

120. I have concluded that, notwithstanding the arguments of the Parties Opponent and the views of the Objectors, the PCC was entitled to choose the proposal it has selected to resolve the longstanding problem of the organ at St James' church.
121. It is not everybody's preferred solution for the reasons set out in this judgment, but I have found no basis on which the court would be entitled to substitute a choice of its own for that of the PCC. No issues arise such as might in the case of a listed building although I have considered the question of the significance of this organ carefully. There are reasonable arguments on both sides as to what the needs and the vision of this church are and the PCC is the proper body to resolve them by making the choice as to how it wishes the organ to be repaired and renovated.
122. I am satisfied that the process followed in the end put the matter fairly before the PCC when it came to consider its final decision and, although I am critical of some aspects of how the information was initially presented, I do not think in the end that it constitutes the kind of irregularity that would justify the court either adjourning this petition or refusing it.
123. The cost is considerable and it is important that the whole PCC is kept informed throughout as to how money is being spent and whether there are any additional

costs that were unforeseen, particularly in view of the vagueness of the costs associated with the structural alteration which I am prepared to tolerate provided the PCC is given a proper estimate of these costs and they are constrained within the contingency element. I shall impose conditions to deal with this aspect.

124. I therefore order that the Faculty as prayed should pass the Seal with the following conditions:

- i. As soon as is possible, and in any event before works commence, the Petitioners must inform the PCC of the estimated costs of the structural alterations which must be accommodated within the contingency element of £21,000.
- ii. From the date this faculty passes the Seal until the conclusion of all works, the PCC is to be provided by the Petitioners at least quarterly with a written account of money spent on the works the subject of this petition. All figures must be inclusive of VAT.
- iii. And, in like manner to i. above, the PCC should be notified at least quarterly by a written financial risk assessment of any issue likely to result in the spending of any money in excess of the budgeted sum of £230,000 (including contingency) and set out how it is proposed that this money is to be raised. All figures must be inclusive of any VAT.
- iv. Any proposed spending in excess of £230,000 (inclusive of VAT) in respect of the works the subject of this petition must be supported by an affirmative resolution of the PCC and approved by the court prior to the spending occurring and will require an explanation of why such spending is deemed essential and how it is proposed to raise this money.
- v. The works the subject of this petition must be completed within 24 months from the date the faculty is granted unless permission for an extension has been granted by the court upon application by the Petitioners or the PCC before the 24 months has expired. The application must set out why such an extension is needed.
- vi. Failure to comply with any of these conditions will constitute a *prima facie* breach of the faculty.

125. In my view, because of the issues raised, particularly those relating to the integrity of the process, and notwithstanding the decision I have reached in favour of the Petitioners, it was proper for this petition to be decided after a full oral hearing and whether such a hearing had or had not been sought by any party, I would have ordered it in any event.

126. Costs of such hearings have to be borne by one side or the other and the law and practice of the Consistory Court is that they should be borne by the Petitioners unless the court is satisfied that the Parties Opponent have behaved so unreasonably that they should themselves bear all or part of them.

127. The Parties Opponent have not behaved unreasonably in any sense, either in contesting the petition or in wishing for an oral hearing. Indeed, in my view the opposite is the case. They have behaved reasonably and responsibly throughout and have opposed the petition because they genuinely believe the proposals to be wrong and because they have been troubled by some irregularities of the process employed in arriving at them. The same is true of the Objectors, although of course they could not incur costs in any event simply for registering their opposition. I was struck by Susan Sorensen's observation, recorded in the Minutes of May 23, 2019 that revealed the struggle in her mind and the care she had taken to give fair consideration to both sides of the argument before deciding that her conscience did not allow her to vote for the MPOS proposal. Her position was an entirely honourable one and I would not want her or any of the Objectors to think that in deciding the case in favour of the Petitioners I am in any way belittling their genuine concerns.
128. Accordingly, I order that the Petitioners, as the applicants, pay the costs of this hearing which doubtless will be met by the PCC. These costs will be taxed by the Registry at the prescribed rates within 3 months from the date the faculty is granted and the Petitioners are to pay them in full within 28 days of receiving notice of the taxation unless, during that same 28 day period, they challenge them in writing with the Registry and seek a review against all or part of them or seek and receive from the court any additional time to pay.

April 9, 2021