Neutral Citation Number: [2016] ECC Swk 13

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF ST JAMES'S CHURCH, KIDBROOKE

AND IN THE MATTER OF A PETITION BY REVD CANON KIM HITCH, RICHARD PHILPOT, JENNIFER ANDERSON AND NET COVERAGE SOLUTIONS LIMITED

AND IN THE MATTER OF

JUDGMENT IN RESPECT OF APPLICATION FOR SECURITY FOR COSTS

Introduction

1. This is an application for security for costs made by the Petitioners in this matter against the party opponent. The Petitioners request that the amount of the security be determined by this Court.

2. The petition is for the installation of twelve antennae and two dishes in the tower of St James Church, Kidbrooke and for authority for the incumbent and the PCC to enter a licence agreement for a term of twenty years with Net Coverage Solutions Limited in respect of the operation of that telecommunications equipment.

3. The Petitioners are the Revd Canon Kim Hitch, the Rector; the churchwardens, Richard Philpot and Jennifer Anderson; and Net Coverage Solutions Limited.

4. There is one party opponent, Miss Velma Lyrae. She considers that the installation will be harmful to her health and that of other local people. She requires there to be an oral hearing to consider her objection (i.e. she does not agree to the matter being determined on the basis of written submissions)[1]. Miss Lyrae is a litigant in person, although she had the assistance of a solicitor at the directions hearing (as to that hearing, see below). I have borne in mind in dealing with this matter that she will not be familiar with the procedures of the consistory court.

5. There was a directions hearing on 20 July 2016.

6. Anyone with a sufficient interest may object to the grant of a faculty. A person who considers that he or she may be physically harmed by a proposal will invariably be considered to have standing to object and, indeed, there has been no objection to Miss Lyrae's standing in this matter. However Miss Lyrae, or someone in her position, has a potential hurdle to overcome. In *In re Emmanuel Church, Bentley*[2], the Court of Arches made it clear that it would not normally be appropriate to refuse the grant of a faculty for telecommunications equipment if it met the standards for such equipment laid down in Government guidance and applied through the planning system. Accordingly, as long as a proposal meets such guidelines, it would not normally be appropriate for a Consistory Court to refuse a faculty for it.

---

[1] See rule 13.1 of the Faculty Jurisdiction Rules 2013 (SI 2013, No 1916).

[2] [2006] Fam 39.

7. If what is set out in paragraph 6 above is the general approach, nonetheless the Court of Arches envisaged that in a particular case a party opponent might be able to demonstrate by reference to scientific evidence that it would not be appropriate to grant a faculty[3].

8. The decision of the Court of Arches is binding on me.

9. It is very important for potential parties opponent to understand the position as set out above since if they elect to become parties opponent but do not call scientific evidence they could be at risk as to application for an order for costs by the Petitioners on the basis that they have not acted reasonably. The position was explained to Miss Lyrae in directions which I gave on 14 April 2016 and again at the directions hearing on 20 July 2016.

10. Miss Lyrae understood the position and explained that she proposed to call two witnesses, one addressing the health issue, the other dealing with matters relating to electrical engineering. I required her to serve copies of those statements by 4 pm on 16 September 2016.

11. The hearing was fixed for 21 November 2016, with a time estimate of three days.

12. On 15 September 2016 (that is, the day before the Reports were due), Miss Lyrae asked for extension of time for service of her experts' reports. I declined such an extension; a copy of the relevant directions is attached.

13. Miss Lyrae did not serve her experts' reports on 16 September 2016. Immediately upon that failure, the Petitioners made an application for security for costs[4]. This was against the background that Ms Lyrae had explained in her submissions dated 15 September 2016 that she was not in a financial position to pay to instruct experts and (although the Petitioners did not draw this to my attention) that she was relying on Social Security to live on.

14. The Petitioners say that the position we have reached appears to be that Miss Lyrae is still objecting to the grant of a faculty but that there is no possible basis on which I might properly decline to grant it. The Petitioners further point out that the statutory court fees for a hearing are £1082.40 per day on top of which there would be likely to be additional Registrar's fee and my fee for writing a judgment; so that the total court fees on the basis of a three day hearing would be likely to exceed £4,000. Further, the Petitioners say that it is likely that they would seek an inter partes order for costs against Miss Lyrae if they are successful in their petition.

15. The Petitioners themselves are prepared to pay up to £3,000 into Court to match any security which Miss Lyrae may be ordered to pay.

The law

16. The power in the Consistory Court to order a party to give security for costs was put on a statutory basis by section 60 of the Ecclesiastical Jurisdiction Measure 1963.

17. However no provision for the exercise of the power was included in the Faculty Jurisdiction Rules 1964 (SI 1964 No 1032), the Faculty Jurisdiction Rules 1967 (SI 1967 No 1002), the Faculty

[3] See paragraph 50 of the judgment.

[4] The application was received by e mail on 16 September 2016.

Jurisdiction Rules 1992 (SI No 2882), the Faculty Jurisdiction Rules 2000 (SI 2000 No 2047) or the Faculty Jurisdiction Rules 2013.

18. Nonetheless, rule 31 of the Faculty Jurisdiction Rules 1992 provided:

Where, in the exercise of the faculty jurisdiction, any procedural question or issue arises, or it is expedient that any procedural direction shall be given in order that the proceedings may expeditiously and justly be disposed of, and where no provision of these Rules appears to the chancellor to be applicable, the chancellor shall resolve such question or issue, or shall give such directions as shall appear to him to be just and convenient, and in doing so he shall be guided, so far as practicable, by the Rules of the Supreme Court for the time being in force.

19. This provision was re-enacted in rule 34 of the Faculty Jurisdiction Rules 2000, with the reference to the rules of the Supreme Court changed to a reference to the Civil Procedure Rules. In turn rule 34 of the Faculty Jurisdiction Rules 2000 became rule 19.5 of the Faculty Jurisdiction Rules 2013, and (in identical form) rule 20.5 of the Faculty Jurisdiction Rules 2015. Rule 20.5 reads as follows:

(1) Where—
(a) any procedural question arises in relation to proceedings to which these Rules apply; or
(b) the court considers it expedient that any procedural direction be given in relation to the proceedings,
and in either case no provision is made for that matter in these Rules, the court is to resolve that question or to give such directions as appear to the court to be just and convenient.
(2) In resolving any question, or giving any directions, under paragraph (1) the court must be guided, so far as practicable, by the Civil Procedure Rules 1998.

20. In the Faculty Jurisdiction Rules 2015, for the first time, express provision was made for security for costs. This was in rule 19.5. It provides as follows:

(1) The court may order any party to give security for costs at any stage in proceedings if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order.
(2) An order for security for costs may be made on the application of a party or of the court's own initiative.
(3) An application for an order for security for costs must be supported by written evidence.
(4) Where the court makes an order for security for costs, it will—
(a) determine the amount of the security; and
(b) direct—
(i) the manner in which, and
(ii) the time within which
the security must be given.

21. The provisions of the Civil Procedure Rules as to security for costs are contained in Part 25. They are set out in the **Annex** to this judgment.

22. I think that it is also appropriate to set out Rules 1.1 and 1.4 of the Faculty Jurisdiction Rules 2013[5]:

1.1.— Overriding objective
(1) The overriding objective of these Rules is to enable the court to deal with cases justly.

[5] It is appropriate to set out rules 1.1 and 1.4 from the 2013 Rules because the 2013 Rules apply to the petition See paragraph 27 below).. However rules 1.1 and 1.4 of the 2015 Rules are in identical terms.

(2) Dealing with a case justly includes, so far as practicable—
(a) ensuring that the parties are on an equal footing;
(b) saving expense;
(c) dealing with the case in ways that are proportionate to the importance of the case and the complexity of the issues; and
(d) ensuring that it is dealt with expeditiously and fairly.

1.4.— Court's duty to manage cases
(1) The court must further the overriding objective by actively managing cases.
(2) Active case management includes—
(a) encouraging the parties and any other persons concerned in the proceedings to co-operate with each other—
(i) in the conduct of the proceedings, and
(ii) in resolving, as far as possible, matters that are in dispute between them;
(b) identifying the issues at an early stage;
(c) deciding promptly which issues (if any) need full investigation and a hearing in court and accordingly disposing of others summarily or on consideration of written representations;
(d) deciding the order in which issues are to be resolved;
(e) fixing timetables or otherwise controlling the progress of the case;
(f) considering whether the likely benefits of taking a particular step justify the cost of taking it;
(g) dealing with as many aspects of the case as the court can on the same occasion;
(h) dealing with the case without the parties needing to attend court;
(i) making effective use of technology; and
(j) giving directions to ensure that the resolution of a case proceeds quickly and efficiently..

Guidance

23. In *Faculty Jurisdiction of the Church of England* (Second edition; 1993), GH and GL Newsom wrote:

Under section 60 (1) of the EJA 1963, the consistory court has power at any stage of the proceedings to order any party to give security for costs. By subsection (4) the word "costs" includes fees, disbursements, expenses and remuneration. This wide definition enables the court not only to order any party to give security for the costs and expenses of any other party but also to require any party to give security for the court fees. This is a useful power and should normally be exercised before every hearing by requiring the proper party, normally the petitioner, to bring into court a sum large enough to cover the likely fees of the chancellor and the registrar in respect of the hearing, together with their expenses in relation to it, and the court's own expenses of holding the hearing.

24. In the booklet Guidance on the Award of Costs in Faculty Proceedings published by the Ecclesiastical Judges Association (February 2000), the following passage appears:

3.1 Section 60 of the Ecclesiastical Jurisdiction Measure 1963 enables the Chancellor in the consistory court
(a) at any stage in the proceedings to order any party to give security for costs;
(b) to make an order that any party shall pay court fees;
(c) to make an order that a party pay the taxed costs of another party.
The purpose of these powers is, first, to cover the cost of administration of the court in respect of the particular faculty matter (the court fees); secondly, to give a discretion to the Chancellor to protect a party pursuing a petition or an objection from the risk of being unable, if successful, to recover any costs awarded against a party with no or minimal financial resources (security for costs); thirdly, to give the Chancellor a discretion on the facts of a particular case to order one party to pay the whole

or part of the costs incurred by the other party as the result of the contested proceedings in the consistory court.

3.2. The availability of these powers is intended to ensure that a sense of discipline is introduced into the proceedings. This discipline is not intended to deter people from exercising their right to object to the grant of a faculty, nor to deter the minister and churchwardens, or others, from pursuing their application even though it is contested. The fact that costs will be incurred and that the Chancellor will have to deal with the subject of costs at the conclusion of the proceedings should, however, operate as a discipline towards saving costs, for example, by narrowing the issues which are in dispute and limiting the amount of paperwork to be handled through the Registry prior to a hearing. The powers also enable the Court to ensure that the Registrar is properly compensated for his work in dealing with the case and that his expenses are covered.

25. In these proceedings, the Registrar has sent Miss Lyrae a copy of this Guidance, it being *a summary of the principles which apply in relation to costs in the consistory court in a form approved by the chancellor*[6].

Argument of the petitioners

26. In their submission dated 16 September 2016, the Petitioners set out the Guidance of the Ecclesiastical Judges' Association set out above. They then say:

The Petitioners respectfully submit that this is exactly the sort of case where this power should be used in accordance with the above guidance. Despite the Court's best efforts, a "sense of discipline" has been entirely lacking. Despite all reasonable efforts from the Court and the Petitioners, issues have not been narrowed. This is not a case where an objector's right to pursue an objection would be unfairly restricted; the Party Opponent has had every opportunity to present a clear, focused case backed by appropriate evidence, to be considered by the Court in an appropriate and proportionate manner.

27. The Petitioners accept that the proceedings are governed by the Faculty Jurisdiction Rules 2013. (This is because the petition was submitted before 1 January 2016.) However they say that, in the circumstances, it would be sensible to apply the Faculty Jurisdiction Rules 2015.

28. In her response dated 3 October 2016, Miss Lyrae does not accept that she has not sought to narrow the issues between the parties. It is apparent that she still hopes to be able to pay for experts' reports, more particularly by crowd funding. She indicates that, even on the basis that the agreement complies with standards which the Court might consider to be appropriate, she considers that the provisions of the proposed licence agreement are inadequate in the protection that they afford to local residents, particularly in terms of monitoring.

Consideration

29. I think that it is helpful to begin with the Guidance of the Ecclesiastical Judges Association.

30. Although I accept that paragraph 3.1 does refer, in the context of section 60 of the Ecclesiastical Jurisdiction Measure 1963, both to the power of the court to award costs and to require provision for security for costs, I think that the focus on paragraph 3.2 is not on the power to award costs. However that may be, I do not think that in making an order for security for costs I ought potentially to be punishing the party opponent because (in the view of the petitioners), she has shown insufficient

[6] See rule 9.3 (2) (c) of the Faculty Jurisdiction Rules 2013, now rule 10.3 (2) (c) of the Faculty Jurisdiction Rules 2015.

discipline. The consequence of her failure to serve expert evidence in time carries with it what is effectively its own sanction: she will not be able to rely on any expert evidence at any hearing. It seems to me that it is this unusual situation – where a hearing has been arranged but the party opponent has no relevant evidence to put before the Court - that gives particular point to the application for security for costs.

31. The next point to make is that, although the costs of a hearing will not be insignificant, they will not be the costs of a three day hearing. If Miss Lyrae is not calling expert evidence it will not be necessary for the Petitioners to call any evidence of their own. I would expect that any hearing would not exceed half a day.

32. Next, it is not in dispute that it is the Faculty Jurisdiction Rules 2013 that apply to this case, subject to any further order that I may make. As I have noted, those rules make no specific provision in respect of security for costs. Accordingly, by virtue of rule 19.5, it is appropriate to look at the CPR to see if they give me any assistance. The CPR are about costs being sought by defendants against claimants. As one would expect in the context of ordinary civil litigation, they do not contain any provision for claimants to seek security against defendants (because a defendant does not want to be party to proceedings) or for the court to seek security for its own fees (because court fees are payable "up front" by the party pursuing the claim). The core situation envisaged in Newsom and Newsom where security for costs might be ordered is very far from anything envisaged in the CPR. I do not think that I derive anything of assistance in considering the exercise of my power to order security for costs from anything in the CPR.

33. If I am right about this, it means that the change brought about in the Faculty Jurisdiction Rules 2015 by specifically incorporating a reference to security for costs does not change the substance of the law; it might otherwise be argued that it "decoupled" consideration of security for costs from the CPR (because the provisions of what had become rule 20.5 no longer had effect). It does indeed seem likely to me that the introduction of rule 19.5 in the Faculty Jurisdiction Rules 2015 was intended to be a minor tidying up rather than bringing about any major change in approach. If this is correct, there is no need for me to order that the Faculty Jurisdiction Rules 2015 should apply to a consideration of this application – it will not make any difference to the outcome[7].

34. Against this background, I approach the application for security for costs seeking to apply the principles contained in the Faculty Jurisdiction Rules 2013 rule 1.1 and 1.4.

35. First of all, I recognise that applications for telecommunications equipment are controversial. Although the majority of scientific opinion is reflected in the government's approach – which in turn has been endorsed by the Court of Arches – there are, as I understand it, some scientists who dissent and the opinions of such scientists are relied upon by lay people who are passionately concerned that the equipment presents a risk to health.

36. Second, the operation of telecommunications networks produces profit for those who operate them; and in a case like the present, if and when the equipment is installed the church will be paid an annual licence fee of £14,300. Nonetheless this does not mean that the Petititioners cannot argue that they should not have to fund the costs of an unnecessary hearing.

37. Third, the effect of ordering Ms Lyrae to provide security for costs may have the effect of "driving her from the judgment seat" because if she cannot find the money, her objection will be struck out. It is

[7] It will be seen that if the Faculty Jurisdiction Rules 2015 **did** represent a material change to the law, there would be an argument that it would be inappropriate to apply that change retrospectively to an application to which the Faculty Jurisdiction Rules 2013 applied.

possible to recognise this as unfortunate, even if one were to take the view that Ms Lyrae's objection is misconceived. A party opponent is given by the rules a right to hearing[8].

38. Fourth, the converse of my third proposition is that not to require security will allow Miss Lyrae to "have her day in Court". I am concerned however that this could essentially become a charade insofar as, if she has nothing that she could say by way of objection that could lead to the faculty being refused, whatever she does say will not be worth saying. Moreover such proceedings would not be cost free.

39. Fifth, by requiring security I can potentially seek to protect Miss Lyrae from an application that she pay the court costs (or indemnify the petitioners for the court costs) and an order that she pay the petitioners' costs of the hearing. I appreciate of course that she may not see the matter in that light.

40. Sixth, there is a human rights issue here. I can see that if the position were that the rules for considering faculties did not give someone in Miss Lyrae's postion an entitlement to a hearing she might not have any complaint under Article 6 of the Convention (right to a fair hearing in the determination of her civil rights). Arguably however, once by virtue of the rules she **is** given an entitlement to a hearing, the position may be different.

41. Seventh, the licence agreement proposed in this case is in a standard form that has been the subject of the grant of a number of faculties in this diocese. Nonetheless, I think that, if she wishes, Miss Lyrae is entitled to argue – as she has indicated that she wishes to do – that its terms are inadequate even if it be accepted that the agreement incorporates reference to the appropriate scientific standards.

42. Taking into account the seven points set out above, I think that the proportionate answer to resolving the competing interests in this matter in accordance with the overriding objective is not to require security for costs. It is a very serious step to make an order which is likely to have the practical effect of debarring a party opponent and I do not feel justified in making it in the present case. I have reached this conclusion without determining whether there is any breach of Miss Lyrae's article 6 rights but taking into account the importance that both the ecclesiastical courts and the convention place on dealing with cases fairly. Thus if Miss Lyrae wishes to argue the narrow point identified at paragraph 41 above, she may do so. I do recognise that my order is likely to have the practical effect that the Petitioners will have to fund the Court costs of the hearing - whatever the outcome and whatever order in respect of costs that I make - because Miss Lyrae may not be able to re-imburse them; and also that the Petitioners may be unable to recover their own costs against Miss Lyrae – on the basis that I considered it appropriate to make one – because she cannot find the money. This is the disadvantage in declining to make the order, which I recognise, but ultimately find outweighed by the benefit of not making an order which would be likely to stifle Miss Lyrae's objection. If I had the power I might have provided that the matter proceed by way of written representations and in that way avoided the costs of a hearing; but I do not think that I have the power to do this.

43. Miss Lyrae should note that I am not saying that I will not in due course make a costs order against her, whether in respect of the court costs or the Petitioners' costs or both – whether I do or not must be a matter for future submissions, the outcome of which I cannot prejudge (as she herself has pointed out).

44. What I want Miss Lyrae to do is the following: not later than **4 pm** on **1 November 2016** to reduce to paper the reasons why she considers the licence agreement inadequate and why she thinks that a faculty should not be granted. The Petitioners should then produce a response document by **4 pm** on **11 November 2016**. There will be no need for the Petitioners to produce any justification for the safety of the installation independent of the basis that was accepted in *In re Emmanuel Church,*

[8] See rule 13. 1, referred to at footnote 1 above.

Bentley. In the light of this written material, I hope that the issues will be clearly identified, enabling the hearing on 21 November 2016 to focus on the matters which are material to my decision.

Notices

45. There is one other matter. At the directions hearing on 20 July 2016, I directed re-publication of the notices that had been displayed in respect of the petition. As is usual, the Registry sent copies of the notices to the Petitioners. They were printed on white (or white-ish) paper rather than yellow. There is no requirement in the Faculty Jurisdiction Rules or elsewhere as to the colour of the notices to be displayed, although they very often are yellow. Miss Lyrae has expressed a concern about the colour of the notices that were displayed. There is however no proper basis for her concern.

PHILIP PETCHEY
Chancellor
19 October 2016

Annex

25.12
(1) A defendant to any claim may apply under this Section of this Part for security for his costs of the proceedings.
(Part 3 provides for the court to order payment of sums into court in other circumstances. Rule 20.3 provides for this Section of this Part to apply to Part 20 claims)
(2) An application for security for costs must be supported by written evidence.
(3) Where the court makes an order for security for costs, it will –
(a) determine the amount of security; and
(b) direct –
(i) the manner in which; and
(ii) the time within which
the security must be given.

Conditions to be satisfied

25.13
(1) The court may make an order for security for costs under rule 25.12 if –
(a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
(b)
(i) one or more of the conditions in paragraph (2) applies, or
(ii) an enactment permits the court to require security for costs.
(2) The conditions are –
(a) the claimant is –
(i) resident out of the jurisdiction; but
(ii) not resident in a Brussels Contracting State, a State bound by the Lugano Convention, a State bound by the 2005 Hague Convention or a Regulation State, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982 [7];
(c) the claimant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
(d) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
(e) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
(f) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 19, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;
(g) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.
(Rule 3.4 allows the court to strike out a statement of case and Part 24 for it to give summary judgment)
Security for costs other than from the claimant

25.14
(1) The defendant may seek an order against someone other than the claimant, and the court may make an order for security for costs against that person if –
(a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
(b) one or more of the conditions in paragraph (2) applies.
(2) The conditions are that the person –
(a) has assigned the right to the claim to the claimant with a view to avoiding the possibility of a costs order being made against him; or
(b) has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover in the proceedings; and
is a person against whom a costs order may be made.
(Rule 46.2 makes provision for costs orders against non-parties)

25.12
(1) A defendant to any claim may apply under this Section of this Part for security for his costs of the proceedings.
(Part 3 provides for the court to order payment of sums into court in other circumstances. Rule 20.3 provides for this Section of this Part to apply to Part 20 claims)
(2) An application for security for costs must be supported by written evidence.
(3) Where the court makes an order for security for costs, it will –
(a) determine the amount of security; and
(b) direct –
(i) the manner in which; and
(ii) the time within which
the security must be given

25.13
(1) The court may make an order for security for costs under rule 25.12 if –
(a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
(b)
(i) one or more of the conditions in paragraph (2) applies, or
(ii) an enactment permits the court to require security for costs.
(2) The conditions are –
(a) the claimant is –
(i) resident out of the jurisdiction; but
(ii) not resident in a Brussels Contracting State, a State bound by the Lugano Convention, a State bound by the 2005 Hague Convention or a Regulation State, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982 [7];
(c) the claimant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
(d) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
(e) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
(f) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 19, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;
(g) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF ST JAMES'S CHURCH, KIDBROOKE

AND IN THE MATTER OF A PETITION BY REVD CANON KIM HITCH, RICHARD PHILPOT, JENNIFER ANDERSON AND NET COVERAGE SOLUTIONS LIMITED

DIRECTIONS (7)

1. It has now been established after republication of the notices that no-one else wants to become a part opponent. Accordingly the possibility does not exist of Miss Lyrae making common cause with other parties opponent and presenting a joint case; she is the only party opponent.

2. Miss Lyrae tells me on 15 September 2016 for the first time that although she has spoken to experts she has not instructed any expert. Her position is that she cannot afford to instruct an expert. I can see that in these circumstances she would like an extension of time so that she can raise funds to instruct experts but she has presented no evidence to suggest that she has any reasonable prospect of raising such funds; and in any event, the court process cannot wait upon someone who objects to what is proposed raising money to fund experts to support their objection.

3. Accordingly I reject her further application for an extension of time in which to serve expert reports.

4. It is therefore apparent that Miss Lyrae will not be in a position to call any expert evidence at the hearing. The position in law being that there is no proper basis for rejecting the petition unless expert evidence be called to show why it be not granted (the effect of *In re Emmanuel Church, Bentley* explained in my Directions dated 14 April 2016), there will be no need for the Petitioners to call any evidence. The position that we have thus reached is that envisaged by paragraph 15 of my directions: *Miss Lyrae will be able to address me at the hearing, but there is no basis on which I could properly hold that the proposals before me should be rejected on the basis that they present a risk to health.*

5. In these circumstances, I think that Miss Lyrae needs to consider her position carefully; and that she would be well advised to seek the advice of her solicitor.

6. I confirm that, absent any other order in the matter, the hearing will take place on 21 November 2016.

PHILIP PETCHEY
Chancellor
16 September 2016