



IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

The Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

Date: Thursday, 2nd November 2017

Before:

MR MARK CAWSON QC
(Sitting as a Deputy High Court Judge)

Between:

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| <p>(1) REVEREND BERHANU BISLAT
(2) DEACON DEREJE DEBELLA
(3) DEACON MAHADER KASSA
(4) DEACON ENGEDAWORK
GEBREEGZIABER
(5) GENERAL HAILU BERWAK MIRGA
(6) MRS AREGASH GEBRE KIDAN
(7) MR GIRMA HAILE-MARIAM
(8) MR SHUMET MENGISTIE
(9) MR MEKU GETACHEW</p> <p style="text-align: center;">- and -</p> <p>(1) ARCHIMANDRITE ABA GIRMA KEBEDE
(2) REVEREND ABATE GOBENA
(3) MRS BETHELEM TADESSE
(4) REVEREND DAWIT ABEBE WORKU
(5) MR ABENER AMENSHOWA
(6) MR DAWIT HABTEMARIAM
(7) MR NIGUSSIE ASRESS
(8) ARCHDEACON DAWIT WOLDETSADIK
(9) MR FASIEL BEKLE
(10) MR HENOK GEBREMICHAEL
(11) MR ASCHELEW KEBEDE
(12) MS TIGIST TADESSE
(13) MR TAYE HAILU ZELEKE
(14) HER MAJESTY'S ATTORNEY GENERAL</p> <p style="text-align: center;">-----
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**MR FRANKLIN EVANS (Counsel) (instructed by Wellers Law Group) for the Claimant
MR MATTHEW SMITH (Counsel) for the Second, Third, Fourth, Seventh, Eighth, Ninth,
Tenth and Eleventh Defendants (“the Charity Defendants”)**

APPROVED JUDGMENT

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1st Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. Fax No: 020 7831 6864 DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

JUDGE CAWSON:

1. This judgment follows on from a judgment that I delivered on 26th June of this year. This judgment should be read together with that earlier judgment and I will adopt definitions used in that earlier judgment.
2. In that earlier judgment I decided a preliminary issue concerning the construction of the 1992 Trust Deed. In essence, I declared that, on the footing that the 1992 Trust Deed is effective to create a trust and in the events that have happened, the reference in the recitals to the 1992 Trust Deed to “the Mother Church in Ethiopia, which is operating under the spiritual jurisdiction of the Patriarch thereof”, of which the Church is described as a branch, means the Ethiopian Orthodox Tewahedo Holy Synod operating in Addis Ababa under the spiritual jurisdiction of the Patriarch elected and recognised from time to time by that Holy Synod as Patriarch.
3. At the time that I decided that preliminary issue there was broad agreement between the parties that the respective parties should work towards agreeing the terms of a Constitution of a new Charitable Incorporated Organisation (“CIO”) to regulate the affairs of the charity governed by the 1992 Trust Deed and the Church. Indeed, one of the reasons for the preliminary issue being directed to be heard as such was to assist the parties in formulating the terms of the appropriate Constitution. Following on from the judgment that I delivered on 26th June, the parties have sought to reach agreement as to the terms of a Constitution of a CIO and, to an extent, the parties have managed to narrow their differences.
4. The order made consequential upon my 26th June judgment provided in its terms for the Claimants to seek from the Charity Commission any further consent required in relation to the further conduct of the proceedings to cover the court dealing with, essentially, an application for an administrative arrangement in relation to the Charity directing the current trustees to incorporate a CIO with a specific constitution. I have been shown a letter of 1st November 2017 which I am satisfied provides the requisite consent to the continuance of the proceedings for this purpose.
5. The result of the parties’ efforts has been the provision two alternative forms of Constitution for a CIO, comprising a first draft produced by the Defendants, which the Claimants have then amended. I have been provided with a helpful schedule, for which I am grateful to the parties for producing, setting out the alternative forms of the draft in tabular form so that the various provisions can be compared. I am also extremely grateful to Mr Matthew Smith, Counsel for the Defendants, for producing a one page summary of the differences on key matters.
6. What emerges from the consideration of these documents is disagreement on two broad matters.
7. Firstly, as to the extent to which on the one hand the Constitution ought to reflect the fact that the Ethiopian Orthodox Tewahedo Church (“the EOTC”) is a hierarchical church with a Patriarch, Archbishops and Bishops, with power resting with the latter, and, on the other hand, the extent to which this particular Church ought to be treated as being congregationally based with power resting with the congregation and meetings of the latter.

8. Secondly, the extent to which, and the way in which the Kale Awadi, which I referred to in my earlier judgment, ought to be reflected in the terms of the Constitution, given that the draft Constitution produced by the Defendants refers to particular provisions of the third edition of the Kale Awadi as applying, rather than simply providing in general terms that the Constitution should embrace the Kale Awadi as the 2006 Bye-Laws had provided.
9. It is agreed between the parties that I should decide the issues that arise from these two broad questions and do so by reference to a number of the particular provisions of the proposed Constitution without deciding all outstanding issues in respect thereof, but enough to assist the parties in, hopefully, agreeing the remaining provisions in the light of my findings.
10. Before turning to the submissions in relation to these matters, I should first deal with a further jurisdictional point which I dealt with briefly this morning. That is as to whether I do in fact have power to direct an administrative scheme in the circumstances of the present case of the kind envisaged. I consider there to be two considerations that I should have in mind.
11. The first consideration is that, bearing in mind that any scheme would be directing the trustees of the relevant trust to act in a particular way, I should be satisfied that the trustees had had the requisite or at least sufficient notice that the court might be making today's order. The position is that there is a dispute between the Claimants and the Defendants as to who are the present trustees of the trust, but it is agreed, and reasonably clear on the evidence that all those claiming to be a trustee are joined either as a Claimant or a Defendant. Not all the Defendants are present or represented by Mr Smith, but I am satisfied that all parties that could reasonably be contacted have been contacted to be informed. The Attorney General may not have been contacted for this purpose, but has played no active part in the proceedings. Two of the other seven Defendants are in court today and they addressed me specifically and indicated they were happy for me to proceed on the basis proposed. There may be one or two others who have not been traced because they have returned to Ethiopia, but that does not seem to me to be an impediment in directing an administrative scheme.
12. The second consideration is as to whether I actually have jurisdiction to order a scheme in the circumstances of the present case where what is proposed is a direction to the current trustees of an unincorporated trust to transfer the assets to a CIO that has yet to be incorporated. The power of the court to direct trustees of an unincorporated trust is not in doubt. In the recent case of *Children's Investment Fund Foundation UK v HM Attorney General [2017] EWHC 1379* the Chancellor, Sir Geoffrey Vos, there held that he did have power to direct an administrative scheme in respect of a charitable corporation. Of course, in the present case one would not be going that far because one would be directing trustees of an existing charity to act in a particular way by transferring assets to a new CIO, but the broad extent of the power of the court to direct an administrative scheme is demonstrated by that case and I am satisfied that I do have the requisite power.
13. In relation to the versions of the draft Constitutions that have been produced, the first draft was, as I have said, produced by the Defendants and various revisions have been suggested by the Claimants. The revisions suggested by the Claimants have in part at

least been reflected in further revisions produced by the Defendants, so when it comes to looking at particular provisions that is the background against which I shall do so.

14. So I turn now to the submissions of the parties in respect of the two broad issues that I have identified before turning to deal with particular provisions.
15. On behalf of the Claimants, Mr Franklin Evans, submitted that my starting point should be the existing Trust documents, the 1992 Trust Deed and the 2006 Bye-Laws, and he submitted that the Constitution of the new CIO ought to broadly reflect the 2006 Bye-Laws. He pointed out that under the terms of the 2006 Bye-Laws the provision dealing with the appointment of a Priest in Charge provided for an election by the congregation with a limited obligation to notify the Diocesan authorities when an appointment had been made. He makes the point that under the Defendants' proposed Constitution there will be a different mechanism whereby, in summary, the "Clergy Council" will put forward three candidates to the congregation who will then by majority vote select one, who will then essentially go up to the Diocese and ultimately to the Patriarch for approval so that any appointment would ultimately require the approval of the Patriarch.
16. Mr Evans points to that as representative of a number of other provisions in the Constitution which he says depart from the terms of the 2006 Bye-Laws. He makes the point that a large section of the present congregation or their descendants came over to this country many years ago as asylum seekers, that they are well established in this country and that is the background against which this particular Church was established, so that it should be regarded very much as what he described as a hybrid church having, on the basis of my finding, a connection with Addis Ababa and Ethiopia, but being firmly rooted in this country. In considering where what he described as "the centre of gravity" lay, he submitted that it lay firmly with the congregation and that should be reflected in the decision that I reach as to this particular issue. He submitted that the discretion of trustees should not be over-riden by a Patriarch who is not even based in England and Wales.
17. He referred to other provisions which he submitted fell on the wrong side of the line in the Defendants' version of the Constitution including: the appointment of the Parish Secretary being in the gift of the Priest in Charge, and the Patriarch having power to dismiss the Priest in Charge under the proposed new clause 12.9(f). He raised issues in relation to clause 4.3 in respect of the relationship between the congregation and the Church. He pointed to other provisions where steps could only be taken after consultation with the Holy Synod, such as clause 5(d) dealing with the disposal of Church buildings. He pointed to clause 10.4(b)(vi) in relation to the removal of someone as a member where the Defendants' proposed clause provides for the general meeting to have the power to remove a member, but for there to be a series of rights of appeal up the hierarchical line, to the Diocesan Office, then to the Archbishop, and then to the Patriarch.
18. Mr Evans pointed out that in the 1992 Trust Deed focused on spiritual jurisdiction in its reference to the Church being a branch of the mother Church in Ethiopia "which is operating under the spiritual jurisdiction of the Patriarch thereof" and he submitted that spiritual jurisdiction in this context ought not to be construed widely, which is why clause 29.10 of the Claimants' proposed Constitution there is a very limited

definition of spiritual jurisdiction, essentially limiting it to the administration of the sacraments.

19. So far as the references in the Defendants' draft to the particular provisions of the Kale Awadi, he made the point that it is unsatisfactory and undesirable for reference to be made to particular provisions of a document that is not in the English language, is subject to change, and in respect of which at the last hearing the parties could not reach agreement as to the proper translation or meaning of particular provisions.
20. So, in short, he submitted that the Claimants' version is to be preferred to that of the Defendants' and that on the broad question of hierarchy the link with the Patriarch and the Diocese ought to be very much more limited than provided for by the Defendants' draft.
21. Mr Smith on behalf of the Defendants began his submissions by making the point that the Defendants' draft was in itself an attempt to deal sensitively with the particular issues in relation to the Holy Synod and the Patriarch and sought to reflect the spirit of my 26 June judgment in relation to the preliminary issue then decided. So far as the reference to the 2006 Bye-Laws are concerned, he made the point, going back to the 1992 Trust Deed, that that was concerned with the trusts of the building which had been bought and funded by the congregation and, in essence, the 2006 Bye-Laws were further essentially concerned with that charitable trust and that there had been no attempt at that stage to fully collapse, as he put it, such rights and obligations as there may have been in relation to the property (Church Building), on the one hand, with the position in relation to the Church on the other hand, although accepting that to a certain extent the 2006 Bye-Laws did seek to deal with matters concerning the running of the Church, as opposed to simply administrative matters in relation to the trusts of the building.
22. He emphasised that the EOTC is a hierarchical church and that this is, on a proper analysis, reflected in the 1992 Trust Deed and the 2006 Bye-Laws. He was not able, as such, to provide any guidance as to what, certainly outside Ethiopia, would be the normal or general position so far as the administration of a church was concerned, but he submitted that the various provisions that he relied upon as set out in the Defendants' draft Constitution are consistent with the Kale Awadi, which is the essential overall governing document so far as the administration of EOTC churches are concerned.
23. He referred me to a number of provisions of the proposed constitution which reflect various degrees of involvement so far as the Diocese and the Patriarch are concerned, making the point that it was not, in the case of most if not all, a question of day to day control being handed over to the Diocese and to the Patriarch. Rather, the involvement of the Diocese or Patriarch was reserved for specific instances such as an appeal against expulsion as a member and removal as a trustees, and in respect of the convening of a general meeting. Mr Smith pointed out that other provisions merely provided for consultation with the Holy Synod or some other entity in respect of the taking of various steps such as the disposal of property, dissolution and events such as that.
24. So Mr Smith submitted that the Defendants' version of events ought to be preferred.

25. In response Mr Evans emphasised that there was, he submitted, a radical change in the character between the Defendants' draft and the 2006 Bye-Laws, which were the last word so far as the terms governing the relevant trusts were concerned before the parties came to court on the last occasion in June.
26. In my view, the present case discloses a tension. One has a trust established and funded essentially by the congregation back in 1992 on the one hand, but on the other hand a Church established, on the basis of my finding in June, as a branch of the EOTC under the jurisdiction of the Holy Synod and the Patriarch in Ethiopia. I do note and place particular significance on the fact that the original Trust Deed does refer to the Church operating under the "spiritual jurisdiction" of the Holy Synod and the Patriarch in Ethiopia, the emphasis being on spiritual jurisdiction. There is common ground between the parties that the EOTC is a hierarchical Church, i.e. a Church operating with a hierarchical structure with a Patriarch and Holy Synod, Archbishops, Bishops and then at a local level Priests, with "Priests in Charge" of their churches operating within a diocesan structure.
27. The question that arises is as to the scope and extent of that hierarchy and the extent to which it, in contrast to the members of the congregation exercising power through a general meeting (or General Assembly), ought play a part in the terms of the exercise of power under the Constitution. In my judgment, the EOTC hierarchy is in essence concerned and ought to be regarded as in essence concerned with spiritual matters and not what might more be regarded as property or other non-spiritual matters. The starting point, as I have indicated, is the 1992 Trust Deed and the 2006 Bye-Laws. It is certainly right that the 2006 Bye-Laws did recognise and deal with more than simply property interests, hence the reference to them "encompassing" the Kale Awadi. Mr Evans is right to flag up that there are fairly significant changes between the 2006 Bye-Laws and what is proposed in the present Constitution, in particular in relation to the appointment of the Priest in Charge. On the other hand, it is right to say that the Constitution of the CIO is seeking to do more than the 1992 Trust Deed and the 2006 Bye-Laws in truly bringing together or, "collapsing" as Mr Smith put it, the charitable trust of the property on the one hand, and the Church on the other hand, into one clearly defined entity with clear rules and regulations to cover the entirety of its operations. On this basis, one can see that different provision may require a different approach so far as decision making processes are concerned with matters that are essentially spiritual matters being matters more for determination and regulation in accordance with EOTC hierarchy, and property and other non-spiritual matters where the focus of decision making ought perhaps to be more on the congregation, although recognising that between the two are various hybrid matters which require a more nuanced approach.
28. In my judgment, the Claimants' formulation of spiritual matters, as set out in the provisions of their draft which I have referred to, limiting spiritual matters essentially to administration of the sacraments, is too narrow an approach for the purposes of this exercise. On the other hand, I do feel that the Defendants' approach takes a too wide an approach to spiritual matters and does seek to enable the Diocese and other entities up the EOTC hierarchy to intrude into and regulate property and other non-spiritual matters in a way that, in my judgment, they would be better not doing.
29. I propose to work through a number of the provisions of the proposed new Constitution of the CIO, and to set out where, in my judgment, the balance ought to

lie in respect of them. I will not be dealing with all the provisions, but I hope to deal with sufficient to enable the parties to reach agreement in relation to others, failing which it will be necessary for the Court to determine the matter on a future occasion.

30. However, before turning to particular provision, it is necessary for me to deal with the issue raised with regard to the role of the Kale Awadi in the Constitution, and whether specific provisions of the Kale Awadi ought to be referred to therein. I agree with Mr Evans that it is not good governance to have within the Constitution reference to provisions which would require reference to some other text in order to determine what the provision was about and seeking to achieve, particularly against a background of a text such as the Kale Awadi, which is subject to review and amendment from time to time, and which is written in another language that has previously caused difficulty and dispute with regard to its translation into English. I consider that whilst it is quite appropriate to refer to the Kale Awadi as providing background to the new Constitution, and indeed to refer to the new Constitution as “encompassing” the Kale Awadi in a generic way in the way that the 2006 Bye-Laws did, any more specific reference to particular provisions of the Kale Awadi would, I consider, be undesirable.
31. Turning to the particular provisions, so far as the Introduction is concerned I prefer the Defendants’ formulation thereof by way reference to general principles that ought not to be seriously in dispute. I found the Claimants’ formulation in some respects difficult to follow and understand, in particular its references to the extent of “voluntary association” and so forth, and as going too far in so far as it stated that the Parish Administrative Council should have exclusive jurisdiction “in/on all matters of the Church. The Defendants’ Introduction provides a historical background as much as anything in respect of the Church, which ought not to be too controversial, at least once Article V within this Introduction is revised in order to delete reference to specific provisions of the Kale Awadi, in accordance with by finding as to whether or not the Constitution ought to include reference to specific provisions of the Kale Awadi.
32. So far as the objects are concerned is dealt with in clause 3, I do have concerns that the Claimants’ expression of the objects is at risk of taking the case outside the scope of the purely charitable objects. The Defendants’ formulation of the objects is more limited in this respect, and is more clearly expressed in terms of proper charitable objects in a way that ought not to be unduly controversial. I therefore consider that the Defendants’ formulation ought to be adopted.
33. So far as clause 4.1 is concerned, again subject to revision in relation to the specific reference to article 7 of the Kale Awadi, I prefer the Defendants’ formulation. Likewise in relation to clauses 4.2, and also clause 4.3, bearing in mind that clause 4.3 essentially adopts the wording of the 1992 Trust Deed that was the subject matter of my June judgment, although again one would need to take out the references to the specific revisions of the Kale Awadi in clauses 4.2 and 4.3.
34. So far as Clause 5(b) is concerned and the exercise of powers in relation to Church property, bearing in mind the distinction that I have drawn between spiritual matters and property and other non-spiritual matters, I do not consider that there needs to be, or that it is appropriate that there should be consultation with the Holy Synod in relation to granting security over the Church building as provided for by clause 5(b).

I prefer the Claimants' formulation in respect of that provision and likewise in relation to clause 5(d) dealing with the sale, leasing or other disposal of property belonging to the Church.

35. So far as clause 5(e) is concerned, I am not going to make any final ruling on this because I have not heard submissions on it, but I can see the sense in the Parish Administrative Council having the ability to make smaller grants or loans of no more than 10% of the average annual income of the Church without reference to the Congregation at a General Assembly. This does, to my mind, strike a fair balance.
36. So far as clause 10.3 is concerned, dealing with, on the Claimants' version, the rights and duties of members, and on the Defendants' version with just the the duty of members, I, again, have not heard submissions on this, so what I say is a provisional view. However, it does seem to me that it would be unusual to set out rights of members in the way that the Claimants seek to do in their version of the Constitution, and I can see real scope and grounds for controversy and dispute if such rights are set out in this way therein. I consider that these are matters more properly and satisfactory to be dealt with in bye-laws or rules promulgated subsequent to the implementation of the Constitution. So far as duties of members are concerned, I again consider that the Claimants' formulation is too detailed, and for that reason liable to give rise to subsequent controversy. I broadly prefer the Defendants' formulation in respect the duties of members, although again without reference to specific provisions of the Kale Awadi.
37. On the question of termination of membership and clause 10.4(b)(vi), that I have already referred to, and the Defendants' proposal that there should be a right of appeal up through the EOTC hierarchy, the argument in respect of this on behalf of the Claimants is that membership ought to be a matter for essentially the members of the Church themselves. The Defendants' argument is that expulsion from membership effectively removes the right to worship at the Church, and the connection with this particular Church and therefore has spiritual implications which require an ability to be able to appeal through the EOTC hierarchy. In my judgment, this is one of those hybrid provisions that can be regarded as touching on spiritual jurisdiction to an extent, whilst being concerned, in my judgment more significantly, with the interests of members as members and property interests. On balance, I come down on the side of the Claimants in respect of this. I consider that membership ought ultimately to be down to the members themselves and that it is not a situation where some form of appeal is necessary, falling insufficiently on the spiritual side of the line to warrant the reference to the EOTC hierarchy provided for by the Defendants' version of clause 10.4(a)(vi).
38. So far as Clauses 11.2(f) and 11.3(a) are concerned, the consequences of failure of the Parish Administrative Council to call a general meeting, and whether there ought to be a right of appeal in relation to that to the Diocese or Archbishop, again in my judgment this falls significantly more on the property/non-spiritual side than the spiritual side of the line, and I prefer the approach taken by the model form of constitution of a CIO rather than the approach taken by the Defendants, and therefore I prefer the Claimants' version of these provisions.
39. So far as chairing the general meeting, and clause 11.5, is concerned, again I consider that is probably more of a property/membership question than a spiritual question. I

prefer the Claimants' approach on this clause as well. So far as voting at general meetings is concerned, and clause 11.8(c), again I consider that reference to specific provisions of the Kale Awadi ought to come out for the reasons that I have already given.

40. Clause 11.8(g)(iii) is another provision that I have not heard submissions on, and so the view that I express is a provisional one. In this day and age it would be normal to permit postal or electronic voting, and the model constitution for a CIO so provides. On this basis, I would be inclined to provide for postal or electronic voting unless there were some very compelling reason against that. No such compelling reason has, as yet, been identified.
41. On winding up and clause 28, bearing in mind the consequences of winding up in circumstances where the membership is unable to agree what should happen to the assets, I consider there to be a great deal of sense in there being a process of consultation with the Holy Synod at that point in order to ensure a proper Cy Pres application of the relevant assets.
42. So far as the Parish Administrative Council's functions are concerned, and clause 12.1(a), I do not see any difficulty with the Defendants' formulation in relation to that because it is merely requiring the Parish Administrative Council to take into account the basis of the Ethiopian Orthodox Tewahedo faith and the spiritual direction of the Patriarch and the Holy Synod. It is simply required to take this into account. Bearing in mind that the Church is a branch of the Mother Church in Ethiopia operating under the spiritual jurisdiction of the Patriarch thereof in the sense as found by my determination of the preliminary issue in June, there can, in my view, no legitimate objection to this particular provision proposed by the Defendants.
43. So far eligibility for trusteeship, and clause 12.2(a) is concerned, again the reference to a specific revision of the Kale Awadi should be removed from the Defendants' proposed provision.
44. I am going to jump to clause 12.9, and this important provisions dealing with the role and employment of the Priest in Charge. I am satisfied that the appointment of the Priest in Charge is more a spiritual matter than a simple property matter or a non-spiritual matter appropriate to be a matter simply for the congregation. I therefore consider that the appointment of the Priest in Charge is one in which the hierarchy within the EOTC has a real interest, and that the appointment at the end of the day is a matter for the hierarchy to ultimately approve. I am satisfied that the draft that has been proposed by the Defendants is one that, subject to the point I am going to make, achieves a proper balance between, on the one hand, the congregation and, on the other hand, reference to the EOTC hierarchy. As I have already indicated, the basic procedure is that the Clergy Council shall nominate up to three individuals, this is then put to a vote of the congregation and the candidate with the highest number of votes is then submitted to the Archbishop, who may review or reconsider the election if he finds irregularities, but if he accepts it as regular he will propose the individual with his recommendation to the Patriarch for approval and appointment, and it would be the Patriarch to makes the final decision in relation to the matter. It is to be noted that it is only on the grounds of irregularity in the process that the Archbishop is obliged to do anything other than forward the congregation's choice of the three nominated by the Clergy Council with his recommendation to the Patriarch for

approval. It seems to me that, against that background, the mechanism proposed ought to operate in a way that is fair to the congregation, provided that the three individuals who are nominated in the first place are ones that congregation have some say in respect of, or are at least not imposed from above so as to deprive the congregation of an effective choice.

45. Unfortunately, the Defendants' draft as presently drafted, whilst providing a definition of Clergy Council, makes no provision for how that Clergy Council is to be composed or authorised. In my judgment, so long as there is some provision within the Constitution that provides for the congregation effectively to be in a position to nominate the Clergy Council, then the provision proposed provides a fair system for identification and appointment of the Priest in Charge. Consequently, subject to this last point, I prefer the Defendants' version of clause 12.9
46. So far as clause 14.3 and the removal of a trustee is concerned, and whether there ought to be a right of appeal to the Archbishop and Patriarch, I go the other way, and in the Claimant's favour. In my judgment, like considerations apply as in the case of termination of membership and the convening of a general meeting as already considered. This is insufficiently connected with spiritual matters to warrant the reference to the hierarchy proposed by the Defendants.
47. So far as the status of the Constitution is concerned, and clause 25, an issue arises in respect of clause 25.1 which provides that the Parish Administrative Council may from time to time, with the agreement of the Congregation at a General Assembly, make rules or bye-laws etc.. The difference between the parties in relation to this is that in the Defendants' version the following wording has been added: "and the like should be sent to the Diocese or the Patriarch Head Office for review, guidance and relevant amendments before they are finalised". I can see scope for consultation with the Diocese or the Patriarchate Head Office for review and guidance, and relevant amendments before they are finalised." If this is, as I understood the Defendants to suggest that it was, simply intended to be a consultant process, then, in my judgment, that provides a satisfactory and acceptable balance. On the other hand, if it provides for a mechanism for veto, or enforced amendment, and then that does, in my judgment, go too far. It will be best to revise the language in order to clarify the point.
48. I turn then to clause 27, which is concerned with amendment of the Constitution, which, under the Defendants' proposal, requires the prior written approval of the Holy Synod. Bearing in mind that the Constitution is dealing with both spiritual matters and property/non-spiritual matters, and that I accept that the EOTC hierarchy is entitled to some real say in relation to the former, I consider it only right that amendments to the Constitution should be subject to the prior written approval of the Holy Synod. I do not see any proper grounds for objection as to this, particularly bearing in mind that the provision would, of course, be without prejudice to the ability of parties to seek a ruling from the Charity Commission or the Court in relation to the terms of the Charity should there be some pressing need for amendment in urgent or particular circumstances. Consequently, I prefer the Defendants' version of clause 27.
49. I believe that this substantively deals with most of the provisions that require to be looked at and, to the extent that I have ruled on those matters, the Constitution to be adopted by the new CIO will contain provisions in accordance with my rulings. To the extent that I have given an indication in relation to matters not the subject of

argument before me, then I would hope that the parties can reach agreement in relation thereto, and in relation to the other provisions of the Constitution of the proposed new CIO.
