

COMPLIANCE

# **Inquiry Report**

## **The Andrew Lloyd Webber Art Foundation**

Registered Charity Number 1015648



# A statement of the results of an Inquiry into the Andrew Lloyd Webber Art Foundation (registered Charity number 1015648)

Published on 14 January 2010.

## The Charity

1. The Andrew Lloyd Webber Art Foundation (“the Charity”) was registered as a charity on 10 December 1992. It is governed by a trust deed dated 5 April 1992.
2. The object of the Charity is to “advance the education of the public in the knowledge understanding and appreciation of the arts generally and in particular in the field of painting”. The Charity furthers its charitable object primarily by lending the paintings it owns from time to time to galleries and exhibitions to be publicly displayed.
3. The Charity currently owns three paintings<sup>1</sup>:
  - a) *‘The Old Horse Guards from St James’s Park’* by Giovanni Antonio Canal (known as “Canaletto”)
  - b) *‘Angel Fernandez de Soto’* (also known as ‘The Absinthe Drinker’) by Pablo Picasso
  - c) *‘The Garage’* by Stanley Spencer.The Charity previously owned a number of other tapestries and artworks including *‘St Cecilia’* by John William Waterhouse.
4. The current trustees of the Charity are:
  - i) Lady Madeleine Astrid Lloyd-Webber – appointed 5 April 1992
  - ii) Mr D John M Ward – appointed 8 February 2002
  - iii) Mr Mark Wordsworth – appointed 17 July 2009
  - iv) Mr Philip Freedman – appointed 18 September 2009
  - v) Mrs Louise Fennell – appointed 18 September 2009
  - vi) Mr Christopher Maton – appointed 18 September 2009
5. Lord Andrew Lloyd-Webber (“the Founder”) is the founder of the Charity. He was also, until September 2009, a trustee of the Charity.
6. In the financial year ending 31 December 2008 the Charity’s total income was £600,040 and total expenditure was £3,321,849. The 2008 audited accounts submitted by the Charity show that the value of its unrestricted funds as at 31 December 2008 was calculated as being £32,121,241.

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<sup>1</sup> For more information please refer to Annex A

7. The Charity, since its inception, has benefited from personal donations from the Founder of over £28 million. The Charity has also received income from the Founder from fees paid under licence agreements, where he has held the paintings under licence agreement for his own use when not on public display and where he has purchased paintings or other artworks from the Charity. When under licence agreement, in addition to paying a licence fee, the Founder takes responsibility for paying insurance costs for the painting and for providing a secure environment for their keeping.

## Source of concern

8. The Commission provided advice to the Charity on a number of occasions including at the time of registration in 1992 and subsequently in 1996, 2003 and 2006. In particular, the Commission advised about transactions involving the Founder and the management of any conflicts of interest that arise from these. The Commission also strongly recommended in 2003 as part of its Review Visits programme<sup>2</sup> that the trustees consider the appointment of additional trustees with no personal connection to the Founder to bolster the Charity's governance structure and form a majority of the Board of trustees. This recommendation was considered by the trustees and professional advice was taken. The advice received by the trustees was that they did not need to make additional trustee appointments at that time. This advice was followed by the trustees and the Founder<sup>3</sup>.
9. The Commission became aware that the Founder and the Charity had been challenged by HM Revenue and Customs ("HMRC")<sup>4</sup> in 2008. This challenge involved the amount paid to the Charity by the Founder as a licence fee for the '*St Cecilia*' painting.
10. This challenge by HMRC raised regulatory concerns for the Commission regarding the governance of the Charity - in particular issues relating to the accessibility of the Charity's paintings, any private benefit<sup>5</sup> that flowed to the Founder by virtue of the licence agreements and other transactions with the Charity, and the management of conflicts of interest within the Charity arising from these transactions.

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<sup>2</sup> Charity Review Visits were established by the Commission in 2002 and were a means of promoting effective governance in charities, with the information gathered contributing to policy development, and to our publications. The purpose of the Commission's Charity Review Visits programme was to:

- i) ensure compliance with the legal framework within which charities operate;
- ii) identify evidence of good practice already in place and advise on areas for improvement; and
- iii) learn about how charities in different parts of the charitable sector operate, and what issues are currently influencing or concerning them.

<sup>3</sup> Under the Trust Deed, the Founder has the power to appoint new trustees. However, the trustees remain ultimately responsible for the administration and management of the Charity.

<sup>4</sup> <http://www.telegraph.co.uk/news/newstoppers/celebritynews/3534690/Andrew-Lloyd-Webber-facing-court-battle-over-6.6million-painting.html>

<sup>5</sup> Private Benefit – refers to any benefit or benefits a person or organisation receives other than as a beneficiary of a charity. Charities can provide private benefits to people other than their beneficiaries so long as those benefits are incidental. Private benefits will be incidental if it can be shown that they directly contribute towards achieving the charity's aims and/or are a necessary result or by-product of carrying out those aims. In general, a private benefit is a necessary result, or by-product, of carrying out a charity's aims if:

- i) it follows from some action that is taken, and is only taken, with the intention of, furthering the charity's aims; and
- ii) the amount of private benefit is reasonable in the circumstances.

11. The Commission noted that the arrangements made by the trustees for public display of the Charity's paintings were not consistent with the Commission's previous understanding of such arrangements.
12. These factors raised concerns as to whether the Andrew Lloyd Webber Art Foundation was operating as a charity for the public benefit.

## Commission Inquiry

13. As a result of these concerns the Commission opened a statutory Inquiry under s.8 of the Charities Act 1993 on 28 July 2009.
14. The purpose of the Inquiry was to investigate and examine, in light of the Commission's concerns, whether the Charity was established and operating as a charity for the public benefit and to examine various governance issues as set out in the issues section below at paragraph 16.
15. The Commission's focus and remit relates to the charity law framework, under which the Charity is required to operate, and the discharge of the duties and responsibilities of the trustees.

## Issues

16. The Inquiry examined the following issues:
  - i) whether the Charity was established and operating as a charity for the public benefit;
  - ii) the public accessibility of the Charity's paintings and the extent and nature of any private benefits the Founder may have obtained from the administration of the Charity; and
  - iii) the management and administration of the Charity by the trustees generally, with specific regard to trustee decision making and key decisions involving transactions with the Founder and management of conflicts of interest.

## Timescale of Inquiry

17. The Inquiry was opened on 28 July 2009 and the substantive investigation phase of the Inquiry concluded on 23 November 2009. The Inquiry closed with the publication of this report on 14 January 2010.

## Findings

### The operation of the Charity

18. The Inquiry found that the Charity operates in the following way.
19. The Charity currently owns three paintings<sup>6</sup> and lends these to various galleries and exhibitions which display them publicly. Prior to this it owned a number of other paintings and artworks. The Charity also has a website which contains information relating to the paintings it owns and where they are currently displayed.
20. During the course of the Inquiry the Charity provided the Commission with copies of its records relating to the movements (which detail both times on public display, under licence agreement, storage, valuation and restoration) of the three paintings currently owned by the Charity and the 'St Cecilia' painting.
21. The Inquiry found that the Charity's paintings (those currently owned by the Charity and the 'St Cecilia') had been publicly displayed for various periods of time since their purchase as set out in Annex A at the end of this report.
22. The trustees had chosen a number of galleries and exhibitions around the world to display the Charity's paintings publicly – including the Tate Gallery, the National Gallery, Yale Centre for British Art and the Tretyakov Museum in Russia.
23. The Inquiry understands that in the art world, galleries often own or hold more paintings than can be displayed at any one time. Exhibitions change regularly and paintings move in and out of public display and storage. Factors that may be relevant to whether a painting is displayed include the particular theme of the exhibition and public interest in a specific painting or artist. When a painting is on loan to a gallery and is not on display, it is likely to be kept in storage by them or returned to the lender.
24. The trustees have, since the Charity's inception, employed an independent art consultant to provide them with expert advice regarding both the purchase and sale of works, and the display of them.
25. The Inquiry found that there were a significant number of transactions between the Charity and the Founder; this included both loans (under licence agreements) when the paintings were not on public display and the sale of some of the Charity's paintings to him. However, the last sale of the Charity's artwork to the Founder was in 1999.

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<sup>6</sup> See further Annex A

26. The Charity's governing document provides a legal framework which allows the trustees to enter into transactions where one of their number has an interest, subject to certain conditions. These conditions are that at least one of the trustees must have no such interest in relation to the transaction being considered and an independent valuation must be received. The relevant clause from the Charity's governing document is as follows<sup>7</sup>:
- "The Trustees may enter into any transaction (including a sale purchase or loan) notwithstanding that one or more of their number have some other interest therein whether in a personal or a fiduciary capacity provided that (a) at least one of their number has no such other interests (b) a duly qualified independent valuer or other adviser has advised that the transaction is a fair and reasonable one for the Trustees to enter into and (c) a purchaser shall not be concerned to see that the preceding paragraphs of this proviso have been complied with."
27. There is no absolute bar to including such a provision within the governing document of a charity provided it is clear that any private benefits which may arise from the exercise of the power is properly incidental to the purposes of the charity. However, when relying on any such power the trustees must be able to demonstrate that it is exercised in the best interests of the Charity. Although at the point of registration the Commission did not provide advice to the trustees on the exercise of this clause, it did recommend that the Charity appoint a majority of independent trustees. This would have strengthened the exercise of the power, particularly as there were conflicted trustees.
28. The trustees informed the Inquiry that the Charity entered into the licence agreements with the Founder on occasions where they were unable to find a gallery to display the painting publicly. This enabled the Charity to obtain rental income from the licence agreement as opposed to having to use its funds to pay for a painting to be privately stored elsewhere. The Charity also recharged insurance costs to the Founder and he took responsibility for safe storage of the paintings during the periods that paintings were under licence to him.
29. The Inquiry noted that the Charity has historically encountered problems with finding venues to display a number of artworks purchased – this includes both the four principal paintings referred to in this report and other works of art which have been sold by the Charity.
30. The Inquiry's findings in relation to the three issues examined are set out below.

#### **Issue (i) Whether the Charity was established and operating as a charity for the public benefit**

31. The object of the Charity is to *"advance the education of the public in the knowledge understanding and appreciation of the arts generally and in particular in the field of painting"*. This object falls within the list of descriptions in the Charities Act 1993<sup>8</sup> and is capable of being a charitable purpose. The Charity's activity of purchasing and displaying paintings is capable of furthering this purpose, subject to meeting the public benefit requirement.

<sup>7</sup> This clause was amended at a meeting of the Charity's trustees on 23 November 2009.

<sup>8</sup> Charities Act 1993 [http://www.opsi.gov.uk/acts/acts1993/Ukpga\\_19930010\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930010_en_1.htm)

32. In considering public benefit, the Inquiry's finding is that there are clear benefits that flow from the Charity's activities and that these arise for members of the public who view the Charity's paintings whilst on public display at galleries and exhibitions<sup>9</sup>. The Inquiry reviewed the diary movements of the Charity's artwork and determined that there has been sufficient public access to the artwork notwithstanding the times the artwork was held by the Founder under the licence agreements.
33. The Inquiry found that further benefits and access arise for those members of the public who visit the Charity's website<sup>10</sup> for information about their artwork and where it is currently displayed.
34. The Inquiry's overall finding on this issue is that the Andrew Lloyd Webber Art Foundation was established and is operating as a charity for the public benefit. The Inquiry has made recommendations to the trustees to ensure that the Charity continues to meet the public benefit requirement in addition to strengthening the Charity's governance – these are outlined in more detail later in this report.

## **Issue (ii) The public accessibility of the Charity's paintings and the extent and nature of any private benefits the Founder may have obtained from the administration of the Charity**

### **Public accessibility of the Charity's paintings**

35. Where a charity owns works of art, the most obvious and usual way of satisfying the public accessibility aspect of the benefit requirement is for the public to have direct physical access to view its particular qualities at first hand.
36. In relation to the public accessibility of the Charity's paintings the Commission has separated its findings under the following three headings:
  - a) General findings;
  - b) '*St Cecilia*'; and
  - c) '*Angel Fernandez de Soto*'.
- a) General findings
37. The Inquiry found that overall the Charity's paintings had been publicly displayed for various periods of time since their purchase. For the times when the paintings were not on public display the trustees were able, in the majority of instances, to demonstrate why they were unable to display the paintings for a longer period.
38. The Inquiry accepts that when the paintings are on loan to galleries and exhibitions the trustees have little control about how long an individual gallery will hang the painting for. However, the Inquiry recommended that the trustees consider including a mechanism in future loan agreements with galleries and exhibitions that allows for the Charity to be notified should a gallery or exhibition not be able to hang the painting publicly for a significant period of the loan agreement.

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<sup>9</sup> Please refer to Annex A

<sup>10</sup> <http://www.andrewlloydwebberartfoundation.com/>

39. During the course of the Inquiry it became clear that following a letter from the Commission in October 1992 the trustees were operating on the basis that three months of the year was a sufficient minimum period for the Charity's paintings to be displayed. The Review Visit report from 2003 noted that it was the Charity's policy to ensure the paintings were on public display for as much of the year as possible and the trustees have confirmed during the Inquiry that this remains the case. The Inquiry has now made it clear to the trustees that there is no minimum period for the Charity's paintings to be publicly displayed. The Inquiry advised that the starting position should always be that the paintings are on permanent display subject to legitimate constraints, such as the ability of a gallery or other venue to house the painting and any maintenance or repair work that is required to preserve and ensure the integrity of the painting(s).
  40. The Commission acknowledges that its previous guidance to the trustees after registration was not as clear as it could have been and contributed to their understanding regarding a minimum period of time for the public display of the Charity's paintings. The current trustees have confirmed that they understand the advice and guidance provided by the Commission in relation to ensuring that they continue to facilitate public accessibility to its paintings to advance its charitable object for the public benefit. In addition, the Inquiry determined that in practice the paintings were displayed on average for more than three months of each year since their purchase, as set out in Annex A.
- b) St Cecilia
41. Despite the finding that the Charity's paintings were publicly displayed for significant periods each year, the Inquiry considered the frequency with which the paintings were loaned to the Founder under licence agreements and how these arrangements might be perceived.
  42. The Charity had previously told the Commission on several occasions that it had been unable to find venues which had the capacity to display its paintings publicly that had the necessary security, insurance and environmental conditions. The Commission had previously been persuaded by this and considered that a licence agreement under these circumstances is a cost-effective alternative to paying for private storage and insurance costs
  43. The Inquiry was initially concerned that this understanding was, in part, undermined by the trustees' decision to display the '*St Cecilia*' painting in the foyer of the Palace Theatre during the run of the Andrew Lloyd-Webber musical '*Woman in White*' where the security and in particular environmental conditions might not be akin to specialist galleries. However, the Charity informed the Inquiry that arrangements had been made to ensure that security and environmental conditions were suitable for the picture to be displayed and that this was part of a larger project entered into in conjunction with the National Portrait Gallery and the Tate Gallery to display paintings with a thematic connection to the musical. The Inquiry was nevertheless concerned that the arrangement suggested that other venues may be appropriate and available to the Charity to enable its paintings to be on public display more frequently. The arrangement, which was linked to the Founder also created a perception that the Founder was benefitting personally from the Charity's activities – this issue is dealt with later in the report.

44. The Inquiry accepts that the trustees had appointed an independent art consultant to provide them with expert advice with regard to galleries and other exhibitions that might be used to display the paintings and the Commission acknowledged this in the Review Visit to the Charity in 2003. This was an example of where the trustees took active steps to follow good practice. However, it is not clear from the Charity's records and information provided to the Inquiry that, after the display of the '*St Cecilia*' at the Palace Theatre, the trustees considered the display of any of its paintings at alternative venues (other than the named galleries).
45. The Inquiry was unable to determine the number of occasions, if any, where displaying the Charity's paintings at alternative venues would have been a viable alternative to entering into a licence agreement with the Founder.
46. Nevertheless, the Inquiry accepts that the licence agreements between the Charity and the Founder raised revenue for the Charity and are a practical and cost-effective alternative to paying for the artwork to be privately stored and insured when they could not be publicly displayed and benefitted the Charity for these reasons.
- c) Angel Fernandez de Soto
47. An exception to the Commission's finding that the Charity's paintings have been publicly displayed for significant periods of time since purchase is the '*Angel Fernandez de Soto*'. The painting was purchased by the Charity in 1995 and from that point until 2006 it was publicly displayed for various periods of time – as set out in Annex A. However, after a title claim in 2006 prevented the painting from being sold at auction, it has not been possible for the painting to be publicly displayed<sup>11</sup> as galleries and museums will not accept the picture while the claim remains outstanding. Despite the title claim preventing the public display of the painting, the Inquiry found that the trustees could have done more to advance the education of the public in relation to this specific painting by including more information about this painting and its significance on the Charity's website. This observation was not limited to the '*Angel Fernandez de Soto*' and was a general recommendation of the Inquiry that the trustees should do more to increase the information contained on the Charity's website to contribute to furthering the Charity's object.
48. The Inquiry agreed in the circumstances that the licence agreement between the Charity and the Founder in relation to the '*Angel Fernandez de Soto*' particularly, given its provenance and value, was expedient in the interests of the Charity. Due to the title claim on this painting<sup>12</sup>, it could not be displayed publicly and private storage would have incurred significant cost to the Charity; in lending the painting to the Founder, the Charity received a rental income as opposed to incurring expenditure for private storage, and the insurance costs of the painting were also met by the Founder.

<sup>11</sup> In 2006 the Charity had arranged for the Picasso to be sold at auction in New York. This however had to be aborted due to a title claim. The suit to recover the painting was filed by Julius Schoeps, who according to the complaint is an heir of Paul von Mendelssohn-Bartholdy, a Jewish banker in Berlin.

<sup>12</sup> The Trustees of The Andrew Lloyd Webber Art Foundation have announced (08.01.2010) that Professor Julius Schoeps and all other heirs of Paul von Mendelssohn-Bartholdy and Elsa von Kesselstatt have settled and relinquished any and all claims of title in the Foundation's painting The Absinthe Drinker (*Angel Fernandez de Soto*) by Pablo Picasso.

### **Extent and nature of any private benefits the Founder may have obtained from the administration of the Charity**

49. As set out above, the Charity's governing document allows the Charity to enter into transactions where one (or more) of the trustees has an interest subject to certain conditions. These transactions include the sale and loan (under licence agreement) of the Charity's paintings to the Founder.
50. The Inquiry was specifically concerned with the potential for private benefits flowing to the Founder as a result of these transactions.
51. The Charity provided the Inquiry with documents that showed that on the occasions where the Founder had purchased or loaned (under licence agreement) artwork from the Charity that an independent valuation from a reputable specialist auction house had been obtained and which specified the fee the Founder had paid. The trustees also informed the Inquiry that legal advice had been taken about each of the transactions.
52. The Charity provided evidence to the Inquiry that showed that there were occasions where some of the earlier paintings and artworks owned by the Charity, which the trustees were considering selling, had depreciated in value. If sold at auction this could have resulted in a financial loss to the Charity if the painting did not sell for a higher price than the valuation. The Charity had also, in a number of instances, incurred costs to maintain and restore its artwork. In such instances the Charity provided the Inquiry with records that showed that the Founder had purchased artwork from the Charity at a higher price than its valuation price, which included restoration costs incurred by the Charity.
53. Although the Founder was able to have private access to the Charity's paintings it was under the licence agreements in accordance with the power in the Charity's governing document. The Inquiry was satisfied, based on documentary evidence provided by the Charity that the Founder always paid a licence fee to the Charity which was, for each transaction, informed by an independent valuer. Despite this, the Inquiry found that the number and frequency of transactions (both sale and licence) between the Founder and the Charity created a perception that the Founder was benefiting from the Charity and its operation.
54. More particularly, the Inquiry found that the trustees' decision to display the '*St Cecilia*' painting in the foyer of the Palace Theatre during the run of the musical '*Woman in White*' which is an Andrew Lloyd-Webber musical may have enhanced this perception of private benefit to the Founder. The Inquiry considered that it was highly unlikely that the display of the '*St Cecilia*' at the Palace Theatre resulted in an increase in ticket sales for '*Woman in White*'. However, due to the clear links between this musical and the Founder, this transaction created a perception that the painting was used to support a private venture of the Founder. The risk of this perception arising is higher, given the public profile of the Founder. Such perceptions need to be appropriately managed by the trustees so as not to erode public trust and confidence in this Charity and charities more generally.
55. Information provided to the Inquiry indicated that there were occasions where paintings had been recalled whilst on public display. The Inquiry found that this has happened on a few occasions to coincide with private visits from academics, parliamentarians or foreign visitors who were viewing the Founder's personal collection. The Inquiry advised the trustees that whilst on public display the paintings should not be recalled in this way as this was a private benefit which the Charity would not be able to show was legitimately incidental to the achievement of the Charity's objects.

56. More generally the Inquiry considered whether the Founder was afforded an exclusive opportunity to enter into licence agreements with the Charity where the paintings were loaned to him personally. The trustees informed the Inquiry that the Founder did not have an exclusive opportunity to enter into transactions with the Charity. The trustees told the Inquiry that it was well known in the art world that the Charity's paintings could be held under a licence arrangement provided that the insurance costs and security conditions were also satisfied and that they would have entered into a licence agreement with a third party in these circumstances.
57. The Inquiry was not able to verify whether it is well known in the art world that these paintings could be held under a licence agreement. The Charity informed the Inquiry that they had declined on one occasion a request for a private licence agreement with a third party as they did not have sufficient environmental conditions to hold one of the paintings. In practice, as the private licence agreements were only made with the Founder, although he paid a licence fee and other associated costs, this contributed to the perception that the Founder was benefitting from the Charity and its operation.

**Issue (iii) The management and administration of the Charity by the trustees generally, with specific regard to trustee decision making and management of conflicts of interest**

58. The Commission was aware, prior to this Inquiry, that the Charity's trustee body was comprised of three individuals; the Founder, Lady Lloyd-Webber and one other individual, who since 2002, had been a partner from the firm of solicitors that provided legal advice to both the Charity and the Founder personally.
59. There is no general legal bar to the composition of the Charity's trustee body in this way. However, where there is a small trustee body and a number of transactions involving the trustees, it can be difficult to manage conflicts of interest properly without decisions being taken by a sufficient number of independent trustees. The Commission had recommended on a number of occasions that the Charity appoint additional independent trustees.
60. When the Charity entered into transactions with the Founder (which under charity law is known as self dealing) both he and his wife (Lady Lloyd-Webber) were in a position of conflict of interest. The Inquiry accepts that the trustees had the power under the Charity's governing document to enter into these types of transactions. However, in exercising this power, the onus is on the trustees to be able to demonstrate that they have done so in the best interests of the Charity (as referred to in paragraph 27).
61. The minutes of the trustee meetings examined by the Inquiry show that (although they would have been known) the conflicts of interest were not formally declared by the trustees and the conflicted trustees participated in the decision making on transactions involving the Founder.
62. The Inquiry's view is that because of the inherent conflicts of interest, these decisions would always be open to the risk of challenge if conflicted trustees made these decisions in these circumstances. The Inquiry found that this was exacerbated by the number of transactions there were between the Charity and the Founder and that, in practice, the Charity only entered into private licence arrangements with the Founder and that he purchased the majority of the Charity's artwork when it was sold. The Inquiry considers these risks would have been mitigated if the Charity had sought authority from the Commission or if a majority of independent trustees had made these decisions.

63. The trustees' view is that all of the trustees were aware of the interests that existed and that the conflict of interest was appropriately managed by them by seeking an independent valuation, and the Founder paying the recommended licence fee and/or purchase price and by obtaining legal advice for each transaction. Their decision, following legal advice, was that independent trustees were not required.
64. The Inquiry accepts that the fact that independent valuations were obtained and the fees/payments paid provided some level of protection. However, in light of the number of transactions involving the Founder, the identity of the three trustees and as the conflicted trustees participated in the decision making, the independent valuation was not sufficient to safeguard the trustees' decisions from the risk of challenge. The Inquiry considers the Commission's recommendation to appoint independent trustees should have been implemented and is critical of the trustees in this regard, notwithstanding that the decision they made followed the legal advice they received.
65. This matter has now been resolved with the recent appointment of four new trustees to the Charity, three of whom are independent of the Founder.
66. From a review of the minutes of trustee meetings the Inquiry noted that an earlier recurring issue for the trustees had been that some of the earlier artworks purchased proved not to be of significant public interest and/or were not of sufficient material quality so as to be able to withstand public display for significant periods of time in institutional galleries. The Inquiry accepts that the trustees took expert advice from their independent art consultant with regard to the research of new art purchases and more recently the quality of purchases has improved (as evidenced by the four paintings dealt with in this Report) so that this is no longer a concern.
67. The Inquiry also identified other examples where the trustees did not manage conflicts of interest within the Charity. The Charity's governing document contains a professional charging clause which allows for any trustee of the Charity (other than the Founder or spouse of the Founder) who is a solicitor or accountant to charge the Charity for professional work undertaken by him or his firm. However, the onus is on the trustees to demonstrate that the exercise of this provision is in the Charity's best interests. From the information supplied to the Inquiry, it was not immediately clear that decisions could be shown to have been made in the best interests of the Charity. For example, it was not evident that the trustees had considered instructing other law firms. The trustees subsequently informed the Inquiry that they considered instructing one of the trustee's law firms to provide legal advice was in the Charity's interests because they were able to negotiate a 25% reduction on the normal fees charged.
68. The Inquiry also understood that historically the Charity has benefited from administrative support from the Founder's employees, which was not charged to the Charity. Although the Charity quite clearly benefited from this arrangement the Inquiry considered that this contributed to the possible confusion between the separation of the Founder and the Charity. The Charity has informed the Inquiry that separate contracts of employment have been created for the staff who work for both the Founder and the Charity, which will help improve the transparency of this arrangement and ensure the Charity's position is protected.

## Conduct of Inquiry

69. The Inquiry examined the administration and management of the Charity. This included meeting with representatives of the Charity on three occasions to outline and discuss our specific concerns and examine the trustees' responses to them. The Commission corresponded with the Charity and its trustees throughout the course of the Inquiry to resolve the concerns.
70. The Inquiry provided the trustees with regulatory advice and guidance to assist the Charity in the future.
71. The Inquiry team viewed the Canaletto at the Tate Britain, which is currently on long-term loan from the Charity. The purpose of this was to verify that the painting was on public display and that the Charity was properly accredited for ownership of the painting. The Inquiry team also met with staff at the Tate Britain to gain a better understanding more generally of how loan arrangements with galleries involving works of art operate in practice.
72. The trustees cooperated fully with supplying information necessary for the purposes of the Inquiry. They had a clear desire to regularise and put matters on a proper footing going forward. Information was provided willingly to the Inquiry and in a timely fashion which prevented any unnecessary delays to the conclusion of the Inquiry.
73. The Inquiry was told that the trustees recognised that although they had taken professional advice throughout the Charity's lifetime, they accepted that there was still room for improvement and that changes were required to enable the Charity to move forward and to ensure that the governance structure of the Charity is fit for purpose. The trustees on their own accord undertook an independent governance review of the Charity during the Inquiry and accepted all the recommendations put forward by both the Commission in terms of what this review should include and those of their current professional advisors in relation to their implementation.

## Conclusions

The Inquiry reached the following conclusions;

### **Issue 1 - Whether the Charity was established and operating as a charity for the public benefit**

74. The Andrew Lloyd Webber Art Foundation was established as a charity with clearly identifiable public benefit. The trustees' starting position should always be that the paintings are on public display for as long as possible at suitable and appropriate venues where the public can access them. In instances where this is not possible the trustees must take reasonable steps to find other ways of using the paintings to advance the education of the public in the arts. However, overall the Inquiry was satisfied that the Charity was operating for the public benefit.

### **Issue 2 - The public accessibility of the Charity's paintings and the extent and nature of any private benefits the Founder may have obtained from the administration of the Charity**

75. The Inquiry recognises that the Charity has benefited significantly from the generous donations and support of the Founder. Generous philanthropy in this way is invaluable to both the public and charities' beneficiaries.

76. The Inquiry concluded that although the trustees took expert advice from an independent art consultant about the galleries and exhibitions that the paintings might be displayed at, and that the paintings were displayed publicly for various periods of time, the trustees should have given greater consideration to finding alternative means of displaying its paintings and advancing the education of the public. For example, through proactively identifying venues other than galleries to display the paintings, increasing the content on the Charity's website or identifying other educational activities to carry out.

77. Although the Founder paid a fee set by an independent expert valuation and met the insurance costs, in practice, he was the only person who was the recipient of the licence agreements. This situation, together with the number of transactions involving the Founder, created a perception that he benefited personally from the Charity in a way more than legitimately incidental to the achievement of its objects. The trustees need to be alert to this going forward and ensure this risk is properly and appropriately managed.

### **Issue 3 - The management and administration of the Charity by the trustees generally, with specific regard to trustee decision making and management of conflicts of interest**

78. The Inquiry recognises that the trustees and the Founder received professional advice in relation to the Commission's recommendation that additional trustees were appointed. Notwithstanding this, the Inquiry is critical of the Charity's decision not to appoint independent trustees on the occasions where the Charity was advised to consider doing so. The composition of the trustee body was such at that time that given the number and nature of transactions with the Founder, the trustees would never have been able to demonstrate clearly that they had exercised the power to enter into the licence arrangements in the best interests of the Charity. The risk of challenge to the trustees' decision making could have been better managed.

## Regulatory action taken

79. The Commission provided the trustees with regulatory advice and guidance, including advice on the Charity's governance, management of conflicts of interest and meeting the public benefit requirement.
80. Due to the high level of cooperation from the trustees throughout the Inquiry, their desire to put matters on a proper footing going forward and the speed in which action was taken to address the Commission's regulatory concerns, the Commission concluded that on the basis of the assurances given by the trustees, no further regulatory action was required, subject to the trustees completing the various assurances given.

## Impact of Commission intervention

81. The trustees have, with assistance from the Commission, taken positive action to assist the Charity in moving forwards, including an independent comprehensive review of the Charity's governance and the appointment of three new independent trustees.
82. The Commission has provided the trustees with further guidance about meeting the public benefit requirement and that the public benefit that flows from furthering the Charity's object should not be limited solely to the public display of the Charity's paintings.
83. The Commission's intervention has helped to bolster the Charity's governance which will help to address the concerns raised in the Inquiry.

## Resources applied

84. The Commission adopted a multidisciplinary team working approach to the Inquiry. The team consisted of investigators and lawyers.

## Actions required of the trustees

85. The trustees have accepted and implemented the regulatory advice and recommendations of the Commission during the course of the Inquiry.
86. The trustees have taken significant steps themselves to bolster the Charity's governance structure, including the appointment of new independent trustees and have confirmed to the Commission that they will make amendments to the Charity's governing document which includes the introduction of a conflicts of interest clause. The trustees have also confirmed that they will amend the provision of the trust deed that allows the Charity to enter into transactions where one, or more, of the trustees has an interest. This clause will be amended to make clear that when the Charity enters into an agreement to lend or sell paintings to the Founder, both the Founder and the Charity will obtain independent valuations to determine the fees payable and that these decisions must be taken by a majority of independent trustees. The over-riding consideration for the trustees when considering the exercise of this self-dealing provision is to do so in the best interests of the Charity. The steps above will help to ensure that when the trustees are of the opinion that the self-dealing clause should be exercised, the transaction will be transparent. In addition to the steps above, it is the Commission's view that the trustees should, when selling the Charity's artwork, give consideration to selling this on the open market. This would further promote public trust and confidence in such a transaction.
87. The trustees must make sure that going forward that conflicts of interest and any transactions involving the Founder are managed in accordance with the Inquiry's recommendations.
88. The Inquiry takes the view that if the Charity is not administered in accordance with its recommendations the Commission will be very critical of the trustees and that this may lead to regulatory action in the future.

## Issues for the wider sector

89. To be a charity an organisation must have exclusively charitable purposes and be established and operating for the public benefit. Charities can provide private benefits to people other than their beneficiaries so long as those benefits are incidental. Private benefits will be incidental if it can be shown that they directly contribute towards achieving the charity's objects and/or are a necessary result or by-product of carrying out those objects.
90. Trustees are encouraged to think creatively and innovatively to find new ways to further a charity's objects for the public benefit. For charities that own artwork the trustees may wish to consider, in addition to public display, showcasing their paintings on the Charity's website. This could include; photographs, information about the history and origins of the paintings and/or the artist, reference to any other works by the same artist and a summary, by the trustees, on the significance of the paintings that the Charity owns.

91. Trustees are responsible for the overall management of the administration of their charity. All decisions by the trustees concerning a charity should be taken by the trustees, acting collectively. A charity is entitled to the independent and objective judgment of each of its trustees, acting solely in the interests of the charity. Charity trustees must not put themselves in a position where their personal interests conflict with their duty to act in the best interests of the charity. The onus is on charity trustees to be able to demonstrate that they have acted solely in the interest of the charity. A trustee's primary duty is to act in the best interests of the charity and, in the interests of transparency, to be able to demonstrate that they have done so.
92. The law states that trustees cannot receive any benefit from their charity, or enter into self dealing transactions unless they have legal authority to do so. This may be provided by a clause in the Charity's governing document or from authorisation from the Commission.
93. More generally, where a conflict of interest or loyalty arises the trustees must declare this interest and unless there is provision in the Charity's governing document or an established policy on managing conflicts, should remove themselves from voting on relevant decisions.
94. Generous philanthropy is invaluable to the public and charity beneficiaries. However, charities that have close relationships with their founders do have to pay particular attention to ensuring the management of those relationships are transparent and any conflicts of interest are properly managed. This is crucial to ensuring public trust and confidence in the charity and its independence is maintained. Perception is as important as reality.

Para	Issue	Charity Commission guidance and relevant legal obligation
15	Trustee duties and responsibilities	CC3 The Essential Trustee
28	Public Benefit	Charities and Public Benefit
35	Public display of paintings	RR10 Museums and Art Galleries

## Annex A

### Paintings currently owned by the Charity

1. *'Old Horse Guards from St James's Park'*  
- by Giovanni Antonio Canal (Oil on canvas, landscape painting, 117x236cm)

Date of purchase by the Charity – 15 April 2002

Purchased for £10,120,000 – of which £7,200,000 was donated to the Charity by Lord Lloyd-Webber<sup>1</sup>.

Currently displayed at the Tate Britain (long term loan)

Historically the painting has been displayed at various galleries, including:

- i) Dulwich Picture Gallery;
- ii) The Royal Academy; and
- iii) The Yale Centre for British Art (USA).

When not on public display the painting has been loaned to Lord Lloyd-Webber under licence agreement. From 1 January 2008 – 9 April 2008 when the painting was under licence to Lord Lloyd-Webber, £2,740 was paid as licence fee. This is in addition to personally paying for the appropriate insurance for the period of £3,595.78 and providing a secure environment for the painting.

The Commission has reviewed the records provided by the Charity relating to the movements of the painting, which documents the times since purchase the painting has been on public display, under licence agreement or being valued, stored or restored. These records show that the painting has been on public display for an average of 6 months each year since purchase<sup>2</sup>.



<sup>1</sup> The Charity raised additional funds, in addition to donations from Lord Lloyd-Webber (on which gift aid was claimed by the Charity) from the proceeds of sale of other artworks and other income (bank accounts)

<sup>2</sup> In calculating this figure the Commission has not included the period the painting was publicly displayed in the first year of purchase. As the painting was not owned by the Charity for a full year to include the months publicly displayed would distort the average.

2. *'Angel Fernandez de Soto'* (also known as *'The Absinthe Drinker'*) by Pablo Picasso (Portrait, 241x301cm)

Date of purchase by the Charity – 8 May 1995

Purchased for £18,492,282 – of which £12,237,962 was donated to the Charity by Lord Lloyd-Webber<sup>3</sup>.

The painting is currently under licence agreement to Lord Lloyd-Webber and has been since December 2006 as a result of a title claim.

Historically the painting has been displayed at various galleries including:

- i) The National Gallery;
- ii) The New York International Art Fair; and
- iii) The Royal Academy of Arts, London.

When not on public display the painting has been under licence agreement to Lord Lloyd-Webber. From 1 January 2008 – 31 December 2008 when the painting was under licence to Lord Lloyd-Webber, £9,024 was paid as licence fee. This is in addition to personally paying for the appropriate insurance for the period of £29,162.46 and providing a secure environment for the painting.

The Commission has reviewed the records provided by the Charity relating to the movements of the painting, which documents the times since purchase the painting has been on public display, under licence agreement or being valued, stored or restored. These records show that the painting has been on public display for an average of 4 months each year since purchase<sup>4</sup>.



<sup>3</sup> The Charity raised additional funds, in addition to donations from Lord Lloyd-Webber (on which gift aid was claimed by the Charity) from the proceeds of sale of other artworks and other income (bank accounts)

<sup>4</sup> In calculating this figure the Commission has not included the period the painting was publicly displayed in the first year of purchase. As the painting was not owned by the Charity for a full year to include the months publicly displayed would distort the average.

3. *'The Garage'* by Stanley Spencer

Date of purchase by the Charity – 23 June 1999

Purchased for £1,063,388 – of which £300,300 was donated to the Charity by Lord Lloyd-Webber<sup>5</sup>.

The painting is currently in storage at Christie's.

Historically the painting has been displayed at various galleries including:

- i) The Royal Academy of Arts;
- ii) The Stanley Spencer Museum; and
- iii) Lakeland Arts Trust.

When not on public display the painting has been under licence agreement to Lord Lloyd-Webber. From 1 January 2007 – 18 April 2007 when the painting was under licence to Lord Lloyd-Webber, £415 was paid as licence fee. This is in addition to personally paying for the appropriate insurance for the period of £215.97 and providing a secure environment for the painting.

The Commission has reviewed the records provided by the Charity relating to the movements of the painting, which documents the times since purchase the painting has been on public display, under licence agreement or being valued, stored or restored. These records show that the painting has been on public display for an average of 6 months each year since purchase<sup>6</sup>.



<sup>5</sup> The Charity raised additional funds, in addition to donations from Lord Lloyd-Webber (on which gift aid was claimed by the Charity) from the proceeds of sale of other artworks and other income (bank accounts)

<sup>6</sup> In calculating this figure the Commission has not included the period the painting was publicly displayed in the first year of purchase. As the painting was not owned by the Charity for a full year to include the months publicly displayed would distort the average.

## Paintings previously owned by the Charity

### 1. 'St Cecilia' by John William Waterhouse (Oil on canvas, 196 x 117cm)

Date of purchase by the Charity – 14 June 2000

Purchased for £6,709,406 – of which £5,233,337 was donated to the Charity by Lord Lloyd-Webber<sup>7</sup>.

Date of sale by the Charity – 5 September 2008

Historically, whilst owned by the Charity the painting has been displayed at various galleries including:

- i) Tate Britain;
- ii) The Royal Academy of Arts; and
- iii) The foyer of the Palace Theatre

When not on public display the painting has been under licence agreement to Lord Lloyd-Webber. From 1 January 2007 – 18 April 2007 when the painting was under licence to Lord Lloyd-Webber, £3,847 was paid as licence fee. This is in addition to personally paying for the appropriate insurance for the period of £1,347.87 and providing a secure environment for the painting.

The Commission has reviewed the records provided by the Charity relating to the movements of the painting, which documents the times since purchase the painting has been on public display, under licence agreement or being valued, stored or restored. These records show that the painting has been on public display for an average of 5 months each year since purchase<sup>8</sup>.

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<sup>7</sup> The balance of this painting was purchased with the gift aid reclaimed by the Charity on the donation from Lord Lloyd-Webber.

<sup>8</sup> In calculating this figure the Commission has not included the period the painting was publicly displayed in the first year of purchase. As the painting was not owned by the Charity for a full year to include the months publicly displayed would distort the average.

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Liverpool  
L69 3UG**

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