

## CASE REVIEW SECTION

### ‘Five Loaves and Two Fishes’ ... English Cathedral Rescued by CVA

Roger Marsh, Partner, PricewaterhouseCoopers, London, UK

On 12 August 2004, the Cathedral Church of Saint Peter, Bradford, England (the Bradford Cathedral) entered into a company voluntary arrangement (CVA) with its creditors and I was appointed as the Supervisor of the arrangement. Additionally I was supported from a legal perspective by Philip Mudd and Caroline Whittington of Walker Morris Solicitors, Leeds. This is the first time that a cathedral in the UK has been subject to a CVA, or any other formal insolvency process. Two questions will probably come to mind immediately:

- How can a cathedral become insolvent?
- Is CVA an appropriate rescue procedure for such a body?

#### Insolvency

The Bradford Cathedral's financial difficulties resulted not from its day-to-day activities, but from the failure of its Millennium project. The project's ambitious goal was to establish a multi-faith visitor attraction in Bradford, celebrating and explaining the history of religious belief. Regrettably, the number of visitors projected by Bradford Cathedral's advisers proved to be highly optimistic and, after only a few weeks, the doors were closed. The project had failed.

A limited company had been formed to operate the visitor attraction on a day-to-day basis. However, the substantial expenses and liabilities involved in setting it up had been incurred by Bradford Cathedral itself. These included the cost of acquiring, renovating and adapting premises; the purchase of specialist IT; and the substantial fees of specialist advisers. The project was financed by a combination of loans and grants. When the project failed, there was no revenue to service the loans and the grants became repayable.

For a number of years these liabilities hung over Bradford Cathedral and the threat of formal insolvency disrupted its ministry in Bradford, a predominantly Muslim community. It was difficult to recruit and there was a serious risk to its survival. This is a

familiar story in the corporate world – but how could this happen in the context of the Church of England?

#### The cathedral's constitution

In England, cathedrals are governed by the Cathedrals Measure 1999 (the Measure). The Measure was passed by the General Synod of the Church of England and has Parliamentary Assent and Royal Assent in accordance with the provisions of the Church of England Assembly (Powers) Act 1919. The Measure therefore has the same force and effect as an Act of Parliament.<sup>1</sup>

The Measure stipulates that the Constitution of a cathedral must:

provide that the members of the Council, the Chapter and the College of Canons are a body corporate with perpetual succession and a common seal.

Each cathedral therefore operates as a separate body corporate, standing on its own financially. It is not merely an emanation of the wider church. It is the Dean and Chapter that together deal with the administrative aspects of a cathedral and who enter into documentation on its behalf. In this respect they are analogous to the board of directors of a limited company.

#### Administration and CVA

Having identified both Bradford Cathedral's insolvency and its status as a body corporate, the remaining question was whether there was an appropriate formal mechanism through which to effect its rehabilitation? Its new Dean, and all those involved in running Bradford Cathedral, were determined to put its affairs in order and, if necessary, to subject Bradford Cathedral to the same procedures and rigours that would apply to any other person or company.

Both administration and CVA used to be reserved to companies incorporated under the Companies Acts. Section 8(7) of the Insolvency Act 1986 (the Insol-

#### Notes

<sup>1</sup> Sir Thomas Bingham MR in *R v Archbishops of Canterbury and York, ex parte Williamson*, The Times, 9 March 1994.

veny Act) extended the definition of 'company' to include a company which may enter into administration by virtue of Article 3 of the Council Regulation (EC) 1346/2000 on Insolvency Proceedings (the Regulation).<sup>2</sup>

According to Article 3:

The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.

Whilst it may have been expected that this would extend CVA and administration to companies incorporated in other European jurisdictions, recent case law has shown that the effect is broader. Not only has it been held, in *BRAC*,<sup>3</sup> that bodies corporate established in other parts of the world are susceptible to administration (and by extension CVA<sup>4</sup>) it has also been held that other types of body corporate existing in the UK can take advantage of those procedures. The key question is whether their centre of main interests is in the UK.

### Re *The Salvage Association*

The case of *Re The Salvage Association*<sup>5</sup> dealt with an Association incorporated by Royal Charter in 1876. The Association constituted a legal person separate from its members, enjoyed perpetual succession, had a common seal and was capable of suing and of being sued. In addition to the powers set out in the Royal Charter, by which it was incorporated, the Association could do most things incidental or appertaining to a body corporate.

The members of the general committee of the Association applied for an administration order in the hope of approving a voluntary arrangement under the protection of such order. The Court held that an Association incorporated by Royal Charter could be made subject to an administration order under Part II of the Insolvency Act and could enter into a CVA under Part I of that Act.

The Court considered *BRAC*. This case concerned a company incorporated in Delaware which had its centre of main interests in the UK. Applying a literal

reading of Article 3(1) of the Regulation it was held that the only test to determine whether the Article is applicable is to establish whether the debtor's centre of main interest is in a relevant Member State. The question is not where the debtor was incorporated as a legal person. The Court held that insolvency proceedings in respect of the Delaware company could be opened in England.

On the authority of *BRAC* the Court in *Re Salvage Association* held that the Association's centre of main interests was in the UK and therefore the Regulation applied.

### Company Voluntary Arrangement

In *Re Salvage Association* the Court held that the same factors which conferred jurisdiction to make an administration order also applied to allow the Association to be made subject to a CVA.

However, the Court did note the reference in Article 3 to 'the Courts of the Member State' having jurisdiction to open Insolvency Proceedings and that a CVA is an 'out of Court' process. A CVA is approved at a creditors' meeting and therefore does not involve a 'competent body of a member state'. In *Re Salvage Association* a broad brush approach was accepted. The Court concluded that the expression 'Court' in the Regulation extended to include a meeting of the creditors.<sup>6</sup>

### Bradford Cathedral

On the authority of *The Salvage Association*, it therefore appeared that CVA was available as a rescue mechanism for Bradford Cathedral. An application was made to Court on 13 August 2004 to determine whether Bradford Cathedral did indeed have power to enter into a CVA. Bradford County Court, sitting in Leeds, considered the application.

It was accepted that Bradford Cathedral enjoys a similar status to that of the Association in *Re Salvage Association*. It is a corporation sole with perpetual succession, has a common seal and is capable of suing and being sued. Bradford Cathedral can borrow and grant security and can do many other things incidental to its existence as a body corporate.

The Court held that the reasoning in *Re Salvage Association* was directly applicable. Bradford Cathedral

#### Notes

2 See also paragraph 111(1) of Schedule B1 of the Insolvency Act.

3 *Re BRAC Rent-A-Car International Inc* [2003].

4 See section 1(4) of the Insolvency Act.

5 *Re The Salvage Association* [2003] EWHC 1028 (Ch).

6 See Moss, Fletcher and Isaacs (eds.), *The EC Regulation on Insolvency Proceedings – A Commentary and Annotated Guide*, (Oxford University Press, 2002) paras 8.16–8.19.

fulfilled the criteria of a 'legal person' as set out in Article 3(1) and had its centre of main interest in the UK. The Court accepted the approach put forward in *Re Salvage Association* that the creditors' meeting was effectively the 'Court' for the purpose of appointing Supervisors, and hence CVA was an available insolvency proceeding. The Court therefore concluded that Bradford Cathedral had power under Part 1 of the Insolvency Act to enter into a company voluntary arrangement with its creditors and thereby achieve its own rescue by compromising with those who could have brought about its failure.

## Overview

Whilst a cathedral can go into CVA it is important to be aware that the relationship between ecclesiastical law and insolvency law is far from clear. There are many practical issues to consider. The content of the proposal will, for example, be affected by restrictions upon the distribution of certain assets, in particular any consecrated ground. In respect of some property, it may be uncertain where the proceeds of any disposal belong to the cathedral absolutely, or are impressed with other equitable interests. The consent of the Church Commissioners, and others, is also required in certain circumstances before property can be disposed of.

It has been suggested that because specific provision has been made in Section 255 of the Enterprise

Act 2002 for 'a company arrangement or administration provision' to apply in relation to certain specific categories of body corporate (Industrial and Provident Societies and Friendly Societies) it cannot be intended that other types of body corporate (such as a salvage association or a cathedral) should have carte blanche to take advantage of those procedures without specific legislation.

However, it would seem to be very strange if (as in *BRAC*) a body corporate established outside the EU could enter into administration in the UK, but a body corporate existing under the laws of England and Wales (albeit not a company under the Companies Acts) could not.

In an enterprise culture where rescue from insolvency is to be encouraged, what would be served by depriving UK bodies corporate of an effective and fair process through which to achieve rehabilitation?

Testament to the constructive role of CVA, Bradford Cathedral is once again able to look to the future and serve its community freed from the burden of insolvency. Nothing whatsoever would have been achieved by denying CVA to the Cathedral, other than substantial expense, litigation and disruption to the City of Bradford.

Perhaps the miracle of the five loaves and two fishes could be seen as being as relevant today as it was over two thousand years ago; just interpreted in a different context!<sup>7</sup>

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## Notes

<sup>7</sup> Portions of this article appear in *Insolvency Law and Practice*.