



RETURN TO AN ADDRESS OF THE HONOURABLE THE HOUSE OF COMMONS
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**REPORT OF THE SPOILIATION ADVISORY
PANEL IN RESPECT OF AN OIL PAINTING BY
PIERRE-AUGUSTE RENOIR, 'THE COAST AT
CAGNES', NOW IN THE POSSESSION OF
BRISTOL CITY COUNCIL**

The Honourable Sir Donnell Deeny

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REPORT OF THE SPOILIATION ADVISORY PANEL IN RESPECT OF AN OIL PAINTING BY PIERRE-AUGUSTE RENOIR, 'THE COAST AT CAGNES', NOW IN THE POSSESSION OF BRISTOL CITY COUNCIL

INTRODUCTION

- 1 The Claimant is Margraf & Co GmbH (in liquidation) (Margraf) which, by itself and through its subsidiaries, was one of the most successful dealers of fine art and jewellery in Germany and internationally in the early part of the twentieth century. Between 1929 and 1937 the Margraf group was owned by Jakob and Rosa Oppenheimer. Margraf itself was liquidated by the Nazis in the late 1930s.
- 2 Margraf's current liquidator is Eva Sterzing, a French lawyer who for many years also acted on behalf of the surviving heirs of Jakob and Rosa Oppenheimer. Margraf's claim is in respect of an oil painting by Pierre-Auguste Renoir entitled "*Cros de Cagnes, Mer, Montagnes*" ("*The Coast at Cagnes, Sea, Mountains*") (the Painting) now in the possession of Bristol City Council (the Council) in the Bristol Museum and Art Gallery.
- 3 According to the Bristol Museum and Art Gallery Conservation Department Technical Record, the Painting was executed by Renoir in circa 1910 and measures 200 mm x 310 mm. It is a small oil on canvas, and depicts a view of the bay at Cagnes-sur-Mer in south-eastern France where Renoir lived from 1907 until his death in 1919. It is catalogued as no. K5925.
- 4 Margraf had acquired the Painting by 1935. Its provenance before then is unknown. It sold at auction through the Berlin auction house of Paul Graupe on 12 October 1935 to an unidentified purchaser. Its whereabouts between 1935 and 1939 remain unknown, but by 1939 it was in the possession of Leopold Moller (b. Vienna 1896, d. Bristol 1999) in Hamburg. Mr Moller, a cultivated man of Jewish origin, fled Hamburg from the Gestapo to Bristol in January 1939, possibly bringing the Painting with him. Mr Moller's wife later joined him in Bristol and brought out from Germany their rugs, other paintings and household possessions. The Mollers made their home in Bristol for the rest of their lives. On Mr Moller's death he bequeathed the Painting to the Friends of Bristol Art Gallery. In turn the Friends gave the Painting to the Council, and it remains at the Bristol City Museum and Art Gallery today.
- 5 Jakob and Rosa Oppenheimer were also of Jewish origin. They worked for Margraf for many years. Mr Oppenheimer had been Margraf's managing director since 1912, the year in which the company was bought by Albert Loeske. When Mr Loeske died in 1929 he bequeathed the entire shareholding in Margraf to the Oppenheimers. The intervening years to 1933 saw the Oppenheimers fall upon difficult times. Mr Loeske's family challenged his will and the bequest to the Oppenheimers, a challenge rejected by the German courts, and the German tax authorities levied significant taxes upon the Oppenheimers' inheritance from Mr Loeske. Moreover, trade at Margraf and its group companies had steadily declined following the Wall Street crash of 1929, leaving Margraf exposed to its bankers.
- 6 The Oppenheimers' Jewish background and Margraf's historic success drew them to the Nazis' attention early on, and in March 1933 the Oppenheimers were summoned by the Gestapo for interrogation. The

Oppenheimers avoided arrest only by fleeing to France. Mr Oppenheimer died there in 1941. Following the German invasion of France, his wife was arrested, interned and then deported to Auschwitz, where she was murdered by the Nazis in 1943.

- 7 Ms Sterzing (as Margraf's liquidator) wrote to the Council in January 2014 to claim the Painting as one of four Margraf works put up for auction at Graupe in 1935. She claimed the Painting had been spoliated from Margraf by the Nazis. The Council asked Ms Sterzing to refer the claim to the Secretary to the Spoliation Advisory Panel, which she did by letter dated 9 May 2014 and, in the event, the claim was referred by the Secretary of State to the Panel in July 2014 for consideration.
- 8 In early August 2014 the Secretary to the Panel wrote to Ms Sterzing with a number of questions concerning the claim that had been raised by the Panel. Answers to those questions came both from Ms Sterzing, who in addition to acting as the liquidator of Margraf also continues to act for one of the heirs, and from other lawyers acting for the remaining heirs over the following months and, lastly, in January 2015. In the interim the Panel learned of two files in the records of the German Federal Office for Central Services and Unresolved Property Issues (the BADV) that the Panel believed touched upon certain aspects of the claim. Copies of the files were provided to Ms Sterzing (and copied to the other heirs' lawyers) and the Council in late April 2015. The Panel invited submissions on the issues which the two files raised; Ms Sterzing responded in late May 2015, but the Council did not make further submissions.

THE PANEL'S TASK

- 9 The task of the Spoliation Advisory Panel is to consider claims from anyone (or from any one or more of their heirs) who lost possession of a cultural object during the Nazi era (1933-1945), where such an object is now in the possession of a UK museum or gallery established for the public benefit. The Bristol Museum and Art Gallery is such a body.
- 10 In considering a claim, the Panel's Terms of Reference (set out in the Appendix) require it to advise the claimant and the institution (here Margraf and the Council) on what action should be taken in relation to the claim. The Panel has taken into account submissions and documents from Margraf's liquidator Ms Sterzing, the heirs' lawyers, submissions and documents from the Council, and documents from the two BADV files, in order to determine the circumstances in which Margraf had and lost possession of the Painting; to evaluate the legal title; to weigh the moral strength of Margraf's case; to decide whether any moral obligation rests on the Council; and to advise Margraf and the Council accordingly. In performing these functions, the Panel's paramount purpose is to achieve a solution which is fair and just both to Margraf and to the Council.

THE CLAIMANT'S STATUS

- 11 Ms Sterzing was appointed as the liquidator of Margraf by order of the Amtsgericht Charlottenburg, Berlin on 30 May 2002 (the Order) on the petition of the Oppenheimers' then surviving heirs Edgar Michel Oppenheimer, Hildegard Stein, Beatrice Lavater, Ursula Pick, Peter Bloch and Anne (Orawan) Oppenheimer. The Order states that the purpose of Ms Sterzing's appointment as liquidator is to recover Margraf's assets. Ms

Sterzing's term as liquidator has been extended by the court until 3 May 2016.

12 When the Painting was sold at auction in 1935 Jakob and Rosa Oppenheimer were the only shareholders of Margraf, and Margraf appears to have had title to the Painting. Ms Sterzing submits that, if the Painting is to be returned by the Council or compensation paid by the Council because of Nazi spoliation, this must be to her as the liquidator of Margraf. The Panel gathers that, should the Painting be returned or compensation paid to Ms Sterzing as liquidator of Margraf, Ms Sterzing would then deal with the Painting or compensation in accordance with the obligations imposed upon her by law as liquidator.

13 Paragraph 1 of the Panel's Terms of Reference enables the Panel to consider claims from:

"... anyone (or any one or more of their heirs) ... who lost possession of a cultural object ... during the Nazi era (1933-1945)".

There is no doubt the Painting is a cultural object, and that Margraf lost possession of the Painting in 1935 during the Nazi era. On the case advanced by Ms Sterzing the person said to have lost possession was Margraf, not the Oppenheimers, who were shareholders of Margraf and (at least insofar as English law is concerned) had no proprietary interest in the Painting. Any natural person in Margraf's shoes at the time would have standing to bring a claim, on the basis that they lost possession of a cultural object during the Nazi era and the object is now in the possession of a UK museum or gallery established for the public benefit. Margraf, however, is not a natural person but a company. This is not a point taken by the Council but, given its threshold nature, it is one that should be determined at the very outset.

14 At first glance it could be argued that the words "their heirs" in paragraph 1 seek to limit the Panel's remit to claims brought only by natural persons rather than by bodies corporate or incorporate. The Panel's view, however, is that the meaning of the word "anyone" in paragraph 1 is wide enough to encompass claims brought by both natural persons and bodies corporate or incorporate. The natural meaning of "anyone" includes any person or people. English law has long treated "person" to include bodies corporate or incorporate. The Panel does not think the words "their heirs" seek to delimit "anyone" to natural persons; rather, it simply widens the pool of potential claimants beyond "anyone" to "their heirs". This is consistent with the general tenor of the Panel's Constitution and Terms of Reference. Thus the Panel's view is that Margraf, through Ms Sterzing as liquidator, has standing to bring this claim as the claimant on the basis that it lost possession of the Painting in 1935 during the Nazi era, and the Painting is now in the possession of Bristol Museum and Art Gallery.

15 Companies like Margraf do not exist in the abstract. The Panel recognises that the "real" claimants standing behind Margraf are the surviving heirs of Jakob and Rosa Oppenheimer. Moreover, given Margraf's claim is so intrinsically bound to the Oppenheimers' treatment by the Nazis, the Panel thinks it right to consider the heirs' position together with that of Margraf's when considering the claim under the Panel's Terms of Reference. We therefore turn to consider their standing as the surviving heirs of Jakob and Rosa Oppenheimer.

- 16 According to Ms Sterzing, Jakob and Rosa Oppenheimer had three children: Hans Oppenheimer, Hildegard Stein (née Oppenheimer) and Nelly Hardt ("divorced Gerstle", "divorced Bloch", née Oppenheimer). Hans, Hildegard and Nelly are now deceased.
- 17 The Oppenheimers also had seven grandchildren. Oradee Oppenheimer (Hans' second wife), Edgar Michel Oppenheimer and Anne Oppenheimer are the surviving heirs of Hans. Inge Blackshear (née Stein) is the surviving heir of Hildegard Stein; Hildegard has passed away since Ms Sterzing's initial appointment as liquidator. Beatrice Lavater (née Bloch), Ursula Pick (née Bloch) and Peter Bloch are the surviving heirs of Nelly Hardt.
- 18 Ms Sterzing produced inheritance certificates from:
- (a) the Amtsgericht Tiergarten, Berlin for Jakob Oppenheimer (d. 3 June 1941), which certifies his sole heirs as Rosa Oppenheimer, Hans Oppenheimer, Hildegard Stein and Nelly Hardt;
 - (b) the Amtsgericht Tiergarten, Berlin for Rosa Oppenheimer (d. 2 November 1943), which certifies her sole heirs as Hans Oppenheimer, Hildegard Stein and Nelly Hardt;
 - (c) the Amtsgericht Mitte, Berlin for Hans Oppenheimer (d. 9 May 1982), which certifies his sole heirs as Oradee Oppenheimer, Edgar Michel Oppenheimer and Oravan (Anne) Oppenheimer;
 - (d) the Amtsgericht Mitte, Berlin for Nelly Hardt (d. 8 September 1986), which certifies her sole heirs as Beatrice Lavater, Ursula Pick and Peter Bloch; and
 - (e) the Amtsgericht Charlottenburg, Berlin for Hildegard Stein (d. 15 June 2005), which certifies her sole heir as Inge Blackshear,
- to prove the heirs' standing as the surviving heirs of Jakob and Rosa Oppenheimer. The Panel accepts that the Oppenheimers' grandchildren set out in sub-paragraphs (c) to (e) above are the surviving heirs to date of Jakob and Rosa Oppenheimer.
- 19 All of the surviving heirs (apart from Edgar Oppenheimer) are now represented by Thierry Tonnellier and Alexander Blondieau, who are also French lawyers. They were, until recently, represented by Ms Sterzing. Edgar Oppenheimer still retains Ms Sterzing as his lawyer.

THE CLAIMANT'S CASE

- 20 The claim for restitution advanced in Ms Sterzing's 9 May 2014 letter to the Panel is based upon the Nazis' persecution of Jakob and Rosa Oppenheimer as people of Jewish origin, on the grounds of the "Principles with respect to Nazi-confiscated art" laid down by the Washington Conference on Holocaust Era Assets dated 3 December 1998 (the Washington Declaration). The Washington Declaration stresses the need to achieve a just and fair solution, which accords with the Panel's paramount purpose as laid down in its Terms of Reference. Ms Sterzing relies upon a report dated January 2014 (the Artiaz report) prepared by Artiaz, the Dutch independent art researchers and consultants, to support this basis of the claim.

The Artiaz report

- 21 The Artiaz report sets out in short form an account of the Oppenheimers' persecution by the Nazis from 1933 onwards, after they had taken control of the business from Mr Loeske:

"On October 1st, 1929 the bachelor Loeske died of cancer and by will left his shares of the Margraf & Co. group to the Jewish couple who had been managing it for him, the art dealer Jakob Oppenheimer and his wife Rosa In the early 1930's the *Nationalsozialisten* or Nazis more and more considered Margraf & Co. to be an exponent of the international jewelry and art trade run by 'Jewish capitalists' and from the moment Adolf Hitler's *Nationalsozialistische Deutsche Arbeiterpartei* (NSDAP) came to power on January 31st, 1933 systematic anti-Semitic harassments and violence were unleashed upon the Oppenheimers. Late March they fled Berlin for France in order to avoid their imminent internment scheduled for April 1st, 1933.

On December 2nd, 1933 a Berlin Nazi Court banned the Oppenheimers from being directors of Margraf & Co. and Bolko von Richthofen, a zealous Nazi and close acquaintance of Herman Göring, was appointed administrator of the group. Its subsidiaries were forced into liquidation in 1933 ... and 1934 ... and their entire stock was sold at five *Judenauktionen* or 'Jew auctions' in Berlin at Paul Graupe between January 25th and October 12th, 1935. The remainder was offered at two more sales at Dr. Walther Achenbach on September 30th and October 13th, 1937. Finally, the parent company of Margraf & Co. was liquidated by von Richthofen in 1938.

France was invaded by the German *Wehrmacht* on May 10th, 1940 and capitulated on June 22nd. During the occupation that followed, the Oppenheimers were eventually arrested and although Jakob was released shortly afterwards, he died of injuries inflicted upon him in Nice in 1941. Rosa was detained in the transit camp of Drancy, northeast of Paris, and with Transport 61 of October 28th, 1943 she was deported to Auschwitz-Birkenau, where she was murdered shortly afterwards. Their children Nelly, Hildegard, and Hans survived the war.

The above chain of events convinced private collectors, museums, auction houses, commissions, and courts of law in Germany, Switzerland, the Netherlands, the United Kingdom, and the United States to acknowledge that the 'Jew auctions' at Paul Graupe in 1935 and at Dr. Walther Achenbach in 1937 were forced sales and that the items offered there are to be considered looted. Regarding the objects the whereabouts of which were determined in recent years, restitutions to or settlements with the Oppenheimer heirs were agreed upon in accordance with the principles of the 1998 Washington Convention on Holocaust-Era Assets."

Mr Loeske's will

- 22 Ms Sterzing also provided a copy of the last will of Mr Loeske made in Berlin dated 2 August 1928 to prove the transfer of title in the Margraf shares from Mr Loeske to the Oppenheimers. In it Mr Loeske makes bequests to his employees, to Rosa Beer (née Blaustein) (his long-time companion), to Jakob and Rosa Oppenheimer, and to Dr Eduard Plietzsch

(a director of Van Diemen & Co, one of Margraf's subsidiaries) amongst others. He bequeathed to the Oppenheims his shareholding in Margraf and its subsidiaries, which effectively gave the Oppenheims control of the whole Margraf business undertaking. Mrs Beer was given the entire cash holdings in Margraf's accounts on the proviso that the money be left in the company's accounts for at least three years at 6% interest. She was given the right, however, to draw upon the cash in order to pay any inheritance taxes that became due. The effect of this bequest may well have left Margraf with a medium-term cash-flow issue, though whether or not that became the case is not known for certain.

- 23 It seems there was a lengthy court battle over Mr Loeske's will, ultimately resolved in the Oppenheims' favour. On 21 January 1931 – almost two years before the Nazis came to power – "The Canberra Times" reported as follows:

"The fate of the huge fortune – variously estimated at from £5,000,000 to £10,000,000 – of the late Albert Loeske, the German financier, jeweller, and art dealer, has been decided.

The Berlin Court awarded the fortune to Loeske's manager, Herr Oppenheimer, Frau Oppenheimer, and his life-long friend, Frau Rosa Blaustein [Mrs Beer], while his 300 blood relations went away empty.

The kindred of the eccentric bachelor who refused to have anything to do with them during his lifetime put forward the alternative pleas that this will was a forgery, that the testator was of unsound mind and under undue influence when he executed it, and that the beneficiaries were unworthy to succeed. The Court, however, made very short work of all these allegations, for its judgement was the result of a retirement of barely five minutes.

...

Loeske was for some time the biggest taxpayer in Berlin. It was said of him that he was the only millionaire in Germany who filled up his income-tax return with scrupulous precision."

Contemporaneous accounts

- 24 With her 9 May 2014 letter Ms Sterzing also offered three accounts of contemporaneous witnesses to support the claim and, more particularly, the transfer of title in the Margraf shares to the Oppenheims: first, that of Dr Eduard Plietzsch, an employee of Margraf from 1919 to 1935 and a beneficiary under Mr Loeske's will; second, an account by Willi Schulz, a tax official between 1914 and 1936 who was responsible for the Loeske estate; and third, a statement by Baron Bolko von Richthofen, who was appointed in 1933 to administer Margraf. English translations of the original German documents were provided by Ms Sterzing.
- 25 Dr Plietzsch made a statement under oath dated 16 July 1956 in support of a claim by certain Margraf subsidiaries to the Restitution Office in Berlin. In his statement, Dr Plietzsch says:

"The shares of these companies [i.e. the Margraf subsidiaries] were [sic] originally owned by Mister Loeske and were bequeathed after the death of Mister Loeske to Jacob [sic] Oppenheimer and to his wife Rosa Oppenheimer

These companies had an international reputation and it was well known that they were considered as belonging to the most famous companies in New York and Amsterdam.

The persecution began immediately after the April 1st 1933. The companies of the Margraf group were subject of the hatred by the national socialist rulers, because they were owned by Jewish persons. They were well-known on the international art market and belonged to the most successful dealers of art. Furthermore, all the important staff as far as they were not Jewish, were not members of the national-socialist party. Consequently these companies were without any protection and were permanently urged by different places (administrative authorities and party authorities) to sell their very valuable property without consideration of the price and without any consideration of the effects of these sales on the art market.

Finally, the stocks had to be sold within a very short time on auctions [sic], i.e. at the following dates:

- 1) in January 1935,
- 2) in April 1935,
- 3) remaining stocks in September 1937.

I remember even the aryan [sic] competitors ... tried to intervene with the party authorities in order to obtain a delay, because it was feared that the prices of the international market would suffer.

...

The auction prices were, as mentioned in the pre-catalogues, without limit [i.e. reserve]. This was very unusual for normally in art trade the works of art are sold on auctions with limits. The raison [sic] was that this Jewish company was meant to disappear as fast as possible from the art market."

Dr Plietzsch does not mention the Graupe auction of 12 October 1935, though perhaps that is understandable given the 12 October 1935 auction sold works belonging only to Margraf, and not the Margraf subsidiaries with which Dr Plietzsch's statement dealt.

- 26 Mr Schulz wrote to the Restitution Office in Berlin by letter dated 25 July 1956 in support of a claim by the Margraf companies and the Oppenheimer heirs. (In fact, Mr Schulz was the executor of the estate of Mrs Beer, for whom he also claimed on behalf of the beneficiaries of Mrs Beer's will – the children of one of the Oppenheimers' daughters, Nelly Hardt, from her first marriage to Ivan Bloch.) In his letter Mr Schulz said:

"In his last will, Mr. Loeske appointed Mr. Jakob Oppenheimer together with his wife [sic] Rosa Beer as executors. The clearing of the estate took several years because of legal suit concerning the will which is of no interest for the present case and which was settled only shortly after^[1] the assumption of power by the national socialists by judgement in favour of the heirs named by Mr. Loeske in his last will

¹ Compare the newspaper report at paragraph 23 above, which indicates that judgment was given in 1931 i.e. two years before the Nazis came to power.

so that this last will has been declared valid in all its dispositions. However the shares could not be formally transferred by the executors to Mr. and Mrs. Oppenheimer because of the seizure of power by the national socialists and because Mr. and Mrs. Oppenheimer had to leave Germany already on April 1st 1933 due to national socialist persecution measures. ...

...

I worked since 1914 in the administration and was in charge of the Albert Loeske estate as a fiscal civil servant. Because of my political convictions and my opposition to the Third Reich, I had to leave the tax administration in 1936 ...

...

... [Margraf] as well as the four affiliated companies were persecuted by the leading Nazis in an exceptional way. The main enemy of these companies were Goring [sic] and Goebbels because they considered the Margraf company as the embodiment of the international Jewish jewellery and art trade. It was planned that the married couple Oppenheimer should be arrested immediately on April 1st 1933 and they could only escape this arrest by fleeing to a foreign country. Their villa was searched and occupied by the party organisations. Mr. von Richthofen was appointed as trustee of the company. He was the brother of the famous pilot of the first world war who was very close to Mr. Goring [sic].

...

The boycott of [Margraf] began immediately on April 1st 1933. [Margraf] had already been attacked before this date by Goebbels [sic] and Goring [sic] also was a special enemy of this company. The consequences of this were naturally that the company was boycotted by a great part of their clients. The clients were mostly people from the former court society and the circles of nobility as well as the main industrialists and bankers who, of course, feared to continue to buy in this company. The yearly turnover which amounted before the Hitler era to many millions was immediately reduced. The goodwill of this company in the international trade suffered also. I may again draw your attention to the fact that in a very uncommon way a trustee (Mr. von Richthofen, who was close to Goring [sic]) was appointed and I do not think that any explanations are necessary to establish that a company directed in this way was hindered in all circumstances to carry out its business. ... The company lost completely its goodwill which it had acquired since 1912 in Germany and abroad until 1933.

... The Margraf company suffered great damage by being taxed of inequitable taxes. ... These inequitable taxes were fixed for the purpose of destroying the Margraf company. [I am] ready to declare in a declaration under oath that unlawful measures were taken by the main tax office As another witness, Bolko Freiherr von Richthofen whom I mentioned above.

...

... the real owners of the shares of Margraf & Co [were Mr and Mrs Oppenheimer] each owning fifty per cent of the shares. These shares were evaluated during the Nazi era for tax evaluation purposes to a total amount of RM 1.500.000 (this shows indirectly the value of the Margraf company): as above mentioned these shares could not be transferred to the married couple Oppenheimer and those persons did not receive any compensation. ..."

- 27 Baron von Richthofen also made a statement under oath. His statement is dated 6 October 1954, and was provided to Mr Schulz. Baron von Richthofen said:

"I was appointed by the tax office Tiergarten as trustee of the company Margraf & Co GmbH since 1933. The shares of [Margraf] were pledged to the tax office Tiergarten as a guarantee of an inheritance tax of more than 5 million Reichmark [sic]. When the debt of inheritance taxes was completely paid in 1937, as I remember, the shares were released from the pledge. According to a written agreement the tax office did not transfer the shares of a value of 1,5 million Reichsmarks to Mr. Jakob and Mrs. Rosa Oppenheimer who received them as a bequest according to the last will of Mister Albert Loeske but to the sole heir of Mister Albert Loeske, Mrs. Rosa Beer, with the obligation that the shares would never be transferred to the heirs of the legatees, Jakob [sic] and Rosa Oppenheimer. Under the pressure of the national socialism Mrs. Beer could not oppose herself to this unlawful request of the tax office. Consequently she was fiscally considered as the owner of the shares of the company and as such she had to pay the property tax and the special tax on Jewish property.

After I was appointed since 1938 as liquidator of [Margraf] I paid to the tax office with the assets of this company on behalf of Mrs. Beer the special tax on jewish [sic] property of an amount of 500 000,-- Reichsmark [sic] to the tax office."

The Panel does not know for certain what happened to the Oppenheimers' shares in Margraf after they passed to Mrs Beer, or, indeed, the ultimate whereabouts of the proceeds of Margraf's liquidation. Mrs Beer, herself a Jew, was murdered by the Nazis in Theresienstadt in March 1943. The Panel considers it likely that her remaining assets (including the proceeds of Margraf's liquidation) were stolen by the Nazis.

- 28 Mr Schulz and Baron von Richthofen's assertions regarding the German state's interference with the operation of Margraf are to some extent independently corroborated by an order of the Landgericht Berlin dated 2 December 1933, also provided by Ms Sterzing. Amongst other things this order prohibits Jakob Oppenheimer and Ivan Bloch (the Oppenheimers' son-in-law who assisted in managing the Margraf group companies) from acting for or on behalf of Margraf and three of its subsidiaries.

Summary of the Claimant's case

- 29 A number of threads can be drawn together from the evidence submitted and submissions made by Ms Sterzing and the heirs' lawyers to sum up the basis of the case for restitution to Margraf:

- (a) Jakob and Rosa Oppenheimer were of Jewish origin. They worked for Margraf for many years and, when the owner of the shares in Margraf Mr Loeske died in 1929, he bequeathed the shares to the Oppenheimers such that they took ownership of the company. Mr Loeske's bequest to the Oppenheimers was challenged by his family, but that challenge was resolved in the Oppenheimers' favour before the Nazis came to power in January 1933.
- (b) The Nazis targeted the Margraf group of companies, which they saw as "the embodiment of the international Jewish jewellery and art trade". The Oppenheimers were singled out for interrogation, but they fled from Germany to France in March 1933 before they could be arrested.
- (c) Jakob Oppenheimer died in France in 1941 after internment. Rosa Oppenheimer was murdered by the Nazis at Auschwitz in 1943. They were survived by their three children, and their surviving heirs are their seven grandchildren.
- (d) The Nazis took control of the Margraf group by various means, including the appointment by the tax office of Baron von Richthofen to administer Margraf in 1933. Baron von Richthofen also acted as the liquidator of Margraf in 1938. He was closely associated with Hermann Goering and other leading Nazis.
- (e) A German court effectively stripped the Oppenheimers of control of Margraf in December 1933.
- (f) Stock-in-trade of the Margraf group of companies was sold by auction through 1935 and 1937. The Painting, which by 1935 was owned by Margraf, was sold at a "Jew auction" to an unknown buyer by the Berlin auction house of Paul Graupe on 12 October 1935. The Claimant's case is that the sale was, in the circumstances, a forced sale due to the Nazis' persecution of the Oppenheimers.
- (g) The Painting at the Bristol Museum and Art Gallery is the same painting which sold at auction on 12 October 1935.
- (h) The Oppenheimers' shares were pledged to the tax office to guarantee inheritance tax of more than RM 5,000,000 levied upon Mr Loeske's bequest. This tax debt was discharged and the shares released from their pledge in 1937, but the shares (which were valued at RM 1,500,000) were never transferred to the Oppenheimers. Instead, they were transferred to Mrs Beer, Mr Loeske's long-time companion, who had remained in Germany, on the basis that they remain with her.

30 Ms Sterzing says that, in all the circumstances, the Painting should be transferred to her as the current liquidator of Margraf or, alternatively, a form of agreed compensation should be made in order for the Council to retain the Painting.

31 Two initial observations may be made here regarding the Claimant's case.

32 First, and quite understandably in the circumstances, outside of the auction catalogue (as to which, see below) there is no direct documentary evidence that the Painting was in Margraf's ownership or possession in the lead up to the 1935 sale.

- 33 Second, there is no evidence as to the price the Painting achieved at auction, and no conclusive evidence of what happened to the proceeds of the sale. Without more, it is a matter of some speculation that the proceeds were paid to the tax office in order to discharge the tax debt levied on the Oppenheimers following their inheritance from Mr Loeske on his death in 1929. The position at least insofar as the proceeds of sale are concerned appears to have been clarified following the Panel's consideration of the two BADV files referred to above.

THE COUNCIL'S CASE

- 34 The Council's position is set out in its statement of case dated 27 June 2014.

- 35 The Painting was bequeathed by Mr Moller along with two others to the Friends of Bristol Art Gallery on Mr Moller's death in November 1999. The Friends are a charitable organisation which does not own works of art itself, and so title to the Painting was transferred by the Friends to Bristol City Council by a form of transfer of title dated 6 February 2001. In the section that lists "conditions" to the gift, the form refers to an enclosed letter written by the Chairman of the Friends dated 5 February 2001, which says in part:

"You will know that we discussed the wording of the agreement at the last meeting of the Friend's [sic] committee and wish to use the following:

'Bristol City Council will adhere to a policy of non-disposal of works acquired, including those given by the Friends. If at any time the Art Gallery should cease to exist, any works given by the Friends are required to be returned to them for offer to another public museum or art gallery.'

We would also like to accept your suggestion for the label:

'Bequest of Leopold Moller to the Friends of Bristol Art Gallery, 1999 and presented by them 2001.'

- 36 Leopold Moller (also known as "Poldi") had a close association with the Bristol Art Gallery from the 1950s onwards. Over time he lent to the gallery three works that he later bequeathed to the Friends whilst he was on vacation. Mr Moller was a valued chemical engineer. He described to the staff at the gallery how, as an Austrian Jew, he had fled Hamburg from the Nazis to Bristol, bringing with him two unframed oil paintings. He settled in Bristol. The story of Mr Moller's flight is told in a eulogy written by his niece, which is kept in the gallery's records:

"My personal knowledge of Poldi began as a small child, when he and his wife would pay their annual visit to Baden, the small resort town near Vienna where we lived. ...

Poldi was so valuable to his company in Hamburg that they protected him and urged him to stay on, long after Hitler had come to power. They promised to get him out of Germany and find him another job if there was reason to fear for his safety. Then one day, in January 1939, he learned from the police chief of Hamburg that the Gestapo were looking for him. On the next day he was on a plane, without any luggage, supposedly on a business trip. He arrived in Amsterdam, visited the Riksmuseum [sic], and spent the night in poor lodgings.

The next day he arrived in Bristol, with a few shillings in his pocket and two valuable paintings rolled up under his arm. He immediately started to work. His company had kept its word: they had found him a job with the Imperial Smelting Corporation in Bristol.

Poldi's wife, Mite, who was not Jewish, followed him to Bristol. She was able to bring out their rugs, paintings, and household possessions."

- 37 The Council has no record of how Mr Moller came into possession of the Painting. Given Mr Moller's history, the Council considered it unlikely that the Painting may have been subject to spoliation by the Nazis. Until Ms Sterzing contacted the Council in early 2014 it was unaware of the Margraf group of companies, the Oppenheimers or the sale of the Margraf group's works at auction in 1935 and 1937. Indeed, Mr Moller's story of persecution by the Nazis and his escape with the Painting has been used in its interpretation of the Painting in its current display at the gallery.
- 38 The Council has provided Ms Sterzing with all of the documents and information it holds in connection with the Painting. It asks that the Claimant demonstrates the Painting is the same as the one sold as Lot 180 at the Graupe auction in 1935 and, if so, whether that sale was a forced sale, and whether, in the circumstances, the Claimant is the sole and rightful claimant.
- 39 We turn first to consider whether the Painting is the same as the one sold as Lot 180 at the Graupe auction in 1935.

THE PAINTING

- 40 Ms Sterzing has provided a copy of extracts from the Paul Graupe catalogue produced for the 12 October 1935 sale. The catalogue is entitled:

"From Different Private Collections

Hand Drawings
The 16th to 20th Centuries

Paintings

Ancient Arts

Auction 147

on October 12, 1935",

and the paintings therein comprise Lots 161 to 184. Lot 180 lists a painting by Pierre-Auguste Renoir:

"Auguste Renoir

180 *Coast at Cagnes*. In the front the turquoise sea, in the back mountains getting blurry. Oil on canvass. Signed right below: *Renoir*. H. 20 cm., W. 31 cm. (5). Plate 30."

The note (5) in brackets is said to be a reference to the catalogue's frontispiece, where it is denoted as a "contribution" by "M.i.L.". Research by Artiaz at the Berlin archive of the Reich Chamber of Fine Arts suggests that

"M.i.L." is an abbreviation for "*Margraf & Co. in Liquidation*". Lots 165, 168, 180 and 181 are each marked (5), which indicates that they all belonged to Margraf.

- 41 It is immediately apparent that the dimensions of the painting in Lot 180 exactly match those of the painting described in the Bristol Museum and Art Gallery Conservation Department Technical Record.
- 42 Plate 30 of the auction catalogue appears to show the Painting. The Artiaz report reproduces Plate 30 and compares it with a picture of the Painting. It concludes beyond doubt that the work in Plate 30 (i.e. Lot 180) is one and the same work as the Painting.
- 43 Ms Sterzing has also provided the Panel with an electronic video prepared by Artiaz which overlays transparencies of the painting depicted in Plate 30 with the Painting. Both works appears to be one and the same. The Panel concludes that, on the balance of probability, the work by Renoir sold as Lot 180 at the Graupe auction on 12 October 1935 is the same as the Painting.

CIRCUMSTANCES LEADING TO THE 1935 GRAUPE AUCTION

- 44 On its own, the case initially advanced by Ms Sterzing regarding the circumstances in which Margraf lost possession of the Painting, as set out in Ms Sterzing's letter to the Panel in May 2014, looks sufficient to establish Nazi spoliation of the Painting. In the course of considering the claim, the Panel learned of the existence of the two files referred to in paragraph 7 above held in the records of the BADV. These files are entitled:
- (a) "BADV, Akte 3097, Betriebsprüfungsakte, Margraf & Co"; and
 - (b) "BADV, Akte 2367, Jacquier & Securius, Betriebsprüfungsbericht Bernott 1938".
- 45 The first file of papers relating to Margraf records the involvement of the local tax office, to which apparently at least some (if not all) of the Margraf shares had been pledged in 1931 and 1932 to secure an inheritance tax debt accrued by Jakob and Rosa Oppenheimer upon Albert Loeske's bequest of the Margraf companies to them on his death. The Panel understands from the papers that the initial tax debt owing by the Oppenheimers was in the order of RM 5,000,000, but that, following payments made by the Oppenheimers in 1931 and 1932 (i.e. before the Nazis came to power), had been brought to below RM 4,000,000. The tax debt appears to have been further reduced by the tax office by 38 1/3% in August 1933 (i.e. after the Oppenheimers had fled Germany, and after Mr Schulz says the Nazis began to boycott the business on 1 April 1933) due to the effect on Margraf's business of the economic crisis which followed the 1929 Wall Street crash, leaving the residual claim at just under RM 2,800,000. As mentioned, the Oppenheimers' shares in Margraf were assigned by them to the tax office to secure this debt well before the Nazis attained power in January 1933 and they fled Germany in March 1933.
- 46 The BADV file indicates that, as early as March 1930 (i.e. before the Nazis came to power), the tax office had sought to audit Margraf, the Oppenheimers and Mrs Beer's affairs, with a particular focus upon their international business relationships. A letter from April 1930 indicates that an audit of the entire Margraf group of companies was planned, stretching back to between July 1928 and October 1929 (the latter date coinciding with

the time of Mr Loeske's death). Other papers in the file suggest that stock-in-trade was being transferred abroad untaxed, mainly through a Dutch subsidiary of Margraf. This appears to have been the basis for the planned audit, though for reasons unknown the audit appears to have been postponed until 1931. An audit of Margraf was carried out by the tax office in 1933; the final report casts doubts about the liquidity of the group (a concern that had been raised by the tax office as early as 1931), partly due to the arrangements in connection with Mr Loeske's estate, and cash withdrawals by Jakob Oppenheimer and Mrs Beer. Mrs Beer appears to have withdrawn RM 60,000 annually in addition to her standard costs of living. The effect this had on the company's finances is mentioned in the papers:

"The remaining personal drawings [of Mrs Beer] continued unabated. Indeed, she has only withdrawn approx. RM 5,500 more than accounted for all the rent income from the surpluses of the buildings and interest credited since 1 January 1930."

- 47 Papers in the first file also say that, shortly after the Oppenheimers fled Germany in March 1933, notaries acting for Jakob Oppenheimer and Mrs Beer held a general meeting and appointed Ivan Bloch, the Oppenheimer's son-in-law, as managing director of Margraf on 3 May 1933. Ivan Bloch was a Swiss citizen who lived outside of Germany. The file also says that, around the same time, Baron von Richthofen was appointed as a "tax inspector" of the Margraf group on the proposal of Jakob Oppenheimer's legal advisor Dr Schachian. This is in direct contrast to Ms Sterzing's submissions. The inference from these appointments, connected as they are with Jakob Oppenheimer, is that Mr Oppenheimer continued to exercise control over the Margraf group companies, at least through Mr Bloch. Indeed, from the BADV papers which the Panel has seen it seems that the tax office did not want Baron von Richthofen involved in any way with Margraf as he was thought to be too inexperienced.
- 48 There is, in addition, an inference that the German court order of 2 December 1933 prohibiting Mr Oppenheimer and Mr Bloch from acting for or on behalf of Margraf was a result of the continuing influence of Mr Oppenheimer, possibly to evade the inheritance tax debt levied by the German tax authorities. Despite the December 1933 court order, Mr Bloch appears to have remained in control of Margraf and its subsidiaries: he was a party on behalf of three Margraf subsidiaries in a contract with Graupe and Jacquier & Securius dated 2 November 1934 for subsequent sales of stock by auction. The stock to be auctioned – art works the property of the three Margraf subsidiaries – was referred to as belonging to the bank as "security by way of ownership".
- 49 The second file of papers relates to Jacquier & Securius, Margraf's bankers, and record Margraf's indebtedness to the bank between 1929 and 1935. This debt is said to have been secured by a contractual lien (Sicherheitsübereignung) dated 13 October 1933 over the stock-in-trade of the entire Margraf group of companies. While the lien permitted the stock to remain in the companies' possession, it gave the bank the right to call in the stock at any time for sale in order to satisfy the outstanding debt.
- 50 Other Margraf group assets were significantly encumbered. Some nine properties owned by the companies, all heavily mortgaged, had been put up for sale by 1933. Some were empty and yielding no rent, and therefore

provided no income for debt repayment. A line of credit provided by the bank from 1931 onwards (thought to have been for the purpose of paying down the inheritance tax liability) stood at almost RM 1,000,000 in 1933, although by 1934 it had fallen to around RM 800,000. A June-August 1933 report by a tax office auditor indicated that the group tax debt and its line-of-credit liabilities to the bank stood then at around RM 3,500,000. The tax auditor said as follows:

"Neither the group companies nor their heirs are in my opinion currently able to make fixed payments by instalments. The rental income has dropped very significantly due to the many empty apartments and business premises. The amounts currently received, insofar as they flow from Germany, are liable to be completely used up in maintaining the operations of the business and the much reduced living standards of the heirs."

He further said that:

"Requesting further collateral through the transfer of valuables is likely to prove futile, because collateral is needed simultaneously for the line of credit. Take-up of the line of credit granted by the bank has been reduced only very slightly."

The tax auditor concluded that repayment of the inheritance tax debt by instalments should be reconsidered again at the beginning of 1934. This suggests to the Panel that, even after the Oppenheims had fled Germany in March 1933, the tax office auditor was interested to see the group business continue in order to pay off the debts which had accrued as and when that could happen, and that other means of securing the tax debt were very limited in light of the group's extant arrangements with its bank.

- 51 It was because of Margraf's strained financial circumstances that Jacquier & Securius took the decision to sell at auction the art works held as stock-in-trade by Margraf and secured to it by lien. One of the bank's auditors said in 1938:

"[In] the end it was agreed that a substantial amount of the stock was to be sold and the proceeds used to cover the debt balance. On 2 November 1934, [Margraf] awarded the auction house of Paul Graupe the auction contract. There were to be four to five separate auctions so as to not flood the market. The bank also had a say in the form of the contract. Once the police commissioner had approved the auctions, the first auction took place in January [1935]. Graupe had accepted the bank guarantee that the auction would at least yield Margraf's debt balance (approx. RM 800,000). In actual fact the [auctions] yielded considerably more. Most of the proceeds went to Margraf. Nor did the bank make any loss on its investment."

- 52 A number of sales by Graupe (including the Painting's sale at auction in 1935) took place with the tax office's consent, and realised RM 1,647,877.70 less commission, of which RM 808,073.83 and RM 14,566.10 went to repay the bank debt, leaving RM 825,237.77 to go towards settling the inheritance tax debt. Once the bank's claims were satisfied Graupe was instructed to make all further payments to Margraf but, despite what the bank's auditor said in 1938, there is no evidence in the BADV files which the Panel has seen that this in fact happened.

- 53 These papers suggested to the Panel that, rather than as a result of Nazi persecution, the Painting's sale at auction in 1935 came about because of the inheritance tax and bank debt which pre-existed the Nazis' accession to power. The Panel invited Ms Sterzing to consider both files and to provide the Panel with submissions in connection with this issue, which she did in late May 2015.
- 54 In the event, Ms Sterzing submitted that the material in the BADV files was irrelevant to the claim for a number of reasons, in sum as follows:
- (a) Ms Sterzing said that the reports prepared by the tax office contained in the BADV files were prepared following the Nazis' rise to power in 1933. The Nazis used state organs such as the tax office as a subversive and persecutory means to target and control Jewish people and their property, and so those reports must be treated with caution as they may not represent the true financial status of Margraf and its group companies.
 - (b) Ms Sterzing contended that Jews were widely persecuted in the years before the Nazis took power in January 1933. The Oppenheimers fled Berlin in March 1933 to escape interrogation by the Gestapo. Their forced departure made Margraf's business situation all the more difficult. Those difficulties culminated in the Graupe auctions in 1935, including the October auction at which the Painting was sold. Ms Sterzing referred to the written evidence of Mr Schulz and Baron von Richthofen, already outlined in part in the paragraphs above, as evidence of the persecution that the Oppenheimers suffered and of the fact that the shares in Margraf were not returned to the Oppenheimers, even after their inheritance tax liability was settled, but instead were transferred to Mr Loeske's long-time companion Mrs Beer.
 - (c) Ms Sterzing said that Margraf's supposed difficulty with its indebtedness to Jacquier & Securius must be treated with caution as it arose towards the end of 1933, well after persecution of the Oppenheimers began. In any event, notwithstanding enquiries (which included official archives in Koblenz and Potsdam), Ms Sterzing found no evidence of the so-called contractual lien over Margraf's stock said to have been given to the bank in October 1933 in order to secure the debt.

Ms Sterzing referred the Panel to the 25 July 1956 letter of Mr Schulz and the 6 October 1954 statement of Baron von Richthofen that we referred to above, and a further statement of Mr Schulz dated 14 September 1956, in support of the Oppenheimers' persecution at the hands of the Nazis. No further documents were produced by the Claimant or the heirs in connection with the BADV files.

- 55 Despite invitation from the Panel, the Council chose not to make any submissions in connection with issues raised by the two BADV files.
- 56 Much of the content of Ms Sterzing's submissions on this material reiterated what the Panel understands to be common ground between the parties, i.e. that the Oppenheimers had to flee from persecution in early 1933; that, in subsequent years, the Oppenheimers were given no opportunity to assert, or reassert, their ownership of the Margraf shares; and that the assets of the Margraf business ultimately were taken by the Nazis, and that Margraf

was dissolved. It is instructive, however, to look in closer detail at Mr Schulz's letter to the Restitution Office dated 25 July 1956, which referred to the legal dispute over Mr Loeske's will, and goes on to say:

"The Margraf shares were after Mr Loeske's death pledged to the Tiergarten Finance Office as security for the inheritance tax due of RM 5,262,477."

Indeed, Mr Schulz stressed the size of Mr Loeske's estate. He confirmed that, when the inheritance tax was finally paid off in 1937 (i.e. after the 1935 Graupe auction of the Painting), it was the Oppenheimers' entitlement to take back the Margraf shares that fell afoul of Nazi persecution policies.

- 57 When taken with the submissions that Ms Sterzing initially advanced, the overall thrust of the Claimant's case is that, because the Oppenheimers suffered persecution at the hands of the Nazis and had to flee the country leaving their business behind which was then exploited by the Nazis, the 1935 sale of the Painting was a forced sale due to the Nazis' persecution of the Oppenheimers because they were Jewish, and the Claimant is therefore entitled to claim restitution of the Painting as one of the many works of art in its possession immediately after the Oppenheimers were forced to flee Germany in March 1933.

WAS THE 1935 SALE A FORCED SALE?

- 58 There are a number of factors which together point towards the Painting's sale at auction in 1935 being a forced sale that resulted from the Nazis' persecution of the Oppenheimers for no other reason than they were Jews. The Margraf group of companies was wholly owned by the Oppenheimers. The Oppenheimers were forced to leave Germany within months of the Nazis coming to power. They were singled out early on for persecution. The Nazis forced a boycott of their business after 1 April 1933. The 1935 Graupe "Jew auctions" are widely recognised as a vehicle through which the Nazis spoliated art works, often under value. The Graupe auctions were not a conventional means by which one could expect the Margraf group companies, as dealers in art, to sell their stock-in-trade. There is no evidence that the remaining proceeds from the sales were returned to the Margraf group. Following settlement of the inheritance tax debt in 1937, the Oppenheimers never received back the Margraf shares bequeathed to them by Mr Loeske which they had pledged to the tax office as security for the debt. Margraf subsequently was liquidated by the Nazis.
- 59 On the other hand, there is little doubt that Albert Loeske's bequest to the Oppenheimers in 1929 incurred a significant inheritance tax debt which was left unpaid because of a number of economic factors that befell the Margraf group before the Nazis came to power in January 1933. Ultimately the remaining inheritance tax debt was left unpaid because the Oppenheimers were forced to flee Germany in March 1933. The line-of-credit extended to Margraf as far back as 1931 (coinciding, it seems, with the favourable determination of the contest to Mr Loeske's will in favour of the Oppenheimers) was supposed to repay some of this liability, but for reasons unknown it seems that the inheritance tax debt was not fully extinguished until 1937, two years after the Painting's sale at auction. Some of the inheritance tax debt had been reduced by the Oppenheimers before they fled Germany in March 1933.

- 60 On the documents which the Panel has seen, the Margraf group debt to its bankers Jacquier & Securius arose at least as early as 1929 i.e. at about the time of Mr Loeske's death, and well before the Nazis came to power. Mrs Beer was, of course, given in Mr Loeske's will the entire cash holdings in Margraf's accounts, though that money had to remain in the company's accounts with interest for at least three years.
- 61 The Panel believes it is likely that Jacquier & Securius continued to provide banking facilities to the Margraf group; indeed, the BADV files reviewed by the Panel indicate that the group indebtedness to the bank through the line-of-credit facility granted in 1931 (apparently in order to pay down the inheritance tax liability) was almost RM 1,000,000 in 1933, although this had reduced to around RM 800,000 in 1934 when the decision was taken by the bank to sell the art works secured by the lien given in October 1933. This decision entitled the bank to realise the value of those items at sale, which in the event it did by auction that included the 12 October 1935 Graupe sale.
- 62 While Ms Sterzing has not been able to find other evidence of the contractual lien given in October 1933 to the bank over the Margraf group art works, it is referred to in the BADV files. Indeed, the lien was given by Margraf during the period in which the Oppenheimers' son-in-law Ivan Bloch was managing director. The Panel considers it unlikely that, even in 1934, the bank would have seized and sold the art works at auction had it not had the lawful authority to do so. Indeed, as Ms Sterzing has acknowledged, the debt accrued by Margraf was repaid to the bank with the proceeds of the various auction sales. Moreover, the fact that Mr Bloch acknowledged the bank's "security by way of ownership" in the auction November 1934 contracts which he entered into with Graupe and Jacquier & Securius corroborates the existence of the October 1933 contractual lien. Although Jacquier & Securius itself, being owned by Jewish people, was Aryanised by the Nazis, that did not occur until 1938, and there is nothing in the material before the Panel to suggest that the bank was taking steps against Margraf over the debt that had accrued by 1934 simply because Margraf was the apex of a Jewish-owned business. To the contrary, the BADV files indicate the Painting was one of a number of art works forming part of the Margraf group stock-in-trade called in as collateral in order to repay a significant debt that had arisen in purely commercial circumstances.
- 63 The Painting's sale was also partly to satisfy the inheritance tax debt accrued by the Oppenheimers upon Mr Loeske's bequest of the Margraf shares. The inheritance tax debt was a significant sum, standing at about RM 4,000,000 in 1933 when the Oppenheimers fled Germany, although that sum was, as we have seen, significantly reduced by the tax office even after the Nazis came to power. The amount of the tax levied was dictated by the fact that the Oppenheimers were not blood relatives of Mr Loeske.
- 64 There is nothing in the papers that the Panel has seen to suggest that the inheritance tax debt levied upon the Oppenheimers was unlawful or persecutory in any way, nor does Ms Sterzing or the heirs' lawyers submit otherwise. There is a general complaint by Mr Schulz in his 1956 letter to the Restitution Office that the Margraf group suffered from inequitable taxes after the Nazis came to power, but there is no contemporaneous evidence of this in the BADV files or in any other papers that the Panel has seen. In his 1954 statement, Baron von Richthofen says that, after he was appointed as liquidator of Margraf in 1938, using Margraf's funds he paid RM 500,000

to the tax office for Mrs Beer on account of the special tax on Jewish property. He also says that, as the owner of Margraf's shares from 1937 onwards, Mrs Beer had to pay a separate property tax. If these are the "inequitable taxes" to which Mr Schulz refers, they were paid after the inheritance tax debt and the bank debt was incurred (though it remains uncertain when the special tax was first raised), and after the 1935 sale of the Painting.

- 65 To what extent should the Panel consider the Oppenheims' flight in March 1933 and the subsequent boycott of and interference with their businesses by the Nazis as contributing (or perhaps even determining) factors in the Painting's loss by Margraf? While the basis for the inheritance tax debt and the bank debt can be explained by the factors to which the Panel has referred to above, Ms Sterzing has argued that Margraf's inability to repay the debt which had accrued to its bankers was partly because they were no longer able to direct the successful operation of the Margraf group in exile. Further, she relies upon Mr Schulz's evidence in support of her submission that the Nazi boycott of the Margraf business caused its downfall. Having given it much thought, the Panel concludes that the Margraf group was in such difficulty by the time the Nazis came to power in January 1933 – from a combination of the general downturn which followed the 1929 Wall Street crash, the battle over Mr Loeske's will, the inheritance tax debt levied on his bequest to the Oppenheims – that any subsequent Nazi interference with the business had little effect on the decision by Jacquier & Securius to call in the bank debt in 1934 and to exercise their right of sale over the stock-in-trade they had secured by lien in October 1933.
- 66 The Panel does not doubt the Oppenheims' persecution at the hands of the Nazis or the theft of their shares but, having considered carefully the events leading up to sale by auction of the Painting in 1935 documented in the BADV files alongside the material provided by the parties, on balance the Panel is of the view that the underlying reason for the sale of the Painting and the other art works at the 1935 Graupe auctions was to repay the group's indebtedness to its bankers Jacquier & Securius, which it did. Put in other words, the reason for the sale was commercial in nature, rather than a direct persecutory measure taken against the Oppenheims. While there is no evidence that the surplus from the sales left over after auction ever found its way back to Margraf, the works seized and sold by Jacquier & Securius at auction were to satisfy Margraf's commercial obligations to the bank that had their origins prior to the Nazis coming to power on 31 January 1933.
- 67 Taking all these factors into account the Panel concludes that, although the Painting's sale was indeed a forced sale, it was not a sale that occurred as a result of Nazi persecution but rather as a direct result of Margraf's bankers' legitimate exercise of their rights over the Painting and other art works in order to realise the significant debt which the Margraf group had accrued. The origin of the Margraf group's financial difficulties itself stemmed from the combination of (a) the difficult financial circumstances in which the Oppenheims found themselves after the challenge to Mr Loeske's will and his bequest to them (which was settled by 1931), (b) Mr Loeske's bequest to Mrs Beer, (c) the economic misfortune which befell the Margraf group following the 1929 Wall Street crash, (d) the inheritance tax debt levied by the German tax authorities which remained unsettled until 1937, and, finally, (e) the Margraf group debt to its bankers Jacquier &

Securius, the calling in of which led to the 1935 Graupe sales which included the Painting.

- 68 Combined with the inheritance tax liability, it is evident from the BADV files that Margraf's exposure to its bankers and its apparent inability to repay those obligations in the end resulted in the bank's decision (with the tax office's apparent agreement) to liquidate a substantial amount of group stock-in-trade to satisfy both the debt and inheritance tax liabilities. In reaching this conclusion, the Panel remained mindful of Ms Sterzing's warning to treat the tax office reports contained within the BADV files with caution, given the majority of them were prepared following the Nazis' accession to power in 1933. The Panel has done so. We note, however, that the legitimacy of the inheritance tax debt levied by the tax office is not challenged by the Claimant or the heirs, and that the bank debt and the inheritance tax liabilities were not discharged until the Painting and other works were sold in the Oppenheimers' absence after they had fled Germany in 1933.

WAS THE SALE AT AN UNDERVALUE?

- 69 There is no evidence of the price achieved by the Painting at the 1935 Graupe auction. The Artiaz report makes no mention of it. Ms Sterzing has told the Panel that she holds no information about the Painting's acquisition by Margraf, or the price it achieved at auction in 1935.
- 70 Referencing other auctions at which Margraf group inventory was sold, Dr Plietzsch said in 1956 that they were without reserve, and indeed the catalogue that the Panel has seen for the 12 October 1935 auction does not appear to set reserves for any lot. While it seems from the BADV files that Graupe was obliged to achieve a minimum amount to cover the bank debt, the total sum achieved exceeded that amount.
- 71 Circumstance suggests that Mr Moller may have purchased the Painting directly at the Graupe auction. There is no evidence of the Painting coming to market in the years between 1935 and 1939, when Mr Moller himself was forced to flee Germany (quite possibly with the Painting). If Mr Moller purchased the Painting at the 1935 auction, he may or may not have paid a perfectly fair price for it.
- 72 The Panel has also consulted a volume of scholarly articles entitled "*Raubkunst? Provenienzforschung zu den Sammlungen des Museum für Kunst und Gewerbe Hamburg*", edited by Drs Sabine Schulze and Silke Reuther, which details the Hamburg museum's research about the provenance of material in its collection acquired during and after the Nazi era. The volume includes an article on some of the Margraf group companies and a series of relevant Graupe auctions in the first four months of 1935, and draws attention to the evidenced facts that the auctions in question were not by way of "fire sales": items were not sold without reserve; in general, the prior understanding between Graupe, Margraf and its bankers was that reserve prices would be 50 percent of the estimate; and that the prices realised were if anything above expectations. The article goes on to say that the January-April 1935 auctions testified to a measure of recovery from recession in the art market, and that the proceeds of the sales were applied in the first instance to paying off Margraf's indebtedness to its bankers (whose origins predated 1933). Although the article does not cover the October 1935 auction at which the

Painting sold, the Panel has not seen any evidence to suggest that any of the auctions conducted by Graupe in 1935 differed in their approach.

- 73 Taking all these matters into account, the Panel does not consider there is sufficient evidence to conclude that the price achieved at auction was under value.

IS MARGRAF THE SOLE AND RIGHTFUL CLAIMANT?

- 74 The heirs stand behind Ms Sterzing as liquidator of Margraf. Had the Painting's sale been a result of Nazi persecution of the Oppenheims, the Panel remains uncertain as to whether or not Margraf is the sole and rightful claimant to the Painting, given the web of financial arrangements in place with the tax office and Jacquier & Securius when the Oppenheims fled Germany in 1933. It was not, however, a sale forced by the Nazis, but one which was undertaken for purely commercial reasons. In the circumstances the Panel concludes Margraf's claim that the Painting was spoliated by the Nazis is weak.

- 75 The Panel understands that there is a separate dispute between the surviving Oppenheimer heirs and the heirs of Hermann Frenkel, the former managing director of Jacquier & Securius, concerning certain Margraf group art works sold at the 1935 Graupe auctions, including a painting formerly attributed to Rembrandt. This dispute has led to claims being pursued between the respective heirs in the courts in Germany, but does not involve the Painting. The fact that Mr Frenkel, himself a Jew, appears to have purchased works of art at these auctions, possibly as well as Mr Moller, is noted.

- 76 The Oppenheims, of course, were shareholders in Margraf. As shareholders in 1935 before the Painting's sale, they had no proprietary right to the Painting under English law, and the Panel assumes the position under German law is the same. Absent other valid claims, the Painting belonged to Margraf, not the heirs. Ms Sterzing sought and obtained appointment by the German courts as liquidator of Margraf on the petition of the surviving Oppenheimer heirs.

- 77 The Panel considers the heirs' only spoliation claim as the surviving heirs would be for the shares in Margraf and the attendant rights of which the Oppenheims were deprived by the Nazis when the shares were passed over to Mrs Beer. (Indeed, the transfer of Margraf's shares by the tax office to Mrs Beer in theory could introduce a competing claim from Mrs Beer's surviving heirs to the liquidated assets of Margraf, but such considerations are beyond the scope of the Panel's task.) Shares are not cultural objects and so do not fall within the Panel's Terms of Reference. The Panel notes that the Oppenheims' then surviving heirs each were compensated after the war by the German government for the loss of the Margraf group in the sum of DM 75,000, which was the maximum compensation amount payable at that time, though that sum is significantly less than the value of the shares at Mr Loeske's death.

TITLE TO THE PAINTING

- 78 The Panel's Terms of Reference require it to consider both Margraf's original title to the Painting and the current title of the Council. Relevant events in this regard are the sale at auction by Graupe in 1935, the acquisition by Mr Moller (if sometime thereafter), Mr Moller's bequest to the

Friends of Bristol Art Gallery in 1999, and the transfer of ownership to the Bristol City Council in 2001.

- 79 The Panel accepts that Margraf had legal ownership of the Painting before its sale at auction in 1935. However, the Panel has concluded on the balance of probability that the 1935 sale conferred a good title upon the unknown purchaser of the Painting. If that was not Mr Moller, then good title thereafter passed to Mr Moller when he acquired the Painting.
- 80 If the 1935 sale was not competent to pass title in the Painting to the unknown acquirer or Mr Moller, then Mr Moller's bequest to the Friends of Bristol Art Gallery in 1999 and the Friends' transfer of title in the Painting to the Council in 2001 would, as unlawful conversions, have triggered the six-year limitation period imposed by Section 2 of the Limitation Act 1980. It follows that Margraf's original title would have expired, at the latest, by the end of 2005 by virtue of Section 3 of the Limitation Act 1980. It would appear to follow that the Council now has title, and the Claimant does not seek to persuade the Panel otherwise.

MORAL CONSIDERATIONS

- 81 The Panel's Terms of Reference also require it to give due weight to the moral strength of the Claimant's case, and whether any moral obligation rests on the Council, taking into account in particular the circumstances of the Painting's acquisition, and the Council's knowledge at that juncture of the Painting's provenance.
- 82 It is undeniable that the Oppenheims suffered a most terrible fate at the hands of the Nazis. Jakob Oppenheimer died in 1941 while in exile in France, following internment. His wife was murdered at Auschwitz in 1943. They were hounded out of Germany, and wrongfully deprived of their rights to ownership of Margraf in 1937. Their treatment, and similar treatment of other Jewish people during the Nazi era, offends any right-minded person. But as the Panel has taken care to explain, the circumstances in which Margraf lost possession of the Painting came about ultimately as a result of its indebtedness to its bankers Jacquier & Securius, compounded by the precarious financial position in which the Oppenheims found themselves following the inheritance taxes lawfully imposed upon Mr Loeske's bequest to them in 1929. It was, however, the Margraf bank debt that resulted in the Painting's sale, rather than any Nazi persecution to which the Oppenheims were undoubtedly subject. The Panel considers that the moral strength of the Claimant's case is significantly weakened because of this.
- 83 In the circumstances of the Painting's acquisition by the Council, the Panel does not consider any moral obligation rests with it. As we have mentioned, Mr Moller's own story of his flight from Germany in 1939 meant the Council considered it unlikely that the Painting may have been spoliated by the Nazis.

THE PANEL'S CONCLUSIONS AND RECOMMENDATION

- 84 The Panel has reached the following conclusions, on the balance of probabilities and taking all the evidence and submissions into account:
- (a) The Painting at the Bristol Museum and Art Gallery is the same painting which sold at auction by Paul Graupe on 12 October 1935.

- (b) When the Painting sold at auction it was owned by Margraf, which in turn was owned by Jakob and Rosa Oppenheimer. The Oppenheimers were of Jewish origin.
- (c) Margraf is able to bring the claim as claimant.
- (d) The Oppenheimers were bequeathed the entire shareholding of the Margraf group by Mr Loeske upon his death in 1929. This bequest was challenged by Mr Loeske's blood relatives, but their challenge was rejected by the German courts in January 1931 i.e. before the Nazis came to power. Mr Loeske's bequest resulted in a substantial inheritance tax debt for the Oppenheimers, which at one stage was of the order of RM 5,000,000, but which ultimately was reduced by the tax office following payments made by the Oppenheimers in 1931 and 1932 (before the Nazis came to power) to just under RM 2,800,000 in August 1933 (after the Nazis came to power). The tax was imposed before the Nazis came to power. Its legitimacy is not challenged by the Claimant or the Oppenheimers' surviving heirs.
- (e) Margraf's financial circumstances were strained following the declining economic conditions after the Wall Street crash of 1929, which happened less than a month after Mr Loeske's death. Margraf's financial position was not assisted by Mr Loeske's bequest to Mrs Beer, which conditionally entitled her to the entire cash holdings in Margraf's accounts. By 1933 assets of the Margraf group were significantly encumbered; some were non-performing. They were unable to provide a source of revenue to reduce the Oppenheimers' inheritance tax liability further.
- (f) The Oppenheimers' shares in Margraf were pledged to the tax office in 1931 and 1932 (again, before the Nazis came to power) to secure the inheritance tax debt.
- (g) Margraf's bankers included Jacquier & Securius, who extended credit to Margraf from at least 1929 onwards before the Nazis came to power. The bank provided a line of credit to Margraf in 1931, thought to have been for the purpose of paying down the inheritance tax debt. The line-of-credit debt was almost RM 1,000,000 in 1933. The bank debt was secured by a contractual lien over the Margraf group's stock-in-trade, which by October 1935 included the Painting.
- (h) The Oppenheimers were forced to flee Germany to France in March 1933, shortly after the Nazis came to power. Jakob Oppenheimer died in 1941 after internment in France. Rosa Oppenheimer was murdered by the Nazis in Auschwitz in 1943.
- (i) Jakob Oppenheimer continued to have influence in the affairs of Margraf after he fled to France in 1933, acting through his lawyer Dr Schachian and his son-in-law Ivan Bloch who was appointed as managing director of Margraf on 3 May 1933. It was Dr Schachian who proposed Baron von Richthofen as Margraf's "tax inspector" in May 1933, an appointment which was not welcomed by the tax office.
- (j) The Margraf group companies were boycotted by the Nazis from 1 April 1933 onwards. While this served to further reduce trade and to worsen Margraf's financial position, only a few months later the total group indebtedness stood at around RM 3,500,000. In the

circumstances the Panel concludes that the Nazi boycott and any subsequent Nazi interference with the Margraf group would have had little effect on Margraf's inability to meet its financial obligations as at 1 April 1933.

- (k) The German court order of 2 December 1933 to remove Jakob Oppenheimer and his son-in-law Ivan Bloch from acting for or on behalf of Margraf appears to have been made as a result of Mr Oppenheimers' continuing influence on Margraf, possibly to evade the inheritance tax debt. In any event, Mr Bloch appears to have remained in office for some time thereafter: he was party to the 1934 auction contracts with Graupe and Jacquier & Securius for and on behalf of the relevant Margraf group companies.
- (l) Margraf's strained financial circumstances was the reason that its bankers Jacquier & Securius took the decision in 1934 to sell at auction the art works secured by them under the 1933 contractual lien. This resulted in the Painting's sale at auction in 1935. It was not a sale forced by the Nazis. Thus, Margraf's claim that the Painting was spoliated by the Nazis is weak.
- (m) The proceeds of the auctions were used first, to extinguish the debt to Jacquier & Securius, and second, to pay down the inheritance tax debt owing to the tax office. The sale proceeds were insufficient to fully extinguish the inheritance tax debt, which was not completely paid until 1937.
- (n) When the inheritance tax debt was fully repaid in 1937, the Oppenheimers' shares in Margraf, which had been pledged to the tax office in order to secure the debt, were expropriated by the Nazis and given to Mrs Beer so that the Nazis could then exploit and ultimately expropriate the remaining assets of Margraf and its group companies.
- (o) There is insufficient evidence to conclude that the Painting was sold at undervalue in October 1935.
- (p) The Council now has unassailable legal title to the Painting.
- (q) In light of all the circumstances surrounding the Painting's sale in 1935, the Claimant's moral claim to the Painting is weak. In light of all the circumstances surrounding the Painting's acquisition by the Council, a gift from its Friends from a bequest by a Jewish refugee who had bought the Painting and brought it with him when he fled from Germany to England, no moral obligation rests with it.

85 In all the circumstances, the Panel finds that the moral strength of Margraf's claim is insufficient to justify a recommendation that the Painting be transferred or that an ex gratia payment be made.

86 The Panel does not know whether Margraf's liquidator Ms Sterzing, the heirs or their lawyers had considered the two BADV files or the information they contained for the purposes of this claim before their attention was drawn to them by the Panel. Nor is the Panel aware if those files were made available to the "private collectors, museums, auction houses, commissions, and courts of law in Germany, Switzerland, the Netherlands, the United Kingdom, and the United States" referred to in the Artiaz report before the determinations they made. The Panel would, however, add this

comment. They are precisely the sort of relevant, publicly available material that the Panel expects every claimant to have researched, considered and disclosed as part of any claim, such that each claim is transparent to the fullest extent possible and the Panel is made aware of all potentially relevant facts. The Panel feels it necessary to make this observation here particularly for the benefit of future claimants.

- 87 The fact that the Painting formed part of the Margraf inventory, and indeed its sale in the 1935 Graupe auction, now forms an integral part of the Painting's provenance. Its acquisition by Mr Moller before he was forced to flee Nazi Germany in 1939 also forms part of that fabric and, without any obligation on the Council, the Panel considers it would be fitting to incorporate into the Painting's narrative history when displayed the Oppenheimers' connection with the Painting such that it serves their memory as well as Mr Moller's.

16 September 2015

The Hon Sir Donnell Deeny – Chairman
Professor Sir Richard J Evans – Deputy Chairman
Tony Baumgartner
Sir Terry Heiser
Professor Peter Jones
Martin Levy
Peter Oppenheimer
Professor Liba Taub

Appendix: Constitution and Terms of Reference

APPENDIX

SPOLIATION ADVISORY PANEL CONSTITUTION AND TERMS OF REFERENCE²

Designation of the Panel

1. The Secretary of State has established a group of expert advisers, to be convened as a Panel from time to time, to consider claims from anyone (or from any one or more of their heirs), who lost possession of a cultural object ("the object") during the Nazi era (1933-1945), where such an object is now in the possession of a UK national collection or in the possession of another UK museum or gallery established for the public benefit ("the institution").
2. The Secretary of State has designated the expert advisers referred to above, to be known as the Spoliation Advisory Panel ("the Panel"), to consider the claim received from on for in the collection of ("the claim").
3. The Secretary of State has designated as Chairman of the Panel.
4. The Secretary of State has designated the Panel as the Advisory Panel for the purposes of the Holocaust (Return of Cultural Objects) Act 2009.

Resources for the Panel

5. The Secretary of State will make available such resources as he considers necessary to enable the Panel to carry out its functions, including administrative support provided by a Secretariat ("the Secretariat").

Functions of the Panel

6. The Panel shall advise the claimant and the institution on what would be appropriate action to take in response to the claim. The Panel shall also be available to advise about any claim for an item in a private collection at the joint request of the claimant and the owner.
7. In any case where the Panel considers it appropriate, it may also advise the Secretary of State:
 - (a) on what action should be taken in relation to general issues raised by the claim; and/or
 - (b) where it considers that the circumstances of the particular claim warrant it, on what action should be taken in relation to that claim.

² Revised following enactment of the Holocaust (Return of Cultural Objects) Act 2009.

8. In exercising its functions, while the Panel will consider legal issues relating to title to the object (see paragraph 15(d) and (f)), it will not be the function of the Panel to determine legal rights, for example as to title.
9. The Panel's proceedings are an alternative to litigation, not a process of litigation. The Panel will therefore take into account non-legal obligations, such as the moral strength of the claimant's case (paragraph 15(e)) and whether any moral obligation rests on the institution (paragraph 15(g)).
10. Any recommendation made by the Panel is not intended to be legally binding on the claimant, the institution or the Secretary of State.
11. If the claimant accepts the recommendation of the Panel and that recommendation is implemented, the claimant is expected to accept the implementation in full and final settlement of his claim.

Performance of the Panel's functions

12. The Panel will perform its functions and conduct its proceedings in strictest confidence. The Panel's "proceedings" include all its dealings in respect of a claim, whether written, such as in correspondence, or oral, such as at meetings and/or hearings.
13. Subject to the leave of the Chairman, the Panel shall treat all information relating to the claim as strictly confidential and safeguard it accordingly save that (a) such information which is submitted to the Panel by a party/parties to the proceedings shall normally be provided to the other party/parties to the proceedings in question; and (b) such information may, in appropriate circumstances, including having obtained a confidentiality undertaking if necessary, be communicated to third parties. "Information relating to the claim" includes, but is not limited to: the existence of the claim; all oral and written submissions; oral evidence and transcriptions of hearings relating to the claim.
14. In performing the functions set out in paragraphs 1, 6 and 7, the Panel's paramount purpose shall be to achieve a solution which is fair and just both to the claimant and to the institution.
15. For this purpose the Panel shall:
 - (a) make such factual and legal inquiries, (including the seeking of advice about legal matters, about cultural objects and about valuation of such objects) as the Panel consider appropriate to assess the claim as comprehensively as possible;
 - (b) assess all information and material submitted by or on behalf of the claimant and the institution or any other person, or otherwise provided or known to the Panel;
 - (c) examine and determine the circumstances in which the claimant was deprived of the object, whether by theft, forced sale, sale at an undervalue, or otherwise;
 - (d) evaluate, on the balance of probability, the validity of the claimant's original title to the object, recognising the difficulties of proving such

title after the destruction of the Second World War and the Holocaust and the duration of the period which has elapsed since the claimant lost possession of the object;

- (e) give due weight to the moral strength of the claimant's case;
- (f) evaluate, on the balance of probability, the validity of the institution's title to the object;
- (g) consider whether any moral obligation rests on the institution taking into account in particular the circumstances of its acquisition of the object, and its knowledge at that juncture of the object's provenance;
- (h) take account of any relevant statutory provisions, including stipulations as to the institution's objectives, and any restrictions on its power of disposal;
- (i) take account of the terms of any trust instrument regulating the powers and duties of the trustees of the institution, and give appropriate weight to their fiduciary duties;
- (j) where appropriate assess the current market value of the object, or its value at any other appropriate time, and shall also take into account any other relevant circumstance affecting compensation, including the value of any potential claim by the institution against a third party;
- (k) formulate and submit to the claimant and to the institution its advice in a written report, giving reasons, and supply a copy of the report to the Secretary of State; and
- (l) formulate and submit to the Secretary of State any advice pursuant to paragraph 7 in a written report, giving reasons, and supply a copy of the report to the claimant and the institution.

Scope of Advice

16. If the Panel upholds the claim in principle, it may recommend either:
- (a) the return of the object to the claimant; or
 - (b) the payment of compensation to the claimant, the amount being in the discretion of the Panel having regard to all relevant circumstances including the current market value, but not tied to that current market value; or
 - (c) an ex gratia payment to the claimant; or
 - (d) the display alongside the object of an account of its history and provenance during and since the Nazi era, with special reference to the claimant's interest therein; and
 - (e) that negotiations should be conducted with the successful claimant in order to implement such a recommendation as expeditiously as possible.

17. When advising the Secretary of State under paragraph 7(a) and/or (b), the Panel shall be free to recommend any action which they consider appropriate, and in particular may under paragraph 7(b), recommend to the Secretary of State the transfer of the object from one of the bodies named in the Holocaust (Return of Cultural Objects) Act 2009.

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