A Report to the Board of Deputies on the Claims Conference

Confidential

Introduction

1. In February 2010 I was asked by Paul Edlin, a Vice President of the Board of Deputies to consider various concerns which have been expressed about the operations of the Conference on Jewish Material Claims Against Germany, Inc. (hereinafter referred to as "the Claims Conference") and to report to the Board of Deputies as to whether there is a case for the Claims Conference to answer in connection with any of these concerns. These concerns were expressed over a number of years by individuals, including Herman Hirschberger, a Deputy who came to the UK as part of the *Kindertransport* and Martin Stern, an individual who was involved in a previous Holocaust claim involving the *Generali* Insura nce Company. The complaints against the operations of the Claims Conference were persistent and, at times during plenary meetings of the Board of Deputies, vocal. Mr Edlin requested me to consider whether there is any substance to these complaints.

2. I am a barrister in independent practice. I was called to the English Bar in 1978 and have been a Queen's Counsel since 1997 specialising in commercial litigation. I was a Deputy for 6 years between 2003 and 2009. I am impartial and have no connection with the Cl aims Conference, any complainant (i n particular Mr Hirshberger, Martin Stern or the late Mr Falkenburg) or indeed Mr Edlin or Mr Helfgott who are the Board's representatives on the Claims Conference. I have approached my task with an independent and objective

attitude. I met Mr Edlin in connection with this assignment in February 2010. I have reported on the progress of my efforts to Mr Wineman, Mr Edlin, Mr Sheldon and Mr Arkush of the Board of Deputies. I had a meeting in late May 2010 with Mr Martin Stern in preparation for this report. I am aware of Mr Helfgott as he is a significant figure in the British Jewish community and was present at some plenary meetings when I was a Deputy. I have never spoken to him.

3. It is right that I point out that I do not have a secretariat. These enquiries have been carried out in my own personal time on a *pro bono* basis. My enquiry was announced publicly and I have received evidence from a number of sources including complainants, such as Mr Martin Stern and the late Mr Ralph Falkenburg. I was and am well aware that both these individuals are (or in the case of Mr Falkenburg, was) critics of the Claims Conference. Of course I have borne that in mind but that does not automatically disqualify the evidence provided by them especially when that evidence is in the form of documentation or is corroborated by other independent evidence or inherent probabilities.

4. In late June 2010 I produced an Interim Report, and in July 2010, I drafted a short addendum to that Interim Report. Both these documents were produced without any input or assistance from the Claims Conference itself. They set out areas of possible concern and questions which I considered the Claims Conference should answer. A detailed response was received from the Claims Conference in September 2010. This document has therefore been produced in the light of the Claims Conference's detailed comments on my initial concerns. As a matter of courtesy these documents were provided by the Board of Deputies in October 2010 to representatives of the AJA and AJR, two other British organisations who are represented on the Claims Conference. I have

also taken account of representations made by representatives of these organisations.

5. Although I was requested to produce this report by the Board of Deputies, the views expressed are entirely my own. In relation to some matters, I have not had sufficient evidence to arrive at a definite view. I acknowledge that there will be many who will disagree with my views and recommendations. The operations of the Claims Conference excite strong and diverse emotions. I have sought to report in an objective and dispassionate manner based on my assessment of the evidence before me. I acknowledge that there are some who will criticise, or even condemn some or all of the conclusions I have arrived at. They are, of course, entitled to their view as I am to mine. However, I do not subscribe to the proposition that, because the Claims Conference fulfils an important role in the Jewish world it is important not to "rock the boat". On the contrary, the pivotal position of the Claims Conference makes it essential that it should be open to scrutiny and, if appropriate, to legitimate and constructive criticism.

The Complaints

6. This report concentrates primarily on one area of concern which has been expressed to the Board of Deputies, namely the alleged lack of assistance and information provided by the Claims Conference to the owners (and their heirs) of the expropriated properties in Eastern Germany and the alleged lack of commitment to restitution of those properties to their original owners (or their heirs). As is apparent from the body of this report, other concerns have been expressed to me during the course of my involvement and I have dealt with these where possible on the basis of information available to me.

7. Although I am qualified to give opinions on questions of English law, it appears that English law is of little, if any, relevance to any of the issues raised by this report. The two systems of law which are directly relevant are New York and German law. New York law is relevant because the Claims Conference is a New York State not for profit corporation formed in 1952. The complaints which I have received relate to the ownership of expropriated pre war Jewish property in Eastern Germany which has been the subject of German legislation after the fall of the Berlin Wall, as well as the proceeds of sale of those properties. The determination of title to those properties and the proceeds of any sale would normally be decided according to the *lex situs* i.e. the law of the country where the property is situated i.e. Germany, unless recognition of the *lex situs* is refused on the grounds that it was penal or discriminatory. This undoubtedly would be the position in the case of Nazi expropriatory legislation but would not be the position in relation to the modern German legislation providing for restitution. I am not proficient in either New York or German law and cannot give a definite opinion on the effect of those legal systems on the matters discussed.

The Claims Conference

8. The Claims Conference is engaged in vital and essential work to relieve the suffering and poverty of aged and infirm Holocaust victims. The wide variety of programmes, funds and allocations are apparent from an examination of the Claims Conference's website (http://www.claimscon.org). Although parts of this report might be interpreted by some as being critical, at least to some extent, of the Claims Conference's conduct, the magnitude of the works of charity and welfare carried out by the Claims Conference should not be underestimated.

9. However, the Claims Conference occupies a sensitive and important role having been entrusted with the stewardship of very substantial sums of money

including, at last count, the best part of €2 Billion which derive from sales of properties and other assets in Eastern Germany looted by the Nazis from the families of Holocaust victims. These funds are then distributed not to the families of these victims or their heirs[1] but to relieve poverty and hardship being suffered by other Holocaust survivors and to fund other worthy projects including Holocaust education. In these circumstances, irrespective of the strict legal position as to ownership of the properties and their proceeds, the Jewish community is entitled to expect that the Claims Conference acts, and appears to act, ethically and with the highest possible standards of integrity, transparency and sensitivity. In addition, the importance and sensitivity of the Claims Conference's activities and the pivotal role it plays in the fabric of world Jewry carries with it responsibilities. The Claims Conference must be open to scrutiny and cannot be immune from justified and constructive criticism.

The Claims Conference's Corporate Purpose

10. In its Certificate of Incorporation, the Claims Conference's corporate purpose includes the following aim:

"voluntarily to assist, aid, help, act for and on behalf of Jewish persons, organisations, cultural and charitable, funds, foundations and communities who were victims of Nazi persecution and discrimination, (i) in matters relating to compensation and indemnification arising out of loss and damage suffered by them in consequence of such persecution and discrimination including distribution of funds that the Federal Republic of Germany makes available to such victims,(ii) in matters relating to the restitution of property rights of every nature and description whatsoever, lost or denied to them in consequence of such persecution and discrimination...."

11. Although any final conclusion on the construction of this provision is a matter of New York law, the words used are simple and comprehensible English expressions, and I doubt that a New York lawyer would construe this provision in a manner materially different from an English lawyer. It is clear that one of the primary purposes of the Claims Conference is "*the restitution of property rights*

[1] Save for those who are beneficiaries under the Goodwill Fund discussed below

of every nature and description whatsoever, lost or denied to them in consequence of such persecution and discrimination....". The reference to *"them"* is to the *"Jewish persons, organisations..."* etc. who were the *"victims of Nazi persecution and discrimination".* It is my firm view that the natural meaning of *"restitution"*, especially in the context in which it appears in the certificate of incorporation, is *"the restoration of something lost or stolen to its proper owner".* The Claims Conference did not seek to contradict this interpretation.

12. Of course restitution is not the Claims Conference's sole objective but it is stated to be one of its primary purposes. Indeed other objectives are stated to be:

"(iv) [by acting as] a successor organisation for heirless and unclaimed Jewish property and for the property of dissolved Jewish communities and other organisations.

(v) by supporting and advancing projects pertaining to the research, documentation and commemoration of the persecution and destruction of Jewish life, cultural organisations and institutions by the Nazis..."

These objectives contrast with the objective of *"restitution"* and represent the main activities of the Claims Conference today.

East German Restitution

13. After the fall of the Berlin Wall and the re-unification of Germany, the German government passed legislation to restore expropriated property (or its value where the property no longer existed) to its original owners or their heirs. Under the German Property Restitution Law there was a deadline for filing claims for restitution of assets located in the former East Germany. The time limits were 31st December 1992 for real property, and June 30th 1993 for claims in respect of moveable assets. I reject an allegation made to me in the course of my enquiries that the Claims Conference persuaded the German authorities to impose these time limits. There no evidence in support of this allegation

14. As is explained in Note 4 to the Financial Statements of the Claims Conference for the years ending 31st December 2008 (page 15)

"...The Claims Conference was designated under the German Property Restitution Law to be the successor for unclaimed Jewish assets (through its Successor Organisation) to ensure that unclaimed assets would not revert back to the German State or to others than the heirs of the original Jewish Owners..."

Although the Claims Conference was recognised as a potential claimant by the German Authorities, it is clear that, in order to fulfil its role as a successor organisation, the Claims Conference was obliged to make a claim in respect of the properties or moveables by the 1992 and 1993 time limits specified under German Law and referred to above. The Claims Conference made tens of thousands of such claims within the relevant time limits. The substantial sums of money received and disbursed by the Claims Conference since that date derive from claims made before the cut off dates in 1992 and 1993.

Information as to Ownership of Jewish Property in Eastern Germany

15. In order to make claims under the German legislation by the time limits in 1992 and 1993, it is a legitimate inference that the Claims Conference must have had substantial information and details of the properties and businesses owned by Jews in former Eastern Germany and data concerning the identities of their former owners. This is accepted by the Claims Conference. As it says on its website under the heading *"Recovered Property and the Successor Organisation":*

"The Claims Conference also negotiated to become the legal successor to individual Jewish property and property of dissolved Jewish communities and organisations that went unclaimed after Dec 31. 1992. In the absence of a claim from an entitled heir, if the Claims Conference filed a claim and successfully proves the original Jewish ownership of the property, it is entitled to recover property. Before the deadline, the Claims Conference conducted a massive research effort to identify all possible Jewish properties"

(Emphasis added)

16. However, as the Claims Conference has emphasised in its submission to me, these researches involved detailed examination of historical documents which was an extremely difficult and time consuming task. Researchers were employed to find and review records dating back to the 1930's. The Claims Conference filed three different global clams in more than one hundred restitution offices in Germany. After the 1992 deadline passed, the Claims Conference specified the claims based on these global applications. In its efforts to meet the deadline, the Claims Conference filed claims in respect of every conceivable Jewish property without knowing whether a heir existed or had also filed a claim, or whether the information upon which it based its claim was in fact accurate. The Claims Conference states that the emphasis in 1992 and 1993 was to identify as many claims as possible, and it did not know in which cases heirs would be filing claims.

17. The Claims Conference submitted that most of the claims filed by the Claims Conference turned out to be unjustified because the properties were not owned by Jews, involved properties to which claims had been filed by heirs, or were duplicate claims. 120,000 claims were made of which 77,600 applications were later found to be incorrect for one of these reasons. The Claims Conference states that the information that it had at this stage was rudimentary at best and that many properties were only identified when a specific application was made many years later.

18. The Claims Conference also contends that many family members knew much more about family owned properties than the Claims Conference and filed claims timeously. Of course that is clearly the case in numerous instances. However, subsequent experience has indicated that there were many heirs and

family members who had less information than the Claims Conference had either in 1992, and certainly in subsequent years.

19. In my preliminary report of June 2010, I was of the provisional view that it would not be an unreasonable expectation that an organisation, one of whose primary objectives was *"restitution"*, would publicise the information it had obtained before the 1992 and 1993 time limits or attempt to contact and assist former owners or their heirs so that the former owners or their heirs could mount a claim themselves within the relevant time limits. There are substantial arguments in favour of the proposition that the Claims Conference was intended to be a safety net in order to ensure that unclaimed property did not revert to the German state or *"the Aryanisers"* (an expression used by the Claims Conference in correspondence I have seen and on their website). Indeed as the Claims Conference says itself (see paragraph 14 above):

> *"...The Claims Conference was designated under the German Property Restitution Law to be the successor for unclaimed Jewish assets (through its Successor Organisation) to ensure that unclaimed assets would not revert back to the German State or to others than the heirs of the original Jewish Owners..."*
>
> (Emphasis added)

20. I was of the provisional view that, irrespective of any legal duties which may or may not have arisen, there are strong arguments that the Claims Conference had a moral duty to publicise the information that it had and seek to assist and identify any heirs who were rightful Claimants. Such action would have promoted the objective of *"restitution"*. This is particularly the case when it appears that the intention of the Claims Conference was to use the funds obtained from its claims to finance its programmes of relief of the suffering of Holocaust survivors generally and other cultural and educational activities (the

importance of which I am not seeking to minimise in any way whatsoever). However, one can see possible moral and ethical problems in using funds derived from property where the heirs were alive but unable to claim due to lack of information, in order to provide financial assistance to third parties, however deserving, where the Claims Conference was in possession of information before the 1992 and 1993 deadlines which might have assisted the identification of the true owners or their heirs and provided them with sufficient information to make a claim in their own right.

21. It is not in dispute that the Claims Conference did not publicise the information in its possession before the 1992 and 1993 time limits or seek to discover or contact the true owners or their heirs before those dates.

22. It is also clear that there were many owners and their heirs who existed but had not made individual claims by the expiry of the time limits in 1992 and 1993. By no means all the claims made by the Claims Conference were in respect of property which was truly heirless. This is apparent from the numbers of claims subsequently made by heirs on the Goodwill Fund (as at December 31st 2008 payments of about €554 million had been paid out of this fund according to the Claims Conference website[2]). This is also apparent from cases which I have seen of heirs of expropriated businesses and properties who have subsequently made claims on the Claims Conference (which have been denied by it) after the closure of the Goodwill Fund. The fact that the Claims Conference has received monies in respect of property where there were heirs actually in existence is accepted by Julius Berman of the Claims Conference. In a letter dated 17th March 2009, to the then President of the Board of Deputies, Henry Grunwald QC, Mr Berman, commenting on Mr Stern's complaints, said:

[2] This compares with a total of €2,059 billion received by the Successor Organisation of the Claims Conference as at December 31st 2008. This figure comes from the Claims Conference website.

"..Unless I am mistaken, this is the same Martin Stern that has been polemicizing the Claims Conference for using the proceeds of the East German properties that belonged to Jews (who in many cases left no heirs) to aid the old, sick and needy survivors to live out their last days in a bit more comfort than would otherwise be the case..."

(Emphasis added)

23. The Claims Conference's explanation for not publicising any information before the expiry of the time limit is that (on page 8 of the Comments):

"Clearly in 1992 and 1993, it was not possible for the Claims Conference to publish information that it did not have in its possession..."

This is obvious, and no one could reasonably criticise the Claims Conference for not disclosing information it did not have. But the fact remains that, before the expiry of the time limits, the Claims Conference was in possession of information that may have been of assistance to owners and heirs in making a valid claim on their own behalf, and did not publicise any of the information it had. I obviously accept the arguments that the Claims Conference puts forward in pages 5 to 11 of its comments as to the difficulties it had in obtaining information and the fact that much of it has subsequently turned out to be unreliable. I accept that, if information had been publicised before the 1992 cut off date, many of the details would have been misleading. However, the Claims Conference's reasons for not publicising this information do not seem to be because they had doubts as to its reliability and the difficulties in acquiring it. Had this been the explanation for the lack of publicity, the Claims Conference would have publicised the information it had in the years after 1992 when it was more confident of its accuracy. As is apparent from the discussion below, the Claims Conference did not publicise any of the information it had until October 2003, and then that information only remained accessible for 6 months.

24. It seems to me that a possible (or even likely) explanation as to the reason why the Claims Conference did not publish information which might have been of assistance to heirs in making claims either on the German authorities (before the expiry of the relevant time limits) or on the Claims Conference's Goodwill Fund (once it was established) was that the Claims Conference considered that it owed no duty to owners or heirs to render them any assistance in making their claims or even realising that they might have a claim, at least after the German legislation was passed in 1990.

25. It is fundamental to the Claims Conference's position that, if an owner or heir fails to claim within the relevant time limit but the Claims Conference does, any rights of the owner or heir are extinguished under German Law and title to the property or compensation vests in the Claims Conference who owe no further legal duties of whatever kind under German law to the owner or heir. The Claims Conference's stance is that any duty, (which it denies or, at least, does not admit), which it might have owed to owners or heirs was discharged by the passing of legislation which gave owners or heirs the right to make a claim within the two year time period (in respect of immoveables[3]). It is clear the Claims Conference rejects any obligation to assist owners or heirs in making a claim within the relevant time limit and disclaims any duty to provide any information in its possession which might have assisted owners or heirs in making a claim under Goodwill Fund when that remedy was available. The Claims Conference also repudiates any responsibility to provide information to owners or heirs even though a claim under the Goodwill Fund is no longer open to them.

26. The stance of the Claims Conference is apparent from the last paragraph of page 12 of its Comments on my Interim Report:

[3] And slightly longer in the case of moveables as discussed above

"Certain comments in the Gruder Report reflect a basic misunderstanding as to the mission and role of the Claims Conference Successor Organisation. The Claims Conference's role as a successor organisation was to file claims, obtain the proceeds and use it for its charitable mission. As stated above, the Claims Conference Successor Organisation has no legal obligation to former owners and heirs. The Claims Conference fulfilled its responsibilities to former owners and heirs by persuading the German Government to allow former owners and heirs to file claims under the Property Law[4]*..."*

This assertion encapsulates the position of the Claims Conference Once the legislation was passed by the German Government, the Claims Conference regarded itself as owing no obligation to owners or heirs. The Goodwill Fund was just that, a fund set up, as a matter of goodwill, the payments from which were given *ex gratia.*

27. The assertion that the Claims Conference persuaded the German Government to allow former owners and heirs to file claims under the Property Law appears more than once in the Claims Conference's Comments on my Interim Report. (See pages 3, 4-5, 6, 12-13). No details are given and no evidence provided to substantiate this claim. I have no evidence to doubt this assertion but nevertheless the following comments can be made:

1) As the Claims Conference makes clear in its Comments, the 1990 legislation was not enacted in a vacuum. Germany had the precedent of earlier legislation which had established the model of a right to claim on the part of owners or heirs with a safety net of a Successor Organisation (see page 2 of the Claims Conference's Comments on my Interim Report)

2) When discussing the 1990 Property Law, the Claims Conference state on page 3 of the Comments that:

[4] I will comment on this assertion below

"Those Provisions of the Property Law that dealt with Nazi era were based on the prior Military Government Law ....The sections in the Property Law dealing with Nazi era property can be seen as an extension of the earlier restitution legislation..."

3) Accordingly, once Germany was unified and legislation was passed which dealt with Nazi expropriation in the Eastern part of Germany, it was likely that the legislation would follow the previous model which gave the primary claim to former owners or their heirs with the Successor Organisation as a safety net in the event that a claim was not made by owners or their heirs timeously.

4) The Claims Conference contends that it was instrumental in persuading the German Government to deal with the issue of Nazi expropriated property in the Eastern part of Germany now that it was no longer part of the Soviet bloc and under communist control (although as I state previously, I have no details or evidence on this issue). However, once the German Government decided to address the issue of Nazi expropriated property in Eastern Germany, there was an established template for the legislation. For example, the German Government was hardly likely to permit the Successor Organisation to claim alone without granting a commensurate right to the former owners and heirs.

28. The Claims Conference also states that it urged the Federal Republic of Germany to extend the deadline in the Property Law so that former owners and heirs could file clams (see page 5 of the Claims Conference's Comments). Again I have no basis to doubt this assertion. If this were the case, then the Claims Conference achieved little or no success. The time limit for claims in respect of immoveables was not extended. The time limit for claims in respect of moveables was extended by 6 months. Any activity on the part of the Claims

Conference which may have contributed to this extension of 6 months would not have been entirely altruistic. The time limit was extended not only for claims by owners or their heirs but also in respect of claims by the Successor Organisation.

29. The Claims Conference regards it as significant and conclusive that once it became the owner of the properties or assets, it owed no duties to the previous owners or their heirs under German Law. This is evident in a criticism of the Interim Report on page 2 of the Claims Conference's Comments:

"Although the Gruder Report seems to brush over the importance of the legal position, the legal status of the Claims Conference as owners of the properties or assets in question is decisive and is based on over 60 years of legal precedent..."

30. In fact I have never questioned the legal position under German Law. In paragraph 6, the Interim Report stated:

"...The determination of title to those properties and the proceeds of any sale would normally be decided according to the lex situs i.e. the law of the country where the property is situated i.e. Germany unless recognition of the lex situs is refused on the grounds that it was penal or discriminatory which undoubtedly would be the position in the case of Nazi expropriatory legislation but would not be the position in relation to the modern German legislation providing for restitution.."

31. Paragraph 21 of the Interim Report did not question the Claims' Conference's title to properties:

"..It is clear that under German law, the German Government considers that it has discharged its duties by making payment to the Claims Conference and that under German law the Claims Conference is entitled to the properties or funds received by it..."

32. Although the legal position under German law is important, there is also a moral and ethical dimension.

The Publication of Information by the Claims Conference

33. Of course in the years following 1992, the knowledge of the Claims Conference of the details of the ownership of expropriated Jewish properties increased and became increasingly more definite and reliable. As the Claims Conference states (at page 10 of the Comments):

> *"..The process of substantiating the claim, which often occurred many years after the claim was filed, involved the process of establishing that the owner was Jewish [and identify his fate] and that the property was confiscated or its sale was forced.."*

As the knowledge of the Claims Conference expanded, it did not publish any information about the *situs* of Jewish owned property in Eastern Germany or the identity of the previous owners. The explanation that no information was published before the expiry of the 1992 time limit because that deadline imposed enormous pressure on the Claims Conference and because of inaccuracy and the lack of quality of information available to the Claims Conference, has much less force in relation to the years following 1992. In 1994 the Claims Conference set up a Goodwill Fund which made *ex gratia* payments to property owners or their heirs who had missed the 1992 German deadline (see below). One might have imagined that a corollary of the setting up of this scheme would have been publication (and regular updating) by the Claims Conference of the information available to the Claims Conference relating to the *situs* of Jewish owned property in Eastern Germany or the identity of the previous owners in order to assist potential Claimants. This did not happen.

34. However, the publication by the Claims Conference of <u>any</u> information did not occur until October 2003. This publication was due, at least in part, by pressure brought to bear by the Board of Deputies and its then Director General, Mr Neville Nagler (see letter from Neville Nagler to Gideon Taylor, Executive Vice

President of the Claims Conference dated 5th March 2003). As discussed below, this information was removed after six months.

35. I have seen evidence of complaints concerning the Claims Conference's lack of disclosure to heirs of claims made by the Claims Conference and compensation received by it from the German Government To this date, the Claims Conference has never published a comprehensive list of the names of the former owners of pr operty or businesses, addresses and the compensation claimed or received by the Claims Conference in respect of those property or businesses.

36. As stated above, no list of any kind was published by the Claims Conference until 2003. This 2003 list appeared on the Claims Conference website for six months only and then removed. Although I have not seen this list, (and regrettably, received no response to my request to the Claims Conference for a copy) I have had it described to me by various sources, and I have no reason to doubt the accuracy of the following description (which was not controverted by the Claims Conference). The list was a list of claims made by the Claims Conference and consisted of surnames and cities e.g. "Cohen, Berlin; Levy Dresden" Accordingly this list would have been of informative but not as useful as it might have been as it did not contain addresses, names of businesses and first names (although I am not sure about this latter point). This list was removed from the Claims Conference's website after March 2004 and has never reappeared. This is regrettable since this list contained surnames which would have made it easier for heirs and relatives to try and trace their families' property. I do not know the reason or the removal of this list and indeed the failure to update it in a publically available form. I regard the removal of this list (and the failure to update it) as regrettable and contrary to the required principle of transparency which I consider should guide the activities of the Claims Conference.

37. The second list produced by the Claims Conference was in 2008. This list is still available on the Claims Conference website. It is a list of assets recovered from 1993 through April 2008 by the Claims Conference in the form of a 195 page PDF file. The format is in three columns Town (*Stadt*), Situs (*Belegenheit*), and Value (*Wert*). Significantly, there are no names of the former owners of properties or businesses in whose shoes the claim was made and settled by the Claims Conference. The absence of any names makes it difficult for any heirs or family members to identify family properties or assets.

38. Accordingly, each list provides some information which would be of relevance to heirs but it is not possible to combine the two lists in order to see the full picture, especially as the first list with surnames has been removed by the Claims Conference. Therefore, it is not possible to consult any list which is presently available and identify a name, address and amount of compensation. Heirs find this frustrating and distressing. It may well be that many, if not most of these heirs may not want to make a claim at this point against the Claims Conference. Any such claim would raise complex and difficult issues which are beyond the remit of this report to explore. However, it is only natural for these heirs to want to know the full details of their families' properties and businesses and the compensation received by the Claims Conference. This information is clearly available to the Claims Conference, and I do find it surprising that it has not been published by it in a comprehensive and comprehensible form, and indeed updated regularly. I consider that there are strong grounds in favour of the proposition that the lists so far published are insufficient. I am not aware of any reason why such a comprehensive list has not yet been published by the Claims Conference or why the previous list with surnames disappeared in 2004. If one of the reasons is the fear that the publication of such a list might encourage claims by heirs against the Claims Conference I do not regard that as a good reason. If, as the Claims Conference contends, any claim would be

bound to fail, then the Claims Conference has nothing to fear. If, on the other hand, the claims have some merit, then I do not regard it as proper that the Claims Conference seek to hinder or deflect any claim by lack of disclosure or obfuscation. Indeed it might be argued that the approach of the Claims Conference increases the sense of grievance felt by heirs and might make claims more, rather than less, probable. As stated previously, the Jewish community is entitled to expect that the Claims Conference acts, and appears to act, ethically and with the highest possible standards of integrity, transparency and sensitivity. In the light of this, I would recommend that the Board of Deputies use its influence in order to seek to persuade the Claims Conference to publish a comprehensive list of claims made and settled with the names of the relevant owner or the business, the address and the amount claimed or settled and to keep this list permanently on its website and updated regularly.

The Goodwill Fund

39. The Claims Conference instituted a Goodwill Fund to receive claims from heirs who missed the 1992 and 1993 deadlines. The Goodwill Fund was established in 1994 with a final deadline of December 31st 1997. This deadline was extended to December 31st 1998. The Claims Conference advertised the availability of the Goodwill Fund to applicants who could prove that they would have succeeded under the German Property Restitution Law had they filed within the legislation's 1992 deadline. After the publication of the 2003 list, the Goodwill Fund then reopened for claims on October 1st 2003 until 31st March 2004. A total of 59,198 names were published on the internet and a further advertising campaign was mounted[5].

[5] I am unaware of the precise details of the advertising campaign mounted by the Claims Conference in either 1994 or 2003

40. The Claims Conference has stressed on a number of occasions in its Comments that the Goodwill Fund was open for ten years (1994-2004). This does not appear to be strictly correct since the deadline for claims under the Goodwill Fund was 31st December 1998. It appears that with some exceptions, the Goodwill Fund was closed for nearly 5 years in the 10 year period (December 31st 1998 to October 1st 2003).

41. Apart from the 6 month window between October 1st 2003 until 31st March 2004, there was no information of any kind published by the Claims Conference at a time when it was possible for Owners and their heirs to make a claim against the German State (before the end of 1992) or the Goodwill Fund.

42. The Goodwill Fund has been closed to new claims since that 31st March 2004 although the Claims Conference website states that:

The Goodwill Fund Guidelines have been amended as follows:

If an application is made after March 31, 2004 which otherwise would have been eligible under the Guidelines and which meets either of the following:

(a) Was submitted by an original owner of the property or spouse of the original owner; or
(b) Was submitted by a child, grandchild or great grandchild of the original owner who can prove, through medical documentation that they were, for medical reasons, unable to file an application in the period immediately before the deadline of March 31, 2004;

it can be reviewed on a case by case basis for inclusion in the Goodwill Fund..."

43. This possibility of review on a case by case basis for inclusion in the Goodwill Fund for claims made after 31st March 2004 is only available to the original owner, his or her spouse, or the child, grandchild or great grandchild of the original owner:

"..who can prove, through medical documentation that they were, for medical reasons, unable to file an application in the period immediately before the deadline of March 31, 2004..."[6]

Accordingly, it is of very limited significance. Less than 30 applications have been made for review in reliance upon this provision.

44. Very substantial sums have been paid out of the Goodwill Fund. As of December 31st 1 998, the Claims Conference had paid approximately €554 million under the Goodwill Fund to original owners or their heirs. The Claims Conference had also set aside approximately €70 million for future payments from the Goodwill Fund, and a further €80 million has been designated for "Goodwill Fund and Other Uses." Accordingly, the Claims Conference states on its website:

"...Approximately 34 percent of Successor Organization income has been paid to or set aside for eligible original owners or heirs – all of whom would have received no property or payment were it not for the Claims Conference's intensive efforts since 1990...."

The total of €704 million (€554 million plus €70 million plus €80 million) is indeed approximately 34% of the Total Claims Conference Successor Organization gross income since 1995 (sales, compensation, Wertheim, bulk settlements and property management) up to December 31, 2008 of approximately €2.059 billion. In addition, the Claims Conference receives additional income each year. As an indication of the income received annually, the figure for 2007 was net income of $284,803,000 and for 2008 $150,448,000.

45. As of 1st May 2010 the Claims Conference had about 30,000 claims that were still pending of which 20% were property claims and 80% business claims. It is noteworthy that the website of the Claims Conference states that:

"...Current and future income from sales and compensation is subject to payment to eligible heirs based on their relevant Goodwill Fund applications..."

(Emphasis added)

[6] There was an immaterial amendment in November 2010

This statement is unclear but probably means that future income from sales and compensation is subject to payment to eligible heirs based on their Goodwill Fund applications made before the 2004 deadline.

46. It is clear that many heirs (over 13,000) had sufficient information to make claims on the Goodwill Fund before the 1998 or 2004 deadlines. However, it is also apparent that some heirs did not make claims on the Goodwill Fund before the deadlines expired. One can see how that this might have occurred. The heirs may not have known about the possibility of compensation or of the existence of the Claims Conference or of the Goodwill Fund. It is also entirely understandable that an heir who might have been a child or unborn at the time of the Holocaust may have had insufficient information in order to make a claim either before the original German 1992 or 1993 time limits or before the 1998 or 2004 time limits for claims on the Goodwill Fund. An heir might have known that his grandfather had a property or business in Germany but might have had only the vaguest idea of its nature and would have been completely ignorant of its address. This is entirely credible for people whose grandparents may have perished in the Holocaust. Two examples I have seen are the late Mr Falkenburg and Zita Ben Tal (whose case is referred to below).

47. I am particularly concerned about the inability of those who did not make a claim due to lack of information having regard to the following:

    1) As discussed above, the Claims Conference did not publish any of the information in its possession either before the 1992 and 1993 deadlines expired or thereafter when the facts became increasingly clarified and the inconsistencies in the information either eliminated or mitigated.

2) The 1998 time limit for claims on the Goodwill Fund expired without the Claims Conference apparently publicising any information in its possession which might have assisted potential claimants on the Goodwill Fund.

3) In 2003 the Claims Conference produced a list of names and cities as described above. The Goodwill Fund was only open to claims for 6 months thereafter and then closed save for the possibility of review discussed previously.

4) The list of names and cities was immediately removed from the Claims Conference's website and never reinstated.

5) The 2008 list of addresses and amounts settled referred to earlier was published 4 years after the closure of the Goodwill Fund and could not have been of any assistance to heirs in making eligible claims on the Fund.

6) To date, the Claims Conference has not published a comprehensive list of claims made and settled with the names of the relevant owner or the business, the address and the amount claimed or settled, although the Claims Conference has been in possession of this information for a substantial period of time. Had this information been made available at an earlier stage, it may well be that a greater number of heirs might have made claims either before the 1992 deadline or, perhaps more realistically, before the 2004 deadline for claims on the Goodwill Fund.

48. I quite accept that when the 1992 time limit passed, it was for the executive the Claims Conference to decide what to do with the proceeds of any claims consistent with the objects of the Claims Conference. As pointed out

previously, the objects of the Claims Conference encompassed restitution, assistance to victims of the Holocaust as well as commemoration. The executive of the Claims Conference could have chosen, if they had so desired, to pay greater regard to the interests of owners and heirs and the objective of restitution. It is a *non sequitur* to suggest that the fact that the former owners and heirs have no enforceable legal rights under German law after the expiry of the 1992 deadline, automatically renders the Claims Conference immune from scrutiny or criticism in respect of its dealings in connection with owners or heirs. On the Claims Conference's analysis of German Law not only owners and heirs, but also holocaust survivors and charitable institutions had no enforceable legal rights against the Claims Conference. The Claims Conference, in its discretion, has chosen to devote its resources to assist holocaust survivors and charitable institutions rather than the owners of the property or their heirs save for the Goodwill Fund. Different choices might have been made consistent with the Claims Conference's purposes as set out in the Certificate of Incorporation.

49. The Claims Conference could have chosen to render greater assistance to Owners and their heirs without being in breach of any legal duty. One of the principle objects of the Claims Conference is restitution. The Claims Conference could not have been criticised if it chose to promote that aim to a greater extent than it did. I have already referred to the following statement of the German Government:

> *"We (the German Government) do not have anything against the Claims Conference transferring property to heirs who missed the filing deadline. This is one of the reasons why the Jewish Claims Conference was named as the entity entitled to obtain the property..."*

This supports the view that there was no intrinsic objection to the Claims Conference assisting Owners and heirs after the expiry of the 1992 deadline. This point is also demonstrated by the public pronouncements of the Claims

Conference in connection with Holocaust Looted Art where the Claims Conference has stated that it will restore Holocaust Looted Art to the original owners irrespective of the passing of any deadlines: See the Claims Conference Press Release of 19th July 1999:

"The Claims Conference has asked the Commission to make arrangements for identifying the owner and heirs and for the return of the work to the owners and heirs who can be found."

50. As the stance of the Claims Conference towards the owners and heirs of property in Eastern Germany was a matter of choice and decision on the part of the Claims Conference, the conduct of the Claims Conference towards Owner and heirs is a matter of legitimate scrutiny, and, if appropriate, criticism. The Claims Conference has not explained why, having set up the Goodwill Fund in 1994, it did not publish any information available to it to assist Claimants until the end of 2003 nor why, in 2004, it removed the list of names and cities after only six months.

51. On the basis of the evidence before me I cannot be sure of the numbers of former owners or their heirs who were unable to make a claim either on the German authorities before the expiry of the 1992 and 1993 time limits or on the Goodwill Fund before the expiry of the 1998 or 2004 time limits due to lack of knowledge or information. However, it is inherently unlikely that there are no surviving owners or heirs in respect of <u>all</u> the €1.2-1.4 billion received by the Claims Conference (up to December 31st 2008) and not paid to owners or heirs or set aside under the provisions of the Goodwill Fund.

52. I am conscious that any payment made from the Goodwill Fund diminishes the assets which are available to assist Holocaust survivors generally and to fund the important projects supported by the Claims Conference. I also understand that any uncertainty prompted by an open ended Goodwill Fund

might lead to the sterilisation of some, or even a substantial part, of the Claims Conference's assets since the Claims Conference would be uncertain as to what sums it needed to retain to provide for payments to owners or heirs under the Goodwill Fund. The Claims Conference has suggested that the reopening of the Goodwill Fund for an indefinite period might lead to a flood of claims which might paralyse the operations of the Claims Conference in bringing relief to aged holocaust survivors.

53. I have given this matter very serious and anxious consideration. On the one hand, I do not wish to recommend anything that might jeopardise the payments to assist aged and infirm Holocaust survivors. On the other hand, there is the position of the heirs of the owners of expropriated property who might have received compensation or a payment from the Goodwill Fund if the Claims Conference had been more forthcoming with information in its possession and now see the proceeds of that property used to fund payments to third parties. I have considered whether the publication of a comprehensive list as recommended above would be a sufficient remedy. On balance, I do consider that justice demands some remedy for those owners or heirs who failed to make a claim before 1992, or on the Goodwill Fund, while it was open, if that failure was due to lack of information. I do feel a sense of unease if it has been the case (and I cannot totally dismiss this on the evidence I have seen) that the funds available for the Claims Conference's programmes were increased by the failure of owners and heirs to make timeous claims for restitution or for payment under the Goodwill Fund due to lack of assistance by, or information from, the Claims Conference.

54. I am the view that the Board should seriously consider requesting the Claims Conference to reopen the Goodwill Fund for a limited period of time after the publication of a comprehensive list of claims made and settled with the names of the relevant owner or the business, the address and the amount claimed or

settled. I think that limited time should be no more than one year. However, taking into account the submissions made on behalf of the Claims Conference, I am convinced that it is necessary to establish some criteria for these claims so that the only claims which could be made are by those heirs who can prove that (1) the reason why they did not claim before 1992 or on the Goodwill Fund was due to lack of knowledge and information and (2) the rejection of the claim would cause them undue hardship. I consider that this course of action will promote justice in appropriate cases while, at the same time, minimising interference with the activities of the Claims Conference in relieving hardship of holocaust survivors and the promotion of cultural and educational activities. This proposal would expand the limited possibility for review on medical grounds referred to previously. It might be that the Claims Conference might limit the total funds available to meet such claims to a specific sum so that the reopening of the Goodwill Fund will not jeopardise or bring to a halt the other charitable operations of the Claims Conference.

Other matters

55. Certain heirs complain about the apparently unhelpful attitude of the Claims Conference. An example of this is the case of Zita Ben Tal. Mrs Zita Ben Tal escaped Germany in the *Kindertransport*. I am informed that she is a British citizen but now lives in Israel. She wrote to Mr Haller of the Claims Conference (Director of Successor Organisation, Frankfurt) in November 2009 seeking information concerning her late father's former textile business in Leipzig. She received no response from Mr Haller despite a reminder. It is unacceptable that Mrs Ben Tal was not even given the courtesy of an acknowledgement. Indeed I do not see why the Claims Conference did not give her the assistance she sought. In the absence of any response from the Claims Conference, Mrs Ben Tal was then assisted by Mr Falkenburg and others who traced the business in

question. It appears that about €260,000 was received by the Claims Conference in respect of these businesses.

56. Mr Falkenburg sought information from the German authorities in respect of the amount received by the Claims Conference as a result of the settlement with the German Government in respect of his family's business. Under the provisions of the German equivalent of the Freedom of Information Act, he sought disclosure of the receipt of payment and wire transfer. Objection was lodged by the Claims Conference on the grounds of protection of intellectual property and trade secrets. The Claims Conference's application was successful but was overturned on appeal. It may well be that the Claims Conference is appealing further but in any event, Mr Falkenburg was able to find out by examining the 2008 list that the Claims Conference has received about €700,000 in respect of his family's property and business. It is difficult to see what intellectual property or trade secrets the Claims Conference was genuinely seeking to protect in this case and what legitimate reason there was for the Claims Conference to seek to prevent Mr Falkenburg from obtaining the information sought.

57. I am uncertain as to how representative these instances are of the general attitude of the Claims Conference to enquiries by heirs or relatives of property owners. However, ignoring requests for information by heirs or, indeed, even worse, the obstruction of their attempts to obtain information is, in my view regrettable to say the least and has the effect of exacerbating the sense of bitterness felt by heirs who already feel aggrieved by the fact that the Claims Conference has received and is disbursing to other victims of the Holocaust, what the heirs regard as their inheritance. It appears to me that the Claims Conference should deal with enquiries from heirs in a sympathetic and open way and provide the information requested in a cooperative manner. Of course the publication of a comprehensive list of claims made and settled with the

names of the relevant owner or the business, the address and the amount claimed or settled, will probably be the answer to many, if not most, of these enquiries. It seems to me that irrespective of the issue of the legal or beneficial entitlement to the funds received by the Successor Organisation, it is indisputable that those funds derive from properties or businesses which the families of the heirs once owned. In these circumstances, whatever the present legal position, it appears to me that the heirs have a legitimate interest in finding out what property their family owned, what has become of it, and if there has been a settlement, the amount of such settlement.

58. Certain other complaints are evident from papers before me. I am aware that there is disquiet in some quarters at the projects chosen by the Claims Conference for financial support and the fact that a substantial proportion of its funds (at one time 20% but now a little less) is earmarked for Holocaust education, research, documentation and awareness and similar projects. It is said that it is wrong that funds are expended on these projects and not to relieve the poverty and suffering of aged Holocaust victims which is getting worse as the years go by. I see powerful arguments that the disposition of the Claims Conference's funds and the choice of projects are management decisions which it is not in my province to criticise, nor do I have any basis for seeking to second-guess the decisions of the relevant executives of the Claims Conference.

59. I have received allegations of wrongdoing or misdemeanours in the selling of properties in Germany by the auction house used by the Claims Conference (Deutsche Grundstuck Aucktionen) and in respect of the allocation of contracts by the Claims Conference (one allegation is that excessive amounts were paid to the Adath Yisrael to digitise documents). I have also received allegations of conflicts of interest in relation to the allocation of funds by the

Claims Conference to bodies who are represented on it. At present, I do not have sufficient evidence to suggest that these allegations are plausible although it is unfortunate that one Jewish organisation in the UK refused a request from a Deputy to publicise my enquiry because it did not want to jeopardise its position as a distributor in the UK of funds disbursed by the Claims Conference. From time to time, the Claims Conference emphasises and claims support for its decisions on the grounds that numerous prominent Jewish organisations have representatives on its boards and committees and are party to its decisions. This point should not be overlooked but this incident may suggest that, at least, some of these organisations may not be entirely disinterested and objective in their support of the Claims Conference.

60. Another issue is the definition of heirs who are recognised by the Claims Conference as eligible to participate in the Goodwill Fund (when it was open). The Claims Conference only appears to recognise the claims of the owner, his spouse and close blood relatives. Accordingly, the Claims Conference does not appear to recognise the claims of beneficiaries under the will of the former owner of the property including charities to which bequests were made. This restriction will also affect claims of other persons in close proximity to the deceased e.g. a long term unmarried partner who is the sole beneficiary under the deceased's will. This appears harsh although balanced against this view must be the fact that widening the circle of potential beneficiaries under the Goodwill Fund will reduce the amount of funding available to assist Holocaust survivors.

Jeffrey Gruder QC

2nd December 2010