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Dear Robin

THE THYSSEN COLLECTION

For your meeting on 5 May, I attach the draft of two papers.

2. The first, "Possible Heads of Agreement", comprises a note which the Prime Minister might be recommended to send to Baron Thyssen, with two annexes, one on the constitution and powers of a new UK Trust in whom the pictures would be vested, and the other (to be supplied by the DOE) on the site and building. We have discussed this draft paper and Annex A in a preliminary way with Jacob Rothschild and Neil MacGregor as well as Tim Burr (Treasury) and John Collins and Penny Dayer (Treasury Solicitor).

3. The second paper contains some initial thoughts on the handling of the proposal.

4. In formulating advice to Ministers, we suggest attention be drawn to the following major issues.

Probable reactions to an agreement

5. There will be admiration for the Government's successful coup. But Ministers should be aware that those who wish to belittle it will find allies in those apt to complain that the Government is finding very large sums in order to attract a foreign collection to this country when it cannot afford properly to fund the museums (and some arts) that are already here. I attach an extract from a letter from Neil MacGregor to this effect. It is not a good reason for holding back. But Ministers should be forewarned of it.

Control of the collection

6. This is linked to the first issue in that criticism will be stronger if HMG neither owns nor controls the collection but is simply paying Baron Thyssen to run his own show in this country.

There are however problems of substance here as well as of initial presentation.

7. There are broadly two possible approaches. The first is to allow Thyssen as prospective Chairman to control the new Trust with himself and his own Trustees constituting the majority; and to incorporate all the necessary safeguards into the founding Trust Deed (or legislation). This means that we have to think of all the necessary safeguards before we start. The second is to provide for at least the possibility of Government control by providing for a majority of Trustees to be nominated by HMG. In our discussions so far most people have shown a strong preference for the second solution, at least as an opening position in negotiation.

His wife

8. The main points of concern giving rise to this preference have been:

(a) What is to happen in the long run, if for example the Thyssen family interest comes down to a single elderly survivor with power to nominate a majority of Trustees?

(b) Thyssen has tended to regard the collection as a world resource, available for extensive and constant touring. We need to make sure that the new and expensive Gallery is not half-empty for two-thirds of the time; and that frail pictures do not travel. Safeguards in a Trust Deed may prove inadequate.

Turnover

(c) The problem at (b) will be especially acute during the period between the conclusion of an agreement and the physical arrival of the pictures in the UK. During this period Baron Thyssen should not be free to move the pictures about as he pleases, especially to send them all to Spain (see para 11 below).

Has done all the work - snow - report not to be effect taking down all records - all the pictures OK - bank

(d) In general, this large outlay of the taxpayer's money, and a substantial annual subvention thereafter, can hardly be justified unless there is an adequate measure of public control and public accountability.

9. I think that these points have force and paragraph 3 of Annex A accordingly provides for a majority of Trustees to be nominated by HMG. If the Baron objects strongly, and UK control is not thought essential, two possible fall-back positions would be:-

(a) introduce a third nominating authority (eg the Royal Academy) in such a way that neither HMG nor Baron Thyssen has a majority but UK-based interests do have a majority;

(b) provide that the Baron as Chairman should command a majority (7 to 6) for as long as he serves, but that on his

resignation or death the balance should swing the other way.
(This would also affect paragraph 2.)

10. In general, I think that we should decide the issue of control by reference to what constitutes adequate control of the pictures, not by reference to control of the staff. It seems clear that if we try to impose Civil Service pay, grading and conditions and service, we shall not secure an agreement. There is however an obvious problem here vis-a-vis the other national museums and galleries and public sector pay more generally. Paragraph 9 of Annex A in square brackets represents an attempted compromise, though I fear prolonged dispute over the pay of the Director which could sour relationships from the start.

The Spanish agreement

11. The Baron believes that the Spanish agreement commits him to nothing. But the Spanish Government may take a quite different view, and we are all much concerned that if the pictures once go to Spain, getting them out again may either prove impossible or take a very long time. The Treasury Solicitor has been asked to obtain Counsel's view on this. We all took the view that if the Baron agreed to negotiate seriously with the UK, HMG should stipulate that there should be no other negotiations with another country or possible recipient at the same time. It is for consideration whether HMG should also stipulate that, before the pictures are vested in the new Trust, no fresh loans should be made without HMG's agreement, thus enabling us to veto a "temporary" loan to Spain (see paras 4(vi) and (vii) of the paper.

The order of events

12. Here again there is a choice between two possible approaches:

(a) set up the new UK Trust, and vest the pictures in it, at the earliest possible date. The Trust can then appoint a Director who would draw up the brief for the building; and the Trust could be made responsible for putting the building up within the cost limit imposed by HMG. In this case, the money for the pictures would presumably fall due earlier rather than later; and the UK Trust would also have the power of decision over what happened to them at the earliest possible date. It would presumably be necessary to set up the Trust and provide for site acquisition, construction and picture acquisition otherwise than by legislation, though covering legislation for continuing subventions would still be needed in due course.

(b) wait to set up the new Trust, and to vest the pictures in it, until the Gallery is ready. The money for acquiring the pictures would then be paid c.o.d. when they were installed in the new Gallery. HMG would be responsible for

erecting the new Gallery and handing it over in acceptable condition to the new Trust. There would then be time to set up the new Trust and make all the essential provisions for its operation in a single Act of Parliament.

12. I submit that (a) is the preferable course, because

(i) it gives the new Trust the earliest possession of the pictures and power of decision over what happens to them;

(ii) the later the deal over the acquisition of the pictures, the higher their price must be expected to be;

(iii) it is highly desirable (the National Gallery would say that it is essential) that the Director should specify the building brief and make sure on the new Trust's behalf that everything happens to specification and to time.

The paper provides accordingly.

Other points

13. We have consulted Thyssen's lawyer (Paul Coleridge) about what exactly HMG would be paying for. Paragraphs 3(a) and (b) represent the position as he describes it. Note that the Sotheby's valuation is not yet complete, since some pictures have not yet been valued; we hope to have up-to-date figures very shortly. It is for consideration whether the paper should name the figure HMG is prepared to pay (para 3(b)). Contrary to the earlier suggestion made to John Anson, I am now inclined to think that the balance of advantage lies in doing so.

14. In general, we have to decide how much detail should go into these documents. I have left out a good many points which are important (for example the need to satisfy ourselves that the Thyssen Trustees are empowered under Swiss and any other relevant law actually to deliver an agreement on these lines) but which would naturally fall to be considered in any detailed follow-up negotiation. On the other hand I have tried to include all points which are of the first importance and which might be difficult to inject at a later stage. The result is a document which Ministers may think too detailed, but the history of this business so far makes me think that it would be dangerous to go too far forward on the basis of generalised expressions of intent.

15. Copies of this letter and enclosures go to Nigel Wicks (No 10), John Anson, Hayden Phillips and Tim Burr (Treasury), Brian Jefferson and John Turner (DOE), Catherine Pestell (FCO), and John Collins and Penny Dayer (Treasury Solicitor).

Yours ever

Richard

R W L WILDING

EXTRACT FROM LETTER FROM NEIL MACGREGOR

There is, however, one central point with which I must open: the response of all those who work in museums. For several years now, the Minister has been obliged to state in public that there is simply not money available for the Government to meet its obligations to maintain the buildings of our major public galleries; to house great university collections like the Courtauld; to increase, through the University Grants Commission, help to institutions like the Fitzwilliam and the Ashmolean; or to provide adequate purchase grants. All such institutions (and they are too numerous to list) have been obliged to seek private support on the basis that the Government is unable to help. Even the most successful are still unable to display their holdings 'at a high standard'.

The reaction of trustees and staff responsible for underfunded museums and galleries to the decision to spend a huge sum of money on a foreign collection (which will not even be fully owned by H.M.G.) may be imagined, and is unlikely to be either favourable or muted. The level of running costs funding proposed for the Thyssen collection must be likely to precipitate vociferous and articulate protest. Perhaps more important, what will be the reaction of those who might have become benefactors? How can it now be credibly represented to them that the Government is unable to meet the costs of collections for the most part given free to the British people? Who will persuade Denis Mahon, Lilian Browse or the Duke of Sutherland -- again, to name only a tiny sample -- that they would not be better advised to follow the Thyssen example and offer their collections for negotiation around the world? And who will explain to benefactors -- again like Denis Mahon -- why in this instance the Government intends actually to prohibit sale? These are difficult and perhaps familiar questions, but they are exacerbated in an extreme degree by the present proposal, which in itself raises some questions and many misgivings.

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THE THYSSEN COLLECTION - POSSIBLE HEADS OF AGREEMENT

Her Majesty's Government proposes that the Thyssen Collection should be given a permanent home in the United Kingdom.

2. HMG understands that the Collection, which is owned by the Thyssen-Bornemisza Art Collections Trust, at present comprises 1365 pictures as follows:

	<i>Family own up all longish title</i> A	B+	B-	C	Totals
Old Masters	127	218	127	56	528
Modern Masters	100	278	316	143	837
	227	496	443	199	1365

3. HMG proposes an arrangement with the following main features:

(a) All the 227 A pictures, at present on loan to the Thyssen Foundation in Lugano, should be made over in perpetuity to a new Trust, to be set up as soon as possible in the UK for the specific purpose of owning, caring for and exhibiting the Collection to the public. Further proposals for the constitution and powers of the new Trust are at Annex A.

(b) The Trust should also acquire the best of the B pictures (about 500) together with such other pictures from the Collection as may be mutually agreed. HMG would finance this and would make available an amount up to a maximum of £120m, being the Sotheby's valuation of the B

and C pictures in December 1987. The precise amount would depend on the pictures to be acquired by the Trust, but could also include an element to recognize the agreement of the beneficiaries to the overall arrangements.

(c) HMG should guarantee the provision of a Gallery on a site to be agreed with Baron Thyssen, constructed and fitted out in such a way that the Collection can be cared for and exhibited at a high standard and be accessible to all who wish to visit it. Further proposals for the site and building are at Annex B. HMG would expect the construction cost of such a Gallery to be around £38m, excluding site costs.

(d) The Gallery should be named "The Thyssen Gallery". In addition to the storage and exhibition of the pictures, it should make adequate provision for conservation, and have other facilities, eg for education and scholarship, appropriate to a major public gallery.

(e) HMG would contribute up to £5m per annum (adjusted for inflation) for the maintenance and running costs of the Gallery; the Trust would be responsible for raising any additional sums that were necessary for these purposes, eg by charging for admission.

4. In order to implement this arrangement it is proposed that

(i) the first step should be to set up the new Trust in agreement with the parties by the end of 1988;

(ii) in agreement with the parties, decisions should be taken about which B [and C] pictures would be acquired by the Trust;

(iii) when such agreement is reached, the necessary financing should be provided by HMG, and the Collection so acquired should be vested in the new Trustees at the earliest possible date; the payment would also be effected at that date;

(iv) prior to the taking of decisions on acquisition by the Trust, facilities for inspecting and verifying the authenticity, condition and title of the pictures concerned should be extended to experts nominated by HMG for this purpose;

(v) the Trustees should be responsible for drawing up the brief for the new building and ensuring its construction within cost limits laid down by HMG;

(vi) while negotiations are in progress for the provision of a permanent home for the Collection in the UK, no other negotiations with another government or interested party will take place over the ~~long-term~~ future of the Collection;

[(vii) until the date at which the pictures are vested in the Trustees, no new loans should be made without consultation with HMG.]

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THE THYSSEN TRUST IN THE UNITED KINGDOM

1. The Collection and the Gallery should be vested in a governing body set up by legislation or otherwise under English law as an independent charitable Trust.

2. Baron Thyssen should be the first Chairman for as long as he wishes to serve, [with the right to nominate his own successor subject to the consent of HMG]. Thereafter the Trustees would elect their own Chairman, [again] subject to the consent of HMG.

What happens if 170 against

3. In addition to the Chairman, there should be 12 Trustees, 5 appointed by the Thyssen interests and 7 by HMG. All Trustees (with the exception of Baron Thyssen as first Chairman) to serve for a period of 5 years, capable of renewal. Appropriate arrangements should be made for the future representation of the Thyssen interests.

4. The Trust Deed or legislation should equip the Trustees with all normal powers for a charitable body. These should include powers to

(a) appoint and employ a Director and staff (see paragraph 8 below);

(b) care for, preserve and add to the objects in their Collection;

(c) exhibit the objects to the public and provide access to them for the purposes of study and research;

(d) generally promote enjoyment and understanding of the fine arts.

For these purposes, the Trustees should be able inter alia

- (i) to enter into contracts and other agreements;
- (ii) to acquire and dispose of land and other property;
- (iii) to charge for admission or for other services or goods provided by them.

5. Since the "A" and the best "B" pictures are to be transferred under a condition of perpetuity, the Trustees should not have powers to dispose of them. They should however be empowered to dispose of other items in the Collection, subject to the approval of HMG. The proceeds of any such disposal may be applied by the Trustees to the purposes of the Gallery as they see fit.

6. The Trustees should obtain the consent of HMG before disposing of any land or buildings. *or the loan*

7. The Trustees may loan items from the Collection for exhibition elsewhere in the UK or abroad, subject to suitable arrangements for ensuring that an appropriate proportion of the "A" pictures is always on exhibition in the UK.

8. The Trustees shall appoint a Director of the Gallery with the consent of HMG. They may also appoint other employees.

[9. The Trustees may pay to their employees such remuneration and allowances, and appoint them on such other terms and conditions as the Trustees may determine. In the case of the Director and senior staff, salaries will be subject to approval by HMG.]

10. There should be a requirement on the Trustees to open the Gallery to the public for at least 300 days a year.

11. The Trustees may appoint their own auditors [with the consent of HMG]. The Comptroller and Auditor General will have access to their books and records.

Needs.