

IN THE CONSISTORY COURT
OF THE DIOCESE OF ELY

In the matter of:

THE RUSTAT MEMORIAL, JESUS COLLEGE, CAMBRIDGE

Summary of Conclusions of Deputy Chancellor Hodge QC

23 March 2022

I summarise my key findings in this public statement. My written judgment sets out much more fully the reasons for my conclusions.

Introduction

1. On 11 October 2021 I was appointed by the Bishop of Huntingdon to determine a faculty petition presented by Dr Richard Anthony, the Bursar of Jesus College, Cambridge. The College now seeks (in summary) a faculty authorising: (1) the careful removal from the west wall of the Grade I listed College Chapel of the memorial to Tobias Rustat, (2) the making good of the wall, using appropriate traditional materials, and (3) the conservation of the memorial, which is to be re-erected in an exhibition and study space to be created in a room on the ground floor of East House, which is situated within the College grounds to the north-east of Library Court.

2. I have conducted two procedural hearings on this petition. These took place remotely using the Zoom video platform on Monday 15 November 2021 and Saturday 8 January 2022. At the second of those hearings, I refused an application by the parties opponent for an adjournment of the substantive hearing of this petition for at least four months for the reasons I set out in a written judgment handed down on 18 January 2022 (under neutral citation number [2022] ECC Ely 1) to which reference may be made for additional background details to this petition. I undertook a site visit, accompanied by representatives of the College

and the parties opponent, on the afternoon of Sunday 30 January 2022 during the course of which I inspected the whole of the Chapel, the Fellows' Guest Room (the east wall of which forms the west wall of the Chapel, on which the Rustat memorial is presently displayed), and East House. Later that same evening, I attended Choral Evensong in the College Chapel. The substantive hearing took place, in the nave, the transepts and the tower crossing of the College Chapel, over three days from Wednesday 2 to Friday 4 February 2022. I sat in the tower crossing facing west, with the Rustat memorial directly opposite the bench. Mr Mark Hill QC (instructed by Birketts LLP) appeared for the College. Mr Justin Gau (of counsel, instructed directly) appeared for 65 of the parties opponent. Professor Lawrence Goldman, another of the parties opponent, appeared in person whilst the remaining two parties opponent were neither present nor represented. Since there was insufficient space in the Chapel to accommodate all those, including representatives of media organisations, who wished to attend the hearing, the proceedings were "live-streamed" to a "viewing room" within the College premises. I am grateful to all those many members of the College staff who were concerned in facilitating this hearing, at a time when some COVID-related restrictions remained in place, for the welcome and the hospitality that were shown to all those who attended and were involved in the hearing, and for ensuring a safe working environment for us all. I am also grateful to all the many people who have taken the time and the trouble to write in to the Diocesan Registry with their views, some in support of, and others in opposition to, the petition without wishing to become formal parties to these faculty proceedings. I have taken all the views expressed into account in reaching my decision on the petition, weighing the arguments, rather than counting the numbers, on each side. I must also pay tribute to the Diocesan Registry and its staff who have had to address a faculty petition of a magnitude, nature, and complexity well outside the normal range of applications submitted through the online faculty system. They have done so with competence and good humour. At the conclusion of the hearing, probably to the surprise of no-one present, I indicated that I would hand down my judgment in writing. I apologise for the length of time it has taken me to prepare this judgment but, although I have taken some two weeks' leave to do so, I have had to interrupt work on it to attend to other cases in the Business and Property Courts in which I sit.

3. The College's petition is advanced on the basis that any harm caused to the significance of the Chapel as a building of special architectural and historic interest by the removal of the Rustat memorial is substantially outweighed by the resulting public benefits, in terms of pastoral well-being and opportunities for mission. The College contends that because of Rustat's known involvement in the transatlantic trade in enslaved Africans (usually referred to as the **slave trade**) throughout the period from 1663 until shortly before his death on 15 March 1694¹, the continued presence of his memorial in such a prominent position, high up on the west wall of the Chapel, creates a serious obstacle to the Chapel's ability to provide a credible Christian ministry and witness to the College community and a safe space for secular College functions and events; and that its removal will enable the pastoral, and missional, life of the Chapel to thrive. The College says that it does not seek to

¹ According to our current calendar. Before 1752 the new year in England, Wales and Ireland did not start until Lady Day (25 March) so his contemporaries would have regarded Rustat as having died in 1693. (in Scotland the new year had started on 1 January since 1600.)

erase Rustat's name, or his memory, from the College but merely to re-locate his memorial to a more appropriate, secular space, where it can be properly conserved and protected, and become the subject of appropriate educational study and research.

4. The parties opponent contend that the court should give the support afforded to the petition from current and past students of the College no weight at all since it is the product of a false narrative that Rustat amassed much of his wealth from the slave trade, and used moneys from that source to benefit the College; and that any positive support from the amenity bodies for the removal of the memorial is similarly tainted by reactions to the memorial generated entirely by misinformation. The parties opponent acknowledge that Rustat's whole life must be examined and put into its true context; but they say that this can be done most economically, most effectively, and most powerfully, by leaving the memorial in place, with an appropriate contextual plaque and information.

5. Those coming to this petition with no knowledge of planning and ecclesiastical law may wonder why the College itself cannot simply implement the decision its governing body has already made, and remove the memorial to a safe, secular space elsewhere within the College itself. The answer is that the Chapel is a Grade I listed building, which means that the Chapel is of exceptional interest in a national context. That listing extends to any object or structure fixed to the building, and that includes the Rustat memorial. If the Rustat memorial were within a secular space, its removal would require listed building consent from the local authority or the Secretary of State. Because the Chapel is included in the list of places of worship maintained by the Church Buildings Council under s. 38 of the *Ecclesiastical Jurisdiction and Care of Churches Measure 2018* (the **2018 Measure**), it is subject to the faculty jurisdiction of the diocese of Ely, exercised through its consistory court. It therefore benefits from the 'ecclesiastical exemption' from the need for listed building consent. This means that a faculty (or permission) from the consistory court of the diocese takes the place of listed building consent. But it is important to understand that it does so only because the state regards the faculty jurisdiction as equivalent to secular listed building consent, in terms of due process, rigour, consultation, openness, transparency and accountability; although this does not mean that the consistory court is required to apply precisely the same approach to listed buildings as is followed in the secular system. This is because a church (or a college chapel) is a house of God and a place for worship: it does not belong to conservationists, to the state, or to the congregation, but rather to God. The ecclesiastical exemption is of importance to the Church as it permits it to retain control of any proposed alterations to a listed church building that may affect its worship, mission or liturgy. As Chancellor Singleton QC (in the Diocese of Sheffield) explained at paragraph 20 of her judgment in *Re All Saints, Hooton Pagnell* [2017] ECC She 1:

“... churches, particularly listed churches, constitute a tangible and spiritual history which touches everyone including the people of the past, the present and the future including those from within and from outside our church communities and from within and outside their geographical area. They connect us to each other and to those who went before us and to those yet to come by our mutual and continuing appreciation and enjoyment of their beauty and history. These buildings need and deserve to be preserved, renewed and improved, expertly, professionally and within a process open to public scrutiny. That is my understanding of the purpose of the strict

law which applies to listed buildings generally and within the Faculty Jurisdiction as applied to listed churches generally and Grade 1 and 2* listed in particular. Within the church the preservation and development of beauty and history is undertaken to the glory of God.”

In determining an application for a faculty permitting works to a church building, the consistory court will have regard to what are known as the “*Duffield* guidelines”, so named after the case in which they were first identified by the Arches Court of Canterbury, which is the appeal court for the southern province of Canterbury (of which the Diocese of Ely forms part), although the guidelines apply equally in the northern province of York. I emphasise that the consistory court does not have a free hand in the matter; it must act in accordance with the law.

Decision and summary reasons

6. After that brief introduction to this case, I turn to the merits of the petition. My detailed reasons are set out in my written judgment under neutral citation number [2022] ECC Ely 2; and I would urge anyone interested in the fate of the Rustat memorial, and the life of the College and its chapel, to read them in full. But since I do not wish to create any unnecessary suspense, this petition is dismissed for the following brief reasons: Applying the *Duffield* guidelines, I am satisfied that the removal of the Rustat memorial from the west wall of the Chapel would cause considerable, or notable, harm to the significance of the Chapel as a building of special architectural or historic interest. The College must therefore demonstrate a clear and convincing justification for the removal of the memorial. I am not satisfied the College has done so: the suggested justification is clearly expressed, but I do not find it to be convincing. I am not satisfied that the removal of the memorial is necessary to enable the Chapel to play its proper role in providing a credible Christian ministry and witness to the College community, or for it to act as a focus for secular activities and events in the wider life of the College. I am not satisfied that the relocation of the memorial to an exhibition space where it can be contextualised is the only, or, indeed, the most appropriate, means of addressing the difficulties which the presence of the Rustat memorial in the College Chapel presents.

7. No-one disputes that slavery and the slave trade are now universally recognised to be evil, utterly abhorrent, and repugnant to all right-thinking people, wherever they live and whatever their ethnic origin and ancestry. They are entirely contrary to the doctrines, teaching and practices of the modern Church. However, on the evidence, I am satisfied that the parties opponent have demonstrated that the widespread opposition to the continued presence of the Rustat memorial within the College Chapel is indeed the product of the false narrative that Rustat had amassed much of his wealth from the slave trade, and that it was moneys from this source that he used to benefit the College. The true position, as set out in the historians’ expert reports and their joint statement, is that Rustat’s investments in the Company of Royal Adventurers Trading into Africa (the **Royal Adventurers**) brought him no financial returns at all; that Rustat only realised his investments in the Royal African Company in May 1691, some 20 years after he had made his gifts to the College, and some five years after the completion of the Rustat memorial and its inscription; and that any moneys Rustat did realise as a result of his involvement in the slave trade comprised only a small part of his great wealth, and they made no contribution to his gifts to the College. I recognise that for some

people it is Rustat's willingness to invest in slave trading companies at all, and to participate in their direction, rather than the amount of money that he made from that odious trade, that makes the Rustat memorial such a problem. I recognise also that it does not excuse Rustat's involvement in the slave trade, although it may help to explain it, that, in the words of L. P. Hartley (in his 1953 novel, *The Go-Between*), "The past is a foreign country: they do things differently there." I also acknowledge that there is no evidence that Rustat ever repented for his involvement in the slave trade, unlike, for example, the reformed slave ship captain, the Reverend John Newton, whose hymn 'How Sweet the name of Jesus Sounds' was sung at the beginning of the service of Choral Evensong which I attended at the College Chapel and whose history I had to consider in the context of the creation of an educational area dedicated to his life and work in my judgment in *Re St Peter & St Paul, Olney* [2021] ECC Oxf 2. However, I would hope that, when Rustat's life and career is fully, and properly, understood, and viewed as a whole, his memorial will cease to be seen as a monument to a slave trader. Certainly, I do not consider that the removal of such a significant piece of contested heritage, representing a significant period in the historical development of the Chapel from its medieval beginnings to its Victorian re-ordering, has been sufficiently clearly justified on the basis of considerations of pastoral well-being and opportunities for mission in circumstances where these have been founded upon a mistaken understanding of the true facts.

8. I am also persuaded that the appropriate response to Rustat's undoubted involvement in the abomination that was the enslavement and trade in black Africans is not to remove his memorial from the College Chapel to a physical space to which its monumentality is ill-suited, and where that involvement may conveniently be forgotten by many of those who attend the College Chapel, whether for worship or prayer, or for secular purposes, but to retain the memorial in the religious space for which it was always intended, and in which Rustat's body was laid to rest (on 23 March 1694) and his human remains still lie, where, by appropriate interpretation and explanation, that involvement can be acknowledged and viewed in the context of his own time and his other undoubted qualities of duty and loyalty to his King, and his considerable charity and philanthropy. In this way, the Rustat memorial may be employed as an appropriate vehicle to consider the imperfection of human beings and to recognise that none of us is free from all sin; and to question our own lives, as well as Rustat's, asking whether, by (for example) buying certain clothes or other consumer goods, or eating certain foods, or investing in the companies that produce them, we are ourselves contributing to, or supporting, conditions akin to modern slavery, or to the degradation and impoverishment of our planet. I acknowledge that this may take time, and that it may not prove easy; but it is a task that should be undertaken.

9. I bear in mind also that whilst any church building must be a 'safe space', in the sense of a place where one should be free from any risk of harm of whatever kind, that does not mean that it should be a place where one should always feel comfortable, or unchallenged by difficult, or painful, images, ideas or emotions, otherwise one would have to do away with the painful image of Christ on the cross, or images of the martyrdom of saints. A church building is a place where God (not the people remembered on its walls) is worshipped and venerated, and where we recall and confess our sins, and pray for forgiveness. Whenever a Christian enters a church to pray, they will invariably utter the words our Lord taught us, which include asking forgiveness for our trespasses (or sins), "as we forgive them that trespass against us". Such forgiveness encompasses the whole of humankind, past and

present, for we are all sinners; and it extends even to slave traders. Jesus recognised that it would not be easy to be one of his followers; yet he led by his example. The first words Jesus uttered from the Cross, as he suffered in terrible agony caused by others, were not words of anger or vengeance; incredibly, he thought of others: the very people who were hurting him, and he begged God to pardon them: “Then said Jesus, ‘Father, forgive them; for they know not what they do’. And they parted his raiment, and cast lots.” (Luke 24, v. 34).

David R. Hodge

Deputy Chancellor Hodge QC

Deputy Chancellor of the Diocese of Ely

Chancellor of the Dioceses of Blackburn and Oxford

23 March 2022