

**Neutral citation number: [2022] ECC Ely 2**

*Faculty application – Grade I listed Cambridge College Chapel – College applying to remove the C 17<sup>th</sup> Rustat Memorial from the west wall of the Chapel to a specially created exhibition space within the College – Pastoral and missional concerns due to Rustat’s involvement in the slave trade –DAC not objecting – 68 objectors becoming parties opponent – Removal causing considerable or notable harm to significance of Chapel – College not demonstrating a clear and convincing justification for removal – Faculty refused*

**Application Ref: 2020-056751**

**IN THE CONSISTORY COURT OF**

**THE DIOCESE OF ELY**

Date: 23 March 2022

Before:

**THE WORSHIPFUL DAVID HODGE QC, DEPUTY CHANCELLOR**

In the matter of:

**THE RUSTAT MEMORIAL, JESUS COLLEGE, CAMBRIDGE**

Hearing Dates: 2 - 4 February 2022

Venue: Jesus College, Chapel

**Mr Mark Hill QC** (instructed by Mr Stuart Jones of **Birketts LLP**) represented the petitioner, Jesus College, Cambridge

**Mr Justin Gau** (instructed directly) represented 65 of the parties opponent

**Professor Lawrence Goldman**, another party opponent, appeared in person

Another two parties opponent were neither present nor represented

The following cases are referred to in the judgment:

*Re All Saints, Hooton Pagnell* [2017] ECC She 1

*Re Jesus College, Cambridge* [2022] ECC Ely 1

*Re St Alkmund, Duffield* [2013] Fam 158

*Re St John the Baptist, Penshurst* (2015) 17 Ecc LJ 393

*Re St Lawrence, Wootton* [2015] Fam 27

*Re St Luke the Evangelist, Maidstone* [1995] Fam 1

*Re St Peter, Shipton Bellinger* [2016] Fam 193

*Re St Peter & St Paul, Aston Rowant* [2019] ECC Oxf 3, (2020) 22 Ecc LJ 265

*Re St Peter & St Paul, Olney* [2021] ECC Oxf 2

*Re St Saviour, Nottingham* [2022] ECC S & N 1

## JUDGMENT

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On the morning of the first day of the hearing, we prayed:

*Give us, Lord, the courage to change those things  
that should be changed,  
the patience to bear those things  
that cannot be changed,  
and the wisdom to know the difference.*

(with acknowledgment to Reinhold Niebuhr)

### Introduction

1. On 11 October 2021 I was appointed by the Bishop of Huntingdon (pursuant to powers conferred by an instrument of delegation) to determine a faculty petition presented on 17 May 2021, through the Online Faculty System (the **OFS**), by Dr Richard Anthony, the Bursar of Jesus College, Cambridge. That petition sought a faculty authorising the: “Removal and inspection of and conservation works to the memorial dedicated to Tobias Rustat currently on the west wall of the College Chapel. Safe temporary storage or display of the monument on college premises.” A draft petition seeking a faculty in these terms had previously been submitted to the Diocesan Registry in December 2020, and this had been the subject of extensive consultation. Included amongst the supporting documents on the OFS was a further petition, dated 7 May 2021, in the name of the College of the Blessed Virgin Mary, Saint John the Evangelist and the Glorious Virgin Saint Radegund, near Cambridge, and commonly called ‘Jesus College, Cambridge’ (the **College**), acting by the College architect, Mr Paul Vonberg (who signed the document). That petition 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. At the outset of the substantive hearing, the College made it clear that it was seeking a faculty in the terms described in the petition dated 7 May 2021, rather than the petition dated 17 May 2022.

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 all of us. 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 of 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 OFS. 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 1694<sup>1</sup>, 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 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

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<sup>1</sup> 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.)

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 will follow later in this judgment; 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, I will start by saying that 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 is said to present.

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).

#### *Tobias Rustat and his memorial*

10. The entry for Tobias Rustat (bap. 1608, d. 1694) in *The Dictionary of National Biography* (created by Philip Lewin on 9 December 2021) describes him as a “courtier and benefactor”. It notes that: “Two years into the Restoration he was lending money to other courtiers, using the king's authority to ensure priority repayment. As Rustat’s wealth increased he invested in the slave trade. His name appears on both the 1663 charter of the Company of Royal Adventurers Trading into Africa, and the later 1672 charter of the reconstituted Royal African Company, where he served on the board as a director (‘assistant’) in the years 1676 and 1679–80. He also appears to have had an interest in the Gambian Adventurers. The record of his banking transactions with Edward Backwell still survives. ... Rustat commissioned three royal statues from Grinling Gibbons, all in Roman costume — Charles II, at Chelsea; Charles II on a horse, in Windsor Castle; and James II, now in Trafalgar Square. In Jesus College, where Rustat is buried, is a marble memorial, probably by Gibbons, which Rustat stored in his house for eight years. In 2020 the college decided to replace this memorial with a plaque acknowledging Rustat’s involvement in the slave trade. The college also has a portrait painted by [Sir Godfrey] Kneller, dated 1682. In the British Museum is a rare engraving, apparently based on this portrait, but incorporating a charity motif.” The previous version of this entry (also created by Philip Lewin on 3 January 2008) noted that: “Two years into the Restoration he was lending money to other courtiers, using the King's authority to ensure priority repayment. He became a director of the Royal African Company and the record of his banking transactions with Edward Backwell still survives.”

11. The entry for the College Chapel in the current (2014) volume of *The Buildings of England for Cambridgeshire* (edited by Simon Bradley and Nikolaus Pevsner) describes the Rustat Memorial (at page 117) as follows: “w wall, Tobias Rustat + 1693/4, an excellent



monument with the courtier's portrait in an oval medallion, two asymmetrically posed putti holding up draperies, and garlands below the inscription. Made c. 1686, almost certainly by the studio of Grinling Gibbons, from whom Rustat commissioned royal statues for Windsor and elsewhere; probably carved by A. Quellin." A fuller description of the memorial reads: "... white marble wall monument with inscription cartouche bordered by garlands of fruit and flowers and surmounted by two cherubs holding aside draperies to reveal an oval medallion containing a portrait-bust carved in high relief, and with a crowning cartouche containing the carved arms of Rustat". Rustat commissioned the memorial in about 1686 and, for the last eight years of his life, it resided at his house in Chelsea. Apart from the final lines, with details of Rustat's death (according to the old calendar), he was responsible for the inscription, which reads:

TOBIAS RUSTAT YEOMAN OF THE ROBES  
TO KING CHARLES THE SECOND,  
WHOM HE SERVED WITH ALL DUTY AND FAITHFULLNESS,  
IN HIS ADVERSITY, AS WELL AS PROSPERITY;  
THE GREATEST PART OF THE ESTATE HE GATHERED,  
BY GODS BLESSING, THE KINGS FAVOUR, AND HIS INDUSTRY  
HE DISPOSED IN HIS LIFE TIME IN WORKES OF CHARITY,  
AND FOUND THE MORE HE BESTOWED  
UPON CHURCHES, HOSPITALLS, UNIVERSITIES, AND COLLEGES,  
AND UPON POOR WIDOWS & ORPHANS OF ORTHODOX MINISTERS,  
THE MORE HE HAD AT THE YEARS END;  
NEITHER WAS HE UNMINDFUL OF HIS KINDRED & RELATIONS  
IN MAKEING THEM PROVISIONS OUT OF WHAT REMAINED,  
HE DIED A BACHELOUR,  
THE 15<sup>TH</sup> DAY OF MARCH  
IN THE YEARE OF OUR LORD 1693.  
AGED 87 YEARS.

It is thought that the memorial was originally installed in its current location on the west wall of the College Chapel. This had been constructed when the convent became a College and the nave was reduced in size to form the Master's Lodge, where it displaced a former protruding window (remnants of which can still be seen from inside the Fellows' Guest Room to the west). The memorial was then moved, perhaps twice, first to the north wall of the north transept (above where the Pietà statue now resides) and then, during later Victorian restorations, to the south transept. It was only moved back to its current, and original location, in 1922 when a large 1887 organ was removed from the west end of the nave.

12. At the end of this judgment, I attach photographic images showing Sir Godfrey Kneller's 1682 portrait of Rustat, the Rustat memorial on the west wall of the College Chapel, its inscription, the Cranmer monument (of 1912) on the south wall of the south transept, and views of the Chapel; and also an artist's impression of the proposed exhibition space within East House (which *Pevsner* describes as "wholly dull"), to the north-east of Library Court.

*The work of the Legacy of Slavery Working Party (the LSWP) and the resulting petitions*

13. At its Council Meeting on 20 May 2019 the College decided to establish a College-based Working Party to undertake an inquiry into legacies of slavery at the College. Its terms of reference included exploring how the College might have benefited historically from slavery and coerced labour through financial and other donations and bequests. I emphasise that the decision to establish the LSWP had been taken before Ms Sonita Alleyne was admitted as the 41<sup>st</sup> Master of the College, on 7 October 2019. The LSWP's Interim Report (presented to the College Council in November 2019) considered the "strong and well-documented" links to slavery of the College's "most prominent benefactor", Tobias Rustat, whose gifts to the College were said to total £3,230 (the equivalent of £500,000). The Interim Report stated:

"The facts of Rustat's involvement both with the College and in the slave trade are not in doubt; they have been widely known for years, and are discussed both in scholarly studies of the Royal African Company and the University Library, and in his entry in the Oxford Dictionary of National Biography. Further archival research might supply more detail about his finances and the precise degree of his involvement in the management of the Royal African Company; but we can be clear that Rustat had financial and other involvement in a slave trading company over a substantial period of time, including at the time when he donated to the College. This involvement has never been fully acknowledged by the College, and current accounts of Rustat's life on the website and in the College history do not mention it."

In November 2020 the LSWP provided an update on the implementation of their actions, which recommended the relocation of the Rustat memorial from the Chapel to an educational, permanent exhibition space within the College. It was the acceptance of this recommendation which provoked the submission of the draft petition to the Diocesan Registry in December 2020 seeking the removal and conservation of the memorial and its safe temporary storage or display on College premises. It is unnecessary for me to refer to the accompanying statements of significance and of need because they have been criticised for their brevity and they have since been superseded by the evidence filed and served in support of the petition

14. This draft petition provoked a host of objections. Although over 120 objectors chose not to do so, in due course some 68 of those who had objected to the draft petition became parties opponent to the eventual petition; and 65 of them have instructed Mr Gau to represent their interests. Mr Gau had previously settled and submitted a formal written objection to the draft petition. Objections have also been received from five lineal descendants of Tobias

Rustat's elder brother, Robert, whose son (and Tobias's nephew), also called Robert, and his family are said to have been the principal beneficiaries of Tobias Rustat's estate. The Registry have also received a number of emails from students of the College strongly supporting the removal of the Rustat memorial from the Chapel and its relocation in an educational space within the College. In July 2021 189 College alumni sent an open letter to the Master, which was copied to the Registry, also expressing their full support for the College's efforts to remove the memorial from the Chapel and relocate it to a place where it could be understood in its full context. It is clear from these documents that feelings about the future of the Rustat memorial run high on both sides of this dispute. It is a powerful tribute to their maturity and integrity that throughout the hearing of this petition everyone concerned has displayed a remarkable degree of dignified restraint and mutual tolerance and respect, appropriate to the College's standing as one of this nation's foremost academic institutions for the advancement of education, learning, research, and religion (as provided in the College's charitable objects and governing statutes). Typical of this dignified restraint was the fact that on the mornings of the second and third days of the hearing, my arrival in the College was welcomed by about a dozen members of the "College Chapel Community" politely displaying hand-written, home-made placards reminding me that "Churches are people not marble" and that this case is about "Moving not erasing". I have had regard to all the written representations received by the Registry, irrespective of whether or not the makers of those representations have elected to become a party to these proceedings.

### Consultation responses

15. Historic England, the Church Buildings Council (the **CBC**), the local planning authority and interested amenity societies have all been consulted on the removal proposals as they have developed with the following results:

#### Historic England

16. Historic England's initial advice was contained in a 12-page letter, dated 18 December 2020, from Mr John Neale, the head of development advice. This had been informed both by a visit to the College to view the monument in its setting and by reference to the Historic England Advisory Committee. It is impossible to do full justice to this letter without reproducing it in full, and it merits careful and considered reading. The summary on page 1 reads:

"Rustat's monument is a work of notable artistic and historical importance, the presence of which is experienced by members of the college community as a burden hard to bear, on account of its subject's involvement in the slave trade. The College sees the presence of the monument as incompatible with the role of the Chapel as a place of worship and welcome. For this reason, it seeks the monument's removal.

Historic England's role is to secure the preservation of ancient monuments and historic buildings, and of those things which contribute to their interest. The Rustat monument is both of significance in its own right, and contributes to the significance of the Chapel as a whole. The removal of the monument would harm both its significance and that of the Chapel.

The College's recognition of the implications of the source of part of Rustat's wealth in slavery forms part of the wider process by which we, as a society, are coming to terms with one of the most shameful parts of our collective past. Historic England understands the importance of this undertaking and shares in it. In respect of monuments of historic and artistic importance, though, we consider that it will best be advanced through re-interpretation rather than removal."

17. Historic England's letter proceeds to consider Sir Tobias Rustat, his wealth and its connection to Jesus College noting that: "Rustat ... profited knowingly from the enslavement of people. As the College states in its application, 'profiting from enslavement, trafficking, and exploitation is unambiguously wrong'." It then describes the memorial, its significance and its relation to that of the Chapel:

"The significance of Rustat's monument is due to its artistic and historic interest. Both are very high, and the monument itself may be described as having high significance ... The place of the monument within the Chapel reinforces its significance, while also contributing to that of the Chapel ... Rustat's monument adds to the richness of the Chapel's interior. Its Baroque character contrasts with the Gothic of the medieval building and its 19th century re-imagining ... Rustat's monument also adds to the historic interest of the Chapel, notably as a representation of one of the College's principal benefactors."

The letter considers the impact of the proposed removal of the memorial. It assesses that this "... would cause a high degree of harm to the monument's significance and a notable degree of harm to the significance of the Chapel". Historic England understands the College's reasons for seeking to remove the memorial but it believes "that we should respond to the legacy of slavery not by removing monuments of artistic and historic importance, but by interpreting their full meaning". Historic England proceeds to develop its position with reference to the *Duffield* questions. The harm to the significance of the Chapel would be "notable, while leaving the Chapel a building of exceptional significance". Historic England states:

"One must consider the richness of the Chapel's significance in assessing the impact of the monument's removal. Given the fact that the greater part of this significance derives from the medieval carcass of the building and its remarkable ecclesiological re-ordering, the Chapel would continue to be a building of exceptional significance even were the monument removed.

One must also consider the significance of the monument itself, and the complex relationship between it and the Chapel. The monument is of high artistic and historic interest in its own right. This interest is enriched by its presence in the Chapel, whose significance it, in turn, enriches. While its removal would leave the Chapel a building of exceptional significance, this does not mean that the harm entailed can be considered unimportant. It is for this reason we describe it as 'notable'."

In his closing submissions, Mr Hill cited the first of these two paragraphs; but that paragraph must be read in conjunction with the paragraph that follows. Historic England recognises that the justification for the removal of the Rustat monument submitted by Jesus College is the fruit of much thought; and Historic England understands the motivation underlying the

College's proposal, and it agrees that the College should respond to the legacy of slavery. It considers, however, that this could be done without the harm entailed by removing Rustat's monument from the Chapel.

“Despite its artistic accomplishment, Rustat's monument has, at its heart, words. The right words, written in reply, could transform the monument's meaning. The right words, speaking what the monument leaves unspoken, could dissolve the claims the monument makes of God's favour and Rustat's industry, and confront the reader with a history which is Rustat's, but which is also our own.”

Historic England offers this as one approach to re-interpretation, as part of the larger exercise of confronting Rustat's presence in the College's life and history.

“If the College successfully confronts the legacy of Rustat's benefactions as a whole, the full storey of his life is likely to be understood by the majority of people - and certainly of members of the College community - before they enter the Chapel. The implications of this for people's engagement with the monument are not considered in the application.”

Historic England does not consider that the importance of the College responding to the legacy of slavery provides a clear and convincing justification for the removal of the Rustat monument from the Chapel.

“If clear and convincing justification has not been provided, it must be questionable whether the public benefit which that removal would secure could outweigh the harm to the Chapel's significance, and that of the monument, which it would cause. Even were the justification found to be clear and convincing, the exercise of balancing the harm to the significance of the monument and Chapel against the pastoral benefits the monument's removal would procure, would remain to be performed.”

Historic England concludes as follows:

“Jesus College's petition for faculty to remove the monument to Sir Tobias Rustat from its Chapel raises questions of profound seriousness. It arises from the College's study of its connections with the legacies of slavery. This, in turn, is part of an exercise taking place, formally and informally, across society.

In Rustat's benefactions the College has a direct and considerable connection to the slave trade. In response the College proposes not to disavow Rustat's role in its life, but to avow and account for it, while removing its most conspicuous mark, Rustat's monument in the Chapel.

Historic England, too, is considering what this necessary inquiry into the legacies of slavery, and other difficult aspects of our history, means for the way we live with the physical legacies of the past. We are aware that much of what people value in the historic places, buildings and monuments which surround us - and to the conservation of which so much effort has been invested over many years - are imbued with the traces - in varying degrees - of difficult histories.

In this case the significance of Rustat's monument, and that of the Chapel, are not in doubt. Nor is there disagreement about the importance of acknowledging and responding to the legacies of the slave trade. The law provides for the preservation of the monument within the Chapel unless there is clear and convincing justification for its removal and unless pastoral considerations, or other considerations of public benefit, outweigh the presumption against its removal.

Historic England will not undertake that final balancing exercise, which will be, ultimately, for the Chancellor. For the reasons set out above, we do not believe, however, that the College's justification, thoughtful though it is, is clear and convincing.

We consider that it would be possible to re-interpret the monument in a way that acknowledged Rustat's engagement in the slave trade - properly described by the College as an unambiguous wrong - and placed it in a proper moral and historical perspective. We recognise that this would require an engagement with our own past that is complex and uncomfortable.

Should this petition be heard at a formal meeting of the Consistory Court, Historic England would be grateful for the opportunity to appear as a Judge's Witness to present these points."

In the event, I did not consider it to be necessary or desirable to call a representative of Historic England as a judge's witness under rule 13.4 of the *Faculty Jurisdiction Rules 2015*, as amended (the **FJR**) although I offered the parties opponent the opportunity of calling such a representative to give evidence on their behalf. My reasons were that: (1) the views of Historic England were adequately set out in its letter; and (2) in a contested faculty case where the opposing parties are legally represented, it is my view that the court should leave it to them to decide which witnesses they wish to call to give oral evidence and be cross-examined.

18. In a later letter, dated 14 July 2021, sent in response to the petition, Historic England reiterated its previous advice save in one respect. It acknowledged that the principal difference between the final petition and the earlier version of the proposals was that it is now proposed to create a new space within East House in which Rustat's monument would be displayed, fixed to a wall, as part of an exhibition of material from the College's archive, which is housed in this building. Historic England

"... considers that what is now proposed would provide an appropriate way of preserving and displaying the monument as a part of the College's heritage, should the principle of removing it from the Chapel be accepted. It would allow the historic and aesthetic interest of the monument to be examined, although it would not, of course, be the same as experiencing the monument in its present position within the chapel."

That conclusion did not bear upon the assessment of the impact of the removal of the monument from the Chapel on both the significance of the Chapel and that of the monument itself; but it did answer the subsidiary point about the inappropriateness of what had previously been proposed. Historic England noted that the College had further developed and

refined aspects of the arguments submitted in support of the proposed removal of the monument from the Chapel; but as this had not added substantive new points to the College's case, Historic England did not wish to add to its previous advice in response. Historic England also noted the publication, in May 2021, by the Church Buildings Council and the Cathedrals Fabric Commission for England of "*Contested Heritage in Churches and Cathedrals*". The College had referred to this new guidance in their introduction to the petition. While the new guidance had been published since Historic England's substantive letter was written, it believed the advice given in that letter to be consistent with the approach set out in the guidance. This further letter concludes:

"Historic England recognises that this petition deals with matters which are very difficult both for the College and for society at large. While acknowledging the care with which the College has considered the problems raised by the Rustat monument, and the thoughtfulness with which this petition has been made, we continue to consider that the removal of the monument from the College Chapel would harm the significance of both the Chapel and the monument, and that the College's justification for this harm is not clear and convincing."

*The Ancient Monuments Society (now Historic Buildings & Places)*

19. In their original email, dated 11 December 2020, the Ancient Monuments Society (the **AMS**) indicated its opposition to taking the memorial down without the clearest idea where it was to end up. The AMS was clear that any new home should be appropriate in terms of presentation, associated interpretation, and environmental conditions. They emphasised that "... we are surely dealing here with a work of art which, judged by intrinsic merits, is itself of Grade 1 quality and interest". In a later email, dated 25 June 2021, written in response to the revised proposal to re-locate the memorial to East House, the AMS declared this to be

"... an excellent outcome which we can support. The pain has been caused by the prominence given to the memorial in a place of Christian worship, literally elevated above worshippers and visitors alike – occupying a site which is not its historic location. Re-siting the monument and in effect reinventing it as a museum exhibit is an intelligent response, worthy of an academic institution. It will allow much closer inspection than is possible now and allow measured interpretation. We support the grant of faculty."

However, in a still later email, dated 26 October 2021, the AMS withdrew that support. It explained that:

"Since 25 June 2021 we have been sent a great deal of further material, elaborating at considerable length and scholarly authority on key matters such as the degree to which Rustat's wealth originated from the slave trade and the reaction of the heirs-at-law (who deserve proper consideration as the legal owners of the monument).

We have also had sight of the updated and comprehensive report of Dr Roger Bowdler.

Together this is hugely impressive additional material and its compilation, and the research behind it, behoves us to revisit our submission of 25th June.

By definition, we were not aware of these new findings and facts when we wrote in June.

As we do not wish to present evidence at the consistory court (which I gather has now been scheduled for February 2022) a submission lodged before this extra information was supplied should not be taken into consideration by the Court.

It is not fair, as a party which has declined to appear in person, that a statement made 8 months before the hearing should stand.

I think it therefore best if the email of 25 June is now discounted and withdrawn.

It is neatest, and fairest, if the Society is recorded as making no formal submission at all to the Court in this case.”

### *The Society for the Protection of Ancient Buildings (SPAB)*

20. In its initial letter of advice, dated 14 December 2020, SPAB emphasised that it had no wish to commemorate slavery or anyone who had benefitted from it and it recognised that there was a long tradition of removing monuments when societies changed.

“Nevertheless, monuments provide evidence about the past. If we destroy this evidence, we may unwittingly remove the memory of those things we now oppose. Potentially, monuments are educational tools which, through addition, interpretation or community interaction may acquire fresh meaning. We are stronger through knowledge of past wrongs and of our changed opinions. The Committee would therefore on balance prefer to see the monument retained in situ with suitable interpretative material. However, it fully understands that the issues surrounding the monument are accentuated by its prominent position in a building which plays a central role in College life. In this context, the Committee thought that there was scope within the concept of interpretation in situ for retention in a different location within the chapel.”

SPAB considered that any new location outside the Chapel should seek to strike a balance between being less prominent and hidden away. In a later email, dated 30 June 2021, SPAB expressed the view that “... relocation to a new archive room constituted an acceptable compromise to which it would not object”.

### *The Georgian Group*

21. The Georgian Group’s consultation response is set out in an email dated 19 August 2021. Noting that the memorial falls outside its normal 1700-1840 date remit, it nevertheless commented as follows:

“The Rustat Memorial is of considerable historic and artistic significance in its own right and is also a commemorative work of art which contributes to the significance of the chapel as a whole. Although it has been moved in the past, it is thought to now reoccupy the prominent position at the west end of the chapel in which it was originally erected. Rustat is also believed to be buried within the chapel’s confines. The memorial is an important work from the studio of Grinling Gibbons and has an inscription which is believed to have been composed by Sir William Dugdale.



The high aesthetic and historic significance of this memorial has been clearly set out by Historic England in their thoughtful letter of the 18 December 2020. The Group cannot meaningfully add to this authoritative assessment, and we do not therefore intend to repeat it here. We do however agree with Historic England that ‘its historic interest encompasses the broad historic interest of Rustat’s life and the particular interest of his contribution to Jesus College, as well as the monument’s interest of seventeenth century sculpture in Britain.’ The Georgian Group is supportive of the well-argued case made by Historic England within this letter and of their recommendations ...

Whilst the Georgian Group has considerable sympathy with the College’s thoughtful and powerfully articulated reasons for wishing to remove the memorial from the chapel, we agree with Historic England that in the case of funerary and commemorative monuments of high aesthetic and historic significance the most appropriate way of addressing the very real injustices that they can represent is by interpreting them in their original context. A response of this nature is likely to avoid causing harm to the significance of the artistic work itself, and harm to the significance of the host building for which it was designed.

We must respectfully suggest that the College has not given this option the thorough consideration it deserves within their submission documents. The written word can be one of the most powerful weapons against injustice open to all of us, and in this context, it could be used to challenge both Rustat’s legacy and the continued legacy of the slave trade on the cultural and economic life of this nation. We agree with Historic England that a ‘powerful reinterpretation’ does not necessarily have to be a dramatic or an obtrusive one ...

The Georgian Group is fully supportive of the College’s desire to acknowledge and respond to the legacy of the slave trade; however, we believe that it should be possible to reinterpret the memorial in situ in a way which effectively confronts both Rustat’s engagement with the slave trade, and how the college historically benefited from his legacy. We do not in any way however mean to suggest that this will be an easy task.”

#### *The local planning authority*

22. The consultation response of the conservation team of the local planning authority is directed solely to the practical, historic building conservation aspects of the proposal to relocate the memorial from the wall of the College Chapel to some alternative location.

#### *The Church Buildings Council*

23. The CBC set out their position in a letter dated 9 July 2021. They did not wish to enter a formal opposition to the proposal, or to become a ‘party opponent’; but they advised that there were still a number of areas of the application that required further consideration. The CBC commented in particular as follows:

“As a memorial with high aesthetic value created specifically for the chapel, relocation outwith the chapel will undoubtably impact on its significance. Its relocation to the expanded archives and display at eye level will change the aesthetic and communal values of the piece, changing its imposing stance, and enabling the text

to be read without having to look up in deference. This new perspective enables a kind of interpretation that isn't possible in its current location. The question remains as to whether its overall legibility as an artwork will remain when viewed in such a tight space. That said, the Council accepts the College's arguments that the benefits to the Chapel's missional activities outweigh the impact on the object's significance if it is relocated. The Council also notes that if the memorial is moved, there will still be a marker of a Christian burial to Rustat in the floor of the Chapel."

*The Church Monuments Society (the CMS)*

24. On 30 December 2020 the CMS wrote expressing its total opposition to the proposed removal of the Rustat memorial from the west wall of the College Chapel, describing it as "totally unacceptable":

"The monument is a hugely important piece of work by the renowned sculptor Grinling Gibbons and therefore it must remain in the Chapel where it was intended and where Rustat is buried. The work by Gibbons is of utmost importance, where in 1680 he was known as the 'King's Carver', so there must be a resounding case of opposition and I will be keen to know the stance by English Heritage!! The prospect of the monument being removed and placed in storage is not the way forward. The society's policy is 'we should explain rather than expunge' surely is the best course of action."

On 4 July 2021 the CMS completed particulars of objection (in Form 5) objecting to the removal of the monument from the west wall of the Chapel. This was said to be "very unwise given that it will very likely crack into pieces as it is very fragile. The removal is a very difficult process." The CMS stated that it did not wish to make any further representations nor did it wish to become a party opponent (contrary to Mr Hill's understanding of the status of the CMS, as expressed at the hearing).

*The Diocesan Advisory Committee (the DAC)*

25. On 29 January 2021 the DAC issued a Notification of Advice (**NoA**) stating that it did not object to the court approving the temporary relocation of the Rustat memorial within the College, subject to the following provisos:

- (1) The DAC recommends that temporary storage of the monument should be limited to one year, after which time it should be reinstalled in the Chapel in its current location.
- (2) If during the period of temporary removal the College identifies a long-term new home for the memorial outside the Chapel, proposals for such should be submitted to the DAC for recommendation, together with a further statement detailing all the options appraised, and giving theological, pastoral and practical reasons against the monument's reinstatement in the Chapel.
- (3) Any disposal of the monument should be on the basis of a long-term loan rather than a donation or sale.

(4) A new memorial should be placed on the wall of the Chapel noting the burial of Tobias Rustat and his dates, together with separate interpretative material.

(5) Further details concerning any conservation works found to be necessary should be submitted to the DAC for recommendation.

26. The NoA records that in the DAC's opinion, the work proposed is likely to affect the character of the Chapel as a building of special architectural or historic interest. It notes that Historic England, the local planning authority, the Society for the Protection of Ancient Buildings, the Ancient Monuments Society, and the Church Buildings Council had all been consulted about the proposals; and that all the responding consultees had raised objections which had not been withdrawn. The Committee's principal reasons for not objecting to the proposals being approved, despite those objections, were as follows:

“Following the advice of the casework group and the further submissions from the College during the summer and autumn of 2020, formal statutory consultations were undertaken with: The Ancient Monuments Society, The Society for the Protection of Ancient Buildings, The Church Buildings Council, Historic England and the City of Cambridge. At the end of the 42-day consultation period, responses had been received from all but the City of Cambridge.

The casework group members reviewed the responses of the consultees and noted they broadly shared the DAC's reluctance to support permanent removal of the memorial from the chapel at the present time, particularly when there is no clear end destination for it. A proposal for permanent removal of the memorial would be more complete if its final destination were known and fitting.

However, while the DAC remains unable to recommend permanent removal of the memorial from the chapel based on the case presented so far, it notes the concerns of the Dean and others about the impact its presence has on the current pastoral work of the chapel. Therefore the DAC is persuaded to not object to temporary removal of the monument from the chapel as proposed in this petition.”

27. On 24 June the Diocesan Registrar wrote to the DAC, referring to further submissions made by the College and seeking the DAC's views on these. On 21 July 2021 members of the DAC's casework group visited the College to inspect the memorial in the Chapel, and also the proposed new location for the monument in East House. The views of the casework group were detailed in a site visit report; and the advice contained within that report was endorsed by the full DAC at their meeting on 29 July 2021. This can be summarised as follows:

“The DAC identified a number of matters which made the proposed new location in East House less than ideal. The DAC reviewed some other possible locations in East House and in the Chapel cloister. The DAC encouraged the College to look closely at a possible location in the stairwell of East House.”

The DAC's site visit notes record the discussions on site in the following terms:

“A. Scaffolding was provided to enable closer inspection of the memorial. This confirmed that the memorial has sustained some knocks in the past, and that given the opportunity, some appropriately specified conservation works would be beneficial.

B. Part of the rear of the wall on which the memorial was currently mounted was inspected via a room abutting the west wall of the chapel. Being able to access the memorial from both sides may make it simpler and less risky to remove the memorial from the wall.

C. Members inspected the room in East House where it is proposed to reinstall the memorial, permanently. It was noted that the false ceiling being removed would provide more height; but there would still be limited clearance above and below the monument.

D. The monument would dominate this space - far more so than it does the chapel - as well as any exhibitions taking place in the space on whatever subject. Rustat's permanent presence in the exhibition space would give his contribution to College history disproportionate prominence.

E. Members enquired whether the monument would remain under the Faculty Jurisdiction were it moved to East House, noting that East House is not itself a listed building.

F. Members took the opportunity to informally review two other possible locations for the memorial. One in the cloister outside the chapel, but this location might leave the memorial vulnerable to the weather and also casual vandalism. A better alternative appeared to be the stairwell in East House, where the monument could be mounted high up on the wall adjacent to the Bursar's office.

G. The visiting party would encourage the College to undertake a feasibility review of placing the monument in the stairwell at East House.”

The report containing the DAC's advice was subsequently submitted to the Registry. The DAC note that they have received no further submissions, and that their general views on the proposal to remove the memorial from the wall in the Chapel remain unchanged.

*The published guidance on 'Contested Heritage in Churches and Cathedrals'*

28. In May 2021 the Church Buildings Council and the Cathedrals Fabric Commission for England (the CFC) published helpful guidance entitled '*Contested Heritage in Churches and Cathedrals*'. This guidance was issued pursuant to powers under s. 3 (3) (a) of the *Care of Cathedrals Measure 2011*, and s. 55 (1) (d) of the *Dioceses, Mission and Pastoral Measure 2007*. As this is statutory guidance, it must be considered with great care (as I have sought to do); and the standards of good practice set out in the guidance should not be departed from unless the departure is justified by reasons that are spelled out clearly, logically and convincingly. In his closing submissions, Mr Hill notes that this guidance contains a framework for addressing contested heritage but it is no substitute for the Faculty Jurisdiction procedure. I will set out those parts of the guidance to which I was specifically referred, or which seem to me to be of particular relevance to this present faculty application (italicising those statements upon which Mr Hill places particular emphasis and underlining four passages which seem to me to be of particular relevance to the present case):

INTRODUCTION [pages 7-8]

This guidance addresses issues of contested heritage in the Church of England's cathedral and church buildings, their settings and their historic interiors.

It is written primarily for parishes and cathedral chapters who need to address their contested heritage, and for the advisory and decision-making committees and individuals that support them within the Church and in the heritage sector. This is a complex subject that requires a thorough discussion of the issues and this guidance is necessarily long. A shorter guide, intended as an introduction for those considering this subject for the first time, is available on our website.

The guidance does not attempt to address every type of contested heritage in church buildings: it focusses on the issue of the memorialisation in tangible form of people or events connected with racism and slavery. It is hoped, however, that it may establish a methodology with which other forms of contested heritage in our cathedral and church buildings may also be addressed.

Our guidance recognises the distinctiveness of contested heritage in a church context. This work supports the mission of the Church by helping churches to be places of welcome and solace for all people. At its heart is the fourth Mark of Mission, which enjoins everyone in the Anglican Communion:

**To transform unjust structures of society, to challenge violence of every kind and pursue peace and reconciliation.**

The purpose of the guidance is to provide a practical framework for addressing issues of contested heritage in relation to specific historic objects in a church or cathedral context. The passions around this—on all sides—mean that there needs to be open dialogue. Our aim has been to find ways of mediating discussion that will help churches and cathedrals and their wider communities to develop solutions that will ultimately tackle the issues behind the feelings that contentious memorials evoke. It is important to remember that this is not about judging people in the past by the standards of the present, but about how items of contested heritage and wider issues of under-representation affect our ability to be a Church for all in the 21st century.

The guidance sets out principles, processes and options for those addressing contested heritage to consider. It begins by discussing the context and underlying philosophy that have shaped our development of this framework. It recognises that under-represented histories can be difficult for parishes and cathedrals to uncover, and it emphasises the importance of undertaking robust, inclusive research to understand as much as possible about the heritage in question. Research and discussions of contested heritage may involve facing uncomfortable truths, in both the past and the present, and our framework suggests how productive and respectful discussions on individual cases might be achieved. Each case needs to be considered individually, and the purpose of the framework is to aid rather than to pre-empt the decision-making process: it neither insists upon nor rules out any particular course of action as the result of such conversations.

## CONTEXT

2a The context for this guidance [pages 11-12]

Churches and cathedrals are, above all, places dedicated to the worship of God. *They should be places where all people are able to worship God, and be welcoming to all for the activities that they undertake for communities. However not all people do feel welcome. This could be for a range of reasons, one of which may be the presence of objects that they find troubling because of their depiction or commemoration of, or association with, the oppression or marginalisation of people on the basis of their race, gender, religion or sexual orientation.* This paper focuses on issues of race, though the principles it articulates would be adaptable to objects associated with other forms of contested heritage.

Much-needed attention is being drawn to racism and ethnic inequality in our society. Systemic and targeted discrimination is still faced by UK minority ethnic communities today, and some of the anger felt is directed towards material culture glorifying people who were a part of this in the past ...

In a Church context, examples of such material culture can be found amongst the monuments, memorials, gravestones, imagery and texts both inside our buildings and in our churchyards. The effects of enslavement continue to impact the lives of many UK ethnic minority communities to whom, at best, these objects may be reminders of an ‘overcome’ past, a horror from which we celebrate our extrication; at worst, for these objects to remain in place with no discussion or interpretation could be taken to imply that the oppression and disenfranchisement they evoke for many in affected communities is socially and theologically acceptable to the Church.

At the same time, the high regard in which others hold these monuments and memorials can also be understood: these objects have over centuries become part of the fabric and fixtures, and of the histories, of individual places of worship. They provide evidence of persons and wider society of the past and their opinions and beliefs. They may be considered artistically significant for reasons that have nothing to do with their contested status.

On the one hand, the presence of memorials associated with contested heritage in churches today may be at odds with the message of the Church and its regard for its diverse congregation; on the other, this diverse congregation may also include those who would regard the removal of this material culture from their place of worship as objectionable.

It is within this context that this guidance proposes principles and processes for considering for contested heritage.

2b What is contested heritage? [page 13]

Discussions of contested heritage should be framed to avoid starkly binary thinking that classes anyone as wholly good or evil. A theology of forgiveness is not reducible to simplistic categorisations. From a Christian perspective every memorial is a memorial to a sinner, however fulsome any tribute to their life, character and achievements may be, and the final moral reckoning on all our lives is known to God alone. The focus of discussion should be the impact of a piece of material culture on a church or cathedral’s ability to be a place of welcome and solace to all, and how this

should best be addressed, not on whether an individual deserves to be expunged from the historical record.

... It is recognised that while building consensus and reaching a shared understanding may be the aims when addressing contested heritage, this is an iterative process, and consensus may not be reached. It is hoped that open, honest and gracious discussion, listening and learning happens, with people being able to disagree well and with kindness and ultimately to respect the decisions made ...

## 2c Legal and historical considerations [page 13]

The framework for considering contested heritage set out in this guidance is not an alternative to or substitute for the process of obtaining formal permission under the Faculty Jurisdiction or the Care of Cathedrals Measure ...

... In terms of attempting to justify a physical intervention such as altering or removing a memorial what needs to be proven is not principally that a memorial is to somebody (or perhaps donated by somebody) whose views or actions we would now condemn, but *rather that the presence of the memorial has a demonstrable negative impact on the mission and ministry of the church or cathedral; and, in the case of a proposed course of action that may be considered harmful to the heritage of a building, that substantially the same benefits could not be achieved by a less harmful option.* It is therefore essential that a thorough appraisal of the available options is undertaken before any formal application is made ...

## A FRAMEWORK FOR DECISION MAKING

### 3a A framework for decision making on contested heritage [pages 17-18]

... This should be considered both from the perspectives of the church or cathedral team themselves, and those in the congregation and wider community (including tourists and others) who are affected by the presence of the object. *What is the level of negative impact on those detrimentally affected by the object? How does the object affect the church or cathedral's ability to proclaim the Good News of the Kingdom? How does the presence of the object detract from the cathedral or parish church's ability to teach, baptise and nurture new believers? In what ways is the church or cathedral not being used by the wider community because of the object? How does the offensive nature of the object detrimentally affect liturgical use of the space? What will be the potential impact of different levels of intervention on the missional, pastoral and liturgical activities of the church or cathedral? What would be the impact on affected communities if there was no change to the object?* If the conclusion is that action may need to be taken it will also be necessary to consider the actual or potential positive impact of the object, in terms of its historical or artistic significance, as an item of interest to tourists and scholars, as an item associated with local identity, and as a possible tool for raising awareness of under-represented histories and present-day injustice ...

If a decision on a proposed course of action has been reached and permission is sought, the Church of England's existing statutory processes are well-suited to dealing with these issues. The basis of any consideration of change regarding contested

heritage would, as always, be a robust Statement of Significance, founded on an appropriate level of research into the object in question and its physical and historical context, and a Statement of Needs, considering the need for change from liturgical, theological, missional, and community perspectives. Insufficient understanding of the significance of the object and the need for change, if the research is deficient in depth and quality and/or the interests of any party are ignored or not given appropriate weight, is likely to lead to distress and recriminations, as well as the possibility of the refusal of any proposed interventions ...

3e What are the options for change? [page 21]

... Broadly speaking, from the perspective of the ecclesiastical permissions process, the greater the level of intervention, the greater the potential harm to significance and thus the more compelling the justification that will be required to implement it. In blunt terms this means that it is generally easier to gain approval for works to objects of low significance than of high significance, and for works that will have a low impact on the significance of the object than for works that will have a high impact. This is true of all works to historic buildings, particularly when the building is listed, and not only works associated with contested heritage.

Some may feel that where an object causes any degree of pain or offence then [it] should be removed without delay, just as others might believe that present-day feelings could never justify the removal of an historic monument. The public interest in ensuring the sustainability of our historic buildings, embodied in the historic buildings legislation under which we operate, demands that we resist knee-jerk responses in order to do the more difficult work of responding in a balanced and nuanced way to the tension that may exist between a building's heritage and its present-day Christian mission, taking into account both the historical and aesthetic significance of an object and the painful feelings it may provoke ...

### *The historical evidence*

29. Pursuant to my case management order of 15 November 2021 (as varied with the consent of the parties on 8 December 2021), on 6 December 2021 the College served the witness statement of Dr Michael Edwards, a senior lecturer in History and a Fellow of Jesus College, Cambridge. He was proffered as the College's only expert witness, speaking to research he had undertaken into original source material relating to the life and activities of Tobias Rustat. Although I acknowledge that Dr Edwards is suitably qualified to give such evidence, I note that in its interim (November 2019) report, Dr Edwards was noted as "in attendance" at LSWP meetings as the Keeper of the Old Library; and in this role he is recorded as one of those who had made "key contributions". He is also recorded as a member of the LSWP in its November 2020 report. At paragraph 19 of his statement, Mr Edwards states:

"I have aimed to produce the fullest possible picture of Rustat's life, considering the full range of his activities, philanthropic and economic; I have not focused narrowly on one aspect of his life—his involvement in the slave trade—to the exclusion of



everything else. My goal has been to document and interpret Rustat's involvement in the context both of his life and of the wider politics and society of late seventeenth-century England. In this paper I have attempted to balance presenting the key archival evidence with brevity; there is much more information available if needed."

However, as the parties opponent pointed out at the substantive hearing, Dr Edwards's witness statement in fact focuses almost exclusively on Rustat's involvement in the slave trade; it does little to undertake any assessment of his life as a whole, despite Dr Edwards's acknowledgment (at paragraph 20 of his witness statement) that this would be appropriate.

30. The service of Dr Edwards's witness statement provoked the application by the parties opponent which led to my judgment of 18 January 2022, refusing them an adjournment of the substantive hearing of this petition (since I considered that this would have been contrary to the overriding objective of dealing with the case justly and, in particular, expeditiously) but giving them permission to call their own historical expert, Dr Aaron Graham, a lecturer in early modern British economic history at University College, London, to respond to the statement of Dr Edwards. Dr Graham's particular field of study is the economic, social and political history of Britain and its empire between 1660 and 1850. In the event, Dr Graham was able to produce his expert statement on 18 January 2022.

31. Dr Edwards and Dr Graham were able to meet remotely via Zoom on the afternoon of Friday 21 January 2022 for around one and a half hours to discuss their respective research findings and expert reports on Tobias Rustat's involvement with the slave trade. The object of that meeting was to identify areas of agreement and any remaining areas of disagreement. There was a high level of agreement on the facts of Rustat's involvement with companies that had traded in enslaved people. In his expert report, Dr Graham had detailed several areas where, based on their reports, it seemed that the experts held different views. These were: corporate governance in the late 17<sup>th</sup> century; the exact nature of Rustat's participation in both the Royal Adventurers and the Royal African Company; the activities of the Gambia Adventurers; wider attitudes towards slavery in late 17<sup>th</sup> century Britain; and the significance of Rustat's involvement with the financier, Edward Backwell. The experts discussed each of the areas of potential disagreement and, in most cases, they identified areas of common ground. These are listed in section 1 of their joint statement. Remaining areas of disagreement were listed in section 2. For ease of reference, and to avoid extending the body of this judgment more than is strictly necessary, I have set out relevant extracts from the expert historians' joint statement at the end of this judgment, together with extracts from Dr Edwards's witness statement where this is now agreed and is necessary to an understanding of the joint statement.

32. The College wish to emphasis that: (1) Rustat: (a) was involved, as an investor, a lender, and a member of the Court of Assistants, with two companies (the Royal Adventurers and the Royal African Company) that had traded in enslaved people; and (b) was fully aware that these companies were involved in trading enslaved people; (2) this involvement both pre-dated and post-dated Rustat's gifts to Jesus College, and he was involved in the Royal Adventurers at the time he donated to the College; and (3) Rustat appears to have been more active than the average shareholder in the governance of the Royal African Company (although this cannot be stated definitively without a quantitative study comparing his level of participation against other shareholders).

33. However, it is also clear that Rustat: (1) amassed little of his great wealth from the slave trade and (2) used no moneys from that source to benefit the College. By about the time of his gifts to the College, far from generating any financial returns, his involvement in the Royal Adventurers had probably cost him £1,044, equivalent to some £172,980 today; and this loss must be set against the equivalent net profit figure of between £923 13s 10d and £1,595 13s 10d (equivalent to between £137,300 and £237,200 today) which he and his estate together earned from the Royal African Company. Dr Edwards does not believe that “the key issue here is arguing about whether Rustat made a ‘big’ profit or not; the moral question of his involvement in slavery should not be reduced to the question of whether he made more or less money from it than other investors”. Dr Edwards acknowledges that “Rustat died a wealthy man, and there is no dispute that any money he received as a result of involvement in the slave trade comprised only a part of his estate, and that it did not exceed the reported value of his philanthropic giving”. But he makes the point that “a small part of a wealthy person’s estate might still be a very considerable sum of money”. Dr Edwards also emphasizes that “any investment in the slave trade supported the exercise of that trade”, whilst recognizing that: “It is important to remember that membership in early modern joint stock companies had other social, political, and economic benefits that appealed to their members. Access to economic opportunities beyond those offered by the African companies may have been another factor that attracted Rustat, particularly given his money-lending and philanthropic activities.” Dr Graham considers that Rustat’s conduct “is consistent with that of someone seeking to manage and increase the value of his investment but is also not incompatible with someone who chose to seek profit in a fashion which also demonstrated his loyalty to the Stuart cause; indeed, he may not have seen these as being contradictory”.

#### *The College’s evidence*

34. The College called six witnesses in the following order:

(1) The Dean of Jesus College Chapel (since 2019), the Revd James Crockford, who is a Fellow of the College and its Lead Welfare Tutor.

(2) Mr Amatey Doku, an alumnus of Jesus College. He is a former President of the College’s Junior Common Room, and he represents the views of those 189 alumni who signed an open letter supporting the College’s efforts to remove the Rustat memorial from the wall of the College Chapel.

(3) The Right Reverend Stephen Conway, the Bishop of Ely and Acting Bishop of Lincoln, who gave evidence in his capacity as the Visitor to the College.

(4) Dr Véronique Mottier, a Fellow of Jesus College and Director of Studies in Human. Social and Political Sciences, who has chaired the LSWP since its foundation in May 2019.

(5) The Master of Jesus College (since 7 October 2019), Ms Sonita Alleyne OBE.

(6) Mr Paul Vonberg, the College’s conservation architect.

I will take the evidence of these six witnesses in turn, summarising what I consider to be the most salient parts of their evidence, both written and oral. In doing so, however, I should emphasise that I have had regard to the totality of each witness’s evidence. In the quotations

that follow, I am grateful to Mr Gau's pupil, Ms Ruba Huleihel, for her notes of the hearing, which have assisted me in deciphering, correcting, and supplementing my own handwritten notes.

### The Dean

35. At paragraphs 4 and 5, the Dean expresses his

“... conviction as a priest and as the Dean of Chapel that the Chapel should be a space that all members of College, without exception, feel is accessible, safe, and welcoming, and that exhibits hospitality to all God's children. It is my conviction that the retention of the large memorial to Tobias Rustat installed on the Chapel's west wall: (a) is incongruent with the message of the Christian gospel; (b) frustrates the Chapel's ability to realise and host a credible Christian witness and ministry to all; (c) hinders the Chapel's outreach, mission and welcome within and to the College community.”

After addressing these three arguments, the Dean proceeds to comment “on how the proposed relocation of the memorial offers the best solution to the above predicaments, and the best opportunity for historical education on Tobias Rustat's legacy, before addressing a series of additional matters around consultation on the proposals”.

36. At paragraphs 6 and 7, the Dean explains the memorial's incongruence with the Christian gospel:

“6. The material fabric of the Chapel building is one of the key ways in which the Chapel communicates the message of the Christian gospel: that each and every human – without distinction of gender, social status, race or ethnicity (*Galatians* 3.28) – is created out of God's love, made in God's image, redeemed through Christ's death and resurrection, and called to faith and fullness of life in the Spirit.

7. The Chapel memorial to Tobias Rustat lauds his benefactions to ‘Churches, Hospitalls, Universities, and Colledges, and upon poor Widows and orphans of Orthodox Ministers’. Notwithstanding his generosity to charitable causes, which is not in dispute, given Rustat's known investments and responsibilities in companies that enslaved, degraded and traded human beings, the unambiguously celebratory messaging of the memorial is morally problematic within a place of Christian worship and ministry. That is, the memorial does not simply record and recognise the historical fact of Rustat's life and donations to various causes; it represents, celebrates and propagates an unqualified positive moral assessment of his whole life, including his investments and donations (and not only those to the College). Its text – which it is understood was commissioned by Rustat during his life, and not (as is more usual) composed by relatives, friends or admirers after his death – attributes his acquisition of funds to ‘God's blessing’. This may not be an unusual thing to say, but one that, in this case, identifies financial benefit from racialized exploitation and human trafficking with God's providence. I believe that such a message is utterly incongruent with and anathema to the Christian gospel.”

37. At paragraphs 8 to 15, the Dean explains how the continued presence of the Rustat memorial in the College Chapel frustrates the Chapel's credible Christian witness and ministry to all, including:

“9. The Chapel's nave is a place of prayer and worship, housing the Sunday morning College Eucharist each week in term, providing overspill seating for Sunday Choral Evensong and larger seasonal services and memorials, and as a space where College members may take pause in the day to reflect and pray. The Chapel nave is also a place of hospitality and welcome to many less clearly 'religious' activities, and, in so being, the Chapel space avows that the humanity of community life is hallowed by God. The memorial to Tobias Rustat stands at the threshold, or gateway, to the whole of the Chapel's life and ministry, and as such, the physical dominance of the memorial over this threshold of hospitality is a problem of access to the Chapel's life of Christian worship, witness and welcome. The memorial does not make its claims from a quiet corner of the Chapel tucked away behind a harpsichord: it is large and dominating, elevated over the nave on its west wall; it enjoys pride of place of one half of the Chapel space, casting a shadow over it. The memorial is a prominent feature for those arriving in the Chapel; for many one of the first things they see on entering. And for those leaving the Chapel, it stands directly before them as they walk down the nave towards the exit. It gives the appearance of having the 'last word' to any service or event held in the Chapel space.

10. From my own perspective as officiant for services of worship in the Chapel, I have had a growing sense of discomfort when presiding at the altar under the gaze of the memorial. At the College Eucharist on Sunday mornings in the nave, as I give the Absolution, or the Gloria in excelsis strikes up, or I elevate the consecrated bread and wine, there are few places to look other than straight at the Rustat memorial. On Festal occasions when presiding at the High Altar, or giving the Blessing at Choral Evensong from the High Altar step, the memorial is still centre view for me. The memorial's scale and location mean it is at times difficult to ignore during worship. Yet I find a service of worship is a problematic context in which to have to engage the mind repeatedly and regularly with issues of the memorial's difficult significance. Managing that moral and liturgical incongruence at the same time as engaging in regular services of prayer and worship is not, I believe, a recipe for healthy spiritual formation, for me or for others.

11. From the perspective of my care of the College's residential community, I am aware that the memorial produces significant obstacles to the Chapel's ability to provide a credible Christian ministry and witness to the College community. One postgraduate student spoke to me recently about their changing relation to the Chapel in the light of the memorial. They are an active Christian and had been 'very, very active in Chapel, going to Evensongs, doing some readings'. However, after realising the memorial's presence and Rustat's financial activity in the slave trade, they said that they 'would have loved to continue but I felt I couldn't, that I wanted to stop. I didn't go in from that point'. Four to five months later, they 'really missed it, I heard the organ being played and so I went in. It was shocking seeing the memorial ... the scale and the height and the text; I was very angry. It was brief – I didn't want that to

be the last taste in my mouth leaving the Chapel. I just left.’ They have not been back in since. They reported speaking to other postgraduate students, who were surprised the memorial’s location was being defended and its relocation contested, which had further ‘deterred people from engaging with the Chapel’.”

The Dean cites the views of two choral scholars and he comments:

“15. Such views evidence that the retention of the memorial in its current location is damaging the Chapel’s credibility as a place of Christian ministry and witness within College and the accessibility of Christian worship and prayer to all College members. They demonstrate consensus with my own experience that, given what is now more widely known about Rustat’s involvement and investment in the slave trade, his memorial carries a difficult significance that stands at odds with the Chapel’s faith values, and that its scale and prominent location amplify its capacity to act as a barrier to worship, a deterrent to participation, and a mental conflict to those attending the Chapel for worship.”

38. At paragraphs 16 to 19 the Dean considers how the memorial hinders the Chapel’s outreach, mission and welcome within and to the College community, including:

“17. Now that the College community has a clearer understanding of Rustat’s involvement in the slave trade, the memorial’s current location is, in the Legacy of Slavery Working Party’s terms, ‘incompatible with the experience of Chapel as an inclusive community and a place of collective wellbeing’. One student, a Christian, described to me how, when they were new to College, it ‘becomes clear there are some spaces that are communal’ and for everyone, and that the Chapel ‘carries the same weight, whether you’re a Christian, a different religion or not.’ A first-year student noted that ‘everyone loves the Chapel,’ and spoke of it as a ‘sanctuary for students in general...a really important part of Jesus College; I’ve only been here one year, but it’s clear from the way people talk about it’. They went on to comment that students ‘were not happy with the idea that Jesus College Chapel should have within it a memorialization, [a] celebration, of a guy who was involved in the slave trade... You can’t really have an inclusive Chapel if you have something so dramatic as a memorial to someone involved in the slave trade... It staying up would hinder that sense that everyone is at home’. They noted that the need to relocate the memorial was not about the ‘morality of what Rustat was doing at the time’ but ‘what the memorial imposes on us in the present... we’re opposed to those values... the slave trade wasn’t a good thing’.

...

19. Thus, the broader hospitality of the Chapel to College activities, and its respect and significance within the College community that it seeks to welcome, serve and support, is hindered and diminished by the retention of the Rustat memorial within the Chapel space. As Dean this is a cause of great concern, for a Chapel that is otherwise well-used and well-loved, and looked to fondly and trustingly by the College community, of all faiths and none. The retention of the Rustat memorial, and awareness about it among the College community, casts a shadow of caution over the warm welcome and inclusion that is otherwise so well established within the College,

and that is so core to my ministry within it. Each time we hold a service, or welcome visitors, or allow a student group to use the space, I am conscious that some may not feel comfortable or able to come; this is a source of some pain to me, that acceptance of the memorial, or the ability to put the incongruence out of mind, should be an entry requirement to the Chapel.”

39. At paragraphs 20 to 27, the Dean addresses the competing merits of relocation and contextualisation, as follows:

“20. Core to the College’s case for relocating the Rustat memorial, and what has been clear to me in my interactions with various students on the matter, is that the Chapel is not a place in which the memorial can be adequately interpreted and engaged with as an educational tool through which to understand Rustat and his legacy in context.

21. The memorial has had at least four locations/installations within Chapel during its lifetime, in addition to the original location at Rustat’s Chelsea home for the last eight years of his life ...

22. Relocation of the memorial within Chapel is not now a possibility, since there are no remaining suitable or vacant areas of wall space, and would in any case be inadequate since the connective association of the memorial with the Chapel space, and its values, is one of the main elements of its problematic significance. This would be so wherever the memorial was located within the Chapel.

23. Contextualisation in Chapel would enlarge and emphasise the problem of the memorial’s significance to visitors, whilst also not doing enough to offset its impact on the space. The memorial was not recognised as presenting a problem when less was known about Rustat’s life and involvement in the slave trade. Acknowledging this involvement in plain terms in the Chapel space would highlight, rather than solve, the incongruity of the memorial in this space. One undergraduate student noted that the ‘problem created by’ the ‘material connection’ of the memorial to the Chapel couldn’t be fixed by contextualising it in situ – ‘it would make it worse’ if ‘as you come into Chapel and there’s even more information about it, more problems it creates’. Additionally, in my view, the scale of the memorial would either necessitate an artistic or informative contextualisation of such proportion as to be an eyesore at the back of Chapel or be so small as to itself be seeming to cower under the memorial as a counteractive footnote. The student noted that any contextualisation in situ would be inappropriate since it would highlight that the memorial ‘conflicts with the Chapel’s value system’, and thus would only contribute further to the moral and theological incongruity. Another student commented that ‘keeping it in Chapel and putting something up [to contextualise it] still draws the exact same attention to it’ and ‘the biggest currency is attention’. Such a response, they said, would feel to many students as ‘a complete disregard to the lived experience and value of them’. One other student dismissed the possibility of providing a contextualising plaque or sign, saying ‘that doesn’t really counteract the celebration’ that the memorial enacts. My own view is that the presence and significance of the memorial within the Chapel, in the light of what is now better known and evidenced about Rustat’s financial activities, cannot adequately be undone through explanatory interpretation. The

memorial contributes to the spatial signalling and theological messaging of the Chapel, all the more so as one of its largest and most prominent installations. In my view, in this case, the scale and centrality of the monument is such that it cannot be ‘acknowledged away’ in its current location.

24. Relocation to a suitable educational exhibition space, with contextualising information, however, breaks the significant connective association of the memorial with a space consecrated to Christian worship and dedicated to College welfare and pastoral care. Relocation offers the necessary opportunities for appropriate study and learning about Rustat’s benefaction and legacy, and the critical and sensitive issues that arise from it. The relocation of the memorial in turn also facilitates the flourishing of the Chapel’s ongoing witness within the College community, and removes a significant barrier to College members’ participation in the life, worship and ministry of the Chapel ...

25. The College’s consideration of the Rustat memorial, and its proposal to relocate it as detailed in the petition, has done, and will do, the opposite of erasing history. It has highlighted, in painful relief, the complex and difficult history of the legacies of enslavement that we should all seek to understand and learn from, which understanding and learning is foundational to Christian discipleship and witness. Part of that learning is to ask hard questions of how our own communities function, and in what ways we may be perpetuating partial and privileged accounts of our histories so as to perpetuate and foster contemporary injustices.

26. In June 2020, the Archbishop of Canterbury commended the review of contested statuary in Church of England churches, noting that ‘some will have to come down’. Likewise the Church of England’s guidance on *Contested Heritage in Cathedrals and Churches* envisages that relocation is an option that will sometimes be an appropriate response to contested memorials and statues. The College’s proposal for relocation of the memorial is dignified, considered and timely, and offers a respectful solution for re-siting and ongoing contextual engagement of the sort that will likely be unavailable to the vast majority of Christian places of worship. If the College’s proposal cannot succeed, I question what if any petitions to relocate contested statuary will.

27. In the case of the Rustat memorial, it is clear that a significant number of the College community feel that the association of the memorial’s representative values with the values of the Chapel’s ministry is highly inappropriate and, for some, distressing, as well as a deterrent both to potential applicants to the College and its Choirs, and to College members who wish to access the Chapel’s ministry. It is my view, and that of a great majority of others in College, that we can better learn from our history in this case by relocating the memorial to an educational space in which it can be engaged as an historical object and appreciated for its artistic merit, and where the critical questions that Rustat’s legacy prompts can be held and explored in a fuller and less loaded way than the Chapel space can offer. The proposals for relocation, then, are a strong solution to the predicament of the Chapel’s ongoing inclusive ministry among the College community, and to the need and desire to promote learning and critique on key moral questions of our common history.”

40. At paragraphs 28 to 30 the Dean explains that he was aware, at an early stage of the College's discussions with the DAC, that the Rustat memorial would usually be considered as the property of the heirs-at-law of those who first erected it, and that at some point within the proceedings the College would be expected to attempt to identify such a person, whose views might therefore offer some pertinence as to the future of the memorial. The Dean makes it clear that the College does not wish to challenge the claim of Mr Stephen Hemsted and other family members that they are descendants of Robert Rustat, but the College is in no position to confirm whether they are the heirs-at-law to Tobias Rustat, as they claim. The Dean notes that Stephen Hemsted only claims that he and his brothers are heirs 'along with others', not that he (or any of his brothers in particular) is the sole heir-at-law. The College has sought advice from a professional genealogist with a view to identifying the heir-at-law to Tobias Rustat's estate but they have been advised that, given the number of succeeding generations, the number of Rustat's indirect descendants, and the possibility that the research may include countries outside the United Kingdom, such a commission could involve up to 200 hours of work, at a cost of up to £14,000. The College did not consider such a cost to be an appropriate use of its charitable funds.

41. Because he was the College's first witness, the Dean was subjected to a lengthier cross-examination than any of the College's other witnesses. Effectively, he was being used as a vehicle to advance the case of the parties opponent by reference to certain of the documents in the hearing bundle. The Dean was taken to an extract from a minute of the discussions at the College Council on 13 July 2020 (at which he told the court that he had not been present) where he was recorded as supporting, as an alternative to the removal of the memorial, "leaving the memorial in place with the addition of contemporary artwork to recontextualise it". The Dean explained that this had been one of a number of suggestions that had been proposed as a response to the concerns that had been raised about the presence of the memorial. Relocation became the preferred option. The Dean affirmed that relocation would bring pastoral and missional benefits, but it would also assist in contextualising the memorial. Some undergraduates were disturbed and upset by being faced with the memorial, and it represented a barrier to welcoming them into, and their participation in the life of, the Chapel. Mr Gau pointed to the statements in the LSWP's November 2019 interim report (which the Dean confirmed had been made available to the student body) that:

"The facts of Rustat's involvement both with the College and in the slave trade are not in doubt ... Further archival research might supply more detail about his finances and the precise degree of his involvement in the management of the Royal African Company; but we can be clear that Rustat had financial and other involvement in a slave trading company over a substantial period of time, including at the time when he donated to the College."

Mr Gau suggested that the implication was that Rustat had been benefitting financially from the slave trade at a time when he had been donating to the College. The Dean confirmed that he had not spoken to the students about Rustat's financial dealings in any detail because he was not a historian, nor was he knowledgeable in that area; but his understanding was that discomfort was being expressed, not just in relation to the source of Rustat's donations, but also about celebrating his life, including his financial dealings. Mr Gau took the Dean to an



email sent to all College undergraduates on 19 December 2020 by an undergraduate member of the LSWP. It included the following statement:

“The JCSU and MCR are supportive of the College's efforts to remove this problematic memorial of Tobias Rustat. As you may recall, Tobias Rustat was one of our College's largest benefactors before the 20<sup>th</sup> century. Rustat amassed much of his wealth from the Royal African Company that captured and shipped more enslaved African women, men and children to the Americas than any other single institution during the entire period of the transatlantic slave trade. The College has clearly denounced its bequest from Rustat as morally repugnant and is taking steps to critically contextualise Rustat's financial support.”

This was said to have established the false narrative that Rustat had “amassed much of his wealth from the Royal African Company”. The Dean accepted that that was untrue, but he said that he had not known about this false assertion at the time, and that he would not have sent out an email which included that false assertion. The Dean was unable to say whether the College had done anything to correct it. Mr Gau pointed to another email from an undergraduate, sent to the Diocesan Registry on 20 January 2021, which referred to the writer's belief “that the memorial clearly celebrates Rustat, who, it has been clearly demonstrated, was a very active slave trader”; and which expressed their extreme concern

“... to hear reports of a concerted effort by external white supremacist organisations to oppose the relocation of the memorial to an appropriate educational space. I would be extremely disappointed if the Diocese gave this vocal, racist minority the power to overrule a decision made by the College's administration, which is strongly backed by the overwhelming majority of its members. I will be a member of the College for life, and will always feel a strong connection to the Chapel particularly, and would therefore be incredibly upset if my strong support was outweighed by individuals who have never set foot in the College, and are attempting to hijack our space as part of their efforts to maintain white supremacy at all costs.”

The Dean accepted that he would not have used the words “a very active slave trader” ; and he made it clear that it was not the view of the College that the objectors were “white supremacists” or “racist”. Mr Gau also referred the Dean to: (1) an email sent to the Registry by an alumna and Fellow of the College (not a member of the LSWP) on 22 January 2021, that stated that Rustat had “made his money from slavery and caused immeasurable human suffering”; and (2) a body of emails sent to the Registry in support of the petition, many from undergraduates of the College, over 20 of which included the same sentence (or a close variant): “It is totally wrong for the statue of someone who was so heavily involved in the horrific crimes of slavery to be glorified in the heart of our community.” The Dean said that he was not aware of any efforts to correct these misstatements because the emails had been sent to the Registry and not to the College; but he would not accept that the College's undergraduates had not been given a true picture of Rustat's financial life. The Dean accepted that it was not impossible for some contentious memorials to be contextualised in situ; but the problem with the Rustat memorial was its scale and its central position. The Dean accepted that students were not stupid and that they were confronted with difficult issues with which they had to wrestle on a daily basis.

42. In his introduction to the faculty application in May 2021, the Dean had written:

“The possibility of relocating the memorial to an alternative position within Chapel was not included for consideration by the College Council or the Society because of the lack of appropriate and viable wall space elsewhere within Chapel. The memorial’s probable former location in the north transept has since been uncovered to expose arches in the oldest section of the Chapel (towards the Chapter House), within one of which is now displayed the 18th century former altarpiece by Jouvenet; the memorial’s only likely former south transept location now displays a coffin lid long held to be that of one of the priory’s nuns. There are no other installation options available within Chapel other than its current location.”

Mr Gau contrasted this with an earlier statement of the Dean, in December 2020, when the College had been seeking interim consent to remove the memorial while it considered and sought out a permanent location for its exhibition, study and contextualization:

“Discussion of relocating the memorial to alternative positions within Chapel had occurred with various College, Diocesan and external parties. This option was not taken forward as a formal option for consideration given (a) lack of appropriate and viable wall space elsewhere within Chapel, (b) the memorial's artistic design necessitates that it be viewed in an elevated position, which is its very problem at present, but to install it within Chapel in a less elevated position would disable its artistic appreciation, (c) once again this solution also did not address the problem of the memorial still being situated in Chapel.”

Mr Gau suggested that references to the need for the memorial to be viewed “in an elevated position” had been removed because this would not be possible in its current proposed location within East House. The Dean’s response, which I did not consider at all convincing, was that, on reflection, he had become open to the possibility that displaying the memorial in a less elevated position would enable it to be better appreciated.

43. In the course of his cross-examination of the Dean, Professor Goldman emphasised Rustat’s other fine qualities (of duty, faithfulness, fidelity and loyalty to his King), which could not be entirely discounted because of one facet of his whole life (his investment in two royal companies engaged in the slave trade). The Dean acknowledged this, but he maintained that these qualities could be more appropriately studied and engaged with elsewhere than in the Chapel. The problem was not so much about Rustat himself but about the effect of the memorial on the Chapel’s worship and mission, and the flourishing of the pastoral life of the Chapel.

44. In his written evidence Professor Goldman had raised the issue of the Cranmer memorial on the south wall of the south transept of the Chapel, posing the question: ‘If Rustat, why not Cranmer?’ Thomas Cranmer had been Archbishop of Canterbury for twenty years, from 1533 to 1553, and he had been responsible for the production of the Book of Common Prayer and the 42 (later reduced to the 39) Articles of Religion, the foundational creed of the Church of England. But, according to Professor Goldman, he had also been a murderous misogynist who had shown violent hostility to religious freedom and all those who had rebelled against the English Reformation or had held to the old Roman Catholic religions and its ways. In 1533 Cranmer had pronounced Henry VIII’s marriage to Anne

Boleyn to be lawful; three years later he pronounced it null and void. He took Anne's confession before her execution in May 1536, knowing full well that she was innocent of the crimes laid against her. Cranmer's biographer describes these events as 'a stain on Cranmer's reputation' whose integrity was 'soiled' by his conduct. In short, Professor Goldman contends that it would be easy indeed to build an unanswerable case against Thomas Cranmer and to campaign for the removal of his memorial from the Chapel. Why, he asked, were the fellows of Jesus College not doing so? Why tolerate such behaviour, which runs counter to all modern principles and practice? Is a man who invested indirectly in the slave trade worse than a man who sent soldiers to kill communities that wanted freedom to worship as they wished, and who was instrumental in the execution of three defenceless and essentially innocent young women? If the answer to these questions was that we must recognise that political and religious beliefs, and attitudes to women, were different in the 16<sup>th</sup> century, then the same argument should apply to Tobias Rustat: in his case, he was engaged in perfectly legal investment in a perfectly legal trade (even though it is abhorrent to us today). Religious persecution, murderous misogyny, and profiting from slavery are all wrong. In short, if Rustat, why not also Cranmer? Professor Goldman makes it clear that that he would never support such a campaign. Cranmer was a great figure in his own right, one of those few about whom it might rightly be said that they formed English identity. He is the most distinguished son of the College. He is correctly placed in the College Chapel where he should remain. But it is a truism, which Professor Goldman claims is apparently lost on the fellows of Jesus College, that all great men and women have feet of clay, and that with political and religious leadership comes error, misjudgement and worse. Rustat, and Cranmer, were both servants of monarchs who expected loyalty; their sins derived from that loyalty. So Professor Goldman asks again: If Rustat, why not Cranmer? Professor Goldman put these points to the Dean, who acknowledged that there were clearly elements of Cranmer's life which he found "regrettable". The Dean's response was that not all memorials were the same. Rustat's memorial was causing practicable and demonstrable difficulties over worship in the Chapel, which was not the case with Cranmer. These had arisen from a particular inquiry into the legacy of slavery. There had been no corresponding inquiry into the Protestant Reformation. The Dean pointed out that the Cranmer memorial was very different in its size and location, and that it merely bore Cranmer's surname.

45. In re-examination, the Dean reiterated that there were no other practicable locations for the memorial within the Chapel. In answer to Mr Hill's question: How do the spiritual life and worship of the Chapel continue to be compromised by the presence of the memorial? the Dean responded: "There are a variety of responses. There are some members of the College who will not enter the Chapel for any reason and find it distressing. There are a larger majority who continue to come but feel disquieted and discomforted by the memorial. They are in limbo at present, working patiently with the College. They look forward to a conclusion." I inquired: "Knowing that the College has done all it can to secure the removal of the memorial, there are two options: If the memorial stays, do you consider more people will be lost to the congregation? Do you consider that the congregation will increase if it goes and that those who are disquieted will return?" The Dean's response was: "I believe that if the memorial stays, those who continue to use the Chapel on the understanding that the College are pursuing removal would stop, and that it would cause untold damage to the reputation and esteem of the College for non-religious functions. If the memorial were to be

relocated, I would anticipate that those who are staying away now would feel able to come back. It would help to bolster and secure the sense of welcome the Chapel is renowned for and which, over the last few years, the presence of the memorial has put in jeopardy.” Mr Gau was permitted to ask any questions arising from this answer, which led to this exchange between himself and the Dean:

Q: You say there’s a likelihood that if the memorial remained, some students would be less ready to return. What if it were put into context with an explanation?

A: That was one of the options that was on the table early on but the response from the students was that would not be sufficient to address the pastoral destruction.

Q: But are there any witnesses who say that? That even if you were to tell me all about the life of Rustat, I would never darken the doors of the Chapel again?

A: I believe from the more collective and anecdotal conversations that I have had that that would be the case.

Q: But you haven’t had any conversations about putting Rustat fully into context because you haven’t spoken to the students about the expert reports.

A: The expert reports were only received a couple weeks ago.

46. In his closing submissions, Mr Gau acknowledged that the Dean had been doing his best to assist the court; but he also criticised him for his reluctance, at times, to accept the obvious, and for his refusal to be moved from his own views. Mr Gau submitted that the Dean’s “judiciously crafted answers” about the emails sent by students, along the lines of: “I wouldn’t have phrased it that way”, had not helped the College’s case. The Dean’s suggestion that more people might come into the Chapel if the monument were removed was mere speculation. The Dean had quoted extensively from College students. Rightly he had not identified them; but nor had he identified when, in what context, or precisely what had been said to him. This evidence was not only hearsay but hearsay with no foundation to assist the court. No witnesses had been called to support the Dean’s assertions. I consider that there is some force in these observations.

47. I have no doubt that the Dean’s views are sincerely held and that they are motivated by a genuine concern to preserve, and promote, the position and role of the Chapel as a centre of worship and mission, and as a primary pastoral resource within the College. However, I do not consider that the Dean’s evidence, however moving and caring it was, is sufficient to exclude contextualisation as an appropriate solution to the difficulties presented by the presence of the memorial within the Chapel. I am concerned that the views expressed by members of the student body have been influenced by the false narrative that has gained currency about the source of Rustat’s great wealth, and his donations to the College, and as to the nature and extent of his involvement in the slave trade. I am also concerned that the College has done little to dispel this false narrative, which does disservice to Rustat’s many other fine qualities. I am also concerned by the implications of Professor Goldman’s question: If Rustat, why not also Cranmer? It seemed to me that the Dean provided no satisfactory answer to that question, or any solution to the implications to which it gives rise.

Mr Amatey Doku

48. Mr Doku emphasised that, in terms of numbers, the supporters of the petition listed in the alumni letter outnumber the parties opponent by more than two to one. There is said to be a clear and articulate majority amongst former alumni in favour of the proposal to remove the memorial from the chapel. The signatories make it clear that, far from erasing history, this action is about facing up to the College's colonial past and taking the necessary action to put that history into context. Mr Doku also introduces a personal note:

“7. On a personal note, I had the privilege of being a choral scholar in Jesus College Chapel during my time as a student. I spent many hours in the Chapel rehearsing and contributing to Chapel worship. Not once during my time there was it pointed out that a plaque of Tobias Rustat was in the Chapel, though I must have walked by it on more occasions than I could now recount. I was oblivious to the significance of Rustat's history. Now that this history has been properly researched by Dr Michael Edwards and others, the association of Tobias Rustat with the slave trade, which was not previously known or understood, is now too well known to allow the memorial to go unremarked. That knowledge cannot be undone or hidden, and it must bear on the question of whether retention of the memorial in the sacred space of the Chapel is appropriate.

8. It is impossible to reconcile veneration of Tobias Rustat with the Christian gospel, which recognises no distinction between slave and free. The idea that Tobias Rustat profited from the utter misery and degradation of men, women and children who were dehumanised in slave factories in West Africa and shipped away in the most degraded condition as mere commodities for profit will be felt by all right thinking people to be appalling.

9. As an individual with my own personal roots in countries which were severely impacted by colonialism, to know that Rustat was and may continue to be revered in a space which I held so dear is deeply saddening. It is of some personal regret that I did not have the opportunity to contribute to this debate while a student, simply because the facts of Rustat's life and involvement in the slave trade were unknown to me and to my contemporaries.

10. This is not about an attempt by the College to erase history. Rather it is a wholly appropriate series of steps by which the College has sought to understand and address the consequences of its history and that of its former alumnus, Tobias Rustat. Without steps taken and proposed by the College, Tobias Rustat's past, dealings and legacy would not have been properly researched, and would not be up for debate or under scrutiny. At the heart of the College's mission is its role in the furtherance of education. The College's actions in relation to the memorial fulfil and are entirely consistent with that role, and a significant number of Jesus College alumni who have expressed a view agree with the College's actions and proposals.”

49. At the end of Mr Doku's cross-examination, I referred him to paragraph 7 of his witness statement and the following exchange took place between us:

Q: Do I take it that you never read or looked at the inscription on the Rustat memorial?

A: I don't remember looking at it or reading the inscription. I may have done when I first arrived or when I was here; but, in a sense, I wouldn't have had any understanding of the broader issue relating to Rustat even if I had glanced at it. Needless to say, if I had had that fuller picture, and if I wasn't fully satisfied that the College was taking it seriously and doing something about it, I don't think I would have applied to the College.

Q: You mean applied to be a student?

A: Yes, correct; precisely because my application led to my being in the College choir so I knew I would have to spend time in the Chapel.

In closing, Mr Gau rightly described Mr Doku as an impressive and thoughtful witness, who had not been shown all the evidence before he collected the signatures he had, and who could not assist the court with what evidence the signatories had seen. Mr Hill rightly described Mr Doku as a thoughtful and helpful witness.

### *The Bishop of Ely*

50. The Rt Revd Stephen Conway has been the Bishop of Ely since 2010, and he was appointed also as the Acting Bishop of Lincoln with effect from 1 January 2022. His legitimate interest in the life of Jesus College is as the ex-officio Visitor. The Bishop explains that he had been aware during all his time as Bishop and Visitor that there have been scholarships and grants endowed by Rustat and named after him. He regrets to say that he had not investigated Rustat's life and activity as perhaps he should have done. He had only been aware of the burial of Rustat's remains in the choir and the presence of an elaborate and "self-vaunting" memorial. The Bishop is glad that the memorial is to be preserved, displayed and fairly interpreted elsewhere in the College. There is no suggestion that Tobias Rustat's remains should be disturbed, nor the engraved stone immediately above the place of his interment removed. "His place in eternity is not our business and we are all in need of God's grace and mercy according to the Christian understanding of sin." The Bishop's witness statement continues:

"6. We cannot 'un-know' that Tobias Rustat profited from the African slave trade. This is not a matter of degree, mitigated by relatively low profitability. He knew what he was investing in, the enslavement and de-humanisation of people as much children of God as he was. In my view, slavery is not a social or historical construct: it is the denial of the human rights of persons who are made who are commodified into chattels. The gospel of Jesus Christ is good news of freedom for all, with special care of the poor and those on the margins. Many Christian missionaries in Africa in and after Rustat's time, fiercely opposed the enslavement of the very people whom they were bringing into the freedom of life in Christ.

7. Christians are governed by the imperative that we do nothing or promote anything which could be a stumbling block for those seeking faith and understanding. The continued presence in the Chapel of the Rustat memorial is, therefore, not a heritage issue – which can be properly served by placing the memorial in a neutral space. It is profoundly a spiritual issue.

...

9. I am satisfied that removal of the memorial to the proposed neutral space in East House is an appropriate answer to the difficulties raised by the memorial in its present location in the Chapel.

10. The College has a responsibility to display the memorial of Tobias Rustat and make it available for members of the College, scholars and tourists to be able to see it and study it. It needs to be interpreted in such a way that it does raise awareness of under-represented histories and continuing, deep-rooted injustice, in this case suffered by UKME citizens of this country. Students of UKME heritage and students from overseas face an unnecessary burden if they wish to enter the College Chapel for worship, prayer or just quiet from the bustle of College life. The Master and the Dean have made firm representation to me that some students who are faithful Christians cannot enter the Chapel at all because they do not feel safe or at home while Rustat is high and lifted up in a position of power rather than one of contrition. I have seen for myself in the position of the priest behind the altar that the memorial soars above the cross of Christ. The continued presence of the memorial in the Chapel is a huge affront and profound sadness for members of the College who feel de-humanised in the present as their enslaved forebears were. This has a direct impact on the worship and pastoral care offered by the Chapel community. It undermines the mission of the Chapel to be a sacred space for all.

...

12. The presence of the memorial in the Chapel offends Christian teaching and has a profound deleterious impact upon the Chapel's mission to celebrate and proclaim the Good News of the Kingdom of God. Any presentation of the universal love of Jesus Christ, made known particularly to the poor and outcast is undermined by what one sees raised up on high as one enters the Chapel.

13. I believe that we are called as a College to pray with thanksgiving for all our benefactors, for whose generosity we are profoundly grateful. There may be those whose lives do not bear much modern scrutiny. All we can do is to commend them to God's mercy and love as we do Tobias Rustat. The re- location of the memorial does not detract from our acknowledgment of Rustat's love for the College. What it does is to acknowledge that while the College honours its past, it is always for the living in a holistic, diverse and radically inclusive community. Rustat will, I am sure, be housed respectfully; but those whom we must raise up now is this generation of the Jesus College community so that their accomplishments and spiritual nurture are celebrated and manifested to God's greater glory."

51. Under cross-examination in his own court, the Bishop made it clear that he had had no direct contact with any of the College students and that he had been reliant upon what he had been told by the Master and the Dean of the College, whom he had reason to trust. The Bishop spoke movingly about how, as an investor in the Royal African Company, Rustat was someone who had allowed human beings to be treated as chattels. People did not need to be reminded, in such a holy place, about how their forebears had been tortured and dehumanised. Rustat's presence was very obvious in the memorial, as Rustat had intended. The Bishop was concerned for the spiritual life and the mission of the College Chapel, and he

would not want anything to detract from Christ's promise to all humankind. Founding upon evidence provided by Professor Goldman, Mr Gau referred the Bishop to the site of the former shrine of Little St Hugh in Lincoln Cathedral as an example of "retain and explain". The boy's murder, in the mid-13<sup>th</sup> century, had been falsely attributed to members of the local Jewish community; and his shrine had become the focus for antisemitic attacks. In the 1950s the Cathedral had put up an appropriate explanatory notice which (as photographed by Professor Goldman in 2009) stated:

"Trumped up stories of 'ritual murders' of Christian boys by Jewish communities were common throughout Europe during the Middle Ages and even much later. These fictions cost many innocent Jews their lives. Lincoln had its own legend, and the alleged victim was buried in the Cathedral in the year 1255. Such stories do not redound to the credit of Christendom, and so we pray:

Lord, forgive what we have been, amend what we are, and direct what we shall be."

The Bishop confessed that he had not previously known about Little St Hugh, and he promised to find out more about him. His response to Mr Gau's point was that the Church of England was involved in combatting antisemitism; and it was coming to term with its own collusion in racism. The Church was concerned to understand that history better. The Rustat memorial would be well understood and interpreted in its new home. The Bishop commended the prayer Mr Gau had repeated; it was a common prayer among Anglicans as we confess our sins. The Bishop's concern was about the implications of the symbolism of the memorial for those who wanted to come and worship in the Chapel: he did not think that its prime position was necessary. He was also concerned for the students and their teachers currently in the life of the College: that should take precedence over Rustat's memorial. In answer to questions from Professor Goldman, the Bishop acknowledged that the memorial was quite a fine memorial of its time; but it should be held by the College in a safe area where it could be studied and interpreted. During the Reformation, the Church had removed a great deal of material that was considered likely to cause spiritual ill to people. The Chapel should be an open Christian community that was welcoming to all people. In his closing submissions, Mr Gau emphasised that the Bishop was a witness who had relied entirely on assertions made by the Dean and the Master and he was effectively adopting their hearsay evidence; he had not spoken to any individual who was concerned about the memorial; and he had never heard of little St Hugh of Lincoln.

### Dr Mottier

52. Dr Mottier's specialist field of study relates to the comparative history and politics of eugenics and racial 'science'; and policymaking regarding gender, ethnicity and reparative justice. As the chair of the LSWP since its foundation in May 2019, Dr Mottier's witness statement seeks "to explain how the Rustat memorial fits within the brief and wider work carried out by the LSWP since July 2019, and to explain the College's decision-making process regarding the Rustat Memorial and the role of the LSWP within that process". At paragraphs 13-15 of her witness statement Dr Mottier responds to the statement made by Mr Andrew Sutton, one of the parties opponent, on 7 July 2021 concerning Tobias Rustat as follows:



“13. Regarding Mr Sutton’s text, it is important to first emphasise two key points: firstly, the entire basis for Mr Sutton’s arguments is the claim that the College founded its decision on the idea that Rustat derived great wealth from the slave trade, so that if only he can show that that wasn’t the case, or that the money he did make from the slave trade was not part of the money that he gave to Jesus, the basis for the College’s decision would be flawed. This is a stark misrepresentation of the College’s position. The recommendation for the relocation of Rustat’s memorial was, as was clearly stated in all public communications on this topic, not based on the amount of wealth that he may have generated from the slave trade, but on the historic fact of his choice to invest in this trade and his managerial involvement (‘Rustat had financial and other involvement in a slave trading company over a substantial period of time, including at the time when he donated to the College’, LSWP Interim Report 2019, p.10). To put it in simple terms, if Mr Rustat made less money from his investments than he might have hoped, that was bad luck for him; but the moral case for experiencing Rustat’s memorial as incompatible with making the chapel a welcoming place to all contemporary students, academics and staff rests upon his investing and involvement at all, not on the amount that he generated from it. On this point, there was never any doubt that the College had ‘enough’ historical information for its decision when it was taken; even Mr Sutton does not deny that Rustat invested in the slave trade.

14. Secondly, to acknowledge the amount of money that Rustat made from his investments, or the date at which the College received his donations, may be relevant. The LSWP already explained in 2019 that ‘further archival research might supply more detail about his finances and the precise degree of his involvement in the management of the Royal African Company’ (LSWP Interim Report 2019, p.10). Since 2019, the LSWP’s expert in 17th-century British history Dr Michael Edwards, has carried out extensive and rigorous research into the primary sources on these topics over the past three years. Dr Edwards’s expert analysis of the economic and managerial aspects of Rustat’s involvement in the slave trade is now the most comprehensive and best researched study that exists to date on this subject.

15. It is customary for professional academics (not only historians) to treat the results of their research with discretion until they are ‘protected’ (from plagiarism, for example) by peer review and academic publication, a process which rarely takes less than several years. In this respect, the complaint from the objectors about neither the LSWP nor the University Inquiry agreeing to send them their research results before these were published in the final reports of these respective inquiries in 2022 reflects an understandable, but fundamental lack of knowledge about the conventions of academic research and publication.”

In cross-examination Mr Gau described paragraph 15 as “ludicrous twaddle”. Certainly, it emerged during the course of Dr Mottier’s cross-examination that the real reasons why the College’s research had not been shared with the parties opponent were twofold: first, a decision was taken that it should be presented to the court as part of the formal consistory court process; and, second, Dr Edwards was unable to complete his research because the relevant archives were closed for some 16 months, until July 2021. Dr Edward’s research was

not written up until November 2021, and it was then disclosed in the form of his statement dated 6 December 2021. Towards the end of her cross-examination by Mr Gau, Dr Mottier reiterated her view that the money Rustat had given to the College was tainted by 30 years of investment in the slave trade; and whether or not his investments had been profitable did not affect the moral issue.

53. At paragraph 26 of her witness statement, Dr Mottier explains that:

“The LSWP’s recommendation on the relocation of Rustat’s memorial from the College Chapel was not therefore part of a drive to deny the historical existence of Rustat or to remove any trace of him from the College. The memorial in Chapel is, however, more than just a record of Rustat’s name and dates. It is loudly self-congratulatory, proclaiming Rustat as a model of Christian charity and piety. We find the tone of the memorial inconsistent with the purpose of the Chapel, particularly now that Rustat’s involvement with the slave trade is public knowledge. The LSWP recognise that to current and future members of the College, the presence of the memorial in Chapel is repugnant. Furthermore, if left in position, it is not unlikely that it will become a distraction from the Christian services and College events which take place in the Chapel. We accordingly recommended the memorial be removed to a location where it can be properly contextualised and studied by those with a genuine interest in Rustat or in art history.”

Dr Mottier concludes (at paragraph 29) as follows:

“The College Council’s decision to petition for the removal of the Rustat memorial from the chapel has been reached after both extensive consultation with the College community and after detailed research into Rustat’s life and his involvement in the slave trade. The view of the LSWP and of the current College community is that it is no longer appropriate to display the memorial in the chapel, given what is now known about Rustat. The memorial is inconsistent with the sacred nature of the chapel, and with the Christian mission of the building, which has a history of over 900 years.”

Dr Mottier explained that the LSWP had excluded modern slavery from their remit, focussing upon the contemporary effects of the transatlantic slave trade. (The first of the LSWP’s terms of reference had been “to explore how the College may have benefitted historically from slavery and coerced labour through financial and other donations and bequests”.) Dr Mottier was unable to provide any assistance to Mr Gau when he inquired about whether the College might have benefitted from contemporary slavery and coerced labour through its financial connections with the Peoples Republic of China and its treatment of the Uyghur, Kazakh, and other Turkic Muslim minority peoples in Xinjiang Province (or East Turkistan).

54. In closing, Mr Gau accused Dr Mottier of not being frank with the court on several occasions, and on one occasion of not being truthful with the court. He also criticised her refusal to accept any view other than her own. In that, she was said to have exemplified the approach of the LSWP as a whole. She was said to have failed to assist the court. I consider that there is some justification in these observations. Certainly, I found Dr Mottier to be an underwhelming witness who was firmly wedded to her own entrenched opinions and unwilling to recognise any views other than her own (unlike the College’s previous witnesses).

## The Master

55. The Master gave evidence from about 3.30 until about 5.10 on the afternoon of the first day of the hearing. Like all the other witnesses, she did so facing away from the Rustat memorial. In his written closing, Mr Gau rightly described the Master as a “deeply impressive person”, although he did add the barbed comment that it was “hard to get a concise answer from her”. It is difficult to do justice to the Master’s eloquent and highly emotive testimony without quoting at length from her witness statement:

“11. I have mentioned that throughout its history Jesus College has embraced carefully considered change. This proposed change, the removal of the Rustat memorial, is a change we want to make to ensure that our Chapel is a place of welcome, reflection, prayer and sanctuary for everyone in our College community, now and in the future.

12. The College today is much changed from the one many of the parties opponent attended in the 1960’s and 1970’s. Of course some things will remain familiar to Jesuans of every generation. The historic site, our Latin grace and, led by the Fellowship, the way we strive for academic excellence. However, the College continues to evolve. It is a living, breathing community that changes with every fresh intake of students and Fellows. Each year around three hundred new undergraduates (UG) and postgraduates (PG) arrive. They have high expectations that they are joining their lives to an institution that accepts them fully for who they are. Each of them wants to have a complete Jesus College and Cambridge experience without barriers to any part of what is on offer.

13. Women now make up approximately 50% of the UG student body. In the intake of undergraduates in October 2020, of the 98% of students who provided ethnicity data over 36% identified their ethnicity in a category other than White. In the intake of undergraduates in October 2021, of the 99% of students who provided ethnicity data, 29.2% identified their ethnicity in a category other than White. So the composition of our community has changed since the majority of the parties opponent studied at Jesus. As a consequence of this the insights, concerns, ideas and questions, which current students have, reflect these changes. I have learnt much from the student body since I arrived as Master. They are a cognitively diverse group of kind, intelligent, intellectually curious people. In my opinion they share a common thread with many young people across the world. They stand for climate justice, racial justice, social justice and they work to widen access and increase participation and break down any remaining barriers within College so that everyone in the community can flourish, as previous generations were able to. In short, they are driven to work for a fairer society. I want Jesus College to be a place in which all these students feel able fully and equally to play a part of our community and where all feel equally valued.

...

16. As already stated, our charitable objective is to establish a College within the University of Cambridge for the advancement of education, learning, research and religion. During the course of considering the moral issues surrounding the removal of memorial to Tobias Rustat from the Chapel, the College has faced persistent and, I

would suggest, unfounded criticism. It has been suggested that the College is trying to somehow wipe out, remove or rewrite the College's history regarding Tobias Rustat in such a way that we fail to advance education, learning and research. That is not the case.

17. The fact of Tobias Rustat's donation to the College cannot be wiped out. Indeed the College continues to display his name on the plaque dedicated to most of our significant philanthropists on the wall of our Cloisters. Importantly, Tobias Rustat's name on the cloister wall exists in a secular space, and does not single Rustat out for particular adulatory praise in the way that the memorial does. The opportunity to consider Rustat, and to learn from his story, will not be diminished if his memorial, currently high on the wall of our chapel - a religious space, is relocated to where it can be given wider historical context in a secular space devoted to our College history.

18. I see the locus of the argument for removing the memorial as being rooted in religion and in the centrality of the Chapel as a place of worship and mission. The memorial interferes with and hinders these functions of the Chapel. It celebrates Rustat's whole life. It speaks of his benefaction and generosity. It speaks to and is congratulatory in respect of the fact that 'his industry' was the thing that enabled him to be such a wonderful benefactor. Tobias Rustat, during his lifetime, put capital into the venture known as the Royal Africa Company. This money capitalised and enabled slavery. His money formed part of a larger sum that enabled The Royal Africa Company to become one of the most active traders of human beings in the Atlantic slave trade. This money purchased shackles that chained human beings, bought and built slave forts along the coast of West Africa and turned these 'slave factories' into the pitilessly efficient institutions they became.

19. Though based thousands of miles away back in England, Tobias Rustat was an integral part of the fabric of slavery. Slavery. I will say it again as I feel I should not skip over this seven-letter word. There must be a place in this hearing to step back and reflect on the horror of what slavery was; both in its vast scale of suffering and also in its intimate second-by-second degradation of thousands upon thousands of people. We must not turn away from the murders, the drownings, the branding of men, women and children, the raping of men, women and children, the separation of families in the 'slave factories', their transportation in the most horrific conditions, the vermin, disease, thirst and brutality that led to thousands of deaths in transport and the subsequent condemnation to work in the killing fields of the Caribbean or American plantations where a slave's life expectancy was 7 years or less.

20. These plantations, especially in this formative period, were places of unimaginable horror: unceasing labour in the sugar cane and other crop fields; places of punishment that test the limits of our imagination with regard to what some humans can do to other human beings: the dismembering of limbs, the beatings and the overworking of people until they literally dropped dead from exhaustion. And let us not skip over the core belief that drove the Atlantic slave trade - that African people were sub-human and thus to be legally considered as property alongside goats and chickens and to be bred like cattle. I believe that this profoundly immoral justification

has driven much of the racism that continues to impact our world. I believe that such views need to be faced up to, even now, so that our own and future generations can pull free of both conscious and unconscious racism.

21. I am an essentially optimistic person and I believe that we are all in this world together, trying to move towards a fairer society. Though some of our problems are deeply engrained, I sense a willingness from so many people from so many backgrounds across so many walks of life to make things better. That is why, at Jesus College, I believe that the way we see and practise religion and equality of opportunity at the centre of our community must be part of the way we move towards a more just and fair society. Jesus Chapel is a place of religion, steeped in religion. It must welcome all who enter its door in search of a pathway to God and/or knowledge of their own spirituality. No one must feel excluded. Everybody must know that the fabric and space of the Chapel exist for them. No one, in their hour of religious or personal need, should feel that there also exists in the Chapel a memorial that venerates the horror of slavery. No one should have to try to make sense of their own faith or need for sanctuary in the Chapel while trying to come to terms with the fact that a man whose life's work included the capitalisation of the transatlantic slave trade, is venerated there. That is why for me, and the Fellowship of Jesus College, the removal of the Rustat Memorial is of such importance. We need to take away what might be an impediment for those in our community who come to the Chapel in moments of religious or personal spiritual need.

22. I am the Head of House of a diverse and modern Cambridge college which has clarity over where it stands on this issue. Throughout this process, Jesus College has proceeded with due care and good governance. It has patiently waited for the Court to decide whether this memorial to Rustat remains fitting and acceptable within the context of today's Chapel and the community it serves. Personally, I believe that the Rustat Memorial's link to slavery is the antithesis of what the Gospels and teachings of Jesus Christ stand for. Whilst we are welcoming to all faiths, it is Anglican Christianity that stands at the foundation of the College and is part of our charitable objective.

23. The moral question that the Fellowship engaged with regarding Rustat is a simple one. The presence of the Rustat Memorial in the Chapel goes against the College's religious objective. However, the Rustat Memorial will still form an important part of our College story. I think that our proposed solution both satisfies our religious objective and retains Tobias Rustat in our College history. The proposal is that the memorial should be safely removed from the Chapel and situated in a secular part of the College where it can be readily accessed and studied. There is no intention to 'cancel' Rustat from the College's history. No one is denying that he existed. No one is denying his generous donation to the College. However, to be clear, neither the Fellowship nor the Council wish the memorial to remain in our Chapel where its presence is in conflict with the College's religious objective and with the use of the Chapel as a place of mission and worship.

24. I have used the word 'remain' deliberately when referencing the Court's decision regarding the Rustat Memorial. The Rustat Memorial has been moved before, twice,

without causing any harm to the Chapel. In fact, in its current position it blocks a deeper architectural truth, a window that once gave previous Masters a view into the Chapel from the College's East Wing.

25. To my mind, the fact that the memorial has already been moved several times means that it is not inappropriate to move it again. Throughout this process we have investigated the very best way to achieve this with a team of experts. I believe that it can be removed safely without damaging the fabric of the Chapel, or of the memorial, which would benefit from the opportunity for some conservation work. However, if the Court rejects the petition, my fear is that potentially it will send out several problematic messages to our students. It will be saying that Rustat's involvement in slavery has to be accepted in a religious context by current and future students. It might imply that the Church of England suggests that historical sins are inconsequential and that the perpetrator of those sins deserves a place of veneration within its sanctified space. I fear that some or indeed many of our students, who desire and campaign for greater racial and social justice in the world, will find the continued presence of the Rustat Memorial incompatible with being able to worship God, or to spend time in personal reflection in the Chapel.

26. We may find ourselves in a situation where increasing numbers of students or Fellows, in the future, avoid the chapel because they believe the veneration of slavery in the memorial acts as a form of religious exclusion to their own core beliefs and values. Because of the publicity which the petition has attracted, potential future students and Fellows may be deterred from applying to the College if the petition fails. I believe such a situation would be deeply divisive. I believe there has to be dignity in worship. If we find ourselves in a situation where students or Fellows turn away from the Chapel because a memorial placed high on a wall venerates slavery it would mean that the College is failing in its primary religious objective to its beneficiaries.

27. A point I want to address is that of the relationship between the Rustat Memorial and the parties opponent. Key strands in their argument are that the position of the Rustat Memorial in the Chapel was fine when the parties opponent were students at Jesus College, that no one was bothered by its presence in the Chapel then and that it was not an impediment to the worship of God or personal exploration of faith. I accept that when the parties opponent considered Rustat during their student days they may have seen his memorial as a tribute to his generosity as a donor to the College and held his name in genuine respect. I can and do understand why the proposed removal of the memorial may be troubling to the parties opponent. I believe the parties opponent are motivated by their sense of love for the College. 96% of the parties opponent matriculated at Jesus College in the years 1954-1977. However, as time moves on, so do the ideas, needs, values and views of new generations of students. Jesus College is a constantly evolving institution seeking full inclusion for all current and future students.

28. One of the characteristics of our Fellows and students is that they are curious critical thinkers. Our Fellows and students rigorously examine and question every facet of the world they find themselves in, both inside and outside College, including

objects and ideas that previous generations may have accepted, failed to notice or did not question in the same way. It was through this curious critical thinking that our Fellows reappraised Rustat and his involvement in the slave trade through the Legacy of Slavery Working Party. The results of their rigorous academic investigation cast Rustat in ways that were, in subsequent discussions with the Fellowship, recognised as contravening the College's objectives and operating to the detriment of beneficiaries.

29. Our current Fellowship and students do – both individually and collectively - see the world differently in many ways from their predecessors. Ideas and social norms that were widely held in the past are often not held or practised today. Our wider society changes. Our wider society adjusts. This, I believe, is a natural process. Each generation seeks to make the world a better place in ways that may differ from those who came before them. The proposal to move the Rustat Memorial is not a judgement on the parties opponent or how they spent their time at Jesus College.

30. If the Rustat Memorial remains in the Chapel our education and learning objectives may also be affected. The Chapel is a concert and social space used for music and performance and for many regular fixtures in the College calendar. Students may attend events such as Blues and Chill and The Snowman as well as the wonderful Jesus College Music Society concerts. The Chapel is an integral part of a rounded educational experience the College has to offer.

31. At the moment, I think a number of students are quietly asking if this is what is expected of them in order to be part of the College. Those questions gain in significance and become more heightened for the growing numbers of People of Colour who join Jesus College each year and for whom the continued presence of the memorial is a barrier to engaging with the entire range of College events. If this is the case, Rustat's memorial will be a cause of exclusion for some of our students from the Chapel. If so, we will be failing our beneficiaries in the College's education and learning objectives. This runs against everything the College ethos stands for.

32. Thus far I have spoken about the issue of Rustat from my position as Master of this wonderful academic institution. Now I want to address my personal experience of attending Chapel throughout this process. On October 7th 2019 I was admitted as Master in a ceremony in the Chapel. I said my Latin vows, surrounded by the Fellowship. Up to this point I had not deeply considered Rustat, his memorial and how integral he was to the Atlantic slave trade. I had not really noticed exactly where his memorial was, how large it was and how it dominates the space once you become aware of it. I think that was the case for many people. How often do we look up at buildings and plaques? Over time specific memorials sink back into the walls that hold them. Collectively we are focussed on this issue because the complete story of Rustat's life and his industry has now lifted his memorial fully out of its stone surround. Over the last two years, as I have grappled with my duties in the Chapel as Master and my personal position being descended from enslaved ancestors, I have found it harder to engage with the spirituality of the Chapel, or even to participate in College events, in a space dominated by a memorial that praises the 'industry' of slavery, with a clear mind. The memorial is always there. It blocks any road that

might exist for me to find my way back to God in that space. Currently at Jesus College Chapel I feel I am denied racial dignity of worship. I had thought that I could ignore the memorial and fulfil all my duties as Master in this space. However a truth once known cannot be unknown. I am not able to put the truth of Rustat's industry back in a box and continue as if I had never learned of it. I recall attending, on 10th July 2021, the admission and dismissal of choristers. On what should have been a joyful occasion, as the choir is such a key part of our community. I was one of two black people reading that day and, due to Covid protocols, we had to read facing the memorial. It is not easy to fully describe what I felt in relation to the memorial's presence that day. I was reading from a bible that, at its heart, at least from my memory of bible studies at the Seventh Day Adventist church, is about equality before God. I was standing next to the crucifix but having to look up at the Rustat Memorial. Instead of concentrating on the meaning of the words I was saying, I found myself thinking about the 150,000 or more victims of Rustat's actions. I thought about those lives and souls for whom no history or even the most basic burial memorial remains. That was the day I decided to only attend Chapel for memorial services for Fellows and the College's Remembrance Day service. On these occasions I will not pray in the chapel. 'Our father who art in heaven. Hallowed be thy name...' I cannot do it.

33. I am patiently waiting for this process to be completed. I know the memorial has been moved before. If this petition is refused then I personally feel that the Church of England, which holds a pivotal place in the Anglican Communion, will be formally saying that even though we know this particular memorial has been moved before that 'you', you People of Colour, must lose every shred of your racial dignity and pray under the watchful eye of a slaver in this revered space.

34. If the average Anglican in this modern age is a 30 year old African woman then I find it seriously and deeply disturbing, when we find ourselves in a position where we could remove a barrier to mission and worship and still maintain the fabric and feel of a building, that we would chose not to do so. My disquiet grows. This is very personal and I know people are at different places with respect to their feelings about the Chapel. I believe our Dean of Chapel, James Crockford, has navigated this situation with grace and fortitude.

35. I feel an extreme personal dilemma in relation to the memorial's retention in the Chapel. Continuing to worship, as though everything is okay is wrong. Each time I go in it feels as though my presence says, to others, that it is okay to ignore or condone Rustat's industry in the slave trade. However, I have kept my personal feelings as separate as I can whilst the Consistory Court process is examining the case. I am angry with myself at acquiescing. In my lived experience, I have had to navigate racism, both intentional and unintentional. I am not alone in this. Over the years I know friends and colleagues of colour, have found themselves navigating similar situations. Every time I go into the Chapel as a black woman, who is descended from slaves, whose ancestors were the lucky line that survived the slave plantations of Barbados, I feel like I am giving a false impression that everything is fine. It is not. I am hopeful. The Fellowship and the Council, who clearly understand the issues, although not all would completely comprehend the lived experience aspect of Chapel



attendance, have decided that the Rustat memorial has no place in a sanctified place of worship sitting at the heart of our community. If the Consistory rules that the memorial should remain then I believe that everyone in the community will have to navigate their individual position with regard to using the Chapel with the memorial in place. As a College we have a duty to relay the truth of the memorial to the beneficiaries. Each year 300 new undergraduates and postgraduates will need to be informed of what is expected of them in order to fully engage in all that Jesus College offers for religion, education, and learning.

36. Throughout this process the Council has taken a responsible approach to its custodianship of the Chapel, a heritage building of significance which is used for the mission and worship in our vibrant and multi-faceted local community. This is clear from the papers accompanying our Petition. These papers also demonstrate that the Council have given coherent and strategic attention to what is required of the building now and what may be required in the future. Careful consideration was given by the Council to a range of options, and the papers supporting the Petition outline these options and give careful and thoughtful reasons for discarding alternatives.

37. How might things be improved if the memorial is removed from the Chapel? The memorial would no longer be venerated in this sacred space. Those who wish to see or study the memorial would still be able to do so in East House. The Church of England would have taken a decisive step, which the whole Anglican Communion could see, towards affirming that where circumstances allow, it will always seek to make its sanctified spaces places which enshrine the principle of equality and racial dignity in mission and worship. The Chapel would be free for all. No one entering would be looked down upon by a memorial dedicated to someone with a profound and well evidenced connection to slavery.

38. As a College we would further our objectives in relation to education, learning and religion by ensuring that the entire community could use the chapel for worship, prayer, mission, reflection, sanctuary, culture and conversation. The Memorial would be housed safely in a secular space where Rustat's contribution to the College could be seen in context and would sit alongside other aspects of our College history. We would be better able to serve the needs of our current and potential future beneficiaries.”

56. Under cross-examination by Mr Gau, the Master emphasised that the Chapel is a place of education as well as religion; it is also used for music and drama. Rustat's memorial is in a place of veneration: one has to look up at it. The inscription refers to his “industry”. The memorial is in a difficult space. For a number of people coming into the Chapel, it is very problematic. Speaking as the first black Master of a Cambridge College, the Master described the memorial as putting barriers up to people coming in to the Chapel. The College does not set out to make matters difficult for people; the College wants to be more inclusive. The Master explained that every community in the Church of England is different and must decide what is right for it. The College has concluded that even a large contextual plaque would not be adequate. One out of every three people applying to come to the College is of mixed colour. You cannot say to people whose ancestors were enslaved, look there is a plaque up now, it is morally cleansed, now it is OK so off you go. Because this is a chapel,

the moral aspect of it is very important. The memorial is designed to be looked up to. You cannot just put up a plaque and say: Here is Rustat, he invested in slavery; people would say what is he doing here? Even if Rustat's involvement in the slave trade was very small, how much sin do you need to have before you come off the wall? The memorial refers to Rustat's "industry"; but what did he do? Because his involvement was small, does that get him off the hook? People still have to be responsible for their actions; those who were involved in the slave trade knew that peoples' lives were being were lost. The only answer to the charge that this was not sinful would be to contend that the victims were not human beings. The Master confirmed that some of the undergraduates had approached her about their concerns and a few, especially those of colour, had told her that they found it very difficult to enter the Chapel. Rustat had invested in the slave trade, he had known what it was about, with slave factories in Africa; and he had been part of an elite circle who had benefitted from their investment in the slave trade. The Master had detected a lack of inter-action on the part of the objectors with the current student body. In response to questions about the College's involvement with funds from China, the Master emphasised that there had been no substantial funds introduced into the College from that source since she had become the Master; but even if there had been, the College would still have been appearing before the consistory court asking for the removal of this memorial.

57. In answer to questions from Professor Goldman, the Master asked rhetorically why young people should have to worship with compromise and a lack of dignity. The Master acknowledged that there was not much in issue between herself and Professor Goldman, but the difference was that she knew her students: they would not meekly come in to the Chapel and say that now they had been informed about Rustat's life and investments, it was all OK. The College was becoming increasingly diverse. It had been in a state of limbo, waiting for the matter to be resolved. Everyone had been really fantastic in trusting in the process and patiently waiting in the belief that the court would see the harm that had been caused to the College community. The Bible is clear that all people are equal and that Christ died on the Cross for all of us. It is for the Church to identify what barriers it wishes to set up for people who wish to worship in the Chapel. The student body should be free to use the Chapel, not as a "safe space", but rather as a glorious, inspiring, religious space.

#### Mr Vonberg

58. Mr Vonberg's evidence addresses: (1) the significance of the Rustat memorial to the Chapel; (2) the process of removing the memorial; and (3) the suitability of the proposed new location. I am satisfied that Mr Vonberg is appropriately qualified, as an architect accredited in building conservation, to express an opinion on such matters. I reject Mr Gau's submission to the contrary. However, Mr Vonberg is certainly nowhere near as well qualified as Dr Bowdler to speak to heritage and listing matters in general, and funerary monuments in particular. I accept Mr Gau's further submission that Mr Vonberg was neither truly independent nor impartial. I acquit him of any financial self-interest in the outcome of this petition; but I found him to be partisan, exhibiting a tendency to argue the College's case (although this was perhaps understandable given his role as the College's long-serving conservation architect and the nature of his involvement in the attempts to remove the memorial from the wall of the College Chapel).

59. Mr Vonberg addresses the significance of the memorial to the Chapel at paragraph 7 of his witness statement. Regarded as a discrete object, Mr Vonberg acknowledges that the memorial clearly has considerable significance as a work of art, and also as a historical record of Tobias Rustat's life and his role as a benefactor of Jesus College. It is Mr Vonberg's opinion, however, that the memorial does not contribute greatly to the significance of the Chapel and therefore its removal would cause little harm to the significance of the Chapel as a building of special architectural or historic interest. He offers "three arguments in support of that opinion": (a) The Chapel's significance depends infinitely more on its core history and on its fixed and co-ordinated architectural elements than on its memorials and pictures. (b) The paintings and memorials mounted or hung within the Chapel are essentially adornments or embellishments. Mr Vonberg observes that paintings and memorials (of which latter Mr Vonberg assesses that there are some 49 in the Chapel, including eleven to men who died in the 17<sup>th</sup> century) generally reveal their less fundamental and more temporary characters by various 'tell-tales': the variety of their sizes and shapes, their often random placing in relation to the architecture, and their relative portability. (c) The abundance of the locations in which this particular memorial has been fixed reinforces the idea of its being an adornment. Were it the case that the Rustat memorial had been fixed permanently in a position which was definite, a location so obviously and deliberately selected as to be unassailable, its significance might be greater; perhaps still not as great as the windows or the roof, but nevertheless greater than it is. It is thought to have been erected in one, or possibly both, of the transepts of Jesus College Chapel albeit there is some confusion about which one or when. It may have been on the west wall of the nave (its current location) at various times, but it was certainly not there in 1912 when a photograph shows that place occupied by an organ. Mr Vonberg argues that:

"Such "pererrations" [sic: probably perambulations] (probably as many as four different locations within the Chapel) are surely more compatible with an adornment than with an integral part of the Chapel's architectural significance ... The implication is that the memorial has never been regarded as having been created for display exclusively on the west wall of the Chapel."

Mr Vonberg disagrees with Dr Bowdler's architectural analysis that the location of the memorial, at the opposite end to the chancel and altar, and some distance away from the focus of liturgical performance, is helpful in separating the essentially secular/historical nature of the monument from issues of worship. On the contrary, Mr Vonberg considers that its location, directly opposite the altar, greatly contributes to its unacceptability in giving it a parity with the altar in architectural terms. Mr Vonberg's conclusion is

"... that the removal of the memorial from the Chapel will not significantly affect the character of the Chapel as a building of special architectural or historic interest, and that any minor harm to the significance of the Chapel as a building of special architectural or historic interest would be outweighed by the advantages likely to be derived from its removal".

60. Mr Vonberg addresses the process of removing the memorial at paragraph 8 of his witness statement. He explains that the Rustat memorial comprises some eight separate pieces of hand-carved marble of different sizes, the heaviest weighing perhaps 500 kilogrammes and the complete memorial maybe as much as 3.5 metric tonnes. The memorial is approximately

2.6 metres high and 1.6 metres wide. It is secured to the west wall of the nave with its lowest edge three metres above floor level. It will not become entirely clear how the memorial is secured to the wall until its removal has commenced but it is likely that all the stones are built into the thickness of the wall, secured both by mortar and by several wrought iron cramps. It is anticipated that the services of Cliveden Conservation would be engaged to carry out the specialist work of removing the memorial. Before moving anything, Cliveden would carry out an assessment of the condition of the memorial, label the separate elements, and reattach any loose pieces of stone to avoid any damage during the dismantling. They would also protect the chapel floor, the oak panelling and the oak bench seat below the memorial. There is no reason to suppose that the removal of the memorial will raise any structural issues for the west wall. Mr Vonberg argues that

“... were the College wishing to remove a painting, the objections would surely be far less strong or even non-existent and would that not be at least partly because a painting is perceived as ‘unfixed’ and therefore portable while a memorial is seen as ‘fixed’ and therefore immovable? The distinction is false.”

61. Mr Vonberg addresses the suitability of the proposed new location for the memorial at paragraph 9 of his witness statement. He explains that in the preliminary consultation phase, the College’s proposal had been that after its removal from the Chapel, the memorial should be

“... protected from future decay (i.e. not be outdoors), that it should only be visible by arrangement (i.e. be within a locked area), and that it should be capable of close study by scholars, whether of Rustat, of Grinling Gibbons or of slavery.”

Despite an exhaustive trawl through the College’s rooms, it had been a struggle to alight on any suitable location that fitted these requirements. One of the Fellows had suggested a room which had been used as a wine store but would soon become vacant; this then formed the basis of the preliminary proposal. At that stage, the mood of much of the College was not encouraging of the idea that the memorial should be given any sort of reverence or even a vertical orientation. Its storage was thought about as a practical issue without perhaps enough thought being given to the ongoing meaning of the memorial or its relationship, in a broader sense, with the College. All that was said of that was that: “It is located in a discreet corner of the College which might suit the current sensitivities of the memorial.” Many responses were received, as is entirely proper during a consultation phase. The College considered these carefully and so was able to develop a much more appropriate proposal for the future of the memorial. The College’s revised proposal is based on extending the College’s existing archive in East House, creating a room that would not only hold the Rustat memorial safely and accessibly, but also with dignity, in its proper vertical orientation, and with appropriate and informed supervision. The wall on which it is proposed to fix the memorial is well-built of brick and Mr Vonberg would expect it to be more than adequate to support the weight of the memorial. In due course, a structural engineer will be engaged to examine this assumption and, if additional steelwork proves necessary, there is space both to construct it and to conceal it behind a plastered face. The existing suspended ceiling in the room is some 2.8m high, although the original ceiling above is around 60cm higher at 3.4m. A new ceiling at 3.3m would allow space for some existing heating and electrical services above and sufficient space to display the memorial below. The aim would be to place the memorial at a height

which is dignified and convenient for scholars and visitors but without the, now inappropriate, reverence for Rustat which is implied by its current height in the Chapel. The plan is to display around the memorial a collection of other artefacts, including other carved stones, pictures, books and papers. In Mr Vonberg's opinion as an architect, the proposed new Archive Exhibition Room will provide an appropriate home for such artefacts: those precious objects from the College's long history which still carry meaning and relevance but which, for a variety of reasons, are no longer fitting within their original homes. Alongside these, the Rustat memorial would be in good and safe company.

62. During the course of cross-examination, Mr Vonberg accepted that his expertise on 17<sup>th</sup> century monuments was limited but he said that he had fairly extensive experience in the conservation of listed buildings generally. He acknowledged that the memorial was a very considerable piece of art which was designed to be seen at a height. Mr Vonberg explained that it was not thought that there was anywhere within the Chapel where it would be possible, or appropriate, to display the memorial. He agreed with Dr Bowdler's assessment of the memorial's artistic and historic significance but he disagreed with him about the application of the *Duffield* guidelines. Removing the memorial would cause some harm to the Chapel but Mr Vonberg considered that this would be small enough to be outweighed by the resulting benefits:

“I would not describe the removal of the monument from the Chapel as unimportant but even as a humble architect one cannot entirely ignore the benefit the client is seeking to achieve by removing it, nor the opportunity to retain the memorial within the College where it can be examined by scholars and others.”

The Master had asked Mr Vonberg to look at the possibility of addressing the problems it presents by contextualising the memorial but the College had concluded that this was unlikely to succeed and that removal was the only sensible solution. Mr Vonberg explained that with a new suspended ceiling at a height of 3.2m, there would be some 40cm clearance below and 20cm above the memorial. He was confident that the proposed location within East House could accommodate the memorial. Relocating it to the stairwell within East House, as suggested by the DAC, was a “non-starter” for two reasons: First, this would require everyone working within, or visiting, the bursar's office to walk past the memorial and, secondly, the memorial would project into the stairwell by some 40cm and this would render the staircase non-compliant with building regulations and make it unsafe. Mr Vonberg indicated that the removal of the memorial from the west wall of the Chapel would be reversible: if, in the future, the College were to decide to return the memorial to the Chapel, that would not be a problem. In response to questions from Mr Hill in re-examination, Mr Vonberg explained why it was not possible to relocate the memorial within the Chapel. There were not large areas of blank wall space available. The memorial was too wide for the east wall of the north transept: even if it might physically fit between the two windows, it would resemble an “over-filled sandwich”. The former space on the north wall of the north transept had been taken away when the three original Romanesque arched windows had been revealed; and if it were to be relocated there, arguably the memorial would become even more visible to worshippers in the Chapel.

The evidence of the parties opponent

63. At the start of the hearing Mr Gau indicated that the parties opponent had elected not to call the Reverend Canon Professor Nigel Biggar, the Professor of Moral and Pastoral Theology at the University of Oxford, as a witness. The court therefore heard from four witnesses (in the following order):

(1) Mr Alastair Farley, a distinguished qualified solicitor, who graduated from the College with a degree in law in 1968. He gave evidence in place of Mr Martin Emmison, who had been advised not to attend the hearing to give evidence for medical reasons.

(2) Mr Andrew Sutton, a chartered accountant and a former partner in Price Waterhouse (and then PwC), who graduated from the College with a degree in natural sciences, also in 1968.

(3) Dr Roger Bowdler FSA, a former director of listing at Historic England, and a member of the London Diocesan Advisory Committee. He has extensive knowledge of, and experience in, the assessment of heritage significance and listing criteria. He gave evidence on the significance of the Rustat memorial and its contribution to the overall significance of the College Chapel. He also addressed the *Duffield* guidelines.

(4) Professor Lawrence Goldman, one of the parties opponent, who was not represented by Mr Gau. He is an Emeritus Fellow of St Peter's College, Oxford, a former lecturer in that University's History Faculty, and (between 2004 and 2014) he was the editor of the *Oxford Dictionary of National Biography*. He has extensive knowledge of, and experience, in three relevant fields: the history of slavery, British biography, and the aesthetics of Jesus College Chapel.

64. It is unnecessary for me to recite in detail the evidence of the parties opponent. Much of it is directed to what the objectors view as the lack of engagement with their concerns on the part of the College, and what they describe as the marked changes of position on the part of the College over the past couple of years. I accept Mr Gau's description of the parties opponent as demonstrating proper intellectual curiosity, vigour, and concern for their old College. Having undertaken diligent and helpful research, they felt themselves rebuffed by the College authorities and falsely accused by certain members of the student body as racists and white supremacists. Neither description is accurate: they are loyal Jesuans. The response of the College to their approaches has been a matter of personal sadness to them, but they have had the grace to rise above it.

Mr Sutton

65. Mr Sutton's helpful research has been largely overtaken by the reports and the joint statement of the historical experts. With the sole exception of Dr Edwards's failure to address the whole of Rustat's life by concentrating instead on his involvement with the slave trade, Mr Sutton welcomed the well-researched facts and opinions of the historical experts. He found their joint statement very helpful; and he would hesitate to dissent from their agreed statement. At the end of his cross-examination, the following poignant exchange took place between Mr Hill and Mr Sutton:

Q: Does it concern you that the spiritual witness of this place you are so proud of has been compromised?

A: One of the complications is the misinformation from the LSWP.

Q: Does it concern you that the Master of the College feels uncomfortable about entering the Chapel because of the presence of the memorial?

A: It does disturb me.

Q: But you would rather it remain and that the Master excludes herself or has to summon up the courage to come in?

A: I'm afraid I can't help the Master.

Q: Or the undergraduates?

A: All can be helped by informed, quiet, rational discussion. It's worth a try.

Q: The attempt so far at contextualisation has made little difference.

A: To whom?

Q: To those at the College, those who wish to enter the building.

A: I fear a cloud of misinformation still hangs over the place.

Q: We differ on that. It is not merely the spiritual life of the College, but there is also the secular use of this space for which the continuing presence of the memorial is an enduring impediment.

A: So you tell me.

Q: Do you have any sympathy for that?

A: (Wistfully) It's very sad.

As was made clear at the end of the hearing, Mr Sutton and the Master enjoy a relationship of mutual affection and respect.

### Mr Farley and Mr Emmison

66. As members of the steering committee of the 'Rustat Memorial Group', Mr Farley and Mr Emmison draw attention to the inaccurate statements about Rustat and the source of his wealth contained within the standard form letters and emails in support of the petition sent by various graduate and undergraduate members of the College. They observe that the majority of these supporters must have been materially influenced by the inaccurate historical information they had received from sources within the College about Tobias Rustat and the extent of his involvement in, and the wealth derived from, the slave trade. They comment that it is no wonder that many students supported the College's petition when they read the "emotional exaggerations" contained in the email sent to all College undergraduates on 19 December 2020 by an undergraduate member of the LSWP (cited at paragraph 41 above). Mr Emmison comments (at paragraph 33):

"The sad thing is not only was that email inaccurate as to the level and timing of wealth received by Rustat from Royal African Company, but when the true facts

became known no attempt was made by the College to correct the factual misrepresentations previously made by these student representatives to its students.”

The parties opponent note that there has been considerable publicity over the last 12 months about the College’s relationship with China, and with Chinese companies and other institutions. Mr Emmison notes (at paragraphs 38-39):

“Most of this publicity has been highly critical of the double standards and apparent hypocrisy of the College, in its continuing to enjoy major funds from China, a country that is deeply engaged in modern slavery and genocide, while at the same time taking a sanctimonious and critical attitude to the perfectly legal investment activities of its major donor of 350 years ago ... We have noted that the LSWP has not to date reported on any aspect of the College’s relationship with China. Many of our Group have stated, both in their letters to the College and in their Forms 5, that the College’s relationship with China is a matter of major concern to them. One may only presume that the LSWP will, in its final report and in the context of slavery, address the difficulties and contradictions of the College’s continued relationship with and receipt of funds from multiple Chinese institutions.”

In his written closing, Mr Gau referred to what he described as “the elephant in the room”, noting that although “the issue of the College’s rather distasteful relationship with China” had taken up little of the court’s time, it had been introduced on the basis that it was considered “important not to allow the College to tackle easy targets and leave more difficult targets in place”. The dead could not fight back; and (quoting from an email that Dr Bowdler had written to the Registry) “monuments must have a voice too – they make us think about the past and about the present: that is what monuments do”. Mr Gau accused the College of “tilting at the memory of a dead man, while turning a blind eye to a contemporary evil”; and he criticised the Master for declining to condemn the Peoples Republic of China in her evidence, commenting that “hypocrisy is not a Christian virtue”. I consider these criticisms to be as unfair as they are irrelevant to the issues I have to determine on this petition. Whilst fully recognising, and respecting, those of religious faith, and appreciating the centrality of religious worship to many at Jesus College, the Master had made it clear in her witness statement that, although she had been brought up a Seventh Day Adventist, her weekly religious worship had stopped in her early teens, and that she did not describe herself as a member of any organised religion. They also ignore the Master’s evidence that there have been no substantial funds introduced into the College from China since she has assumed the position of Master. Mr Gau is right, however, to remind all of us that (as Professor Goldman so eloquently emphasised) slavery is not just a legacy issue but remains a modern-day evil in which all of us should ensure that we are in no way complicit.

67. Mr Emmison and Mr Farley explain that they oppose the petition for the following reasons:

(1) The proposal to remove Tobias Rustat’s funerary memorial from the Chapel is a disproportionate reaction to the scale and context of his involvement in companies associated with slave trading;

(2) The pressure from College undergraduates and recent graduates for its removal was a misguided pressure, as these people had either been inadequately informed or misinformed



by other College personnel about the nature and extent of Rustat's involvement in companies associated with the slave trade;

(3) The expenditure by the College on the legal costs of this case, and (if the petition were granted) the costs of the removal and rehousing of the memorial is an inappropriate use of the College's charitable funds; and

(4) Throughout they have favoured a proposal for compromise, namely that an explanatory plaque be displayed permanently on the Chapel wall, beneath the memorial and readily visible.

Mr Farley adds the following personal commentary (at paragraph 7):

"I admire and value history enormously, and in particular the history of this country, its people and the physical evidence it has left for subsequent generations. I strongly believe that what we have been left with should be preserved and not interfered with. To the extent that it reflects something that is considered unacceptable today but was not when it was created should not cause its disruption but that piece of history should be moderated by explanation and education as is felt appropriate by the current generation in whose care it resides."

68. As part of his evidence, Mr Emmison produces a 45-page typed letter (received by email on 6 January 2022) addressed to him by a recent post-graduate member of the College (who received an M. Phil in world history) objecting to "the motion" for the removal of the Rustat memorial. (In common with every person who has contributed to these proceedings otherwise than by giving evidence, I will not name the writer.) The author is

"... the direct descendant of slaves who were transported from Africa to the Caribbean, and from there to Virginia. For over two centuries, they worked on the Sherwood Forest Plantation, in Charles City County, Virginia. Their servitude and subordination did not end with the abolition of slavery. Shortly after their liberation, they continued to work on the same plantations on which they were previously enslaved. In a cruel twist of irony, my ancestors continued working on the plantation until its closure at the turn of the 20<sup>th</sup> Century. And in an even crueller twist, their descendants— nearly my whole immediate family— still live within walking distance of the same plantation."

Mr Gau referred the court to the writer's conclusion:

"... I think the very term 'legacy of slavery' is telling ... our world is the product of a time that slavery was permissible and even innocuous— meaning that our whole world is, in a sense, a 'legacy of slavery'. In this respect, by concentrating on statues and by projecting the debate into the 17<sup>th</sup> Century, as the motion seeks to do, the motion in fact obfuscates the most important ways that the 'legacy of slavery' manifests itself in our world. I feel I am well-positioned to say that the 'legacy of slavery' is not about architecture but is instead entirely to do with ways in which our world, descended from 'that world', is full of socio-economic issues, racial inequality, and racist attitudes. For that reason, I think the motion should be dismissed in exchange for a more serious discussion located in our Zeitgeist, without deluding ourselves with a false aesthetic sense of progress."

It is perhaps also worth quoting from one of the writer's many footnotes:

“... In this instance, ‘slavery’ refers to the Transatlantic Slave Trade. As I intimated earlier, this can be distinguished into another discussion: ‘Which’ slave trade? Materially, the scale and scope of the slave trade changed and could likely be divided into multiple, coherent periods. Intellectually, the justification for slavery has certainly changed (and indeed, for a long time, nobody saw a need to create a justification *for* slavery). But I make this point mainly to say that slavery as a practice has not ended. When we speak of the legacy of slavery, we are speaking of the legacy of a practice of slavery that has already ended. But of course, there are an estimated 40 million people living in slavery today: more than there have been at any other point in human history.”

### Dr Bowdler

69. In his original report dated July 2021 Dr Bowdler expressly addresses the *Duffield* questions. He is exceptionally well qualified to do so, at least on heritage issues. I recognise that the subject of Dr Bowdler's PhD thesis (on 17<sup>th</sup> century English church monuments) and his former role (until the summer of 2021) as a council member of the Church Monuments Society both militate against an entirely objective approach to any proposal for the removal of such a significant memorial from the College Chapel (although I take Dr Bowdler's point that it would be strange to be interested in church monuments and not be a member of the CMS). Dr Bowdler concludes that the College's proposals will cause substantial harm to the Chapel and that any resulting public benefits would not outweigh this harm. In his more recent statement of 6 January 2022, Dr Bowdler concentrates on issues relating to the significance of the Rustat memorial arising from the College's witness statements. Intrinsicly, Dr Bowdler considers the Rustat memorial to be one of the most important church monuments of the late 17<sup>th</sup> century in terms of (a) the critical esteem in which it is held, (b) its authorship by one of the greatest craftsmen-sculptors of his age, (c) its style and appearance, (d) its sculptural quality, (e) the interest and importance of its epitaph, and (f) the circumstances of its commissioning. The Rustat memorial was not conceived as a stand-alone item of sculpture capable of being moved from location to location. It was commissioned as a funerary monument: a bespoke piece of commemorative art intended to mark the resting place of an individual in a specific building. Its place within the Chapel has shifted several times but it remains close to Rustat's grave in the chancel, which is marked by a modest inscription on the floor. To take the monument out of the Chapel would greatly affect its context. The Rustat monument is very rare in its local context of Cambridge college chapels; and it is very special in its specific college context. Dr Bowdler considers that the visual contribution of the monument - one of the key fixtures inside the Chapel - is considerable and that this adds to the significance of the Chapel overall. The College Chapel is strongly medieval in character, with a notable overlay of Gothic revival enrichment from the Victorian era. The monument thus has evident significance as a testament to the post-medieval history of the College, and recalls a major gift to the College. The Rustat memorial possesses artistry of distinction, as well as high historical interest; and it clearly adds to the significance of the Grade I listed Chapel. It is Dr Bowdler's opinion that:

“... the monument is both a creation of European funerary art of a high order, and one which remembers a figure of clear historical note. This is not to deny that his ethical

principles differ from those of the 21<sup>st</sup> century: clearly, in terms of his involvement with the Royal African Company and Royal Adventurers Company, they do. But there are wider issues to consider from a heritage perspective, including the contribution of the monument to its setting in the chapel and its sculptural quality as a product of the leading carver/sculptor of his day, Grinling Gibbons. As a work of art it is notable, and as an historical artefact it is of equal importance. In Historic England's words: 'The significance of Rustat's monument is due to its artistic and historic interest. Both are very high, and the monument may be described as having high significance.' As a monument it invites contemplation: and in today's more questioning climate, it can still be a prompt for more challenging contemplation than old-fashioned hagiographic attitudes were wont to stimulate ... Overall, having assessed all the relevant issues, the clear response to the question whether the removal of the monument would cause harm to the significance of the chapel must be a resounding 'yes'. In the words of Historic England: 'The removal of the monument would harm both its significance and that of the chapel'."

In the light of Dr Bowdler's answer to the first of the *Duffield* questions, the second question does not arise.

70. As for the third question (the seriousness of the harm), Dr Bowdler is of opinion that because of the clear significance of the memorial, its removal from the Chapel would evidently cause "considerable harm". The Chapel is largely medieval and Gothic revival in character: the Rustat memorial is by far the most important fixture to date from the lengthy period in between, and it reflects an exceptional relationship between a donor and a college. Cambridge college chapels are not blessed with funerary monuments to the extent that Oxford ones are, which makes this all the more special in local terms. Because the Rustat memorial contributes very clearly to the significance of the Chapel, its removal would cause substantial harm and would deprive future visitors and worshippers of a centuries-old connection with a significant national figure, who is a key figure in the College's history. Dr Bowdler writes:

"Some proposals cause a degree of harm which is barely detectable. Others might cause harm which would be more obvious, and yet be justified through its instrumental benefits. In terms of impact on tangible heritage, the impact of the proposals to remove this monument would be very serious, and clearly above the 'less than substantial harm' regarded as sometimes acceptable in a proposal affecting a secular designated heritage asset, in the words of the government's *Planning Policy Guidance Note* (2019), paragraph 194. This harm would affect both the monument and the chapel, which are inter-twined historically and hard to separate."

71. On the fourth question, Dr Bowdler does not find the justification for the removal of the memorial to be either clear or convincing. The statement of significance is inadequate in that it does not identify the grounds of significance, nor does it assess the significance of the Rustat memorial. It deliberately attempts to underplay the monument's importance, it fails to register the impact of its removal on the Chapel, it displays a regrettable lack of objective balance, and it fails to articulate the case for its removal. Dr Bowdler comments that the supporting document, written by the Dean:

“ ... presents a series of propositions founded on a mind-set which is determined to see the most negative aspects of Rustat and which has failed to assess the heritage significance of the memorial at all. The College’s desire to create an atmosphere of welcome and inclusion is evident and hard to fault: but at what price? The approach to the monument is akin to scapegoating, and the proposal lacks the rigour and balance necessary in this process to reach a balanced outcome.”

72. As for the fifth question, Dr Bowdler does not find the public benefits set out clearly in the application, which makes it difficult for him to reach a view as to the overall balance. The alleged public benefits appear to Dr Bowdler to be:

- (1) The creation of a sacred space of a welcoming and inclusive character through the removal of a controversial and prominent monument with links to the slave trade;
- (2) Addressing directly an uncomfortable chapter in the College’s past, and demonstrating commitment to issues of race and equality;
- (3) The possible display of the Rustat monument in a more educational context, which uses the monument as a means of widening public awareness of the slave trade.

Against these Dr Bowdler sets a number of disbenefits:

- (4) The removal of a memorial of evidently high significance, which both deprives the Grade I Chapel of one of its key fixtures and deprives the memorial of its context as a sepulchral tribute;
- (5) The exposure of the monument to a delicate dismantling process;
- (6) Its translation to a low display space which destroys its former context and exposes it to a much higher risk of damage;
- (7) Its uncertain long-term future, once it falls outside the protection of the faculty system. (As will appear below, I do not regard this as creating any real difficulty.)

Dr Bowdler summarises his conclusions on the fifth question thus:

“In weighing up the impact of the proposals, it is necessary to consider whether the chapel as a place of Christian worship is hindered by the presence of the object under consideration. Here it needs to be remembered that the memorial is located some distance away from the high altar, the liturgical focus of the chapel. The stress in the application is one of preference, rather than necessity. The stakes have been raised through the college’s vigorous pursuit of the Legacies of Slavery agenda, and demands have therefore been placed on the historic setting of the college and chapel to accommodate these new requirements.

To champion the monument is not to deny the importance of addressing issues of historical justice and the enduring place of the memory of slavery; but it is to uphold the place of monuments from the past in contributing to current and future lives, and to suggest that monuments have much to teach us if allowed to perform the task of a monument – to bring to mind, for better or for worse.

In terms of impact, it has been demonstrated that the harm likely to be caused to the significance of the chapel interior by this proposal is substantial. Compromises such as screening or curtaining off the monument have been rejected, in pursuit of what in English terms would be an unparalleled move: the removal from a place of worship of a notable memorial to an interesting figure, executed by a leading late Stuart artist, from its original context.”

Although he recognises that this is ultimately a matter for the court, Dr Bowdler’s conclusion is that the proposal will cause substantial harm to the Chapel, and that the public benefits would not outweigh this harm.

73. In cross-examination by Mr Hill, it was put to Dr Bowdler that he had used the phrase “considerable harm” whilst Historic England had used the phrase “notable harm”. Dr Bowdler could see no difference between the two forms of words; both he and Mr Neale, in his “thoughtful submission”, had been “saying the same thing” Dr Bowdler accepted that his expertise lies in assessing historical significance in listing matters rather than in matters of worship (a point Dr Bowdler had acknowledged at page 21 of his report, where he had said that as his document was “concerned with matters of heritage significance”, he would avoid comment on the “pastoral and missional context”). Mr Gau described the manner of Mr Hill’s cross-examination, with some justification, as “unhelpful ‘hair-splitting’”. I suspect that the reason for this was because it was very difficult to challenge Dr Bowdler’s reasoned opinions.

*Professor Goldman*

74. In his witness statement, Professor Goldman opposes the removal of the Rustat memorial on historiographical grounds, based on the principles that underpin historical research and historical scholarship. He sets out reasons why the memorial tablet should remain where it is, derived from precedents set by the Oxford Dictionary of National Biography (the **ODNB**). At the end, he also makes some strictly historical points about Rustat’s involvement with slavery in the late 17<sup>th</sup> century, in order to help to clarify his role, although he does not present himself as an expert on this period. However, Professor Goldman begins his evidence in Jesus College Chapel, thinking about another notable biographical monument there, the memorial to the college’s most famous son, Thomas Cranmer (1489-1556). He, more than any other student to have been educated at Jesus, defines the College and its place in British History. Professor Goldman poses the question: ‘If Rustat, why not Cranmer?’ Professor Goldman advocates that the Church of England should not countenance the removal of a monument because it memorialises someone whom we now convict of what are to us, morally unacceptable acts. Sin is a part of life; we are fallen creatures; and in Christian doctrine, Christ redeems us all. Professor Goldman asks rhetorically: How can it accord with fundamental scholarly and religious principles to hide away a monument to someone, the totality of whose acts may be judged both good and bad, both exploitative and beneficent? Historians, churchmen and churchwomen must surely agree that there is no history, no religion, indeed no humanity, without error and sin. Professor Goldman notes that the College wishes to remove Rustat’s monument to another location in the College, wresting it from its place for the last three and a half centuries, and, in the term used by our age, thereby ‘cancelling’ him. A new sensibility and also, perhaps, new knowledge about his investments, apparently justifies this action. But this is neither scholarly

nor honest. It obscures Rustat as a historical figure, who is less accessible; and it obscures an honest appreciation of the College's historic associations with slave trading through Rustat. The fact that a previous generation of fellows of the College took Rustat's benefaction without demur, and that it has been used for good ends for generations, is now more difficult to appreciate, is lost to history. This may be convenient, because it is less embarrassing; but it is not how historical and biographical scholarship are conducted. An educational institution as reputable as a Cambridge college should be intensely rigorous, accurate and honest in its scholarship, and in the presentation of its history. Professor Goldman suggests that the example of the ODNB may assist. When it was re-written, from 1992 onwards, no subject was ejected on moral, or any other, grounds: all who were thought worthy of an entry by former generations of editors and scholars were kept in the work. But in acknowledgment of our changed views of the past and of the discovery of new information, all articles were reviewed, and more than four-fifths of them were entirely rewritten, to include the latest scholarship. That would be a better option for Jesus College to adopt in dealing with the Rustat memorial. A plaque beside the Rustat memorial could set out his biography and his investments in the slave trade. The College website might then carry pages explaining who Rustat was and what he had done in detail: students, potential applicants, and scholars would learn something, rather than know nothing at all about a man who had been removed from history. "A great college should surely not forgo an educational opportunity, and while about it, Jesus might also update its pages on Thomas Cranmer to present him in light of all the facts and the latest scholarship, as well." In an age when there are more ways than ever of communicating scholarship, Professor Goldman finds it troubling that the College seeks to remove the Rustat memorial rather than to explain it. "If the Church of England is committed to building a better future for all citizens, it should not agree to the removal of historical evidence which, by demonstrating the sins and mistakes of the past, provides guidance on the way to conduct ourselves now and subsequently. In short, make Rustat's crimes and sins visible in the chapel and on the website; do not obscure them. Some might consider that a religious as well as an academic duty."

75. Professor Goldman counsels against "judging the past by the standards of the present". He argues:

"Whenever historic monuments and artefacts are threatened with removal on ethical and political grounds, the same point must always be made: that it is intellectually and morally illegitimate to convict figures from the past for transgressing principles that we now uphold. They lived in a different age, acted according to different conventions, and believed different things. They cannot be convicted of crimes and sins that were not recognised when they were alive. They cannot be judged by our standards, and they are unable, of course, to defend themselves from their present-day and present-minded critics. We may lament the fact that the slave trade was legal in the 1670s; that an organised, national anti-slavery movement did not develop in this country for another century after that; and that the slave trade was not abolished until 1807. But these are facts that cannot be ignored. Rustat lived in a different age. It would only compound the errors of scholarship discussed in this submission if Rustat were to be 'cancelled' and removed because Jesus College wishes to assault carefully selected aspects of its past.

I hope I have shown why the application to remove the Rustat memorial is counter to the principles of historical scholarship and thus comes ill from a university institution that should value and conserve its high intellectual reputation. I hope I have suggested another way of seeing Rustat in his own specific context as a royalist courtier, loyal to his king. Finally, I hope that my comparison with Thomas Cranmer has alerted the Church of England to the grave problems it will face if it sets a precedent here and grants the faculty applied for. Other figures from the past, equally bad or even worse, will also have to be removed and cancelled, and the disputes will multiply and intensify. If the Church supports the removal of monuments, it will rightly stand accused of adding to cultural division and social discord.”

76. Professor Goldman submits the following as his suggested solution:

(1) That the Rustat memorial remains where it is in the chapel, but an explanatory plaque is placed nearby to explain Rustat’s life. (The same might be done, accurately and honestly, for Thomas Cranmer). He submits by way of example the explanation hung by what remains of the shrine to Little St. Hugh, a supposed martyr to Jewish “murderers”, in Lincoln Cathedral. In Jesus College Chapel such a notice might also direct people to the College website for more information.

(2) That the College publishes a full and scholarly account of Rustat’s life, investments, associations with the slave trade, and benefactions, as an enduring feature on its website.

(3) That instead of removing monuments, the College uses some of its great wealth to adorn the Chapel with a new monument, statue, or other artefact, which embodies the values held currently by the whole Jesus College community. “Leave a legacy yourselves that will beautify, sanctify and add holiness to the Chapel and represent your view of the world. Do not interfere with another beautiful legacy that has been passed down to you by your predecessors for safekeeping.”

77. Perhaps unsurprisingly, there was no real cross-examination of Professor Goldman. Mr Gau commended his evidence and submissions.

### The legal framework

78. Since the College Chapel is a Grade I listed building, this faculty application falls to be determined by reference to the series of questions identified by the Court of Arches in the leading case of *Re St Alkmund, Duffield* [2013] Fam 158 at paragraph 87 (as affirmed and clarified by that Court’s later decisions in the cases of *Re St John the Baptist, Penshurst* (2015) 17 Ecc LJ 393 at paragraph 22 and *Re St Peter, Shipton Bellinger* [2016] Fam 193 at paragraph 39). These questions are:

(1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

(2) If not, have the petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that, in the absence of good reason, change should not be permitted?

(3) If there would be harm to the significance of the church as a building of special architectural or historic interest, how serious would that harm be?

(4) How clear and convincing is the justification for carrying out the proposals?

(5) In the light of the strong presumption against proposals which will adversely affect the special character of a listed building, will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm?

79. When considering the last of the *Duffield* questions, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be required before the proposed works can be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II\*, where serious harm should only exceptionally be allowed. I recognise that these questions provide a structure and not a strait-jacket: to adopt a well-worn phrase, these are guidelines and not tramlines. Nonetheless, they provide a convenient formula for navigating the considerations which lie at the core of adjudicating upon alterations to listed places of worship, namely a heavy presumption against change, and a burden of proof which lies upon the petitioners, with its exacting evidential threshold. Since my judgment in *Re St Peter & St Paul, Aston Rowant* [2019] ECC Oxf 3, (2020) 22 Ecc LJ 265, a practice has also developed of inquiring whether the same, or similar, benefits could be achieved in a manner less harmful to the heritage value of the particular church building concerned. At paragraph 7 of my judgment in that case I said the following (with reference to the fifth of the *Duffield* questions):

“In considering the last question, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be needed before proposals can be permitted. It also has to bear in mind that serious harm to a church listed as Grade I or Grade II\* should only be permitted in exceptional cases. In applying the *Duffield* guidelines, the court has to consider whether the same or substantially the same benefit could be obtained by other works which would cause less harm to the character and special significance of the church. If the degree of harm to the special significance which would flow from proposed works is not necessary to achieve the intended benefit because the desired benefit could be obtained from other less harmful works, then that is highly relevant. In such circumstances, it would be unlikely that the petitioners could be said to have shown a clear and convincing justification for proposals which would, on this hypothesis, cause more harm than is necessary to achieve the desired benefit.”

80. I should emphasise one particular matter: In one sense, the decision whether or not to grant a faculty always involves an exercise of the chancellor’s judicial discretion. As Chancellor Ockelton recently observed in *Re St Saviour, Nottingham* [2022] ECC S & N 1 (in the diocese of Southwell and Nottingham) at paragraph 8:

“Broadly speaking, the grant or refusal of a faculty is always a matter for the exercise of the Chancellor’s judicial discretion.”



However, the application of the *Duffield* guidelines does not involve any exercise of the consistory court's discretion but rather a multi-factorial evaluation of the facts, as found by the court on the evidence that is before it. Although the *Duffield* exercise requires the court to consider, evaluate, and balance a number of competing factors, and the weight to be given to those factors is a matter for the consistory court, once the court has undertaken that exercise, there can only be one correct answer to each of the *Duffield* questions. Proceedings for the grant of a faculty are brought before the court by the petitioner, and it is for the petitioner to make out their case. It is only if the *Duffield* questions are answered in favour of the petitioner that any question of the exercise of the court's discretion to grant, or withhold, a faculty can arise.

81. During the course of the hearing, reference was made to the requirement to have due regard to a church's purpose enshrined in s. 35 of the *2018 Measure*. This provides that:

“A person carrying out functions of care and conservation under this Measure, or under any other enactment or any rule of law relating to churches, must have due regard to the role of a church as a local centre of worship and mission.”

The statutory predecessor of that section (s. 1 of the *Care of Churches and Ecclesiastical Jurisdiction Measure 1991*) was considered by the Court of Arches (Sir John Owen, Dean of the Arches, and Chancellors Goodman and Sheila Cameron QC) in *Re St Luke the Evangelist, Maidstone* [1995] Fam 1. This was the first occasion on which the Arches Court of Canterbury had sat in its new constitution of a three-member court. At page 7, the Arches Court held that in the absence of words expressly limiting the wide jurisdiction long enjoyed by chancellors, the section could not be said to apply to chancellors since they were not persons carrying out functions of care and conservation. Rather, in carrying out their functions under the faculty jurisdiction, chancellors were (in the words of what is now s. 7 (1) of the *2018 Measure* to “hear and determine ... proceedings for obtaining a faculty”. However, the court went on to make it clear that: “If the section had applied to the chancellors it would have added nothing to the existing duty and practice of chancellors.” I take that to mean that, independently of s. 35, when exercising the faculty jurisdiction, a chancellor should have due regard to the role of the particular church as a local centre of worship and mission. I also note, and bear in mind, the court's observation (at page 8) “... that a church is a house of God and a place for worship. It does not belong to conservationists, to the state or to the congregation but to God.”

82. The law concerning the ownership of monuments is dealt with in s. 66 of the *2018 Measure*. So far as material, this provides:

“(1) The consistory court of a diocese may grant a faculty for the moving, demolition, alteration or carrying out of other work to a monument erected in or on, or on the curtilage of, a church or other consecrated building or on consecrated ground, even if the owner of the monument –

(a) withholds consent to the faculty, or

(b) cannot be found after reasonable efforts to find him or her have been made.

(2) The monuments in relation to which a power to grant a faculty under this section is exercisable include a monument erected under or affected by a faculty, whenever granted.

(3) If the court is satisfied that the matter is of such urgency that it would not be reasonable to require the petitioner to seek the consent of the owner of the monument or to take the steps referred to in subsection (1)(b), it may grant the faculty (even though the consent has not been obtained and those steps have not been taken).

(4) ‘Monument’ includes a tomb, gravestone or other memorial, and any kerb or setting forming part of it; and a reference to a monument includes a reference to a monument erected after the passing of this Measure.

(5) ‘Owner’, in relation to a monument, means –

(a) the person who erected the monument, or

(b) after that person's death, the heir or heirs at law of the person or persons in whose memory the monument was erected.”

83. Until 1926, real estate devolved (in the absence of other testamentary provision) upon the heir at law of the owner, that being his nearest surviving relation under a system of primogeniture, with males taking priority over females. This system of devolution ceased to have any practical application as a result of the *Administration of Estates Act 1925*, which (by s. 45 (1) (a)) abolished the descent of property to the heir at law with regard to the real estate and personal inheritance of every person dying after the commencement of the 1925 Act. The impact of s. 45 upon the transmission of title to monuments has never been satisfactorily determined. However, although I did not receive any detailed argument on the point, it seems to me that s. 66 (5) of the *2018 Measure* provides a self-contained definition of ‘owner’ for the purposes of the faculty jurisdiction, in so far as it concerns faculties for works to monuments, including their removal. In the case of a person who died as long ago as 1693/4, without leaving any direct issue, there are likely to be considerable practical and evidential difficulties in identifying, with any degree of certainty and finality, the person or persons who in fact are the ‘owner’ within s. 66 (5) of the *2018 Measure*.

84. Some concern has been expressed about the continuing applicability of the faculty jurisdiction were the Rustat memorial to be moved from the College Chapel to East House, particularly since that is not a listed building. In the leading modern case on the sale of church treasures, *Re St Lawrence, Wootton* [2015] Fam 27, the Arches Court of Canterbury (George QC, Dean of the Arches, and Chancellors McClean QC and Briden) strongly recommended (at paragraph 33) that any faculty sanctioning the loan of an article belonging to a church should contain clear, express provisions relating to the continuance of the faculty jurisdiction in respect of the article loaned. Mr Hill accepts that it is open to this court to include, as a condition of any faculty, that the memorial should remain subject to the faculty jurisdiction of the Consistory Court of the Diocese of Ely, notwithstanding that it will be removed from the Chapel. He indicated that the College would not resist the imposition of such a condition but would welcome it. Accordingly, this is no reason not to grant a faculty for the memorial’s removal if this would otherwise be appropriate.

85. Against this legal framework, I now turn to summarise the parties’ submissions.

### The College's submissions

86. In his opening skeleton argument, Mr Hill submitted that notwithstanding the emotive elements of these proceedings, or the controversy raised by so-called 'contested history', this petition is simply a request for permission to carry out a relatively minor change to the consecrated chapel of Jesus College, Cambridge, a building which falls within the faculty jurisdiction of the consistory court of the Diocese of Ely as a place of worship included in the list maintained by the CBC under s. 38 of the 2018 Measure. Mr Hill maintained that this petition does not require any general excursus into the morality of slavery, Christian ethics, culture wars, 'wokeism', virtue signalling or 'cancel culture'.

87. In his closing submissions, Mr Hill cited from the recent CBC/CFC guidance on Contested Heritage. This was said to contain a framework for addressing contested heritage but it was no substitute for the procedure under the faculty jurisdiction, which involves the application of the Duffield framework. Mr Hill submitted that it was apparent from the evidence of Mr Sutton, and the submissions of Mr Gau, that the parties opponent might have come rather late to an understanding that the petition, and this hearing, were primarily directed to the use of the Chapel as a Christian place of worship, and the extent to which this was compromised by the continued presence of the Rustat memorial. The starting point must be the worship, mission, outreach, and other activities of a Church of England chapel and the role the Chapel plays in the work and the life of the College.

88. Mr Hill addressed the order of questions within the Duffield framework. In his original skeleton argument, Mr Hill had answered the first of the Duffield questions in the negative. He had emphasised that the test was harm to the significance "of the church as a building of special architectural or historic interest", and not simply harm to the memorial itself, or even harm to the chapel building. He had submitted that the suggestion of harm to the Chapel (much less of harm to the significance of the Chapel as a building of special architectural or historic interest) had been almost entirely absent from the various particulars of objection lodged by the respective parties opponent. Inevitably, in the light of the evidence before the court, by the time he came to present his closing submissions, Mr Hill had modified that position, conceding "that there would be some harm to the significance of the chapel as a building of special architectural or historic interest".

89. Moving to the third question, Mr Hill submitted that the harm caused to the significance of the chapel as a building of special architectural or historic interest by the removal of the memorial would be "moderate"; and this would, in any event, be mitigated by the many other very impressive attributes of this listed chapel. Citing from Historic England's letter of 18 December 2020, it would still "leave the chapel a building of exceptional significance ... Given the fact that the greater part of [the Chapel's] significance derives from the medieval carcass of the building and its remarkable ecclesiological re-ordering, the chapel would continue to be a building of exceptional significance even were the monument removed". As I have already observed when reviewing this letter, Mr Hill is selective in his citation; he omits the statement that: "The harm to the significance of the Chapel would be notable" and the later sentence: "While its removal would leave the Chapel a building of exceptional significance, this does not mean that the harm entailed can be considered

unimportant. It is for this reason we describe it as ‘notable’.” In support of his submission, Mr Hill relies on the following matters:

- (1) The Chapel (which predates the creation of the College) dates from the 12<sup>th</sup> century. The memorial was introduced only after Rustat’s death in 1694.
- (2) For some eight years prior to its introduction into the Chapel, the memorial was on display in Rustat’s private home.
- (3) The memorial has been moved and re-sited on several occasions since it was first introduced, occupying different positions within the Chapel.
- (4) There is no mention of Rustat’s memorial in the listing statement. However, this is a very early listing statement, dating from 26 April 1950, and it is well-known that early listing statements are much less detailed than those produced in later years.
- (5) The plaque is composed of eight segments and can readily be dismantled and reassembled.
- (6) The proposed works are completely reversible.

Mr Hill points out that that the memorial will be safely retained on display elsewhere in the College so that the status quo ante can be restored at any time in the future should the court so direct. Mr Vonberg gave clear, and uncontradicted, evidence that the memorial is readily moveable and it can therefore be put back without undue difficulty or any risk to its integrity. It had been moved from Rustat’s home (where it was exhibited for some eight years during his lifetime) and it has been re-sited within the Chapel on several occasions in its history. Mr Vonberg also gave evidence that work of care and restoration could be carried out at the same time as the memorial was moved, so the condition of the memorial itself is likely to be improved.

90. Mr Hill acknowledges that Dr Bowdler is undoubtedly highly experienced in the field of heritage buildings and funerary monuments and, as such, he is entitled to give expert evidence. However Mr Hill invites the court to treat Dr Bowdler’s evidence with some caution because:

- (1) At the time he wrote what was supposed to be an independent report Dr Bowdler was a serving member of the Council of the Church Monuments Society which is an objector in these proceedings. He did not recognise that this gave rise to a conflict of interest. His response that it did not matter, because his opinion happened to coincide with that of the Society, showed an incomplete understanding of the duty of an independent expert.
- (2) Dr Bowdler was unaware of the requirement under FJR 11.5, particularly the requirement under rule 11.5 (3) (h) that where there is a range of opinion on the matters dealt with in an expert report, it should both (i) summarise the range of opinions; and (ii) give reasons for the expert’s own opinion. (A similar criticism could be levelled at Mr Vonberg.)
- (3) Dr Bowdler’s report made no reference to the duty to have due regard to the role of the Chapel as a local centre of worship and mission (although Dr Bowdler acknowledged that his contribution was only part of the weighing-up process and that he was mindful of the sensitivities of this case in a College setting and was not indifferent to them).

(4) The questions Dr Bowdler had been asked to address in his report did not follow the clear text of the *Duffield* framework, and the omissions in relation to questions 1 and 5 were particularly unfortunate as they went to the heart of the very issue the court had to determine.

91. Turning to the fourth question, Mr Hill submits that the justification for carrying out the proposals is extremely strong. The parties opponent were said to have tilted at several windmills of their own invention (tainted money, cancelling or erasing Rustat, etc). Mr Hill likened this to a smokescreen to prevent the court getting to the real issues and determining the matter according to the *Duffield* framework. The parties opponent had not really engaged with the College's justification for removing the memorial from the Chapel, nor had there been any meaningful challenge to the evidence led on the College's behalf on this aspect of the case. This evidence was said to be clear, cogent, and highly persuasive. Mr Hill relies on the following:

(1) The presence of the memorial in its prominent position in the Chapel is compromising the worship and mission of the Church of England.

(2) Furthering the Christian gospel is compromised. In the words of the Dean, it "frustrates the Chapel's ability to realise and host a credible Christian witness and ministry to all".

(3) Citing from *Contested Heritage*, the presence of the memorial has "a demonstrable negative impact on the mission and ministry of the church". (I note that the passage continues: "... and, in the case of a proposed course of action that may be considered harmful to the heritage of a building, that substantially the same benefits could not be achieved by a less harmful option".)

(4) Rustat was undoubtedly involved in the slave trade. Even taking the College's case at its lowest, Rustat's involvement with the slave trade is more than sufficiently made out. Mr Hill emphasises the following passages from the joint statement:

"It is beyond dispute that, between 1663 and 1691, Rustat was involved with companies (the Royal Adventurers and the Royal African Company) that traded enslaved people; in both cases this involvement was as an investor, lender and Assistant.

... there is no doubt that Rustat was fully aware that these companies were involved in trading enslaved people

Rustat's involvement ... pre-dated and post-dated his gifts to Jesus College, and that he was involved in the Royal Adventurers when he donated to the College;

Rustat appears to have been more active than the average shareholder in the governance of the Royal African Company ..."

(5) Rustat is not being cancelled, erased or destroyed, as the emotive comments of the parties opponent tend to suggest. To the contrary, he will continue to be remembered in his final resting place in the Chapel, and elsewhere in the College. His memorial will be put on display in a seemly location a short distance from the Chapel, and still within the College, where it can be contextualised without compromising the worship and mission of the Church of England in the College.

92. In a powerful oration, Mr Hill submitted that the Bishop's evidence was clear: the dominance of the memorial in the Chapel is concerning and troubling to all Christians using the Chapel and particularly to those with a heritage different to his own. Mr Hill invited me to take particular care when reading the Bishop's statement by way of supplementing his oral evidence. There is also the evidence of the Dean, the priest licensed by the Bishop to serve the College community, comprising those of all faiths and none. Mr Hill reminded me that the Chapel also serves a secular purpose beyond the Christian purpose for which it was consecrated. The presence of the monument is also compromising the Chapel's ability to host secular and College events. None of this is to detract from Rustat's generosity as a benefactor of the College, which can thank him for his generosity. But in addition to the huge amount of good that he did, Rustat was also involved to a high degree in the trade in slaves, and it is this which makes his memorial so problematic to Christians of conscience, and to those of global majority heritage. Mr Hill acknowledges that there is light and shade in all of us and none of us is beyond reproach; but we cannot hide from the fact that the presence of this memorial, with its self-imposed script glorifying the benevolence of a man who contributed to companies which traded in enslaved people, is an abomination which causes offence to right-minded people and prevents responsible and well-meaning individuals from entering the Chapel. Mr Hill thanked the Master for sitting in the Chapel, and providing her moving testimony of her lived experience that has caused her such pain and discomfort, and has caused her to turn away from her Christian heritage. Her evidence should neither be overlooked nor trivialised. This petition is concerned with human beings living communally within the College and with seeking to promote a Christian presence and witness at the heart of the College. Rustat is not being erased or cancelled; and it was emotive and wrong of Mr Gau to say that he was. Rustat will always be remembered; this Chapel will always be his final resting place; and the College will continue to display his coat of arms. None of that can be changed, and the College has no wish to change it; but the College has taken the view that this memorial has to go. It is not to be destroyed, but to be interpreted, explained and fully dealt with. The College has come to a view. It recognises that others take a different view; but nevertheless the view of the College is that this memorial needs to be moved.

93. Mr Hill approached the fifth of the *Duffield* questions on the hypothesis that any harm caused to the Chapel by the removal of the Rustat memorial was 'considerable' (to borrow from Dr Bowdler) or 'notable' (to adopt the assessment of Historic England). As Mr Hill rightly observes, this is the fulcrum on which this case will fall to be determined. He contends that in this instance the public benefit would substantially outweigh the higher level of harm contended for by the parties opponent, for the following reasons:

- (1) The pastoral and missional life of the Chapel can thrive.
- (2) The effect on the students of the College, as detailed so strongly and persuasively in the Dean's witness statement. On none of those salient points was the Dean troubled by any cross-examination, and he never changed or wavered in his evidence. The Dean took the decision to record all that he had been told by the students and not subject them to the rigours of exposure to the media. There is no reason to suggest that the Dean has been anything but honest, scrupulous and careful in representing the views expressed to him by the College students.

(3) Members of the College, across the complete range of diverse backgrounds, will no longer feel excluded;

(4) A barrier will be removed for Christians, and for the College community generally, who strive for racial justice and are serious about the Church's response to racism and its legacy. The last thing any responsible Christian-led community would want to feel is that it should be in any way portrayed as having an attitude that is casual towards racism.

(5) The relocation of the memorial will allow Rustat's historical nexus with both the slave trade and the College to be properly understood. Its proposed new location, which, importantly, is not consecrated nor a place of Christian worship, will facilitate the process of contextualising Rustat outside the sacred space which the memorial currently occupies.

(6) The proposed location in East House will positively assist in the process of education and contextualisation, assisting in the process of learning more about Rustat's life in all its various facets – something which both Mr Sutton and Professor Goldman are keen to encourage.

(7) The memorial does not mark a burial. Rustat's remains lie elsewhere in the Chapel (in the chancel) and are already marked by a separate tablet which will remain.

(8) The works are entirely reversible and it would be open to the Court to direct the reintroduction of the memorial at a future date. To my observation that in the real world, if the court were to allow the memorial to be removed from the Chapel, with all the labour and costs associated with its relocation, it is most unlikely ever to be returned to the Chapel, Mr Hill's response was that we simply cannot know. When it was first erected in the Chapel, wherever that might have been, it was probably thought that it would occupy that space in perpetuity. All Mr Hill would say is: Never say never. One cannot predict what may happen in future generations.

(9) The Ancient Monuments Society originally supported the petition in its current form: "Re-siting the monument and in effect reinventing it as a museum exhibit is an intelligent response, worthy of an academic institution. It will allow much closer inspection than is possible now and allow measured interpretation". However, it withdrew its support, apparently following the receipt of certain documentation from one or more of the parties opponent. At the time it adopted its neutral stance, the AMS did not have the benefit of the expert evidence of Dr Edwards and Dr Graham or their Joint Report.

(10) The Society for the Protection of Ancient Buildings "thought that relocation to a new archive room constituted an acceptable compromise to which it would not object".

(11) The Church Buildings Council raised various points of detail, which have now been addressed by the College, and they do not object to what is now proposed. Indeed, the CBC go further: "... the Council accepts the College's arguments that the benefits to the Chapel's missional activities outweigh the impact on the object's significance if it is relocated." Mr Hill submits that particular weight should be given to the CBC's analysis as it is made in the light of its guidance on *Contested Heritage*, which gives particular consideration to religious, rather than heritage, matters.

(12) The local planning authority (Cambridge City Council) have raised no objection although they have made several suggestions about the way the works should be carried out, none of which are controversial.

(13) Whilst Historic England were not persuaded on the harm/justification issues (on which the court has the advantage of additional material and reflection), it “considers that what is now proposed would provide an appropriate way of preserving and displaying the monument as part of the College’s heritage, should the principle of removing it from the Chapel be accepted”. Mr Hill submits that the College has firmly established the principle that the memorial should be removed from the Chapel.

(14) The DAC’s initial Notification of Advice (issued on 29 January 2021, prior to there being a firm proposal with regard to a final destination for the memorial) was ‘No Objection’: “...it notes the concerns of the Dean and others about the impact its presence has on the current pastoral work of the chapel. Therefore the DAC is persuaded to not object to temporary removal of the monument from the chapel as proposed in this petition.”

(15) Dr Bowdler’s evidence on this fifth, and crucial, *Duffield* question should be disregarded because:

(a) In his own words, his report “is concerned with matters of heritage significance” and so does not take account of the pastoral and missional context. It is a “heritage-led” document.

(b) Dr Bowdler’s formulation of question 5 omitted the crucial passage: “(including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission)”. He had only filled one side of the scales.

(c) As Dr Bowdler properly accepted in cross-examination, his function was to provide expert evidence on building heritage (and nothing else), thereby enabling the Chancellor (and not Dr Bowdler) to apply the *Duffield* framework.

(16) The Master feels she cannot enter the Chapel of the institution she serves. Nor can certain members of the undergraduate or postgraduate community. The testimony of the Master on this point is hugely telling and should not be lost sight of. Equally, perhaps more poignant, is the evidence of Mr Doku, a former choral scholar:

“The Parties Opponent do not speak for all of the College’s alumni. I consider that the merits of removing the memorial far outweigh the benefits of retention. The memorial inhibits students in both access to the Chapel and in worship within it. If I had had a fuller understanding of Rustat’s involvement in the slave trade, I would not have applied to study at Jesus College, since I wanted to sing in a choir, and that would have meant spending much time in the Chapel.”

(That quotation is from the notes of evidence of the College’s solicitor. It does not accord exactly with either my note or the verbatim notes of Mr Gau’s pupil; but I accept it as an accurate precis of Mr Doku’s evidence.) Mr Hill emphasises that it would be a matter of great regret if a student of the undoubted calibre of Mr Doku were not to apply to come to the College because of the continued presence of the memorial in the Chapel. How, Mr Hill



asked rhetorically, can an establishment like this College hold its head up high when students go elsewhere because they are inhibited by the presence of this memorial?

(17) Perhaps most poignant of all, according to Mr Hill, was Mr Sutton's response when asked how he responded to the fact that the Master of the College, of which he is an alumnus, felt unable to enter its chapel, except on limited occasions. In the sacred silence of the court, all he could offer was: "It's very sad".

94. Mr Hill submits that the College has carefully considered alternative or lesser means of addressing the problem presented by the memorial, short of relocating it to an exhibition space where it can be contextualised. Adding explanatory plaques or other material would be insufficient to address the problem. Veiling or otherwise covering the memorial would merely draw attention to it, whilst preventing any meaningful contextualisation. The parties opponent criticise the College for changing its proposals. At one stage the fellowship had favoured retaining the memorial, at another it had considered introducing an additional or competing art work, at another time it had proposed placing the memorial in an inclined position in a basement room. Such changes are not properly a matter for criticism. The fact that the College has reviewed and revisited its proposals shows its active engagement with consultees and others. It does not conform to the suggestion of the parties opponent that the College has doggedly pursued an agenda without taking into consideration the views of others. To the contrary, it shows a humble institution, prepared to listen, rethink and revise. The LSWP had worked carefully, hard, and painfully slowly. The College has tried contextualisation, including a small sign not dissimilar to that at the site of the shrine of Little Saint Hugh in Lincoln Cathedral; but it has not been successful. The memorial is so dominant that any interpretative material would itself need to be sizeable and intrusive. That in itself would draw further attention to the memorial, which is already extremely prominent. And even with interpretation, there would still be a large memorial extolling the personal virtues of someone involved in the slave trade in a dominant sacred space. Even interpreted, it would continue to cause offence and compromise the mission and witness of the Church of England and the corporate life of the college. The stairwell of East House (as proposed by the DAC) is not feasible. It would offend the many employees of the College who would have to pass it multiple times every day in the course of their work. More particularly, it would project out into the stairs to such an extent as to infringe building regulations. Historic England are very clear about the East House proposal: "Historic England considers that what is now proposed would provide an appropriate way of preserving and displaying the monument as a part of the College's heritage, should the principle of removing it from the chapel be accepted."

95. Mr Hill addresses the case presented by the parties opponent that the support of the College's undergraduates has somehow been obtained through misinformation and should in some way be discounted. Mr Hill points out that:

(1) The governance of the College (which is a charitable foundation) lies with the College Council, which specifically takes account of the views of the fellowship as expressed through meetings of the Society.

(2) The students are not the petitioners and their emails have never been part of the College's case (but were exhibited to the statements of Mr Sutton and Mr Emmerson). They post-date

both the LSWP's recommendation to relocate the memorial to an interpretative space and the College Council's decision to pursue it.

(3) The fact that students wrote to the Registry in similar terms is no more surprising than the many striking similarities between the Form 5s lodged by the objectors, many of which are framed in standardised terms. (It is a matter of which I can take judicial notice that objectors to applications for planning permission frequently adopt standard, suggested forms of wording to express their objections.)

(4) The fellowship proceeded with care and caution in proceeding on the advice of the LSWP. Its reports were announced and circulated to all College members. Information was accurate. The College cannot be held responsible for an error in an email sent by one student to their fellow students. It was nowhere stated in the reports of the LSWP, which were the primary way in which the College communicated the findings of the LSWP to its fellows and students. There is no evidence to support the parties opponent's repeated assertion that the College produced a false narrative about Rustat and communicated it to the students.

(5) On the contrary, Dr Mottier's evidence (at paragraph 13 of her witness statement, cited above) is said to be clear and uncontroverted:

“The recommendation for the relocation of Rustat's memorial was, as was clearly stated in all public communications on this topic, not based on the amount of wealth that he may have generated from the slave trade, but on the historic fact of his choice to invest in this trade and his managerial involvement (‘Rustat had financial and other involvement in a slave trading company over a substantial period of time, including at the time when he donated to the College’, LSWP Interim Report 2019, p 10).”

(6) Mr Doku gave evidence that there had been considerable media coverage given to the matter and not everything in the press was necessarily accurate. There were multiple sources of information about Rustat. It cannot be assumed that the College is the only source of information.

96. In conclusion, Mr Hill submits that the College has comfortably discharged its burden of proof. Applying the *Duffield* framework to the particular facts of this case militates strongly in favour of allowing this petition. Mr Hill invites me to grant the College's petition and direct that a faculty may issue. It is open to me to add a condition that the memorial will remain subject to the faculty jurisdiction of the Consistory Court of the Diocese of Ely, notwithstanding that it will be removed from the Chapel. The College would not resist the imposition of such a condition but would encourage it. Mr Hill emphasises that this case is not about tainted money, or the Uyghur community in China. The case is about the application of the *Duffield* guidelines, and whether the benefit of the removal of the memorial far outweighs any resulting harm to the significance of the Chapel. The College can only become a welcoming home to a gathered Christian community by removing the memorial. Those who worship and study in the College need a resolution. Mr Hill therefore invites me to grant the College's petition.

#### Mr Gau's submissions

97. Mr Gau began his closing submissions by confessing that he had struggled with a contradiction at the heart of the College's case: that the Rustat memorial was so massive that

it dominates the space within the Chapel yet so small that it could be removed without causing any harm to the significance of the Chapel. He characterised this petition as all part of an unfortunate desire on the part of the College to get rid of an elderly and unpopular relative, albeit one who had been hugely generous towards the College in the past. The College's wish to remove Rustat's monument, to rename the Rustat Feast, and to take his name off the conference and the charities bearing his name all amounted to keeping the benefits but hiding their sources. Mr Gau likened this to "money laundering on an industrial scale". He submitted that the proper way of dealing with such a difficult relative was not to put them away but to deal with them and learn from them: to "retain and explain".

98. Nowadays it is a Christian truism that slavery is abhorrent and to be condemned; but in the past, Christian churches around the world failed to condemn slavery, thereby covering themselves in shame. The New Testament, read uncritically, fails in any place directly to criticise the institution of slavery. For many years, Bishops in the House of Lords were no supporters of abolition, and they used that argument to justify their behaviour in refusing to support the abolition movement on the basis of financial self-interest. Now we believe in reading more critically and more contextually and it is obvious that those arguments are odious. The past is a different country. We know better now and can appreciate that there are ways of putting objects that are repugnant, and which cause fear and horror, properly in context so that they can prove transformational. The site of the shrine of Little St Hugh in Lincoln Cathedral has been retained and explained; it has been refined into an educational tool to advance inter-faith relations. It may be that with open hearts and humility on both sides, the Rustat memorial can become a tool for learning about the sins of the past. But there is no assistance in promoting the mission of the Church with empty gestures. If, as the College claim, Rustat is a stumbling block to the Chapel – which lies at the heart of this College – then he is a stumbling block to the very essence of this College. If he is tainting the heart of this College, then every brick of the College is tainted by his influence; he is tainting its identity and role as an academic institution. There is no point hiding behind the strict legalities of charities law; if Rustat is to go, he must be purged entirely. If the 'heart' of the College is tarnished with his touch, then the College is, morally, dead. Empty gestures will gather no new members of the congregation. This is an intelligent group of young people who are going to ask why the scholarships remain in place and why the trusts have neither been liquified nor match-funded elsewhere.

99. Mr Gau emphasises that Rustat himself was a man of enormous wealth and enormous charity. He transformed the finances of Jesus College and significantly shaped its identity as an academic institution over the years. His benefaction still assists people to this day. The College has made no effort to share with their wider family how he achieved his wealth. It was demonstrably not through his involvement with the slave trade, as the parties opponent have discovered and revealed. The College has failed to engage holistically with Rustat the man, and his life as a whole, but has instead focused upon, and analysed, his life through the single lens of his relatively small investments in two slave trading companies. It is disappointing that the College's expert historian has failed to engage with this tricky issue properly. Ironically, for such an august institution of learning, no intellectual rigour has been brought to the analysis of Rustat's life so that proper conclusions can be drawn about the suitability of his monument staying in place. This is exemplified at paragraph 18 of the Master's witness statement (which I have reproduced in full above).

100. Mr Gau submits that this petition is a mess and always has been. All attempts to steer the College in the right direction have been ignored. The College appears to have resolved that the monument shall go, and it will brook no opposition and will consider no other conclusion. Correspondence has been ignored, approaches have been snubbed, and no dialogue with anyone with a contrary view had been considered. There has been no disclosure of any of the discussions within the LSWP; and it is a body that takes no minutes. The LSWP is not independent; and there is no explanation of why such an emotive subject should not have received assistance from an independent review. Even after all this period of time, the court is not assisted by the fact that the LSWP has still not completed its analysis of Rustat, and neither has their expert. There is still no clear, final, safe destination for the memorial. The truth is that the College was scrambling to find a place for the memorial. Initially the College planned to put it in a wine cellar. The proposal to move it to East House emerged as a compromise created between the draft petition and the petition the court is now considering. This required the College to abandon its previously expressed concern (cited by the Dean) that the memorial's artistic design necessitates that it be viewed in an elevated position, and that to install it in a less elevated position would disable its artistic appreciation. The DAC are not content with the proposal for the monument to be placed in the proposed exhibition space in East House, a destination that was only considered appropriate when the College was told that hiding it in a wine cellar (and not a 'former wine cellar', as the Dean claimed) would be inappropriate.

101. It is common ground that the test the court must apply is articulated in the *Duffield* judgment. Mr Gau submits that at no stage has the College attempted to deal with the first four of the *Duffield* questions. The College now claims that it does not need to call any direct or expert evidence to counter the expertise demonstrated by Historic England and others. The College has not assisted the court in any way at all. Surprisingly, in a case of this importance, the College has chosen not to instruct any independent expert witness on architectural, heritage or building matters to assist the court in any of its deliberations. There has been no assistance to the court about the College's move from the secular to the ecclesiastical jurisdiction, or the position of the memorial historically. The College's claim that the memorial effectively has no effect on the significance of the church as a building of special architectural or historical interest is demonstrably wrong in the face of the evidence supplied by the statutory consultees and produced by the parties opponent. The College has asserted, in terms of the *Duffield* questions, that their proposal is 'entirely reversible'. This flies in the face of the age, the delicacy and the national and international importance of the memorial as part of the body of the work of Grinling Gibbons or his studio: it is over 330 years old, weighs as much as 3.5 metric tonnes and is the only funerary monument of its type and quality in Cambridge and possibly the whole country. Moving such an historically important and ancient object from the medieval wall of a Grade I listed building is fraught with difficulty. No proper assessment has been made of its condition. Yet again, no expertise has been tendered to the court.

102. Having failed to engage with the first four of the *Duffield* questions, the College's engagement with question five is so unreliable that Mr Gau submits that the College's assertions about it should be dismissed in their entirety, or given little or no weight. The answer the College tender to question five has been obtained by promoting a misleading narrative to those whom they claim to have consulted. The LSWP have been in possession of

evidence that establishes a much fuller picture of who Tobias Rustat actually was, but they have chosen to share only one single, minor, inaccurate and prejudicial aspect of Rustat's life with those whom they have consulted. That false narrative has been promulgated by a member of the LSWP. It is said to be plain that the majority of those whose views were communicated to the College filled in a pro-forma organised by certain students using inaccurate and inflammatory rhetoric about Rustat. That unsatisfactory response has not been confined to the student body but has extended to at least one of the College's fellows. All of these individuals (none of whom have made witness statements) have been misled about Rustat's life and legacy. The College has allowed a "bogus claim to spread that he made his fortune from slave trading and used monies from that fortune to benefit the College". Mr Gau says that the College should have known that this was happening, and it should not have allowed this false narrative about Rustat to flourish unchecked. Alternatively the College is not, in fact, as much in touch with their students as it claims. There appears to have been a marked disinterest in trying to establish why such violent reactions to the monument have been spreading. No one appears to have asked why any individual has formed the inaccurate view that they have. Mr Gau invites the court to take account of the views of two student members of the College expressed in emails to the Registry opposing the petition sent on 20 January 2021 (and forming part of Exhibit AS 5 to Mr Sutton's witness statement). The first email includes the following:

"... I have a number of objections to the removal of the memorial from the college chapel, as a student at the college, as a Christian who has benefited from chapel worship, and as a citizen aware of the political tides of our times ...

Finally, it is worth highlighting a point I have implied, namely the flippancy of this present urge among activists to remove these statues. Up until a few months ago, we were the same liberal, multicultural, 21<sup>st</sup> century morally-minded community - disgusted by the slave trade - but we were content with the presence of such a memorial in our chapel. It may well be that in a few months' time, the radical frenzy over statues has died down, and suddenly it will seem as though an embarrassing, censorious force had taken grip of our institutions for that short time, that suddenly we felt we could not tolerate our history. Perhaps this won't come for a few years. But the point remains that, unlike the college, which (in human terms) is a stable, long-standing community which can take strength and comfort in its long and prestigious academic history, the activist urges of the present moment are extremely transient. The impulse to preserve will always sound less attractive and up-to-date than the one to remove, but there must be some to defend the heritage of certain things, the preservation of history and of grand old buildings and their interior decoration, if we are to build up anything of lasting value. I hope that I am not alone in encouraging a defence of a level-headed, historically-inquiring, humble thinking with regards to this memorial, and a sense that our moral energies are far better, and more urgently served in the fight for those oppressed by our current benefactors in China.

I appreciate the opportunity of expressing my opinions as a student of Jesus College, opinions which are echoed by numerous fellow students at the college who are a little anxious, it must be said, to come forward to oppose this relocation, because there is no small pressure from student activists for us to regard taking down the memorial as

the only conceivable thing to do. I hope you can see that theirs is not the only opinion among the student body, though it is the most aggressively proclaimed.”

The second email reads:

“Hi there.

I am a current undergraduate student at Jesus College Cambridge, and I would like to write to express disagreement with the path the college is taking regarding the relocation of the Tobias Rustat Memorial. The college is using deliberately inflammatory language to students to consistently refer to the Memorial as ‘the slavery-celebrating memorial’, when in fact it does not celebrate slavery at all, it simply marks the life of the man who is buried there in the Chapel. As Christians, we accept that we are all sinners and have done bad things, but we do not take down everyone's markers above their graves. If College wish to add a plaque to contextualise Tobias Rustat, that is of course their prerogative, but I must break ranks with college over the position that this Memorial is ‘slavery-celebrating’, and I do not think that there is a need for it to be taken down.”

Mr Gau also invites me to take account of the 45-page typed letter produced by Mr Emmison from which I have already quoted. Mr Gau describes this letter as “extremely well-researched and erudite” and as “a considerable work of expertise and thoughtful analysis through the eyes of a young black Jesuan who is himself the descendant of slaves”.

103. Mr Gau submits that I should give the support the petition has received from current and past students of the College no weight at all as it has been obtained by misleading them. He submits that future students might be assisted by knowing the truth about Rustat before coming to any judgment about him. This could be achieved by putting his memorial into context rather than removing it: the proper approach should be to retain and explain. Mr Gau submits that any support, or lack of objection, from any of the statutory consultees is worthless because they will have taken account of a reaction to the monument generated entirely by misinformation. S. 35 of the *2018 Measure* requires the court to give weight to the role of the church as a local centre of worship and mission; but the court cannot now rely on any of the conclusions drawn by the amenity bodies who were affected by submissions under s. 35 as they were falsely obtained. The College has made no attempt to correct this false understanding on the part of the consultees. The objectors’ supporters, on the other hand, have been in possession of the more accurate facts about Rustat from the outset and they have maintained their objections. Mr Gau submits that their support can be given significant weight as they have been in possession of a much fuller, and fairer, picture since shortly after becoming involved. The individuals who support the petition, albeit that they have been misled by the College, do all make one thing clear, however: that Rustat’s life should be contextualised. Mr Gau submits that this can be done most economically, most effectively, and most powerfully by leaving the memorial in place with a contextual plaque and explanation. To the Master’s question: How big would this plaque and explanation have to be?, Mr Gau’s response is that this is a question that will still have to be answered if the memorial is relocated to East House.

104. Mr Gau points out that the statement of significance does not even mention the memorial at all. He suggests that one important discovery may have helped to start the

process of contextualising the memorial. If it offends viewers of the memorial, the inscription needs to be put into context. The memorial was created in about 1686. This pre-dated the sale of Rustat's investment in the Royal African Company. By that time, he had realised only a net loss from his total investments in the Royal Adventurers and the Royal African Company. It may be of interest, and of some comfort, for viewers of the memorial to know that Rustat's 'industry', from which, according to the inscription, his wealth was in part derived, did not extend to his investments in the slave trade, and that he had in fact lost money from those investments by the time the memorial came to be created. Not only is there no evidence that any 'tainted' moneys ever came to the College from Rustat, but the agreed evidence of the historical experts now points clearly to the fact that no 'tainted' moneys ever did. Mr Gau submits that it would be entirely wrong to remove such an important memorial on the basis of a misapprehension about the source of Rustat's wealth at the time he caused his memorial to be created. To claim that anyone associated with the slave trade, however tangentially, should not be memorialised in a church building would lead to the wholesale destruction of our sacred environment; yet this was what the Bishop of Ely came close to saying. That does not form any part of the CBC/CFC's guidance on contested heritage; and it would be wholly disproportionate. Mr Gau submits that the extraordinary claim by the Dean (at paragraph 26 of his witness statement) that if this petition "cannot succeed, I question what if any petitions to relocate contested statutory will" demonstrates lazy thinking, and a sense of self-importance about Jesus College which may demonstrate why the College are reluctant to feel the need to deal with anyone not within their fellowship.

105. Mr Gau pointed to relevant passages in the CBC/CFC guidance on contested heritage. The College had not undertaken the "robust, inclusive research" required to "understand as much as possible about the heritage in question" (page 8). Mr Gau referred to the hope expressed by the CBC/CFC (at page 13) that "open, honest and gracious discussion, listening and learning happens, with people being able to disagree well and with kindness and ultimately to respect the decisions made"; and he submitted that that had been reflected in Mr Sutton's evidence and approach. Mr Gau suggested that the plaque introduced at the site of the former shrine of Little St Hugh in Lincoln Cathedral had been a good illustration of the use of a "tool for raising awareness of under-represented histories and present-day injustice" (page 17). Mr Gau pointed to the need for "a robust Statement of Significance, founded on an appropriate level of research into the object in question and its physical and historical context" (page 18); and he reiterated that the College's statement of significance had not even referred to the Rustat memorial. Finally, Mr Gau cited from page 21, which emphasises that:

"The public interest in ensuring the sustainability of our historic buildings, embodied in the historic buildings legislation under which we operate, demands that we resist knee-jerk responses in order to do the more difficult work of responding in a balanced and nuanced way to the tension that may exist between a building's heritage and its present-day Christian mission, taking into account both the historical and aesthetic significance of an object and the painful feelings it may provoke."

That was the task with which the College had failed to engage. As will appear, I consider that these criticisms of the College's approach are well-founded.

106. For all these reasons, Mr Gau submits that the College has failed to make out its case and that this petition must fail. He commends to me the submission of a former member of

the Southwark DAC that there must be considerable uncertainty as to the extent to which the missional impact of the Chapel will actually be enhanced in net terms by removing the memorial; and that the College's evidence is not sufficiently robust to justify a proposal which would lead to a considerable loss of significance.

*Professor Goldman's submissions*

107. Professor Goldman began by acknowledging that all parties to this case recognise the compelling requirement to make changes to the Rustat memorial in the College Chapel. Fresh research yielding new knowledge, and a wave of interest in the history of slavery in recent years, had rightly led the College to reconsider the memorial. The question is: how is this best done? It is a question which raises moral, aesthetic, and historical issues of great complexity.

108. Professor Goldman admitted that he had never doubted Rustat's involvement in the slave trade as an investor. It was the essence of his approach that institutions must be honest, accurate, and entirely without sentiment in examining and detailing the life, and indeed the crimes, of historic figures. But it is the essence of the Professor's approach that historic fabric should not be rent or altered: the best place for such historical honesty is beside, or close by, the monument or statue. There is no need for us to commit a crime against our material heritage in our efforts to witness and acknowledge the crimes of the past. For that reason, Professor Goldman has opposed the faculty petition; and nothing he had heard in the College Chapel over the previous two days had changed his view.

109. Professor Goldman considers that Rustat has been assessed and judged incorrectly by the College. Whilst we all lament this deeply, slavery and slave trading were legal in the 1660s and 1670s, and Rustat is being condemned for acts that were neither criminal nor exceptional in his own time. The court may have forgotten, or may not know, that as late as the year 1800, more people across the globe as a whole worked as forced labour - whether as chattel slaves, serfs, indentured labourers, or peasants owing service to their lords - than as free men and women, though slavery was, without doubt, the worst of these. And Rustat, as a courtier caught up in the financial politics of the day, was expected to invest in Royal companies. With the other parties opponent, Professor Goldberg continues to think that the College has failed to take account of the whole of Rustat's life, with its virtues of duty, faithfulness and charity, as expressed in the inscription on his memorial. Rustat fought beside his king and his king's heir in the 1640s. In the 1650s he went into exile with Charles II (as he later became). He was there at the Restoration, a courtier throughout the following reign, and a munificent benefactor of many charities and institutions. The College, rightly concerned by his investment in royal companies engaged in slave trading, has failed to balance this egregious financial behaviour with the rest of his worthy life. Mr Hill had reminded the court of the requirement that expert witnesses should examine all sides of an issue before coming to their own conclusion. In regard to Rustat, the College had not done that. It had not engaged with the totality of Rustat's life, and it had rushed to a predetermined conclusion. The College had begun the application for a faculty at a time when its research into Rustat's life and investments was only at a beginning. On a question even more important than that of the memorial - how to treat Rustat's benefactions within the College's endowment, and as dispersed in various ways across different College activities each year - it



was evident that the College had come to no conclusions at all. Work was still in progress. We might have expected that this petition would have emanated from the settled results of the LSWP; but it bears all the marks of haste. Indeed, there is no evidence before the court that the College will divest itself of the Rustat benefactions, or turn them into other good causes, or launch an entirely new project with them, or address the social issues of underprivilege and inequality that are the undoubted legacies of slavery to this day.

110. The College's sole argument for the removal of the memorial is a pastoral one: that its retention in its current place, even with explanatory material around it, apparently deters students from attending the Chapel and taking part in the religious life of the College – indeed, in any activities within the Chapel. Professor Goldman does not underestimate the force of this argument; but it, in turn, underestimates the capacity of students in the College to understand such complex matters as Rustat and his legacy. It also undervalues their resilience when the issues are put before them fairly and fully. It does not square with Professor Goldman's experience of teaching undergraduates the history of slavery, which he did in Oxford for the best part of three decades as a college tutor. In his experience, high-quality, mature, and supportive pastoral care within the College, allied with good teaching, should be able to deal with the concerns of students over the retention of the Rustat memorial. At the very least they should be tried. The most dispiriting aspect of this hearing had been to learn that no attempt has been made to use the Rustat memorial as an educational, religious and moral opportunity, and thereby to provide that balance, that holistic approach, that Mr Hill had spoken about. Although the case will be decided on the *Duffield* principles as they apply to ecclesiastical buildings, this chapel sits within an educational institution, one of great renown. But where is the evidence of attempts to explain Rustat to the students? The governing body of the College seems to have come to its decisions without any attempt being made to consider Rustat's life and legacy with the very people whose untutored views it now uses as its sole rationale for its case. Where are the seminars on Rustat's life? On the development of slavery in the emerging British empire in the 17<sup>th</sup> century? On the balance to be struck over benefactions made from funds accumulated by force or by fraud? On the art and style of the late 17<sup>th</sup> century? On the work of Grinling Gibbons, one of our greatest carvers in wood and stone? On the issues that arise when historic buildings undergo change? Or on the theological questions arising from the urge to condemn, and, at the same time, observe the Christian duty of forgiveness? These, and related subjects, provide a wonderful opportunity for the historical, aesthetic and moral education of students. There might have been a course of lectures, as well; some could have been given by opponents of the policy to remove Rustat's memorial.

111. The parties opponent have made clear their concern that the emails collected from students opposing the retention of Rustat's memorial in the College followed a set formula, as if dictated or rehearsed. Therefore they may not be the authentic voice of the student body. More troubling still is said to be the entire absence of direct evidence from the College in support of their single, main, and key argument that retention of the monument in the Chapel deters worship and participation. No current student has said that to us; no deposition from one of them states it; we are invited to rely only upon the indirect testimony of College officers. How helpful it would have been to have had such direct evidence before the court of the pastoral problems caused by Rustat. If the anonymity of current students was an issue, ways could have been found to deal with that. This matter is central to the case made by the

College, and yet there is no evidence submitted in its support, nor has there been any opportunity to test it. The closest we have come is the evidence of Mr Doku; but he is an alumnus who left the College some time ago, and he also told the court that for three years, as an undergraduate, before anyone knew about Rustat's dealings, he had used the Chapel without concern or demur. So it would seem that the College has rushed to its own judgment; it has not provided opportunities for its students to learn about, and consider, the questions raised by the Rustat memorial; and its only argument to justify its petition, to which it has kept returning, is to claim that students are deterred from participation in all events in the Chapel, religious and secular, for which the court has no direct first-hand evidence.

112. Turning to the *Duffield* framework, in relation to the first question, Professor Goldman submits that the removal of such a monumental, and famous, work of art from this place, in which lie the mortal remains of its donor, would result in harm to the significance of the Chapel as a building of special architectural and historic interest. Rustat may have seemed to be a minor cavalier, but we have made him, through our debates here and our research into his life, a figure of great significance, who is now a key representative of central themes in British history, above all the historic responsibility of the British elite for the slavery of millions of Africans. We cannot now commit him to the obscurity of East House without harming the historic interest of this place. And to do so would be to remove one of the finest funerary monuments of the 17<sup>th</sup> century, made by one of the few British craftsmen to have name recognition among the wider public. The College cannot contend that the new exhibition space to be established to receive the monument compensates for any loss or harm, because, under the *Duffield* framework, the court must consider not the issue of continuing access to the Rustat memorial, but the deleterious effects of its removal on the Chapel.

113. That leads to the third of the guidelines in the *Duffield* framework. How serious would the harm be? Professor Goldman considers the finest work in the Chapel to be the stained glass by Pugin and Morris. But that is intrinsic to the structure of the building. Opinions may differ, but of those objects here that are portable, and which matter historically and aesthetically, there can be none as important, and as remarkable as a work of art and an historical artefact, as the Rustat memorial. Mr Vonberg admitted that its removal would depreciate the memorial itself; but to remove the memorial from the Chapel, and break the link with the remains of Rustat buried here, must be to do harm to the building itself as a place both of special architectural, and also special historic, interest.

114. The fourth of the *Duffield* guidelines focuses on the College's case. How clear and convincing is the justification for removing the memorial? The College's case has been rushed out before so much else connecting Jesus College to Tobias Rustat has been discussed, let alone determined. It appears as a half-measure, an interim gesture, not the settled and evidenced conviction of a body of scholars who have thought through all aspects of the issues we have discussed in these hearings. The only argument of substance and force that the College has made takes us to the final *Duffield* guideline, in particular the issues of 'pastoral well-being' and 'opportunities for mission'. But what we have heard here is just an argument, nothing more. It has not been evidenced; there is no direct testimony that we can consider, let alone witnesses who could have been questioned. Professor Goldman can see no specific examples in the College's case, as presented to the court, of precise occasions when pastoral well-being has been compromised by the presence of the memorial; no moments of

documented resistance when students refused to enter the Chapel for any purpose, religious or secular. Without evidence, we have only opinion, and that cannot be a strong enough basis on which to agree to the removal of the Rustat memorial. The Chapel sits within an educational institution; and its educational mission, complementing its religious mission, should have focused upon explaining Rustat's life, and his involvement in slave trading, openly, extensively, and objectively, so as to help its students to reach mature conclusions on the many issues we have considered. If there is 'pastoral harm' here, it is not because of the presence of Rustat's memorial. It is because the College has not attempted to relate to its students in a properly academic and objective manner, to educate them, and to expect from them the high levels of intellectual and cultural engagement and understanding of which they are capable when well-taught.

115. For these reasons, the conditions required for removal, as set out in the *Duffield* framework, have not been met, and the Rustat Memorial should stay in the Chapel, where it has been since the 1690s, but now complemented by material to explain Rustat's life, his investments, his role in the slave trade, his benefactions, and the horrors of the middle passage across the Atlantic Ocean.

#### Analysis and conclusions

116. I can dispose immediately of three preliminary matters. First, the College Chapel is a 'peculiar', in the sense that it is not under the direct control of the diocesan bishop, although since the College has elected to include it in the list of places of worship maintained by the CBC under s. 38 of the *2018 Measure*, it is subject to the faculty jurisdiction of this consistory court and, as a result, it benefits from the ecclesiastical exemption. The Chapel is not, however, a 'royal' peculiar (as suggested by Mr Gau).

117. Second, there is no evidence to support Mr Hill's suggestion that the memorial comprised personalty which formed part of Rustat's estate and was gifted to the College, when legal title passed. Unusually for a church monument, this memorial was not erected by others in Rustat's honour but was fabricated at his direction during his lifetime, to his specifications, including the self-referencing inscription. Rustat displayed the memorial in his home for some eight years prior to his death. However, the College has produced no documentary evidence, whether in the form of a will or a codicil or a deed of gift, to support the wholly speculative assertion that the memorial was ever gifted to the College. In any event, as I have already indicated, it seems to me that s. 66 (5) of the *2018 Measure* provides a self-contained definition of 'owner' for the purposes of the faculty jurisdiction, in so far as it concerns faculties for works to monuments, including their removal: and the expression 'heir at law' is a legal term of art. Mr Hill argues that it has proved uneconomical to trace Rustat's heir or heirs at law. Certain relatives (described by Mr Hill as 'distant') have objected to the petition, but Mr Hill says that none of them has proved ownership of the memorial or elected to become a party opponent; nor have they sought (or been afforded) party status by the court. As the heir or heirs at law cannot be found, and as some family members have indicated their opposition to the proposed move, but have not participated in the proceedings, the court must proceed on that basis. Mr Hill accepts that I can take the

views of Rustat's collateral descendants into account, even though I cannot assume that they are his heirs at law.

118. Mr Gau invites the court roundly to reject the College's submission that it has proved uneconomical to trace Rustat's heir or heirs at law, in view of the College's resources and the evidence served by Rustat's claimed heirs. He points to the fact that nearly 30 years ago the College invited Mrs Dorothy Hodgkin, and then Mr Sebastian Payne in her place, to attend the Tercentenary Rustat Feast as a representative of their branch of descent from Rustat's father. The parties opponent succeeded in tracing some of Rustat's collateral descendants with no difficulty, and they encouraged them to contact the College and make their views known; and they have attempted to assist the College by demonstrating their claims. Mr Gau submits that it would appear that no effort has been made to share the evidence filed by Rustat's heirs with Pro-Gen Research Ltd. The estimate that approximately 200 hours of research time would be required to identify and locate all of Rustat's living relatives, at a cost of approximately £14,000, was only obtained in late November 2021, some ten months after the heirs first contacted the College. To put this quotation into perspective with the College's resources, Mr Gau points out that obtaining this extremely important piece of evidence would equate to approximately the cost of one of the College's annual Rustat Feasts.

119. As I have already indicated, in the case of Rustat, who died as long ago as 1694, without leaving any direct issue, I accept that it is likely to be a complex and difficult task to identify, with any degree of certainty and finality, the person or persons who in fact are the 'owner' of his memorial within s. 66 (5) of the *2018 Measure*. I accept Mr Gau's submission that it would have been reasonable for the College to have made more efforts to have traced Rustat's heirs at law, given the resources available to the College and the significance, and the likely value, of the memorial as a work of 17<sup>th</sup> century funerary art. In all the circumstances, the College can have no legitimate complaint if I proceed (as I do) on the basis that the 'owner of the monument' withholds their consent to the faculty sought by the College. However, I make it clear that in the circumstances of this case, the withholding of the owner's consent makes no difference to the outcome of this faculty application.

120. Third, Mr Hill invites the court to reject Mr Gau's criticism that the petitioner has not called a '*Duffield* expert' because, as Dr Bowdler himself readily accepted, there is no such category of expert. I accept this invitation. The application of the *Duffield* framework is an approach commended by the Court of Arches to assist chancellors when determining faculty applications involving works to church buildings. In practice, it is invariably adopted. However, it is applied in the individual circumstances of each case, based upon all the relevant evidence presented to the chancellor. It would be an abrogation of the chancellor's judicial function for a heritage expert to purport to make the decision for them. Some of the relevant evidence, when applying the *Duffield* framework is outside the knowledge and experience of even the most experienced and well-qualified building heritage or conservation expert since considerations wider than mere heritage issues, such as liturgical freedom, pastoral well-being, and opportunities for mission, are all engaged by the framework. Dr Bowdler rightly accepted in cross-examination that his function was to provide expert evidence limited to heritage issues (and nothing else), with a view to assisting the Chancellor to apply the *Duffield* framework.

121. I therefore turn to the *Duffield* framework. In addressing the *Duffield* questions, I consider it important to bear one consideration firmly in mind. This faculty application concerns a college chapel and not a parish church. That inescapable fact seems to me to have considerable relevance when addressing, in particular, the fourth and fifth of those questions. A college chapel stands at the heart of its college, and its role extends and permeates far beyond its use as a place of Christian worship and mission in a way that even the most active parish church is likely to find it difficult to achieve. In one sense, the congregation of a college chapel is more transitory than that of a parish church: apart from the teaching staff of the college, there will be an almost complete turnover in the congregation of a college chapel every three or four years. Yet in another sense, the potential congregation of a college chapel is far wider than that of a parish because former members of the college are likely to return to the chapel of their old college, albeit intermittently, for many years after they have left the college. Particularly if they worshipped there when they were students of the college, they are likely to retain a great affection for their college chapel. Some student members of the college are likely to have a far more intimate connection with the chapel than is the case with many parishioners because they are organ or choral scholars or members of the college choir. Even if they do not worship there, members of the college are likely to attend the chapel for musical and dramatic performances, and for significant events in the life of the college. The wide range of responses to this petition demonstrates the keen interest that many former, as well as present, members of the College retain in the fabric of their chapel, no matter how distant from it they now find themselves, in terms of both geography and time; and present students of the College have responded to this petition even though they may not worship there. One must also remember that a college chapel, particularly one situated within a college of national or international, architectural and historical interest and significance, attracts tourists and other visitors who may never normally worship in any church, but who, through entering the doors of the Chapel, may be drawn to reflect on matters beyond the purely secular. In his witness statement, the Dean observed (at paragraph 41) that:

“The Chapel is attended regularly by visitors from the public, though by only a handful of individuals who attend repeatedly and regularly; the main non-residential contingent of Chapel worshippers are chorister families ...”.

All of these considerations may affect the weight to be given to the various factors that fall to be taken into account when addressing the *Duffield* questions. In particular, the court has to bear in mind that the Chapel congregation is not confined to those presently studying at the College or actively worshipping in the Chapel. With these prefatory observations, I turn to address the *Duffield* questions.

### Harm

122. Mr Hill is right to focus upon the harm that the removal of the Rustat memorial would cause to the significance of the College Chapel as a building of special architectural or historic interest and not simply the resulting harm to the memorial itself, or even to the chapel building. At the end of his submissions, I understood Mr. Hill to concede that it would cause at least some harm to the significance of the Chapel as a building of special architectural or historic interest if the College were to remove the Rustat memorial from the College Chapel and relocate it elsewhere. In my judgement he was right to do so. In the light of the evidence from Historic England and Dr Bowdler, in particular, and for the reasons given by Mr Gau

and Professor Goldman, in my judgment it is quite clear that the removal of the memorial would cause harm to the significance of the Chapel as a building of special architectural or historic interest. Even if I approach Dr Bowdler's evidence with the caution urged upon me by Mr Hill, he was an impressive witness who is exceptionally well qualified to opine upon the heritage issues which arise on this faculty petition; and I am entirely satisfied that I can rely upon his expert evidence, supported as it is by the detailed, reasoned and well-argued case presented by Historic England, and supported by other interested statutory consultees.

123. I can therefore pass over to the third question. I reject Mr Hill's submission that the harm that would be caused to the significance of the Chapel as a building of special architectural or historic interest by the removal of the memorial would be "moderate" and, in any event, mitigated by the many other very impressive features of this Grade I listed chapel that would still remain in place. In the light of their evidence, I would agree with the assessments of Historic England and Dr Bowdler that the resulting harm to the significance of the chapel as a building of special architectural or historic interest would be "notable" (Historic England) or "considerable" (Dr Bowdler). I accept Dr Bowdler's observation that the two adjectives are more or less synonymous: "notable" means noteworthy, remarkable, or striking, whilst "considerable" means "notable" or "important". I acknowledge Mr Hill's point that the Chapel dates from the 12<sup>th</sup> century whereas the memorial was only introduced shortly after Rustat's death in 1694. But it was created to be displayed in the Chapel; although it has moved around the building, it has remained within the Chapel, where Rustat was laid to rest, for almost 330 years; and it provides an interesting, and, in my judgment, a significant, bridge between the Chapel's medieval origins and its Victorian re-ordering. The significance of Rustat's memorial is attributable both to its artistic, and also its historic, interest, both of which are considerable. The place of the memorial within the Chapel - and this is one of the College's concerns - reinforces its intrinsic significance whilst also contributing to the significance of the Chapel as a Grade I listed building by adding to the richness of its interior. The Baroque character of the memorial contrasts with the Gothic character of the medieval building and its 19<sup>th</sup> century re-imagining. The memorial also adds to the historical interest of the Chapel, as a visible representation of one of the College's principal benefactors, commissioned by him from one of, if not the, leading skilled craftsman of his time. Whilst the memorial is not mentioned in the listing statement, it is notorious that such early listing statements were less detailed than more recent statements. Whilst I accept that it should prove possible to return the memorial to the Chapel should this ever be considered appropriate or desirable, until such indeterminate future time as this might occur, if ever, the Chapel will continue to suffer considerable, or notable, harm to its significance as a result of its removal.

*Justification and resulting public benefit*

124. It follows that the College must demonstrate a "clear and convincing" justification for the removal of the memorial from the west wall of the College Chapel. Since the justification advanced by the College is the public benefit which, it says, will result from this removal, it is convenient to deal with the fourth and fifth of the *Duffield* questions together. In summary, whilst acknowledging the force of the submissions that Mr Hill has so eloquently pressed upon me, I have concluded that I should accept the competing submissions of Mr Gau and Professor Goldman.

125. I accept that the justification that the College advances for the removal of the Rustat memorial is clearly expressed; essentially, it is founded upon considerations of pastoral well-being and lost opportunities for mission. The College asserts that the continued presence of the memorial to Tobias Rustat, in its prominent and elevated position on the west wall of the College Chapel, is compromising the worship and mission of the Chapel and frustrating its ability to realise and host a credible Christian witness and ministry to all who are concerned about the Chapel. Mr Hill submits that the evidence adduced by the College that the continued presence of the memorial is having a demonstrable negative impact on the mission and ministry of the Chapel is “clear, cogent, and highly persuasive”; and that the justification for removing the memorial is “extremely strong”. However, even bearing in mind (as I do) the importance of the Chapel’s role as a collegiate centre of worship and mission, I do not find the justification advanced by the College for the memorial’s removal to be convincing, particularly when I bear in mind that the Chapel is Grade I listed (meaning that serious harm “should only exceptionally be allowed”). I prefer the contrary arguments so persuasively presented by Mr Gau and, more moderately, but no less persuasively, by Professor Goldman, whose restrained but powerful advocacy suggests to me that the practising Bar lost a potential silk (Queen’s Counsel) when the Professor opted to follow the study of history rather than the law.

126. Despite the powerful, and emotive, evidence advanced by the College, I am not satisfied that:

(1) 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.

(2) The public benefits, in terms of pastoral well-being and opportunities for worship and mission, of removing the memorial would substantially outweigh the notable or considerable harm that would result to the significance of this Grade I listed college chapel as a building of special architectural and historic interest.

(3) 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 any difficulties to which the continued presence of the Rustat memorial in the College Chapel is said to give rise..

In this connection, I would refer to, and adopt, without repeating, all that I have said in my summary reasons at paragraphs 6 to 9 above (which would bear re-reading at this point in my judgment).

127. The CBC/CFC’s helpful and considered guidance on *Contested Heritage* provides a practical framework for addressing issues of contested heritage in church buildings. I express my thanks to those who have contributed so carefully to its production and publication. The purpose of this guidance is to aid, rather than pre-empt, the court’s decision-making process in any individual case, which must be undertaken by applying the *Duffield* framework. As statutory guidance, I have considered it with great care; and I recognise that I should not depart from its standards of good practice unless such departure is justified by reasons that are spelled out logically, clearly, and consistently in my judgment. I bear in mind that the issues raised by memorials which commemorate people (inevitably men) who were connected with slavery and the trade in enslaved people should not involve judging those in

the past by the standards of the present, but about how such memorials affect the ability of the church to serve all of us who live in this diverse, multi-cultural, and multi-ethnic 21<sup>st</sup> century. I acknowledge the need for “robust, inclusive research to understand as much as possible about the heritage in question”. Regrettably, I find that in this case the LSWP moved to judgment without undertaking the fuller and more complete assessment of Rustat’s precise involvement in companies engaged in the slave trade which is now available to the court from the historical experts; that seemed to be acknowledged by Dr Mottier when (in cross-examination, but not in her witness statement) she told the court that the College had been unable to produce the evidence of Dr Edwards until 6 December 2021 because he, in turn, had been unable to complete his research since the relevant archives had been closed for some 16 months until July 2021. I also remind myself of the context for the CBC/CFC’s guidance: that churches should be places “where all people are able to worship God, and be welcoming to all for the activities that they undertake for communities”. I am also sensitive to the conflict between those for whom “the presence of memorials associated with contested heritage in churches today may be at odds with the message of the church and its regard for its diverse congregation” and those others “who would regard the removal of this material culture from their place of worship as objectionable”. The views of both groups of people are worthy of respect and proper consideration. I recognise the need to “resist knee-jerk responses in order to do the more difficult work of responding in a balanced and nuanced way to the tension that may exist between the building’s heritage and its present-day Christian mission, taking into account both the historical and aesthetic significance of an object and the painful feelings it may provoke”. I would encourage all those who have to grapple with the problems presented by contested heritage “to consider the actual or potential positive impact of the object, in terms of its historical or artistic significance, as an item of interest to tourists and scholars, as an item associated with local identity, and as a possible tool for raising awareness of under-represented histories and present-day injustice”. I would urge them all to engage in “open, honest and gracious discussion”, listening to, and learning from, each other; and I trust that they will be able “to disagree well and with kindness and ultimately to respect the decisions made”, however convinced they may be that it is wrong. However difficult this may be, no-one should regard the decision that is ultimately reached in any case involving contested heritage as representing either a victory for one view or a defeat for the other.

128. I agree with the CBC/CFC that:

“In terms of attempting to justify a physical intervention such as altering or removing a memorial what needs to be proven is not principally that a memorial is to somebody (or perhaps donated by somebody) whose views or actions we would now condemn, but rather that the presence of the memorial has a demonstrable negative impact on the mission and ministry of the church or cathedral; and, in the case of a proposed course of action that may be considered harmful to the heritage of a building, that substantially the same benefits could not be achieved by a less harmful option. It is therefore essential that a thorough appraisal of the available options is undertaken before any formal application is made.” (Section 2c)

I also agree that:

“Broadly speaking, from the perspective of the ecclesiastical permissions process, the greater the level of intervention, the greater the potential harm to significance and thus



the more compelling the justification that will be required to implement it. In blunt terms this means that it is generally easier to gain approval for works to objects of low significance than of high significance, and for works that will have a low impact on the significance of the object than for works that will have a high impact.” (Section 3e)

I further agree that:

“The basis of any consideration of change regarding contested heritage would, as always, be a robust Statement of Significance, founded on an appropriate level of research into the object in question and its physical and historical context, and a Statement of Needs, considering the need for change from liturgical, theological, missional, and community perspectives. Insufficient understanding of the significance of the object and the need for change, if the research is deficient in depth and quality and/or the interests of any party are ignored or not given appropriate weight, is likely to lead to distress and recriminations, as well as the possibility of the refusal of any proposed interventions.” (Section 3a)

129. This present case provides an object lesson in the potential dangers of failing to undertake “robust, inclusive research to understand as much as possible about the heritage in question” (to quote from the introduction to *Contested Heritage*) before reaching any decision on a proposed course of action. I acknowledge that the College engaged in a process of appraising other options than the removal of the Rustat memorial from the west wall of the College Chapel and its relocation to an exhibition space in East House. However, I find that it did so on the basis of an incomplete assessment of the full extent of Rustat’s involvement in companies engaged in the slave trade and the financial benefits that this had brought him at the times: (a) he made his generous donations to the College, (b) he commissioned the memorial and drafted its inscription, and (c) of his death. The College also proceeded in reliance on a statement of significance which does not even refer to the memorial and thus without the benefit of any “robust Statement of Significance founded on an appropriate level of research into the object in question and its physical and historical context”. Most importantly, I find that the College has relied upon views expressed by student members of the College, and at least one of its fellows, that were founded upon the entirely false narrative that Rustat had “amassed much of his wealth from the Royal African Company”. Although this was never explicitly stated by the College, I also find that it created the false impression that Rustat’s generous donations to the College may have been derived, at least in part, from his involvement in the Royal African Company when it stated (in the LSWP’s November 2019 interim report, which was made available to the student body) that “... we can be clear that Rustat had financial and other involvement in a slave trading company over a substantial period of time, including at the time when he donated to the College”. I find that the false view has taken hold, amongst some at least of the student body, that Rustat was “heavily involved in the horrific crimes of slavery” and that it is this that has led to the view that it is wrong for him to be “glorified in the heart of” the College community. Although the Dean refused to accept this, I find that the members of the College, and especially its students, have not been given a true picture of Rustat’s financial life; and that the false picture they have been given has contributed to the College’s perception, and concerns, that the continued

presence of his memorial in the Chapel is having a demonstrable negative impact upon its mission and ministry.

130. In cross-examination, the Dean accepted that he was not aware of any efforts to correct these misstatements, explaining that this was because the emails had been sent to the Registry and not to the College. Mr Hill submitted that: (1) the students are not the petitioners, and their emails form no part of the College's case; and (2) the LSWP's recommendation to relocate the memorial to an interpretative space, and the College Council's decision to pursue this course of action, both pre-date these emails. However, Mr Gau is right to point out that the College should not have allowed a false narrative about Rustat to spread unchecked; and if the College did not know that this was happening, then it cannot be as much in touch with, or receptive to, the views of its students as it claims. But the points made by the Dean, and Mr Hill, also fail to meet the over-arching objection to the College's case that the College cannot properly seek to justify harm to the significance of a Grade I listed building by reliance upon considerations of pastoral well-being and lost opportunities for mission if those considerations are founded upon false understandings, whatever their source, which the College has taken no reasonable, or appropriate, steps to identify, address and correct. In such circumstances, the College cannot sensibly demonstrate 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. As a result, the College has failed to satisfy me that the public benefit, in terms of pastoral well-being and opportunities for worship and mission, of removing the memorial would substantially outweigh the notable or considerable harm that would result to the significance of this Grade I listed college chapel as a building of special architectural and historic interest.

131. However reprehensible we now rightly recognise such conduct to have been, I do not consider that the investment of moneys, whether by way of loan or the purchase of stock or shares, in companies that traded in enslaved people, with the knowledge that they were involved in that inhuman trade, even if coupled with a limited degree of participation in the corporate governance of those companies, necessarily justifies the removal of a memorial commemorating the life and "industry" of that investor, even in the context of a college chapel. That is particularly so in a case (such as the present) where: (1) that chapel is listed Grade I, (2) the memorial is itself of considerable artistic and historic significance, and (3) the memorial makes a positive contribution to the significance of the chapel as a building of special architectural or historic significance. If that were the case, the walls of our college chapels, and of churches throughout this country, would be stripped of many fine, artistically or historically significant, memorials. We must remember both that investment in companies which were engaged in the enslavement of, and the trade in enslaved, people, was entirely lawful at the time such investment was made; and also that in many respectable sectors of society, even if not all, this was considered acceptable at the time, however utterly reprehensible we now rightly recognise this to have been. Nor is involvement in slavery and the slave trade the only form of conduct now recognised as morally repugnant and unacceptable that might properly fall to be considered as a qualification for removal: the persecution of other people, whether on grounds of religious persuasion or practice, racial or ethnic origin, gender or sexual orientation, or political affiliation and opinions, all potentially give rise to issues of contested heritage as symbols of injustice and sources of great pain. I

appreciate the reluctance to condescend to matters of judgment about the degree of sin that qualifies for the removal of a memorial; but that is good reason for hesitation and consideration, and for one to pause, not by way of condonation, but for mature reflection. As the CBC/CFC point out in their guidance, from a Christian perspective, every memorial is a memorial to a sinner. To the rhetorical question posed by the Dean (at paragraph 26 of his witness statement) that if this petition cannot succeed, what, if any, petition to relocate contested statutory would do so, I would venture to respond (without in any way wishing to pre-judge the outcome of any actual petition, or to suggest that these should be regarded as necessary qualifications, as opposed to possible sufficient conditions, for removal): a memorial of no intrinsic artistic or historic merit, contained within an unlisted church building, commemorating, and glorifying, a person who was actively engaged in the transport and ill-treatment of enslaved people. As the CBC/CFC point out in their guidance, the focus of attention and discussion should be upon the impact of a piece of material culture on a church's ability "to be a place of welcome and solace to all, and how this should best be addressed, not on whether an individual deserves to be expunged from the historical record". I recognise that expunging Rustat from the historical record is not what the College is seeking to achieve, because the separate floor tablet marking his burial within the inner chapel (or chancel) will remain within the Chapel, and that Rustat will continue to be remembered elsewhere within the College. But since the removal of this memorial will cause considerable, or notable, harm to the significance of the Chapel, it should not be permitted without a clear, and a convincing, justification; and not even then if substantially the same benefits can be achieved by some less harmful option.

132. The College has failed to satisfy me that the relocation of this memorial to an exhibition space where it can be contextualised is the only, or indeed the most appropriate, means of addressing the difficulties to which the continued presence of the Rustat memorial in the College Chapel is said to give rise. In cross-examination, the Dean accepted that it was not impossible for some contentious memorials to be contextualised in situ; but he sought to explain that the problem with the Rustat memorial was its sheer scale, and its central position on the west wall of the College Chapel. The College has placed a stand displaying an explanatory card in front of the memorial on the west wall of the Chapel; this is visible on the attached image showing the view of the Rustat Memorial. The College has also produced a useful four-page illustrated leaflet containing an 'introduction' to Rustat, his memorial, and his involvement in, and the activities of, the Royal African Company; and also more detailed sections on 'Legacies of Slavery in Jesus College', 'Rustat's life and career', 'Slavery and the Royal African Company', and 'Rustat's benefactions'; and showing images of Rustat's portrait, the Rustat memorial, and a view of the College. However, the leaflet does not make it clear that Rustat amassed little of his great wealth from the slave trade, or that he used no moneys from that source to benefit the College. Not only is there no evidence that any 'tainted' moneys ever came to the College from Rustat, but the agreed evidence of the historical experts now points clearly to the fact that no 'tainted' moneys ever did. Nor is there any attempt to put the inscription on the memorial into its proper context. The memorial was created in about 1686, pre-dating the sale of Rustat's investment in the Royal African Company. By that time, he had realised only a net loss from his entire investments in both the Royal Adventurers and the Royal African Company. I agree with Mr Gau that it may be of interest, and of some comfort, for viewers of the memorial to know that Rustat's 'industry',

from which, according to the inscription, his wealth was in part derived, did not extend to his investments in the slave trade; and that he had in fact lost money from those investments by the time the memorial came to be crafted. Doubtless these omissions have arisen because the leaflet was produced before the results of the most recent historical research had become available; but the leaflet clearly needs updating to present the memorial properly in its true context. The Dean accepted that the College's students were not stupid and that they were confronted with difficult issues with which they had to wrestle on a daily basis. They should be afforded the opportunity to approach, and view, the memorial to Rustat on a sound factual basis.

133. Standing, as I did, before, and under, the Rustat memorial, it seemed to me that the west end of the College Chapel might well provide a useful area for the display of material inviting visitors to the Chapel, and those working and worshipping there, to consider many of the different sources of injustice and pain that sadly exist in this modern world, in addition to the historical aspects, and the contemporary legacies, of slavery and the transatlantic trade in enslaved people, and also the involvement of the College, the wider University of Cambridge, and the Church of England, in such abominable practices. Certainly, slavery, as an historic institution, invites consideration of many different issues, such as attitudes to slavery, both in Britain, and in a wider global context, in the 17<sup>th</sup> and 18<sup>th</sup> centuries, and the extent to which, and the reasons why, this should ever have been considered morally acceptable to otherwise right-thinking people and followers of Christ. The areas of disagreement identified by the historical experts may provide a useful starting-point. Why should such a generous, charitable, philanthropic, and apparently religious man as Rustat ever have considered it to be morally acceptable to lend his assistance to the treatment of his fellow human beings as chattels, to be traded contrary to their will? The economic benefits to the countries which engaged in the slave trade, and the lasting damage caused to the countries and the peoples who were its victims, also merit serious thought and study. But moving on from such historical matters, the extent to which, and the ways in which, slavery still persists in the modern world, and the extent to which we, as individuals, may support and promote that odious institution and practice, would clearly merit serious consideration and study; as would other sources of contemporary injustice and pain, such as the persecution or unfair treatment of people, whether on grounds of religious persuasion or practice, political affiliation and opinion, racial or ethnic origin, or gender or sexual orientation, and the extent to which we are all contributing to climate change and its effects. Both in his evidence and in his submissions, Professor Goldman suggested other interesting areas of study and debate. By engaging with the Rustat memorial in this way, by the display of such thought-provoking materials, it might be turned into a useful “tool for raising awareness of under-represented histories and present-day injustice” (to quote from section 3a of *Contested Heritage*). I would venture to remind the College that the introduction into a church building of free-standing noticeboards and moveable display stands is permitted without any faculty, or the need for any consultation, as matters prescribed under List A5 (4) (c) and (d) of Schedule 1 to the FJR.

134. For all of these reasons, I find that the College has not made out its case for the removal of the Rustat memorial from the west wall of the College Chapel and its relocation to an exhibition space to be created in East House; and I therefore dismiss this petition. It may be of some, albeit small, comfort to the College for me to acknowledge, and record, that the

College, its witnesses, and Mr Hill could not have done, or said, any more than they have done in support of the College's petition.

Alternative or less harmful means

135. The CBC/CFC's guidance on Contested Heritage makes it clear (in section 2c at page 13) that in terms of attempting to justify a physical intervention, such as removing a memorial

“... what needs to be proven is not principally that a memorial is to somebody (or perhaps donated by somebody) whose views or actions we would now condemn, but rather that the presence of the memorial has a demonstrable negative impact on the mission and ministry of the church or cathedral; and, in the case of a proposed course of action that may be considered harmful to the heritage of a building, that substantially the same benefits could not be achieved by a less harmful option. It is therefore essential that a thorough appraisal of the available options is undertaken before any formal application is made”.

I accept that: (1) On the evidence, there is no other suitable location for the memorial within the College Chapel; and, in any event, such relocation would not address the problems that the continued presence of the memorial in the College Chapel are said to present. (2) Veiling, or otherwise covering, the memorial would merely draw attention to it, whilst preventing any meaningful contextualisation. (3) The stairwell of East House is not a suitable alternative location for the memorial for the reasons given by Mr Vonberg (which I accept). However, given its intrinsic artistic and historical merits, and its significance to the College Chapel, the relocation of the memorial to the proposed exhibition space in East House should be avoided if at all possible. In my evaluation, having viewed East House, and notwithstanding the views of Historic England, if it were to be relocated there, the memorial would look unduly cramped and restricted, sandwiched uneasily between the floor and the ceiling of the proposed exhibition space: I would echo Mr Vonberg's comments, when he was addressing the possibility of relocating the memorial to the east wall of the south transept of the Chapel, that even if the memorial might physically fit the space, it would resemble an “over-filled sandwich”. If it were to be relocated to East House, the memorial could not be viewed in the elevated position necessitated by its artistic design; and to display it in the position proposed by the College would disable its artistic appreciation. As Mr Gau pointed out in his closing submissions, these were points originally acknowledged by the Dean in the statement he wrote in December 2020 in support of the College's application seeking temporary permission for the removal of the memorial. For the reasons I have already given, I do not accept that the introduction of explanatory plaques and other contextual material would be insufficient satisfactorily to address the difficulties that the College has identified as resulting from the presence of the Rustat memorial in its present prominent and elevated position on the west wall of the College Chapel. For this reason also, this faculty petition must fall to be dismissed.

Fees and costs

136. The numerous objections to this petition have led to much additional work for the Registry. Since my appointment to determine this petition, there have been two remote interim hearings via the Zoom video platform, a site inspection, and an attended, contested hearing at the College Chapel in Cambridge which lasted three days. My provisional view is that it is appropriate that the College, as petitioner, should be responsible for the additional costs thereby incurred as well as the judgment, fee, as specified in the applicable *Ecclesiastical Judges, Legal Officers and Others (Fees) Order*; but, if necessary, I would be prepared to receive written representations on this issue. Whilst in no way encouraging any such application, I am also conscious that issues may arise as to the incidence of the legal costs of these faculty proceedings. If such issues do arise, I would encourage the parties to agree that they should be disposed of by way of written representations, and upon a mechanism for achieving this. Should these become necessary, I would hope to receive any written representations on the issue of costs by 4.00 pm on Friday 8 April and any counter-representations by the same time on Friday 22 April 2022.

#### Postscript

137. Mr Gau began his cross-examination of the Bishop of Ely by welcoming him to his own court. Mr Gau made the point that the Bishop had appointed His Honour Judge Leonard QC as the Chancellor of this diocese; and, had he not determined that he should take no further part in these faculty proceedings, the Bishop would have been giving evidence in his own court before the chancellor whom he himself had appointed to that office: see s. 1 of the *2018 Measure*. In the event, this has presented no real problem because: (1) care has been taken to ensure that I was appointed to act as deputy chancellor by the Bishop of Huntingdon (acting under powers conferred by an instrument of delegation); and (2) there is no prospect of me ever being appointed by the Bishop of Ely to the office of chancellor of this diocese because, under regulations made by the House of Bishops, and approved by the General Synod (under powers contained in what is now s. 5 of the *2018 Measure*), no-one may hold more than two chancellorships simultaneously, and I already hold office as the chancellor of two other dioceses (Oxford and Blackburn). The Bishop of Ely indicated that this was the first occasion on which he had given evidence in any court; and he was not aware of any Bishop ever having previously given evidence in his own consistory court. Nevertheless, I am concerned that should such a situation ever arise in the future, it might be suggested that it gives rise to an appearance of bias.

138. As Chancellor Leonard explained in his judgment on the recusal application (delivered on 13 August 2021), the test of apparent bias is “whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased”. Under the terms of the *2018 Measure*, not only is the chancellor appointed by the Bishop of the diocese: see s. 2 (1); but the Bishop may (after consulting the Dean of the Arches and Auditor) authorise the chancellor’s continuance in office beyond the normal retirement age of 70 for a period, initially of up to two years, and thereafter for further periods of up to one year at a time, until the date on which the chancellor reaches the age of 75, if the bishop considers this to be desirable in the interests of the diocese: see s. 3 (1), (5)-(8). I am concerned that this power may give rise to the submission that there is an appearance of bias in any case where a bishop gives evidence

before the chancellor whose continuance in office beyond the age of 70 depends upon the goodwill of that bishop. A similar appearance of bias might arise in any case where a bishop has already publicly expressed views on the outcome of a particular faculty application pending before the consistory court of his diocese, or has publicly expressed views about issues, such as the presence of contested heritage in churches, that may fall to be determined by his diocesan chancellor. This potential problem could be avoided if the Church of England were to adopt, in relation to diocesan chancellors, and their deputies, legislation similar to that contained in s. 121 and Schedule 1 of and to the recently enacted *Public Service Pensions and Judicial Offices Act 2022*, which has extended the mandatory retirement age for secular judges from 70 to 75 years of age, thereby doing away with the need for any element of episcopal discretion over the effective retirement age of diocesan chancellors and their deputies.

*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

Tobias Rustat (bap. 1608, d. 1694)

by Sir Godfrey Kneller, 1682

Jesus College, Cambridge; photograph © National Portrait Gallery, London

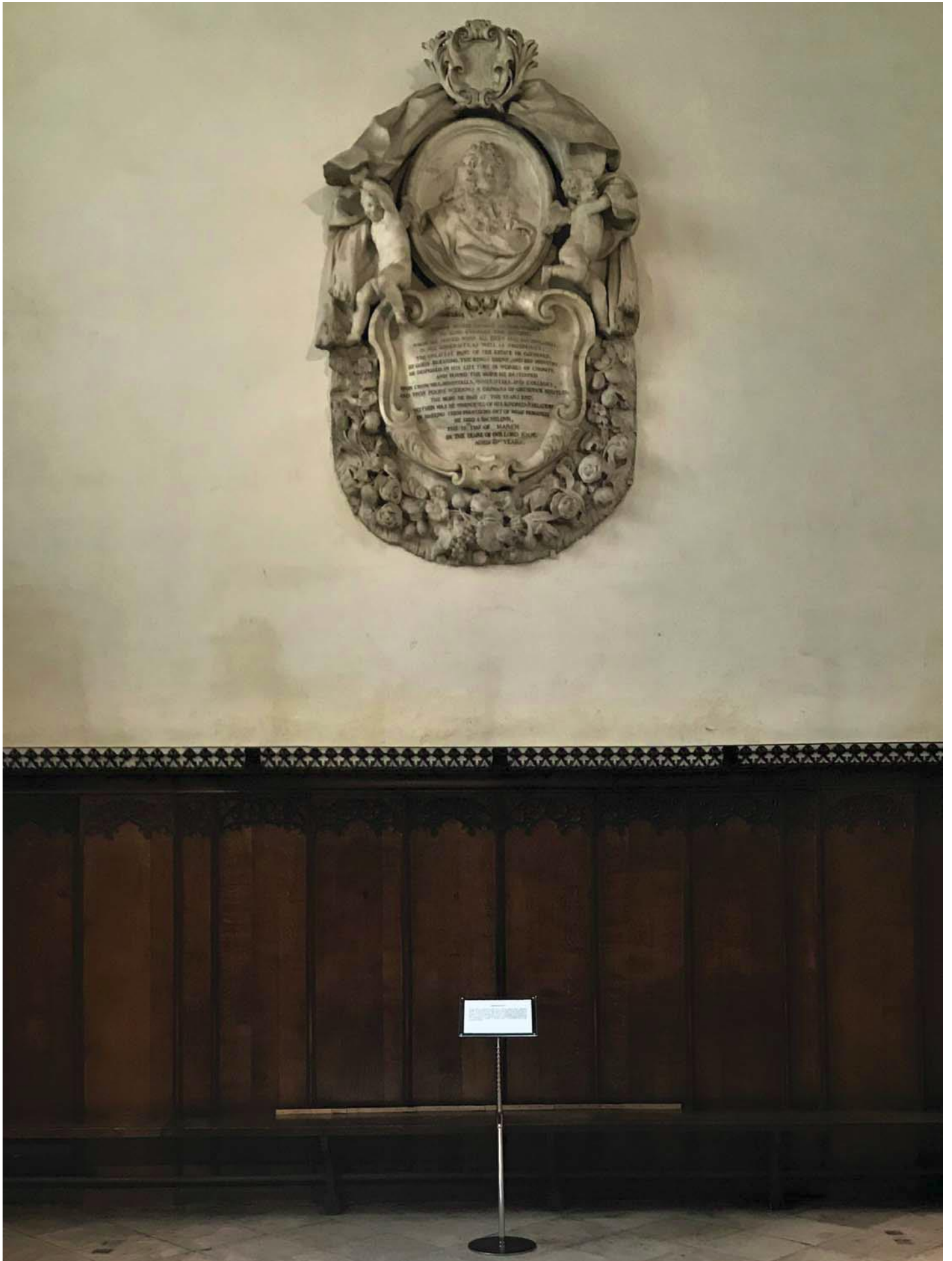




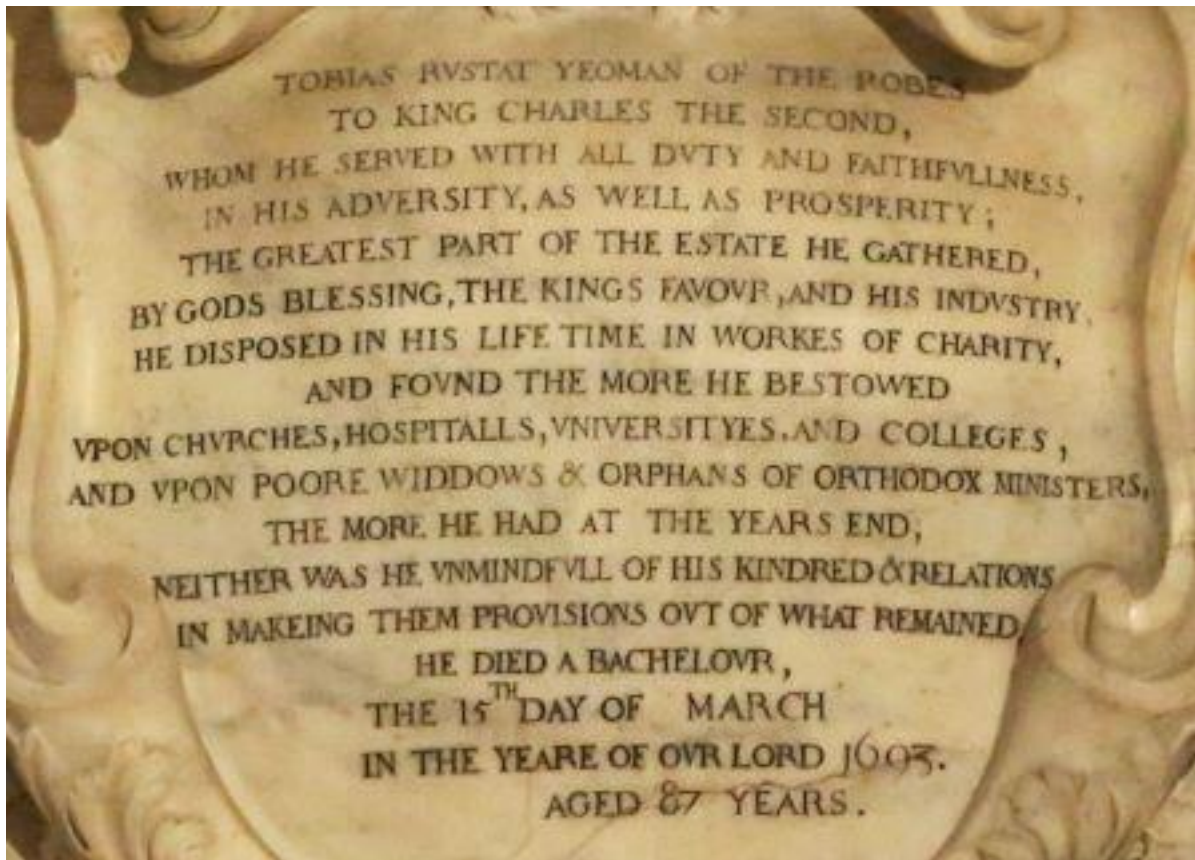
View of the Rustat Memorial from the Chancel Screen



View of the Rustat Memorial



View of the Rustat Memorial Inscription



View of the Chancel Screen from the West Wall



View of the north transept from the tower crossing



View of the south transept from the tower crossing



The Cranmer Monument



Artist's impression of the proposed exhibition space





## Extracts from the expert historians' joint statement

### Section 1: Areas of agreement

1. It is beyond dispute that, between 1663 and 1691, Rustat was involved with companies (the Royal Adventurers and the Royal African Company) that traded in enslaved people; in both cases, this involvement was as an investor, a lender, and an 'Assistant'.
2. There is no doubt that Rustat was fully aware that these companies were involved in trading in enslaved people.
3. Rustat was involved with the Royal Adventurers from 1663 to 1672.

[Dr Edwards states: "There seems little doubt that Rustat's investments in the Royal Adventurers did not generate financial returns." On the footing (which Dr Edwards describes as "reasonable") that Rustat paid his fourth (and final) subscription in full, his total net investment was £1,160; if not, it was £760. Using what Dr Edwards describes as "the most helpful figure" of "the real wage or real wealth value", the equivalent figures today would be either £192,200 or £125,900. When the new Royal African Company was formed, Rustat received only 2 shillings in the pound (or 10%) for his investment in the Royal Adventurers, meaning that his losses were in the order of £172,980 or £113,310.]

4. Rustat was involved with the Royal African Company between 1672 and 1691 as a shareholder and a member of the Court of Assistants. He also lent £500 to the Royal African Company, and he received interest on this loan. He also received small payments for his attendance at the Court of Assistants.

[Dr Edwards calculates that Rustat's estate received £40 16s 6d interest on the specialty debt of £500 he had advanced to the Royal African Company (which was still outstanding at his death); and that Rustat himself received £474 dividends on his £400 stock, and £8 17s 4d for his service on the Court of Assistants, totalling £523 13s 10d in all.]

5. Rustat's involvement in the Royal Adventurers and the Royal African Company both pre-dated and post-dated his gifts to Jesus College; and he was involved in the Royal Adventurers at the time he donated moneys to the College.
6. Rustat sold his Royal African Company stock in May 1691.
7. Dr Graham agrees with the analysis of the probable price at which Rustat sold his stock in May 1691 set out in Dr Edwards's witness statement.

[Dr Edwards calculates that Rustat sold his £400 stock for between £800 and £1,472, meaning that, in total, Rustat derived between £1,323 13s 10d and £1,995 13s 10d from his involvement in the Royal African Company. After deducting the original £400 cost of the stock, this resulted in a net profit of between £923 13s 10d and £1,595 13s 10d, equivalent to a "real wage or real wealth" equivalent today of between £137,300 and £237,200. However, it is appropriate to recall that Rustat made a loss on his investment in the Royal Adventurers of the equivalent of (probably) £172,980 (and at least £113,310.)]

8. Rustat appears to have been more active than the average shareholder in the governance of the Royal African Company, but this cannot be stated definitively without a quantitative study comparing his level of participation against other shareholders.

9. There may have been multiple factors behind Rustat's decision to invest in the Royal Adventurers and the Royal African Company and to serve in their Courts of Assistants, just as there were for investors in most early modern trading companies: profit, political motives, loyalty, and the possible economic and social benefits that came from membership. The surviving evidence does not rule out any of these possibilities.

10. Rustat was involved in the Gambia Adventurers.

11. The surviving records concerning the Gambia Adventurers are limited. There is circumstantial evidence that the Gambia Adventurers intended to trade in slaves, and that their forts and factories in west Africa were in fact used to trade in slaves and commodities during the period of Rustat's involvement. Further work would be required to establish whether any direct evidence exists of this trade.

12. Corporate governance in the late 17<sup>th</sup> Century: A comparison between the Court of Assistants of the Royal Adventurers and the Royal African Company on the one hand, and College Councils or boards of directors on the other has value, but it can only be an approximate comparison. A better way to reconstruct the role of individual Assistants is to look at their actual participation in the business of the companies concerned, whilst being aware that sources like minute books do not necessarily reveal the full extent of that participation. A distinction between 'active' and 'non-active' directors is too blunt, given that individuals' levels of involvement fluctuated over time: an individual who had invested over the long term might be active in the Court of Assistants at one point, but not at others. The oath that members of the Royal African Company's Court of Assistants took after being elected also gave them legal responsibilities to the Company, whatever their level of day-to-day involvement. Activity might also have occurred (such as furthering the interests of the Royal Adventurers or the Royal African Company at court) that was not captured by the minute books.

13. Rustat's involvement in the Royal Adventurers: Since Rustat could only have participated in meetings of the Courts of Assistants in the years when he had been elected (agreed as 1664, 1667, 1668, 1669, 1670, and 1671), and given that the Minute Book does not record his name amongst those elected in 1665 and 1666, it was agreed that 1665 and 1666 should be excluded from the table in paragraph 17 of Dr Graham's report of the total of Assistants' meetings. It was agreed that it cannot be determined whether or not Rustat stood for election in 1665 and 1666, or whether he wanted to serve on the Court of Assistants but was not elected. Rustat also participated in the Court of Assistants in 1671, and not 1672. This changes Rustat's participation rate in the Court of Assistants to 12 meetings out of a possible 23, or 52%. On this basis, it is agreed that: (i) Rustat was a reasonably active attendee at meetings of the Court of Assistants of the Royal Adventurers; (ii) his involvement in the later 1660s occurred after the peak of slave trading by the Royal Adventurers; and (iii) some of his early involvement in 1664 may have been related to their business at court. It is agreed, however, that, unlike some other members of the Court of Assistants, he was not elected to committees or given specific roles within its governance, with the caveat that he

may still have supported the Royal Adventurers in ways not recorded in their minute book and other examined records.

14. Rustat's involvement in the Royal African Company: Rustat attended the General Court of the Royal African Company regularly and over a long period of time. He attended very few meetings of the Court of Assistants when he was elected in 1676, 1679, and 1680. Most stockholders were not elected to the Court of Assistants: women investors were not able to serve, nor generally did stock-jobbers, who bought and sold Royal African Company stock in large volumes, or stockholders whose holdings did not meet the minimum threshold. In the sense that he was part of a smaller group that was eligible for election to the Court, Rustat was probably more active than most other investors, although more research would be needed to quantify this precisely, and to establish how large a proportion of the total shareholders this group was, and their own patterns of participation. Of those who did serve on the Court, Rustat was not a regular attendee. It is agreed that the minute books do not necessarily capture all participation by Assistants: this is relevant given Rustat's involvement in the Court of Assistants during the Exclusion Crisis in 1679/80, when his connections to the royal court may have been important, but not captured in the minute book.

15. Wider attitudes to slavery in Britain: Within elite circles in Britain, the majority opinion was more likely to support or accept the institution of slavery than to criticise it. Within Rustat's immediate Anglican and royalist circles, he could have had access to anti-slavery opinion, although the majority of views in his immediate circle were very likely to be pro-slavery, of the kind detailed in Dr Graham's report.

16. The implications of Rustat's dealings with Edward Backwell: Rustat's bank account with Edward Backwell demonstrates his connections to the merchant community. It also suggests that Rustat had a greater level of financial sophistication than the majority of the English population at the time. The available evidence (Backwell's records do not extend beyond 1672, and Rustat may have closed his account by 1671) suggests that Rustat was not as sophisticated financially as someone like Sir Stephen Evance (who is discussed in Dr Edwards's report), who traded stocks in high volume and used other financial instruments. The record of Rustat's transactions in Backwell's ledgers nevertheless shows that he had a similar financial profile to other courtiers and merchants who invested in the Royal African Company.

### Section 2: Areas of disagreement

17. Wider attitudes to slavery in Britain: In terms of early modern attitudes to slavery, and the question of its morality and acceptability (stemming from Dr Edwards's report), the experts still disagree over the best context in which to situate Rustat. Dr Graham emphasises the importance of the context of Rustat's immediate circles in the court and the Church of England, with whom the evidence of Rustat's correspondence and patterns of philanthropy show he was closely connected. Dr Edwards emphasises the importance of a broader context so that, in addition to Rustat's circles, other elites, and voices critical of aspects of slavery, like Thomas Tryon and George Fox, there should be included the opinions of non-elite people in Britain and enslaved people in Africa and the Americas. Dr Edwards emphasises that considering this broader, global context suggests that early modern people across the world did not universally approve of slavery or find it to be acceptable. The experts discussed

the extent to which the existing sources can allow access to non-elite opinion about slavery and the opinions of enslaved people. They agree that there is little direct evidence that speaks to the opinions of non-elites in Britain on slavery. Whilst agreeing that historians have usually accepted the grassroots anti-slavery campaigns of the early 19<sup>th</sup> century described by Dr Graham as evidence of widespread popular anti-slavery attitudes, the experts differ on the extent to which an absence of written evidence, or silence in the sources, about the views of non-elites in Britain on slavery in the late 17<sup>th</sup> century indicates indifference to, or approval of, slavery. Dr Edwards also maintains that it is possible to reconstruct some of the responses of enslaved people to slavery through sources like the State Papers and the records of the Royal Adventurers, in cases where resistance or rebellion occurred; but the experts agree that there is a broader difference of historical opinion on the subject, and resistance by enslaved people has a complex historiography. The experts' differences of opinion in this area reflect their different views of how much weight should be given to Rustat's immediate context when compared to the broader global context of the early modern world.

18. Rustat's involvement in the Royal Adventurers: In terms of Rustat's more frequent attendance at meetings of the Court of Assistants of the Royal Adventurers in the late 1660s, the experts continue to differ over how far this was linked to the formation of the Gambian Adventurers. Dr Graham argues that this may have been an important factor, even if this was not necessarily reflected in the minutes, though agreeing with Dr Edwards that there may also have been other reasons behind Rustat's attendance in this period.

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 1694<sup>1</sup>, 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

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<sup>1</sup> 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