

Any outside demand for disestablishment and disendowment is dead at the present moment. A few political dissenters . . . still hold to the old doctrine of the iniquity of a union between Church and State. But as far as the bulk of the people are concerned, this doctrine is obsolete. . . . I desire that the national life should have its *consciously* religious side. If, as a state, we are purely rationalist and selfish in our motives and aims, we shall degrade the life of the individuals who compose the state. I should desire the Church to become the home of national communal aspirations as well as of the endeavour of the individual towards a better personal life. Meanwhile I prefer the present Church with all its faults to blank materialism . . .¹⁰

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The Peculiar Case of a Royal Peculiar: A Problem of Faculty at the Tower of London

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INTRODUCTION

Her Majesty's Royal Palace and Fortress the Tower of London, less formally known as the Tower of London or simply 'the Tower', was the seat of royal power in England for several centuries following its construction by William the Conqueror in 1078. While now a popular tourist attraction, it remains the home of the Crown Jewels, is a working barracks and maintains many ceremonial traditions of state. Two chapels are located within its walls. Foremost of these is the late eleventh-century chapel of St John the Evangelist (St John's), located within the White Tower, noted as a rare surviving example

¹⁰ B Webb, *Our Partnership*, ed B Drake and M Cole (London, 1948), pp 208–210 (emphasis in original).

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of early Anglo-Norman ecclesiastic architecture.² To the north-west, the Chapel of St Peter ad Vincula (St Peter's) has an equally remarkable history and is a building of singular importance even within the Tower complex. Its origins may be traced, like many London parish churches, to a small, private house-church in the ninth century, before being subsumed within the boundaries of the fortress.³ The chapel, the latest of three documented iterations, was constructed between 1519 and 1520 and is the burial place of many notable figures, including the sixteenth-century queens Anne Boleyn, Catherine Howard and Lady Jane Grey, together with Cardinal John Fisher and the former Lord Chancellor Sir Thomas More, both now venerated as martyrs and saints in the Roman Catholic Church.⁴

Both of the Tower's chapels are chapels royal and royal peculiars. The origins of these designations are fragmented from both a historic and a legal perspective but are concisely described by Avril Cameron in that they are often 'survivals from a period when founders . . . were anxious to keep their foundations independent of episcopal rule'.⁵ To further fracture this designation, the evolution of these institutions—and the nationally important buildings they occupy—are disparate as a result of their incomparable contextual settings. Thus, each chapel royal and royal peculiar is, by definition, unique. It is important to note, therefore, that, because this comment is focused specifically upon the Chapel of St Peter's unique development, the specific legal resolutions outlined here may not be directly applied to other chapels royal or royal peculiars. However, as each of these buildings will, to some degree, encounter the difficulties outlined below, it is hoped that the example of St Peter's will act as a useful guide in similar cases to ensure the protection of these sites and the role of archaeology in their continued maintenance.

CHAPELS ROYAL AND ROYAL PECUILIARS

The Chapel Royal is an institution attached to the Royal Household under the direct patronage of the sovereign. Its primary purpose is to perform choral liturgical services and care for the spiritual well-being of the monarch, though the chapels can also provide spiritual support and pastoral care to a wide range of people, and many act as popular visitor attractions.⁶ Although the designation of chapel royal refers

- 2 J Crook, 'St John's Chapel' in E Impey (ed), *The White Tower* (New Haven, CT, 2008), pp 95–124 at p 95.
- 3 J Haslam, 'Parishes, churches, wards and gates in eastern London', in J Blair (ed), *Minsters and Parish Churches: the local church in transition 950–1200* (Oxford 1988), pp 35–45 at pp 39–41.
- 4 A Keay, *The Elizabethan Tower of London* (London, 2001), p 40; J Llewellyn, *The Chapels in the Tower of London* (London, 1987), pp 1–2.
- 5 A Cameron, *Report of the Review Group on the Royal Peculiars* (London, 2001), p 9. While a discussion of each type of peculiar is not appropriate here, P Barber, 'What is a peculiar?', (1995) 3 *Ecc LJ* 299–312, is an invaluable source in this regard.
- 6 Cameron, *Report of the Review Group*, p 7.

specifically to a jurisdiction or institution rather than any specific building(s), today, the chapels royal in England are closely associated with some of the most significant historic royal sites in the country, including St James's Palace (the Queen's Chapel and the Chapel Royal), Hampton Court Palace (the Chapel Royal), the Tower of London (the Chapel of St Peter ad Vincula and the Chapel of St John the Evangelist) and the Queen's Chapel of the Savoy.⁷

By contrast, royal peculiars relate specifically to particular buildings, or areas within buildings. They are exempt in law and custom from episcopal jurisdiction and the consistory court of the local diocese and are instead subject directly to the jurisdiction of the sovereign.⁸ Peculiar is an apt term. Derived from the Latin *peculiaris*, referring to private property, it denotes primarily the right of jurisdiction, which is held by the sovereign, and the position of peculiars outside the diocesan structure of the Church of England. Although connected, the two designations of chapel royal and royal peculiar are not mutually inclusive. While all chapels royal are royal peculiars, not all royal peculiars are chapels royal, including the notable examples of St George's Chapel (St George's) and the Royal Chapel of All Saints, Windsor; the Collegiate Church of St Peter, Westminster (Westminster Abbey); the Chapel of St Mary Undercroft, Westminster Palace; the Royal Foundation of St Katharine; and Temple Church.

While both designations relate specifically to the spiritual care of and governance by the reigning monarch, in ecclesiastical matters regarding the chapels royal this authority is usually exercised by the Dean of the Chapels Royal, a position which has been traditionally held, since 1748, by the Bishop of London.⁹ The separation of the dean and the bishop is important to note here. While these offices are distinct, and invested separately, their legal separation appears disparate. The Bishop of London is appointed by the sovereign on the recommendation of the Prime Minister and the Crown Nominations Commission, and is then elected and confirmed, overseeing numerous functions of that diocese.¹⁰ The appointment of the Dean of the Chapels Royal, however, is by royal warrant and remains within the gift of the sovereign. The dean 'is immediately Ordinary' under the monarch within the Chapels Royal and has 'sole Jurisdiction . . . both Ecclesiastical and Civil' over those chapels.¹¹

7 Barber, 'What is a peculiar?', p 305.

8 A McGregor, 'Legal Office memorandum: Chapel of Saint Peter ad Vincula HM Tower of London', Diocese of London, 2016, p 2, HRP Archive, Tower of London.

9 'The Dean of Her Majesty's Chapels Royal', <<https://www.london.anglican.org/about/the-dean-of-her-majestys-chapels-royal/>>, accessed 23 April 2022; A Mellows, *The Chapels Royal within the Tower of London* (unpublished report, 2006), pp 23–24. At the time of writing, the Dean of the Chapels Royal is the Right Reverend and Right Honourable Dame Sarah Mullally DBE and the Chaplain is the Reverend Canon Roger Hall MBE.

10 *Choosing Diocesan Bishops: The report of the steering group appointed to follow up the recommendation of 'Working with the Spirit'*, GS1465, available at <<https://www.churchofengland.org/sites/default/files/2018-10/gs1465-choosing%20diocesan%20bishops.pdf>>, accessed 7 June 2022.

11 A Ashbee and J Harley, *The Cheque Books of The Chapel Royal Vol 1* (Aldershot, 2000), p 197.

Within these two roles therefore, the Dean of the Chapels Royal and the Bishop of London exert comparable yet separate levels of authority. Ecclesiastical matters within the Royal Peculiars which are not Chapels Royal are overseen through various measures, usually the appointment of a separate dean under the monarch as Visitor. By contrast, the physical care of both the chapels royal and the royal peculiars is overseen by the Lord Chamberlain.¹²

The continued maintenance of the chapels, though overseen by the Lord Chamberlain, is usually delegated to organisations or individuals associated with each building. Where the chapels in the Tower are concerned, the dean entrusts ‘ecclesiastic’ matters to the chaplain, while the care of the building is overseen by Historic Royal Palaces (HRP) on behalf of the Lord Chamberlain and Secretary of State for Digital, Culture, Media and Sport.¹³ This relationship may call into question the principle of *delegatus non potest delegare*, in that an individual invested with authority on behalf of another (in this case the Dean of the Chapels Royal or the Lord Chamberlain and the sovereign) cannot delegate this authority to another (the chaplain and HRP) without their express authorisation. However, jurisdiction of the building is not fully delegated, as the ‘ecclesiastic’ matters overseen by the chaplain are only those which enable the effective management of liturgy and worship at St Peter’s and St John’s, and the management of the Tower by HRP is covered in detail through numerous documents which reserve certain powers, and ownership, with the Crown.¹⁴

THE PROBLEM

A project initiated in 2018 to improve visitor access throughout the Tower made it necessary to undertake several archaeological excavations outside the western boundary of St Peter’s. Within the Tower of London Scheduled Monument, any works undertaken require permission from Historic England known as Scheduled Monument Consent (SMC).¹⁵ Works that alter an ecclesiastical building or consecrated ground, however, are not covered by SMC and would normally require a faculty to be obtained from the relevant diocesan authorities.¹⁶ A faculty is a ‘permissive right’ to undertake works within an

12 Personal communication from the Reverend Canon Roger Hall MBE and Mr Huw Lloyd (Chapels Royal Trustee); Mellows, *Chapels Royal within the Tower*, p 28.

13 Historic Royal Palaces and the Royal Household, *Memorandum of Understanding* (2018), v.3.c.

14 *Ibid.*

15 Archaeological Areas Act 1979. Section 61(8) includes a provision that excludes ecclesiastical buildings from being scheduled monuments; however, as both St Peter’s and St John’s form part of the Tower of London, they are not exempt from the legal requirement for SMC. This is in order to preserve the Tower of London as a complex group of individual buildings, the settings of each being integral to the others.

16 A burial licence may also be acquired for such works from the Ministry of Justice but was not applicable in this instance as there is no record of the burial ground of St Peter’s being deconsecrated. It is

ecclesiastical building or its grounds.¹⁷ For the exhumation of human remains, this is set out by section 25(2)(a) of the Burial Act 1857, which requires a faculty from the consistory court of the geographically appropriate diocese. The court is defined in section 25(4)(a)–(b) and may also refer to ‘any other court or body referred to in section 9, 16, 19 or 21 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018’, including ‘Arches and Chancery Courts, Court of Ecclesiastical Causes Reserved, Commission of Review and the Privy Council’.¹⁸

This system is the result of the separation of ecclesiastical buildings from the usual constraints of planning legislation, including listed building consent and planning permission. This was enabled by the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, now the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) Order 2010, which requires that controls in lieu of these remain ‘satisfactory’.¹⁹ For most ecclesiastical buildings, these controls are found through an application for faculty. During this process, an applicant is guided by the relevant Diocesan Advisory Committee (DAC), who provide the professional guidance necessary to preserve these buildings. With regard to cathedrals in England, protections are maintained via the Care of Cathedrals Measure 2011 which includes provisions for the exhumation of human remains. Through this Measure, in lieu of faculty, applications are made to the Cathedrals Fabric Commission (CFC) under the guidance of individual Cathedral Fabric Advisory Committees (CFACs), each of which are legally required to appoint a number of advisers, including a suitably qualified archaeologist.²⁰

In the case of royal peculiars, however, a number of problems exist which crystallise the issue of just how ‘satisfactory’ these systems of control really are in this context.²¹ The first of these is the applicability of legislation such as the Burial Act 1857. It could be argued, rather unconvincingly, that, as these buildings fall under the direct jurisdiction of the sovereign—who is not bound by legislation except where explicitly specified—they are similarly exempt. However, the Burial Act 1857 can be judged to override any presumed legal exemption as, although the Crown is not bound by this legislation, this does

therefore not discussed in detail here (see the Church of England (Miscellaneous Provisions) Measure 2014).

17 A Fairclough, ‘Ecclesiastical law and the Church of England’, 2002, available at <<https://www.buildingconservation.com/articles/ecclesiasticallaw/ecclesiasticallaw.htm>>, accessed 9 May 2022.

18 Burial Act 1857; Ecclesiastical Jurisdiction and Care of Churches Measure 2018; I Blaney, ‘The treatment of human remains under the ecclesiastical law of England’, (2021) 23 Ecc LJ 3–18 at 3–7.

19 Cameron, *Report of the Review Group*, p 89.

20 Care of Cathedrals Measure 2011; *Heritage and Renewal: the report of the Archbishops Commission on Cathedrals* (London, 1994), pp 115–123. Except, as set out in s 23(2) of the Care of Cathedrals Measure 2011, where the archaeological significance of that cathedral has been proven to not justify the appointment of a cathedral archaeologist.

21 Cameron, *Report of the Review Group*, p 88.

not extend to either the caretakers of these buildings (in this instance HRP) or those individuals physically exhuming the remains.

The next issue is one of procedure. Because the royal peculiars are beyond episcopal jurisdiction, the courts listed above, presumably excluding the Privy Council, hold no jurisdiction. Combining this with the lack of a legal requirement for the royal peculiars to form or consult a professional governing body, such as the DACs, CFC or CFACs, creates a framework in which these irreplaceable buildings could be altered—potentially causing irreparable damage—either on the basis of no consultation or through a petition to the Privy Council. This is not a suitable replacement for the professional guidance provided to other ecclesiastical buildings by the DACs, CFC and CFACs.²²

The Review Group on the Royal Peculiars (the Review Group) noted two potential resolutions for this issue. The first is through the Care of Places of Worship Measure 1999, which allowed royal peculiars to ‘opt to come within ... faculty’, a permission that is maintained in section 38 of the 2018 Measure.²³ This, however, would require relinquishing some of the independence that makes these unique buildings what they are, which is therefore thought to be unacceptable. Alternatively, new procedures can be established outside of faculty with the agreement of the sovereign and the Secretary of State for Digital, Culture, Media and Sport. This is shown at Westminster Abbey and St George’s, through the creation of a Fabric Commission and a Fabric Advisory Committee respectively.²⁴ These bodies are independent and not bound by either the 2011 or the 2018 Measure, though they are enshrined in the latter, which enables them to comply with the Burial Act.²⁵ Despite this, they largely operate as an amalgamation of the CFC and CFACs and include suitable professional representation (including consultant archaeologists), reporting to the sovereign as Visitor.²⁶ However, as these appointments are made by the institution itself, and owing to the lack of an overarching regulatory body such as the CFC, the Review Group noted that, while these measures were set up with ‘care’, they are somewhat ‘lacking’.²⁷

Irrespective of these solutions, because there is no legal requirement to form such a body it appeared as though works within royal peculiars which have not

22 Professional guidance in this instance can be found through the Advisory Panel on the Archaeology of Burials in England, *Guidance for Best Practice for the Treatment of Human Remains Excavated from Christian Burial Grounds in England* (2017), available at <https://apabe.archaeologyuk.org/pdf/APABE_ToHREFCBG_FINAL_WEB.pdf>, accessed 7 June 2022; P Mitchell and M Brickley (eds), *Updated Guidelines to the Standards for Recording Human Remains* (Reading, 2017), available at <<https://www.babao.org.uk/assets/Uploads-to-Web/14-Updated-Guidelines-to-the-Standards-for-Recording-Human-Remains-digital.pdf>>, accessed 7 June 2022.

23 Cameron, *Report of the Review Group*, pp 88–89.

24 Ibid.

25 Ibid, p 90.

26 Ibid, pp 90–91.

27 Ibid, p 90.

taken either action, such as St Peter's, could still be legally enabled through a formal petition to the Privy Council, as set out in section 25(4)(a)–(b) of the Burial Act 1857, or to the sovereign in person, despite the lack of an appropriate governing body.²⁸ However, the works at the Tower raised further challenges. This procedure requires there to be a defined boundary within which the jurisdiction of the Privy Council or sovereign can be exercised. Unfortunately, the curtilage of St Peter's – if it ever existed – is now lost. Although a number of nineteenth-century plans note an extramural burial ground, these do not conform to archaeological evidence of *in situ* human remains. It was likely, therefore, that these plans only represented a small portion of consecrated ground, its boundaries changing throughout its history. Compounding this already significant issue, a letters patent of 1550 and an Order in Council issued in 1845 under section 10 of the Ecclesiastical Commissioners Act 1836 (discussed further below) appear to have stripped St Peter's of its status as a royal peculiar, bringing it under the jurisdiction of the Diocese of London.²⁹

It soon became apparent, because the status of the chapel was in doubt and the proposed trial excavations were located immediately outside the chapel, within an extramural burial ground of unknown size, with no formal boundary and no record of deconsecration, that it was seemingly impossible to make any formal application for permission to undertake these works. The Diocese of London would not grant a faculty in late 2018, as it was felt that the chapel fell outside their jurisdiction. Likewise, the Dean of the Chapels Royal and the Lord Chamberlain could seemingly not grant permission (as they are not recognised by the Burial Act), and a formal application to the Privy Council would have been premature without definitively proving St Peter's status as a royal peculiar. Clearly, further study was needed to enable both the necessary care of the site and legal compliance. In order to better locate St Peter's within this framework, it was subsequently necessary to assess its history from its foundation in the ninth century to the present day, noting in particular its changing uses and designations. The following sections of this article present this research in chronological order.

EARLY HISTORY OF THE CHAPEL OF ST PETER AD VINCULA

The early location and form of the chapel from the ninth century is unknown.³⁰ It is thought that Henry I (1100–1135) demolished any earlier fabric and constructed a new chapel in around 1110–1128 as part of works to expand the

28 St Peter's and St John's benefit from the guidance of such professionals through their association with HRP but this does not replace the governing body of the chapels.

29 Ecclesiastical Commissioners Act 1836.

30 Haslam, 'Parishes, churches, wards and gates in eastern London', pp 35–45.

fortress.³¹ This new chapel appears to have remained unaltered throughout expansion of the fortress by Richard I (1189–1199).³² Later, though, in the reign of Henry III (1216–1272), significant alterations are attested by the documented replacement of the roof and, following this, the installation of glazed windows, together with ‘large and handsome’ stalls completed by 1240.³³ In addition, a ‘great painted beam’ depicting the Crucifixion, the Virgin Mary and St John was inserted alongside a marble font and several images of saints, clearly showing that the chapel was being used regularly by the reigning monarch.³⁴

During the reign of Edward I (1272–1307), the Tower was enlarged with concentric defences. During these works Henry I’s chapel was demolished; a new chapel was built to replace it in 1286–1287, at a cost of £317 8s 3d.³⁵ Although there are no existing descriptions of this chapel, it has been suggested that it was located to the north of the current chapel, over what is now the crypt (itself contrived from a Tudor basement that served the Board of Ordnance until 1512), though more recent archaeological evidence places it to the south-west.³⁶

Although St Peter’s origins are obscure, some assertions concerning the chapels royal in the thirteenth century may be made.³⁷ The existence of private royal chapels is well understood but, while the institution has been studied extensively, much of the scholarship relates to the subjects of musical, liturgical or institutional development.³⁸ Of these, Ian Bent’s assessment is invaluable in enabling us to observe the designations of individual chapels in this period. In a succinct summary, he states that:

Royal Free Chapels were chapels exempt from episcopal jurisdiction, and under the control of the Chancellor . . . Royal Chapels, on the other hand,

31 Llewellyn, *Chapels in the Tower of London*, pp 1–2.

32 H Colvin, *The History of the King’s Works*, vol II: *The Middle Ages* (London, 1963), pp 708–710; Impey, *White Tower*, p 5.

33 Colvin, *History of the King’s Works: the Middle Ages*, p 715.

34 *Ibid.*

35 *Ibid.*, p 723.

36 G Roberts, *Report on the Crypt of St Peter ad Vincula* (London, 2013); G Roberts, *Report on the Interior Layout of St Peter ad Vincula* (London, 2013).

37 Ashbee and Harley, *Cheque Books of the Chapel Royal*, p xii.

38 S Roper, ‘Music at the English chapels royal c. 1135–present day’, (1927–28) 54 *Proceedings of the Musical Association* 19–33; ‘Music at the English chapels royal’, *Musical Times*, 1 April 1928, pp 354–355; I Bent, ‘The English chapel royal before 1300’, (1964) 90 *Proceedings of the Royal Musical Association* 75–95 at 81; W Jones, ‘Patronage and administration: the king’s free chapels in medieval England’, (1969) 9:1 *Journal of British Studies* 1–23; A White, ‘Privilege’, (1978) 41:3 *Modern Law Review* 299–311; J Denton, *English Royal Free Chapels 1100–1300* (Manchester, 1986); Barber, ‘What is a peculiar?’, F Kisby, ‘Officers and office-holding at the English court: a study of the chapel royal 1485–1547’, (1990) 32 *Royal Musical Association Research Chronicle* 1–61; D Baldwin, *The Chapel Royal: ancient and modern* (London, 1990); Ashbee and Harley, *Cheque Books of the Chapel Royal*; Mellows, *Chapels Royal within the Tower*; McGregor, ‘Chapel of Saint Peter ad Vincula’.

were simply the king's private chapels in castles and manors ... The Chapel Royal ... was the king's transportable equipment for worship.³⁹

The original term 'chapel royal' or *capella regis* appears to have referred only to the king's portable chapel, fixtures, mass paraphernalia and members of the clergy officiating, which suggests that it did not apply to physical structures and instead complemented the peripatetic nature of mediaeval kings who were constantly on the move.⁴⁰ It is similarly difficult to assign the title of royal chapel to St Peter's as, although it was located within a castle, prior to 1320 the role of a 'private' chapel would have been fulfilled by St John's within the White Tower or the chapel within the Blunderville Tower (now the Wakefield Tower), which was then in use as royal lodgings.⁴¹ It appears, then, that the only applicable designation vested in physical structures which could apply to St Peter's prior to 1300 is that of a 'royal free chapel'. This is by no means clear, however, as a set of clerical petitions made to the king by English prelates in 1295 only mentions 'fourteen chapels of the lord King of England'.⁴² Within this petition, no mention is made of the Tower and only two contextually similar chapels to St Peter's are noted: St George's in Oxford Castle and St Martin's in Dover Castle.⁴³

How then can we extrapolate the designation of 'royal free chapel' to St Peter's? A good comparative example is the Chapel of St Edward the Confessor, later St George's, within Windsor Castle. Initially built during the reign of Henry III, the collegiate church of St George was attached to the chapel by Edward III (1327–1377).⁴⁴ Exemption from episcopal jurisdiction was granted by papal privilege in 1351 at the request of Edward III, and oversight delegated to the Chancellor.⁴⁵ The chaplains and clerks working within the chapel were funded through local tithes and its portfolio of land and tenements (which were primarily granted by the Crown). New appointments were within the king's gift, under the overall oversight of a dean appointed by resident canons.⁴⁶

39 Bent, 'English chapel royal', pp 75–79, 81.

40 Denton, *English Royal Free Chapels*, pp 1–15; Bent, 'English chapel royal', pp 75–79, 81, 89–90.

41 V Galbraith, 'The Tower as an Exchequer record office in the reign of Edward II', in A Little and F Powicke (eds), *Essays in Medieval History Presented to Thomas Frederick Tout* (Manchester, 1925), pp 231–47 at p 233; Colvin, *History of the King's Works: the Middle Ages*, p 714.

42 M Powicke and C Cheney, *Councils and Synods with Other Documents Relating to the English Church, Vol II: A.D. 1205–1313. Part II: 1265–1313* (Oxford, 1964), pp 1138–1147.

43 *Ibid.*, p 1146; Denton, *English Royal Free Chapels*, pp 1–15; Bent, 'English chapel royal', p 81.

44 Denton *English Royal Free Chapels*, p 129; A Ashbee and J Harley, 'Records of the English Chapel Royal', (2007) 54:4 *Fontes Artis Musicae* 481–521 at 485; N Saul, *St. George's Chapel, Windsor, in the Fourteenth Century* (Woodbridge, 2005), p 1.

45 W Bliss and C Johnson (eds), *Calendar of Entries in the Papal Registers Relating to Great Britain and Ireland: papal letters. Vol. 3 1342–1362* (London, 1897), p 383.

46 Denton, *English Royal Free Chapels*, pp 119–131; personal communication from Dr Euan Roger; Saul, *St. George's Chapel*, p 4.

A similar, but distinct, structure can be seen at the Tower from at least the reign of Henry III, with funding from the king, the Constable of the Tower and the Master of the Mint, supplemented between 1354 and 1416 through duties on certain goods passing through the Tower granted to St Peter's, many of which continued into the nineteenth century.⁴⁷ From this, it can be inferred that at least a financial system similar to Windsor extended somewhat to St Peter's.⁴⁸ Similarly, it can be assumed that appointments within the Chapel of St Peter, as in the case of all royal chapels, were within the king's gift alone, although these were presumably undertaken from 1312 by the Dean of the Chapels Royal on the monarch's behalf, suggesting that St Peter's was not under episcopal jurisdiction or, at the very least, the bishop never dared assert any authority.⁴⁹ This is understandable given the context of the period, as at this time the Tower, and the area surrounding it, was known as the 'Tower Liberties'. This area was outside the jurisdiction of the City of London, falling under the direct control of the Constable of the Tower and, by extension, the Crown. Subsequently, St Peter's was in custom, if not in name, a royal free chapel.⁵⁰

From 1483 the legal status of these buildings becomes much clearer. With the establishment of the 'Royal Free Chapel of the Household' by Edward IV (1461–1470; 1471–1483), the divergent groups of chapels royal were organised into a coherent structure and the dean aligned with the Lord Chamberlain, Lord Steward and Lord Chancellor.⁵¹ Similarly their endowments were all consolidated within one institution of the Royal Household.⁵² It is still not clear, however, whether St Peter's status relied on its geographical location or any defined legal protections, or was merely exempt by episcopal jurisdiction by custom—relating to the long-standing and accepted treatment of St Peter's rather than in relation to common law alone.

THE PARISH CHURCH WITHIN THE TOWER

Edward I's chapel stood for 225 years, until it was lost in a catastrophic fire in 1512.⁵³ The Tower's other chapel, St John's, had since 1320 been appropriated

47 The National Archives (TNA), MINT 18/35.

48 D Bell, *Notices of the Historic Persons Buried in the Chapel of St. Peter ad Vincula* (London, 1877), p 3; Mellows, *Chapels Royal within the Tower*, p 38; J Bayley, *The History and Antiquities of the Tower of London: with memoirs of royal and distinguished persons, deduced from records, state-papers, and manuscripts, and from other original and authentic sources* (London 1830), p 127.

49 Ashbee and Harley, *Cheque Books of the Chapel Royal*, p xiii.

50 Kisby, 'Officers and office-holding at the English court', p 5.

51 Ashbee and Harley, *Cheque Books of the Chapel Royal*, p xiii; Ashbee and Harley, 'Records of the English Chapel Royal'.

52 Baldwin, *Chapel Royal*, p 40.

53 K Mears, *The Tower of London: 900 years of English history* (London, 1988), p 62.

as an archive by the Exchequer Record Office.⁵⁴ As such, a new place of worship was required within the fortress and a 'parish church within the Tower' was constructed between 1519 and 1520 by Sir Richard Cholmondeley, then Lieutenant of the Tower.⁵⁵ By the early sixteenth century, royal occupation of the Tower had long ceased, apart from the symbolic night that monarchs spent within the walls before their coronations. The royal apartments were dilapidated by the end of the century, and the Great Hall was reported as derelict in 1564–1570.⁵⁶ While clearly no longer a functioning royal chapel, the new building appears to have been beyond episcopal reach, although in April 1550, a letters patent issued under Edward VI stated:

the church and parish of St. Peter within the Tower of London (with precinct and territory) . . . are exempt from ordinary jurisdiction and lie within the city and suburbs of London . . . Now the king separates the above exempt places from all jurisdiction save that of the diocese of London and annexes them to the diocese and bishopric of London to be at the collation of the Bishop of London.⁵⁷

It is important to view this letters patent in the context it was given. The tradition of appointing the Bishop of London as Dean of the Chapels Royal dates from 1748 and therefore, in 1550, this letters patent can only relate to the Bishop of London as a separate and distinct office and, subsequently, a distinct jurisdiction. The ceding of this jurisdiction to the Bishop of London appears to be supported by old cheque books of the Chapel Royal which survive from 1580.⁵⁸ While these documents are not related to the jurisdiction of individual buildings, only the chapels royal at Greenwich, Hampton Court, Whitehall, Westminster, Windsor and St James's are mentioned; there is no mention of St Peter's. This could indicate, therefore, that the chapel was omitted because of the cessation of its peculiar jurisdiction. It remains perplexing, however, if this were the case, that there is no evidence that a bishop of London ever

54 Galbraith, 'The Tower as an Exchequer record office', pp 233–236; Impey, *White Tower*, p 150; TNA, E01, 469/3.

55 'The King's book of payments, 1519', in J S Brewer (ed), *Letters and Papers, Foreign and Domestic, Henry VIII, Volume 3, 1519–1523* (London, 1867), pp 1533–1539, available at <<http://www.british-history.ac.uk/letters-papers-hen8/vol3/pp1533-1539>>, accessed 23 September 2021.

56 G Parnell, 'Ordnance storehouses at the Tower of London, 1450–1700' (1996) 18 *Château Gaillard* 171–179 at 171–173.

57 R Newcourt, *Repertorium Ecclesiasticum Parochiale Londinense: comprising all London and Middlesex, with the parts of Hertfordshire and Buckinghamshire to the said diocese belonging*, 2 vols (London, 1708), vol 1, p 530; *Calendar of the Patent Rolls Preserved in the Public Record Office: Edward VI. Vol. III 1549–1551*, (London, 1925), pp 171–172.

58 Ashbee and Harley, *Cheque Books of the Chapel Royal*, pp xviii–xix. The cheque books document various aspects of the chapel royal's activities, including the membership of the institution, alongside day-to-day liturgical functions and purchasing of Mass paraphernalia and decorative fittings and furnishings.

attempted to exert this authority, although, as mentioned, the existence of the 'Tower Liberties' may go some way to explain this.

Jurisdictional confusion aside, St Peter's was clearly being used in a manner akin to a parish church rather than a royal peculiar, as recorded by the many burials during this period. Though incomplete, the burial, baptism and marriage registers survive from 1550, 1580 and 1587 respectively until 1821.⁵⁹ These registers show an average number of interments as between 6 and 27 per annum, which, although modest, would result in thousands of burials within the Tower between the sixteenth and nineteenth centuries. Evidently, by 1597 the number of burials had become a problem, with a complaint that 'Ther is not wth in the Tower anie place sufficient for their burialls'.⁶⁰ Some evidence for the positioning of the burial ground is provided by William Hayward and John Gascoyne's survey in 1597.⁶¹ While it does not note the burial ground specifically, its location can be inferred by the existence of nearby buildings including ordnance warehouses located to the north and east.⁶² These buildings exclude those areas from non-secular activities and indeed it is likely that their construction resulted in destruction or disinterment of earlier burials. The most likely areas of consecrated ground, then, were identified to the south and west of St Peter's.

By the seventeenth century, although it remained part of the Crown estate, the Tower's decline as a royal residence was largely complete. No relationship is seen between St Peter's and the monarch apart from several gifts presented to the chapel by Charles I, and there is no evidence for the reversal of the 1550 letters patent.⁶³ Matters are somewhat muddled, however, by the speed of ecclesiastic, political and cultural change during this period. Following the execution of Charles I in 1649, the chapels royal became redundant in England and no further notes were made in the Old Cheque Book until 1660.⁶⁴ In addition, the abolition of the episcopacy in 1646 left the jurisdiction of many churches, including the former chapels royal, in Presbyterian limbo.⁶⁵

59 Register of the Chapel Royal of St Peter ad Vincula: marriages 1580–1752; baptisms 1587–1821; burials 1550–1821.

60 Keay, *Elizabethan Tower of London*, p 40.

61 Excerpt of the copy of the Hayward and Gascoyne map of 1597 made for the Society of Antiquaries of London in 1741 (HRP02178), <<http://www.bl.uk/onlinegallery/onlineex/crance/a/007zzz0000000008u00042000.html>>, accessed 13 June 2022.

62 Parnell, 'Ordnance storehouses at the Tower of London', p 171; H Colvin, *The History of the King's Works*, vol III: 1485–1660 (part I) (London, 1975), p 264, n 2.

63 Llewellyn, *Chapels in the Tower of London*, p 16.

64 Baldwin, *Chapel Royal*, p 55.

65 'October 1646: An Ordinance for the abolishing of Archbishops and Bishops within the Kingdom of England, and Dominion of Wales, and for settling of their Lands and Possessions upon Trustees, for the use of the Commonwealth', in C H Firth and R S Rait (eds), *Acts and Ordinances of the Interregnum, 1642–1660* (London, 1911), pp 879–883, available at <<http://www.british-history.ac.uk/no-series/acts-ordinances-interregnum/pp879-883>>, accessed 23 September 2021.

Following the Restoration, the chapels royal returned. The Old Cheque Book holds some notes documenting this process, but yet again the Tower's chapels are absent. Likewise, the Church of England was reinstated as an episcopal church with the monarch at its head through various acts from 1660 to 1689.⁶⁶ At the Tower, royal authority was reaffirmed through various means, including the appointment of a new Master of the Jewel House, and physical works were undertaken throughout the fortress, including the partial reconstruction of St Peter's bell tower.⁶⁷ The largest alteration to the building in this period was the installation (by 1755) of a gallery projecting from the northern and western internal elevations, to accommodate the increased congregation following the expansion of the Tower's garrison.⁶⁸

This leaves St Peter's in a somewhat strange position, as in this period the building was not used as a royal chapel but as a garrison church, a symptom of the decline in the use and status of the Tower as a royal residence, a position reinforced though St Peter's omission from the Old Cheque Book. However, it appears that St Peter's was still intrinsically linked to the Tower as a royal property, if not a royal residence, as, while there is no evidence of the reversal of the 1550 letters patent, a similar void remains regarding the Bishop of London exerting authority over the building. It appears, therefore, that the true status of the building cannot be satisfactorily defined in this period.

GARRISON CHAPEL TO CHAPEL ROYAL

Some of the most important alterations to St Peter's occurred in the nineteenth century and it is the first period in which the position of the chapel's extramural burial ground could be mapped in any detail. A plan of the Tower drawn in 1824 shows the northernmost section of Tower Green and a considerable portion of the parade ground, located to the north of the White Tower, as being consecrated ground.⁶⁹ An additional area noted as a 'proposed addition to the burial ground' stretches further east but it is unknown whether this expansion was ever implemented. While this document is essential to any archaeological assessment of the area, we know from historic excavations which have encountered either disarticulated or *in situ* burials that all of the remains, save one, were located outside this boundary.⁷⁰ As such, the actual extent of consecrated ground, or

66 M Harmes, *Bishops and Power in Early Modern England* (London, 2015), p 86; M Harmes, 'The universality of discipline: restoration of the English episcopacy 1660–1688', (2010) 33:1 *Renaissance and Reformation/Renaissance et Réforme* 55–79; A Whiteman, 'The re-establishment of the Church of England, 1660–1663', (1955) 5 *Transactions of the Royal Historical Society* 111–131.

67 H Colvin, *The History of the King's Works*, vol V: 1660–1782 (London, 1976), p 383.

68 TNA, Work 5/25.

69 TNA, MPH 1/893/6.

70 G Keevill, *HM Tower of London: the Parade Ground: a report on its archaeological potential*, 2018; Oxford Archaeological Unit, *TOL 6* (Oxford, 1995); Pre-Construct Archaeology, *TOL 101* (London, 2006);

at least ground known to have the potential to contain human remains, can be presumed to be considerably larger than the area identifiable in 1824.⁷¹

This area was further altered following a catastrophic fire in 1841, which tore through the Grand Storehouse, a large building constructed in 1688 immediately to the east of the chapel.⁷² Its replacement in 1844 was the Waterloo Block, which now houses administrative offices and the Crown Jewels, the construction of which resulted in a significant proportion of the burial ground identified in 1824 being destroyed.⁷³ At that time, advice was sought from Sir John Dodson, the Queen's Advocate-General, on the removal of human remains interred there. Dodson stated that the chapel was a 'Royal Demesne' and was subject only to the jurisdiction of the Crown.⁷⁴ This is curious given that no reversal of the letters patent of 1550 is shown, suggesting that jurisdiction of the chapel in this period owed more to its geographical location within the Tower than any documented legal framework. Subsequently, in 1845, an Order in Council was made under section 10 of the Ecclesiastical Commissioners Act 1836, stating:

upon and after the same first day of January all parishes places locally situate within the limits of the ... dioceses of Canterbury, London, Winchester, Chichester, Lincoln and Rochester and of the several archdeacons thereof respectively, and all churches and chapels of the whole clergy ... locally situate within the limits of such parishes and places respectively, shall, notwithstanding any peculiar jurisdiction which any of such parishes places churches chapels or clergy may now possess or be subject to or claim to possess or be subject to respectively, under and subject to the jurisdiction and authority of the bishops of the said several dioceses and of the archdeacons of the several archdeacons ... they shall respectively be so locally situate and to no other eccl^l jurisdiction whatsoever, *except* the cathedral churches of and within the said several dioceses *and the royal residences and the churches of chapels founded therein or annexed thereto.*⁷⁵

The applicability of this Order has been the subject of two studies, though neither mentions the 1550 letters patent nor addresses whether by this stage

Historic Royal Palaces, *TOL 157* (London, 2016), all in HRP Archive, Tower of London. An Iron Age burial was discovered in the Inner Ward to the north of the Lanthorn Tower in the twentieth century but this was excluded from this assessment due to its considerable age.

71 TNA, MPH 1/893/6.

72 HRP Archive, Tower of London, HRP21183.

73 TNA, MPH 1/910/5.

74 McGregor, 'Chapel of Saint Peter ad Vincula', p 3.

75 Order in Council, 8 August 1845, TNA, PC 2/227 (emphasis added). See also Barber, 'What is a peculiar?', pp 304–305.

St Peter's actually had a peculiar jurisdiction to abolish. It was argued by Professor Anthony Mellows in 2006 that this provision for 'royal residences' included those chapels at the Tower and that they are therefore beyond the jurisdiction of any bishop or faculty.⁷⁶ Interestingly, though, he notes that a previous dean of the Chapels Royal, Dr Graham Leonard (Bishop of London between 1981 and 1991), had attempted to bring the chapel of St John within his jurisdiction as Bishop of London. By what legal basis this was undertaken is unclear as it predates the 1994 Order which enabled such a change.⁷⁷ No further evidence of this is available but, while it was clearly unsuccessful, it suggests that there was lingering doubt over the legal position of the Tower's chapels, the procedural format which enables their protection and the disparate nature of the offices of bishop and dean, which, while distinct, lack any defined legal separation.⁷⁸

By contrast, Alexander McGregor—assessing the chapel in the context of an archaeological excavation in 2016—argued that the 1845 Order in Council stripped the chapel of its peculiar status, as the Tower could not be regarded as a 'royal residence'.⁷⁹ McGregor notes the decision of the Court of Appeal in *Combe v De La Bere* (1882) 22 ChD 316, concerning the Palace of Westminster, which held that, even in cases where a palace was in the ownership of the Crown (such as Westminster), it could not be upheld as a royal residence, and therefore peculiar, by dint of the Crown's ownership alone.⁸⁰ A royal palace could only be considered as such if it was a regular place of residence for the monarch or kept so that the monarch could immediately reside there. McGregor also noted the House of Lords case of *Attorney-General v Dakin* (1869–70) LR 4 HL 338, in which Hampton Court Palace was similarly not substantiated as a royal residence.⁸¹ This case interestingly notes that, despite parts of Hampton Court Palace being granted as grace-and-favour residences to a number of individuals, who could theoretically leave to provide the monarch with a place of residence, this did not form a regular place where the monarch could immediately reside. This argument could therefore be applied to all residences at the Tower, many of which are still occupied.

Of all the royal palaces, the Tower had ceased to be an occupied royal residence long before any others. If Westminster or Hampton Court could not be considered royal palaces, the Tower surely could not be either. As a result, irrespective of whether St Peter's had a peculiar jurisdiction to abolish, both St Peter's and St John's presumed peculiar statuses would have ended with the Order in Council of 1845. They would therefore be subject only to the

76 Mellows, *Chapels Royal within the Tower*, pp 33, 111.

77 Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994.

78 Mellows, *Chapels Royal within the Tower*, pp 111–112.

79 McGregor, 'Chapel of Saint Peter ad Vincula', pp 3–5.

80 *Ibid*, p 4.

81 *Ibid*, p 4–5.

jurisdiction of the Diocese of London ‘and to no other ecclesiastical jurisdiction whatsoever’.⁸²

To bring the challenges back to the present day, it therefore appears that, after 1857, only the Diocese of London had the authority to grant a faculty for the exhumation of human remains. However, the practical application of this conclusion remains confused. This is shown by the reorganisation of interments in St Peter’s by Doyne Courtenay Bell in 1876–7.⁸³ It appears that permission for these works was obtained merely through consulting Queen Victoria herself, rather than any defined legal process. This may have been because the remains of several former queens were disturbed and it was felt appropriate to consult the monarch, but these actions seem to disregard the position of the chapel following the Order in Council of 1845.

In the twentieth century, the gradual decline of the Tower’s garrison and its rise as a tourist attraction resulted in St Peter’s regaining some of the intimacy that had been lost during its later history. In relation to the chapel’s status though, the only change which occurred was in 1965, when St Peter’s was rededicated as a royal peculiar and chapel royal.⁸⁴ The chapel was then officially designated in 1966 as a chapel royal, and therefore a royal peculiar, by Robert Stopford, then Bishop of London and Dean of the Chapels Royal.⁸⁵ This development is one of the most curious in the evolution of St Peter’s as the reasoning behind it is unclear. Was it perhaps that doubt was raised over the status of the building? Or was this a religious gesture only related to the status of the Tower, as opposed to the governance of the building?

In any case, the statutory force of this dedication has been debated. McGregor argues that ‘Only a subsequent Act of Parliament or a legislative instrument made under the authority of an Act of Parliament could legally have the effect of removing . . . the Chapel from the diocese.’⁸⁶ However, Mellows contends that, as such a dedication is performed under the authority of the Crown, and the Crown is not bound by statutes unless specified, the dedication can be upheld as holding statutory force regardless.⁸⁷ As a result, it can be said with some certainty that from 1966 the chapel was, once again, beyond episcopal jurisdiction. This is further reiterated in a memorandum of understanding between HRP and the Royal Household, last renewed in 2018, which states

82 Ibid, p 5.

83 TNA, Work 14/1/16.

84 Mellows, *Chapels Royal within the Tower*, p 38, citing Lord Chamberlain’s Memorandum of 17 September 1965.

85 McGregor, ‘Chapel of Saint Peter ad Vincula’, p 5. This is an important distinction as, while the same individual may be invested with both of these titles, that individual cannot issue authority in one role while acting in the capacity of the other.

86 McGregor, ‘Chapel of Saint Peter ad Vincula’, p 5.

87 Mellows, *Chapels Royal within the Tower*, p 32.

that ‘The chapels are Royal Peculiars . . . they are not part of the Church of England, and . . . are not subject to the jurisdiction of any bishop’.⁸⁸

CONCLUSION

Each of the chapels royal and royal peculiars have complicated histories, which have resulted in a profoundly complicated legal position.⁸⁹ For much of its history, the status of the Chapel of St Peter ad Vincula was informal, or nebulous at best. The 1550 letters patent explicitly strips it of its status and the 1845 Order’s application to the Tower is supported by case law, as the site cannot be reasonably argued to be a ‘royal residence’.⁹⁰ However, the rededication of the Tower’s chapels in 1965–1966 extinguished any lingering doubt that the Tower’s chapels are both chapels royal and royal peculiars. Nevertheless, the caretakers of these buildings cannot be reasonably argued to benefit from the Crown’s exemption from legislation such as the Burial Act. Therefore, at present, it is clear that works which require the exhumation of human remains *within* St Peter’s may only be undertaken with the express permission of the sovereign (likely via the Privy Council as set out in section 25(4)(a)–(b) of the Burial Act 1857). However, the extramural burial ground of St Peter’s appears not to have been included in the 1965–1966 rededication.⁹¹ From this, it can be asserted that the 1966 rededication created what is, in effect, a new royal peculiar, with boundaries defined by the outer walls of the chapel; this, having being done under the authority of the Crown, can be upheld as having statutory force.⁹² With regard to the extramural burial ground, because of its omission the only recourse is to observe the most recent change in the burial ground’s history that explicitly exerts statutory force over it: the 1845 Order in Council, which results in its jurisdiction remaining within the Diocese of London.

This conclusion creates a distinction between the burial ground, which remains under the jurisdiction of the Diocese of London, and St Peter’s as a chapel royal and royal peculiar, under the authority of the Crown. Based on this understanding, for works within the burial ground, HRP are able to apply for a faculty from the Diocese of London in a manner in keeping with the Burial Act 1857. This is the process that was used to proceed with the archaeological exhumation of two *in situ* burials in early 2019. The burial ground accordingly benefits from the professional guidance of the Diocese of London DAC, enabling the professional standards set out by the Advisory Panel on the Archaeology of Burials in England and Chartered Institute for Archaeologists

88 Historic Royal Palaces and the Royal Household, *Memorandum of Understanding*.

89 Cameron, *Report of the Review Group*, p 77.

90 Order in Council, 8 August 1845, TNA, PC 2/227.

91 Cameron, *Report of the Review Group*, p 78.

92 Mellows, *Chapels Royal within the Tower*, p 32.

to be followed, thereby ensuring that any present human remains are treated with the appropriate respect and formality. This separation, however, is only possible due to the unique history of St Peter's. Had this resolution not been achieved, a burial ground of unknown size, with no formal boundary and no record of deconsecration, would lie solely under the jurisdiction of the sovereign and, therefore, the Privy Council. At the same time, the caretakers of the site, HRP, would remain governed by the 1857 Act and therefore even the most routine of works would require a formal petition to proceed.

While this separation provides a reasonable legal solution for the works carried out in 2019, and is supported by case law, it does not provide St Peter's with the guidance and protection provided to other ecclesiastical buildings by the DACs, CFC or CFACs. These bodies are equipped, and legally required, to provide archaeological guidance and work seamlessly and expediently alongside archaeologists on the ground, ensuring best practice both spiritually and archaeologically. The Privy Council, in contrast, is not. Given the existing systems of governance over the royal peculiars, this presents a worrying situation within the context of the day-to-day maintenance of these sites. Indeed, with regard to St Peter's the only form of professional guidance for the chapel proper in these matters is provided by a separate organisation, HRP, a relationship which is not replicated in the other chapels royal and royal peculiars. It is clear then that the 'satisfactory' controls described by the Review Group which enable such independence do not exist in this instance, a situation which is certainly replicated within a number of these irreplaceable buildings.

The chapels royal and the royal peculiars are a profoundly important part of England's history, inhabiting some of the most important ecclesiastic buildings, both architecturally and spiritually, in the country. They are, in historic and architectural terms, more akin to cathedrals than parish churches and no more concise an aspiration can be made than Averil Cameron's that 'this is a heritage that should be loved and preserved'.⁹³ Preservation, though, often requires intervention, and intervention within such important buildings should strive to follow appropriate professional guidelines. As the Review Group noted, 'change is possible with the agreement of the Sovereign' and 'It is in the interests of the Royal Peculiars and ... the Sovereign to have regard to ideas of good practice', which is 'in no way incompatible with ... their status ... or with their independence'.⁹⁴ Change should therefore be made to bring these nationally important buildings within the folds of accepted best practice. As discussed above, two undertakings are possible to achieve this and were noted by the Review Group. The first, to opt into faculty, is enshrined in section 38 of the 2018 Measure but would surrender the independence of these

93 Cameron, *Report of the Review Group*, p 97.

94 *Ibid*, pp 77, 79.

buildings to their relevant diocese.⁹⁵ As their independence is so integral to their history, this would clearly be an unrealistic suggestion. The creation of a Fabric Commission or Fabric Advisory Committee for each royal peculiar, such as those at St George's and Westminster Abbey, is therefore the only means by which each of these irreplaceable buildings can ensure that they benefit from appropriate guidance and best practice—while maintaining their independence.

A new Fabric Advisory Committee should therefore be created with appropriate urgency as a permanent advisory body for the Tower's chapels, the jurisdiction of which should include the extramural burial ground. This committee should include the appointment of those professionals found within the CFACs, including a chapel archaeologist with duties akin to those of the cathedral archaeologists, providing advice on both the below-ground and the built archaeology of the site, and indeed on other concerns of alteration, recording, methodology and professional standards. This would be in no way incompatible with HRP's stewardship of the fabric or with St Peter's status as part of a scheduled monument but would, instead, provide the chapels with a means to ensure their independence within these relationships. The Review Group, however, was correct to note the considerable issue of internal appointments and the lack of an overarching governing body. The creation of a new body, akin to the CFC, with oversight over the royal peculiars and answerable to the sovereign, should therefore be discussed in due course to formalise these protections. It is only through this, or similar action, that the continued maintenance and protection of these internationally important sites, and their caretakers, can be appropriately protected in the eyes of the law.

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Bishop Roger Herft: The Determination of the Episcopal Standards Board of the Anglican Church of Australia

GARTH BLAKE AM SC

Chair of the Safe Ministry Commission of the Anglican Church of Australia

95 Ibid p 89; Ecclesiastical Jurisdiction and Care of Churches Measure 2018.