

# Principles for Restitution

A Guide to Stewardship

Sir Trevor Phillips OBE and Lara Brown





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## Endorsements

“During my time as Minister for Arts & Heritage, I encountered numerous examples of the requests that our museums and other cultural organisations sometimes receive for restitution of items in their care. As a historian, I always found these cases particularly interesting — and was struck by the thoughtful and detailed way the custodians and trustees of our public collections invariably approached them. Sadly, this nuanced and scholarly approach is not always reflected in the wider public debate about the topic, or the way that it is often reported or discussed online. That is why I welcome this balanced and thoughtful contribution to the debate by Sir Trevor Phillips and Lara Brown. This Policy Exchange report builds on work the sector has undertaken in recent years, guidance issued by Arts Council England in 2023, and the passage of the Charities Act 2022.

Some have argued that the last of these offers a way of circumnavigating the safeguards which exist to ensure that any question of disposing of items in our public collections is preceded by careful thought. I think that is a mistakenly creative reading of the Act, and certainly not what the Special Public Bill Committee which considered it — chaired by a former Master of the Rolls — envisaged. As Minister, I sought to make this clear through our plans for the commencement of the Act, and hope the new Government will do the same.

There is no such thing as a ‘final draft’ of history. We should not shy away from constant reappraisal of the past, nor from confronting aspects of it which might make us uncomfortable today. But we must be wary of moral absolutes or beguilingly easy answers which take us further away from what we owe to all those who came before us: an ever more rounded of the past, in all its complexity.”

**Lord Parkinson of Whitley Bay**, Shadow Minister for Digital, Culture, Media and Sport and former Minister for Culture, Media and Sport

“The History Matters project initiated by Policy Exchange is a really valuable contribution to the debate about how countries reflect on their past in a contemporary context. One of the most practical challenges is how to deal with the tangible objects representing that past both indigenous and from other cultures and jurisdictions. In recent years this space has become nothing short of a battleground as competing ideologies and interests and the rise of ‘cultural chauvinism’ lay claim to the restitution of individual objects where provenance, mode of acquisition and accessibility to the public are treated as passing collateral damage to the imperative to ‘send them back.’ Amidst the often acrimonious debate trustees of museums and curators of the past trying to promote the understanding of objects in their care in the context of the ascent of international civilisation are caught in the cross fire and demonised as the defenders of looted treasure houses. Clarity is desperately needed before world treasures in our world museums are shipped off to satisfy contemporary political agendas or diplomatic niceties that treat them simply as tradeable commodities rather than the important markers of our shared history that they are. The suggestion of a set of principles to act as ground rules when contentious claims are made is an eminently sensible contribution to this debate and I hope that they will be taken forward at the highest level and provide the foundations for a future where the world has the greatest exposure to treasures of the world’s multivarious cultures without reducing our greatest museums simply to narrow showcases of domestic production only.”

**Tim Loughton**, former Chair of the APPG Archaeology and APPG British Museum, Fellow of the Society of Antiquaries and former MP for East Worthing and Shoreham

“Museums are among the UK’s most valuable institutions. I am a long-time admirer of the work of the Policy Exchange History Matters programme and its quest to protect our great national institutions from the maws of wokery. It is paramount that our institutions are guided by historical evidence and due process rather than by contemporary politicised fashions and I urge all museum stewards and parliamentarians alike to absorb the great lessons contained within this Policy Exchange paper – whether they are considering claims for restitution or debating the subject in Parliament.”

**Lord Roberts of Belgravia**, English Historian and Vice Chair of the Archives and History APPG

“Policy Exchange’s report, Principles for Restitution, offers a sensible, coherent, useful and thoughtful contribution. The paper feels informed and balanced, wise rather than provocative, and it covers all aspects the debate.”

**Sir Nicholas Coleridge CBE DL**, Chairman of Historic Royal Palaces

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## Executive Summary

Museums are among the UK’s most trusted and valuable institutions. They are curated not only for those who live in our society today, but for the citizens of tomorrow, as well as those who visit our shores. As crucial institutions which underpin our civilisation and civic society, museums are a global resource, a core means by which we preserve the shared story of our past for all of humanity.

Museum directors, trustees, and curators, as stewards of their collections, should be united in their desire to preserve the past for future generations. Change in the way that the nation understands and represents our past is not novel. However, in recent years, these stewards have been drawn into an intensely political struggle as to how the past is presented and interpreted. In some cases this has led to the alteration of public history – including changes to how exhibitions are curated, how items are displayed or, indeed, whether they should be displayed at all – without a rigorous and non-partisan approach having been taken.

Policy Exchange’s History Matters project was established in June 2020 to address widespread national concern about the growing trend to alter public history and heritage without due process. Through the regularly updated History Matters compendium, we have been documenting attempts at historical re-interpretation and re-invention, gathering evidence about the processes by which changes to the national teaching and display of history have been made. In 2021, this led to us publishing the Principles for Change, authored by Sir Trevor Phillips, that put forward a set of key overarching principles applicable to any institution and to any context by which proposals to reinterpret our history should be assessed. These principles have in turn formed the basis of the recently published ‘Guidance for custodians on how to deal with commemorative heritage assets that have become contested’.<sup>1</sup> Colloquially known as ‘retain and explain’, this offered the custodians of English heritage a vital reference point when dealing with contested monuments, street names, and commemorative sights.

One element of contested history that was covered neither by Policy Exchange’s Principles for Change, nor the subsequent DCMS guidance, was the subject of ‘restitution’, whereby museums are asked to return items from their collection to a nation, group or individual who is perceived to have a better claim to them. Restitution has sometimes been presented as a way for museums to ‘right the wrongs of the past’ or to ‘return items to their rightful owners.’ This has often taken place in parallel with wider campaigns on ‘decolonisation’, in which museums are asked to reinterpret their collections according to specific, and often contested, theories of

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1. Gov.UK, ‘Guidance for Custodians on How to Deal with Commemorative Heritage Assets That Have Become Contested’, 5<sup>th</sup> October 2023, [link](#).

history. The debate about museums has been radically shifted away from one about stewardship, to one of ownership.

In practice, claims for restitution vary greatly in legitimacy. At one end, lies the restoration of objects looted by the Nazis during the Second World War to their immediate descendants, a process to which there is close to universal agreement. At the other lie cases where an object's provenance and original creators are unclear, where there may be multiple claimants to an object, or where the object was obtained lawfully under the laws existing at the time. The merits of such cases are frequently highly disputed on historical, philosophical and political grounds.

In the UK, museums are not directly managed by government officials. Instead, they are overseen by trustees, directors, and curators – all stewards of the items they hold in trust, who will have a comprehensive understanding of the complexity of their collections. It is, rightly, these stewards who will act as decision makers when it comes to questions of restitution.

Museum stewards are, however, offered very limited advice on the question of restitution. Guidance from Arts Council England asks stewards to make an 'ethical' decision with little information about how this should be reached. In some cases, this means that such decisions can be devolved to working groups or subject to undue influence by campaign groups who may not represent the broader public interest and who do not approach issues with the non-partisan approach that is required.

This paper does not seek to alter who is responsible for resolving requests for restitution. Instead, the goal is to offer a guide to stewards as they consider such requests, by establishing eight 'Principles for Restitution'. Collectively, these offer a guide for museum stewards considering a request for restitution.

## Principles for Restitution

- 1. Stewards must abide by the law of the land, as well as the founding documents, constitutions, statutes, or trust deeds of their institutions. They should also consider any conditions attached to an individual bequest.**
- 2. Stewards should seek impartial and expert advice about whether an item was legally obtained.**
- 3. Stewards should consider the strength of connection between the person or persons calling for the restitution of the artefacts and the origins of those objects.**
- 4. Stewards should consider the relative significance of the object to the institution in which it currently resides, the global significance of the object, and the significance of the object locally to the group making the claim.**

- 5. Stewards should consider the future preservation of the object. Is there evidence those making a claim have the capacity and intention to preserve it for future generations?**
- 6. Stewards should consider the public accessibility of the object, in both its current position and if it were to be granted to those claiming it. This should include a consideration of the interests of any relevant diaspora.**
- 7. Stewards should consider where the object has the greatest educational benefit.**
- 8. Stewards should conduct a full consultation of their visitors and the wider public before returning an object.**

The burden of proof should always lie with those who seek restitution. Applicants for return must demonstrate a powerful case according to the principles outlined above.

For each Principle, the passage of time will be relevant. Restitution is a complex topic because in many cases the states claiming ‘ownership’ of an artefact are much younger than the antiquity they wish to be returned. As the eminent historian and author of Policy Exchange’s paper on The Elgin Marbles, Sir Noel Malcolm, has observed, ‘no reasonable person demands compensatory or corrective action today for the invasive wars which criss-crossed Europe before the twentieth century’.<sup>2</sup> This basic human intuition recognises that actions of the past which ‘were as morally wrong then as they would be now’ cannot meaningfully be corrected or compensated for through legal retribution. As Sir Noel explains:

*If we really had to seek ways of correcting the injustice of the Norman Conquest, or the Dissolution of the Monasteries, or a hundred other wrongs of that kind, our moral universe would become unnavigable.<sup>3</sup>*

There are, for example, no popular movements to compensate the descendants of those who suffered during the Harrying of the North from 1069-70. These events were so long ago that legal recourse would no longer be useful. Conversely, there is, rightly, an active movement seeking to return the products of Nazi loot to their Jewish owners, or the immediate descendants of these owners, because the horrors of Nazi Spoliation occurred within living memory.

It is also important to note that the longer that an artefact has resided in a British museum, the more cultural significance it is likely to have to Britain. The Elgin Marbles, for example, have resided in London for two centuries, in which time they’ve been written about, argued over, painted, and adored – in the process, causing them to become of cultural significance to the UK.

It is impossible, and ultimately arbitrary, to determine a precise date after which an action acquired ‘historic’ status. In places where an artefact

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2. Policy Exchange, ‘The Elgin Marbles: Keep, Lend or Return: An analysis’, March 2023,

3. Ibid, p.41.

was wrongly obtained, active justice must cover the lifetime of the victim from whom an artefact was stolen, and the lifetime of those in the community who may remember and miss the object. The passage of one hundred years, or the course of a human lifespan, offers a helpful heuristic for understanding the point of which an action becomes 'historic'. The period of a century should not be understood as a clear cut off but should instead act as a guide for stewards assessing claims.

## Recommendations

1. When considering a request for restitution, museum stewards should pay heed to the Principles for Restitution.
2. The Department for Digital, Culture, Media & Sport should publish the Principles for Restitution as guidance for museum stewards.
3. When considering a request from a charity to return an artefact, the Charity Commission, Attorney General, or court asked to grant permission should abide by the Principles for Restitution when making their decision.
4. Before section 15 & 16 of the Charities Act 2022 are commenced, guidance should be issued to clarify that 'ex gratia payments' must be financial, and do not extend to the transfer of an artefact.
5. If stewards choose to return an artefact, they should be bound by a six-month cooling off period. This will allow visitors in the UK to see the artefact and will prevent hasty decisions.
6. Decisions about restitution should be taken at the highest level of a museum, involving the trustees, directors, and head curators. Decisions should never be devolved to a committee or working group.
7. A UK Museum should almost never bear the cost of returning an artefact. The cost of transportation should, with rare exceptions, be borne by the claimant.
8. In line with their obligations to safeguard their collections, stewards should never loan an artefact to a country which does not accept the museum's legal ownership of the item.
9. The British Museum Act 1963 should not be amended to allow stewards to engage in restitution.
10. The Museums and Galleries Act 1992 should not be amended to allow stewards to engage in restitution.

11. Indefinite loans or loans over three years should be treated by stewards as returning the item. If stewards wish to loan an artefact for three years or indefinitely then they should make this decision using the Principles for Restitution.

# Introduction

Museums matter. They are amongst our most trusted public institutions. They have been described as ‘treasure house[s] of possibilities filled with amazing objects.’<sup>4</sup> Museums allow us to connect to the past, to contextualise civilisations across time and place, understand our shared humanity, and ultimately to become better citizens. In 2023, 36 million people visited a museum sponsored by the then Department for Digital, Culture, Media & Sport (DCMS).<sup>5</sup>

Museums do not just contain history, but geography as well. At the British Museum, in a single trip, one can visit the Elgin Marbles, made in 5<sup>th</sup> century BC; a mesmerising collection of Chinese Jade Objects ranging from Neolithic blades to 18<sup>th</sup>-century pendants; and one of the earliest ever examples of a board game, originating from Mesopotamia. For the ten million people in Britain who live outside of their country of birth, museums offer a point of connection between their home in Britain and their ancestors’ history.

Those responsible for museums act as stewards of history. Most of the treasures housed in our museums are not owned by any single person or family. It has been recognised that their value to society is too great for them to be locked away from view in a private collection. The public institutions with whom these objects have been entrusted preserve and display them, acting as the custodians of the past for future generations.

One factor that stewards must contend with in this endeavour is the growing calls for the restitution of artefacts to their place of geographical origin. In recent years, objects have been returned to India, Nigeria, Canada, and Australia to name a few.<sup>6</sup> In some cases, the decision to return was taken after detailed consultation with experts in the field, considering a range of factors including where an item will be best appreciated, viewed, and preserved. However, in too many cases, decisions to restore artefacts have been taken without proper consultation or full consideration of these wider factors. The disappearance of Benin bronzes, returned from across the world, into a private collection is an example of the dangers of restitution without proper consideration.<sup>7</sup> Artefacts that were once available to millions of visitors are now viewable by very few.

Restitution refers to the restoration of something lost or stolen to its proper owner.<sup>8</sup> In this sense, discussions about restitution often imply a moral judgement – the claim an item was unfairly taken and that it has a rightful owner (generally overseas). Such claims are increasingly political, contested by nations, political parties and campaign groups who have different perspectives on history, its interpretation and how those living

4. Michael Morpurgo quoted in: Museums Matter, National Museum Directors Council, p.2, [link](#).

5. Gov.UK, ‘[Museums and Galleries Monthly Visits](#)’, [link](#).

6. In 2022 Glasgow Life Museums signed an agreement with India which saw it become the first UK museum to repatriate artefacts to India. High Commission of India’s Press Release [here](#). Artefacts originating from Nigeria have been returned by the Horniman Museum, Jesus College Cambridge, and Aberdeen University. In 2023 a Totem Pole was returned by the National Museum of Scotland to the Nass Valley in Northern British Columbia. In 2023 Manchester Museum returned 174 objects to an Indigenous Australian Community off the northern coast of Australia.

7. The Times, ‘Berlin’s Benin bronze return a “fiasco” as artefacts vanish’, 8<sup>th</sup> May 2023, [link](#).

8. Oxford Reference, ‘[Restitution](#)’, [link](#).

today should engage with it.

The Museums Association (The MA), a professional membership organisation based in London for museum, gallery and heritage professionals in the UK who have lobbied extensively for the ‘decolonisation’ of museums, define restitution from museums as ‘the return of cultural material to its original owners’. The MA go on to state that ‘the repatriation or restitution of museum items can be a powerful cultural, spiritual and symbolic act which recognises past wrongs and restores items to their original community’.<sup>9</sup> In *The Brutish Museums*, one of the most influential books in the campaign to send the Benin Bronzes to Nigeria, Dan Hicks argues: ‘It is clear that the enduring colonial violence of displaying loot is not just collateral damage, but an endurance of anthropology’s period of being put to work for an ideology of white supremacy’.<sup>10</sup>

Others have rejected this perspective, Tiffany Jenkins, an academic specialising in questions of restitution, has noted that:

*The movement for reparations is an example of a trend which relies on therapeutic measures, such as the recognition of historic ills through the movement of cultural artefacts, as a way to solve social problems. But in the process of making claims, groups and individuals have to enter a competition in which their wounds are evaluated. They cannot just ask for money, or demand material and political equality; rather, they have to prove how badly they have been affected. Because of this competitive dynamic, reparations are more likely to divide than reconcile. And because the process relies on supplication, with the victim asking the historical victor for a handout or a statement of recognition, power relations are not transformed but reinforced.*<sup>11</sup>

Similarly, academics have noted that the rhetoric of Hicks, the MA, and others like them risks robbing certain groups of their autonomy. Anthropologist Gillian Cowlishaw has argued that the emphasis in Australia on wrongs committed against the Aboriginal people, and attempts to return all artefacts to them (even those given as gifts) risks ‘underestimating their agency and [...] degrading their achievements’.<sup>12</sup>

This report uses the term ‘restitution’ as the most widely recognised term defining the act of returning an object to its geographical place of origin, or to the descendants of a previous owner. This should not, however, be taken as implying that accepting claims for restitution is always, or even mostly, the most appropriate course of action. Each claim must be judged on its merits and, there are many cases in which accepting a claim for restitution would not be an appropriate action for a museum.

This report will offer stewards a non-partisan approach to the question of restitution. It develops and sets out a set of principles which should be applied to the process of restitution, to support stewards in considering how to respond to claims.

In 2021 Policy Exchange published ‘History Matters: Principles for Change’ to address widespread national concern about the growing trend to alter public history and heritage without due process.<sup>13</sup> The guidance offered in this report formed the basis of the recently published ‘Guidance

9. Museums Association, ‘Decolonising Museums: Collections, part three’, [link](#).

10. Dan Hicks, *The Brutish Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution*, Paperback edition (London: Pluto Press, 2021), p.236.

11. Tiffany Jenkins, ‘Keeping their marbles’, (Oxford University Press, 2016), p.285

12. Gillian Cowlishaw, ‘Collateral Damage in the History Wars’, in Tess Lea, Emma Kowal, and Gillian Cowlishaw (eds), *Moving Anthropology: Critical Indigenous Studies* (Darwin: Charles Darwin University Press, 2006), p.131

13. Policy Exchange, ‘History Matters: Principles for Change’, October 25<sup>th</sup> 2021, [link](#).



for custodians on how to deal with commemorative heritage assets that have become contested'.<sup>14</sup> Colloquially known as 'retain and explain', this offered the custodians of English heritage a vital reference point when dealing with contested monuments, street names, and commemorative sights. However, 'museums' and 'galleries' collections' were not included as the guidance is focused on open space, statues, and monuments located in local communities – primarily in open air spaces as part of the built environment. This has left museum stewards with no clear advice on contested heritage. Stewards are left with a limited framework when working through requests for restitution, leading to hasty and often partisan decisions that are not taken in the best interests of the preservation of history or the general public.

There are several pieces of legislation pertaining to questions of restitution. The 1963 British Museum Act precludes The British Museum and the National History Museum from disposing of artefacts in their collection, whether to respond to restitution claims or other reasons, stating that 'trustees do not have the power to sell, exchange, give away or dispose of any object vested in them and comprised in the Collection unless object is a duplicate of another object held in the Collection, object is unfit or useless for the purposes of the Museum'.<sup>15</sup> Other museums are bound by the 1983 National Heritage Act which states that boards of a museum 'may not dispose of an object the property in which is vested in them'.<sup>16</sup> These Acts provide vital safeguards against the disposal of items from the nation's most important museums.

Many other museums across the country, including local museums and university museums, are governed by the Charities Act 2022 which requires them to seek authorisation through section 106 if they wish to return objects on moral grounds.<sup>17</sup> While this does offer some safeguards against hasty restitution, events have shown that it is relatively easy for museums to retain permission for return. Furthermore, recent amendments to the Charities Act allow, in some cases, the return and sale of items valued of up to £20,000 without special permission from the Charity Commission. Accordingly, it is important that the stewards of these museums have a clear framework with which to assess claims for restitution.

There are two areas where clear guidance does exist: human remains and Nazi Spoliation. The Human Tissue Act 2004 allowed several national museums to transfer human remains under 1000 years old out of their collections if they think it is appropriate to do so – even when the Acts which created these museums normally prohibit restitution.<sup>18</sup> DCMS guidance on the Act advises museums to compile inventories of the human remains in their possession and try to identify a tribe which they may be affiliated with.<sup>19</sup> Nazi Spoliation refers to artefacts stolen by the Nazis during or before the Second World War. The 'Holocaust (Return of Cultural Objects) Act 2009' Act, creates provision for the families of those who had artefacts stolen (and then sold or gifted to a museum) to seek their return via a 'Spoliation Advisory Panel'. Outside of this, the National Arts Council has a 'Practical Guide for Museums in England' on 'Restitution

14. Gov.UK, 'Guidance for Custodians on How to Deal with Commemorative Heritage Assets That Have Become Contested', 5<sup>th</sup> October 2023, [link](#).

15. Legislation.gov.uk, 'British Museum Act 1963', [link](#). d.gov.uk, 'British Museum Act 1963', [link](#). Legislation.gov.uk, 'British Museum Act 1963', [link](#).

16. Legislation.gov.uk, 'National Heritage Act 1983', [link](#).

17. Legislation.gov.uk, 'Charities Act 2022', [link](#).

18. Legislation.gov.uk, 'Human Tissue Act 2004', [link](#).

19. Department for Culture, Media and Sport, 'Guidance for the Care of Human Remains in Museums', [link](#).

and Repatriation'.<sup>20</sup> While this offers curators extensive advice on the administration associated with a formal claim for restitution, curators are left with the relatively vague instruction that they should make an 'ethical assessment' about whether an item should be returned.

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20. Arts Council England, 'Restitution and Repatriation: A Practical Guide for Museums in England', September 2023, [link](#).

# Understanding Stewardship

Britain's museums are the envy of the world. They showcase local, national, and global histories in all their complexity. In these buildings, many of which are architectural wonders in and of themselves, we attempt to preserve fragments of the human and natural worlds; artefacts which have survived the toll taken by time, and which now stand as monuments to the impressions made by the past.

These objects, however brilliant, could not be understood and appreciated without the work done by those who work there. They must be preserved, researched, studied, and displayed. This is an ongoing and active process. Difficult curatorial questions ask which objects ought to be on permanent display and which should be stored. Exhibitions must be delicately crafted to respond to the needs of the present with lessons from the past. These are ongoing questions which are regularly revisited.

## The Role of the Steward

The goal of this report is to offer contemporary stewards a framework through which to deal with the artefacts entrusted in their care. There are many different people who play a role in this: archivists, curators, conservators, exhibit designers, educators, directors, and trustees, amongst others. All of these people play a different part in the museum's function, and all may be considered stewards of the artefacts of the museum.

The trustees of museums are those ultimately legally responsible for the decisions taken by the museum. Although the museum will be, in legal terms, the owner of the objects contained therein, in fulfilling their role, trustees should be considered to have a moral duty to act as stewards of the objects they are responsible for, mindful of the interest that the general public and all of humanity – present and future – have in the preservation of history. In practical terms, these duties will be governed by a museum's governing legislation, founding documents, statutes or trust deeds, which will set out the broader purposes for which the museum's collection are being preserved.

## The Place of the Museum in Society

Museums are important cultural institutions. They diffuse cultural capital, holding up a history of both our 'best selves' – documenting moments when people across humanity have acted in the name of the common good and pursuit of truth – and recording the worst moments in the past when we have fallen short of these ideals. At a time when trust in public institutions is at a historic low, many still have faith in the power of a

museum. Research by Britain Thinks for Museums Association found that “Museums hold a unique position of being trusted, which is particularly important given the perceived lack of trusted organisations in society such as the government and the media”.<sup>21</sup>

At the National Maritime Museum a story of human endeavour is told through artefacts which belonged to Horatio Nelson and his crew. The International Slavery Museum documents the stories of enslaved people who were forcibly uprooted and shipped across the Atlantic in conditions of great cruelty – an indelible mark on our nation’s history which we must continue to remember and teach. At the Eyam Museum in the Peak District one can learn of the extraordinary acts of self-sacrifice made by villagers in 1665, who sealed off the town to prevent the spread of the bubonic plague. At the edge of Sherwood Forest stands the National Holocaust Centre and Museum, an institution dedicated to remembering the horrors of the Holocaust, documenting atrocities beyond human comprehension. It is vital that we tell all of these stories. It is only through documenting the past that we might understand and properly respond to the present. Objects tell a story of history that is rivalled by no other medium. It is through letting artefacts speak, and contextualising what they stand for, that the stewards of museums create an invaluable and powerful educational resource for all society. There is a reason so many academics, writers, and historians refer to the formative roles museums played in their youth. Professor Stephen Hawking credits the Science Museum with fostering his love for physics.<sup>22</sup> Neil MacGregor, former Director of the British Museum, perhaps put it best when he said, ‘The point of the museum is to allow the citizen to be a better citizen’.<sup>23</sup>

Museums are not just educational arenas where knowledge is a settled subject which sits behind glass and is explained by placards. They are live and active spaces in which research constantly modifies our understanding of the past. A striking example of this is recent work undertaken by the British Museum to understand the implication of a Mesopotamian pillar which lay in storage for 150 years. The white marble cylindrical pillar was deciphered in 2018 by Irving Finkel, a curator in the Middle East department of the British Museum.<sup>24</sup> The cuneiform pillar relates a long-running and bloody dispute over a tract of land claimed by two rival city states: Lagash and Umma. Research found the pillar to be possibly the first boundary marker, and on it appears the first recorded description of ‘no man’s land’. This research was promoted by the British Museum’s exhibition on borders. The work demonstrates the vital role that object driven historical and archival research plays. This sort of work happens constantly at museums across the country. Numerous institutions facilitate or even supervise doctoral research projects on their collections. Whether artefacts are behind closed doors in storerooms or behind glass as part of displays, they are available to researchers seeking to uncover untold stories and further pry open our window into the past.

Museums also have a more utilitarian value. A 2015 report suggested that museums across the country generate £3 for every £1 provided by

21. Britain Thinks for the Museums Association, ‘[Public perceptions of – and attitudes to – the purposes of museums in society](#)’, March 2013, [link](#).

22. Stephen Hawking cited in: ‘[Museums Matter](#)’, National Museum Directors Council, p.2, [link](#).

23. Neil MacGregor, Director of the British Museum, BBC Artsnight, April 2015.

24. British Museum, ‘British Museum Annual Review 2018-19’, July 2019, [link](#).

the public purse.<sup>25</sup> In 2017 England's museum sector employed around 33,000 people and generated around £2.64bn in income and £1.45bn in economic output.<sup>26</sup>

## A Question of Geography

Many artefacts worldwide do not currently reside in the place of their geographical origin. In fact, it has often been the removal of an object from its place of creation which leads to its understanding and appreciation. The Rosetta Stone, the most visited item in the British Museum, was found by a group of French soldiers digging the foundations for a fort in Rashid. Before it was discovered it formed part of the wall of a Fort Julien. Had it not been brought to Britain then scholars may never have deciphered hieroglyphs and a huge aspect of ancient history would have been forever obscured.<sup>27</sup>

Restitution claims often make the relatively straightforward argument that an item ought to reside in the place of its geographical origin. Proper stewardship requires an interrogation of these claims. Is there anything about geography alone which legitimises a claim to an artefact? Renaissance paintings from Italy reside in art galleries in many countries around the world, not just in Italy. Only one of the four full, vellum copies of the Gutenberg Bible resides in Germany, the other three being located in the UK, France and the United States<sup>28</sup>. If museums could only hold objects from the country in which they are located they would be much impoverished.

Egyptian artefacts found across the U.K: the two largest collections of which are at the World Museum in Liverpool and the British Museum in London. In recent years there have been calls for the restitution of items in these collections, most prominently, the Rosetta Stone. The expected completion of the Grand Egyptian Museum just outside of Cairo has renewed many calls for return.

The Egyptian Government itself has not submitted a formal request to the British Museum for the return of the Rosetta Stone. Although representatives from The Ministries of Foreign Affairs and Tourism and Antiquities have indicated interest in opening talks, most pressure has come from a prominent online campaign run by Monica Hanna, acting Dean of the College of Archelogy in Aswan.<sup>29</sup> Egypt has a long and complex history. After the Rosetta Stone was produced in 196BC, the country saw sweeping demographic changes, with new populations living and working within the borders of modern-day Egypt. Furthermore, from the first millennium BC, onwards, Egypt dealt with repeated invasion and rule by Libyans, Assyrians, Kushites, Persians, Greeks, Romans, Arabs, Turks, and Europeans. As a consequence, Egypt's population dynamics have changed dramatically since the period in which many contested artefacts were produced. A recent landmark study of 90 ancient Egyptian mitochondrial genomes found in ancient Egyptian Mummies concluded that ancient Egyptians shared more ancestry with Near Easterners than present-day Arab Egyptians.<sup>30</sup> Could Cyprus or Lebanon reasonably lay

25. Arts Council England, 'The Economic Impact of Museums in England', 25<sup>th</sup> February 2015, [link](#).

26. Gov.Uk, Neil Mendoza, 'The Mendoza Review: an independent review of museums in England', November 2017, [link](#).

27. The British Museum, '[Everything You Ever Wanted to Know about the Rosetta Stone](#)', [link](#).

28. Library of Congress, [Link](#)

29. Reuters, 'Egypt calls for return of Rosetta Stone 200 years after it was deciphered', October 5<sup>th</sup> 2022, [link](#).

30. Nature Communications, '[Ancient Egyptian Mummy Genomes Suggest an Increase of Sub-Saharan African Ancestry in Post-Roman Periods](#)', 30<sup>th</sup> May 2017, [link](#).

claim to Ancient Egyptian artefacts on this count? Furthermore, there is little religious or cultural continuity between modern day and ancient Egyptians. Over the course of thousands of years, can geography really be understood as the most important determinant of an artefact's rightful place?

Globalisation has further complicated these questions. Large diaspora communities live across the world outside of their country of birth. Around 200 million people across the world live outside of their country of birth. 10.4 million of these people live in the UK. Many more people are the child or grandchild of an immigrant.

The age of the objects in our museums guarantees that they will have complex histories. While geography may seem to offer easy answers about restitution, close examination reveals that appeals to geographical origin only are flawed. When considering claims for restitution, stewards must engage more deeply with a range of complex considerations regarding the artefacts in their care.

### The Status Quo

When considering questions of restitution, we must differentiate between different types of museums. There is no single legislative framework or legal guidance which applies to every museum. The stewards of different museums will also have varying founding documents, statutes, responsibilities, and stakeholders to which they must pay heed.

For the purposes of this report, museums have been categorised as: National Museums, Museums Sponsored by Government Departments, University Museums and Local Museums.

While the 'Principles for Restitution' can be used effectively by all museums, it is important they are applied in accordance with the legal status of the museum and with a museum's constitution, founding documents or statutes.

### National Museums

DCMS usually defines museums established by Acts of Parliaments as 'National Museums'.<sup>31</sup> The 'Mendoza review of DCMS-sponsored museums' identified 13 museums as 'National Museums'.<sup>32</sup> Primary legislation would be required to make substantive changes to the constitution and functions of these museums. These museums are:

- The British Museum – British Museum Act 1963
- Imperial War Museums (London, Cambridge, and Manchester) – Imperial War Museum Act 1920
- Museum of London – Museum of London Act 1965
- National Gallery- Museums and Galleries Act 1992
- National Maritime Museum – National Maritime Museum Act 1934
- National Museums Liverpool - The Merseyside Museums and Galleries Order 1986
- National Museum of Science & Industry (collections include the

31. DCMS, 'Strategic review of DCMS-sponsored museums', November 2017, p.15: 13 ALBs (12 museums and the British Library) are established by Acts of Parliament, which set out the constitution, powers and duties of their boards of trustees and vest their collections in the boards. They are usually known as 'national museums' both because their existence is governed by legislation and their collections were gifted, bequeathed to or collected on behalf of the nation. [...] National Museums Liverpool is a national museum because, although not established by an Act of Parliament, The Merseyside Museums and Galleries Order 1986 gives it this status.' [Link](#)

32. DCMS, 'Strategic review of DCMS-sponsored museums', November 2017, p.11.

Science Museum, the National Railway Museum at York and Shildon, the National Museum of Photography, Film and Television at Bradford and the Wroughton outstation in Wiltshire) – *National Heritage Act 1983*

- National Portrait Gallery - *Museums and Galleries Act 1992*
- The Victoria and Albert Museum (collections include Victoria and Albert Museum, Museum of Childhood, and the Theatre Museum) – *National Heritage Act 1983*
- Natural History Museum – *British Museum Act 1963*
- Royal Armouries (collections include Tower of London & Museum of Artillery at Fort Nelson) – *National Heritage Act 1983*
- Tate Galleries (collections include Tate Britain, Tate Modern, Tate Liverpool, and Tate St Ives) – *Museums and Galleries Act 1992*
- Wallace Collection - *Museums and Galleries Act 1992*

Sir John Soane’s Museum London is sometimes described as a National Museum because it was established by an Act of Parliament in 1833. However, this was superseded in 1969 by The Charities (Sir John Soane’s Museum) Order (1969 No.468) most recently revised in 2022.<sup>33</sup> It is therefore no longer governed by an Act of Parliament.

Several of these museums have divided their collections between venues in London – the Tate for example has collections in Liverpool, St Ives, and London.

National Museums are often regarded as the country’s greatest and most high-profile historical assets. Three of our National Museums are in the top ten most visited museums in the world.<sup>34</sup>

The Acts of Parliament governing the following National museums explicitly prohibit the disposal of artefacts, including in response to claims for restitution:

The British Museum and the Natural History Museum (*British Museum Act 1986*):

3. (4) Objects vested in the Trustees as part of the collections of the Museum shall not be disposed of by them otherwise than under section 5 or 9 of this Act [or section 6 of the *Museums and Galleries Act 1992*].<sup>35</sup>

Section 5 and 9 of the Act provide exceptions for the disposal of duplicates, printed material made after 1850, or objects unfit to be retained in the collections of the Museum which can be disposed of without detriment to the interests of students. Almost all lawyers agree that these conditions would prohibit the restitution of most objects.

The Victoria and Albert Museum, The Science Museum Group, and the Royal Armouries (*National Heritage Act 1983*):

6. (3) The Board may not dispose of an object the property in which is vested

33. Gov.UK, ‘Sir John Soane’s Museum: Registered Charity No. 313609’, [link](#).

34. Department for Digital, Culture Media & Sport, ‘Strategic review of DCMS-sponsored museums’, November 2017, [link](#).

35. ‘British-Museum-Act-1963.Pdf’. <https://www.britishmuseum.org/sites/default/files/2019-10/British-Museum-Act-1963.pdf>

in them and which is comprised in their collections unless—

(a) the disposal is by way of sale, exchange or gift of an object which is a duplicate of another object the property in which is so vested and which is so comprised, or

(b) the disposal is by way of sale, exchange or gift of an object which in the Board's opinion is unsuitable for retention in their collections and can be disposed of without detriment to the interests of students or other members of the public, or

(c) the disposal is an exercise of the power conferred by section 6 of the Museums and Galleries Act 1992], or

(d) the disposal (by whatever means, including destruction) is of an object which the Board are satisfied has become useless for the purposes of their collections by reason of damage, physical deterioration, or infestation by destructive organisms.<sup>36</sup>

The Acts of Parliament governing the below museums seriously limits their capacity to dispose of objects:

Royal Museums Greenwich (National Maritime Museum Act 1934):

3. Vesting in the Board of objects given to, acquired for, or transferred to Museum.

All objects—

which at the time of the constitution of the Board form part of the Naval Museum of the Royal Naval College at Greenwich;

which immediately before the constitution of the Board are vested by virtue of the deeds referred to in the first column of the Third Schedule to this Act in all or any of the trustees named in the second column of that Schedule;

which are expressly given or bequeathed to the public or to the nation or to the Board for the purposes of the Museum;

which are given or bequeathed by words showing an intention that the gifts should inure to, or for the benefit of the Museum;

which are acquired by purchase or otherwise for the purposes of the Museum;

shall vest in the Board and be held by the Board for the purposes of the Museum.

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36. 'National Heritage Act 1983'. <https://www.legislation.gov.uk/ukpga/1983/47/contents>



The National Gallery (Museums and Galleries Act 1992)

4.(3) The National Gallery Board shall not dispose of a relevant object the property in which is vested in them and which is comprised in their collection unless the disposal is an exercise of the power conferred by section 6 below.<sup>37</sup>

The National Portrait Gallery (Museums and Galleries Act 1992)

4.(5) The National Portrait Gallery Board shall not dispose of a relevant object the property in which is vested in them and which is comprised in their collection unless—

(a) the disposal is an exercise of the power conferred by section 6 below;

(b) the disposal is by way of sale, exchange or gift of a relevant object which is a duplicate of another relevant object the property in which is so vested and which is so comprised;

(c) the disposal (by whatever means) is of a portrait and the Board are satisfied that the identification formerly accepted by them of the person portrayed has been discredited; or

(d) the disposal (by whatever means, including destruction) is of a relevant object which the Board are satisfied has become useless for the purposes of their collection by reason of damage, physical deterioration or infestation by destructive organisms; and a relevant object may be disposed of by the Board as mentioned in paragraph (d) above notwithstanding a trust or condition (express or implied) prohibiting or restricting the disposal of the relevant object.<sup>38</sup>

The Tate Group (Museums and Galleries Act 1992)

4.(4) The Tate Gallery Board shall not dispose of a relevant object the property in which is vested in them and which is comprised in their collections unless—

(a) the disposal is an exercise of the power conferred by section 6 below;

(b) the disposal is of a relevant object which, in the Board's opinion, is unsuitable for retention in their collections and can be disposed of without detriment to the interests of students or other members of the public; (c) the disposal (by whatever means, including destruction) is of a relevant object which the Board are satisfied has become useless for the purposes of their collections by reason of damage, physical deterioration, or infestation by destructive organisms; but this subsection is without prejudice to any trust or condition (express or implied) prohibiting or restricting disposal of the relevant object.<sup>39</sup>

The Wallace Collection (1992 Museums and Galleries Act)

37. Participation, 'Museums and Galleries Act 1992': <https://www.legislation.gov.uk/ukpga/1992/44/contents>

38. Ibid.

39. Ibid.

4.(6) The Wallace Collection Board shall neither add any object to their collection nor dispose of any object the property in which is vested in them and which is comprised in their collection.<sup>40</sup>

While some of the above Acts of Parliament do allow some museums and galleries to dispose of objects in their collections, this is only in cases where an object is deemed to be a ‘duplicate’, ‘useless for the purposes of the Museum by reason of damage, physical deterioration, or infestation’, or can be ‘disposed without detriment to the interests of students’.

The question of whether trustees of national museums could obtain permission to dispose of objects in their collections for reasons falling outside of the exceptions given above was considered by the High Court in 2005. The case *Attorney General v. Trustees of the British Museum* took place when the Trustees of the British Museum asked the Attorney General to sanction the return of four drawings to the heirs of Dr Arthur Feldmann who had been robbed of his art collection in Czechoslovakia in 1939.

The Attorney General, from whom the trustees sought permission to return the paintings, made an application to the High Court for determination of the legal position. The High Court ruled that neither the Attorney General nor the Court could overrule the British Museum’s statutory bar on deaccession.<sup>41</sup> The ruling made clear that when it comes to the disposal of objects by national museums with statutory prohibition, moral considerations are irrelevant as “nothing less than some statutory authority is required to justify a departure from statutory obligations imposed on trustees”.<sup>42</sup> Instead, Feldmann’s heirs were paid a sum of £175,000, approved by the Secretary of State for Culture.

Three years later Parliament did introduce legislation overriding these restrictions: The Holocaust (Return of Cultural Objects) Act 2009 which allows for the deaccession of Nazi looted objects when recommended by the SAP and approved by the Secretary of State.<sup>43</sup> This reinforces the fact that restitution from National Museums is not possible without an Act of Parliament. The only other act of Parliament overriding statutory restrictions on these national museums is The Human Tissue Act 2004 which allows the trustees of nine listed institutions to remove human remains from their collection where “appropriate to do so for any reason”.<sup>44</sup>

### Museums sponsored by Government Departments

Government funded museums receive money via grand-in-aid from the department that oversees them. This will not be their only form of income. Many will receive funding from other grant sources (often the Heritage Lottery Fund), general donations, trading and commercial activity.

As of March 2024 the Department for Digital, Culture, Media & Sport (DCMS) sponsored 15 museums.<sup>45</sup> These museums are all non-departmental public bodies. They operate with a degree of political independence with some oversight from the Secretary of State for Culture.

Some museums are funded by other departments. The Royal Botanic

40. Ibid.

41. Maitland Chambers, ‘Attorney General V Trustees of The British Museum (2005)’, [link](#).

42. Ibid., at para. 42

43. Legislation.gov.uk, ‘Holocaust (Return of Cultural Objects) Act 2009’, [link](#).

44. Legislation.gov.uk, ‘Human Tissue Act 2004’, [link](#).

45. Gov.UK ‘DCMS-sponsored museums and galleries annual performance indicators 2022/23: headline release’, May 2024, [link](#).

Gardens at Kew is funded, for example, by the Department for Environment, Food and Rural Affairs.<sup>46</sup> Similarly, the National Museum of the Royal Navy and the National Army Museum are both sponsored by the Ministry of Defence.

Individual Government departments have a bespoke arrangement with each of the museums they sponsor. Each museum is permitted to set its own strategy, make curatorial decisions, and operate with independence. Because they receive funding from a Government department, they make management agreements with the relevant Secretary of State. These decisions establish what the museum should achieve in exchange for grand-in-aid. This is discussed regularly and presented to Parliament in the form of annual reports and accounts every year.<sup>47</sup> The relevant Secretary of State has the ultimate responsibility to monitor and supervise activity, and to appoint a board of trustees.

Several museums are sponsored by a department or arm's length body in Scotland, Wales or Northern Ireland.

### National Museums Scotland

National Museums Scotland is an executive non-departmental public body of the Scottish Government. It manages and provides funding for the national museums of Scotland. These are as follows:

- The National Museum of Scotland
- The national Museum of Flight
- The National Museum of Rural Life
- The National War Museum

These museums are also governed by The National Heritage (Scotland) Act, 1985 which sets out the legal powers to dispose of objects from the National Collection. This was amended in part by the Museum and Galleries Act 1992.<sup>48</sup>

While the statutes of these museums often have a presumption against the deaccession and disposal of their objects, many have outlined procedures in which they will engage with restitution. This is the case for the National Museum of Scotland which recently returned a totem pole to the Nisga'a nation in Canada.

### Amgueddfa Cymru – Museum Wales

Amgueddfa Cymru is a Welsh Government sponsored body that comprises seven museums in Wales. These are as follows:

- National Museum Cardiff
- St Fagans National Museum of History, Cardiff
- Big Pit National Coal Museum, Blaenavon
- National Wool Museum, Dre-fach Felindre near Llandysul
- National Slate Museum, Llanberis
- National Roman Legion Museum, Caerleon

46. Gov.uk, 'Royal Botanic Gardens, Kew framework document', [link](#).

47. Department for Digital, Culture, Media & Sport, 'Strategic review of DCMS-sponsored museums', November 2017, [link](#).

48. Legislation.gov.uk, 'National Heritage (Scotland) Act 1985', [link](#).

- National Waterfront Museum, Swansea

They are accountable to the Welsh Government who provide 80% of their funding. Outside of charity law (see below) there is nothing prohibiting Museum Wales / Amgueddfa Cymru from disposing of objects.

Museum Wales / Amgueddfa Cymru has a 'Charter for Decolonising' their collection. This includes a stated aim to: "ensure that due diligence is applied to collections we already hold. We will play a positive role in forming partnerships with communities of origin, and legitimate owners, to explore the potential for restitution and repatriation based on cooperation and understanding".<sup>49</sup>

### National Museums NI

National Museums NI manages Northern Ireland's is sponsored by the Department for Communities and funds four museums in Northern Ireland. These are as follows:

- Ulster Museum
- Ulster Folk and Transport Museums
- Ulster American Folk Park
- Armagh Country Museum

The Secretary of State for Northern Ireland appoints the Chair of National Museums NI and the Board Members. They are overseen by the Northern Ireland Museums Council. Outside of some limitations in The Charities Act (Northern Ireland) 2022 there is nothing to prevent National Museums NI from disposing of objects.

National Museums Northern Ireland hosts guidance entitled 'Supporting Decolonisation in Northern Ireland: Lessons Learnt Through Global Voices, Local Choices: A Creative Engagement Programme in Museums'. This advises member museums to "be prepared to consider how you discuss the future of collections, including repatriation. Through our experience we recommend that this should be guided by provenance research and honest conversations with source communities. [...] Be positive and do not be afraid to work in this field."<sup>50</sup>

### University Museums

Some museums belong to universities. For example, the Pitt Rivers Museum is part of the University of Oxford.

University Museums will typically be managed through a bespoke governing document usually available as part of the university's statutes. It is possible a University Museum may have governing documents which prevent it from disposing of objects.

University Museums are exempt charities for the purpose of charity legislation. This means that while they have charitable status they are exempt from the requirement to register with the Charity Commission.

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49. Museum Wales, 'A Charter for Decolonising Amgueddfa Cymru's Collection' [Link](#)

50. 'National Museums NI', [Link](#)

Instead, they are managed by a principle regulator – in this case the Office for Students. They must still comply with the Charities Act 2022 which is discussed further below.

## Local Museums

There are many local museums around the UK. In most cases these are either run by local authorities or operate as independent charities. In both cases they will have significant freedom to dispose of objects. Those run by local authorities are bound by local authority regulatory frameworks, but these will simply set standards for how councillors should operate when considering claims.

## Charity Law in England and Wales

Many UK Museums are registered as charitable trusts. A museum with charitable status must act according to its charitable objectives. The legal obligations of museums established as charities are laid out in the Charities Act 2022 & 2011; this establishes the responsibility for trustees and provides benchmarks for how decisions should be made. The Charity Commission also provides further guidance that sets out what charities ‘must’ and ‘should’ do<sup>51</sup>. Some museums may also be subject to their founding statutes, trust deeds, and bequest conditions. Trustees must ensure that all actions taken by a museum must seek to further the charity’s purpose and be made in the best interests of the charity.

Charity trustees are required by law to apply a charity’s funds and property solely in pursuit of the charity’s purposes.<sup>52</sup> Section 106 of the Charities Act 2011 (currently in force) enables the Charity Commission to authorise charity trustees to make an ex-gratia payment on moral grounds.<sup>53</sup> Where trustees wish to make payments (or waive their entitlement to property) because they regard themselves as ‘being under a moral obligation’ to do so, rather than because it is in the best interests of the charity, then they must seek permission from the Charity Commission to make an ex-gratia payment.

Restitution is currently treated as the making of an ‘ex gratia’ payment. This means any charitable museum must seek permission from the Charity Commission before they can dispose of objects (unless restitution is clearly in line with their charitable purpose).<sup>54</sup> Where museums (such as the British Museum) are forbidden from disposing of objects, this bar on disposing of objects is not overridden by the Charities Act 2011.

The Charities Act 2011 has been updated by the Charities Act 2022. However, Sections 15 & 16 of the Charities Act 2022, which deal with ex-gratia payments, have not yet been commenced.

- Section 15 of the Charities Act 2022 would permit charities to make small payments without authorisation from the Charity Commission.<sup>55</sup> The limit set out varies depending on the turnover of the charity, up to charities with a gross income exceeding £1 million, which would be permitted to make ex-gratia payments

51. Legal Obligations of Charities, NCVO, [Link](#)

52. ICAEW, ‘Ex gratia payments: understanding your responsibilities and the changes expected from the Charities Act 2022 implementation’, [link](#).

53. Legislation.gov.uk, ‘Charities Act 2011’, [link](#).

54. Gov.UK, Charities Act 2011, [link](#).

55. Charities Act 2022, 15 Small ex gratia payments, [link](#).

valued up to £20,000 without seeking permission from the Charity Commission.

- Section 16 of the Charities Act 2022 would allow National Museums to apply to the Charity Commission in order to make ex-gratia payments, even if their governing legislation precludes disposing of objects.

Upon identifying the impact of Sections 15 and 16 of the Charities Act 2022, the then Minister for Arts & Heritage, Lord Parkinson of Whitley Bay, wrote to the Chairman of the Charity Commission to clarify the Government had plans to change the legislation before it was commenced, setting out:

*Provisions would also enable national museums and galleries, whose governing legislation precludes the restitution of objects in their collections, to apply to the Charity Commission for permission to make an ex gratia payment involving the restitution of an object. The potential consequences of these provisions were not made clear by the Law Commission when the Bill was introduced and were not subject of Parliamentary scrutiny or debate during the passage of the Bill.<sup>56</sup>*

The current Government is yet to make a formal statement on their position regarding Sections 15 and 16 of the Charities Act 2022. However, it has been reported that the Government may be planning to commence these sections without making the changes proposed by the previous Government.<sup>57</sup> This would enable National Museums like the British Museum to dispose of artefacts, including for the purpose of restitution, either of their own volition, or following authorisation by the Charity Commission.

### Charity Law in Scotland

Charity Law in Scotland is governed by the Charities and Trustee Investment (Scotland) Act 2005. This act created The Office of the Scottish Charity Regulator (OSCR) which governs the powers of charities in Scotland.

In Scotland, unlike in England, charities do not have the power to make ex gratia payments on moral grounds.

### Charity Law in Northern Ireland

Charity Law in Northern Ireland is governed by the Charities Act (Northern Ireland) 2008.

The regulations governing charities in Northern Ireland are very similar to that in the England and Wales. The major difference is that charities must apply to the Northern Ireland Charity Commission for permission to make ex gratia payments on moral grounds.

### Other Relevant Legislation

The Open General Export Licence (Objects of Cultural Interest) introduced on 12 March 2015 permits the exportation of artefacts which are over fifty years old and are valued less than £65,000. For artefacts above this value, the

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56. Lord Parkinson of Whitley Bay letter to Orlando Fraser KC, 31<sup>st</sup> January 2024, [link](#).

57. Telegraph, 'Labour leaves door open to loophole that could send Elgin Marbles back to Greece, 30<sup>th</sup> November 2024, [link](#).

owner must apply for an Individual Licence via the Secretary of State's agent, Arts Council England, whose Export Licensing Unit (ELU) may refer the application to an Expert Adviser ("usually a director, senior keeper or curator in a national museum or gallery").<sup>58</sup> The Expert Adviser can object to the granting of a licence if he considers that the object may satisfy one or more of the Waverley criteria.<sup>59</sup> If the Expert Adviser objects, the ELU refers the application to the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest.

As previously discussed, The Human Tissue Act 2004 and Holocaust (Return of Cultural Objects) Act 2009 also make specific provision for the restitution of certain artefacts.

### Existing guidance

Guidance for museums on this topic comes from a range of sources: some government run and some independent. An analysis of the guidance available to museums demonstrates that the historic focus has been working through the practicality of a claim e.g., how to engage with the claimant, how to manage an appeal to the Charity Commission, and how to safely return an object.

### Parliament

The return of cultural property was considered by the Culture, Media, and Sport Select Committee in 2000. They noted that:

Museums receiving claims are faced with an exceptionally difficult task. They are expected to confront a range of considerations, legal, ethical, historical, emotional and political. In the past, it has been suggested that museums faced with claims for return have had "a sense of isolation".<sup>60</sup>

As part of the inquiry a memorandum was submitted by the Charity Commission. On the question of ethics, they offered the following guidance:

*In some cases the trustees may feel that they are under a moral obligation to return property to its "rightful" owners even where the charity clearly has legal ownership. The trustees would have to consider whether there was a moral obligation overriding the overall objects and purposes of the charity. They would take into account such things as researches into the provenance at the time of acquisition, the history and sequence of events, the circumstances of its acquisition and the circumstances of the claimant. Trustees have to balance any moral case to return particular items of cultural property with their responsibilities to keep the property in the public domain for the public benefit. If the trustees wanted to return the property on moral grounds, they would need to seek the authority from the Commission, the Attorney General or the courts.*<sup>61</sup>

This submission still leaves trustees with the difficult balancing act of determining who the 'rightful' owners of an object are, and of weighing up the moral case for return with the responsibilities of the museum.

Since this inquiry, the restitution of specific artefacts has been discussed

58. Arts Council England Notice, 'UK Export Licensing for Cultural Goods', 2020, p.5, [link](#).

59. Department of Culture, Media & Sport, 'Export Controls on Objects of Cultural Interest, 2015, [link](#).

60. Media, Sport Committee, *Seventh Report*, 18 July 2000, Article 130, [link](#).

61. Select Committee on Culture, Media, and Sport, 'Appendices to the Minutes of Evidence: Memorandum submitted by the Charity Commission, [link](#).

in the House a number of times. The House of Lords debated the Elgin Marbles in December 2023 and George Osborne has raised the issue during Select Committee questioning at several points.

The ‘Repatriation of Cultural Objects’ was raised in the House of Lords in September 2022. The Parliamentary Under-Secretary of State for DCMS informed Parliament that the position of the Government of the time was that:

*My Lords, museums and galleries in England operate independently of government. Some national museums are prevented by law from deaccessioning items in their collection, with some narrow exceptions. The Horniman Museum is not subject to such legislation so this was a decision for its trustees, but I know that they went about their decision with appropriate care and consideration. Arts Council England has published a practical guide for museums in England to help them in approaching this issue more generally.<sup>62</sup>*

### Arts Council England

Arts Council England has issued a guide: *Restitution and Repatriation: A Practical Guide for Museums in England*. The document was last updated in September 2023 to offer stewards an understanding of how the Charities Act 2022 interfaces with questions regarding the return of artefacts.<sup>63</sup> The guide is not designed to support museums in devolved administrations. It was commissioned by Arts Council England and produced by the Institute of Art and Law. This guidance has a clear preference towards restitution. It warns curators that they should:

*Be alert to the possible sensitives of claimants, and to the deep sense of hurt and alienation which some of them may feel. It is also worth remembering that the cost to a claimant of bringing a claim – both financially and emotionally – can often be very significant.*

The has information on how museums should develop a transparent policy, do provenance research on their collections, and how they should work through a claim (including advice on understanding the claimant). It also offers guidance on whether restitution is likely to be legal in light of an institution’s charitable status, founding statutes, and controlling bodies.

When it comes to assessing the claim itself, stewards are advised to ‘consider ethical principles relevant to the particular circumstances, as well as any legal grounds for the claim’.<sup>64</sup>

The aspect of the guidance which pertains to this report is broken down in a flowchart on p.19. The full flowchart may be viewed in Appendix 2. It asks two questions: the first, ‘Is the claim being made on legal grounds’, advising museums to seek legal advice. The second offers four factors to allow museums to make an ethical assessment in light of four factors together. These are:

1. The significance of the object to the claimant
2. How the object was removed from its place of origin of from a

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62. Hansard, House of Lords: Repatriation of Cultural Objects, 6<sup>th</sup> September 2022, [link](#).

63. Arts Council England, ‘Restitution and Repatriation: A Practical Guide for Museums in England’, [link](#).

64. Ibid, p.7.



past owner

3. How the museum has engaged with the object
4. Who is raising the claim

It then asks Stewards to determine if ‘the ethics of today favour the claimants claim?’

## Museums Association

The Museums Association is a membership organisation for museum, gallery, and heritage professionals in the United Kingdom. They campaign ‘for socially engaged museums and a representative workforce’. They are not an arms-length body of Government. However, their charitable arm does receive government support in the form of grants. In 2023 they received £22,000 from the Government through grants and £119,680 from contracts. In 2022 they received £192,660 from Government grants and no income from contracts.<sup>65</sup> In November 2024 they reported they had 11,816 members and 652 member institutions.<sup>66</sup> As such, their influence on the UK museum sector is significant and worth attention.

The Museums Association is a major advocate for the ‘initiative to decolonise museums and their collections’. They claim that ‘decolonisation requires a reappraisal of our institutions and their history and an effort to address colonial structures and approaches to all areas of museum work’.<sup>67</sup> As part of this project, they offer advice on collections and crucially a guide to ‘repatriation and restitution’.<sup>68</sup> They argue that ‘the repatriation or restitution of museum items can be a powerful cultural, spiritual and symbolic act which recognises past wrongs and restores items to their original community’.<sup>69</sup>

The advice offers six ‘issues to consider’ on the topic of repatriation and restitution. These are:

- How can you take a proactive and collaborative approach? Be proactive in researching collections, identifying priority items that may be of interest for repatriation and restitution, and communicating about them with potential stakeholders. Collaborate with the person or group to whom an item may be returned, working together to understand the issues, concerns and motivations at play, and exploring all possible outcomes.
- Collaboration can result in a positive ongoing relationship with the museum – but this should not be expected or used as a main motivation for repatriation and restitution. Returning an item does not place any obligation on those involved to continue the relationship.
- Can you take a co-ordinated approach with other museums when contacting a person or group about a possible repatriation or restitution? Where more than one museum is working on items relating to a specific person or group, it is important to avoid duplication or overwhelming partners. There is a growing role for Subject Specialist Networks in this area of practice.

65. Charity Commission, Register of Charities, ‘The Museums Association’, [link](#).

66. Museums Association, ‘Annual Report 2024’, [link](#).

67. Museums Association, ‘Campaigns: Decolonising Museums’, [link](#).

68. Museums Association, ‘Collections, part three: repatriation and restitution’, [link](#).

69. Ibid.

- How can you create an equal and respectful relationship? Many groups undertake cultural work on a voluntary basis and have no or limited recourse to funds. Provide guidance which supports groups to understand your museum, your motivations and your processes. Ensure that this is available in the relevant languages.
- Recognise and be respectful of the interests and expertise of partners and stakeholders. Wherever possible observe the appropriate cultural and spiritual protocols in terms of collections care and management. If full restitution or repatriation is not requested, explore other collaborative models to inform the care, storage, display and interpretation of collections material, for example via collections management agreements or memoranda of understanding.
- The language of repatriation and restitution tends to encourage a reactive and adversarial stance from museums. Instead of talking about ‘claims’ and ‘claimants’, you could instead refer to ‘proposals’ for restitution. A proposal for repatriation or restitution could be made by the museum as well as an originating community or national government.<sup>70</sup>

### International Council of Museums

The International Council of Museums is an NGO with consultative status with the United Nations Economic and Social Council. It has adopted a Code of Ethics for Museums which ‘sets minimum professional standards and encourages the recognition of values shared by the international museum community’.

The guide offers this advice on restitution:

#### 6.2 Return of Cultural Property

Museums should be prepared to initiate dialogue for the return of cultural property to a country or people of origin. This should be undertaken in an impartial manner, based on scientific, professional and humanitarian principles as well as applicable local, national and international legislation, in preference to action at a governmental or political level.

#### 6.3 Restitution of Cultural Property

When a country or people of origin seeks the restitution of an object or specimen that can be demonstrated to have been exported or otherwise transferred in violation of the principles of international and national conventions, and shown to be part of that country’s or people’s cultural or natural heritage, the museum concerned should, if legally free to do so, take prompt and responsible steps to cooperate in its return.<sup>71</sup>

A further document on deaccessioning of objects indicates that two legitimate reasons to remove an artefact from a museum collection are:

7. Another museum could more appropriately care for, display and provide

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70. Ibid.

71. *ICOM Code of Ethics for Museums*, ed. by Internationaler Museumsrat (Paris: ICOM, 2017), [link](#).

access to the object, and it is the intention of the originating museum to assign ownership of the object to that other museum

8. The museum's possession of the object is inconsistent with applicable law or ethical principles, e.g., the object was, or may have been, stolen or illegally exported or imported, or the object may be subject to other legal claims for return or restitution.

# Principles for Restitution

In 2021 Policy Exchange published *History Matters: Principles for Change* authored by Sir Trevor Phillips OBE. The report aimed to respond to widespread national concern about the growing trend to alter public history and heritage without due process by putting forward a set of key overarching principles with which proposals to reinterpret our history should be assessed. The report offered three key Principles for Change:

1. Any decision-making body must be identified clearly, with its composition and powers set out publicly and unambiguously.
2. Any change must be lawful and consistent with the stated aims and purpose of the institution.
3. Any individual or board making a decision about change in a public institution must be accountable to those who support the institution, including the taxpayer.

These principles were produced through engagements with museum donors and curators, school governors, councillors, and a wide range of other stakeholders.<sup>72</sup> The report was accepted by the Government who published their ‘Retain and explain’ guidance on the protection of heritage assets. This government guidance sought to provide a ‘toolkit to ensure that heritage decision makers can access expert advice and good practice to support them to make better and more considered decisions with confidence’.<sup>73</sup>

However, museums and galleries, particularly those ‘subject to restitution claims’ were not included in this guidance. They are instead directed by the Government to guidance on restitution published by Arts Council England.

The following eight principles build on the work carried out in 2021. They are specifically designed to support museum stewards working through restitution claims. Taken together they offer a means through which museums legally permitted to dispose of objects in their collection can work through restitution claims.

## Principles

1. Stewards must abide by the law of the land, as well as the founding documents, constitutions, statutes, or trust deeds of their institutions. They should also consider any conditions attached to an individual bequest.

72. Policy Exchange, ‘History Matters’.

73. Gov.UK, “Retain and Explain” Guidance Published to Protect Historic Statues’, [link](#).

2. Stewards should seek impartial and expert advice about whether an item was legally obtained.
3. Stewards should consider the strength of connection between the person or persons calling for the restitution of the artefacts and the origins of those objects.
4. Stewards should consider the relative significance of the object to the institution in which it currently resides, the global significance of the object, and the significance of the object locally to the group making the claim.
5. Stewards should consider the future preservation of the object. Is there evidence those making a claim have the capacity and intention to preserve it for future generations?
6. Stewards should consider the public accessibility of the object, in both its current position and if it were to be granted to those claiming it. This should include a consideration of the interests of any relevant diaspora.
7. Stewards should consider where the object has the greatest educational benefit.
8. Stewards should conduct a full consultation of their visitors and the wider public before returning an object.

### **1. Stewards must abide by the law of the land, as well as the founding documents, constitutions, statutes, or trust deeds of their institutions. They should also consider any conditions attached to an individual bequest.**

There are at least 2,468 museums across England alone.<sup>74</sup> As discussed in the chapter on *The Status Quo* different museums are subject to different legal requirements, guidance, and statutes.

The Principles in this paper should be interpreted in the context of the law of the land, a museum's founding documents, constitution, and any statutes that bind them. For example, all national museums and galleries are bound by their governing legislation.

Different museums were founded for varying purposes. They all have individual funding arrangements. Their approach to considering claims for restitution must be governed by these trust deeds, founding documents, and legal arrangements.

Before considering restitution, stewards must consult and abide by their institution's constitution and legal status. They must also look at how the artefact in question was acquired, and in the case of bequests, they should confirm restitution would not violate any of the conditions attached. Stewards should not override an institution's governing documents, regardless of their personal opinion on restitution.

Museum curators, trustees, and directors are not just stewards of the present. They also hold deep obligations to the past and the future. Stewards have been entrusted with the care and safeguarding of an institution and the objects within it. Adhering to the institution's founding principles and values is a crucial part of stewardship. Seeking to change founding documents according to modern and variable views sets a harmful precedent and undermines the vital continuity which sits at the heart of a museum's work.

In choosing to work for a particular institution, a steward should be considered to have implicitly consented to being bound by a museum's longer term purpose, as expressed in their founding documents, statutes or other governing documents.

#### **Acts of Parliament**

There is a particular subset of the UK's most significant museums in which limitations are places on restitution by various Acts of Parliament. They are as follows:

- British Museum
- Natural History Museum
- Victoria & Albert Museum
- Science Museum Group

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74. Birkbeck, 'Mapping Museums 1960-2020: a report on the data', [link](#).

- Royal Armouries

The above museums have been designated by Parliament as fundamental to the preservation of history in the UK. They have a unique value which would be compromised were trustees permitted to give away artefacts from their collections. All these museums are completely free to access and, across all these museums, a universal story of human history is told. It is right, given the value of these museums, that decisions about their collections are made by Parliament.

The historian, Sir Noel Malcolm, wrote of the British Museum in his paper on the Elgin Marbles:

*To be able to walk from a gallery of ancient Greek art to one of ancient Assyrian or Egyptian civilisation, or from Indian art to Chinese to Japanese, opens up, in the form of direct experience, possibilities which might otherwise be the preserve of scholars, or of a cultural elite of dedicated visitors to multiple museums in multiple countries. This is an extraordinary benefit.<sup>75</sup>*

This is a benefit shared by all these museums. The Victoria and Albert Museum houses Constable's landscapes, official dresses of Margaret Thatcher, Tipoo's Tiger from Asia, and a cast collection wider reaching than that of any other museum, all in one building.<sup>76</sup>

The National Gallery contains famous paintings spanning centuries and continents, including Van Gogh's Sunflowers, van Eyck's Arnolfini Portrait, and Titian's Bacchus and Ariadne.

These museums are a part of history. They were developed out of Enlightenment ideas about the diffusion of universal knowledge and offer, as Neil MacGregor has shown 'a unique repository of the achievements of human endeavour'.

### Founding documents, constitutions, statutes, or trust deeds

Many museums are governed by a constitution. For example, Chesham Museum's constitution requires that it 'establish[es] and maintain[s] a museum for the benefit of the public and to advance education by displaying and promoting aspects of the history of Chesham and the people of the town; and involving the people of the town in history projects'.<sup>77</sup>

This will establish the purpose of the museum – for many newer museums this purpose will be taken from the International Council of Museums' Code of Museum Ethics and will require that they 'maintain collections hold them in trust for the benefit of society and its development'.<sup>78</sup> Arts Council England sets the following requirements for a museum. They require that:

The museum must be a long-term organisation that exists to benefit the public and protect its assets, including collections. It must have an appropriate and acceptable constitution for the governing body.<sup>79</sup>

The constitution of a museum will also establish its governing body and how power is conferred to them. It is possible the constitution of a museum might include details regarding whether, and under what

75. Ibid, p.45.

76. Victoria and Albert Museum, Cast Collection, [link](#).

77. Chesham Museum: A Community Resource, 'Constitution of a Charitable Incorporated Organisation with voting members other than its charity trustees', [link](#).

78. International Council of Museums, 'Code of Ethics', [link](#).

79. Arts Council England, 'Museum Accreditation: Museum Constitutional & Governance Arrangements', [link](#).

circumstances, the trustees may dispose of objects, for example for the purpose of restitution.

Charitable Organisations will also have a charitable purpose. For example, the Horniman Museum and Gardens has the stated charitable object of:

THE ADVANCEMENT OF EDUCATION FOR THE PUBLIC BENEFIT BY ACQUIRING HOUSING AND EXHIBITING AND DOCUMENTING, CONSERVING RESTORING AND REPAIRING OBJECTS AND COLLECTIONS OF AN EDUCATIONAL NATURE PARTICULARLY THOSE RELATING TO THE STUDY OF ETHNOGRAPHY, NATURAL HISTORY AND MUSICAL INSTRUMENTS AND BY ESTABLISHING ACQUIRING MANAGING AND MAINTAINING MUSEUMS GALLERIES LIBRARIES AND OTHER SUITABLE PREMISES FOR USE FOR SUCH PURPOSES. (2) THE ACQUISITION, PROVISIONS, ESTABLISHMENT AND MANAGEMENT OF PUBLIC PARKS FOR THE USE AND RECREATION OF THE PUBLIC THE CONSERVATION AND PRESERVATION OF AND THE CREATION OF PUBLIC ACCESS TO THEIR NATURAL FEATURES, ANIMAL AND PLANT LIFE AND THE ENCOURAGEMENT AND PROMOTION OF PUBLIC KNOWLEDGE AND APPRECIATION OF THE NATURAL WORLD AND ITS DEVELOPMENT<sup>80</sup>

Other museums are established through statutes which may confer certain obligations to the trustees. This is particularly common for museums attached to another institution, like a university. The Pitt Rivers Museum is governed by a statute, although this only refers to the ‘safe keeping, preservation, and orderly administration’ of the museum.<sup>81</sup>

A museum may also be established by a trust deed – for example, the Commemorative Museum Trust was established in 1979 by trust deed to establish and maintain ‘for the benefit of the public a collection of objects of national historic educational or artistic interest pertaining to the history of the royal families of Britain and elsewhere’.<sup>82</sup>

Many of these documents refer to the ‘benefit of the public’. They also often focus on the maintenance of a certain collection of objects. If stewards wish to engage in restitution, they must closely consider whether removing artefacts from a collection serves these requirements.

### Individual Bequests

Bequests provide a vital source of funding and support for museums. They are usually made after an individual’s death and could come in the form of artefacts or money. Ham House and Gardens, for example, was bequeathed to the National Trust in 1948.<sup>83</sup>

Where an item has been donated or bequeathed to a museum, Arts Council England advises that they may be ‘subject to other legal restrictions arising from conditions attached’.<sup>84</sup> In many cases, however, an individual may have gifted an item to a museum without attaching legally binding conditions. Instead, they may have expressed their wishes for the future of the object through correspondence with the museum or over the course

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80. Charity Commission, ‘The Horniman Public Museum and Public Park Trust’, [link](#).

81. Oxford University, Governance and Planning, Statute VIII, [link](#).

82. Charity Commission, ‘Commemorative Museum Trust’, [link](#).

83. National Trust, ‘The history of Ham House’, [link](#).

84. Arts Council England, ‘Disposal Toolkit: Guidelines for Museums’, [link](#).



of their life. However, such wishes are not legally binding.

Stewards must consider two things when assessing whether they should remove a bequeathed object from their collection. Firstly, they should take legal guidance on the implication of any conditions attached. It is vital that stewards act in line with the law. Stewards should also be considered to have a moral duty to consider the original intentions of a donor – whether or not they are legally binding.

## 2. Stewards should seek impartial and expert advice about whether an item was legally obtained.

Calls for restitution often begin with claims that artefacts were ‘stolen’ or ‘looted’. Lobbying for the return of the Benin Bronzes, Abba Isa Tijani, Director of Nigeria’s National Commission for Museums and Monuments told Sky News:

*They are the subject of loot. They were illegally taken out of the country. It is irrespective whether they are safe there. That is not an issue. The issue is that these are stolen artefacts, and they should be returned to Nigeria to the communities that they belong to.*<sup>85</sup>

In a petition started by Dr Zahi Hawass, Egypt’s former minister for antiquities affairs, the claim is made that:

*The Rosetta Stone was removed from its original findspot in 1799 by the occupying French army, and seized in 1801 by the British, who took it to England in 1802. Egypt never had a say in the matter.*<sup>86</sup>

In January 2023 the Greek Ministry of Culture asserted (as they have done many times before):

*We repeat, once again, our country’s firm position that it does not recognise the British Museum’s jurisdiction, possession and ownership of the Sculptures, as they are the product of theft.*<sup>87</sup>

Such claims are frequently disputed, either by the museum currently in possession of the objects, the host nation in which they reside, or by other academics and legal experts. Sir Noel Malcolm has done significant authoritative work on the legal status of the Elgin Marbles in his paper for Policy Exchange on the topic.<sup>88</sup>

Given that many requests for restitution open with such legal assertions, it is important that stewards understand how to interpret them. Given the complexity of this topic the burden of proof ought to be on the claimant to prove ‘illegal’ acquisition.

The principle against retrospective legislation is a cornerstone of the rule of law and should not be overlooked when it comes to restitution. It does not matter whether it would be legal to remove marbles from the Parthenon today, or whether the current Greek government would grant

85. Sky News, ‘Nigeria Demands Return of Benin Bronzes after Thefts from British Museum’, [Link](#).

86. ‘Sign the Petition’, *Change.Org.*, [link](#)

87. Reported in ArtNews, ‘Greece Rejects Possibility of a Parthenon Marbles ‘Loan’ in New Statement’, 6 January 2023, [link](#).

88. Policy Exchange, ‘The Elgin Marbles’.

such permission; what is relevant is whether permission was lawfully granted at the time. Artefacts in museums tend to have changed hands numerous times (from private collectors, through donations etc.) and as such it is not always possible for a museum to fully understand the provenance of their collection. In many cases, paperwork relating to this provenance has been lost. This does not prove that an artefact was illegally acquired.

There is a clear and generally accepted principle regarding ‘nearness’, regarding how long ago an action took place. While scholars may debate the point at which the law should no longer seek to address the wrongs of the past, it is generally accepted that illegal acts committed long ago are far less in need of retribution than those committed recently. It is why we have legislation returning works of art stolen by the Nazis from Jewish families to their immediate descendants, but no such focus on returning artefacts taken by Napoleon back to France. This doesn’t mean that actions in the distant past are somehow less wrong, it simply speaks to a reduced need for the law to compensate for historic injustices that are further removed in time. There are, for example, no popular movements to compensate the descendants of those who suffered during the Harrying of the North from 1069-70. This is because it’s an intuitively accepted fact that these events were so long ago that legal recourse would no longer be useful.

Such a principle of ‘nearness’ also speaks to our understanding of inherited grievances. If an artwork was taken from your grandfather, then you will have a close personal connection to the theft. You may have been personally involved by the events leading to the theft, and with the artefact itself. You are, to an extent, a victim of this lost inheritance. Conversely, if an artefact was taken from your family two centuries ago, then it is impossible to claim any such connections. You are no longer, meaningfully, a victim of that crime.

There is no clear moment at which a legal claim loses weight due to its age. However, in recognition of the principle claims and corresponding duties hold strong force over the course of a human lifetime, this paper will propose that stewards should consider questions of legal acquisition within 100 years. This is not a clear cut-off point and is instead intended to offer a general guide for stewards. Stewards should closely consider the nuances of each individual case when it comes to the passage of time.

The Intergovernmental Committee set up by UNESCO in 1978 exists in part to resolve calls for restitution.<sup>89</sup> The discovery that an artefact was indeed looted or stolen does not entail any legal requirement (in British or International law) that it should be returned. Instead, it simply offers context to the decision.

The legal status of an acquisition is simply one of the principles and must be considered alongside the others. It is not enough by itself to answer the question of whether a claim for restitution is valid. For example, stewards may determine that an artefact was obtained illegally, but also that the object would not be preserved well or displayed publicly by the claimant, and as such it would be legitimate for the museum to

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89. UNESCO, ‘Intangible Culture Heritage: Intergovernmental Committee’, [link](#).

retain the artefact. Similarly, as was the case at the National Museum of Scotland, it may emerge that while an artefact was most likely purchased legally, it holds greater historical and spiritual value to the claimant and therefore restitution may be considered appropriate.

### 3. Stewards should consider the strength of connection between the person or persons calling for the restitution of the artefacts and the origins of those objects.

Before engaging any further with a request for restitution stewards must clearly establish the relationship between the claimant and the original creator or owners of the object. As discussed earlier in ‘A Question of Geography’, these questions are highly complex and resist easy answers. While it is important for stewards to engage with the question of connection, stewards must apply judgement when considering whether evidence of connection has been exaggerated or manufactured, particularly when judging between competing claims.

In resolving this question, stewards must first ask whether an artefact is the ‘cultural property’ of the claimant. Janna Thompson offers a definition for understanding what this may entail:

*Something is the cultural property of a collective if and only if a) it was legitimately acquired by the collective or its members – that is, not taken without consent or justification from others; or b) the item plays an important role in the religious, cultural or political life of people of the collective by functioning as a symbol of collective ideals, a source of identity for its members, as a ceremonial object, a focus of historical meaning, an expression of their achievements, or as a link with founders or ancestors.<sup>90</sup>*

The wonder of museums is their ability to house objects that do not belong to one individual. Attempts to trace the ‘rightful’ owner of an artefact entails abandoning this central mission of the museum – to hold items in trust. To hand over an object to a private individual is to undermine the role which museums hold in preserving humanity’s history and maximising access to it.

This being said, an attempt to understand whether an artefact has a clear cultural inheritor is a valuable exercise. Culturally invested artefacts may have particular resonance or significance to certain groups which participated in their creation.

Stewards should consider these claims along cultural lines. Because many restitution claims are made by nation states, this debate is often confused by conversations about national heritage. Today, nations are very rarely culturally homogenous or static. The cultural makeup of a nation state may have shifted and transformed with time, as such, it is important to consider whether there is significant evidence of cultural

90. Janna Thompson, ‘Cultural Property, Restitution and Value’, *Journal of Applied Philosophy*, 20.3 (2003), 251–62, p.242, [link](#).

continuity between the claimant and the creators of the artefact. This may not always be in the geographical location of an artefact's origin. It may also be impossible to determine.

As Tiffany Jenkins has pointed out, 'no one culture, or people, has ever been fixed throughout history'.<sup>91</sup> Ideas about 'Greekness' or 'Egyptianness' are selective and ignore the very complex histories of these landmasses.

The Koh-i-Noor diamond, which forms part of the Crown Jewels of the United Kingdom, is an example of an artefact where there are a number of competing claims. Numerous legends and contested narratives surround our understanding of Koh-i-Noor's history. We know that it was previously owned by the Mughal Emperors, Shahs of Iran, Emirs of Afghanistan, and Sikh Maharajas.<sup>92</sup> Different parties all have different beliefs about whether these transfers were legitimate. The governments of India, Iran, Pakistan and Afghanistan have all requested the restitution of the Koh-i-Noor diamond. The UK also now has a cultural link to the artefact, it having been part of the Crown Jewels for over a century and used at a number of coronations.

It would be difficult to determine which of these claims is the strongest, or indeed if any of these nation states can claim to be the inheritor of the cultural dynasties which possessed the Koh-i-Noor at different times. The modern borders between these countries were determined, in some cases, less than a century ago. Moreover, the cultures have intermingled since the diamond's creation. Such a situation weakens the case for restitution to any individual claimant.

A strong claim is a necessary precondition for restitution. If a claimant cannot prove a strong cultural relationship with the artefact, or if there are multiple parties with similarly strong competing claims, then stewards should typically decline a request for restitution.

#### **4. Stewards should consider the relative significance of the object to the institution in which it currently resides, the global significance of the object, and the significance of the object locally to the group making the claim.**

The history of an artefact does not start and end with its creation. Instead, artefacts have long biographies shaped by those who, for a short or long time, have had them in their possession. The long periods many artefacts have spent in British museums forms a crucial part of their history, and firmly establishes them as culturally significant objects to Britain.

Shortly after the Elgin Marbles were purchased by Parliament in 1816, John Keats visited the sculptures and wrote one of the most famous English poems: 'On Seeing the Elgin Marbles'. The arrival of the art in England fuelled great cultural interest in Greek antiquity. The sort of interest which led Percy Bysshe Shelley to proclaim: 'We are all Greeks. Our laws,

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91. Tiffany Jenkins, *Keeping their Marbles: how the treasures of the past ended up in museums... and why they should stay there*, (Oxford: Oxford University Press, 2016), p.213

92. Historic Royal Palaces, 'The Crown Jewels', [link](#).

our literature, our religion, our arts, have their root in Greece'.<sup>93</sup> The sculptures have enormous significance to the people of Greece, but they have also come to represent a vital aspect of British cultural understanding.

In his paper for Policy Exchange Sir Noel Malcolm shows that the Marbles have become part of British Cultural Heritage. He notes that:

In her study of the Parthenon, Mary Beard writes that 'after 200 years the Elgin Marbles have a history that roots them in the British Museum as well as in Athens; and that history cannot simply be unwritten by a well meaning gesture of 'restitution' or 'reunification'.<sup>94</sup>

When considering calls for restitution, stewards ought to evaluate whether there is a significant disparity between the significance of an artefact to the claimant and the current owners.

Important work done on this question can be found in John Henry Merryman's 1986 essay 'Two Ways of Thinking About Cultural Property'.<sup>95</sup> In the essay he argues that we can either understand cultural property as 'components of a common human culture' or as part of a 'national cultural heritage' which gives nations a special interest and assumes 'the attribution of national character to objects, independently of their location or ownership'. It is very difficult to determine which of these claims should be prioritised. The bar for consigning an object to simply 'national cultural heritage' should be very high – more artefacts are best understood as part of a 'common human culture'. It should not be enough to claim one 'closely identifies' with an artefact, or that one feels it is an important part of their culture. This principle is primarily reserved for objects which play an active role in modern religious customs or rituals.

Stewards should be careful of claims regarding artefacts and national identity. As Tiffany Jenkins identifies in her book, there is a long and fraught history of political regimes laying claim to objects of the past as a means of identifying a modern regime with a desired historical narrative. Egypt, for example, became interested in ancient heritage in the mid-nineteenth century as a means of separating their identity from the Ottoman Empire.<sup>96</sup> China, similarly, have shown recent interest in antiquity – a state run Chinese newspaper recently demanded that the British Museum 'returns all Chinese cultural relics acquired through improper channels to China free of charge'.<sup>97</sup> This is likely a function of China's wish to assert a sense of Chinese nationalism and tradition. A claimant must prove that an artefact has far more than just 'national significance' – the object being called for must play a keen, active, and unique role in a culture's day to day existence.

Ultimately, stewards must carefully consider an objects relationship to these two types of heritage on a case-by-case basis. Some objects are vital to telling stories of common human culture, some have a much closer relationship to one culture's immediate past and therefore ought to reside there. This will always be a difficult and complicated question, however, answering it will help stewards best determine where an artefact should

93. Percy Bysshe Shelley, *The Major Works: Including Poetry, Prose, and Drama*, eds. Zachary Leader & Michael O'Neill, (New York: Oxford University Press, 2009), p.549.

94. Policy Exchange, 'The Elgin Marbles', p.43. [link](#)

95. John Henry Merryman, 'Two Ways of Thinking About Cultural Property', *The American Journal of International Law*, 80.4 (1986), 831–53 <<https://doi.org/10.2307/2202065>>.

96. Tiffany Jenkins, *Keeping their Marbles: how the treasures of the past ended up in museums... and why they should stay there*, (Oxford: Oxford University Press, 2016), p.213

97. 'British Museum thefts: Chinese state newspaper calls for the return of cultural relics', Gareth Harris, *The Art Newspaper*, [link](#).

be displayed.

### **5. Stewards should consider the future preservation of the object. Is there evidence those making a claim have the capacity and intention to preserve it for future generations?**

The future and safety of an object is of utmost importance. Artefacts should only ever reside in museums where they will be cared for and preserved, with minimal to no risk they could be lost, damaged, or allowed to decay.

Museum conservation is a complex task. Some artefacts, like ancient papyrus scroll, are so delicate they might disintegrate upon touch. The preservation of these delicate objects necessitates years of training. A museum should not be entrusted with an object of importance if they do not have conservators with the necessary skill level and experience to support the preservation of the item returned.

Museums themselves must be equipped with numerous features to properly conserve an object; these include, but are not limited to:

#### **Climate Control:**

**Temperature:** Fluctuations can lead to the expansion and contraction of materials, causing damage. Different materials have different ideal temperature ranges.

**Humidity:** Controlling humidity prevents deterioration due to mould, corrosion, or dimensional changes.

#### **Lighting:**

Exposure to light, particularly natural sunlight, cause the corrosion of polymers in numerous objects. As such, museums must limit exposure to light often through the use of UV-filtering glass.

#### **Security**

There is a thriving black market for stolen artefacts. Museum must utilise surveillance, cameras, alarms, in-person security, and secure display cases to minimise this risk. Numerous artefacts have also been lost throughout history due to corrupt curators or conservators who abuse their privileged access to an object.

#### **Proper documentation**

Artefacts are much more vulnerable to loss or damage if they are not properly documented. Digital catalogues allow stewards to keep track of the objects in their care, catalogue any of their structural weaknesses, and note down any changes.

#### **Pest control**

Many artefacts have been lost or damaged due to poor pest control in museums. Artefacts in storage are particularly vulnerable.

## Disaster

Museums must have procedures in place to minimise damage in case of events such as floods, fire and (where appropriate) earthquakes. Warfare and political instability may also pose a threat to artefacts.

If there is no evidence that a claimant has a museum capable providing all of the above protections for an artefact, then stewards cannot responsibly agree to restitution. Sometimes, nations might request the restitution of an artefact while promising a museum would be custom built were it returned. It would be irresponsible of stewards to hand over an irreplaceable artefact until they have seen evidence of a well-staffed and secure museum.

## 6. Stewards should consider the public accessibility of the object, in both its current position and if it were to be granted to those claiming it. This should include a consideration of the interests of any relevant diaspora.

One important function of museums is to allow people to view the objects which they create. These prospective viewers may range from children on school trips to doctoral candidates engaging with ground-breaking research. This is a relevant consideration when considering a claim for restitution.

In considering a claim for restitution this principle, stewards should consider a number of factors, including the number of people able to view it, the accessibility of the object, and the diversity of who will see it, including consideration of the diaspora of the culture making the claim.

An initial consideration is whether, if the claim is granted, the artefact would be housed in a museum or other public space, or in a private collection. Stewards should almost never countenance restitution to private collections which would result in the objects no longer being viewable to the public.

Other important questions involve cost and accessibility. Will the artefact be free to visit? How many visitors does each museum get a year? Is it safe to travel to the country restitution is being proposed to? Does the area of a history of political stability which is likely to continue? Does the building itself have good disabled access? Will the artefacts be accessible to those wishing to carry out research on their provenance and role in history?

A further consideration when considering the question of restitution is the role of the diaspora. 10.4 million people in the UK were born in another country and for them, and their children and grandchildren, artefacts in UK museums may offer an important means with which to connect to their heritage. When one considers the case of an artefact such as the Benin Bronzes, it is relevant to consider the large diaspora of people of West African descent who live in both Europe and the Americas, and for

whom the Bronzes form part of their cultural heritage – no less than they do to those still living in Nigeria. Ben, for example, is home to around 13 million people. America, on the other hand, plays home to 46 million African Americans.<sup>98</sup> These differentials are important when trying to understand where cultural artefacts will be appreciated. The exhibition of the Bronzes in publicly accessible museums provides an important contribution of making that heritage accessible to the diaspora. Similarly, in cases like that of the Elgin Marbles, or other Greek artefacts, it is worth remembering that 5 million Greeks live outside their country of birth, that's half the number of people living in Greece.

### 7. Stewards should consider where the object has the greatest educational benefit.

A fundamental purpose of the museum as an institution is to educate. There are many ways to do this: through educational programmes, explanatory labels, additional resources, online catalogues, research programmes, and media collaborations.

The educational benefit of an artefact is often defined by its surroundings. A single cuneiform tablet will have far more impact if it stands in a gallery of Assyrian relics contextualising its role in both time and place.

Of particular importance to this principle is the value of the Universal Museum (to be discussed in the next chapter). As Professor David Abulafia writes of the British Museum, 'it embraces the history of all the world's civilisations: in doing so, it contextualises those civilisations.'

The British Museum, for example, was visited by 237,000 school children in 2022/23. Even much smaller museums, like the Horniman (which is currently engaged in the restitution of the Benin Bronzes) see 31,491 school visits. These are just those recorded as part of a formal educational programme. Free museums will also see thousands of students attend on weekend or during the evening to learn more about their independent cultural interests.<sup>99</sup>

The best museums will work with schools to develop learning opportunities; they will run guided tours exploring certain aspects of their collections; and they should ensure a dynamic range of temporary exhibitions which shine a light on different artefacts in their possession

Museums also work with doctoral research students – supervising or otherwise supporting academic research into their work. They seek to better understand the artefacts in their care, working with other museums around the world to piece together a full history of the cultures that created these objects.

The goal of stewards should always be to provide visitors to a museum with the best sense of a broader educational context. This requires that artefacts exist in curated exhibits which enlighten visitors on their historical and cultural background. When stewards consider restitution, they should

98. Population of Benin: 14.11 million as of 2023: World Health Organisation, 'Health data overview for the Republic of Benin, [link](#). Number of those who reported their race as Black or African in America as on 2023: 46,936,733.; Census.gov, 'Over Half of Those Who Reported Their Race as Black or African American Identified as African American, Jamaican or Haitian', October 17th 2023, [link](#).

99. 'Museums: Educational Visits in England 2022', Statista, [link](#).



attempt to determine how the educational experience might be enhanced or harmed for viewers. Furthermore, they should ask who will be able to visit and receive this education.

## 8. Stewards should conduct a full consultation of their visitors and the wider public before returning an object.

Restitution is an irreversible act. Once an object is returned to its country of origin, it is quite likely that it will never again be displayed in a British Museum.

Debates surrounding restitution often evolve very rapidly, in response to public pressure and concerted efforts by interest groups. It is vital that museums ensure decisions towards restitution are taken in the interests of all stakeholders, rather than allowing the loudest voices to dominate. For all museums, their most important stakeholders are their visitors; these are the people invested in the future of the museum and who are the most likely to have firmly held views about artefacts displayed in the building.

Museum stewards have vital expertise regarding their collections. However, they should inform their own decisions by consulting the public. Any consultations must fulfil the following criterion (criteria?):

- **Informed** – The consultation process must seek to inform people of the significance of the artefact, the case made by the claimant, and its provenance. Stewards should avoid asking the public to determine the legality of acquisition – this is a complex question which is best dealt with by a lawyer.
- **Non-Partisan** – questions about restitution should be posed objectively. Any information supplied about an object's provenance, or the case made by a claimant, should be presented in as neutral terms as possible. The consultation should never presuppose a response or make assumptions about the 'morality' of any chosen position.
- **Transparent** – stewards should operate with full transparency about research done into the collection so far. Information about how the object was obtained should be presented clearly and objectively. Similarly, stewards should be transparent about any potential harms to the object if it is returned.
- **Balanced** – stewards must ensure that a balanced range of people are consulted. Those who visit a museum ought to be prioritised. A balanced consultation should be conducted over a minimum of three months.

Consultation is only one principle and the results of any consultation should be considered alongside the other principles. If, however, a consultation determines that an artefact is very important to museum

visitors, or to the broader public, then stewards should be cautious about accepting a claim for restitution.

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# Loans

Loans are a crucial part of the work of museums. They allow stewards to share their artefacts widely and ensure that an object's educational benefit might be maximised. Loans also allow museums to tell a more complete story of history as part of an exhibition. In 1972 over 1.6 million people travelled to the British Museum to see 50 objects on loan from Egypt as part of *The Treasures of Tutankhamun* exhibition.<sup>100</sup> The star object was a famous gold mask from the head of the king's mummy. This collaboration began a long and beneficial relationship between the Egyptian Museum in Cairo and The British Museum and showcases exactly how museums can use loans to their advantage.

However, loans are increasingly being suggested to subvert conversations about restitution. They are often proposed as a way for a museum to 'share' a contested artefact. In some cases, long term or indefinite loans are proposed as an alternative to restitution when either the law, or the Principles for Restitution, demonstrate that the return of an object is not the correct decision.

Stewards should avoid loans in the following scenarios:

1. When a loan may pose a threat to the artefact. This includes both the threat of poor preservation by the host museum and the threat of non-return. As former Supreme Court Judge Lord Sumption recently warned of proposals to lend the Elgin Marbles to Greece: 'once they leave, their fate will depend on the law of the place where they are located'.<sup>101</sup> Stewards cannot safely countenance long-term loans to countries which do not recognise the UK's legal rights to an object. They should also avoid loans to countries where public sentiment strongly opposes the UK's ownership of the artefact.
2. When the Principles for Restitution have shown that an artefact should be returned, stewards should not simply loan the artefact for an indefinite or very long period (over three years).

100. Tutankhamun | British Museum, [link](#).

101. *The Spectator*, 25 February 2024, p. 9.

## Testing these Principles

The heuristic offered above is not binary and requires stewards to exercise their best judgement. Here we will consider three case studies dealing with contested objects.

### The Benin Bronzes

The Benin Bronzes in the UK reside in the British Museum, London, The Horniman Museum, London, the Pitt Rivers Museum, Oxford, and The Museum of Archaeology and Anthropology, Cambridge.

An object centred approach considers restitution in the context of the whole collection. Where a wider collection is concerned, UK museums should consider restitution together, not separately.

- 1. Stewards should conduct a full consultation of their visitors and the wider public before returning an object.**

The British Museum is subject to the British Museum Act 1963. This prohibits restitution from their collection. The Horniman Museum is a DCMS sponsored museum but, with the correct permissions, may engage with restitution. The Pitt Rivers Museum and The Museum of Archaeology and Anthropology may also engage with restitution with the relevant permissions from the Charity Commission.

- 2. Stewards should seek impartial and expert advice about whether an item was legally obtained.**

Some historians believe that the Benin Bronzes were looted. In January 1897 a British trade mission was attacked on its way to Benin City. This incident caused Britain to launch a punitive mission against the Kingdom of Benin. In 1897 Benin City was captured. During this period of occupation thousands of objects were taken to Britain as official 'spoils of war'. Some were given to members of the expedition as reward or payment. Amongst these objects were the Benin Bronzes. As Professor Nigel Biggar has demonstrated, it is not accurate to describe the events which led to the British acquisition on the bronzes as 'looting', which more accurately refers to the seizure of items by soldiers for private purposes. The Bronzes were taken punitively and sold by the Admiralty as spoils of war in order to 'pay for the expenses of removing the King from his Stool'.

The question of ownership for individual museums becomes

more complex. Regardless of the fact that the Bronzes were taken by force from Benin, the UK museums who now hold Bronzes received them through legal donation or purchase from individuals or organisations.

Considering the concept of ‘nearness’, the Benin Bronzes were taken over one hundred years ago.

**3. Stewards should consider the strength of connection between the person or persons calling for the restitution of the artefacts and the origins of those objects.**

The Benin Bronzes can mostly be dated back to either the thirteenth or fifteenth and sixteenth century: widely believed to represent two ‘golden ages’ of metal workmanship. They were produced in the Kingdom of Benin as courtly art<sup>102</sup> and the brass used in their formation was likely traded by the Oba of Benin with Portuguese merchants in exchange for chattel slaves.<sup>103</sup>

Since the Nigerian Government first called for the restitution of the Bronzes, the President of Nigeria has declared that all bronzes returned will be given to the Oba of Benin. The title of Oba is a hereditary title which has belonged to Ewuare II. Ewuare II is a direct descent of the man the Benin Bronzes were taken from. There is a strong connection between the original creators of the Bronzes and the group calling for restitution.

**4. Stewards should consider the relative significance of the object to the institution in which it currently resides, the global significance of the object, and the significance of the object locally to the group making the claim.**

Adam Kuper believes there are around five hundred Benin Bronzes in Nigerian Museums.<sup>104</sup> Dan Hicks has argued there are seventy-eight.<sup>105</sup> Widespread interest in the Benin Bronzes appears to be a relatively new phenomena in Nigeria. Eva Meyerowitz visited Benin City in the 1940s and reported that ‘valuable bronzes, some still encrusted with earth, those which were found buried in the ground, are kept carelessly, one on top of the other in an open room, and are carried into a courtyard when shown to visitors and afterwards left lying about’.<sup>106</sup>

This would indicate there has not been long term historic interest in the Benin Bronzes by the Nigerian government. However, we must acknowledge that economic and political turbulence will have contributed to this. The work done by the Benin Dialogue Group to regain ownership of the bronzes is indicative of profound interest in owning the artworks now.

Interest in the Bronzes is not limited to those currently living in Nigeria. As some of the preeminent examples of African metalwork they have a wider significance, both to other Africans and those of African heritage and also a global significance, in their ability to

102. British Museum, ‘Benin Bronzes’, [link](#).

103. The British Museum, ‘[Benin: an African Kingdom](#)’, [link](#).

104. Kuper, p.241.

105. Hicks, p.243-4.

106. Kuper, p.246.

demonstrate important cultural and technological developments of one of Africa's leading kingdoms.

The complexity of this question is spotlighted by a group of African Americans, who have filed a lawsuit to stop the return of some Benin Bronzes from the Smithsonian Museum in Washington DC to Nigeria. The case has been brought forward by Deadria Farmer-Paellmann, the founder and executive director of the Restitution Study Group (RSG). She highlights that more than 103,000 slaves were brought to America from ports controlled by the kingdom of Benin, and that the brass used in their formation was likely traded by the Oba of Benin with Portuguese merchants in exchange for chattel slaves. The Restitution Study Group argues that the descendants of those sold as slaves, now living in the UK and United States, have the right to see the Bronzes in museums in their own country, and that it would be wrong to repatriate them to the country who sold them into slavery<sup>107</sup>.

**5. Stewards should consider the future preservation of the object. Is there evidence those making a claim have the capacity and intention to preserve it for future generations?**

There is not strong evidence that the Nigerian government have the capacity to preserve the Benin Bronzes for future generations. The museum of Lagos, which has the largest collection of Benin Bronzes in Nigeria, is in disrepair.

Many of the bronzes inherited by Nigeria in 1960 now seem unaccounted for. Mike Wells, a photographer whose portfolio includes comprehensive coverage of Nigeria in the 1970s, has reported that many items supposedly in Nigerian museums are now unaccounted for.<sup>108</sup> Martin Bailey of the *Art Newspaper* discovered that Queen Elizabeth had been gifted an original 12-inch bronze oba's head in 1973, not a replica as she'd be told. When the commissioned replica had been unconvincing, General Yakuba Gowon had stolen a real bronze from Lagos museum to gift to the Queen – the ordeal offers a damning indictment of the quality of curation and stewardship in Lagos during the 1970s.<sup>109</sup>

The Benin dialogue group wishes to accession the Bronzes to an 'Edo Museum of West African Art'. They have raised \$4 million for this project (£3 million of which was contributed by the British Museum). However, in 2021 the Oba of Benin rejected these plans, stating 'I do not believe that the move by a privately registered company, the Legacy Restoration Trust Ltd., and the purported establishment of Edo Museum of West African Arts are in consonance with the wishes of the people of Benin kingdom'.<sup>110</sup>

All of these factors suggest that at this point in time, the Benin Bronzes will not be well preserved if they are returned to Nigeria.

**6. Stewards should consider the public accessibility of the object,**

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107. Restitution Study Group, [Link](#)

108. Cultural Property News, [Link](#)

109. The Art Newspaper, 'How the African Treasure was looted not once, but twice', 14<sup>th</sup> June 2021, [link](#).

110. Gregory Austin Neakunor, 11 July 2021, 'Rumble in Benin over looted artefacts', *Guardian Nigeria*, [link](#)

**in both its current position and if it were to be granted to those claiming it. This should include a consideration of the interests of any relevant diaspora.**

Some Bronzes have already been sent to Nigeria. Although museums were told the bronzes would be returning to the National Commission for Museums and Monuments, a declaration made on 23 March 2023 unequivocally recognises the Oba, or king, of Benin, Ewuare II, as the owner of the famous Benin Bronzes.<sup>111</sup> A group of Bronzes returned by Germany appear to have disappeared after restitution, quite possibly into the Oba's private collection.<sup>112</sup>

In contrast, the Bronzes currently held within UK museums are well curated, publicly accessible and in most cases free to visit. They are visited by millions of people per year, not just those living in the UK but those visiting as tourists from across the world.

Considering the diaspora, in the 2021 Census 270,768 people stated Nigeria as their country of birth, and around 4% of the UK population is black, an indication of direct or indirect African descent<sup>113</sup>. Many of these individuals will be descended from those who were enslaved in Benin. For these – and others of the African diaspora who visit the UK – the British Museum, and other UK museums, provide a better opportunity to view the Bronzes than if they were in the Oba's private collection in Nigeria.

#### **7. Stewards should consider where the object has the greatest educational benefit.**

The Benin Bronzes have the greatest educational benefit in the British Museum, where they are contextualised by a universal collection.

The Horniman Museum, London, the Pitt Rivers Museum, Oxford, and The Museum of Archaeology and Anthropology, Cambridge are all also excellent, well curated museums.

It is difficult to ascertain the educational benefit of the proposed Edo Museum of West African Art until it is built; however, it could potentially have high educational benefit.

The fact that the Bronzes, items of global historical significance, reside in a number of places – including in Nigeria – provides greater educational benefit than if they were all in a single country.

#### **8. Stewards should conduct a full consultation of their visitors and the wider public before returning an object.**

If the first seven principles indicated significant benefit could be derived from returning the the Benin Bronzes, then stewards should conduct a full consultation before moving forward with the move. On the balance of these principles, this is not necessary.

### **Verdict: The Benin Bronzes**

The case for accepting the claim for restitution of the Benin Bronzes is

111. 'Nigeria Benin Bronzes: Buhari Declaration "blindsides" Museum Officials', *BBC News*, 10 May 2023, [link](#).

112. Oliver Moody Berlin, 'Berlin's Benin Bronze Return a "Fiasco" as Artefacts Vanish', 4 December 2023, section world, [link](#).

113. ONS, 'Country of Birth - Census Maps', [link](#).

weak. The risk the bronzes might be damaged or confined to a private collection is too great to justify return, particularly given it is not possible to accurately determine the location or security of many of the Bronzes believed to already reside in Nigeria.

The question of claims and cultural links is also complex and does not provide a strong case for restitution. While the Bronzes were taken from Nigeria as spoils of war by Britain, some of the Bronzes themselves were created in Benin with brass obtained by selling the people of Benin into chattel slavery. The descendants of those enslaved people, many of whom now reside in the UK and the United States, also have a strong cultural link to the Bronzes.

### Nisga'a Ceremonial Totem Pole

In August 2023, Stewards at the National Museum of Scotland made the decision to return the House of Ni'isjoohl ceremonial totem pole.

- 1. Stewards must abide by the law of the land, as well as the founding documents, constitutions, statutes, or trust deeds of their institutions. They should also consider any conditions attached to an individual bequest.**

The National Museum of Scotland is permitted to return the object. Their charitable objective is:

*“So far as practicable and subject to the provisions of this Act, the Board shall (a) care for, preserve and add to the objects in their collections, (b) secure that the objects are exhibited to and interpreted for the public, (c) secure that the objects are available to persons seeking to inspect them in connection with study or research, (d) generally promote the public’s awareness, appreciation and understanding of matters agricultural, archaeological, architectural, artistic, cultural, environmental, historical, industrial, military, scientific and social both by means of the Board’s collections and by such other means; including collaboration with other institutions, as they consider appropriate, and (e) provide education, instruction and advice and carry out research.”<sup>114</sup>*

Removing an artefact from their collection clearly falls outside of this remit. Arguably, return is directly in contravention of their objective to ‘preserve and add to the objects in their collections.’ However, the museum is legally permitted to dispose of the object if they seek permission from the OSCR.

- 2. Stewards should seek impartial and expert advice about whether an item was legally obtained.**

The totem pole was taken in 1929 by a Canadian ethnographer, Marius Barbeau. He did not pay for the pole, which was taken when many people were absent from the Nisga'a Nation due to hunting and fishing season. By the legal standards of British Columbia, Canada (as the pole was taken before the Nisga'a Final Agreement giving them right to self-governance) then it seems the

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114.OSCR, Charity Details: National Museums Scotland, [link](#).



pole was taken illegally. However, this is a complex case in which the National Museum of Scotland would be advised to involve a lawyer.

**3. Stewards should consider the strength of connection between the person or persons calling for the restitution of the artefacts and the origins of those objects.**

There is a strong connection between the Nisga'a people of British Columbia, Canada and the totem pole. The pole forms part of the Nisga'a Nation's cultural rituals, which are still practiced today.

The Nisga'a people are the direct descendants of the people who initially commissioned the pole. Amy Parent, whose great-great grandmother commissioned the pole to honour her son, recalled that she 'could feel the breath of our ancestors' when visiting the National Museum of Scotland.

**4. Stewards should consider the relative significance of the object to the institution in which it currently resides, the global significance of the object, and the significance of the object locally to the group making the claim.**

The totem pole is of high significance to the Nisga'a people. The totem pole was created to record traditional stories and histories known as *adaawak*. Amy Parent describes the pole as 'a living constitutional and visual archive'. This pole commemorated the death of a warrior in line to be chief after he was killed in conflict. Many of the Nisga'a people are only two generations removed from said warrior. Calls to remove the pole have been vocal since 1991 when the first Nisga'a delegation visited Scotland to request the return of the pole.

The totem pole was on prominent display in the National Museum of Scotland. This implies significance. However, it does not have the same cultural and spiritual value to the museum's visitors, nor was it an item which many visitors would travel to the National Museum to see. While significant to the Nisga'a people, it does not enjoy global cultural recognition in the way that artefacts such as the Rosetta Stone or others do.

The totem pole is of more importance locally to the group claiming ownership, than it is globally or to the institution it previously resided in.

**5. Stewards should consider the future preservation of the object. Is there evidence those making a claim have the capacity and intention to preserve it for future generations?**

In 2000 the Nisga'a Final Agreement came into effect.<sup>115</sup> This included a provision for the return of ancestral objects from the rest of Canada and the creation of the Nisga'a Museum. In 2011 the \$14 million facility where the totem pole would be on

115. Nisga'a Lisims Government, 'Nisga'a Treaty', [link](#).

permanent display opened. The museum has the structural and curatorial ability to preserve the pole effectively. They have the only Class A climate-controlled gallery space in British Columbia's northwest and state of the art security.<sup>116</sup>

**6. Stewards should consider the public accessibility of the object, in both its current position and if it were to be granted to those claiming it. This should include a consideration of the interests of any relevant diaspora.**

The Nisga'a Museum does not have published annual visitor numbers. While it is an emerging tourist destination, it seems likely the National Museum of Scotland received more visitors (1,973,51 in 2022). However, the National Museum of Scotland likely receives very few visitors from the Nisga'a Nation who do not have a large diaspora community.

**7. Stewards should consider where the object has the greatest educational benefit.**

In the Nisga'a Museum the totem pole is contextualised by a museum dedicated to showcasing artefacts taken from the Nisga'a community. Visitors are given the opportunity to fully appreciate wider Nisga'a culture in their place of origin.

The National Museum of Scotland is a highly didactic museum. They run a school visits programme, have numerous educational resources, and a thriving research programme.

It is possible the net educational benefit of the totem pole would be greatest in Scotland, due to the number of school visits and volume of research.

**8. Stewards should conduct a full consultation of their visitors and the wider public before returning an object.**

There is no evidence that National Museums Scotland held a consultation on the future of the totem pole. While museum stewards did spend several months in conversation with members of the Nisga'a Lisims Government, visitors to National Museums Scotland and the wider public were not consulted.

### **Verdict: Totem Pole**

There is a reasonable case that the Museum of Scotland's decision to return the totem pole was justified. The pole's active role in present day spiritual ceremonies and its depiction of a story which exists within living memory for the community provides a strong case that the pole is of greater significance to the claimants than to the museum and its current visitors. The Nisga'a community have also demonstrated that they are able to preserve the pole. However, stewards of the museum should have consulted the public before reaching this decision.

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116. Discover Disga'a, 'The Nisga'a Museum', [link](#).

# Curation of Contested Artefacts

Calls for the return of an artefact throw up complex curatorial questions for stewards. Once an item is 'contested', stewards ought to consider how they wish to respond. Whether or not an artefact is retained, stewards should seek to provide transparent information about their decision.

Where possible, stewards should work with museums to share resources and information; regardless of whether a request for restitution was accepted.

## When an artefact is returned

On the practicalities of return, stewards should refer to Arts Council England's Practical Guide for Museums in England on Restitution and Repatriation.<sup>117</sup>

Stewards should make every effort to ensure that the public and patrons of a museum know an artefact is being returned. The museum should seek to operate with total transparency about their decision, explaining how they worked through the framework and what led them to decide to return.

Except for in very rare cases of recent theft – such as Nazi Spoliation, stewards should not pay for the return of an artefact. The claimant must shoulder the costs of transportation. This demonstrates a claimant's ability to safeguard an artefact and ensures that the UK Museum is not disadvantaged by a high cost which doesn't contribute to their educational purpose.

Some space in the museum itself should be dedicated to a display explaining the return. The museum should provide history on the artefact, including the time it spent in the museum, and why it was returned.

If the artefact is small or transferable then a loans programme should be considered in which the artefact will regularly return to the UK.

## When an artefact is retained

It is important that when stewards choose to retain a collection, they are equipped to explain their decision and the context surrounding the artefact's acquisition.

Stewards should first consider whether a restitution claim ought to be explained. Some restitution claims are illegitimate and do not require a response from stewards or a change in curation. However, where a restitution claim is significant, and has a bearing on the history, cultural significance and display of the artefact, stewards may wish to consider including information on the artefact's contested heritage in their display,

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117.Thompson.

in line with broader principles of ‘Retain and Explain’.

Good curation takes time. Provenance research is a complex and long process. Stewards should never respond to social pressure to reach a decision fast. Even after a final decision is made regarding restitution or retention, they should take time to properly review any impending curatorial decisions.

### Case Study – Curation after Retention

The Koh-i-Noor diamond is one of the most famous diamonds in the world. It is also one of the most contested objects – at least four different countries currently have active calls for the restitution of the diamonds.

The diamond is part of ‘The Crown Jewels’ collection at the Tower of London. Its label provides clear information about the stone, how it was acquired, and how its story has been influenced by different groups, including the Mughal Emperors, Shahs of Iran, Emirs of Afghanistan, and Sikh Maharajas across its long history.

Extensive provenance research is presented clearly and without bias. The Historic Royal Palaces Website hosts an FAQ for those interested in the diamond’s history and wishing to learn more than what is on display at the Tower. A podcast on the diamond’s role in coronations and further information about the diamond’s history in England has also been produced by Historic Royal Palaces.

The curation of this artefact is an excellent example of the principle of ‘Retain and Explain’.

## Conclusion

This report seeks to provide a guide whereby those in museums can make objective and impartial decisions when considering claims for the restitution of artefacts. These are difficult decisions, involving the weighing of multiple factors involving provenance, preservation, cultural links and contested claims, in which there are often – despite the claims of campaigners – no simple answers.

Our eight Principles for Restitution offer an impartial heuristic through which those in museums can assess such claims, taking into account not only their legal responsibilities, but their moral responsibilities as stewards of humanity's shared history.

# Appendix 1

Excerpts from each Act of Parliament governing a museum's constitution and conditions for the acquisition, disposal, lending and borrowing of objects. Some of these acts govern multiple museums.

## **1963 British Museum Act<sup>118</sup>**

The British Museum Act established both the British Museum and the Natural History Museum

### 3. Keeping and inspection of collections

(4) Objects vested in the Trustees as part of the collections of the Museum shall not be disposed of by them otherwise than under section 5 or 9 of this Act [or section 6 of the Museums and Galleries Act 1992].

### 4. Lending of objects

The Trustees of the British museum may lend for public exhibition (whether in the United Kingdom or elsewhere) any object comprised in the collections of the Museum:

Provided that in deciding whether or not to lend any such object, and in determining the time for which, and the conditions subject to which, any such objects is to be lent, the Trustees shall have regard to the interests of students and other persons visiting the Museum, to the physical condition and degree of rarity of the object in question, and to any risks to which it is likely to be exposed.

### 5. Disposal of objects

(1) The Trustees of the British Museum may sell, exchange, give away or otherwise dispose of any object vested in them and comprised in their collection if -

(a) the object is duplicate of another object, or

(b) the object appears to the Trustees to have been made not earlier than the year 1850, and substantially consists of printed matter of which a copy made by photography or a process akin to photography is held by the Trustees, or

(c) in the opinion of the Trustees the object is unfit to be retained in the collections of the Museum and can be disposed of without detriment to the

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118. 'British-Museum-Act-1963', [link](#).

interests of students:

### 1920 Imperial War Museum Act<sup>119</sup>

3 Vesting in Board of objects given to, acquired for, or transferred to Museum.

(1) All objects given, bequeathed, or otherwise acquired for the purposes of the Museum at any time before the date on which the Board is first constituted, and not disposed of before that date, shall by virtue of this Act vest in the Board, and all objects which are at any subsequent time expressly given or bequeathed to the public, or to the nation, or to the Board for the purposes of the Museum, or given or bequeathed by words showing an intention that the gifts should enure to or for the benefit of the Museum, or which are acquired by purchase or otherwise for the purposes of the Museum, shall vest in the Board and be held by the Board for the purposes of the Museum.

### 1954 National Gallery And Tate Gallery Act<sup>120</sup>

4. Powers of lending exercisable by National Gallery Trustees and Tate Gallery Trustees

(1) Subject to the provisions of this section, the National Gallery Trustees and the Tate Gallery Trustees shall respectively have power to lend pictures or other works of art vested in them—

(a) for public exhibition, whether in the United Kingdom or elsewhere; or

(b) for display—

(i) in a public building or official residence in the United Kingdom or elsewhere for the furnishing of which the Minister of Works is responsible; or

(ii) in the official residence of the Governor of a colony.

(2) The said Trustees shall not lend for exhibition or display outside the United Kingdom a picture or other work of art which appears to them to have been executed by a foreign artist before the year seventeen hundred unless the loan has been approved by an order of the Treasury contained in a statutory instrument; and a draft of any such statutory instrument shall be laid before Parliament.

(3) The number of paintings or other works of art which are at any time on loan under paragraph (b) of subsection

(1) of this section shall not exceed—

(a) in the case of the National Gallery, one-twentieth of the total number of works of art then vested in the Trustees of that Gallery, and

(b) in the case of the Tate Gallery, one-tenth of the total number of works of art then vested in the Trustees of that Gallery,

119. Expert Participation, 'Imperial War Museum Act 1920' (Statute Law Database), [link](#).

120. 'National Gallery and Tate Gallery Act 1954' (King's Printer of Acts of Parliament), [link](#).

but the Treasury may from time to time by order increase or reduce either of the fractions mentioned in the foregoing paragraphs.

An order under this subsection shall be made by statutory instrument a draft of which has been laid before Parliament, and an order increasing either of the said fractions shall not be made unless the draft has been approved by a resolution of each House of Parliament.

(4) A loan under paragraph (b) of subsection (1) of this section shall require the consent of the Treasury and shall be effected through the Minister of Works.

(5) Before lending a picture or other work of art under this section, the Trustees shall satisfy themselves—

(a) that, taking account of its age and material, and, in the case of a picture, of the atmospheric conditions under which it has been kept, it is proper to expose it to the atmospheric changes, vibration and other ordinary incidents attending its removal, and

(b) that it will not be exposed to any unnecessary or exceptional hazards,

and the Trustees shall have particular regard to those considerations in determining the time for which, and conditions subject to which, the loan is made.

(6) It shall be the duty of the authority responsible for any picture or other work of art while it is displayed under this section in any public building or official residence to afford reasonable opportunities of viewing the picture or other work of art to any applicant who satisfies them that he is a student or engaged in research and that the application is made for the purpose of his studies or researches.

(7) In the case of a picture or other work of art which has been given or bequeathed, the powers conferred by this section shall not be exercisable—

(a) until fifteen years have elapsed since the date on which the property passed to the nation, unless the donor or his personal representatives or the personal representatives of the testator, as the case may be, have consented to the exercise of those powers; or

(b) in any manner inconsistent with any condition attached to the gift or bequest unless either twenty-five years have elapsed since the said date, or the donor or his personal representatives or the personal representatives of the testator, as the case may be, have consented to the exercise of those powers in that manner.

(8) In this section the expression “ colony “ includes a protectorate or protected State within the meaning of the British Nationality Act, 1948, and a United Kingdom trust territory as defined in that Act, and the expression “ Governor “ has the same meaning as in that Act.



(9) The provisions of this section shall be in substitution for the provisions of the [46 & 47 Vict. c. 4.] National Gallery (Loan) Act, 1883, and the [25 & 26 Geo. 5. c. 18.] National Gallery (Overseas Loans) Act, 1935; but nothing in this subsection shall affect the terms of any loan made before the coming into operation of this Act.

## 1934 National Maritime Museum Act<sup>121</sup>

3. The Board shall have the general management and control of the Museum and for that purpose may—

(a) make such regulations as they think necessary for securing the due administration of the Museum and preserving the objects collected therein, including regulations requiring payment to be made for admission to the Museum;

(b) exchange, sell or otherwise dispose of any duplicate objects vested in them for the purposes of the Museum, and with the consent of the Lord President of the Council] exchange, sell or otherwise dispose of any objects so vested which the Board consider to be not required for the purposes of the Museum;

(c) with any moneys which, in accordance with the provisions of this Act, are available for the purpose, purchase any object which in the opinion of the Board it is desirable to acquire for the Museum;

(d) on such terms and subject to such conditions as the Board think fit lend any objects vested in them for the purposes of the Museum to any gallery, museum or exhibition approved for the purposes of this provision by the Lord President of the Council];

(e) subject to the consent of the Lord President of the Council] transfer or lend to any Government Department or to the trustees or other persons having the management of any gallery, museum or other institution in Great Britain which is in receipt of moneys provided by Parliament, any objects vested in the Board for the purposes of the Museum which, in the opinion of the Board, would more properly be under the control or management of that Department or of those trustees or other persons, as the case may be;

(f) subject to the provisions of this Act, do such other things as appear to them necessary or expedient for furthering the interests and increasing the utility of the Museum:

Provided that the powers conferred by this section of selling or otherwise disposing of, or lending or transferring, any object, shall not be exercised in any manner inconsistent with any condition attached to any gift or bequest by virtue or in consequence of which that object was vested in the Board for the purposes of the Museum.

2.(3). The Board shall have the general management and control of the

121. 'National Maritime Museum Act 1934', [link](#).

Museum and for that purpose may—

(b) exchange, sell or otherwise dispose of any duplicate objects vested in them for the purposes of the Museum, and with the consent of the Lord President of the Council] exchange, sell or otherwise dispose of any objects so vested which the Board consider to be not required for the purposes of the Museum;

### 1983 National Heritage Act<sup>122</sup>

#### Victoria and Albert Museum

6. (1) Subject to subsection (2), the Board may lend any object the property in which is vested in them and which is comprised in their collections (whether or not the loan is for purposes of public exhibition, and whether or not under the terms of the loan the object is to remain in the United Kingdom).

(2) In deciding whether or not to lend an object, and in determining the time for which and the conditions subject to which an object is to be lent, the Board—

(a) shall give special consideration to a request for the loan of an object for public exhibition, and

(b) subject to that, shall have regard to the interests of students and other persons visiting the Board's collections, the suitability of the prospective borrower, the purpose of the loan, the physical condition and degree of rarity of the object, and any risks to which it is likely to be exposed.

(3) Where the property in an object has become vested in the Board subject to a condition, the power conferred by subsection (1) is exercisable in a manner inconsistent with the condition if either—

(a) 25 years have elapsed since the date on which the property became vested in the Board (or, where it became vested in them under section 4(1), the Minister), or

(b) the person who first imposed the condition or his personal representatives have consented in writing to the exercise of the power in that manner.

(3) The Board may not dispose of an object the property in which is vested in them and which is comprised in their collections unless—

(a) the disposal is by way of sale, exchange or gift of an object which is a duplicate of another object the property in which is so vested and which is so comprised, or

(b) the disposal is by way of sale, exchange or gift of an object which in the Board's opinion is unsuitable for retention in their collections and can be disposed of without detriment to the interests of students or other members of the public, or

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122. 'National Heritage Act 1983', [link](#).

(c) the disposal is an exercise of the power conferred by section 6 of the Museums and Galleries Act 1992], or

(d) the disposal (by whatever means, including destruction) is of an object which the Board are satisfied has become useless for the purposes of their collections by reason of damage, physical deterioration, or infestation by destructive organisms.

## Science Museum

15.(1) Subject to subsection (2), the Board may lend any object the property in which is vested in them and which is comprised in their collections (whether or not the loan is for purposes of public exhibition, and whether or not under the terms of the loan the object is to remain in the United Kingdom).

(2) In deciding whether or not to lend an object, and in determining the time for which and the conditions subject to which an object is to be lent, the Board—

(a) shall give special consideration to a request for the loan of an object for public exhibition, and

(b) subject to that, shall have regard to the interests of students and other persons visiting the Board's collections, the suitability of the prospective borrower, the purpose of the loan, the physical condition and degree of rarity of the object, and any risks to which it is likely to be exposed.

(3) Where the property in an object has become vested in the Board subject to a condition, the power conferred by subsection (1) is exercisable in a manner inconsistent with the condition if either—

(a) 25 years have elapsed since the date on which the property became vested in the Board (or, where it became vested in them under section 12(1), the Minister), or

(b) the person who first imposed the condition or his personal representatives have consented in writing to the exercise of the power in that manner.

14. (3) The Board may not dispose of an object the property in which is vested in them and which is comprised in their collection unless—

(a) the disposal is by way of sale, exchange or gift of an object which is a duplicate of another object the property in which is so vested and which is so comprised, or

(b) the disposal is by way of sale, exchange or gift of an object which in the Board's opinion is unsuitable for retention in their collections and can be disposed of without detriment to the interests of students or other members of the public, or

(c) the disposal is an exercise of the power conferred by section 6 of the Museums and Galleries Act 1992], or

(d) the disposal (by whatever means, including destruction) is of an object which the Board are satisfied has become useless for the purposes of their collections by reason of damage, physical deterioration, or infestation by destructive organisms.

### Armouries

20 (3). The Board may not dispose of an object the property in which is vested in them and which is comprised in their collection unless—

(a) the disposal is by way of sale, exchange or gift of an object which is a duplicate of another object the property in which is so vested and which is so comprised, or

(b) the disposal is by way of sale, exchange or gift of an object which in the Board's opinion is unsuitable for retention in their collection and can be disposed of without detriment to the interests of students or other members of the public, or

(c) the disposal is [F1an exercise of the power conferred by section 6 of the Museums and Galleries Act 1992], or

(d) the disposal (by whatever means, including destruction) is of an object which the Board are satisfied has become useless for the purposes of their collection by reason of damage, physical deterioration, or infestation by destructive organisms.

### 21. Lending and borrowing of objects.

(1) Subject to subsection (2), the Board may lend any object the property in which is vested in them and which is comprised in their collection (whether or not the loan is for purposes of public exhibition, and whether or not under the terms of the loan the object is to remain in the United Kingdom).

(2) In deciding whether or not to lend an object, and in determining the time for which and the conditions subject to which an object is to be lent, the Board—

(a) shall give special consideration to a request for the loan of an object for public exhibition, and

(b) subject to that, shall have regard to the interests of students and other persons visiting the Board's collection, the suitability of the prospective borrower, the purpose of the loan, the physical condition and degree of rarity of the object, and any risks to which it is likely to be exposed.

(3) Where the property in an object has become vested in the Board subject to a condition, the power conferred by subsection (1) is exercisable in a manner inconsistent with the condition if either—

(a) 25 years have elapsed since the date on which the condition was first imposed on any person, or

(b) the person who first imposed the condition or his personal representatives have consented in writing to the exercise of the power in that manner.

## 1992 Museums and Galleries Act<sup>123</sup>

Established Boards of Trustees of the National Gallery, the Tate Gallery, the National Portrait Gallery, and the Wallace Collection

4.(3) The National Gallery Board shall not dispose of a relevant object the property in which is vested in them and which is comprised in their collection unless the disposal is an exercise of the power conferred by section 6 below.

(4) The Tate Gallery Board shall not dispose of a relevant object the property in which is vested in them and which is comprised in their collections unless—

(a) the disposal is an exercise of the power conferred by section 6 below;

(b) the disposal is of a relevant object which, in the Board's opinion, is unsuitable for retention in their collections and can be disposed of without detriment to the interests of students or other members of the public; or

(c) the disposal (by whatever means, including destruction) is of a relevant object which the Board are satisfied has become useless for the purposes of their collections by reason of damage, physical deterioration, or infestation by destructive organisms; but this subsection is without prejudice to any trust or condition (express or implied) prohibiting or restricting disposal of the relevant object.

(5) The National Portrait Gallery Board shall not dispose of a relevant object the property in which is vested in them and which is comprised in their collection unless—

(a) the disposal is an exercise of the power conferred by section 6 below;

(b) the disposal is by way of sale, exchange or gift of a relevant object which is a duplicate of another relevant object the property in which is so vested and which is so comprised;

(c) the disposal (by whatever means) is of a portrait and the Board are satisfied that the identification formerly accepted by them of the person portrayed has been discredited; or

(d) the disposal (by whatever means, including destruction) is of a relevant

123. Expert Participation, 'Museums and Galleries Act 1992' (Statute Law Database), [link](#).

object which the Board are satisfied has become useless for the purposes of their collection by reason of damage, physical deterioration or infestation by destructive organisms; and a relevant object may be disposed of by the Board as mentioned in paragraph (d) above notwithstanding a trust or condition (express or implied) prohibiting or restricting the disposal of the relevant object.

(6) The Wallace Collection Board shall neither add any object to their collection nor dispose of any object the property in which is vested in them and which is comprised in their collection.

### 1986 The Merseyside Museums and Galleries Order

6. - (1). Subject to paragraph (4) the Board may not dispose of a work or object in the property in which is vested by them in accordance with this Order unless —

(a) the disposal is by way of sale, exchange or gift of a work or object which is a duplicate of another object the property in which is so vested and which is so comprised, or

(b) the disposal is by way of sale, exchange or gift of a work or object which in the Board's opinion is unsuitable for retention in their collection and can be disposed of without detriment to the interests of students or other members of the public, or

(c) the disposal is by way of sale or gift made to, or exchange made with, any body or institution mentioned in paragraph (3), or

(d) the disposal (by whatever means, including destruction) is of a work or object which the Board are satisfied has become useless for the purposes of their collection by reason of damage, physical deterioration, or infestation by destructive organisms.

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## Appendix 2

for subsection (1) substitute—

“(1) The Commission, the Attorney General or the court may authorise the charity trustees of a charity to take any action falling within subsection (2) (a) or (b) in a case where the charity trustees—

(a) (apart from by virtue of this section or section 331A) have no power to take the action, but

(b) in all the circumstances could reasonably be regarded as being under a moral obligation to take it.

(1A) In relation to a charity established by (or whose purposes or functions are set out in) legislation, subsection (1) is not disapplied only because the legislation concerned prohibits application of property of the charity otherwise than as set out in the legislation.

(1B) In subsection (1A) “legislation” means—

(a) an Act of Parliament;

(b) an Act or Measure of Senedcymru;

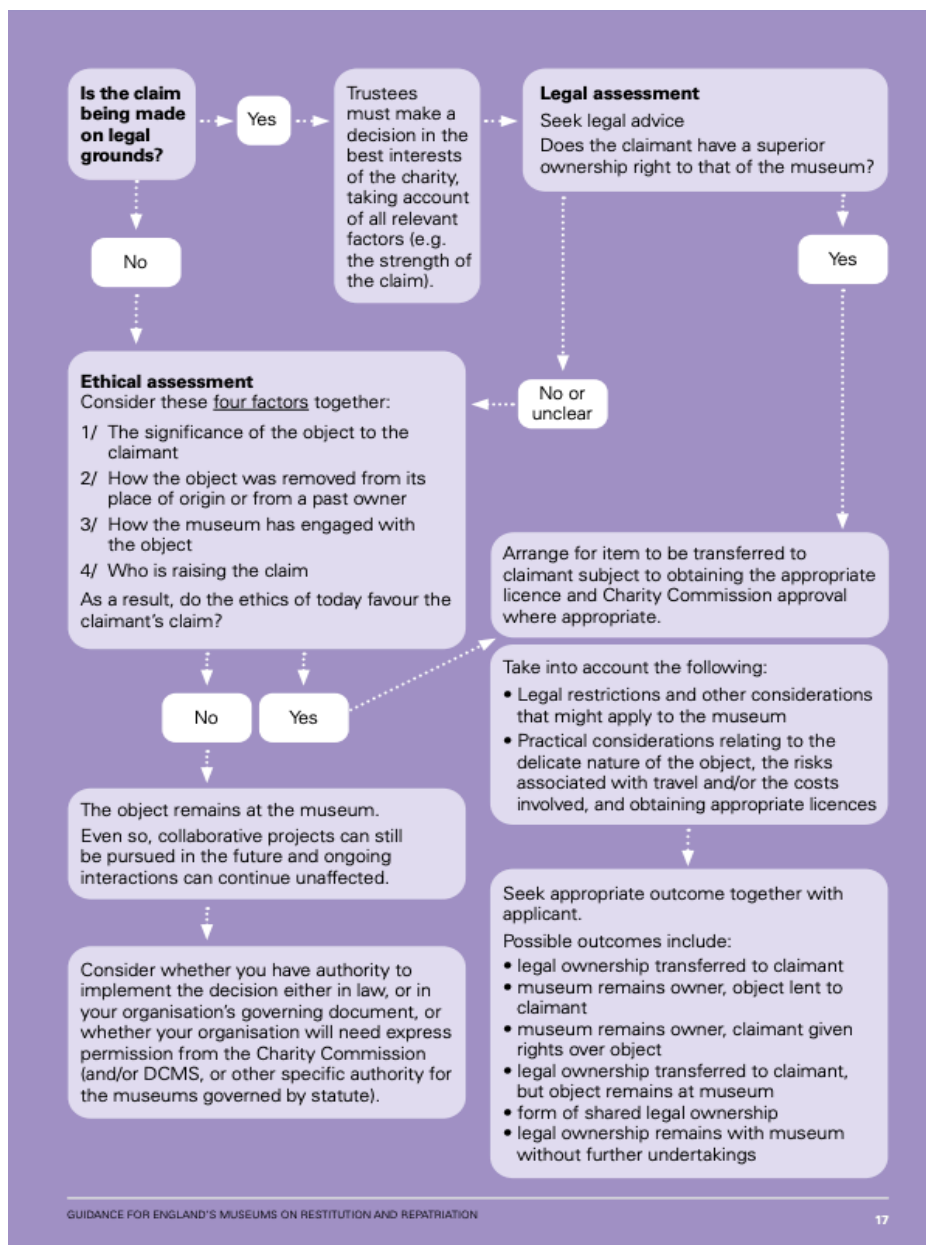
(c) subordinate legislation (within the meaning of the Interpretation Act 1978) made under an Act of Parliament;

(d) an instrument made under an Act or Measure of Senedd Cymru; or

(e) a Measure of the Church Assembly or of the General Synod of the Church of England.”;

(b) in subsection (3), after second “Commission” insert “by order and”.

# Appendix 3







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