

# **Restitution and Repatriation: A Practical Guide for Museums in England**

# Acknowledgements

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# Introduction

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This guidance is intended to provide advice and best practice for museums in England on responding to restitution and repatriation cases. It sets out recommendations on all aspects of museum operations affected by these issues, guiding and empowering museums to take proactive action in a spirit of **transparency, collaboration** and **fairness**, qualities that sit at the heart of this guidance.

When it comes to responding to restitution and repatriation cases, every situation is different. Objects in museums will have been acquired at different times, in varying circumstances, and by institutions with differing structures, sizes, priorities and collection types. Objects can also include scientific and natural history specimens.

There may be many people, groups and organisations with different connections to, and interests in, these items. While cases can therefore be complex and time-consuming, they often present rich opportunities for enhancing understanding for all involved. Considering a claim for restitution can offer the opportunity for museums to develop their collections knowledge and research, to build relationships with originating communities, to open up dialogue around contested items and to create opportunities for discourse and discussion around cultural heritage.

While this guidance is aimed at English museums, the principles behind it may be applicable for museums across the UK and internationally.

## Restitution and repatriation explained

The terms 'restitution' and 'repatriation' do not have any strict legal definition as far as museum practice is concerned. They tend to be used rather loosely, but in essence, they have traditionally described the process of returning cultural material to its original owners (restitution) or its place of origin (repatriation). Considered more broadly, however, responding to a claim for restitution and repatriation can

encompass much more than this, and enable museum practice to develop and adapt.

There is no such thing as a single, uniform process or set of procedures which constitute a 'restitution blueprint'. Nor is there a single, defined goal or endpoint. Rather, responding to a restitution case requires you, the museum, to (re)consider your relationship with objects in your collection, their history, origins and acquisition – and most importantly, the people for whom they may have a special meaning today.

Receiving a claim for restitution or repatriation can therefore be seen as an opportunity to learn and reflect, and to connect with people and the collection in new ways. Generally, the experience need not be defensive and adversarial, but can be collaborative and enriching. Sometimes, stripping back the complexities to think about issues on a human level can be helpful in overcoming the fear of difficult conversations, or of 'making mistakes' which can otherwise hinder progress towards resolution. It is important to be alert to the possible sensitivities 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. Equally it is important to establish whether the claimant has standing to make the claim, and whether they are entitled or authorised to do so.

## How to use this guidance

This guidance recognises that those who read and use it will vary in many ways. They might range from small independent museums to large, multi-site museum and cultural services. They may have different governance structures, collecting interests, expertise and resources. They may have no history or experience with issues relating to restitution, or they may have a significant record of dealing with such matters. Some museums may be seeking guidance about how to better understand items in their collection, while

others will require support because they have received a claim seeking the return of an object.

Owing to the public interest in the debate about restitution, this guidance may be read and consulted by members of the public who have a general interest in the matter. It may also be consulted by those interested in seeking the return of items in a museum's collection. It is therefore written in a way that can be accessible to everyone, whether or not they have any previous experience of the English museum sector.

While each situation is different, and a case-by-case approach is required, there are common issues which apply to all museums and for which broad, best-practice principles are recommended. These relate to matters of process: for example, how to engage in provenance research into controversial items; how best to respond if a claim is received; and how to explore the various ways to progress the dialogue. They also relate to the ethical considerations involved in assessing claims and implementing the appropriate outcome.

Some museums, including national museums in England, are bound by legislation that describes the limited circumstances in which they are able to deaccession objects from their collections. This means that some of the processes outlined in this guidance might not apply to them. However, it is expected that they will receive and handle restitution and repatriation claims in line with the guidance (and as set out within their individual policies), following an approach of transparency, collaboration and fairness while working within the constraints of their legal framework.

## Understanding the ethical and legal background

This guidance should be read against the relevant ethical and legal backdrop. From an ethical perspective, English museums are supported by a framework laid out in both the ICOM Code of Ethics and the Museums Association Code of Ethics (and its Additional Guidance). Both Codes state that museums should partner and co-operate with communities of origin.

The guidance in this document is also underpinned by a national and international legal framework which seeks to protect cultural heritage generally and which, in certain situations, specifically addresses the restitution and repatriation of cultural property. The broad parameters of the principal international and national instruments are set out in Appendix 2.

## Existing guidance

This guidance replaces the previous guidance on the topic issued by the Museums and Galleries Commission (now defunct) in 2000 ('Restitution and Repatriation: Guidelines for good practice').

For guidance on the disposal process more broadly, see the Museums Association's Disposal Toolkit.

In respect of the particular museum objects or material set out below, museums should follow the guidance already in place in the UK as follows:

### Human remains

For cases or situations involving human remains, museums in England should refer to the DCMS *Guidance for the Care of Human Remains in Museums* (2005).

### Nazi spoliation

For matters involving items wrongfully taken during the Nazi/Third Reich period (1933-45), national and certain other museums (which form part of the National Museum Directors' Council (NMDC)) should refer to *Spoliation of Works of Art During the Holocaust and World War II Period: Statement of Principles and Proposed Actions* (NMDC 1998, updated in 2016), in particular Section 6. A comparable statement, issued by the now defunct Museums and Galleries Commission in 1999, provides equivalent guidance for museums not covered by the NMDC document. Claims regarding such items in a public collection can be referred to the Spoliation Advisory Panel, which has existed since 2000. This can result in the return of the item to the claimant, along with other possible outcomes.

# Section 1: Getting started

## 1.1 Better understanding collection items: provenance research

All English museums, whether or not they have received a claim for restitution or repatriation, should be managing their collections and be aware that a claim for restitution may be a possibility. How to respond to a restitution case should be explained in a museum's Collections Development Policy, which should be kept up to date, and reviewed on a regular basis.

A fundamental part of collection management is provenance research. This means learning more about the history of an object, including the object's movements and how it was acquired by the museum. These details, together with an understanding of the object's meaning to past owners or their descendants<sup>1</sup>, inform how a museum interacts with the object and how it seeks to engage others with it, ultimately setting the stage for the assessment of any potential restitution or repatriation claims that may come.

Provenance research is an ongoing process, which different museums will need to approach in different ways, dependent on resources and structures. The methodology employed will also differ according to numerous factors, including the nature of the object, and when and how it was acquired. A museum will need to consider its own approach carefully. This section highlights best practice suggestions which can be adopted and refined according to a museum's particular circumstances.

Successful planning of research can help a museum to identify the ways in which that research may be used to resolve a claim, and to develop a restitution and repatriation policy which can help to underpin the ways in which a museum responds to a claim in the future (further information on developing a repatriation and restitution policy may be found in section 1.3).

**Managing your research:** Research into collections should be managed according to organisational need and museums should demonstrate due diligence in the prioritisation of research around collections which may have contested histories. Museums should engage with communities of origin<sup>2</sup> in this process where possible, as this can provide significant opportunities to better understand the cultural origins of an object and its associated histories.

### Research checklist:

Engaging with the following individuals, groups and organisations will often prove useful (keeping in mind that it may be appropriate to remunerate those you consult, and that you should always conduct such research in a collaborative, considered and sensitive manner):

- Countries and communities of origin
- Diaspora groups
- Other museums with similar collection items, both in the UK and overseas
- Academic specialists, both in the UK and overseas. University museums are often helpful resources with research expertise
- Relevant specialist sector groups (Arts Council England has a list of Subject Specialist Networks (SSNs))
- Relevant experts, institutions or networks around the world which can provide specialist training. This may be particularly useful in understanding collection items from countries with longstanding experience in restitution and repatriation matters
- In some cases, where appropriate, the donor or seller of the item

<sup>1</sup> **Genealogical descendants:** People who can trace direct genealogical descent to ancient human remains and those who may be a descendant of a previous owner of an object, eg a member of a certain group of indigenous peoples.

<sup>2</sup> **Communities of origin:** A group who identifies themselves as a community and would normally be expected to have a shared geographical location, shared cultural or spiritual and religious beliefs and shared language; or to share some of these facets.

An interesting example of a collaborative research project is the 2020/21 DCMS-funded project involving several UK museums called 'Rethinking Relationships and Building Trust around African Collections'.

More examples can be found on the [Museum Ethnographers Group's Repatriation Resource](#) which is a very useful resource for researching many aspects of restitution and repatriation generally.

**Efficiency and knowledge sharing:** A museum should seek to share knowledge about the objects and their provenance as widely as possible across the sector through relevant networks, websites, social media, conferences, databases, newsletters and other publications.

## 1.2 Ensuring collection information is accessible

Museums should aim to be as transparent as possible about their collections. Conversations between museums and countries or communities of origin, or other past owners, only become possible when those parties are aware of the items in museum collections of interest to them. Museums therefore need to consider what information is provided and how it is done.

### What information?

Museums should aim to make accessible as comprehensive an account of their collection's provenance as time, resources and available

information allow. They should seek to tell the full stories behind collection items, including those that may reveal a controversial past. In some cases, this might require an explanation of the wider historical context, including how, why and by whom items were removed from individuals or countries/communities of origin, and what this reveals about the attitudes of those involved.

Examples of projects demonstrating a transparent approach to provenance research include the 2019-20 Concealed Histories display at the Victoria and Albert Museum (focused on eight stories of Jewish collectors subject to dispossession by the Nazi regime) and the Labelling Matters project undertaken by the Pitt Rivers Museum at Oxford University (aimed at examining and changing derogatory and other contentious language used to interpret certain items in the collection).

### How to make the information available?

- **Labelling and interpretation:** Both physical and digital labels and interpretation panels should reflect the true and full provenance of the item and any relevant historical context straightforwardly and sensitively.
- **Archives:** Museum records should be kept updated with newly discovered information and should be made available in a form which is accessible not only to professional researchers but for anyone with an interest in finding out more about a museum object or its history.

*Rethinking relationships and building trust around African collections*

**Horniman Museum and Gardens, Museum of Archaeology and Anthropology, Cambridge, Pitt Rivers Museum, Oxford, and World Museum Liverpool (supported by DCMS)**

This pilot project focused on developing a methodology for building equitable conversations about the future care, access and ownership of collections from Kenya and Nigeria. Working with heritage professionals, community members, researchers, artists and other stakeholders from the UK, Kenya and Nigeria, the project sought to ensure that questions about the future of collections are led by the requirements of communities whose heritage is located in UK museums. Four core areas of focus were identified: research, changing practice, proactively engaging with community members, and enabling equitable conversations.

A key finding of the work was that access to collections was one of the biggest barriers to successful engagement and discussion around restitution and repatriation. One of the key outcomes from the project was a toolkit, developed by 18 community members in Nairobi, to address the challenges raised by accessing collections online, and aimed at enabling communities to better understand how they could access collections digitally.

Further information can be found at: [www.horniman.ac.uk/project/rethinking-relationships](http://www.horniman.ac.uk/project/rethinking-relationships)

- **Digitisation:** It is desirable, where possible, to digitise objects (through multiple high quality images for 3D objects), as well as provenance details, and to publish such information in an easily searchable format on the museum’s website. If material appears sensitive to a community of origin, always verify first with the community whether digitisation is appropriate for such material. Digitisation is not a goal in itself, but a means to broaden access to the collection as widely as possible. This means that the format in which digital material is presented should be carefully considered, for example, to ensure that it can be viewed and understood across multiple devices, applications and platforms.
- **Details about restitution and repatriation claims:** Museums should be transparent about claims they have received in the past. Such examples are important in demonstrating a transparent and collaborative approach to the issue and in providing useful information to members of the public and potential claimants.

While maximum transparency should always be the goal, museums will need to bear in mind whether certain images or information should be kept confidential. This might be at the request of a claimant or potentially interested party (whether an individual or community) or it might be for compliance with legal obligations as regards data protection.

### 1.3 Developing a policy on responding to restitution and repatriation cases

All affected museums should work towards establishing and publishing on their website a policy on restitution and repatriation. It is important, in the interests of transparency and fairness, that a museum makes its approach clear to a potential claimant, as well as to members of the public with an interest in the collection.

The policy should be clear, and should be located in a prominent place on a museum’s website, indicating the staff position(s) that will act as point(s) of contact for communications relating to restitution and repatriation. It should be accessible, succinct and flexible enough to deal with the many different aspects of restitution and repatriation requests.

A template which could serve as the basis for an appropriate policy is set out in Appendix 1.

Museums should ensure that the policy is reviewed on an appropriately regular basis (for example, as a matter of course over set periods of time, and in the event that a claim is made, so that learning points can be addressed).

## Section 1 checklist

### 1. Better understanding collection items: provenance research

#### Have you:

- Looked into controversial collections?
- Consulted relevant parties (countries or communities of origin, diaspora, other museums, relevant specialists/experts)?
- Shared provenance information across museums, academic and sector networks?

### 2. Ensuring collection information is accessible

#### Have you:

- Told the full story about an item through labelling and interpretation, as well as in archives?
- Digitised relevant provenance information to make it widely available?
- Made public information about past restitution and repatriation claims?
- (All of the above are subject to any possible confidentiality requirements).

### 3. Developing a policy on responding to restitution and repatriation cases

#### Have you:

- Developed a policy on responding to restitution and repatriation cases?
- Appointed staff role(s) as point(s) of contact for restitution and repatriation issues?



# Section 2: Working through a claim

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## Introduction

This section provides practical, step-by-step guidance on the issues which will generally arise at each stage of the claims process. The stages which will usually be relevant are described below, but a museum should bear in mind that these stages will often be rather fluid. Sometimes they may overlap or occur simultaneously, and in some cases, stages may be skipped altogether. Even if a museum enters the process at a later stage, by receiving a formal claim, for example, a museum will usually find it useful to work through the recommendations in the earlier stages to enhance its understanding of the objects involved and the circumstances surrounding the claim.

### Stage 1 – Developing understanding

You may be approached by a party interested in a particular item, or enquiring more generally about whether there are items in your collection to which they have a particular connection. What preliminary steps and questions should you consider and discuss with the party?



#### Stage 1A – Understanding the object(s)

You will need to gain a full understanding of the object(s) in question. This will usually involve working together with the interested party, and with others, to gather and interpret the relevant information.

#### Stage 1B – Understanding each other

As initial discussions progress, you will need to ensure that each party understands the basic structure and status of the other.

#### Stage 1C – Involving other stakeholders

You should consider, with the interested party, what other stakeholders might need to be involved.



### Stage 2 – Work through a formal claim

Once a formal claim is submitted, what practical steps will follow?



### Stage 3 – Assessing the claim

How do you assess the information in reaching decisions about the claim and the relevant object(s)? You will need to consider the ethical principles relevant to the particular circumstances, as well as any legal grounds for the claim, if such exist.



### Stage 4 – Implementing the outcomes

What needs to happen to put into practice any agreements reached or decisions taken about the claim and the relevant object(s)?

## Stage 1 Developing understanding

### Preliminary discussions

A claim will often begin with an approach from a party seeking information about a particular item or group of items. The enquiry could also be of a more general nature, asking whether a museum's collection includes items of a particular type or origin that may have a cultural, spiritual or historical affiliation with the party or the party's forebears.

### Steps to consider

- Appointing staff member(s) to act as point(s) of contact for communications (unless a museum already has role(s) which cover these matters) and providing details to the interested party.
- Ensuring it can be verified that the item(s) requested by the party match(es) the item(s) held by the institution.
- If the object is of spiritual or sacred sensitivity to the claimant, discussing the object's removal from display with the claimant, and ensuring that the appropriate messaging is displayed on any relevant collections page on the museum's website.
- Ensuring the party is aware of the museum's written policy on responding to restitution and repatriation cases. This should be shared and explained, and the museum should clarify that if the party wishes to make a formal claim, the procedure set out in that policy would then be followed.
- Inviting the party to meet with relevant museum staff, either at the museum, an alternative location or via video-conference.
- Enhancing organisational understanding of:
  - o the relevant object(s): see Stage 1A
  - o the interested party: see Stage 1B
  - o other potential stakeholders: see Stage 1C

## Stage 1A – Understanding the object(s)

### How to gather information about the object(s) claimed

In the first instance, it is vital that the museum determines that it does have the object in question. If the object cannot be located, careful consideration needs to be given to how the claimant is informed and then supported.

### Compile any readily accessible information

This might include documentation which may show:

- who owns the object and what provenance documentation exists to support this
- if the object is not owned by the museum, what the circumstances are of its ownership (eg it may be a loan/orphaned object)
- statements and evidence provided by the claimant
- object records and acquisition documentation
- any export or excavation permits associated with the object's initial removal, if relevant
- publications about, or referring to the object or relevant to its history
- information from museum employees
- accounts from other museums with similar collection items

In some cases, the information gathered may be sufficient to progress discussions with the claimant, but usually, further enquiries will be required.

### Seek additional information

This will depend on the nature of the item and its history, but steps might include:

- checking relevant databases (for example, databases of stolen art or cultural property (see the Collections Trust website for examples); the UNESCO Database of National Cultural Heritage Laws, where you can check the laws in force at the time of the removal of the item(s) in question, if relevant; the International Council of Museums' (ICOM's) 'Red Lists' of types of items considered to be at high risk of having been looted)

- undertaking the provenance research detailed in section 1.1 above (see 'Research checklist') if not already conducted in relation to the item in question
- undertaking research to better understand the wider context of the claim. It may be useful to consider whether the claim may be connected with broader political initiatives or more systematic restitution or repatriation campaigns

These steps should usually be carried out with the consent of, or at least with the knowledge of, the claimant (except where confidentiality considerations prevent this).

It is usually best to gather information in written form, but verbal evidence might also be important in some cases (for example, for items from indigenous groups where information about the item may have been passed down through the generations verbally, or where written records have been destroyed, through war, natural disaster or other causes). It may be necessary to seek expert advice on the interpretation of verbal evidence from relevant subject specialists. It is important that you identify methods of translation/interpretation when obtaining verbal evidence, and that language barriers are overcome through the engagement of the appropriate translator/interpreter where possible.

### **How to evaluate the information**

- In many cases, the nature of the item and its history will mean that the information available is not comprehensive. It may not be possible to piece together a detailed and complete account of the object's history or to verify conclusively every aspect of a claim. In these circumstances, the museum should think about whether the information they have, taken together, provides a *reasonable basis* to decide a particular question or issue. Is it more likely than not that a certain fact or state of affairs exists or existed?
- Record the steps taken in gathering information, and itemise the information systematically so that it is available for use in the next stages of the process.

## **Stage 1B – Understanding each other**

In order to engage in meaningful and fruitful dialogue about a restitution or repatriation request, it is important that both parties (the museum and the claimant) have a good understanding of each other's structures and processes.

### **Understanding the museum**

The way in which the museum responds to a claim will depend, to some extent, on:

- its structure and how decisions are made at an organisational level
- any legal restrictions or considerations, eg Export Licences (see Arts Council England's guidance), affecting items in the collection

The governance structures, decision-making processes and legal restrictions usually applicable to different types of museums in England should be clarified and explained prior to commencing (see Appendix 3). For national museums, this will involve an understanding of the statutory restrictions that usually apply to the permanent removal of an object from a museum.

The museum should ensure that there are no applicable restrictions in the terms of a gift or bequest, or of a grant used to acquire the object, and that if the object entered the collection through a governmental tax scheme (Acceptance in Lieu, Cultural Gifts), that the appropriate permissions can be obtained. These factors should be fully understood and legal or other relevant advice should be sought, if required and if possible. Their potential consequences should be explained openly and sensitively to the claimant. For instance, if the museum is legally prevented from deaccessioning certain items (ie removing them from the collection), it may wish to explore with the claimant, at this stage, whether outcomes other than a transfer of legal ownership might be possible.

## Understanding the claimant

A claim may be brought by a number of different people, organisations or entities. These include:

- an individual (often a descendant of a particular individual or family who had once owned the item(s) claimed)
- a community of origin or related organisation
- a museum or cultural centre (most commonly one located overseas)
- a foreign state (usually represented by its Embassy or High Commission, or by a particular ministry or government department, or by a politician or other state official) or an organisation specially designated for dealing with restitution claims (among other matters)

The museum should consider:

- Are they talking to the right person/group?
- Are there multiple/competing claims over this object/collection of objects? If there are multiple/competing claims, you need to consider how this will be managed (go to Stage 1C below)

If the museum is not able to answer the above questions with confidence, it may be unable to respond effectively to the claim. There may be very complex local politics which need considering in the context of the claim, and every effort should be made to understand this context in order to manage the claim effectively.

In each case, on receiving a claim, the museum should engage in dialogue to understand the position of the claimant. This will usually involve making certain enquiries or taking certain steps. These should be discussed openly and transparently with the claimant, explaining why the information is relevant and important. The museum should also be aware that language may be a barrier to engagement, and steps should be taken in order to overcome this issue through the use of translators/interpreters, where possible.

Firstly, ensure the following basic details are clarified:

- Name of individual or family, community of origin or organisation, museum, cultural centre or state making the claim
- Claimant's place of origin (territory and country)
- Item(s) claimed
- Item(s)' place of origin
- Claimant's relationship to item(s) in question
- Claimant's wishes in relation to item(s)

Further questions to consider may include the following, as appropriate:

- Is the claimant bringing the claim as an individual or as a representative of a community, organisation or state?
- Does the claimant have the support of any official body?
- If the claimant is representing a community or organisation:
  - what is the nature of that community/organisation? Is it officially recognised under the laws, or according to the practices, of the relevant country?
  - how is the claimant authorised to represent that community/organisation? Does s/he have an official or recognised position within the group (for example, an elder of an indigenous community)? Can s/he demonstrate the support of the community for the claim?
- If the claimant is a museum, what is its structure and does it have official recognition, as a member of the International Council of Museums (ICOM) or a national museums association, for example?

## Stage 1C – Involving other stakeholders

The museum should consider, together with the claimant, whether there are other potential stakeholders who should be involved in the dialogue. In some cases, a joint approach to these stakeholders might be possible.

Questions to consider and discuss with the claimant in this regard include the following:

- Has the claimant been in contact with, or does s/he know of others who support the claim, and whom it might be useful to engage in the discussions? These might include the government of the claimant's country or other recognised organisations, or museums or other cultural centres. In some cases, it might be useful to discuss these relationships further to understand any political or cultural sensitivities surrounding the claim.
- If the claim is brought by a state, are the representatives bringing the claim directly representing, or in communication with an individual, group or community connected with the object in question, and if so, can that person, group or community be directly involved in discussions?
- Are there any other groups or organisations which should be informed about the claim? These might include: Department for Digital, Culture, Media and Sport (DCMS), sector

organisations, Arts Council England or other groups in the country of origin, diaspora communities (explaining sensitively why communication with these entities might be necessary or useful at this stage).

- Is it possible, and if so, might it be useful to approach the donor of the object(s) in question in order to ascertain more about provenance, respecting any confidentiality requirements (for example relating to the identity of the donor)?

**Note:** If a request for information or a claim comes from a foreign state or one of its agencies, it will be necessary to inform the Cultural Property team in the UK's Department for Digital, Culture, Media and Sport (DCMS), which will be able to provide guidance and advice. In most cases, and it is a UK national museum and the matter is of special sensitivity, if a request for information or a claim comes from an individual, community or other entity, it will only be necessary to inform the DCMS. This can be particularly helpful to navigate diplomatic tensions and/or other interdependencies that may exist.

## Stage 1 Checklist

### Preliminary discussions

- Appoint staff member(s) as point(s) of contact, unless already provided for
- Ensure item matches that requested by claimant
- Ensure party aware of restitution policy
- Invite party to meet
- Enhance understanding of (1) object(s), (2) parties and (3) potential stakeholders (see below)

### A. Understanding the object(s)

Compile readily accessible information, such as:

- statements and evidence from claimant
- object records and acquisition documents
- export/excavation permits associated with object's removal, if relevant
- publications about/referring to object/relevant to its history
- information from museum employees
- accounts from other museums with similar objects

Seek additional information (with consent and knowledge of claimant):

- Check databases
- Undertake provenance research
- Undertake research on context and history of object and claim

### B. Understanding each other

The museum:

- Structure and decision-making
- Legal restrictions or considerations affecting collection

The claimant:

- Name (individual/family, community of origin, organisation, museum, state)
- Place of origin (territory and country)
- Item(s) claimed
- Item(s)' place of origin
- Relationship to item(s) in question
- Wishes in relation to item(s)

Further questions:

- Is the claimant bringing claim as an individual or representative?
- If representative, what is the nature of the community/organisation being represented? What is the claimant's authorisation from the community/organisation?
- If a museum, what is its structure and does it have recognition?

### C. Involving other stakeholders

Questions to consider:

- Are there others who support the claim?
- Are there others with a separate or competing interest in claiming the item?
- If a state, does it represent any individual, group or community connected with the object?
- Should other groups/organisations be informed?
- Is it possible/useful to approach the donor?
- Others who do not support the claim

Note: If the claim is from a foreign state (or you are a national museum and the case is of special sensitivity), inform DCMS.

## Stage 2 – Working through a formal claim

Once a formal claim has been submitted, the museum should follow the steps of the policy on responding to restitution and repatriation cases. The museum should keep the following practical matters in mind throughout the process:

- **Information sharing:** the claimant and any other relevant stakeholders should be kept appropriately updated in a timely fashion as the claim progresses.
- **Records:** a written record should be maintained, detailing each step in the process, cataloguing, for example, what action or decision was taken, when, by whom, and with what result. This will be important in preparing a report which should be submitted to the decision-making body, such as the trustees, board or directors (see Appendix 3 for further information) at the appropriate time (see below).

The following steps will usually be applicable:

1. **Receiving the formal claim:** Claims should generally be presented in writing, usually addressed to the Director or similar senior position in the institution. The museum should ensure that it has advised the claimant accordingly. The claim should be managed throughout the process by the staff position(s) appointed as point of contact, whose contact details should be clear on the museum's website. This person may refer matters to other experts and staff within the museum, or consult with them either on an informal or formal basis (for example, by establishing a working group, if appropriate). Should the museum be engaging with external experts/consultants on a formal basis, consideration should be given to appropriate remuneration.
2. **Sending an initial response:** Provide a written acknowledgement to confirm receipt of the claim promptly, within the timeframe suggested in the policy.
3. **Informing the decision-making body:** Provide notification that a formal claim has been submitted to those responsible for making a decision. Confirm with the decision-making body that matters will

be progressed in accordance with the museum's policy.

4. **Competing claims:** If it appears from the information gathered that there are competing claims to the object(s), it is generally advisable to ensure that these are resolved before proceeding to the next steps.
5. **Meeting:** If it has not already been done, the museum should invite the party to meet with relevant museum staff, either at the museum, an alternative location or via video-call. This can be important to develop a relationship of trust between the parties and can sometimes help to clarify misunderstandings which can easily arise when communications have been conducted only by email or in writing.
6. **Preparing stakeholder communication plan:** Depending on the nature of the claim and the item(s) in question, the museum may wish to develop a communications plan with the claimant, considering issues such as press releases and responses to media enquiries, as well as social media activity (both proactive and reactive). Consider the message the museum wishes to convey. Share the media strategy among relevant museum staff. Some useful tips regarding communications plans, together with a template press release are provided on the Collections Trust [website](#). The museum should work closely with its communications colleagues to ensure they have a full understanding of the situation, and that they are well prepared.
7. **Preparing a report:** It is important that the museum's decision-making body and other key stakeholders are fully apprised of all relevant information. The museum's point of contact should work with the claimant in drafting a detailed report about the claim, to be submitted to the decision-making body at the appropriate time.
8. **Meeting of decision-making body:** It will be useful to conduct a meeting, or series of meetings, of the decision-making body for the assessment of the claim. The claimant should be invited to participate (by video-conference, if necessary) so that

matters can be discussed face-to-face. The claimant should always be provided with an opportunity to respond to any counter-arguments raised, so if participation in real time is not possible, for any reason, a subsequent opportunity should be given.

9. **Making a decision and sharing this with the claimant:** The museum should assess the claim in accordance with the guidance set out in Stage 3, and consider carefully and sensitively how the decision is shared with the claimant.
10. **Resolving an impasse:** If it proves difficult to progress through the steps suggested above at any point, and the parties are unable to move forward, either party could consider referring the matter to a number of bodies who may be able to provide support, including Arts Council England and DCMS.

## Stage 2 checklist

### Throughout the process:

- Follow restitution policy
- Information sharing
- Maintain written record

### Steps to follow:

- Receiving the formal claim
- Sending an initial response
- Informing the decision-making body
- Competing claims
- Meeting with claimant
- Preparing for media interest
- Preparing a report
- Meeting of decision-making body
- Making a decision and sharing this with claimant

## Stage 3 – Assessing the claim

A claim for restitution or repatriation will either be based on legal grounds or on ethical principles. If a claim is based on legal grounds, you should promptly seek legal advice on the appropriate response (see 'Legal assessment' below). More often, however, the claim will need to be considered in accordance with ethical principles.

### Ethical assessment

Considering a claim in accordance with ethical principles means, at its most basic level, discussing 'the right thing to do'. In practice, of course, this can be a complex question. Ethics are not a single, uniformly accepted, universal and unchanging set of principles. Rather, they are fluid and subject to changes through time and circumstance. A past decision taken at a particular point in time is not set in stone; changing approaches over time and discoveries of new information might result in a different decision on re-examining a claim at a later date.

The following four ethical factors will assist museums in making this assessment. Each factor should be discussed with the claimant (and possibly other relevant stakeholders) and a decision taken only once they have been considered all together.

### (1) The significance of the object to the claimant

It is recognised throughout the museum sector today that cultural objects of great significance to a country or community of origin, or to a past owner, can retain an important connection to that country, community or person long after their removal.

*How this relates to the core qualities:*

- transparency – being honest and sensitive about an object's origins and how these can relate to people today
- collaboration – working with countries and communities of origin, and past owners
- fairness – treating the sensitivities of such parties with respect



*Questions to consider:*

- Why and how is the object important to the claimant?
- Does the claimant want to use or incorporate the object within his/her/its community's current customs or practices?
- What is the genealogical, cultural, spiritual or religious link between the claimant and the object's original creator or past owner?

## **(2) How the object was removed from its place of origin or from a past owner**

It is recognised throughout the museum sector today that museums must be especially sensitive to countries or communities of origin, and to past owners, in relation to cultural objects originally taken in ways considered unethical today (including during war, conflict or occupation, as well as by unlawful means or through duress).

*How this relates to the core qualities:*

- transparency – being honest and sensitive about an object's history and the context of its original removal
- collaboration – working with victims of past removals, or their descendants, to better understand and care for the object
- fairness – seeking fair outcomes that might help redress any past or ongoing injustices suffered by the claimant

Questions to consider:

- Did the removal occur in a way that was unlawful at the time or through a transaction entered into under duress or without consent (even if it occurred long ago)? If removal was illegal, the decision is often no longer an ethical one, but a legal decision.

- Did the removal occur at a time of war, conflict, occupation, famine, disease or widespread displacement of a population?
- Did the circumstances through which the object was removed create particular harm and suffering that still resonate today for the claimant?
- Did the person(s) (if any) who facilitated the removal have the appropriate authority to do so?

## **(3) How the museum has engaged with the object**

It is recognised throughout the museum sector today that museums have an ethical obligation to actively engage with the public, including communities of origin, diaspora groups and descendants of originating communities and individuals.

*How this relates to the core qualities:*

- transparency – being honest about an object's meaning to communities today
- collaboration – engaging communities locally and internationally
- fairness – recognising that in certain circumstances the best place for engagement with the object may be outside the museum

Questions to consider:

- How accessible has the object been to the claimant during its time at the museum (including to the claimant's community, where relevant, or related parties) or to other stakeholders?

### *Repatriation of a Torah scroll to Cornwall's Kehillat Kernow community* **Royal Cornwall Museum**

In 2009, a representative of Kehillat Kernow (the new Jewish Community of Cornwall) contacted the Royal Cornwall Museum (RCM) to request the use of a Torah scroll in the RCM's collection which had been donated to the museum in the late 1800s.

The scroll had originally been donated to RCM following the closure of the Falmouth Synagogue. Significant research was carried out to determine the provenance of the scroll and, following correspondence with Kehillat Kernow, the RCM Board of Trustees determined the scroll should be returned to the Jewish community.

A ceremony was held in 2014 to celebrate the return of the scroll to the community and the scroll is now in use for religious services.

Further information can be found at: [kehillatkernow.com/about/scrolls](http://kehillatkernow.com/about/scrolls)

- Has the museum engaged in outreach programmes which make meaningful use of the object for those to whom it might have particular significance?
- Has the museum promoted a meaningful understanding of the object and its connection with the claimant through research opportunities, publications, labelling and interpretation?

It should be noted that while the use of an object may be a factor in the discussion of a claim, it should not supersede issues raised around the provenance of the object, particularly in relation to the ethics behind a claim.

#### 4) Who is raising the claim

The assessment of the claim is also incumbent on understanding who is raising the claim and whether they are the appropriate claimant (for example, an individual without the means to properly care for the object/s may not be viewed as an appropriate claimant). However, a collecting institution (eg museum) with a track record in storing and caring for this type of material may be viewed as an appropriate claimant.

##### *How this relates to the core qualities*

- transparency – clarity of purpose to the claim
- collaboration – ensuring that the most appropriate claimant is identified to safeguard the future of the object should it be restituted
- fairness – enabling the claimant to understand why an alternative claimant may need to be identified in order to progress a claim

#### Legal assessment

If a claim is based on legal grounds, the museum should promptly seek legal advice on the appropriate response. Situations in which a museum may have to return an object for legal reasons would usually occur only if the claimant can demonstrate a stronger right of ownership to the object than the museum's, such as:

- Where the claimant was the legal owner and the object was stolen or otherwise misappropriated from them. This may include cases where a foreign state is claiming antiquities removed without authorisation, provided there was a law at the time 'vesting' the antiquities in the state.<sup>1</sup> Very often, however, the title of the original owner will have been lost because of the passage of time.<sup>2</sup> Legal ownership can also be lost if a stolen or misappropriated item has been sold on in a foreign country, depending on the legal rules of that country.
- Where the claimant had in fact only lent the object to the museum.

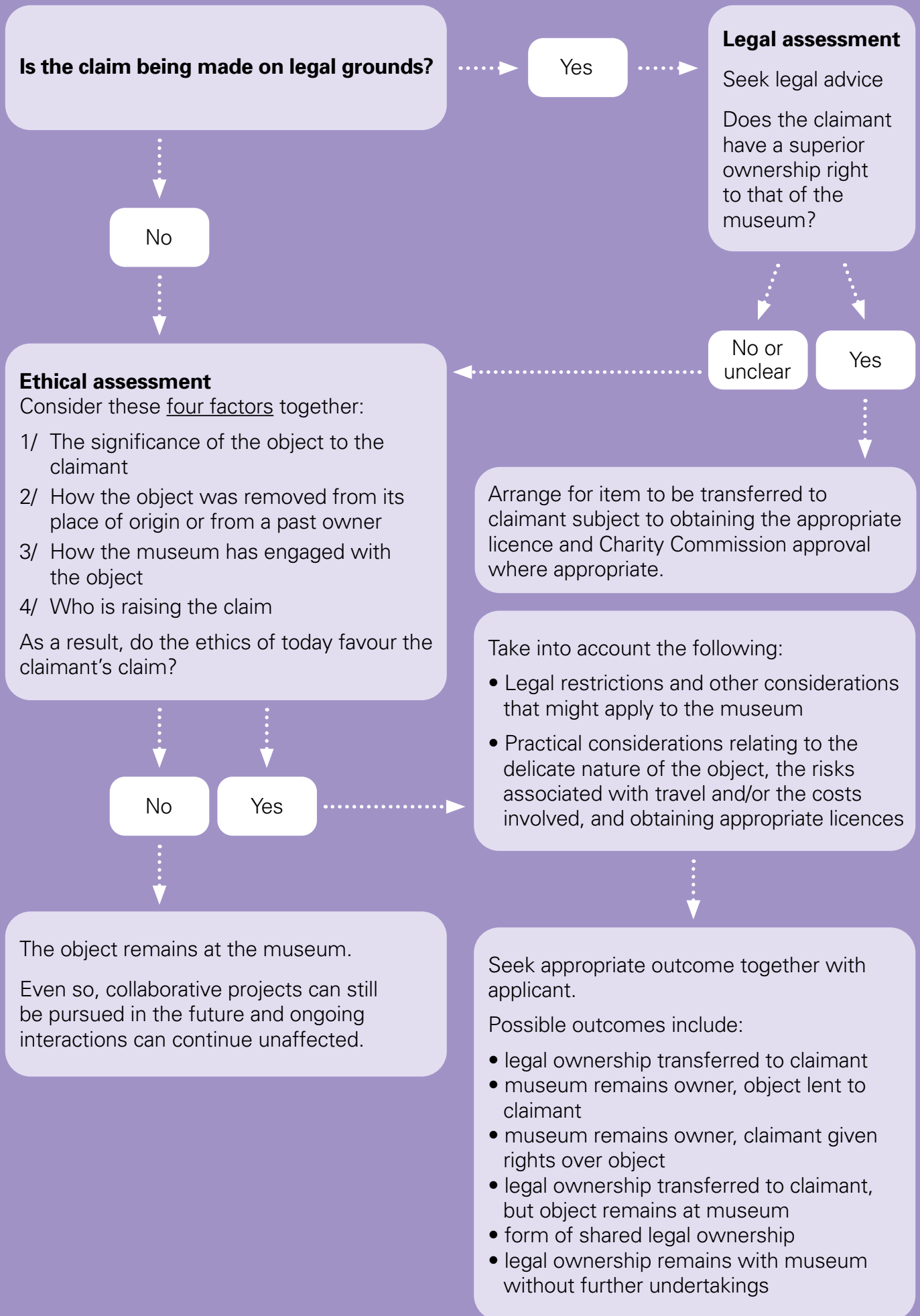
In addition, an item in a collection which has been imported or dealt with in a way which constitutes a criminal offence in the UK, or where the UK has a particular international obligation to return an object, might be subject to confiscation by the authorities.<sup>3</sup>

If it transpires that the legal grounds for return are not met, or remain unclear, the museum will need to consider the claim under 'Ethical assessment' above.

<sup>1</sup> For instance, the Republic of Iran was successful in asserting ownership over unlawfully excavated antiquities through its cultural heritage law, providing legal grounds for a claim in the English courts against a London-based gallery in possession of those antiquities: *Iran v Barakat* [2007] EWCA Civ 1374.

<sup>2</sup> This is called the 'limitation period' (generally lasting six years): Limitation Act 1980. Note, however, that there can be postponements of such periods in special cases.

<sup>3</sup> The Iraq (Sanctions) (EU Exit) Regulations 2020 (SI No: 2020/707); and The Syria (United Nations Sanctions) (Cultural Property) (EU Exit) Regulations 2020 (SI No: 2020/1233).



## Stage 4 – Implementing the outcomes

There are a number of possible ways that a claim for restitution or repatriation can be resolved. These include outcomes whereby:

- legal ownership of the object is transferred to the claimant and the object handed to the claimant or a representative on a date to be arranged by mutual agreement
- the museum remains the legal owner, but the object is lent to the claimant (on a short-term or long-term basis)
- the museum remains the legal owner, but the claimant is given certain rights of access to the object and/or control over its future care and display
- legal ownership is transferred to the claimant, but the object remains at the museum (ie on loan from the claimant)
- a form of shared legal ownership is agreed
- legal ownership of the object remains with the museum without further undertaking. The claimant should be notified of this outcome and a record of the claim be made for the museum despite no action being taken.

The particular outcome pursued will depend upon a number of factors. These include:

- The outcome of the Stage 3 assessment

- Legal restrictions and other considerations that might apply to the museum. The legal restrictions usually applicable to different types of museums will have already been clarified and explained prior to commencing. For national museums, this will involve an understanding of the statutory restrictions that usually apply to the permanent removal of an object from the collection (with certain exceptions, depending on the museum)
- Practical considerations relating to the delicate nature of the object, the risks associated with travel and/or the costs involved.

The approach taken should be pursued in a spirit of transparency, collaboration and fairness with the claimant. Even if the result is that ownership of the object remains with the museum without further undertakings, this may not always signal an end to the relationship. In some cases, collaborative projects might be pursued in the future and any ongoing interactions with the claimant on matters unrelated to the claim may continue unaffected.

**Transfer of ownership:** Collaborative arrangements should be made to ensure the transfer can occur in the most appropriate manner. The museum should be sensitive and open to the claimant's wishes about how the item should be treated (for example storage,

### *Claim regarding Gweagal Spears*

#### **Museum of Archaeology and Anthropology, Cambridge**

The Cambridge Museum of Archaeology and Anthropology (MAA) has curatorial responsibility for four spears removed by Captain James Cook from Australia in 1770, following a hostile encounter with members of the indigenous Gweagal people. The spears were donated to Trinity College, Cambridge, and in turn, to the MAA, and have since been mostly on permanent display.

In 2016, a request was made for the repatriation of the spears on behalf of a man of Gweagal ancestry, seeking to return the spears to the Gweagal people. A sub-committee established by MAA sought advice from indigenous representatives and academics in Australia, and ultimately concluded the spears should be retained. This was for a number of reasons; the claim was not supported by the La Perouse Land Council, the relevant recognised Indigenous representative body; there were additional concerns regarding a lack of clarity around future care, and the coherence of the larger collection from Cook's first voyage.

Following the case, MAA comprehensively reviewed its repatriation policy to include a framework which helps to define eligible claims in future. In addition, three of the four spears formed part of a new major exhibition marking the 250th anniversary of James Cook's expedition, *Endeavour Voyage: Untold stories of Cook and the First Australians*, which ran from 2 June 2020 to 26 April 2021; they were subsequently accessible on Country, close to the site of appropriation, at the University of Sydney's Chau Chak Wing Museum, for community access and display in 2022.

Further information can be found at: <https://maa.cam.ac.uk/gweagal-spears>

packing, transport, timings). If a handover ceremony is agreed to, the details should be discussed and agreed with the claimant. In some cases, a delay in the physical transfer of the object may be preferable or necessary for both parties and this should be discussed and agreed where appropriate.

The practical steps involved in a transfer would include arranging or completing the following:

- A permanent UK cultural object Export Licence. The museum, not the claimant, should apply for the Export Licence and it should be obtained before the title is transferred (more information can be obtained from the Arts Council England's Export Licensing Unit)
- The documentation required by the museum's policies to effect and record the disposal or deaccession, together with any necessary changes to the museum's collections database
- A CITES permit (or assisting claimant in preparation of the application), if the object is made of/contains material deriving from endangered species of fauna and flora (see Appendix 2)

- Once all necessary licences and permits have been obtained, ensure that the transfer of title form (to reflect the terms of the transfer), the storage arrangements prior to the handover, who will bear what costs and the travel arrangements, and any rights over images are all agreed.

**Loan:** The museum should consider how the loan can best provide meaningful access to the object for the claimant, taking into account any specific requirements relating to the nature of the item and its treatment. The loan may be short-term or long-term and may be on a renewable basis. Be mindful of existing loans policy, which may place certain conditions on the loan (such as its duration or the requirement for scheduled condition checks involving site visits), and consider whether it might be possible to amend the policy in special cases.

The practical steps involved for a loan would include arranging or completing the following:

- A temporary UK Export Licence, if required (more information can be obtained from the Arts Council England's Export Licensing Unit)

### *Return of Chief Crowfoot's regalia to Siksika Tribal Council and Blackfoot Crossing Historical Park*

#### **Royal Albert Memorial Museum, Exeter**

The Royal Albert Memorial Museum (RAMM) has a diverse collection, with numerous items donated by former colonial officers and families with naval and military connections. Objects in the collection include items from the Blackfoot community of Canada, including the ceremonial regalia of Chief Crowfoot of the Blackfoot people.

In 2015, the Blackfoot Crossing Historical Park (BCHP) made a formal request to RAMM to repatriate Chief Crowfoot's regalia. RAMM has previous experience of repatriating items, and worked with BCHP to progress research into the process of repatriation. In order to progress the return of the items, information was needed which was unobtainable and resulted in negative press coverage in both the UK and Canada.

RAMM initiated a direct discussion with Chief Ouray Crowfoot leader of the Siksika Nation (one of Chief Crowfoot's descendants), which led to a report recommending the return of the regalia to the Siksika Nation. This was supported by Exeter City Council.

A formal handover ceremony took place in May 2022, when representatives from the Siksika Nation travelled to Exeter to receive the regalia, in collaboration with RAMM and Exeter City Council. The visiting delegation included Elder, Herman Yellow Old Woman, who presented regalia made by himself thirty years ago to the museum collections, as a symbol of the Siksika Nation's continuing relationship with the City.

Further information can be found at:

[rammuseum.org.uk/news/crowfoot-regalia-to-be-handed-over](http://rammuseum.org.uk/news/crowfoot-regalia-to-be-handed-over)

- A CITES permit, if required (see above);
- If applicable, ensuring that measures are in place to provide for immunity from seizure in the country of destination (NB there may be a time limit on this);
- Any loan forms required by a museum's own policies including appropriate entries in a central loan registry (if any).

**Rights of access or control:** This outcome could involve allowing the claimant or its representatives special access to the relevant object at the museum. Such access could include the ability to handle the object in ways that are meaningful to the claimant, including using the object for ceremonial practices on the premises. It could also involve giving the claimant control over how the object is viewed, handled or studied by others (including through digitisation, and control of image use). This might be through a general agreement covering any such use, or it might be through a right for the claimant to provide or withhold consent on a case-by-case basis.

Practical steps to implement such rights of access or control would include the following:

- A written agreement setting out the details of the arrangements
- An update to the collections database and object file
- Briefing and training staff on the agreed arrangements
- If necessary, an update to relevant policies, such as those relating to access and handling

**Legal ownership of the object is divided between the claimant and the museum:**

This can be a challenging outcome to navigate. Museums should work with the key stakeholders to identify a clear partnership agreement for the future, identifying key points such as where the object/s will be stored, displayed etc, and for how long. In addition, partners should work together to develop a communications plan to ensure that they are prepared for any challenging/negative press/enquiries, etc. Key to shared legal ownership is identifying the best future for the object in terms of its care and storage, etc.

**Stakeholder management**

Museums should develop a plan to ensure that key stakeholders (both internal and external), are properly informed about any final decision/outcome. For example, the claimant may be working with another museum/museums in relation to a wider claim pertaining to a number of objects/collections. Likewise, the museum should consider how it engages other sector colleagues (eg museums with similar collections), along with any major funders/stakeholders (eg Arts Council England/National Lottery Heritage Fund (NLHF)). If a case is particularly high profile, DCMS should be kept informed and the appropriate information shared.

**Dealing with the media:** Whichever outcome is pursued, the parties should work together to deal with media issues (on the basis of the pre-agreed communications plan, if any). The level of media interest will depend on a number of factors, but is likely to be particularly high in cases involving returns of high-profile objects. Media involvement in any handover ceremony will require careful consideration and planning.

**Transparency in records, interpretation and labelling:** Whichever outcome is pursued, you should update relevant interpretation and labelling to reflect any new information that has come to light.

**Transparency about decision:** With the approval of the claimant, information should be provided about the outcome reached on the museum's website, subject to any confidentiality requirements. The museum may also consider wider publication, as appropriate. This might include local, national or international press; the websites of relevant sector organisations; relevant publications or newsletters. The information published should include a sufficiently detailed explanation of the reasons underpinning the outcome. Examples of such transparency include the published recommendations of the Spoliation Advisory Panel in relation to Nazi-spoliated objects, the publication of trustee decisions relating to claims for human remains in certain national collections and certain published reports of local authorities.

## Stage 4 checklist

Where the outcome involves no change in ownership:

- Ensure the claimant and other key stakeholders are informed of the outcome
- Identify ways in which the object might be used going forward
- Consider its research and interpretation
- Proactively engage in understanding its provenance and its place in the collection to bring context for audiences and community groups
- Include Charity Commission approval requirement where appropriate.

Where the outcome involves transfer of ownership:

- Consider whether a permanent UK cultural object Export Licence is required and make the necessary application (or assist claimant with this)
- Consider whether a CITES permit is required and make the necessary application (or assist claimant with this)
- Consider with claimant arrangements for storage, packing, transport, timings
- Consider with claimant whether handover ceremony is appropriate and if so, arrangements for this
- Complete/arrange completion of relevant documentation, such as: transfer of title form; disposal or deaccession documents; changes to collections database
- Include Charity Commission approval requirement where appropriate

Where the outcome involves loan to claimant:

- Consider whether a temporary UK cultural object Export Licence is required and make the necessary application
- Consider whether a CITES permit is required and make the necessary application
- Complete relevant documentation such as loan forms and amend central loan registry (if any)
- Arrange for immunity from seizure if applicable
- Include Charity Commission approval requirement where appropriate

Where the outcome involves granting rights of access or control to claimant:

- Ensure written agreement setting out all relevant terms is agreed with claimant;
- Update collections database and object file as appropriate
- Brief and train staff on agreed arrangements
- Update relevant policies (eg access and handling) as appropriate
- Include Charity Commission approval requirement where appropriate

# Appendix 1

## Recommended template policy on responding to restitution and repatriation cases

**Note:** This template sets out the main areas the museum will need to consider. The museum may wish to follow the style of its institution's existing policies (for example its Collections Management or Acquisition Policies). The size, resources and collections of a particular institution may dictate the level of detail included.

## Policy on responding to restitution and repatriation cases

### 1. Introductory statement

This should briefly describe your institution and its collections and include any legal information pertaining to those collections, including any statutory limits on deaccessioning items from your collection, and Charity Commission restrictions where appropriate. It may express the institution's general approach to matters of restitution and repatriation, for example, describing its commitment to the qualities of transparency, fairness and collaboration and its desire to engage proactively with interested parties. It could also cross-refer to other policies which may be relevant.

### 2. Scope of policy

This should explain that the policy sets out the procedure for claims for the return of cultural objects from the institution's collection. It may specifically exclude certain matters (for example relating to human remains, if these are covered in a separate policy).

### 3. Procedural matters in response to a claim

**(i) Initial enquiries:** You may wish to invite potential claimants to engage in informal discussion, providing the name of the staff role(s) to be contacted in that regard and the relevant contact details.

**(ii) Formal claim:** Indicate how, and to whom, a formal claim should be submitted (for example, in writing, addressed to the Director or similar senior position in the institution). Explain briefly how the claim will then be managed, indicating the staff position(s) who will act as the main point of contact (with relevant contact details).

**(iii) Content of claim:** Clarify what information you would like to receive as part of a formal claim, which would generally include: details about the claimant, their identity and contact details and whether they represent a group or organisation (and if so, the source of their authority to do so); details about the item(s) claimed; the reasons for the claim, describing the claimant's connection to the item(s) claimed, and their understanding of its/their history; details of any other parties the claimant knows may have an interest in the item(s).

**(iv) Response to the claim:** This section should make clear that claims will be dealt with transparently at all stages.

– Initial response: Indicate the form of your initial response to the claim and if possible suggest the timeframe for this (eg a written acknowledgement within [XX] days).

– How the claim will be assessed: explain the method of assessing the claim and on what basis decisions will be made. The process should be collaborative, giving opportunities for the claimant to participate fully. Many policies will explain that decisions will be made on a case-by-case basis, taking into account certain broad principles and factors. Any applicable legal restrictions relating to returns could also be briefly set out here.

**(v) Steps to assess the claim:** Indicate, briefly, the steps in your decision-making process, ideally suggesting likely timelines for each step and inviting participation of the claimant throughout.



#### **4. Processes to implement outcome of claim**

This section should cover the logistical and administrative matters to be addressed once a claim is resolved. It should set out how the practical matters relating to a return will be addressed (for example conservation, packing, shipping, relevant permits, export and import documentation) and how the costs will be covered.

#### **5. Policy review**

Indicate the date the latest policy was agreed and when it will next be reviewed.

# Appendix 2

## International and national legal instruments and relevant guidance documents

### International instruments<sup>4</sup>

What kinds of collection items/material/rights might it cover?	What is it about and why is it important for museums?	Signatories as at 2020	UK
<b>1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, Protocol 1 (1954), Protocol 2 (1999)</b>			
Items of 'great importance to the cultural heritage of every people'.	Sets rules to protect relevant cultural property in event of armed conflict; prohibits export of cultural property from occupied territories. Implemented by UK through Cultural Property (Armed Conflicts) Act 2017 (see below).	Over 130	✓
<b>1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property</b>			
Items of importance for archaeology, prehistory, history, literature, art or science.	Aimed at curbing illicit trade in cultural property. Strict legal obligations apply only to signatory states from the time of signature but ethical principle that museums will not acquire illicit cultural property now widely adopted in museums' codes of ethics.	140	✓
<b>1975 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)</b>			
Endangered species of fauna and flora (and items made/containing such, eg ivory).	Museums may need permit to acquire, or transfer out of their collections, items covered by CITES. CITES Management Authority in the UK is Animal and Plant Health Agency (APHA), agency of the Department for Environment, Food and Rural Affairs (Defra).	Over 180	✓

<sup>4</sup> International Conventions are voluntary agreements entered into by states. They apply only to the states which sign up to them and have no direct legal effect on individuals, private entities or organisations (including museums). On signing up to a convention, a state will then generally implement it through new national laws. United Nations Declarations are statements of principle and are not legally binding.

## International instruments

What kinds of collection items/material/rights might it cover?	What is it about and why is it important for museums?	Signatories as at 2020	UK
<b>1992 UN Convention on Biological Diversity (CBD) and Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Nagoya Protocol)</b>			
Products encompassing genetic material and associated 'traditional knowledge' (knowledge, innovations and practices of indigenous and local communities).	Aim to assist countries in conserving biological diversity and ensuring fair and equitable sharing of benefits arising from utilisation of genetic resources. Based on prior informed consent to use of material under mutually agreed terms.	CBD, over 190; Nagoya, over 120	✓
<b>2007 United Nations Declaration on the Rights of Indigenous Peoples</b>			
Recognises rights and cultural heritage of indigenous peoples (eg right to use and control ceremonial objects, repatriate human remains and to maintain manifestations of their culture)	Considered as major step forward for the rights of indigenous peoples. Note: there is no standard definition of 'indigenous peoples' under international law, primarily because each country and each group will probably understand the term differently.	Not legally binding (no direct legal impact). UK voted in support at the UN in 2007.	

## United Kingdom legislation

<b>Theft Act 1968/Proceeds of Crime Act 2002</b>
Creates offences for handling stolen goods and dealing in proceeds of crime (can include stolen property). Prosecution requires handler/dealer to act with knowledge or suspicion/belief the goods were stolen and, for handling stolen goods, that they acted dishonestly.
<b>Dealing in Cultural Objects (Offences) Act 2003</b>
Creates offence of dealing in cultural objects which are 'tainted' (meaning unlawfully excavated or unlawfully removed after 2003). 'Dealing' covers acquiring, disposing, importing/exporting, including by gift or loan. To be convicted, accused must have known or believed object had been unlawfully excavated/removed and must have been dishonest.
<b>Human Tissue Act 2004 (section 47)</b>
Allows listed English institutions which are restricted by law from deaccessioning collection items to transfer human remains less than 1,000 years old. This includes material which the human remains are mixed or bound up with.
<b>Holocaust (Return of Cultural Objects) Act 2009 (extended in 2019 by Holocaust (Return of Cultural Objects) (Amendment) Act 2019)</b>
Allows listed UK institutions which are restricted by law from deaccessioning collection items to transfer items claimed in relation to events that occurred during the Nazi era (1933-45). The transfer must have been recommended by the Spoliation Advisory Panel and approved by the Secretary of State.

### **Cultural Property (Armed Conflicts) Act 2017**

Implements UK's obligations under the 1954 Hague Convention and Protocols (see above). Creates criminal offences aimed at protecting cultural property under threat in conflict situations (including dealing in cultural property unlawfully exported from an occupied territory, knowing or having reason to suspect such unlawful export).

### **The Syria (United Nations Sanctions) (Cultural Property) (EU Exit) Regulations 2020 (SI No: 2020/1233)**

Relates to cultural property unlawfully removed from Syria any time after 15 March 2011. Creates offence of dealing in such property where there are reasonable grounds to suspect the objects in question have been unlawfully removed from Syria. Dishonesty is not required to convict for the offence.

### **The Iraq (Sanctions) (EU Exit) Regulations 2020 (SI No: 2020/707)**

Relates to cultural property unlawfully removed from Iraq any time after 6 August 1990. Creates two offences of (i) dealing in such property; (ii) failing to transfer such property to the police. Possessor must prove that it/s/he did not know nor have any reason to suppose the property was illegally removed. Dishonesty is not required to convict for the offence.

## **Guidance documents**

**Spoliation of Works of Art During the Holocaust and World War II Period: Statement of Principles and Proposed Actions (National Museum Directors' Council 1998, as updated)** (and for certain regional museums, the comparable statement issued by the now defunct Museums and Galleries Commission in 1999)

Principles and recommendations for provenance research into works of art wrongfully taken during the Nazi/Third Reich period, 1933-45.

### **Guidance for the Care of Human Remains in Museums (DCMS, 2005)**

Guidance for museums holding human remains in their collections, setting out best practice advice in relation to curation, care and use, and a framework for handling claims for return.

### **Museums Association Disposal Toolkit 2014 – Guidelines for Museums**

General information and guidance on disposal for all museums.

### **Museums Association The Legal and Ethical Status of Museum Collections 2014: Curatorially Motivated Disposals**

Supplements the Disposal Toolkit (see above). Discusses legal restrictions on disposal (including where collection items are on loan or where ownership is uncertain).

### **UK Export Licensing for Cultural Goods: Procedures and guidance for exporters of works of art and other cultural goods, an Arts Council England Notice (Export Notice)**

Guidance on procedures involved in applying for an Export Licence for cultural goods.

# Appendix 3

## Legal structures of UK museums and restrictions on disposal

Legal structure	Decision-making body	Legal duties of decision maker(s)	Legal restrictions on the disposal of items
<p><b>All museums</b></p>		<p>In addition to relevant category below, will depend on the museum’s governing document (trust deed, constitution, articles of association, Royal Charter or statute).</p> <p>Trustees need to consider maintaining and developing the collection for current and future generations, and their responsibility to act in the interests of carrying out the charity’s objects now and in the future.</p>	<p>In addition to relevant category below, restrictions on disposal may arise from:</p> <ul style="list-style-type: none"> <li>• the museum’s governing document</li> <li>• conditions placed by a donor on a gift or bequest</li> <li>• conditions placed if object acquired through external grant funding (disposal may require external approval or may result in financial penalty)</li> <li>• conditions placed if object received under Acceptance in Lieu or Cultural Gifts Scheme (disposal requires permission of Secretary of State/Minister)</li> </ul>

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<p><b>Museums established as charities</b></p> <p>Note: ‘charities’ include museums established to benefit the public through the advancement of arts, culture, heritage or science. However:</p> <ul style="list-style-type: none"> <li>• local authorities are not charities (see below)</li> <li>• national museums, though charitable, are generally governed by statute (see below)</li> <li>• university museums can be charities (see below)</li> </ul> <p>See Charity Commission, <i>The Review of the Register of Charities: Museums and Art Galleries</i>, RR10</p>	Trustees	<p>Charity law imposes the following duties on trustees<sup>5</sup>:</p> <ul style="list-style-type: none"> <li>• Exercise reasonable care, skill and diligence at all times</li> <li>• Act within powers, using correct procedures;</li> <li>• Act in good faith and in the interests of the trust (museum)</li> <li>• Adequately inform themselves</li> <li>• When making a decision, take into account only relevant factors</li> <li>• Make decisions that are within the range of reasonable decisions that a reasonable body could make</li> </ul> <p><sup>5</sup> See the Charities Act 2011 and Charity Commission guidance: <i>It’s Your Decision: Charity Trustees and Decision Making</i> (2013)</p>	<p>Charity law imposes two key legal restrictions on trustees<sup>6</sup>:</p> <ul style="list-style-type: none"> <li>• Any action must be in the best interests of the museum</li> <li>• Any action must be in the interests of the public</li> </ul> <p>Museums can seek advice or authorisation for particular actions from the charity regulator the Charity Commission for England and Wales. In some cases a court order can be sought.</p> <p><i>Note:</i> national museums, though charitable, are exempt from the jurisdiction of the charity regulator, and are instead overseen by the DCMS. Many universities are also exempt from the charity regulator.</p> <p><sup>6</sup> See the Charities Act 2011 and Charity Commission guidance: <i>The Essential Trustee: what you need to know, what you need to do</i> (2015) and <i>It’s Your Decision: Charity Trustees and Decision Making</i> (2013)</p>
<p><b>Museums established as companies</b></p>	Directors	<p>Company law imposes the following duties on directors:</p> <ul style="list-style-type: none"> <li>• Act within powers in accordance with the company’s constitution (ie governing document)</li> <li>• Act in good faith in the interests of the company, fostering the company’s relationships and maintaining its reputation</li> <li>• Avoid any conflict of interest</li> <li>• Act with reasonable care, skill and diligence</li> </ul> <p>See Companies Act 2006 (ss 171-177)</p>	Will depend on constitution and/or articles of association.

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<b>Museums run by local authorities</b>	Councillor(s) of local authority	<p>Will depend on the particular regulatory framework of the local authority</p> <ul style="list-style-type: none"> <li>• A general expectation to act with reasonable care, skill and diligence</li> </ul> <p><i>Note:</i> on occasion, local authorities may hold certain collections on trust, in which case the charity law rules above will apply.</p>	<p>Will depend on the particular regulatory framework of the local authority.</p> <p><i>Note:</i> on occasion, local authorities may hold certain collections on trust, in which case the charity law rules above will apply.</p>
<b>National museums governed by statute</b>	Trustees, Board of trustees or Council	<p>Will be found within relevant statute that governs the museum and its decision makers. Generally, this includes a duty to maintain the relevant collection:</p> <ul style="list-style-type: none"> <li>• To care for, preserve and, where relevant, add objects to the collection</li> <li>• To ensure collections are exhibited in public</li> <li>• To ensure objects are available for inspection by members of the public</li> <li>• And, generally, to promote public enjoyment and understanding by means of the collection</li> </ul> <p><small>See Museums and Galleries Act 1992 (s 2), British Museum Act 1963 (ss 3, 8), National Heritage Act 1983 (ss 2, 10, 18), Imperial War Museum Act 1920 (s 2), Merseyside Museums and Galleries Order 1986 (s 3).</small></p>	<p>Will depend on the relevant statute that governs the museum and its decision makers.</p>
<b>University museums</b>	Board, Council (will depend on structure of university)	<p>Will depend on governing document.</p> <p><i>Note:</i> can sometimes be charities, in which case the charity law rules above will also apply.</p>	<p>Will depend on governing document.</p> <p><i>Note:</i> can sometimes be charities, in which case the charity law rules above will also apply.</p>



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