



SMC Response to Combating Illicit Trade: Due diligence guidelines for museums, libraries and archives when acquiring cultural material: DCMS draft paper

Introduction

The Scottish Museums Council (SMC) is the membership organisation and representative body for Scotland's non-national museums. Our aim is to improve museum and gallery provision in Scotland for both local people and visitors. SMC combines strategic leadership for the sector with provision of professional information, advisory and support services to members.

We have over 200 members who in turn manage over 360 museums. The members include all 32 Scottish local authorities, universities, regimental and independent museums, ranging in size from small voluntary trusts to large metropolitan services, attracting in excess of 1 million visitors each year.

General Comments

SMC welcomes the opportunity to respond to this draft document. The illicit trade in cultural material is a reprehensible and damaging activity which can potentially affect all museums and which must be resisted. In the past, museum staff or governing bodies may have found themselves responding to such instances in an isolated, reactive way, unaware of where to turn for practical advice or unsure of whether nationally applicable guidance was available. This document offers much needed assistance by dealing with the complex issues in a clear, concise fashion. The extensive appendices provide useful sources of information and case studies illustrate how individual organisations can make a real difference; exercising due diligence in a practical sense.

SMC administers the Museum Registration Scheme in Scotland in which our full members participate, and so they are long accustomed to operating ethically and to following diligent acquisition procedures. The publication of these guidelines will, however, provide them with up to date and practical assistance and we are confident will be appreciated.

In addition to the general observations we have made in response below, are specific questions about the guidelines' validity within the Scottish legal framework. The different processes and laws in place throughout the UK are acknowledged in some instances, but not uniformly throughout this document.

Specific Queries

1) Scope of Guidelines

(Page 2, Para 2)

It is recommended that *'[these guidelines] should be used in conjunction with documents such as Spectrum and the Museums Association Ethical Guidelines on Acquisition'*.

In the draft notes accompanying MLA's revised Registration (Accreditation) Scheme, the document *'Stealing History: The Illicit Trade in Cultural Material'* (2000) is recommended, and also includes due diligence guidelines for museums.

Are these (DCMS) guidelines intended to supersede or to compliment those, and will this be made clear in the final Registration guidelines? We suggest it would be useful to acknowledge *Stealing History* along with the others listed here.

2) Basic Principles

(Page 3, The 1970 threshold)

The background and relevance of the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property* is carefully explained and this, along with information in appendices and case studies, outlines the ethical approach museums need take to making acquisitions in the area of archaeological or ancient items.

Explicit reference is made later to the Receiver of Wreck as the appropriate authority to whom maritime finds ought to be reported, however there is no overt mention of spoliation, in particular of Nazi loot. We suggest that this might cause some confusion to museums following the new Registration guidelines, where The National Museum Directors' Conference (NMDC) *Statement of Principles and Proposed Actions on Spoliation of Works of Art during the Holocaust and World War II period* (1998) is promoted.

These DCMS guidelines are presumably applicable to the illicit trade of all cultural material? Perhaps, then it would be useful to refer to spoliation overtly, and to provide signposts to further information.

3) What to do if there are problems establishing the provenance

(Page 5, Major Items)

'If, after undertaking due diligence...no acceptable documentary evidence can be provided to verify the provenance, then the museum should ask for a sworn statement (affidavit) from the vendor...'

What is the status of a 'sworn statement' (affidavit) in Scots law? Need a different recommendation apply here?

4) The results of due diligence

(Page 7, Para c)

In the case of a minor item: *'If the museum does embark on the purchase, it is the museum's responsibility to record the ways in which due diligence has been exercised.'*

It may be useful to specify that by 'museum', the legally responsible body meant is the 'museum governing body', so as to avoid any fear that potential blame could come to rest with an individual; a curator or budget holder. The individual's recommendation ought to be considered and approved by the governing body.

'In all cases if there is any suspicion whatsoever about the item, then you should not proceed with the acquisition.'

It could be useful to suggest 'what to do next' information here. For example, the MA's Code of Ethics suggests that museums have a responsibility to inform the police of their suspicions. Should they also alert other museums who may be approached or potentially have an interest in the same item?

5) Summary flowchart

(Page 9)

The flowchart neatly illustrates how to deal with potential acquisition in English museums, with a note in parenthesis instructing Scottish and Irish enquirers where to go for information.

A similar flowchart for Scotland (and presumably for Northern Ireland) would doubtless be appreciated, and be more in keeping with the intention that these guidelines are relevant to and intended for use in museums across the UK, not only in England.

6) Museums as places of temporary safety for items originating overseas

('In particular', Bullet Point 5)

'The museum must not acquire the item: but instead accept the item on loan under an agreement that authorises it to return the item to the rightful owner when it is safe to do so.'

Is there a difference, legally, in 'rightful ownership' in Scotland and England? Would such a loan agreement, where an object was not returned to the lender but to an otherwise agreed 'rightful owner', be robust?

(Page 11, Para 3)

'It is crucial to ensure that any such acts are lawful under, for example, the Dealing in Cultural Objects (Offences) Act 2003 and other legislation.'

Does this act apply in Scotland? If not should museums in Scotland be asked to follow the spirit of the Act or is there an equivalent that ought to be suggested instead?

7) Archaeological material from the UK

(Page 14, Para d) Material from wreck

'The Receiver of Wreck deals with wreck which comes from tidal waters. Material from non-tidal waters are treated as if they were found on land, and come under other legislation (e.g. Treasure Act 1996, Ancient Monuments and Archaeological Areas Act 1979).'

It might be useful to add ‘...and equivalents from the home nations’ or similar, as a guide to users outside of England.

8) Appendix 1

Further information and advice

Inclusion of an internet address or contact details for The National Museum Directors’ Conference *Statement of Principles Proposed Actions on Spoliation of Works of Art during the Holocaust and World War II period* (1998) might be included.

Or, more beneficially perhaps, a link to the guidelines promoted in the revised Registration guidelines and referred to as: the ‘*guidance on spoliation issued for non-national museums in 2003 by Resource.*’

9) Case Studies illustrating the use of due diligence procedures

The inclusion of a Spoliation case study might be useful.

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