



## Restitution of Objects Spoliated in the Nazi-Era: A Consultation Document NMSI Response

NMSI welcomes the opportunity to respond to the DCMS consultation document. The questions have been repeated below with the NMSI response in **bold**. In the event of any queries regarding this response please find contact details at the end of this document.

Q1 Consultees are asked if they agree with our provisional view that museums should have a power to dispose of items in their collections which were lost during the years 1933 to 1945 as a result of the actions of the Nazis, their allies or collaborators.

**NMSI believes that museums should have the power to dispose of items in their collections which were lost during the years 1933 to 1945 as a result of the actions of the Nazis, their allies or collaborators.**

Q2 Consultees are asked whether:

(a) the power to dispose of objects in a collection which we propose should apply:

(i) to objects wrongfully taken in circumstances directly related to the actions of the Nazis, their allies or collaborators during the years 1933 to 1945 (and if so whether “wrongful taking” should be defined to include all the circumstances identified in paragraph 3.14 above); or

(ii) to objects which were involuntarily lost by their owners during the period from 1933 to 1945 in circumstances arising from the actions of the Nazis, their collaborators or allies or;

(iii) to objects lost during that period as a result of Nazi actions in circumstances which would today be considered to be contrary to the human rights of the original owners.

**NMSI is convinced by the argument that definition (i) leaves legislation open to potential problems regarding the exact definition of ‘wrongful taking’, as well as being subject to the difficulties posed by English contract law. NMSI believes that definitions (ii) and (iii) are both in keeping with the spirit of this legislation and both allow for greater clarity. Of these two options, definition (ii) would require ‘involuntarily lost’ to be defined, and this could be problematic. NMSI would therefore have a slight preference for definition (iii) as this would allow judgment to be made in the light of the articles of the ECHR, which have already been incorporated into English law.**

(b) they agree that that separate provision should be made to enable the restitution of the Beneventan Missal in addition to the general power to de-accession items lost as a result of Nazi actions which we propose;

**NMSI agrees that the circumstances surrounding the Beneventan Missal means that separate provision should be made.**

(c) the legislation should seek to define the entitlement which should be demonstrated by a claimant before museums are permitted to transfer objects in their collections to that claimant, or whether guidance on a claimant’s entitlement should be provided by a Code of Practice.

**NMSI believes that a Code of Practice would allow more flexibility and be more in keeping with the spirit of this legislation.**

Q3 Consultees are asked for their views on the following issues:

(a) Should the question whether a particular object is de-accessioned be left wholly to the discretion of the institution concerned?

**Yes, NMSI believes that the institutions should retain discretion.**

(b) Should an institution be able to de-accession an object in its collection in response to a claim which has not been considered by the Spoliation Advisory Panel, without reference to other authority?

**Yes, the ability should be present.**

(c) Should an institution be able to reject a recommendation made by the Spoliation Advisory Panel, and if so in what circumstances?

**NMSI believes that whilst in practice it is highly unlikely that an institution will reject a recommendation of the Spoliation Advisory Panel, the Panel's findings should not be legally binding.**

(d) Should recommendations made by the Spoliation Advisory Panel be binding on the parties to a claim?

**NMSI believes the Panel's findings should not be binding.**

(e) Should the consent of the Secretary of State, the Attorney General or the Charity Commission be required before an institution is able to de-accession an object from its collection?

**No, NMSI believes the powers that exist, for example under the Human Tissue Act would suffice.**

(f) Should the Secretary of State have power, subject to the approval of a draft order by Parliament, to direct an institution to de-accession an item from its collection?

**No, NMSI does not believe that political input would be beneficial to the parties involved and so the Secretary of State should not have the power to direct.**

Q4 The views of consultees are sought on the following issues:

(a) Should any provision be made to permit an institution to dispose of an object in its collection in response to a claim where that object is subject to any trust or other condition which expressly or impliedly prohibits disposal?

**NMSI believes that the purpose of the trust or any other condition would be to remove the ability to sell or otherwise dispose of an object for reasons of finance, fashion etc. NMSI believes that in most cases the trust makers and the 'common man' would consider return of a spoliated object would be the correct course of action. For these reasons, NMSI believes that the provision should be made.**

(b) If so, should an institution be able to override all non-statutory restrictions on disposal, or should there be any exceptions? What exceptions might be made?

**As stated above, NMSI believes that an institution should only be able to override restrictions that directly relate to spoliated objects. The institution should be given the opportunity to override the findings of the Spoliation Advisory Panel as per 3c and 3d above.**

Q5 Consultees' views are invited on the question whether the Spoliation Advisory Panel should be transformed into a statutory body.

**NMSI does not believe that the Spoliation Advisory Panel should be made a statutory body, particularly as it does not believe its rulings should be binding.**

Q6 Consultees' views are invited on the following questions:

(a) Should the claimant be liable to any capital gains tax payable in respect of gains made on the sale of a work of art or other object restored to the claimant by a museum or gallery?

**Since this issue does not have a direct impact upon NMSI we do not feel it is appropriate to comment. We would be happy to support the findings of an appropriate authority in this matter.**

(b) Should the value of a work of art or other object restored to the claimant by a museum or gallery be included in the claimant's estate for the purposes of inheritance tax, or should it be treated as excluded property?

**Since this issue does not have a direct impact upon NMSI we do not feel it is appropriate to comment. We would be happy to support the findings of an appropriate authority in this matter.**

(c) Consultees are asked whether they agree that where an item donated to an institution is transferred to a claimant in restitution, the donor of that item should not lose the benefit of any tax advantages accruing to him or her as a result of the donation?

**NMSI agrees with this statement provided that d) below also applies.**

(d) If they agree to the proposal in (c), do they consider that an exception should be made where the donor was aware or had reason to be aware of the previous history of the item)?

**NMSI agrees that if the donor was aware or had reason to be aware of the previous history of the item that any tax advantages should be removed.**

Q 7: Consultees are asked:

(a) Should the limited power we propose for museums and galleries to transfer items out of their collections be a permanent one, or should it only be available for a defined number of years after it comes into force?

**A time limited piece of legislation has advantages in this case. However, the argument that information may come to light after the period has expired also has weight. On balance NMSI believes that the power should be permanent, the legislation is designed to right a previous wrong, and to time limit such a concept could impose a further wrong in the future.**

(b) If consultees believe that this power should not be a permanent one, which of the following periods is most appropriate:

(i) Ten years from the date on which legislation implementing it comes into force;

(ii) Twenty years after this date;

(iii) Any other period from this date?

**N/A**

Q8 - Consultees are asked whether they agree that a museum or gallery which has transferred an item from its collection to a claimant should be protected against any further claim in relation to that item by a subsequent claimant.

**NMSI believes that a museum or gallery that has transferred an item from its collection to a claimant should be protected against any further claim by a subsequent claimant. This provides protection for the museum or gallery from legal costs, but still allows for the subsequent claimant to make a claim against the original claimant.**

Contact Details:

Matthew Simkin

NMSI Head of Policy Development

Science Museum

Exhibition Road

London

SW7 2DD

020 7942 4185

[matthew.simkin@nmsi.ac.uk](mailto:matthew.simkin@nmsi.ac.uk)