

## SUMMARY PAPER – RESPONSE TO THE CONSULTATION ON THE CARE OF HISTORIC HUMAN REMAINS

### ISSUE

In July 2004, DCMS published the consultation document *Care of Historic Human Remains* following the Report of the Working Group on Human Remains. The consultation document summarised the Working Group's Report and invited comments on its recommendations. Forty seven responses were received, from a range of groups including UK national and non-national museums, archaeological groups as well as cultural and religious groups. This summary paper draws together the comments of these groups on the key areas set out in the consultation document.

### 1. Licensing – Regulation of human remains collections in museums

1.1 The Working Group recommended that a licensing system should be introduced with the object of regulating the holding, return, treatment, handling and disposal of human remains in broad conformity with the Department for Health's proposals for the Human Tissue Bill.

1.2 The responses to the consultation showed that only 29 percent of respondents supported a move for all the activities of museums to be brought under the licensing regime issued by the Human Tissue Authority. A far greater number, 53 percent opposed this, including 12 responses that would only supported licensing for human remains less than 100 years in age.

1.3 Many museums reported that regulation and the cost of compliance with a licensing regime would adversely affect operations. The smaller non-national museums were concerned that they would have difficulty in meeting the costs of compliance, and said that licensing was likely to discourage all but the largest institutions from retaining collections. The financial implications for smaller provincial museums might mean that they would choose to de-accession remains, which could result in an extensive loss of material that would be damaging for socially valuable scientific research. Archaeological groups noted that as most UK human remains were uncontentious, licensing them all would detract from research activities disproportionately.

1.4 It was confirmed that the amendment of the licensing provisions in the Human Tissue Bill at Report Stage in the House of Commons would mean that the museum sector remained largely outside the licensing provisions of the Bill. This was because most museum holdings of human remains were older than 100 years in age, and so would be outside the remit of the licensing regime or Human Tissue Authority.

## 2. Consent & Consultation

2.1 The Working Group considered that, in common with the retention and treatment of human remains by institutions within the remit of the Department for Health, the retention and treatment of human remains by museums should be based on consent. Key issues were: how to identify the person or community whose consent should be sought in a particular case; how far the requirement for consent should be extended; and how far a cultural rather than a genealogical interest in human remains should put a community in a position to give or withhold consent.

### *Consent*

2.2 Over 72 percent of respondents to the consultation were in agreement that research on remains should be subject to the consent of close family or direct genealogical descendents, where such relations could be identified. Those not in agreement felt the requirement to obtain consent was unacceptable and unworkable for the museum system. It was also suggested that the danger of misidentification would be worse than not establishing identity at all.

2.3 Only 27 percent of the respondents agreed with the majority of the Working Group that where no family or descendents can be identified, there should be a requirement to obtain consent from those within the deceased person's own culture or religion. It was emphasised that consent should be restricted to family and direct descendents only, although consultation with wider groups should be encouraged.

### *Identification*

2.4 In facilitating the identification of remains, it was widely agreed that the majority of museums should provide clear and open information on their collections. However, it was thought to be unreasonable to require museums to pro-actively seek out descendents of the remains they hold (in addition, defining a 'direct genealogical descendant' is problematic). Only two responses suggested there should be any pro-active work towards finding descendents.

### *Consultation*

2.5 Forty eight percent of the respondents (including all UK national museums respondents) agreed with the minority report that where no direct genealogical descendents could be identified, the use and custody of human remains should require consultation rather than a requirement for consent. The consultation highlighted several problems with any requirement to obtain

consent from those within the deceased person's own religion or culture with a responsibility comparable to that of close family:

- The majority view supposed Western equivalences on societies to which they may have no application. It may be impossible to demonstrate 'a status or responsibility comparable to that of close family'
- It was morally and ethically wrong to return human remains back to a culture or religion where they may not have wished to reside
- Providing information to ill-defined cultural descendents may cause serious distress and create problems within communities

### *Return of Human Remains*

2.6 The consultation asked what factors were relevant to a decision on whether or not to return human remains, and whether age was a relevant consideration. From the responses, it became clear that the age of human remains was only a very crude indicator of the sensitivity of human remains, and not necessarily the most reliable way to assess claims for repatriation.

2.7 The UK national museums were keen to consider the degree of benefit to the public by the retention of remains and the information they provide in the context of associated non-human remains. Archaeological groups, while recognising the age of remains as applicable in an archaeological context, drew attention to other criteria, including: the condition of remains, their uniqueness, historical questions associated with them, the circumstances under which the remains were collected and the value of the remains to the claimant communities. In short, the value of remains in understanding the past and the request for repatriation must be weighed against each other.

## **3. Human Remains Advisory Panel**

3.1 It was recommended by the Working Group that a Human Remains Advisory Panel (HRAP) should be established as soon as reasonably possible, to provide advice in cases of disagreement between museums and claimant communities,

3.2 42 percent of the respondents wholly rejected the idea of a national Human Remains Advisory Panel. Only 16 out of 47 replying institutions were supportive of the idea, and eight respondents were keen to stress that any Panel should if established, take a consultative approach. The majority of those in favour of a national panel were the smaller non-national museums. In contrast, the national Museums were not in favour of a suggested HRAP; similarly out of 15 archaeological groups, only three were supportive of such a panel. 10 groups choose not to comment.

3.3 The consultation asked whether, if set up, a National Human Remains Advisory Panel would be used. Only 19 percent responded positively to this, with 28 percent of respondents thinking that a panel would not be greatly used.

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Most respondents, even those in favour of an HRAP indicated that after initial claims were dealt with, activity for the Panel would decrease and that a large number of claims were not envisaged.

3.4 In considering the need for a Human Remains Advisory Panel, the consultation sought opinion on whether it should be open to museums to establish their own local advisory panels rather than referring them to a national HRAP. 51 percent of respondents were in favour of this, however it was widely thought museums should not be required to do and that it should only be voluntary. The 23 percent of respondents that were not in favour of such a move expressed concern over what was perceived as another layer of bureaucracy as well as concern over the relationship between the local and (if set up) national panel.

### *Statement of Principles*

3.5 The consultation also asked whether it would be useful to publish a statement of principles as guidance to museums and to a possible National Human Remains Advisory Panel. 53 percent of respondents were in favour of this, with only 14 percent rejecting the idea, suggesting such guidance would be better contained in a Code of Practice. Many of those in favour, however, noted that the draft contained at Appendix 5 in the consultation document would need substantial revision, as the principles had not been developed for UK remains but instead for overseas remains.

## **4. Code of Practice**

4.1 The Working Group recommended that institutions should be required, as a condition of licensing to subscribe to a code of practice on the care and management of human remains. Nearly 70 percent of respondents agreed it would be useful to introduce such a code. The Museums, Libraries and Archive Council (MLA), the Museums Association (MA), the Human Tissue Authority (HTA) and the Department for Culture, Media and Sport (DCMS) were all suggested as possible co-ordinators for issuing and enforcing a Code of Practice, although no one was predominately favoured. However, it was widely noted that a Code should be voluntary and not imposed, and that museums must be involved in its development.

The consultation requested comments on what a draft code should provide for. From the responses, the following were identified as key areas in which there was a need to:

- Acknowledge special nature of human remains in both scientific and human terms
- Emphasise good curation
- Provide for differentiation between different types of human remains (e.g. between UK and overseas remains).
- Recognise the multiple accountability of all institutions holding human

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remains to all constituencies with a legitimate interest in them.

- Require institutions holding human remains to know in detail the contents of their collection
- Stress openness and communication in all discussions.

## **5. Sacred Objects**

5.1 Following a recent Select Committee Report, the Secretary of State undertook to consider whether it would be appropriate to undertake an audit of sacred objects in UK museums. The consultation sought opinion on this point. Only 3 respondents out of 47 thought that such a survey should be undertaken. The majority thought that the exercise could not usefully be carried out. It was emphasised that 'sacred' was a culturally specific term and that what was sacred was far harder to determine than human remains. The problems of definition were such that it would require a separate group to be convened to arrive at a workable definition.

5.2 The resource implications of this exercise would depend on the definition used and whether a central body undertook the survey or questionnaires were used; it would also depend on what level of description of the collections was required. However, the consensus was that it would be a time consuming and resource intensive move, that would outweigh the potential benefit.

## **6. Ministerial Arbitration**

6.1 The consultation document asked whether Ministers should have a role in dispute resolution where other procedures have failed to secure agreement. Just over 65 percent of the 47 organisations that responded answered negatively. Only three groups – 6 percent of the 47 organisations consulted - were in favour of the arbitration service. Two of these were archaeological organisations, which said that Ministers should intervene only when all other avenues had been explored. The Australian Minister for Immigration & Multicultural & Indigenous Affairs also suggested that the Minister should remain the ultimate power of intervention in the event that disagreements become the subject of inter-governmental concern. The remaining 29 percent of the responses made no comment on this suggestion.

## ANNEX A – CONSULTATION ARRANGEMENTS

The consultation document *Care of Historic Human Remains* was sent to 266 people in July 2004. The consultation and response submission period lasted until 29 October 2004. The respondents were invited, if they so wished to remain anonymous in any publication of the responses to the document. However, no requests for such anonymity were received.

A total of 47 responses were received from:

AOC Archaeology Group  
Australian Minister for Immigration & Multicultural & Indigenous Affairs  
Birmingham Art Gallery and Museums Trust  
British Association for Biological Anthropology & Osteoarchaeology  
British Humanist Association  
Cambridgeshire Archaeology  
Council for British Archaeology  
David Pollock  
English Heritage  
Glasgow Museums  
Institute of Field Archaeologists  
Museums Association  
Museums Ethnographers Group  
National Museums and Galleries of Wales  
Office of the Chief Rabbi  
Oxford Archaeology  
Royal Anthropological Institute  
Royal College of Surgeons  
Sheffield Galleries and Museums Trust  
Southeast Museums, Libraries and Archive Council  
The British Archaeological Trust  
The British Museum  
The Institute of Archaeology and Antiquity  
The Leverhulme Centre, Cambridge  
The Manchester Museum  
The Museum of Archaeology and Anthropology, Cambridge  
The Museum of London  
The Museum, Libraries and Archives Council  
The National Army Museum  
The National Museum Liverpool  
The Natural History Museum  
The Royal Society  
The University Museums Group UK  
The University of Bristol Speolaological Society  
The Wellcome Trust  
UCL Museums and Collections  
University of Bradford, Archaeology Department  
University of Bristol, University Office

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University of Dundee, Anatomy and Forensic Anthropology  
University of Durham, Archaeology Department  
University of Oxford, Pro-Vice Chancellor's Office  
University of Sheffield, Archaeology Department  
University of Southampton, Archaeology Department  
Warwickshire Museum  
Wessex Archaeology  
Wiltshire Archaeological and Natural History Society  
World Archaeology Congress

## ANNEX B - CONSULTATION RESPONSE PROPOSALS

### Licensing

#### *Costs*

In mind of fears over the costs of a new licensing regime and the impact it may have on smaller institutions, the National Army Museums asked whether the possibility of special rates for smaller institutions could be explored. The Wellcome Trust similarly suggested whether there could be a minimum threshold for a license. However, University College London Museum and Collection's department argued that the ethical benefits of compliance with such a system would justify the cost to operations.

The Natural History Museum were keen to stress that the nature and conditions of licensing should be proportionate to the level of ethical concern associated with the remains. In stating this, they drew attention to the need to distinguish between those remains which may prove controversial and those that do not, as well as recognising the different circumstances of overseas and UK remains.

Two respondents, commenting on the extensive costs of licensing and of compliance with such a regime, noted that additional funding would be needed to absorb these costs.

#### *Implementation*

The consultation asked respondents to comment on when museums should be brought under the remit of the Human Tissue Authority and/ or the licensing regime. Although over 60percent of respondents were against such a move, it was suggested that if enforced, implementation must be carefully planned to allow adequate time for a properly planned and managed process. It was recommended that there be a lead-in period, as immediate compliance with requirements (for example of collections documentation and appropriate storage) would not be possible with all institutions. This period would also allow museums to decide whether they could afford to or would want to be licensed. A process of consultation with institutions in determining the implementation of such a regime would also be welcomed.

Other more specific criticisms, raised in the consultation responses, of the Working Group's recommendations on the Licensing regime are outline below:

- **Recommendation X** - enables institutions *'to defend their interests at law and to loan the remains to other licensed institutions'*

There is concern that this provision for licensed institutions to loan human remains only to other licensed museums, would result in unnecessary restrictions on travelling exhibits of cultural remains and impact severely on collaborative research.

### Security Classification

- **Recommendation XVII** – *'Material associated with human remains, but not consisting of human remains shall be excluded from the proposed licensing regime'*

This excludes non-human remains associated with human remains from the licensing regime and may result in collections being dispersed.

## Consent and Consultation

The consultation showed that while the majority of respondents were strongly opposed to a requirement for museums pro-actively to seek out the descendants of the remains they hold, they supported the need for clear and open information.

Over 30percent were in favour of institutions auditing and publishing identified remains that could be accessed by members of the public. It was suggested that the Internet may be used to facilitate this and that such records could be deposited with a central body, (such as the MLA) which would be able to hold a national register and act as a central point of contact.

It was also recommended that there be further work with UK institutions and indigenous communities to establish a framework in which the process of identification of human remains can be discussed.

## Statement of Principles

56percent of respondents were in favour of publishing a statement of principles as guidance to museums and to a possible National Human Remains Advisory Panel. However, the consultation raised several areas where the draft included at Appendix 5 of the consultation document, may require amendment or expansion. These points have been summarised below:

- **Principle (i) Unique Status** *'Human remains, irrespective of age, provenance or kind, occupy a unique category, distinct from all other museum objects'*

It was suggested that the definition used was too large

- **Principle (vii) Consent** *'Factors to be taken into account in responding to requests for return or special treatment shall include, but may not be limited to...The wishes of the deceased person...the wishes of the genealogical descendants...the wishes of the cultural community of origin and the wishes of representatives of the country of origin.'*

The term 'cultural community of origin' was problematic, suggesting that a community would have a uniformity of opinion, and overlooked the relationships of ethnic minority groups and the state in many parts of the

## Security Classification

world.

The principles omitted the legitimate and important needs of the scientific community. A more balanced view was required that took into account the needs of the research and scientific community as well as those of any claimant or claimant community.

- **Principle (iv) External reference** *'A wide range of expert external advice should be sought and taken into account. Museums should be prepared to submit their position to external valuation'*

The need for museums to submit their position to external valuation may result in advice that was contrary to the ultimate decision of the museum's governing body.

- **It was noted that the principles lacked a statement on the responsibilities of claimant communities in dealing with museums**
- **The principles also did not have a statement obliging institutions to audit and publish details of their holdings of human remains**
- **Need to be valid in a UK context** – the statement of principles reproduced in Appendix 5 of the consultation document was not developed for UK remains but for those from overseas. The origin of the remains was important particularly in recognition of the special connection that many indigenous groups have with ancestral remains, particularly where there were living descendants and areas of indigenous land. In contrast, the majority of human remains of UK origin are uncontroversial.