

SUMMARY OF QUESTIONS FOR CONSULTATION [Tate responses \(October 2006\)](#)

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

[Yes.](#)

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 [Error! Reference source not found.](#) 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.

[Yes.](#)

- (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;

[Yes.](#)

- (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. (See paragraph 3.22).

[A Code of Practice would be more practicable, especially if the Code was devised by, or endorsed by, the Spoliation Advisory Panel.](#)

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

In order to maintain public transparency (and confidence) in the process it is essential that the institution should not be burdened with making the decision independently, should submit all claims to the Spoliation Advisory Panel and should abide by the Panel's recommendations.

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

The parties to the claim should agree in advance of the consideration of the case by the Panel.

- (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?**
- (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? (Paragraph 3.39)**

The recommendation of the Panel, which is in the public domain and made through detailed examination of the facts, should be sufficient to relieve the Secretary of State of either consenting or needing to direct the actions of an institution. Indeed, such interventions would be likely to prolong any claim and may ultimately confuse a particular case and future cases. Furthermore, it is the trustees that have primary responsibility for the collection that they hold in trust, not the secretary of State.

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?**
- (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? (See paragraph 3.48).**

Spoliation concerns, which must be presumed to have lain outside any such conditions, should override stipulations of trusts or other conditions.

Q5 Consultees' views are invited on the question whether the Spoliation Advisory Panel should be transformed into a statutory body. (See paragraph 3.52).

No, the moral authority of the Spoliation Advisory Panel derives from its non-statutory position and it has shown itself to be remarkably effective to date. Any change in status would, furthermore (and as noted in 3.48-52), lead to legal and funding consequences that might dissuade potential claimants.

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?**
- (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?**

The claimant should be subject to capital gains and inheritance tax on a returned object.

- (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?**

No attempt should be made to alter the tax status of the original donation.

- (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)?** (paragraph 3.60)

This makes sense in the abstract, though in practice would be very difficult to prove. It would normally be assumed that a past donation was made in good faith; recent donations should be subject to the institutions' own practice of due diligence in provenance research.

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?**
- (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?** (Paragraph 3.64)

The power should be available for a limited period of twenty years after legislation. This would encompass two generations, after which evidence becomes increasingly difficult to uphold.

3.2. **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. (Paragraph 3.67)**

Yes.