

## DRAFT SOTHEBY'S RESPONSE TO DCMS OF QUESTIONS FOR CONSULTATION

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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

Draft response: Agreed. We would recommend that the DCMS consider whether similar treatment should be given in respect of items in museums which were confiscated between 1933 and 1945 by Allied governments from victims of the Nazis, their allies or collaborators. Such items would include items which were sent to Allied jurisdictions for safe keeping by Jews in Germany and which were then confiscated by the Allies as enemy alien property on war being declared.

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.

**Draft response: We believe that option (i) above is the best. "Wrongful taking" should be defined to include the circumstances identified in paragraph Error! Reference source not found. (a) to (d) inclusive. The circumstances in paragraph 3.14 (e) should only apply to the extent that there was a direct nexus between the sale and persecution; we are mindful that as defined, 3.14 (e) might apply to a sale by a refugee in Switzerland or the USA where the refugee had lost their means of financial support in Nazi Europe but were under no threat from the Nazis or their allies at the time of sale – putting them in the same position as a refugee at any other time in history.**

- (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;

**Draft response: Sotheby's expresses no view.**

- (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 3.25).

**Draft response: Sotheby's would support the provision of a Code of Practice in the interests of clarity and would be happy to assist in the preparation of such a document.**

**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?

**Draft response: No.** It is important to ensure consistency of response in such matters and the delegation of the decision making process to the institution concerned might generate inconsistency.

- (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?

**Draft response: No.**

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

**Draft response: No.**

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

**Draft response: No.**

- (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?

**Draft response: Yes.** We feel that overview by the Secretary of State or the Attorney General is the best way to ensure consistency between regions and institutions.

- (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)

**Draft response: Yes.**

**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?

**Draft response: As in all claims concerning historic provenance of works of art, Sotheby's believes that it is important to seek a just and equitable solution taking into account the respective legal and ethical positions of the parties and also public interest. It may be that justice would be best served in some cases by the payment of compensation by or on behalf of an institution rather than restitution of the work of art concerned. The greatest care should be taken with regard to objects which are the subject of a trust or other condition which expressly or impliedly prohibits disposal and any provision should be permissive as rather than directive.**

- (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).

**Draft response: see previous answer**

**Q5** Consultees' views are invited on the question whether the Spoliation Advisory Panel should be transformed into a statutory body. (See paragraph 3.54).

Draft response: Sotheby's expresses no view on this.

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?

Draft response: No. There should be a window of, say, 24 months after restitution in which a work of art can be sold without CGT liability.

- (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?

Draft response: Where the claimant is a living person at the time of restitution then the restituted object should be treated as being part of the claimant's estate on the claimant's death. Sotheby's believes that a restituted object should not be treated as having formed part of the estate of a deceased person who would have owned the object between the date of spoliation and the date of restitution but for the loss or confiscation of that object during the Nazi period.

- (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?

Draft response: Agreed

- (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)

**Draft response: The donor should keep the tax advantage since the onus is on the accepting institution to diligently researching the provenance of works of art offered to it.**

**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?

**Draft response: It should be permanent.**

- (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)

**Draft response: Not applicable**

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)

Draft response: The transferee should be asked to warrant that the transferee is solely entitled to claim the artwork and must give a full indemnity to the institution concerned against any competing claims which might be made in the future.