

## British Museum policy

### De-accession of objects from the collection

#### 1. Preamble

- 1.1 This policy covers all objects vested in the collection of the British Museum (“the Collection”) and should be read alongside the British Museum Policies on Acquisitions and Human Remains.
- 1.2 The Trustees of the British Museum have a strong commitment to the integrity and global public value of the Collection, and do not normally deaccession objects from it.

#### 2. Purpose

- 2.1 This policy sets out the principles which the Trustees of the British Museum apply to the exercise of their powers of de-accession from the Collection whether by sale, exchange, gift and other disposal (including disposal in response to any third party claim for the restitution or repatriation of an object in the Collection).

#### 3. The Legal Duty and Powers of the Trustees

- 3.1 The British Museum Act 1963 (“the Act”) is the governing instrument of the Trustees of the British Museum.
- 3.2 Subject to the extension of powers contained within s 47(4) Human Tissue Act 2004 and the Holocaust (Return of Cultural Objects) Act 2009<sup>1</sup> the Act defines and limits Trustees’ power to de-accession objects from the Collection and there is a strong legal presumption against it. Under the Act, “Objects vested in the Trustees as part of the Collection of the Museum shall not be disposed of by them otherwise than as provided by the Act”.<sup>2</sup> This legal presumption is reinforced by an absolute prohibition against de-accessioning where any object has been vested in the Collection subject to any trust of condition against de-accessioning imposed on the Trustees at the time of its acquisition<sup>3</sup>. The Trustees would not want to disregard the wishes of donors. There are in any event only very limited circumstances in which it would be possible to do so, and the consent of the Museum’s charity regulator is required to set this prohibition aside<sup>4</sup>.
- 3.3 Under the Act, Trustees do not have the power to sell, exchange, give away or otherwise dispose of any object vested in them and comprised in the Collection<sup>5</sup> unless -
  - (a) the object is a duplicate of another object held in the Collection, or
  - (b) in the opinion of the Trustees the object is unfit to be retained in the Collection and can be disposed of without detriment to the interests of the public or scholars<sup>6</sup>;

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<sup>1</sup> For more information see the Trustees’ Policy on Human Remains and paragraph 3.8 below

<sup>2</sup> ss 3(4) the Act

<sup>3</sup> s 5(1) *ibid*; see also s 47(4) Human Tissue Act 2004; s 2(6) Holocaust (Return of Cultural Objects) Act 2009

<sup>4</sup> ss 105 & 106 Charities Act 2011 (expediency in the best interest of the Museum; or exceptional moral circumstances)

<sup>5</sup> ss 3(4) the Act

<sup>6</sup> ss 5(1) *ibid* (nb: where an object has become vested in the Trustees by virtue of a gift or bequest these powers of disposal are not exercisable as respects that object in a manner inconsistent with any condition attached to the gift)

- (c) it has become useless for the purposes of the Museum by reason of damage, physical deterioration, or infestation by destructive organisms<sup>7</sup>.
- 3.4 *Objects that are duplicates:* The Trustees do not normally de-accession duplicate objects from the Collection. They understand ‘duplicate’ to mean an object that is identical in every significant respect to one or more other objects in the Collection, not merely of the same or a similar kind. The Trustees furthermore consider that duplicate objects in the Collection, whether acquired as part of an archaeological find or for some other appropriate reason, may enhance the significance of the Collection as a whole and to the study of particular classes of artefact, and therefore should not normally be de-accessioned from the Collection merely on the grounds that they are duplicates.
- 3.5 *Objects that are “unfit”* The Trustees would only consider that an object was unfit to be retained in the Collection if it was no longer useful or relevant to the Museum’s purpose and if its retention would not be of benefit either to scholars or the general public, whether for display or research or any other purpose for which the Museum is established. Before concluding that any object was unfit to be retained in the Collection, the Trustees would require there to be a written statement of a) the reasons why it was unsuitable for the Museum’s purpose and therefore unfit for retention, and b) why it might be disposed of without detriment to the interests of the public or scholars.
- 3.6 *Objects that are “useless”:* The Trustees would only consider that an object that had been vested in the Collection could be regarded as “useless” in cases where an object had suffered damage, physical deterioration, or infestation by destructive organisms such that it had become useless for the purposes of the Museum. In such cases, Trustees would require there to be a written statement of the reasons why it was useless for the purposes of the Museum, and could be disposed of.
- 3.7 *Human Remains:* See the Trustees’ Policy on Human Remains.
- 3.8 *Holocaust Spoliation:* The Trustees use and report against the ‘Spoliation of Works of Art during the Holocaust and World War II period: Statement of Principles and Proposed Actions’ issued by the National Museum Directors’ conference in 1998. Until at least 12<sup>th</sup> November 2019<sup>8</sup> the Trustees have the power to transfer an object from the Collection if an Advisory Panel appointed by the Secretary of State has recommended the transfer and the recommendation has been approved by the Secretary of State<sup>9</sup> where a claim is made in respect of an object related to events in the Nazi era (1933-45). Notwithstanding any recommendation of an Advisory Panel or any approval of the Secretary of State, the Trustees will themselves make their own independent determination whether to exercise the power in any particular case, and would, normally, not do so unless satisfied that:
- 3.8.1 any claimant had a strong moral claim to the transfer of an object claimed and had the authority to represent all heirs of the original owner of that object;
  - 3.8.2 any object claimed was lost to the original owner as the consequence of wrongful action of the National Socialist Government of Germany or its collaborators in Nazi occupied Europe;
  - 3.8.3 the victim of such wrongful action (or his/her heirs) had not previously been justly and fairly compensated for the loss; and
  - 3.8.4 the transfer of the object represented the best solution to the claim after giving due weight to the importance of the object to the Museum’s Collection and circumstances in which the object was acquired by the Museum.
- 3.9 *National Museums and Galleries:* There exist limited powers<sup>10</sup> for the Trustees to transfer objects in the Collection, by way of sale, gift or exchange, to any of the listed institutions in the United Kingdom<sup>11</sup>.

<sup>7</sup> under ss5(2) *ibid*

<sup>8</sup> s 4(7) Holocaust (Return of Cultural Objects) Act 2009

<sup>9</sup> ss 1 & 2 *ibid*

<sup>10</sup> s 6 Museums and Galleries Act 1992.

<sup>11</sup> Schedule 5, Museums and Galleries Act 1992

- 3.10 *The charitable status of the Museum:* The Museum is an “exempt” charity<sup>12</sup> and the Trustees are therefore subject to the English trust and charity law and the supervision of the Attorney General/the Charity Commissioners in the exercise of their legal powers and duties.
- 3.11 Decisions to dispose of objects comprised within the Collection cannot be made with the principal aim of generating funds though any eventual proceeds from such disposal must be used to enhance the Collection<sup>13</sup>. Where an object has been acquired with the aid of an external funding organisation, any conditions attached to the original grant must be followed including the repayment of the grant if appropriate
- 3.12 *Procedures:* In those exceptional cases where the Museum is legally free to dispose of an item from the Collection, any decision to sell, give away, exchange or repurpose as, for example, archival material for retention, an object vested in the Collection shall be made openly and with transparency by the Board of Trustees only after full consideration of the merits of the case by reference to the principles set out above and on the basis of curatorial, legal and other appropriate advice and authority. Where the Trustees deem it appropriate, external expert advice will be obtained and the views of stakeholders such as donors, researchers, local and source communities and others served by the Museum will also be sought. Where there is an external claim for the de-accessioning of an object within the Collection, the Trustees shall regard de-accession as a last resort that will only be considered if they regard it as the only fair and sufficient response to the claim. Once a decision to dispose of an object from the Collection has been taken, the Trustees would normally expect that, in the absence of strong reason to the contrary (such as a strong personal claim to which paragraph 3.7 applies), the object should be offered first to another museum accredited by the Arts Council England and otherwise to an institution within the public domain rather than to private individuals or organisations (particularly where there is a risk that the object will be reburied, disappear or be destroyed). Full records will be kept of all such decisions and the items involved and proper arrangements made for the preservation and/or transfer, as appropriate, of the documentation relating to the items concerned, including photographic records where practicable.
- 3.13 Any object proven unfit or useless for retention in the British Museum’s Collection or other public collections shall be disposed of in a way that prevents it being rediscovered and mistakenly reinterpreted.
- 3.14 The Trustees require that a register is maintained of all objects de-accessioned from the Collection, setting out particulars of the objects, the dates of and the reasons for each de-accession decision.

#### 4. Assurance

In the annual assurance statement all relevant heads of department shall confirm that this policy is understood and implemented by the staff in their departments.

#### 5. Review

This Policy will be reviewed from time to time and at least once every five years. In the event that significant changes to the Policy are made, every reasonable effort will be made to notify stakeholders, including the Arts Council England.

***This Policy was approved by the Trustees of the British Museum on 29 September 2018 and will be reviewed no later than 2023.***

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<sup>12</sup> see section 3(5) and Schedule 2 paragraph (p) Charities Act 1993

<sup>13</sup> s 5(3)*ibid.*