

## British Museum Policy

### Human Remains in the Collection

#### 1. Preamble

This policy should be read alongside the British Museum Policies on Acquisition and De-accession.

#### 2. Purpose

This Policy sets out:

- 2.1 the principles governing the holding, display, care for and study of human remains in the Museum's Collection; and
- 2.2 the principles by which the Trustees of the British Museum will exercise their power to transfer human remains in the Collection under section 47 Human Tissue Act 2004.

#### 3. Definitions

In this Policy the following words and expressions shall have the following meanings:

“Code of Practice”	means <i>Guidance for the Care of Human Remains in Museums</i> , published by the Department for Culture Media and Sport in October 2004;
“Collection”	means the whole or any part of the collection vested in the Trustees of the British Museum;
“cultural continuity”	has the meaning provided by paragraph 5.15.3 of this Policy;
“cultural importance”	has the meaning provided by paragraph 5.15.4 of this Policy;
“human remains”	means parts of once living people from the species <i>homo sapiens sapiens</i> (defined as individuals who fall within the range of anatomical forms known today and in the recent past) <sup>1</sup> . In this policy human remains include: <ol style="list-style-type: none"><li>(i) osteological material (whole or part skeletons, individual bones or fragments of bone);</li><li>(ii) soft tissue including organs and skin; and slide preparations of human tissue;</li><li>(iii) any of the above, that may have been modified in some way by human skill and/or may be bound-up with non-human materials, to form an artefact composed of</li></ol>

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1. Sometimes, there is uncertainty whether a piece of worked bone was originally human or animal. This Policy will apply only where the Trustees believe it reasonable to think that material is human.

several materials; and

- (iv) artworks composed of human bodily fluids or soft tissue;

However, human teeth, hair and nails, being essentially body parts that may be shed naturally during a lifetime, are not normally considered by the Trustees to be subject to the principles set out in this policy, unless: forming part of other human body parts described in (i) and (ii) above; or, exceptionally, there is evidence to suggest they were removed without the consent of the deceased;

“mortuary practice”	means any culturally-specified process (such as, for example, burial or cremation) the purpose of which is to progress towards the final disposition of human remains;
“Museum”	means the British Museum;
“Public Benefit Test”	means the test set out in paragraph 5.17 of this Policy;
“Trustees”	means the Trustees of the British Museum or, where the context requires, their employees and authorised representatives.

#### 4. Legal Powers to Transfer and Retain Human Remains

- 4.1 The Trustees may transfer from the Collection any human remains which they reasonably believe to be remains of a person who died less than one thousand years before the day on which section 47 Human Tissue Act 2004 came into force (3<sup>rd</sup> October 2005).
- 4.2 The Trustees may also transfer from the Collection any other objects that are mixed or bound up with such human remains, provided that it is undesirable, or impracticable, to separate them.
- 4.3 However, the Trustees may not transfer any human remains in the Collection in contravention of a trust or condition subject to which they hold them. This means there may be cases in which there are legal constraints in trust law which prevent a transfer of human remains from the Collection, which the Trustees might otherwise have been able to consider.
- 4.4 Human remains in the Collection of anyone who died less than 100 years ago are subject to the licensing requirements of the Human Tissue Act 2004<sup>2</sup>. The storage, care and display of such remains is subject to licence from the Human Tissue Authority.

#### 5. Principles

##### *Public Benefits of Human Remains the Collection*

- 5.1 The primary legal duty of the Trustees is to safeguard the Collection for the benefit of present and future generations throughout the world. Therefore, the Trustees’ overarching presumption is that the Collection should remain intact.

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<sup>2</sup> In other words, human remains will cease to be subject to the licensing requirements of the Human Tissue Act with age.

5.2 The public benefits of the retention of human remains in the Collection include the following:

- 5.2.1 Human remains are a record of the varied ways that different societies have conceived of death and disposed of the remains of the dead;
- 5.2.2 Human remains in the Collection help advance important research in fields such as archaeology, human biology, the history of disease, palaeoepidemiology, bioarchaeology, physical anthropology, forensics and genetics;
- 5.2.3 Human remains, which have been physically modified by a person working within a cultural context, or which form part of an archaeological record, illuminate other objects in the Collection.

### *Management of the Collection*

- 5.3 The Deputy Director with responsibility for the Collection shall ensure that Museum staff operate and maintain written rules of guidance for the care and display of human remains to make certain that, whether during handling, storage or display, human remains are treated with respect, care and dignity, whether they are part of the Collection or held on loan. In ensuring that staff operate and maintain written rules of guidance for the care and display of such human remains, the Deputy Director will follow the Code of Practice.
- 5.4 The Trustees will continue to add to the Collection<sup>3</sup> and lawfully hold<sup>4</sup> human remains on the condition that, as far as is possible, provenance has been clearly established, there is no suspicion of illicit trade and that the remains are of potential public interest to the Museum's worldwide audience.
- 5.5 The Trustees shall maintain an inventory of human remains within the Collection. It will be published on the Museum's Website, in accordance with the Code of Practice.
- 5.6 The Trustees will maintain an assessment of the research carried out on human remains in the Collection. The assessment will identify both the current state of knowledge concerning them and their future research potential value. The Trustees will continue to improve information on human remains in the Collection by conducting an on-going programme of data collection and documentation for inclusion in inventories and databases.
- 5.7 In carrying out or permitting research on human remains in the Collection the Trustees will remind researchers of their ethical obligations with regard to human remains. Researchers will be expected to follow the relevant principles of this Policy and the Code of Practice.
- 5.8 Human remains in the Collection shall be stored in conditions that are actively managed and monitored to meet standards of security, access management and environmental control proportionate and appropriate to their age, origin and modern, cultural significance.
- 5.9 In the display of human remains at the Museum, explanatory and contextual information will be provided. A written justification for any decision to display human remains shall be

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3. Any addition to the Collection of human remains that are less than 100 years old will be subject to the legislation set out in the Human Tissue Act 2004 and the Museum will be guided by the Human Tissue Authority and the Ministry of Justice in this regard.

4. Principally from archaeological excavations conducted in the UK, which are subject to a Home Office licence or directions, and conducted in accordance with legal requirements and published professional standards of archaeological investigation. Similar standards apply to excavations overseas.

retained by the Trustees and shall balance the public benefits of display against the known feelings of

- 5.9.1 any individual known to the Trustees as having a direct and close genealogical link to the remains (where these are less than 100 years old); or
  - 5.9.2 a community which has *cultural continuity* with the remains in question and for whom the remains have *cultural importance* (where they are more than 100 years old).
- 5.10 Before authorising any loan of human remains to other institutions the Trustees will seek the assurance of the borrower that it is able to satisfy the legal, ethical and practical considerations set out in the Code of Practice.
- 5.11 Public access to any human remains in the Collection (or to electronic or photographic images of them, as well as any data derived from their analysis) will be subject to the conditions of any applicable licence under the Human Tissue Act 2004 and having regard to applicable guidance contained in the Code of Practice.

*Application of section 47 Human Tissue Act 2004*

- 5.12 Requests for the transfer of human remains under s.47 Human Tissue Act 2004 should be submitted for consideration in accordance with the Trustees' published procedure. Requests will be determined by the Trustees. The Trustees have no power to consider requests for the transfer of human remains that are more than 1000 years old.
- 5.13 The Trustees consider that the public interest is strongly in favour of the retention in the Collection of human remains that have been modified for a purpose other than a mortuary practice (e.g. made into a Tibetan Buddhist thighbone trumpet) and will not accept requests for transfer in respect of them. Nor, save where there is evidence to suggest removal without consent, will the Trustees normally agree a request for human remains that consist only of human teeth, hair or nails.
- 5.13 The Trustees will normally only consider a request for the transfer of human remains:
- 5.13.1 from a community, when it is made through the relevant national government or national agency. In particular, the Trustees will expect the applicants to provide evidence that they have the support of the relevant national government or agency to submit the request. Where the applicants do not make their request through their relevant national government or agency the Trustees will take account of the reasons for that omission.
  - 5.13.2 from representatives of a community, when it is demonstrated that the representatives have the authority to submit a request on behalf of that community. Where there is more than one group of applicants, the representatives submitting the request will be expected to demonstrate that they are fully supported by all the applicant groups.
  - 5.13.3 from a national government or agency, when it is made on behalf of an identified community which has *cultural continuity* with the human remains in question, for whom the remains have *cultural importance*, and it is clear that the community wishes the human remains to be transferred<sup>5</sup>.

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5. The Trustees will provide all of the information that they have available with regard to its human remains to assist a national government in identifying the appropriate community

- 5.14 The Trustees are unlikely to accept any request for the transfer of human remains unless they are satisfied that:
- 5.14.1 the request is for human remains that were originally subjected to a mortuary practice, or were intended for a mortuary practice;
  - 5.14.2 the applicants have made the case described in paragraphs 5.14 -5.16;
  - 5.14.3 the Trustees have had the benefit of independent advice on any questions, which they formulate as needing an answer to help them to decide the request; and that
  - 5.14.4 the Public Benefit Test (described in paragraph 5.16) is satisfied.
- 5.15 The case that the Trustees will expect the applicants to make is:
- 5.15.1. *either that* (where the human remains are less than 100 years old) the applicants have (a) a direct and close genealogical link to the remains; and that (b) there is a binding and comprehensive agreement between the applicants and any other genealogical descendants that the request should be made by the applicants; *or that*
  - 5.15.2 (where the human remains are more than 100 years old) the community making the request (a) demonstrates *cultural continuity* with the remains in question; and (b) demonstrates that the remains have *cultural importance* for them.
  - 5.15.3 For there to be *cultural continuity*, it must be demonstrated that there is a continuity of:
    - (a) religious/spiritual belief; and/or
    - (b) cultural customs and practices<sup>6</sup>
 between applicants and the community from which the human remains originate; in the context of which:
  - 5.15.4 For the human remains to have *cultural importance*, the applicants must demonstrate that:
    - (a) the human remains and their treatment have particular significance to them (for example, because the human remains were removed in circumstances outside the normal customs and practices of the applicant community; or that the customary ceremonies for “laying to rest” of a deceased person were not followed); and that
    - (b) the continued holding of the human remains by the Trustees perpetuates strong feelings among the applicants’ community.
- 5.16 The Trustees will weigh the applicants’ case made under paragraph 5.14 on the balance of probabilities. However, they shall presume that the balance will normally lie:
- 5.16.1 more strongly in favour of the retention of human remains in the Collection where a request is made to human remains over 300 years old; and
  - 5.16.2 very strongly in favour of the retention of human remains in the Collection where the human remains are over 500 years old<sup>7</sup>;

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6 This will sometimes, but not necessarily, be associated with land occupation

7. This is because archaeological and historical studies show that in the vast majority of cases it is very difficult to demonstrate *cultural continuity* and *cultural importance* far into the past.

5.17 The Public Benefit Test: Having taken account of all the principles set out in part 5 of this Policy, the Trustees will then decide whether they believe that:

5.17.1 either, (in the case of human remains where less than 100 years have elapsed since the date of the person's death) the significance of the direct and close genealogical link with the human remains demonstrated by the applicants outweighs the public benefit to the world community of retaining the human remains in the Collection; or

5.17.2 (in the case of human remains where more than 100 years have elapsed since the date of the person's death) the significance of the *cultural continuity* and the *cultural importance* of the human remains demonstrated by the community making the request outweigh the public benefit to the world community of retaining the human remains in the Collection.

5.18 The Trustees' consideration of requests will be open and transparent. The request process will be consultative and negotiations will be conducted in a manner designed to be as equitable as possible.

## 6. 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 Department for Culture Media and Sport.

*This policy was approved by the Trustees of the British Museum on 6 December 2018 and will be reviewed no later than 2023.*

## The British Museum

### Procedure for making a request for the transfer of human remains under Section 47 Human Tissue Act 2004

1. Requests for the transfer of human remains in the Collection should be submitted in writing to the Deputy Director with responsibility for the Collection at the British Museum.
2. Applicants should set out requests clearly and give as much information and supporting evidence as possible about:
  - the human remains requested;
  - the individual or community submitting the request; and
  - the reasons for the request.
2. The Deputy Director with responsibility for the Collection will be the single point of contact for applicants and other interested parties throughout the process. All enquiries should be submitted to him/her.
3. The Deputy Director with responsibility for the Collection will formally acknowledge the request in writing. The acknowledgement will indicate how long it is likely to take to process the request. The Deputy Director with responsibility for the Collection will also explain who will be consulted, and on what matters<sup>8</sup>.
4. The time taken to process a request will in part depend on the quantity and quality of the information submitted by the applicant, and on the timing of Trustee meetings, which take place at intervals of approximately three months.
4. Each request will be considered by the Trustees. At their first meeting the Trustees will consider the information available. They may be able to make a decision based on that information. Alternatively they may ask for further advice from independent advisers, or further consultation with the applicants or other interested external parties (such as the national government or the diplomatic representatives of the country in which the applicants normally reside).
5. If the request is not determined at the time of its initial consideration by the Trustees, the dossier of the case will be made publicly available in order to provide an opportunity for all with an interest to comment (however, any personal data included within the dossier will be processed in accordance with the British Museum Privacy Notice and the rights and freedoms of data subjects will be protected). Any advice requested by the Trustees or comments made to them will also be made available publicly. In particular, an open and on-going dialogue will take place with the applicants with regard to the request and the criteria against which it will be assessed.
6. After a decision has been made, the Trustees' minutes will record how it was reached. The applicants will be informed of the decision in writing and at the same time the decision will be published on the Museum's Website.
7. If a decision is taken to transfer human remains in response to a request, the Deputy Director with responsibility for the Collection will begin discussions with the applicants as to when and how the transfer will take place.

Approved by the Board of Trustees XXXX

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8. As soon as this information is known

