

Ethical guidelines 2 - Disposal

1. Introduction Disposal is the permanent removal of an item from a museum's permanent collection. (This is sometimes called deaccessioning.)

These guidelines have been prepared by the Museums Association Ethics Committee to help museums make decisions about disposals and recommend procedures to follow. They include basic principles, which are derived from the Museums Association's ethical codes and the Museums and Galleries Commission's registration scheme. These basic principles should always be upheld.

The guidelines also give some more flexible advice. You will need to use your judgement in applying these suggestions to your specific circumstances. If you are unsure about a proposed course of action – or feel that it may breach these guidelines – then you are encouraged to contact the Museums Association for specific (and confidential) advice. The public reputation of museums as a whole is harmed if a museum carries out unethical disposal.

The Museums and Galleries Commission supports these guidelines and joins the Museums Association in commending them to museums (although the guidelines are not a formal part of the Museums and Galleries Commission's registration scheme or a substitute for a disposal policy). Many of the points here will already be embodied in your museum's disposal policy; it may prove useful to incorporate others.

The guidelines are also commended to other public institutions that hold collections of artistic, historic or scientific importance.

The guidelines should be followed as far as possible when a museum service is closed down completely or partially.

These guidelines do not give detailed advice on

the law and are not intended as a substitute for legal advice.

2. Basic Principles

These basic principles should always be upheld by museums and those who work in or for museums. Further guidance on their interpretation can be found in sections 3, 4 and 5 below

2A Museum collections often represent the generosity of past generations. Acquisitions are made in the expectation that they will be preserved in perpetuity. Museum governing bodies must act as guardians of the long-term public interest in the collection. One of the key duties of a governing body is to balance the duty to provide services to today's public with the duty to ensure that the collection is maintained and enhanced for future generations. As a key function of a museum is to preserve a collection in perpetuity, there is a strong presumption against the disposal of any item from a museum's permanent collection.

2B However, there are circumstances in which disposal may be appropriate. For example, certain items might be better transferred to another museum for reasons of care, access or context. In such circumstances, the disposal would be in the public interest.

2C Every disposal must clearly demonstrate long-term public benefit. Decisions to dispose must be based on clear, published criteria. A museum should develop its disposal policy as part of a collections management policy that also addresses issues of acquisition, conservation and access. These issues should always be seen within the context of the museum's overarching purposes and aims. Disposal must be carried out according to unambiguous, generally accepted procedures, which should be incorporated in the disposal policy.

2D Wherever possible, public collections should remain in the public domain. Priority should be

given to offering items by gift to registered museums (this is sometimes called transfer). If this is not possible, gifts to other public institutions should be considered. (This paragraph excludes an item that is damaged or dangerous or is being returned to its place of origin outside the UK.)

2E Disposal should never be undertaken principally for financial reasons (either to raise money for any purpose or to reduce expenditure). Selling an item from a museum's permanent collection out of the public domain always risks damaging public confidence in museums and is, therefore, a course of action that the Museums Association Ethics Committee would never recommend. In addition, society benefits from the long tradition of mutual co-operation between museums. Selling, rather than giving, items to other registered museums jeopardises this tradition and is therefore not recommended.

2F However, some museums do undertake disposal by sale. We do not endorse this. In the exceptional circumstances when money is raised as a result of disposal, it should be solely and directly applied to the museum's collection.

2G Decisions to dispose should be taken by the governing body, acting on the advice of staff with appropriate expertise and taking into account all legal and other attendant circumstances.

2H To reduce the likelihood of disposal being necessary in future, acquisitions must be made only with great care and according to an acquisition policy (see Museums Association ethical guidelines on acquisition).

3. Making the decision to dispose

The decision-making process outlined here should be followed for all categories of item (as set out in paragraphs A-G of section 4, below)

3A Before detailed enquiries are made that may lead to the possible disposal of an item, it is

advisable for the governing body to take a decision in principle that staff should investigate the disposal, if it has not previously done so (for example by approving a programme of collections management that includes the active investigation of disposals).

3B Determine whether the museum is legally free to dispose of the item.

It is good practice to have documented the legal status of all items in the collection. (However, some museums have not done this; see appendix on undocumented items.) The freedom to dispose of an item will vary from museum to museum and item to item. In particular, some museums are regulated by acts of parliament, or hold collections (or individual items) that are subject to charity law. These guidelines, in their generality, are believed to be compatible with the legal obligations that arise from that status, but museum governing bodies should consider the special legal implications of such a disposal. Preliminary guidance about legal aspects of disposal can be sought from your area museum council, but it may be necessary to take specialist legal advice. (See The Law, in Further Information, below.)

3C Opinions on the proposed disposal should be sought from the following:

- Someone with specialist knowledge of the item. This will normally be the member of museum staff with appropriate specialist knowledge. It is also advisable to obtain an independent outside opinion
- Organisations that grant-aided the acquisition, if applicable
- Organisations that grant-aided conservation or display of the item, if applicable

Note that there may be a legal requirement for money to be repaid to grant-giving

organisations if the item is disposed of. This may exceed the amount of the original grant.

3D If applicable, the governing body may wish to seek the opinion of the donor of the item. Opinions vary about the necessity of this. Some museums feel that even in cases where they are legally free to do as they wish with the item, it is advisable to attempt to seek the permission of the donor, for reasons of courtesy and to protect the public reputation of museums. In contrast, others believe that if an unconditional gift has been made, the donor has knowingly given away all rights in the item. (Museums must, of course, always take account of any legal restrictions as a result of a donation or purchase.)

The range of options is:

- the permission of the donor before making any decision to dispose
- Seek the opinion of the donor and consider it as part of deciding whether to dispose
- Inform the donor once a disposal has taken place, as a matter of courtesy
- Inform the donor only if the item is being destroyed or leaving the public domain
- Do not contact the donor at all

Some museums set a time limit, only attempting to contact donors who have given items within the past 10 or 20 years, for example.

If the original donor is dead, some people suggest that descendants should be contacted and that if descendants cannot be traced, it may be appropriate to place an advertisement in a national newspaper to ascertain whether there are any successors or descendants. (For further guidance on this approach see Selection, Retention and Dispersal of Archaeological Collections, pp18-19; details in Further Information, below.) However, another school of

thought argues that no attempt should ever be made to contact descendants as the museum is ignorant of the state of relationships within the family.

The above points may be extended to cover cases in which the item was purchased at a price significantly below the market value.

In all cases, it is vital to be sensitive in any dealings with donors. In the final analysis, a policy that takes into consideration the wishes of the donor through a transparent process of consultation will pay long-term dividends for the museum and hence be one of enlightened self-interest.

3E Consider, too, the potential public and media response to the disposal. It may be necessary to plan the way the disposal is to be presented. Be particularly careful if the disposal could harm public attitudes to museums as a whole. A decision to dispose needs to take account not only of what the museum believes to be in the public interest, but also of what members of the public themselves may perceive to be in their best interests (see Marie Malaro, *A Legal Primer*, p142; details in Further Information, below).

If the museum has a friends' organisation, ensure that they understand the reasons for the disposal, otherwise they may become reluctant to raise money for future acquisitions.

3F The final decision to dispose should be taken by the governing body, acting on the advice of staff with appropriate expertise. The decision should not be taken by an individual acting alone. Some governing bodies require a two-thirds majority (or a unanimous decision) in favour of the disposal.

The process by which the governing body approves a decision to dispose of an item will vary from museum to museum, but in all cases it should take full account of the requirements of the Museums Association Code of Practice for

Museum Governing Bodies, these guidelines and the Museums and Galleries Commission's registration scheme, and should consider fully all opinions expressed about the proposed disposal.

The governing body may wish to defer final approval of disposal of an item until the future ownership of the item has been fully investigated. This will necessitate carrying out some of the procedures in section 5.

4. Categories of items

4A Items for destruction

The following types of item can usually be disposed of without ethical problems:

- An item too badly damaged or deteriorated to be of any use for the purposes of the museum in the opinion of the member of museum staff with specialist knowledge of the item
- An item that poses an unavoidable health and safety risk or unavoidable serious conservation threat to other items in the collection. Badly damaged or dangerous items should normally be disposed of by destruction. However, there may be circumstances in which consideration should be given to the possible interest of other registered museums (and other public bodies). It is therefore advisable to take account of the procedures laid out below in section 5, although it will not always be appropriate to follow them all in detail.

If an item is to be destroyed, the following procedures should be followed:

- The governing body should take independent outside specialist advice (for example, from another museum) about the appropriateness of the proposed destruction
- The disposal should be witnessed and

records of the circumstances of the destruction should be kept, together with other appropriate records (see paragraph 5G, below)

- The item's documentation should be retained

4B Return of cultural property

If an item is to be returned to its place of origin outside the UK then it need not be offered to other registered museums or public institutions in the UK, so some procedures in section 5 will not apply. Attitudes to the return of cultural property vary widely and the Museums Association intends to issue some guidance on the subject. Specialist guidance on the return of human remains can be found in guidelines from the Museum Ethnographers Group (see Further Information).

4C Duplicates

It may be appropriate for a museum to dispose of an item that is a duplicate of another item in the collection. However, in many cases the term 'duplicate' is open to question. For example, items may differ in provenance or be natural history specimens. Therefore, a museum may have good reason to retain items that are apparently identical.

If disposing of duplicates, follow all the procedures set out below in section 5.

4D Items better owned by another museum

Some items may be more appropriately housed in another registered museum. For example, if a museum owns items that it is unable to make publicly accessible or care for adequately, it should consider giving them to another registered museum. In addition, certain items may be better in another registered museum for reasons of context or use. The procedures in section 5 should be followed. The disposal must result in improvements to the care of the item or

to public access to it.

4E Archive material

The management of archive material requires special facilities to provide access and care. If the museum cannot provide these, the material is best housed in a public archive or record office. The material can be offered as a gift, in which case the procedures in section 5 apply.

Alternatively the material can be placed on deposit, in which case ownership of the material will remain with the museum so a formal disposal will not take place.

4F Other unwanted items

This category includes accessioned items that are regarded as substandard or irrelevant to the collection. If such items are not accepted by another registered museum or other public institution then ethical problems can arise.

A museum's aims and activities should be linked to its existing collections. It should endeavour to make use of all types of item in the collection, whether or not they are being actively collected under the museum's current acquisition policy.

It is important to be aware of the risks of making a decision based on short-term considerations. Museums have a long-term purpose. Staff and members of governing bodies should take account of the intentions of their predecessors in developing future priorities. Be aware, too, that future uses for items may not be foreseeable now. In particular, advances in technology may create new techniques for examining material that may give it a new purpose and value.

If a museum nevertheless intends to dispose of items covered by this category it is vital to follow the procedures laid down in section 5.

4G Internal disposal

This category comprises items that are to be included in a handling/loan/education/working machinery/ demonstration collection. Museums have different ways of administering these collections; there are two basic approaches.

a) If the item that is being placed in a handling (etc) collection remains on the permanent collection accession register, a disposal is not taking place; rather the museum has made a decision to apply a particular standard of care to an item in its permanent collection. Questions of disposal do not arise at the time the item is placed in the handling (etc) collection. (However, they may arise in the long term if the item becomes badly damaged, and there may be ethical issues about collection care.)

b) If the handling (etc) collection is separate from the permanent collection (so the item is formally removed from the permanent collection accession register) then this is effectively the disposal of the item and consideration should be given to the possible interest of other registered museums (and other public bodies). It is therefore advisable to take account of the procedures laid out below in section 5, although it will not always be appropriate to follow them all in detail.

4H Items held temporarily

If a museum obtained items with the intention of keeping them for a temporary period, they will not normally be accessioned into the permanent collection. See Appendix.

5. Disposing of the item

This section applies to items in categories C ,D ,E and F. It should also be taken into account for categories A, B and G. It is recommended that if a museum is considering following alternative procedures, prior advice is sought from the Museums Association and the Museums and Galleries Commission (see Further Information)

Once a decision (or an 'in principle' decision)

has been made by the museum governing body to dispose of an item, these procedures should be followed to determine the future of the item.

It is desirable to keep all items that have been accessioned into a museum's permanent collection in the public domain. An item should be first offered to registered museums, preferably by gift. This may be done by 'Open' disposal (a general offer to all registered museums) or 'Closed' disposal (the offer of the item to a single registered museum or a selection of registered museums).

5A Open disposal

The item should be offered, preferably as a gift, to all registered museums by means of a notice in Museums Journal (and other specialist journals if appropriate; ensure that they are circulated throughout the UK). The notice should include the number and nature of the items. At least two months should be allowed from the date of publication for registered museums to express an interest.

If archive material is to be offered by open disposal the offer should be made in the Society of Archivists mailing to heads of repositories as well as in Museums Journal.

5B Closed disposal

A museum may choose to undertake a closed disposal and so offer the item as a gift to only a limited number of registered museums. Consider all registered museums likely to have an interest in the item. For example, a museum may have a local connection or a strong collection of that type of item. Consider in particular:

- The role that the item plays in a regional context. If it is the only item of its type in a region, consider the benefits of offering it only to registered museums within the region. The area museum council may

be able to provide advice

- The role the item plays regionally or nationally within its specialist area. It may be best to offer it only to registered museums with a particular interest in the subject

It may be appropriate to offer the item to an overseas museum. In this case the museum will not be registered by the Museums and Galleries Commission, so it is important to be satisfied with the standards to which the museum is run.

If a closed disposal proves unsuccessful, the item should be offered by open disposal to all registered museums in the UK.

5C Unsuccessful open disposal

If no registered museums want an item that has been offered as a gift by open disposal, then the following options can be considered:

- Retain the item in the ownership of the museum, but transfer it out of the permanent collection to, for example, a separate handling or demonstration collection (also see paragraph 4G above)
- Offer the item as a gift to a public research, educational or related institution (possibly subject to conditions about the future disposal of the item; see paragraph 5E, below)
- In cases where the item was donated recently (within the past 5-10 years, for example) it may be appropriate to offer it back to the donor. However, proceed with caution as this may lead to requests from donors for the return of items that the museum wishes to retain

As a final resort, consider either:

- Offering the item outside the public domain (but see 5D below)

- Destruction (see 4A above)

Never give an item to a registered museum or any other organisation without its prior agreement in writing to accept the item.

5D Sale

Decisions to dispose should never be made principally for financial reasons (either to raise money for any purpose or to reduce expenditure).

The sale of items from museum collections is not recommended, even if the sale is to a registered museum. Society benefits from the long tradition of mutual co-operation between museums. The sale of items to other registered museums jeopardises this tradition.

Selling an item from a museum's collection out of the public domain always risks damaging public confidence in museums and is, therefore, a course of action that the Museums Association Ethics Committee would never recommend.

In addition, decisions are normally made with more clarity if there is no consideration of possible income from disposal.

However, some museums do undertake disposal by sale. In the exceptional circumstances when money is raised from a disposal it should be solely and directly applied to the museum's collection. This normally means the acquisition of new items for the collection, but may exceptionally extend to improving the care of the remaining collections. Prior advice should be sought from the Museums Association and the Museums and Galleries Commission if this is planned.

It is particularly bad practice to sell items from museum collections on museum premises, for example in a museum shop or at a special auction.

5E Transfer of title

Ensure that legal title to the item is transferred to the receiving institution (or individual). A gift could be made under a deed that provides a right of pre-emption in favour of the donor museum if the receiving institution itself decides to dispose of the item within a period of, say, 10 years.

The transfer document should ensure that where possible any rights in the item (such as copyright) are transferred to the new owner. The receiving institution may want to make enquiries if there is no record of who holds such rights. There may also be a need to take account of any arrangements with third parties in respect of rights (such as reproduction rights) in the item.

In some cases it may be appropriate to transfer the item together with any special conditions attached to it. This may require specific legal permission.

Guidance on the transfer of title can be found in Spectrum (see Further Information).

5F Long loans

If another registered museum wants the item, but for legal reasons formal transfer of ownership is not possible, it may be appropriate to consider a loan for a finite but renewable term.

5G Records and documentation

For openness and accountability, records should be kept of disposals. They should include the reasons for the disposal and the opinions and advice considered in making the decision to dispose. The records should be made available to members of the public on request. Records should be to the standards laid down in Spectrum (see Further Information).

Proper arrangements must be made for the

preservation or transfer of the documentation relating to the items, including the preservation of photographic records where practicable.

5H Conflict of interest

It is important to avoid any risk of conflicts of interest during disposal. No person or organisation involved in advising on a proposed disposal or in making the decision to dispose should benefit financially or personally from the disposal. Where a conflict of interest might arise, the public benefit should prevail and a written declaration of interest should be made and kept on record by the museum.

5I Unacceptable reasons for disposal (This paragraph does not apply to items in category 4H)

From the above it is clear that it is unacceptable to dispose of an item:

- Primarily for financial reasons (whether to raise money for any purpose or to reduce expenditure)
- On an ad hoc basis (ie other than as part of a long-term collections management plan)
- Without considering expert advice from someone with a specialist knowledge of the item
- If the disposal would adversely affect the public reputation of museums
- If the disposal would not be in the long-term public interest
- Outside the public domain, except in exceptional circumstances

Appendices *UNDOCUMENTED OR UNACCESSIONED ITEMS*

This appendix covers undocumented items, items of unknown provenance and other items

that may be unaccessioned, such as handling or loan collections

a) Undocumented items

A museum should make exhaustive enquiries if it wishes to consider removing items of unknown provenance. Poor documentation is not in itself a reason for disposal.

Documentation about the items may come to light in future. They may turn out not to be the property of the museum and could be reclaimed by the legal owner at a later date. Alternatively, they may in fact be in the accession register, but not recognised as such because, for example, they are not labelled.

Furthermore, some items that are effectively part of the permanent collection may not have been formally accessioned because of an administrative oversight or a documentation backlog. It is advisable to ensure that the collection is fully documented before considering disposal.

b) Unaccessioned items

To avoid confusion, the term 'disposal' should be applied only to the removal of items that are part of a museum's permanent collection. The procedures and principles outlined above in sections 2-5 do not need to be followed strictly when removing other types of items, such as ones in a separate handling or loan collection. However, the guidelines may prove useful because they are sensitive to the possible public reaction and take account of the fact that the items may be of interest to another museum. (Note that some handling or loan collections may contain accessioned items, which for disposal purposes should be treated as part of the permanent collection.)

Legal note on unaccessioned items: i) in law there may be no distinction between accessioned and unaccessioned items so any legal restrictions on accessioned items may also apply to unaccessioned ones; ii) the

museum may not have the legal right to remove unwanted items that it does not own (such as unwanted offers for the collection or unclaimed opinions), although the legal position will vary from museum to museum.

Definitions

A registered museum is one provisionally or fully registered under the Museums and Galleries Commission's registration scheme.

A museum governing body is the principal body of individuals in which rests ultimate responsibility for policy and decisions affecting the governance of the museum.

Further information

Basic principles

The basic principles in these guidelines are derived from:

Code of Practice for Museum Governing Bodies, Museums Association, 1994, especially para 2.7

Code of Conduct for Museum Professionals, Museums Association, 1991, especially para 3.5

Code of Conduct for People who Work in Museums, Museums Association, forthcoming

Registration Guidelines, Museums and Galleries Commission, 1995

The law

Guidance on Disposal from Museum Collections, Factsheet, Committee of Area Museum Councils, 1993, available via your local area museum council, gives a summary of key legal considerations in disposal

The Legal Status of Museum Collections in the UK, Museums and Galleries Commission, 1996, sets out in detail the legal framework of museum collections

Disposals from Museum Collections: A note on legal considerations in England and Wales, Adrian Babbidge, in *Journal of Museum Management and Curatorship*, vol 10, 1991, pp255-261

Also see articles by Adrian Babbidge (on the law in England and Wales) and by Robert Clark (on the law in Scotland) in *Museums Journal* September 1991, pp32-35

Return of human remains

Guidelines on the Storage, Display, Interpretation and Return of Human Remains in Ethnographic Collections in UK Museums, Museum Ethnographers Group, reproduced in *Museums Journal*, July 1994, p25

Vermilion Accord, World Archaeological Congress, 1989, reproduced in *Museums Journal*, July 1994, p24

Several articles in *Museums Journal*, March 1993, pp24-36 and July 1994, pp23-34

Return of cultural property

See various articles in *Museums Journal*, January 1996, pp19-23

Archaeological material

Selection, Retention and Dispersal of Archaeological Collections: Guidelines for use in England, Wales and Northern Ireland, Society of Museum Archaeologists, 1993 (for the current address of the Society see *Museums Yearbook*)

Archives

Guidelines on Museums and Archives, Standing Conference on Museums and Archives, published in *Museums Yearbook*

Also contact the Society of Archivists, Information House, 20-24 Old Street, London EC1V 9AP.

Tel: 020 7253 5087. Fax: 020 7253 3942

Documentation and record keeping

SPECTRUM: The UK Museum Documentation Standard, Museum Documentation Association, 1994; also available is a short guide, Spectrum Essentials. For details contact MDA, The Spectrum Building, The Michael Young Centre, Purbeck Road, Cambridge CB2 2PD

Tel: (01223) 415760. Fax: (01223) 415960

Charities in England and Wales

Contact the Charity Commission, St Alban's House, 57/60 Haymarket, London SW1Y 4QX.

Tel: 020 7210 3000. Fax: 020 7210 4545

General reading on disposals

Several articles in Museums Journal, September 1991, pp25-37

Disposals from Museum Collections: Ethics and Practicalities, Tristram Besterman, in Museum Management and Curatorship, vol 11, 1992, pp29-44

A Legal Primer on Managing Museum Collections, Marie C Malaro, Smithsonian Institution Press, 1985, ISBN 0-87474-697-3 or -656-6, deals primarily with the law in the United States of America, but also covers many other issues related to disposal

An Ethical Basis for Museum Collections, John Thompson, Museums Association, 1992

Specific advice

Further detailed advice on specific cases can be provided by:

The Ethics Adviser, The Museums Association,
42 Clerkenwell Close, London EC1R 0PA,

Tel: 020 7250 1789. Fax: 020 7250 1929

Email: info@museumsassociation.org

Museums Registration Scheme c/o 16 Queen
Annes

Gate, London SW1H 9AA. Tel: 020 7233 4200.

Fax: 020 7233 3686

Your area museum council

You are recommended to take prior advice if
there is any likelihood of breaking these
guidelines.

For more information contact

Ratan Vaswani

Professional Development and Ethics Adviser

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