

Disposing of objects you may not own

How is this different from disposal in general?

The Museums Association and the Collections Trust provide guidelines and procedures for museums to follow when disposing of objects that form part of their own permanent collections, (see the *MA Code of Ethics* and *Ethical Guidelines on Disposal* and the Collections Trust's *SPECTRUM*). However, there may also be times when museums are faced with having to dispose of objects that do not belong to them or whose ownership is uncertain. In these cases there are additional issues of legal and ethical obligation and public relations management to consider.

What types of objects are likely to be a problem?

- **Uncollected enquiries:** Objects that have been brought into a museum for identification and have not then been collected by their owners.
- **Unsolicited and unwanted gifts:** Objects that have been brought into a museum as gifts but which do not come within the museum's collecting policy. Sometimes these are left at the desk without the proper Object entry procedures being followed; sometimes they arrive unsolicited in the post, often with no return address.
- **Objects with no documentation:** Most museums have some objects in their care with no accompanying documentation to show how they were acquired. These objects often come to light after a museum has carried out an inventory project.
- **Recently loaned objects:** Objects that have been loaned to your museum with formal loan agreements, for example for a temporary exhibition. The name and address of the lender are known but at the end of the agreed loan term they do not respond to requests to collect their object.
- **Long standing loans where the owner cannot be traced:** In the past many museums took objects into their collections on the basis of 'permanent-loan'. These objects do not belong to the museum even if they have been in the collections for many years. Sometimes the address of the lender was not recorded and often it is impossible to find the owner of the object many years after the original loan was agreed.

Basic principles to apply

1. Try to prevent the problem occurring in the first place

Prevention is better than cure. A museum's ethical duty is to manage resources effectively and that means not acquiring objects without considering the full implications of holding them permanently.

Here are some steps you can take to reduce the risk of future problems.

- *Implement an Acquisitions Policy*
Make new acquisitions with great care and according to an acquisition policy. This reduces the risk of having to dispose of them in the future.
- *Closely manage object entry procedure*
Manage the process of objects coming into the museum to ensure as far as possible that your museum is not left with unwanted objects. Make sure Object Entry procedures are in place to account for all objects entering the museum. (see the Collections Trust factsheet on Entry Records and *SPECTRUM Procedure Object entry*).
- *Assemble evidence of ownership*
When you acquire an object for the permanent collection make sure you have clear evidence of the original title to an item and the transfer of title to the museum. (see the Collections Trust factsheet on Accession Records and *SPECTRUM Procedure Acquisition*).

- *Try to prevent unwanted objects being left in the museum*
For example, produce a leaflet that can be given to people before they bring an object into the museum stating what you collect and what you don't collect and what will happen when they leave an object at the museum. Where possible suggest alternative homes for objects.

2. Develop clear policies (there is no substitute for having clear policies to point to if challenged)

- *Collecting policy*
If you are a registered museum you must have a collecting policy and a policy for deaccession and disposal of objects. This should be regularly reviewed and should have been formally accepted by the governing body. It must also conform to Museum Accreditation guidelines and the Museums Association Ethical Guidelines on Disposal.
- *Other useful policies*
Think about other policy decisions you may need to take. You should, for example, create a policy for dealing with unsolicited donations. State explicitly that the museum does not encourage anonymous donations and give a standard length of time that you will retain objects for to allow for collection. Three months is generally considered to be an appropriate retention period. After that the museum may reserve the right to dispose of items as it thinks fit.

3. Establish the status of an object

- *Intent to give?*
Legally the right of a museum to accession or dispose of material hinges on whether it can be said to have ownership - whether title has passed. This is a separate issue from whether it is accessioned. It depends on whether there was an intent to give. This could be reasonably assumed if, for instance, something was sent without a return address or if requests to come and collect the object to prevent its disposal were ignored.
- *Documentation checking*
Check all possible sources of documentation for information and try to establish the status of an apparently undocumented object as far as possible. For example, check accession registers, history files, correspondence, catalogue records, committee reports etc.

4. Assess the risk

Keeping or disposing of unsolicited material when it isn't possible to give it back always involves a degree of risk management. There are no legal absolutes - it is a matter of interpretation.

- *How much research are you required to undertake?*
You may need to consider whether an object has been illicitly acquired. There is no need to spend valuable resources on researching provenance if there is no likelihood of it being a problem. However, if the object falls into a category where there might be a problem, for instance Nazi loot or illicitly traded antiquities, then appropriate research would need to be carried out. There are easy steps that can be taken towards this, like reporting it to the [Art Loss Register](#).
- *To what extent are you required to follow formal disposal procedures?*
Deciding on a method for disposal of an item also involves assessing risk. You would need to decide whether to follow the *Deaccession and disposal* procedures set out in *SPECTRUM* and the Museums Association Ethical Guidelines on Disposal. There is not a straightforward answer to this. A museum would need to consider its own responsibility for the situation arising and the best use of resources. For example, if an object had been in the museum for a long time and proper procedures had never been followed it may be better to use *SPECTRUM* and Museums Association recommended guidelines. However, if an object was left unsolicited on the doorstep this may not be necessary.

5. Record all actions and decisions

In *SPECTRUM* procedure *Deaccession and disposal* there is advice on what information to record when disposing of items from a permanent collection. It is a museum's ethical duty to manage resources wisely so you need to decide what it is important to record for an object that is not part of the permanent collection.

You should record a description of the object and probably a photograph as this may protect you from claims that it was more valuable or unique. You should record why it was assumed to be an intended gift and why you decided to dispose of it.

All documents generated in the disposal process should be kept.

Dealing with difficult situations

1. An object is left at the museum which the depositor does not collect

An item is brought into the museum for identification and all the correct procedures are followed. An entry form is filled in and the depositor's name and address are known. An identification is provided for the object and the depositor is asked to collect it. The item has still not been collected after 3 months. This scenario could also happen with an object left as a possible donation, which the museum decides it does not want to acquire, or objects that were loaned for a specific reason, for example a local Art Society exhibition.

The 'Conditions of Deposit' on the back of the Collections Trust Object Entry Form states that uncollected items may be disposed of by the museum after 3 months. The depositor signs to say that they accept these conditions. Is a museum legally able to dispose of uncollected items, originally left in the care of the museum, after an agreed period of time?

The key to this scenario is being able to demonstrate intent. If the depositor signed the form (and was not under duress) that ought to demonstrate that they agreed to collect the item and understood the consequences of not doing so. It is still good practice to send an explicit notification after the 3 months restating that the object will be disposed of if they do not collect it. You could, for example, give them another month to claim the item. In spite of any disclaimers your museum may make, objects are never left 'at your own risk' and must be treated with proper care while they are in the museum.

Depending on the size and value of an object you may decide that your best option is to send it back to owner, possibly using registered post.

2. An item arrives anonymously at the museum

An item is either left on the museum doorstep or received through the post with no details as to where it came from and who left or sent it.

As the owner of the item has not left an address this is a pretty strong indicator that they intend to give the item to the museum. They obviously do not want it back. You now need to decide whether to accession the item into the permanent collection or dispose of it.

There may be more public relations implications than legal ones to consider in disposing of the item. For example, the owner may come back to find out why the object isn't on display. In making a decision the risks in the situation need to be weighed up. It is also better to manage expectations by developing a clear, published policy on how unsolicited items will be dealt with.

If the anonymously delivered object has a note saying 'do what you want with this' then that is a clearer statement of intent and you can be even more confident about deciding whether to accession or dispose of it.

Whether or not the object arrives with a note establishing intent to give, if you wanted to sell the unsolicited object you would need more information to establish whether the intent was to benefit the institution (in which case using the proceeds of a sale would be reasonable), or whether it was to benefit society, in which case you must endeavour to dispose of the item in a way that benefits the public. From an ethical position, you must assume the intent is to benefit the public if you have no evidence to the contrary.

3. An unsolicited and unwanted donation arrives from a known source

An item is sent from a named would-be donor, the museum does not want it and the source won't agree to its return. The item is too big to post back. Transfer to another museum could be an option but no other museum wants it.

If you can find a way to return the item to the donor it should be returned. If not the museum should write to the sender asking them to sign to say the museum can do what it wants with the item. In addition the museum should also send a registered letter notifying them of intent to dispose of the item if they do not collect by a certain time. A reasonable period of time could be 28 days or 4-6 working weeks.

4. Objects were left at the museum in the past and have not been collected and undocumented objects found in the museum

a) There is a box of objects in your museum that were brought in for identification over the last ten years and have never been collected by the depositors. These objects were left at the museum before entry procedures were established. The information about who left these items is patchy.

b) Some undocumented items in a museum can be identified as unclaimed exhibition loans from the past when no entry documentation was used. They may be identifiable in an exhibition catalogue or list which might also provide the name of the lender. A longstanding member of staff may associate an object with an exhibition from memory but there is no other documentation.

c) The museum has been carrying out a retrospective documentation project and an inventory of the stores. At the end of this process there are several items with no documentation. All the sources of documentation have been searched for information and nothing has been found.

These are difficult situations as the depositors' intent is now difficult to establish. It is not clear whether these items were not returned to the depositors because the museum did not contact them or whether they were contacted and chose not to collect the items.

In this situation the fault is in the museum's own lack of good procedures. The onus is therefore on the museum to make extra efforts to reunite objects and owners. If a name and address is known, this could be written to using registered post. If the person is no longer living at the address the letter should be returned to the museum. If only the name of the depositor is known, then the local telephone directory and electoral roll may provide an address. A good idea would be to advertise in the press without giving details of the objects, specifying that they will be disposed of after a period, for example, 2 years.

In making a decision whether to accession or dispose of these items the risks of the situation need to be considered. If the objects are accessioned this should be on the basis that, if more information comes to light in the future, records can be amended and, if necessary, the object returned to its owner.

If you decide to dispose then you need to consider that there could be a future claim. You would need to think about how it would be dealt with and establish a policy and procedure. For example, the proceeds of any sale could be ring fenced to compensate owners. If the object is transferred to another museum they also need to accept this risk of a possible future claim, although this is probably unlikely. You would need to weigh up how likely this is to happen.

Restitution and Repatriation

In cases where a request is received for restitution or repatriation of an object, visit the [Cultural Property Advice](#) website for guidance on how to respond and what procedures to take. The checklists below, taken from the website, cover various aspects of return:

- [Considering a request \(CPA\)](#)
- [Researching validity \(CPA\)](#)
- [Reaching a decision \(CPA\)](#) [Decision making template \(CPA\)](#)

Further sources of help and advice

Art Antiquity and Law, Vol 1. Issue 2. May 1996

'Deaccession and Disposal', in *SPECTRUM: The UK Museum Documentation Standard*, Cambridge: MDA, 2005.

Museums Association. [Code of Ethics for Museums](#). London: Museums Association, 2002

'The Torts (interference with Goods) Act 1977 and the Local Government (Miscellaneous Provisions) Act 1982' in **Thompson, John M. A.** *Manual of Curatorship*, 2nd ed., Oxford: Butterworth-Heinemann, 1992.

This factsheet was originally compiled in partnership with the Museums Association, the Imperial War Museum and Tate.



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