



Quinquennial Review of the Reviewing Committee on the Export of Works of Art

REVIEWING COMMITTEE ON THE EXPORT OF WORKS OF ART

CONTENTS

Section 1: Aims and Terms of Reference of the Review

Section 2: Summary of Conclusions and Recommendations

Section 3: Conduct of the Review

Section 4: Role, Functions and Contribution to Government Objectives

- 4.1 Legislative Framework
- 4.2 The Advisory Panel on Illicit Trade
- 4.3 The Waverley Report and the Establishment of the RCEWA
- 4.4 RCEWA Composition, Governance and Resources
- 4.5 Objects of Outstanding National Importance
 - 4.5.1 *The Waverley Criteria and Expert Advisers*
 - 4.5.2 *RCEWA Meetings*
 - 4.5.3 *Valuation and Deferral Period*
 - 4.5.4 *Purchase of Deferred Objects*
 - 4.5.5 *Private Offers*
 - 4.5.6 *Re-application after licence refusal*

Section 5: Stakeholders' Views on the Export Control and the RCEWA

- 5.1 Remit and Composition of the RCEWA
- 5.2 The Export Control and Expert Advisers
- 5.3 The Waverley Criteria
- 5.4 Conduct of RCEWA Hearings
- 5.5 Valuation and Deferral Period
- 5.6 Purchase of Deferred Objects
 - 5.6.1 *Championing*
 - 5.6.2 *Funding*
 - 5.6.3 *Private Offers*
- 5.7 Refusal of Offers and Withdrawal of Applications
- 5.8 Consultation and Communication
- 5.9 Efficiency and Effectiveness

Section 6: Conclusions and Recommendations

Appendices

- A DCMS Objectives
- B RCEWA Membership
- C Composition of the Advisory Council on the Export of Works of Art
- D Expert Advisers to DCMS
- E Reviewing Committee Cases: 1968-2001
- F Proposed amendments to the rubric of the Waverley Criteria
- G Purchase of an item temporarily barred from export
- H Sample Offer and Undertaking
- I Discussion of Offer and Undertaking Proposal

Section 1: Aims and Terms of Reference of the Review

Overall Aim

To review the continuing need for the services provided by the Reviewing Committee on the Export of Works of Art ('RCEWA'); to consider whether the scope of services provided should be extended or reduced; whether those services are best delivered by an advisory Non-Departmental Public Body ('NDPB'); and, (subject to confirmation as an advisory NDPB) whether improvements can be made in the efficiency and effectiveness of service delivery.

Stages One and Two

To consider specifically:

1. The need for a RCEWA and the extent to which it contributes to the delivery of Government and, within that, departmental objectives;
2. Whether the RCEWA should be a standing body or whether there are other options for delivery;
3. Links that exist, or should exist between the RCEWA and other organisations, and opportunities for partnership working;
4. The RCEWA's geographical coverage;
5. What the RCEWA's stakeholders think about its role, performance and responsiveness to their needs;
6. Whether any amendments are needed to the RCEWA's terms of reference to enable it more effectively to play its part in delivering Government and, within that, departmental objectives;
7. Whether it is appropriate for changes to be made to the system and procedures for controlling the export of cultural goods;
8. The recommendations of the report of the Ministerial Advisory Panel on Illicit Trade (2000);
9. Whether any structural changes are needed to enable the RCEWA more effectively to play its part in delivering Government and, within that, departmental objectives;
10. The extent to which the RCEWA provides value for money and the scope for increased efficiency gains;
11. The effectiveness of arrangements for administrative support;
12. Whether the RCEWA could make better use of new technology;
13. The extent to which guidance and codes of practice are followed in respect of RCEWA appointments and members' conduct;
14. Whether the RCEWA operates in an open and transparent fashion in accordance with the Code of Practice on Access to Government Information. DCMS Objectives are at **Appendix A**.

Section 2: Summary of Conclusions and Recommendations

2.1 The need for a RCEWA and the extent to which it contributes to the delivery of Government and, within that, departmental objectives

2.1.1 We conclude that the functions of the RCEWA within an export control system which is perceived as being fair in balancing the interests of those concerned, fulfils Government and departmental objectives regarding the protection of objects of national importance.

2.1.2 We recommend that the RCEWA should retain its current main title, with the addition of the phrase 'and objects of cultural interest'.

2.2 Whether any amendments are needed to the RCEWA's terms of reference to enable it more effectively to play its part in delivering Government and, within that, departmental objectives

2.2.1 We recommend removal of term of reference iv), 'to supervise the operation of the export control system generally', which is an executive function belonging within DCMS, and revision of item i) to include the role of advising upon the operation of the export control system.

Incorporating the recommendations made in 2.1.2 and, 2.2.1, the RCEWA's terms of reference would therefore become:

- to advise on the principles which should govern the control of export of works of art and antiques [to become 'export of objects of cultural interest'] under the Import, Export and Customs Powers (Defence) Act 1939 [to become 'under the Export Control Act 2002'] and on the operation of the export control system generally;
- to advise the Secretary of State on all the cases where refusal of an export licence for a work of art or antique [to become 'an object of cultural interest'] is suggested on grounds of national importance;
- to advise in cases where a special Exchequer grant is needed towards the purchase of an object that would otherwise be exported.

2.2.2 We recommend that any change to the third term of reference concerning special Exchequer grants should be made in the light of the conclusions of the Goodison Review of Saving Art for the Nation being undertaken by HM Treasury.

2.3 The recommendations of the report of the Ministerial Advisory Panel on Illicit Trade (2000)

2.3.1 We endorse the Illicit Trade Advisory Panel (ITAP) as being the appropriate forum to devise means for monitoring and advising on the operation of the export control in relation to illicit trade in cultural objects, and the continuing representation of the RCEWA on ITAP to promote communication.

2.4 The RCEWA's geographical coverage

2.4.1 Export controls are a reserved matter and the UK and EC export licensing regimes therefore cover exports from England, Scotland, Wales and Northern Ireland.

We are satisfied with the arrangements by which expert advisers to the DCMS are asked, when considering a licence application, to bear in mind that colleagues in other UK institutions may wish to make a case against a particular export and to ensure that any such consultations are undertaken before giving advice on whether to allow export.

2.4.2 We are satisfied that the membership of the RCEWA and engagement of independent assessors represent UK-wide interests in items of cultural significance.

2.5 Whether the RCEWA should be a standing body or whether there are other options for delivery, and whether any structural changes are needed to enable the RCEWA more effectively to play its part in delivering Government and, within that, departmental objectives

2.5.1 We recommend that the RCEWA's status should remain that of an advisory NDPB, sponsored by DCMS.

2.5.2 We recommend no alteration to the composition of the RCEWA.

2.5.3 We recommend that the Chairman of the RCEWA should be independent from both the art market and the museum/gallery world. Whilst a legal background would be an advantage for this post, we do not regard it as a requirement.

2.5.4 We are satisfied that the membership of the Manuscripts, Documents and Archives Working Party is representative of the concerns it addresses.

2.5.5 We consider it of importance that the RCEWA should both retain and be seen to retain independence of the DCMS. We recommend that all appropriate steps are taken to further this end including the RCEWA having its own notepaper. With regard to the report by the RCEWA, we understand that under the Export Control Act 2002, the Government will be required to present to Parliament an annual report on the operation of any Order relating to objects of cultural interest. The Department has undertaken a consultation on the draft Order to be made under the Export Control Act 2002 which seeks views as to whether the RCEWA's report should continue to be published as a separate document, or whether it should be included in an annual report from the Secretary of State under the Export Control Act 2002. We consider there is considerable value in the RCEWA making its own independent report to the Secretary of State and we accordingly prefer that they should do so.

2.6 Links that exist, or should exist between the RCEWA and other organisations, and opportunities for partnership working

2.6.1 We recommend that copies of the DCMS guidance to expert advisers should be made available to those in other institutions whom the expert advisers need to consult. The guidance should be clear, succinct and kept up to date.

2.6.2 We recommend that DCMS should experiment with an annual seminar, to which expert advisers and members of the RCEWA would be invited, to discuss procedure and best practice.

2.6.3 We recommend that the RCEWA should undertake a review to update the membership of its Advisory Council.

2.6.4 We recommend that in making a submission to the RCEWA, expert advisers should take account of, and comment upon, conservation.

2.7 The extent to which guidance and codes of practice are followed in respect of RCEWA appointments and members' conduct

2.7.1 We are content that guidance issued by the Office of the Commissioner for Public Appointments (OCPA) and the Guidance on Codes of Practice for Board Members of Public Bodies issued by the Cabinet Office are followed satisfactorily.

2.7.2 We observe that there is a potential for conflict of interest, although we consider it to be more of a problem with members of the RCEWA and independent assessors than for expert advisers. We note that the DCMS draws the issue to the attention of members and independent assessors and asks that any possible conflict of interest is disclosed by them. We also note that, in cases where an expert adviser's institution is pursuing the purchase of an item referred to him or her, the Secretariat re-allocates the case to another adviser. We have concluded, therefore, that the risk of a conflict of interest is kept to a minimum.

2.8 Whether the RCEWA operates in an open and transparent fashion in accordance with the Code of Practice on Access to Government Information

2.8.1 In that the RCEWA is an advisory NDPB, the Parliamentary Ombudsman has no jurisdiction over its members and cannot review its decisions. However, we are satisfied that requests for information are dealt with according to the Code of Practice on Access to Government Information by DCMS, subject to the appropriate exemptions.

2.8.2 We recommend that those expressing interest in a deferred object might apply to the RCEWA Secretariat for information additional to that published in the Department's press notice and that, where the RCEWA does not find that an object meets any of the Waverley criteria, DCMS considers making an announcement. In both cases, however, the consent of all parties involved with the application would be obtained, given the commercial confidentiality of the licence application.

2.9 The extent to which the RCEWA provides value for money, the scope for increased efficiency gains and the effectiveness of arrangements for administrative support

2.9.1 We recommend that DCMS management assess the complement and use of resources in ELU.

2.9.2 We have concluded that the RCEWA provides value for money and that arrangements for administrative support are effective. In doing so, we note that expert advisers, members of the RCEWA and independent assessors receive no remuneration for their contributions.

2.10 Whether the RCEWA could make better use of new technology

2.10.1 We endorse the investigation of the development of electronic licensing provision by CPU. In providing this opportunity, it would be necessary to enable smaller businesses which did not have the electronic capacity to be able to obtain licences via manual processing. However, the business advantage of e-processing

should be encouraged, in line with the Government's business strategy.

2.10.2 We recommend that greater use should be made of e-mail for delivery of material to expert advisers and that one e-mail list could be used by both the RCEWA Secretariat and ELU.

2.10.3 We recommend that arrangements for generating publicity and interest among UK collecting institutions, in relation to export-stopped items, should be reviewed.

2.10.4 We recommend that information should continue to be collated and maintained on licence refusals and withdrawals after an offer has been made.

2.11 Whether it is appropriate for changes to be made to the system and procedures for controlling the export of cultural goods

2.11.1 We support UK representation for there to be a review of licensing thresholds under EC Regulation (EEC) No 3911/1992.

2.11.2 We recommend some clarifications to the rubric accompanying the Waverley criteria, including the association of an object with an important collection, and the provision of more up-to-date examples under each criterion.

2.11.3 We recommend (subject to consultation and an appropriate value threshold) that individual fossils of material value be brought within the UK export control, and therefore within the remit of the Waverley system. We would propose as a means of doing this a definition of a fossil which combines wordings used in an Australian Statutory Instrument, the Protection of Moveable Cultural Heritage Regulations 1987 and the Canadian Cultural Property Export Control, as follows:

'a vertebrate or invertebrate fossil or plant fossil or trace fossil, being a specimen of interest for scientific, educational or study purposes and of fair market value in the UK of more than (£).'

2.11.4 The Working Party on Manuscripts, Documents and Archives has proposed for inclusion in the OGEL an up-to-date professional definition of an archive (which would not be confined to manuscript material) as 'documents in any medium, created and/or accumulated by an individual, family, corporate body or institution, which have survived or been preserved as evidence of their purpose and activities'. The RCEWA has agreed this definition and a consultation is being undertaken regarding its adoption in the OGEL. We recommend support for this policy change and attach considerable importance to it.

2.11.5 We recommend expanding the rubric to the third Waverley criterion, to note that an object 'might be considered of outstanding significance either on its own account or on account of its connection with a person, place, event, archive, *collection or assemblage*' (see also 2.11.2).

2.11.6 We recommend that an owner should be able to apply for a licence for a whole collection *if he wishes to export it as an entity*, whether or not all the items would otherwise qualify.

2.11.7 We recommend that adequate information about the history and provenance of a work should be provided when an application for an export licence is made and that

the UK export licence application form should also include a reminder that it is an offence to give false statements for the purposes of applying for a licence.

2.11.8 We support the UK's representations to the Commission that applications for EU licences should carry a reminder concerning provenance.

2.11.9 We support the use of a checklist by ELU, which can be used to ensure that basic supporting documentation is always provided by applicants for export licences before papers are referred to expert advisers.

2.11.10 We recommend that it should be made clear to applicants that they may be required to make a formal declaration to the RCEWA that they have provided all relevant provenance information known to them.

2.11.11 We support retention of the current system of one expert adviser per discipline, with enhanced communication to identify specialists who are onward consulted by expert advisers and provide support for them by provision of guidance, using electronic means where possible.

2.11.12 We agree that expert advisers should continue to perform their duties as a part of their posts.

2.11.13 The RCEWA needs to have satisfactory proof of value in determining fair market price. We recommend that in future, when the RCEWA is not satisfied that there is adequate evidence to support a price proposed by the applicant, evidence in the form of a private contract will only be accepted where the RCEWA can be satisfied a) that such contract price represents the price agreed between parties at arms' length and b) that such contract contains all the terms agreed. This might be provided by an affidavit sworn by a professional adviser but if that or other evidence satisfactory to the RCEWA is not available, then the terms (including price) of such a contract will not be taken into account in reaching a fair price. In such a case, the RCEWA could offer the applicant the option of a third party determination of the value as set out below. If the applicant were not agreeable to following this route, then the RCEWA would be entitled to recommend refusal to the Secretary of State.

2.11.14 We recommend that the process for third party determination of value should be more clearly set out in the Department's guidance, and propose a revised model for use in obtaining this advice.

2.11.15 We endorse the current arrangements for championing deferred items, including seeking the interest of private purchasers where appropriate.

2.11.16 We recommend that private offers should be accompanied by a sufficient and demonstrable countervailing public benefit and set out conditions which would demonstrate this.

2.11.17 We recommend that the distinction between a public and private offeror should be more clearly set out, and that the definition of a public institution should encompass those bodies included in Schedule 3 of the Inheritance Act 1984 and such other as the Minister shall approve.

2.11.18 We recommend that, at the end of the RCEWA hearing, the applicant should be asked if he would not be prepared to accept a matching offer in any circumstances. If

the applicant makes it clear that he would not be prepared to accept a matching offer in any circumstances, then the RCEWA should recommend the refusal of a licence.

2.11.19 We recommend that, if at the end of the first deferral period, an institutional or private source has expressed a serious intention to purchase the deferred object, the applicant should be asked whether he will accept the matching offer from that specific purchaser. If he will not accept such an offer, refusal of the licence should be recommended.

2.11.20 We recommend that the 'offer and undertaking' proposal is a reasonable means of preventing the refusal of a matching offer during the second deferral period, when an applicant has already indicated to the RCEWA at its hearing that such an offer would be acceptable and that it should be considered for introduction by Ministers.

Section 3: Conduct of the Review

This Quinquennial Review ('the Review') of the Reviewing Committee on the Export of Works of Art ('the RCEWA') was announced on 30 March 2001 by the Rt Hon. Alan Howarth, then Minister for the Arts at the Department for Culture, Media and Sport (DCMS). The Review was led by an independent reviewer, Alex Stewart, Director of Arts and Culture at DCMS, and was supported by the Review Management Team of the Arts and Culture Directorate.

A Steering Group, chaired by Alex Stewart, guided the Review. The membership comprised: Sir Jack Baer, a leading fine art dealer and formerly both a member of the RCEWA and Chairman of the Acceptance in Lieu Panel at Resource: The Council for Museums, Libraries and Archives; Anthony Browne, Chairman of the British Art Market Federation and member of the Advisory Panel on Illicit Trade; Sir Matthew Farrer, formerly a Trustee of the British Museum; Sir John Guinness CB, Chairman of the RCEWA; Simon Pink, HM Treasury; Ros Savill, Director of the Wallace Collection; Anna Southall, then Director of the National Museums and Galleries of Wales, becoming Chief Executive of Resource: The Council for Museums, Libraries and Archives in September 2002; Tim Suter, Chief Executive of the Quality, Efficiency and Standards Team (QUEST); Hillary Bauer, Head of the Cultural Property Unit (CPU); Elizabeth Foxell, Secretary to the RCEWA; Susan Shaw, Finance Division, DCMS; Richard Creasy and Anna Milton, DCMS Lawyers; Roger Stratton-Smith, Head of the Review Management Team; and Tania Jacobs and Diana Forbes-McNeill of the Review Management Team.

The work of the Review was informed by a consultation exercise. A consultation paper was published on 19 November 2001 and 12 weeks were allowed for the submission of written responses. The consultation paper was posted on the DCMS website and was also issued to 354 stakeholders. In addition, Roger Stratton-Smith conducted interviews with 19 key stakeholders. The outcome of the consultation exercise is reported at Section 5.

The Steering Group considered a number of issues arising from the system and procedures for controlling the export of cultural goods, and established a sub-committee, chaired by Sir Matthew Farrer, to consider these in depth. The sub-committee was chaired by Sir Matthew Farrer and in addition comprised from the Steering Group itself Sir Jack Baer, Sir John Guinness and Anthony Browne together with co-opted representatives from the legal profession in Professor Norman Palmer and Mr Richard Harwood. The Steering Group is very grateful to Sir Matthew and all the members of the sub-committee for their contribution on these areas of policy, several of which have been matters of discussion for many years.

Section 4: Role, Functions and Contribution to Government Objectives

4.1 Legislative Framework

The export control system is the context within which the RCEWA operates. It provides an opportunity for the retention in the UK of cultural goods considered to be of outstanding national importance. The system is designed to strike a balance, as fairly as possible, between the various interests concerned in any application for an export licence – such as the protection of the national heritage; the rights of owners selling goods; exporters or overseas purchasers; and the position and reputation of the UK as an international art market.

There are currently two licensing regimes in place for cultural goods: one under UK legislation and the other under an EU Regulation. The two systems operate in tandem (i.e. licences are required under both regimes) and the UK system has been adapted so that exporters need obtain only one specific individual export licence (which may cover more than one object) from the DCMS, either under UK or EU law, depending on the type of object concerned and the destination of export. Licences may be required for permanent or temporary exports, including when a person is transferring their own property abroad. Both regimes cover exports from England, Scotland, Wales and Northern Ireland and have continued to do so since devolution, as export controls are a reserved (not a devolved) matter.

The current UK export legislation is the **Import, Export and Customs Powers (Defence) Act 1939** ('the 1939 Act'), emergency World War II legislation which relates not only to the export of cultural objects but also to all other goods. Under the 1939 Act, the Secretary of State for Culture, Media and Sport may, from time to time, make an Order (i.e. secondary legislation) specifying which goods require a licence for export from the UK and the Isle of Man. In relation to cultural objects, the current **Export of Goods (Control) Order 1992** states that an individual licence is required for *all goods manufactured or produced more than 50 years before the date of exportation*, with certain limited exceptions (for example, postage stamps, personal papers and goods manufactured by the exporter).

The 1939 Act is to be replaced by the **Export Control Act**, which received Royal Assent on 24 July 2002. The Act provides a general framework of powers to control exports, to be used by both the DTI and the DCMS. Secondary legislation (an Order) made under the Act will provide for export controls on objects of cultural interest. As now, objects manufactured or produced more than 50 years before the date of exportation will be subject to a licensing requirement.

At present, therefore, current UK law requires an export licence for most cultural objects (as defined in the Order) over 50 years of age. In order to reduce the burden on would-be exporters, the Government has issued a number of Open Licences, which permit the export of certain specified objects without the need to obtain an individual UK licence from DCMS. None of the provisions for open licences over-ride any requirement to obtain an individual licence under the EU Regulation (for exports to destinations outside the European Customs Union).

Council Regulation (EEC) No 3911/1992 of 9 December 1992, as amended, on the export of cultural goods, which came into force on 1 April 1993, introduced a common system of licensing for the export of certain cultural goods outside the customs territory of the Community and has as one of its purposes the protection of cultural goods. The export of such goods requires a licence issued by the competent authority of the Member State where the cultural object is lawfully located and the licence is valid throughout the Community. Before issuing a licence, the competent authority is required to satisfy itself that the object was lawfully exported from another Member State, or imported from a third country, or re-imported from a third country after lawful dispatch from a Member state to that country. Although an export licence is not required for archaeological objects of limited archaeological or scientific interest, provided their presence on the market is lawful, this exception does not apply to archaeological objects that are the direct products of excavation, finds and archaeological sites within a Member State, all of which need a licence.

National controls continue to apply to intra-Union movements and to extra-Union exports which are not covered by the Regulation or which relate to 'national treasures'. Article 30 (formerly Article 36) of the Treaty of Rome permits Member States to retain their national export controls for '...the protection of national treasures possessing artistic, historic or archaeological value...'

In all other cases, exporters need to obtain an individual licence from DCMS, either an EC licence or a UK licence. To export a cultural object to a final destination outside the EU, a licence, either UK or EC, must be obtained if it is valued at or above the relevant threshold for the type of object concerned. To export a cultural object to a destination in another EU Member State, a UK licence application must be made if the object is valued at or above the relevant threshold for the type of object concerned.

Current policy is normally to grant an export licence for any object which has been imported into the UK within the last 50 years. This policy does not apply to EU licences if an object has been illegally exported from a Member State of the European Customs Union on or after 1 January 1993.

Council Directive 1993/7/EEC of 15 March 1993, as amended, on the return of cultural objects unlawfully removed from the territory of a Member State was enacted into UK law by the **Return of Cultural Objects Regulations 1994**, as amended, on 2 March 1994. The Directive obliges a State to which a request is made by another State for the return of an unlawfully-removed cultural object to comply with the request, provided that the object satisfies the necessary criteria and the prescribed procedures are followed.

HM Customs & Excise is responsible for enforcing the export control on behalf of DCMS. If an object is presented to Customs for export without an export licence having been granted, the exporter and any other party concerned with the unlicensed exportation may be subject to penalties, including criminal prosecution, under the **Customs and Excise Management Act 1979**. The unlicensed object may also be subject to seizure under the provisions of the same act.

4.2 The Advisory Panel on Illicit Trade

On 24 May 2000, the then Minister for the Arts appointed the **Advisory Panel on Illicit Trade** to consider the nature and extent of the illicit international trade in art and antiquities, the extent to which the UK was involved in this and how most effectively,

through both non-legislative and legislative means, the UK could play its part in preventing and prohibiting the illicit trade. The Panel's report of December 2000 contained 16 recommendations, the principal ones being accession to the *1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, subject to specified reservations; a proposal for a new criminal offence (dishonestly to import, deal in or be in possession of any cultural object, knowing or believing that the object was stolen, or illegally excavated, or removed from any monument or wreck contrary to local law); and databases of international legislative information and of cultural objects unlawfully removed from the UK or overseas. The Government acceded to the *1970 UNESCO Convention* in July 2002 and is now seeking to introduce the proposed criminal offence at the earliest legislative opportunity. A Sub-Committee of the Panel considered the matter of the monitoring of exports and this work is now being taken forward by the main Panel, on which the RCEWA is represented.

4.3 The Waverley Report and the Establishment of the RCEWA

In 1950, the Chancellor of the Exchequer appointed a Committee under the Chairmanship of Lord Waverley:

'To consider and advise on the policy to be adopted by His Majesty's Government in controlling the export of works of art, books, manuscripts, armour and antiques and to recommend what arrangements should be made for the practical operation of policy.'

The report of the Waverley Committee, issued in September 1952, recommended, *inter alia*, that:

- the state should retain the right to prevent the export of objects of high importance;
- where an export was prevented, the owner should be assured of an offer to purchase at a fair price;
- those in charge of our public collections should do all they could to secure *desiderata* before they came into the export market;
- export control should be confined to limited categories of objects of high importance;
- the tests of assessing the importance of an object should be those subsequently known as 'the **Waverley criteria**';
- objects which had been imported within the last 50 years should be exportable as of right;
- the annual purchase grants-in-aid of the grant-aided collections should be substantially increased, as should the grants-in-aid to the Victoria & Albert Museum for assisting acquisitions by other institutions;
- in the case of grant-aided collections any special financial assistance needed for the purchase of an object that would otherwise be exported should be given by special grant upon the recommendation of the RCEWA.

The RCEWA was established in 1952, following the recommendations of the Waverley Committee's Report with the following **terms of reference**, which have remained unchanged:

- to advise on the principles which should govern the control of export of works of art and antiques under the Import, Export and Customs Powers (Defence) Act 1939;

- to consider all cases where refusal of an export licence for a work of art or antique is suggested on grounds of national importance;
- to advise in cases where a special Exchequer grant is needed towards the purchase of an object that would otherwise be exported; and
- to supervise the operation of the export control system generally.

4.4 RCEWA Composition, Governance and Resources

The RCEWA is a non-statutory, advisory Non-Departmental Public Body (NDPB), consisting of eight permanent members appointed by the Secretary of State for Culture, Media and Sport. Appointments are undertaken according to guidance issued by the Office of the Commissioner for Public Appointments (OCPA), under which a modified process may be used for the appointment of members of advisory NDPBs. Members of the RCEWA are drawn from across the UK, and have expertise in one or more fields (paintings, decorative arts, archaeology, manuscripts etc), to ensure that the RCEWA has a broad range of experience with which to consider individual items brought before it and to provide policy advice to the Secretary of State.

One member of the RCEWA is traditionally connected with Scotland, and at least one other with the art trade. A member is also appointed to provide expertise in the field of manuscripts and documents and this person chairs the Working Party on Manuscripts, Documents and Archives, which meets once a year and advises the RCEWA on policy relating to this field. A Sub-Committee was established in 1966-67 to make recommendations concerning the export control of manuscripts, documents and archives. In 1972, two further small Working Parties were set up to discuss the operation of the Victoria & Albert Purchase Grant Fund documentary provision, and to consider more general problems relating to the protection of documents. From 1979, the two Working Parties were amalgamated and have continued as one body.

Current membership of the RCEWA is at **Appendix B**.

The RCEWA is guided in its consideration of policy issues by the Advisory Council on the Export of Works of Art, which contains representatives from museums and galleries, art trade organisations and various ‘heritage’ bodies. The Council provides an annual forum for the discussion of the principles and operation of the export control system and considers the policy section of the Committee’s draft annual report (July-June), which is addressed to the Secretary of State for Culture, Media and Sport and is published by her as a Command Paper. Membership of the Council is at **Appendix C**.

The Secretary of State has discretion on the granting of export licences, but this must be exercised reasonably, and policy is normally only varied in exceptional circumstances. Decisions may be subject to judicial review. There is no formal appeal process regarding the RCEWA’s recommendation, but representations may be, and indeed are, made to the Minister. Since 1999, all executive and advisory NDPBs which have direct dealings with members of the public have fallen within the Parliamentary Ombudsman’s jurisdiction. The Ombudsman has no jurisdiction over the members of an advisory NDPB such as the RCEWA and cannot review the recommendations made by it. The Ombudsman deals with complaints from members of the public that they have suffered injustice because of maladministration by government departments or certain other public bodies. He also deals with complaints about problems in obtaining access to

official information. In the case of the RCEWA, this would involve the staff of the Secretariat and the administrative functions they carry out in support of the Committee, which are the responsibility of the DCMS Permanent Secretary.

The annual budget of the RCEWA is £20,000-£23,000 per annum, which covers travel and subsistence expenses for RCEWA members (who are not paid) and independent assessors (specialists who advise the Committee on individual cases), hire of rooms and production and distribution of an annual report. The RCEWA is served by a Secretary, and by one full-time and one part-time staff member, located within the Cultural Property Unit (CPU) of the DCMS. It also takes up to 10% of the time of the Head of the CPU. The cost of the staff is approximately £75,000 per annum, but these staff also fulfill other departmental duties.

4.5 Objects of Outstanding National Importance

4.5.1 The Waverley Criteria and Expert Advisers

The Export Licensing Unit (ELU), which performs a statutory executive function in issuing export licences for cultural goods, in line with EU and UK legislation, is situated within the CPU of the DCMS. The annual staffing cost of the ELU is approximately £80,000 and it deals with some 10,000 licence applications per year. Some of these licences cover several objects.

The ELU refers certain licence applications to the DCMS's expert advisers for scrutiny as to national importance. The advisers are directors or senior curators of national collections, each having responsibility for advice within a particular discipline (**Appendix D**). The UK individual licensing requirements guide the policy on which licence applications are referred to the expert advisers, the intention being to refer only those objects which would have been referable prior to the introduction of the EC Regulation. Where a licence is being applied for under the EC Regulation, but the object is valued below the relevant UK monetary limit, the object is not considered to be a potential 'national treasure' and a licence will be granted. However, where an object has come from another EU Member State on or after 1 January 1993, either directly or via a non-EU country, applicants requiring an EC licence should include with their application evidence that the object was legally despatched from the originating Member State. Objects that have arrived in the UK within the last 50 years from the Channel Islands are also normally referred to an expert adviser for scrutiny as to national importance.

An expert adviser may object to the granting of a licence where he or she believes that an object satisfies one or more of the **Waverley criteria** (published in the Waverley Report of 1952):

Waverley one

Is it so closely connected with our history and national life that its departure would be a misfortune?

Waverley two

Is it of outstanding aesthetic significance?

Waverley three

Is it of outstanding significance for the study of some particular branch of art, learning or history?

In its 1988-89 Annual Report, the RCEWA set out its interpretation of the Waverley criteria:

The first criterion is whether an item is so closely connected with our history or national life that its departure would be a misfortune.' This was originally intended to catch such objects as the Alfred Jewel or the manuscript of Gray's Elegy but we interpret it in a somewhat wider context to include items which are of major importance for local history, or which are part of collections which are of the greatest historical significance, or which are associated with significant historical events.

The second criterion refers to 'outstanding aesthetic importance'. There can be no definitive guidelines for judging whether an item is aesthetically outstanding, but we do not restrict this criterion to great works of painting or sculpture. We might, for instance, conclude that an exquisite snuff box met this criterion as well as a painting by Poussin. In the case of works by great artists it may be claimed that anything from the hand of Rembrandt is outstanding. We are not always swayed by such arguments and may take into account the condition or restoration to which it may have been subjected.

The third criterion is whether an item is 'of outstanding significance for the study of some particular branch of art, learning or history. 'Almost anything could be caught under this heading: the worst works of the best artists (just to show that Homer nods), a poet's laundry list, a collection of seaside postcards. We therefore apply this criterion with rigour to objects which, in our view, are important for the study of some significant branch of art, learning or history; they have to be important for study rather than merely interesting to study. Many objects might provide attractive topics for a PhD thesis but are not of wider significance for the study of the subject as a whole.

Expert advisers are asked to make their decision as to whether or not to oppose export solely on the basis of the Waverley criteria. The presence of an institution which is interested in acquiring an item should not be allowed to influence their decision as to whether or not to object to an export. If the expert adviser were aware that their own institution was seeking to acquire the object in question, the Secretariat would allocate the case to another adviser for scrutiny under the Waverley criteria. Expert advisers are also asked to bear in mind that colleagues in other UK institutions may wish to make a case against a particular export. It is their responsibility to make sure that any such consultations are undertaken before giving advice on whether to allow export. This applies not just to other national institutions, but also to local collections, which depend on advisers for information about proposed exports. If an object is of particular interest to Scotland, Wales or Northern Ireland, the relevant institutions there are consulted before the expert adviser decides whether to raise an objection.

For a number of years, the RCEWA has expressed concern that there should be a means of ensuring that outstanding collections (particularly those in public or semi-public ownership) are kept intact. The issue was first addressed by a Working Party set up in 1986, following the RCEWA's consideration of items from the George Brown ethnographical collection, and was considered again in 1991, and in 1992 by the Secretary of State's Consultative Group. Both the 1986 and 1992 consideration of the problem concluded that the only certain way of defining collections would be to make a list, a policy which was rejected in 1992 by the then Secretary of State, David Mellor. The RCEWA has continued to draw attention to cases which would, in its opinion, qualify for a fourth criterion to cover collections, if one existed. Items from collections such as Castle Howard, Chevening, Holkham, Houghton, the Royal Holloway College

and the Clive collection at Powis Castle were mentioned in this context, a number of which already fall within the first criterion.

4.5.2 RCEWA Meetings

If an expert adviser makes an objection to an export, DCMS refers the licence application to the RCEWA. In the past decade, the Department's expert advisers have referred between 13 and 43 cases per year for the RCEWA to consider, i.e. **fewer than 0.5% of the total number of licences dealt with by the DCMS in any year.**

The RCEWA normally meets on a monthly basis to consider the cases which have been referred by expert advisers. Its task is to decide whether an object meets one or more of the Waverley criteria. It does not take into account whether anybody wishes, or has the funds, to acquire the object. If the RCEWA decides that an object meets one or more of the criteria, it establishes a fair market price and deferral period for recommendation to the Minister.

Both the applicant to export and the expert adviser are invited to submit statements in support of, respectively, retention in the UK against the Waverley criteria, or export, and these are circulated to all parties concerned prior to the RCEWA's hearing. The applicant may also advance other arguments as to why a licence should be granted, which are put to the Minister with the overall recommendation made by the RCEWA. However, on occasion, the applicant may agree that the item is of Waverley status.

At the hearing, the RCEWA's eight appointed members (four of which constitute a quorum) are joined by three independent assessors chosen for their expertise on the object in question, and who are drawn from specialists across the UK. These independent advisers are treated as members of the RCEWA for the application under consideration and have a vote. Officials from DCMS, including a lawyer, are also present to advise the RCEWA.

The expert adviser and applicant attend the meeting to present their arguments, and the RCEWA also sees the object. There is an opportunity for both parties to add to their written statements and to ask questions of the other side. The RCEWA may also put factual questions to the applicant and expert before inviting them to withdraw and voting on whether the object meets one or more of the Waverley criteria. If there is a majority vote in favour of one or more of the criteria, the RCEWA recommends to the Minister of State that a decision on the licence application be deferred for a specified period to enable an offer to purchase to be made at or above the fair market price, which will also be recommended by the RCEWA. The RCEWA may 'star' an object, which is of special importance, though it is not necessary for such an object to have met all of the criteria. If the owner of the object has indicated prior to, or at, the hearing that they will not accept a matching offer for the object if it is found to be of Waverley status, the RCEWA recommends that a licence is refused. If the object does not satisfy any of the Waverley criteria, the RCEWA recommends that the export licence should be granted.

The proceedings of the RCEWA are treated as commercially confidential. Its recommendations are made known to both parties at the end of the hearing, but remain confidential until the Minister's decision is announced in a departmental press notice, which invites purchase offers to be made initially to the RCEWA Secretariat. An account of each case is published in the RCEWA's annual report, which is checked by the applicant and expert adviser.

4.5.3 Valuation and Deferral Period

In arriving at a recommendation to Ministers, the criteria on which the RCEWA arrives at a proposed length of deferral normally include:

- the value of the object;
- the time that any fund raising might reasonably be expected to take;
- the likelihood of a fund-raising attempt being launched;
- the proximity of the beginning of the deferral period to a new financial year;
- the proximity of the beginning of the deferral period to the summer - and, to a lesser extent, the Christmas and New Year holiday periods;
- whether the owner of an object, which has been conditionally exempted from capital taxation, has given the requested three months' notice of an intention to sell the object to Resource: the Council for Museums, Libraries and Archives;
- whether the owner is willing for the object to be publicly displayed (in appropriate conditions) to assist any fund raising appeal that might arise as a result of a deferral period.

The RCEWA seeks to recommend a valuation which is fair and reasonable to the owner and national heritage interests alike by examining carefully the elements included in the valuation. Therefore, at the meeting, the RCEWA will normally ask what the value as stated on the application form represents. This is likely to fall into one of three categories, viz:

- the price at which the present owner has bought, either at auction or through a private sale; or
- the price at which the present owner has agreed to sell (either unconditionally or subject to conditions, such as the granting of an export licence); or
- an estimated price with supporting evidence, such as recent prices fetched by other important objects in the same field.

In May 1996, the Secretary of State issued a consultation paper on elements that should be included in establishing a fair market price. Following the consultation, the RCEWA's procedure was published in *Export Licensing for Cultural Goods*, 1997. In addition to the base price, the RCEWA would allow the buyer's premium; reasonable conservation costs (those incurred by a new owner as being necessary to stabilise the condition of an object); and dealer's commission on a sale to a third party (which will not normally include a commission on a sale to a connected party) to be included in the recommended fair market price. The RCEWA could also disallow certain elements in arriving at a fair market price, such as interest charges, transport and storage costs and insurance costs.

If the RCEWA accepts the applicant's valuation, the application is likely to be deferred at that value. However, where the object is not the subject of a recent sale, the RCEWA can ask the expert adviser's opinion as to whether the value claimed is a fair market price and seek the views of its own members and the independent assessors. If the expert adviser objects and a value cannot subsequently be agreed by all parties, the RCEWA may seek independent advice on valuation before making a recommendation to Ministers. Normally two or more persons will be asked to advise the RCEWA on the value of the object concerned. Those persons will normally be approved by the applicant and the expert adviser, both of whom are invited to submit names of appropriate valuers with recent market experience in the specific field of the object.

4.5.4 Purchase of Deferred Objects

If the Minister of State temporarily bars an object from export, the expert adviser who referred it to the RCEWA becomes its 'champion'. A 'champion' normally consults several institutions, including galleries, museums etc, which may be in all parts of the UK and across English regions, and makes sure they are aware of possible funding avenues. In appropriate cases, the 'champion' may also draw Waverley items to the attention of individuals, in line with the 'Ridley rules' on private offers. The expert adviser reports on the championing process to the RCEWA.

Galleries, museums, libraries and other cultural institutions may raise funds from a wide variety of sources, including their annual grants from central or local government, friends of institutions, the Heritage Lottery Fund and the National Heritage Memorial Fund, charities (notably the National Art Collections Fund), individuals and special appeals. If an offer is made by a public body and is refused by the owner, the Minister of State normally refuses an export licence.

4.5.5 Private Offers

In May 1990, the then Secretary of State, Mr Nicholas Ridley, announced that, in considering whether or not to grant an export licence for heritage items, he would take account of an offer to buy an object from any source, whether public or private. In May 1996, the then Secretary of State, Mrs Virginia Bottomley, issued a consultation paper asking whether any specific conditions should be attached to a private offer to purchase an object under export deferral, in order for the Secretary of State to take that offer into account in deciding on an export licence application. The paper also invited views on whether, in the event of simultaneous offers from a public and a private source, the Secretary of State should express the hope that an owner would consider accepting a public offer in preference to private offer.

The resulting procedure (announced in *Export Licensing for Cultural Goods*, 1997) stated that, whilst it is Ministers' preference that an item be made publicly accessible when acquired, owners cannot be compelled to accept public offers over private offers which do not offer access. Ministers will normally take the existence of a private offer into account only where it is combined with a signed undertaking with a public institution to guarantee reasonable public access to the object; to provide satisfactory conservation conditions; and not to sell the object for a specified period. Where a private offer combined with such an undertaking is refused by the owner, Ministers will normally refuse an export licence. If no undertaking is given, Ministers will not take the existence of the offer into account and will normally grant an export licence.

4.5.6 Re-application after licence refusal

If an application is made within 10 years or so of a licence application which was refused, on behalf of the same owner, it will be subject to normal licensing procedures and to referral to the RCEWA. If, however, there are any changes or circumstance since the earlier application, or other arguments, these may be put forward for consideration. This replaced the previous 'indefinite stop' procedure, whereby if an owner stated in advance that he would refuse an offer to purchase made by a public collection after an export stop, the case was treated as if an offer had been made and refused. The issue of an export licence was then indefinitely suspended and the applicant told that the RCEWA would not expect to reconsider the case for a considerable period, perhaps 10 years, unless there were a material change in circumstances. Following a review by the

Office of Arts and Libraries and the DTI in 1986-87, it was concluded that, because the Secretary of State had statutory responsibility for export licensing and discretion as to whether or not to grant a licence, any application must be given proper and due consideration by the Secretary of State, including, where appropriate, referral to the RCEWA for advice.

Statistics on the outcome of RCEWA cases (1968-2001) are at **Appendix E**.

Section 5: Stakeholders' Views on the Export Control and the RCEWA

Responses to the written consultation exercise were received from a cross-section of stakeholders, including the UK trade associations and major auction houses representing applicants to export; museums, galleries and libraries which provide expert advice to DCMS, independent assessors to the RCEWA and which might acquire, or wish to acquire, objects temporarily barred from export; other independent assessors to the RCEWA; current and former members of the RCEWA; members of the Advisory Council on the Export of Works of Art; and the grant-making bodies which assist with acquisitions by UK institutions. In addition, 19 interviews were conducted with some current and former members of the RCEWA, DCMS and Customs and Excise officials, expert advisers and independent assessors. As well as commenting on the work of the RCEWA, respondents offered opinions on the export control and processing of export licence applications.

5.1 Remit and Composition of the RCEWA

There was strong agreement among stakeholders that the functions of the RCEWA are still needed and that the system, compared with some other European models, is perceived as being fair in balancing the interests of those concerned. The majority was content with the functions of the RCEWA as they stand, and thought that the Committee embodied an admirably clear purpose. However, it was suggested that 'cultural property' or 'objects of cultural significance' might better describe the broader spectrum of items considered by the RCEWA than 'works of art'.

It was queried whether 'to supervise the operation of the export control system generally' accurately described the role of the RCEWA, alongside recognition of the need to deal effectively with breaches of the export control and concern about the matter of illicit trade. Most responses were supportive of the work of the Advisory Panel on Illicit Trade (ITAP) and demonstrated the need to build on its work in achieving legislation at the earliest opportunity, developing monitoring procedures for licence applications and providing guidance for expert advisers. A distinction was seen between the work of ITAP and the RCEWA, with the conclusion that illicit trade was appropriately placed with ITAP, with the RCEWA represented on the Panel, and the possibility of a future review of this arrangement. The RCEWA suggested that it should have a formal link with Customs & Excise.

It was seen as a major weakness that a high proportion of the works of art initially stopped by the RCEWA were eventually exported, particularly items of high value, and that there should be better means for the funding for these objects. In this context, it was noted that the RCEWA's role in recommending Special Exchequer grants appeared to have lapsed since 1980. More detailed comments on funding are set out in 5.6.2.

The majority of respondents thought that the RCEWA was the appropriate body to perform its functions. As an independent advisory NDPB, it was viewed as operating

fairly and impartially, and as representing good value for money, compared with an executive body. It was seen as reasonable for DCMS to sponsor the RCEWA because it administered the export licensing system for cultural goods, and sponsored the national museums, galleries and libraries, thus providing an appropriate context for the RCEWA's functions. This arrangement also enabled the RCEWA to derive strength from internal communications within DCMS and cross-departmental links which the CPU was able to maintain. However, it was queried whether the RCEWA's independence was sufficiently apparent in the arrangements for publication of its annual report, and the use of DCMS headed paper.

In general, the composition of the RCEWA was seen as satisfactory, with some proposals as to how membership might be augmented to reflect the range of objects brought before it. There was a request that the process of appointments to the RCEWA should be clarified to demonstrate that it fairly took into account devolved government and its interests, even though the export controls are a reserved (i.e. not a devolved) matter. One respondent thought that the Society of Archivists should be represented on the Manuscripts, Documents and Archives Working Party.

The majority of Associations and individuals representing the major art trade organisations broadly supported the present arrangements. However, two legal representatives of the auctioneers thought that the composition of the RCEWA required a radical overhaul to meet the rights and duties guaranteed under contemporary law, and examination of the current arrangements for government sponsorship. They proposed that the RCEWA should be subsumed with the Tribunals Service recommended in Sir Andrew Leggatt's report *Tribunals for Users: One System, One Service* (March 2001, HMSO). In the interim, its activities might be brought in line with Sir Andrew's recommendations by ending its dependence on DCMS (possibly by transferring its function to Resource, the Council for Museums, Archives and Libraries); by ensuring that future chairs of the RCEWA were legally qualified and by restricting sitting members to three (Chair, curator and trade representative).

5.2 The Export Control and Expert Advisers

The importance of provenance and supporting documentation/images being attached to export licence applications was stressed by many expert advisers. It was suggested that ELU should check more rigorously to ensure that this information was always provided by applicants before papers were referred to expert advisers, to avoid delays in processing and unnecessary referral to expert advisers and, on occasion, the RCEWA. Some thought that provenance, including whether the item had been in the UK for 50 years, should be mandatory and included on the application form.

The importance of measures to counteract illicit trade were highlighted and the need for accurate provenance information to monitor the movement of cultural property. There was concern both at abuse of the system in relation to archaeological remains and items which are important to the European archaeological heritage, and that expert advisers should track applications to export an accumulation of apparently insignificant objects from important sites. It was suggested that the RCEWA might have an investigative role in relation to material illegally excavated from British soil.

Some respondents thought that cultural significance was not always directly related to market value, which might result in potentially important objects being exported; others that the thresholds above which licences are required and items are referred to expert advisers should be raised. There was some concern about the protection of cultural

property which was less than 50 years old, such as documents, aircraft and aviation related items. One respondent took issue with the current policy of *normally* granting an export licence for any object which had been imported into the UK within the last 50 years. This was seen to conflict with the original recommendation of the Waverley Committee that such objects ‘should be exportable as of right’.

There was some concern regarding the system for controlling temporary exports, including items of potential national importance, and the monitoring of condition in this context. It was proposed that there should be a clear distinction between licences for temporary export (12 months) and those for longer periods (to be defined) and that points should be taken into consideration when granting temporary licences such as the purpose of loan, status of borrower and what guarantees there were to ensure that the loaned item would be appropriately cared for and safely returned at the end of the agreed period.

There was also concern at how the control was monitored and that it should be seen to be effective with regard to unlawful exports. There was a suggestion that audits could be undertaken according to prioritised subjects to establish the effectiveness of the control and that a review be undertaken of mechanisms which could be activated when knowledge of unlawful export was suspected, and evaluation of their effectiveness in the return of material and as future deterrent.

In general, expert advisers appreciated their role and were pleased to perform it, though some would like further guidance on aspects of their role and to know who the other expert advisers are. (They are listed in **Appendix D** of this report.) Some commented that the role represented a considerable workload, in evaluating licences, researching and preparing cases for items referred to the RCEWA and championing deferred objects in the context of difficulties of fund raising. There was one suggestion that this work should be paid for, another that costs should be identifiable.

Whilst arrangements for onward consultation were generally effective, there was a view that advice could be sought initially from a broader band of expert advisers, which would speed up processing, and that the interests of institutions in Scotland, Wales and Northern Ireland should not be overlooked. It was recommended that a list of advisers to be contacted in such circumstances should be set up. Some thought that DCMS should be more proactive in identifying the people with the relevant expertise and in explaining the export control system and the work of the RCEWA to them, and that there should be a means of checking the consistency with which the Waverley criteria were applied by expert advisers.

5.3 The Waverley Criteria

There was general support for the criteria being appropriate and sufficient, with strong and fairly evenly divided opinions for and against the possibility that they might be revised or supplemented to cover collections. It was also proposed that archives of various components (including ephemera) and archaeological assemblages should be included. There were some perceptions that the criteria were biased towards fine art, and should specifically be seen to encompass the wider range of cultural property which the RCEWA considered and to relate to a wider community, both in terms of the origin of objects and their potential importance for study.

There were some suggestions that the criteria would benefit from greater clarification, including the ‘weight’ of each criterion (particularly with reference to the third criterion)

and the distinctions between them. The interpretation of the first criterion with reference to regional and local importance was supported, and it was suggested that historical association with a particular setting and origin within a historically significant collection should be covered. There was also concern about the protection of items of interest to the European archaeological heritage.

The definition and protection of collections is a long-running policy issue. Several respondents to the consultation raised this topic, some to call for a new Waverley criterion to cover collections, others to say that it was not workable to attempt this. From the mainly curatorial point of view, a collection was seen to be greater than the sum of its parts, so that, whilst individual items might not meet the Waverley criteria, a collection as a whole should, if a definition could be found, be referable to the RCEWA against them. On the other hand, and in the opinion of several trade representatives, such a definition was seen as problematic. Since there was no mechanism to prevent the dispersal of collections within the UK, it was seen as unfair to attempt to do this at the point of export, when there might also be multiple ownership of items after an auction.

5.4 Conduct of RCEWA Hearings

In general, the proceedings were thought to be fair to all and conducted in a helpfully informal atmosphere, though two respondents questioned whether confidentiality needed to extend to all of the proceedings. Two legal representatives of the auctioneers proposed some significant changes to the composition of the RCEWA, which would affect the conduct of hearings (see 5.1). Under these arrangements, they also suggested that independent assessors might assist but should no longer have a vote and that departmental assessors should no longer attend hearings. Another stakeholder questioned the voting rights of independent assessors and whether the number of assessors at each hearing was sufficient. More than one stakeholder suggested that a representative of Customs & Excise should occasionally attend the Panel hearings and be able to ask questions of the applicant.

On the subject of potential conflicts of interest, most stakeholders perceived that the potential for conflict of interest was greater in relation to members of the RCEWA and independent assessors than for expert advisers. It was generally accepted that any conflict of interest should be declared, recorded and a decision taken in discussion with the Secretariat as to whether the person concerned should withdraw. The principles established by the Nolan Committee were mentioned as an appropriate model. It was suggested that, in the case of RCEWA members, a publicly available register of interests should be held by DCMS. There should be rigorous criteria for the appointment of independent assessors, who should sign declarations before cases. There was recognition that there was the potential for a conflict of interest if an expert adviser was asked to consider an application to export an item which their institution had an active interest in acquiring. In two cases, the potential for conflict of interest was seen as extending to a connection between an expert adviser and their institution and a member of the Committee or assessor.

It was suggested that it would be useful to have a conservation report on objects before hearings and independent analysis of restoration and cleaning, because the time to examine condition was limited at the meeting itself.

5.5 Valuation and Deferral Period

There was serious concern that the system could be exploited by putting forward an artificially high price which implied that a sale had taken place. This put deferred items out of the reach of potential purchasers and distorted the market. It was generally accepted, therefore, that the RCEWA should be able to see accurate and comprehensive documentation about sales in order to determine a recommended value and that a legal basis for valuation through a statutory declaration, though more bureaucratic, was worth considering to enable this problem to be tackled. One trade representative saw this proposal as impracticable, however. Another respondent suggested strengthening the investigative powers of Customs & Excise to examine sale documentation.

It was suggested that applicants should be made aware that a matching offer might include a (lower) private treaty offer to a UK institution by a UK vendor in certain circumstances, depending on their tax position. There was some concern that certain US institutions were conducting sales in a way which denied such tax remissions to UK institutions. This might be dealt with by requiring that the sale be conditional upon obtaining an export licence. It was also proposed that the RCEWA should have the power to obtain details of agreements about deferred payment terms. One legal representative of the auctioneers suggested reinstatement of the legal provision which, prior to 1958, permitted private treaty sale treatment and thus awarding the *douceur* in circumstances where a public institution was the successful bidder at auction.

Regarding the possibility that title might pass during a deferral period, there was a suggestion that, where title remained with the unpaid seller, an application should be made on behalf of the vendor requesting a licence to export to the purchaser, with the obligation on the part of the applicant to notify DCMS immediately title passed to the purchaser, whereupon the application would transfer automatically to the purchaser. Until then, the RCEWA should be prepared to hear representations from either side, despite the fact that the purchaser would have no property in the item. A different suggestion was that the applicant should be the purchaser and that it should not make any difference if title had not passed. If those representing the applicant also represented the vendor, the representatives should resolve any conflicts of interest which might arise.

It was suggested that DCMS guidance should make clear the VAT implications for purchasers of items placed under deferral, both on goods and on services (such as VAT on dealers' commissions). It was noted that the VAT system put UK buyers at disadvantage compared to non-EU buyers.

The omission of interest from the recommended price and the potential financial risk to purchasers was mentioned by some respondents. One trade association had previously suggested that, where an export licence was eventually refused, the overseas purchaser should be compensated for loss of interest (if actually suffered), based upon the sale price. Two other representatives of the art market suggested that, if a stop was deferred more than once and where a licence was not issued, following a UK institution buying an item before the expiry of the extended stop, the fair market price should be enhanced by interest at commercial rate from the date of the second deferral period.

Where estimated prices were put forward, it was suggested that there should be a closer definition of 'recent prices' for comparative purposes, given that the market could be volatile. One respondent thought that enquiries into valuation were less justified in the case of figures put forward by the trade for sale purposes, than in the case of estimates

put forward by owners who wished to move their property to another country. Where there was negotiation between a vendor's agent and the expert adviser regarding an estimated value, it was suggested that guidance should be clearer on how to reach agreement on a fair market price, for example, through arbitration.

Two legal representatives of the auctioneers proposed establishing a panel of experienced valuers drawn from the trade, selected independently from the RCEWA. If the applicant or expert adviser did not accept them, a valuer would be nominated independently. Instructions to valuers would be submitted in draft by the RCEWA for comment and all dealings between the RCEWA and valuers would be transparent. One respondent suggested that opinions on valuation should be sought from disinterested specialists, rather than from the art market.

There was a concern that a split deferral period altered the balance of interests against the applicant. Another view was that the length of deferral should reflect the time needed for fund-raising and that the second period should be at least 4 months.

5.6 Purchase of Deferred Objects

5.6.1 *Championing*

Responses showed that some expert advisers had questions about the championing role which required further guidance, for example, what to do when their own institution wished to acquire the item in question and whether to be proactive in contacting private collectors. One respondent wondered whether all champions were equally committed and effective in raising funds and whether training was needed. It was also suggested that directors of institutions might receive training in fundraising, possibly with assistance from the art market. One expert adviser thought the championing role outdated, problematic and time-consuming, another that the activity promoted a sale at the price nominated by the vendor. One trade representative thought that the system should not be a part of the workings of the RCEWA and should be pursued independently, nor was it appropriate that champions should draw Waverley items to the attention of individuals. Others considered it important that champions should continue to draw the attention of private individuals to Waverley items.

5.6.2 *Funding*

There was widespread concern that such a small proportion of Waverley items (particularly in terms of value) are retained in this country. This was seen as undermining the valuable work of the RCEWA and as creating a demoralising context for expert advisers/champions to work in. Some thought that there should be guaranteed provision of public funding for the acquisition of items of 'Waverley' status, particularly those which had been given 'starred' recommendations, and it was suggested that the 'starring' mechanism might be formalised. A number of suggestions to improve funding were made by the full range of stakeholders, a common theme being the need for a strategic approach to the retention of deferred items.

Suggestions we received from respondents to the consultation included:

- The RCEWA should have its own allocation from government, or should be able to recommend the use of dedicated government funding (such as the Special Exchequer grant, or a 'fighting fund') to acquire items threatened by export, or to fund a proportion of their cost;

- The NHMF grant in aid should be increased to former levels and that the NHMF and HLF should be directed to give preferential treatment to funding the purchase of deferred items. Their application procedures could also be simplified. Some respondents proposed closer involvement between grant-making bodies and the RCEWA, to prevent duplication of effort and to provide a more structured approach to fund raising;
- National museums, galleries and libraries should receive more government funding for acquisitions;
- Gift Aid should be extended to encompass gifts in kind and companies should have tax incentives to purchase deferred items and then give them to a national museum or gallery. A taxation incentive could also be extended to members of the public making contributions to fund raising campaigns for deferred items;
- The rate of *douceur* applied in case of private treaty sales where inheritance tax is applicable should always be 50% rather than 25% and commissions payable should be allowed in the calculation of the special price.
- The VAT exemption should be extended to university museums;
- A by-invitation only group of knowledgeable and interested people should be created who would meet and be encouraged to help UK institutions to buy items for the nation.

5.6.3 Private Offers

There was strong opposition from six stakeholders, mainly art market representatives, to the system of private offers. The 'Ridley Rules' were seen as being against the purpose of the control as set out by the Waverley Committee and as promoting speculation. At the very least, the arrangements should be reviewed (uncertainty about the system of undertakings was seen as a unsatisfactory) and ideally, abolished. Ten respondents thought the arrangements appropriate or acceptable, in enabling the retention in the UK of cultural assets, with the possibility that there would be a future chance for a public institution to acquire them. Of these, however, most thought that the arrangements for public access to privately acquired items should be reconsidered and defined more clearly. If the 'Ridley Rules' were retained, it was suggested that the expert adviser as 'champion' should not draw deferred items to the attention of individuals. Others thought it was important that champions should continue to draw the attention of private individuals to Waverley items.

5.7 Refusal of Offers and Withdrawal of Applications

There was strong concern that when applicants refused a purchase offer from a public institution or withdrew an application after an offer had been made, the institution was put to a considerable amount of effort and cost to no avail. There was recognition that owners could not be compelled to sell items, but it was proposed that a disincentive be found to this course of action to avoid institutional purchasers wasting resources. The possibility of introducing an 'option to purchase' agreement between an owner and an institution was proposed. However representatives of the art trade were generally concerned at the effect of such a commitment on owners' property rights.

5.8 Consultation and Communication

There was broad support for consultation arrangements via the Advisory Council on the Export of Works of Art, with some suggestions as to how membership might be reviewed and more clearly defined, for example to ensure that representation adequately reflected UK-wide institutional concerns, archaeological interests and the trade. Some respondents thought that the size of the Council and the infrequency/length of its meetings hampered consideration of relevant policy issues and timely execution of action points. It was proposed that smaller strategic groups drawn from the Council could take forward policy matters more effectively. It was suggested that Council minutes and annual reports might be produced more quickly, and that DCMS should publish a response to the RCEWA's annual report. However, it was recognised that the annual report provided a useful record of the Committee's work and that it would be helpful to record how widely it was distributed.

Apart from the Advisory Council, some trade representatives and expert advisers expressed a wish to have contact with DCMS to discuss aspects of the export control. The importance of effective liaison between the RCEWA, its Secretariat and UK cultural institutions was shown in the progress of a case from referral to the Committee, to deferral with an accurate press announcement, to publication in the annual report. Some expert advisers and their colleagues in regional institutions said that they would appreciate more directly available guidance and information about deferred items and that better links might be forged between the press offices in DCMS and acquiring institutions. Ways should also be found to promote better public understanding of the work of the RCEWA.

Some, including the RCEWA, advocated greater co-operation with the major funding bodies (NHMF/HLF, NACF) to promote a more strategic approach to saving items of national importance. Good communication with the Acceptance in Lieu Panel was also thought valuable.

5.9 Efficiency and Effectiveness

It was suggested that ELU staffing levels should be reviewed to address delays in processing export licence applications. Expert advisers wished to continue to receive hard copy of key, supporting documentation for licence applications but also supported the introduction of electronic delivery of applications and related documentation and digital delivery of images of works of art.

In general, the RCEWA was seen to operate in a well-organised way and the costs of staffing for the Secretariat were seen as representing good value for money, though additional resources would enable more policy and strategic work to be undertaken. Effectiveness was seen to be compromised by the success rate of retention of items in the UK, which was outside of the Committee's control. There was one suggestion that there was currently no accounting of the time devoted to by the expert advisers and that a way of recording this in future would provide a more accurate picture of the true cost of the service.

Some RCEWA members thought that better e-mail links were desirable for speed of communication, but only for short messages. Video-conferencing or the electronic distribution of papers without hard copy was not thought appropriate. It was noted that statement texts provided by the advisers for the RCEWA were now mainly sent in both hard copy and e-mail which eliminated errors in the production of press releases

and copy for the Annual Report compiled by the Secretariat. It was suggested that there should be wider electronic distribution of press releases and that improvements could be made to the DCMS web-site so that the work of the RCEWA could be readily accessed. It was also suggested that e-mail links would improve communications for the Advisory Council.

One stakeholder thought that DCMS should maintain a database for the use of the RCEWA, expert advisers and collecting institutions on the number and value of export stopped items set against the value of such items of exported each year. Such a database would also include details of difficult cases considered by the Committee and could record instances of withdrawals of applications.

Section 6: Conclusions and Recommendations

6.1 The need for a RCEWA and the extent to which it contributes to the delivery of Government and, within that, departmental objectives

6.1.1 We conclude that the functions of the RCEWA within an export control system which is perceived as being fair in balancing the interests of those concerned, fulfils Government and departmental objectives regarding the protection of objects of national importance.

6.1.2 We recommend that the RCEWA should retain its current main title, with the addition of the phrase 'and objects of cultural interest'.

6.2 Whether any amendments are needed to the RCEWA's terms of reference to enable it more effectively to play its part in delivering Government and, within that, departmental objectives

6.2.1 We recommend removal of term of reference iv), 'to supervise the operation of the export control system generally', which is an executive function belonging within DCMS, and revision of item i) to include the role of *advising* upon the operation of the export control system.

Incorporating the recommendations made in 6.1.2 and 6.2.1, the RCEWA's terms of reference would therefore become:

- to advise on the principles which should govern the control of export of works of art and antiques [to become 'export of objects of cultural interest'] under the Import, Export and Customs Powers (Defence) Act 1939 [to become 'under the Export Control Act 2002'] and on the operation of the export control system generally;
- to advise the Secretary of State on all the cases where refusal of an export licence for a work of art or antique [to become 'an object of cultural interest'] is suggested on grounds of national importance;
- To advise in cases where a special Exchequer grant is needed towards the purchase of an object that would otherwise be exported.

In the Spring 2003 Budget, the Chancellor of the Exchequer announced a review of the options available for improving support to museums to enable them to acquire and make works of art and culture accessible to all. We welcome this review (the Goodison Review of Saving Art for the Nation), and recommend that any change to the third term of reference concerning special Exchequer grants should be made in the light of its conclusions.

6.3 The recommendations of the report of the Ministerial Advisory Panel on Illicit Trade (2000)

6.3.1 We endorse the Illicit Trade Advisory Panel (ITAP) as being the appropriate forum to devise means for monitoring and advising on the operation of the export control in relation to illicit trade in cultural objects, and the continuing representation of the RCEWA on ITAP to promote communication.

6.4 The RCEWA's geographical coverage

6.4.1 Export controls are a reserved matter and the UK and EC export licensing regimes therefore cover exports from England, Scotland, Wales and Northern Ireland. We are satisfied with the arrangements by which expert advisers to the DCMS are asked, when considering a licence application, to bear in mind that colleagues in other UK institutions may wish to make a case against a particular export and to ensure that any such consultations are undertaken before giving advice on whether to allow export. However, we make a recommendation on the effectiveness of communication with expert advisers below (6.6).

6.4.2 We are satisfied that the membership of the RCEWA and engagement of independent assessors represent UK-wide interests in items of cultural significance.

6.5 Whether the RCEWA should be a standing body or whether there are other options for delivery, and whether any structural changes are needed to enable the RCEWA more effectively to play its part in delivering Government and, within that, departmental objectives

6.5.1 We have examined the proposal made by legal representatives of the art trade that the RCEWA be subsumed into the Tribunals Service recommended by Sir Andrew Leggatt. We understand that tribunals are generally statutory bodies, usually set up in the context of a wider legal framework establishing citizens' rights and obligations and that most modern tribunals exist to provide an appeal system against administrative acts or decisions. Although their functions are essentially judicial, they are separate from the formal court system. If a body does not have a statutory base, or only 'recommends' rather than 'decides' then it is unlikely to be a tribunal NDPB, although it may be an advisory NDPB. The RCEWA is described as an advisory NDPB.

The key distinguishing characteristic of a tribunal is that it is concerned with the resolution of disputes (*Tribunals for Users One System, One Service* March 2001 para 1.9 -"Leggatt"). Leggatt (www.tribunals-review.org.uk/leggatthtm/leg-00.htm) drew up in its consultation paper a comprehensive list both of tribunals and of other bodies that might be affected by the review, in which the RCEWA is not mentioned. The eventual scope of the report is much more circumscribed than these lists. In the light of this, we conclude that it is not possible to sustain the argument that the RCEWA is in any sense a tribunal and do not regard it as appropriate for the RCEWA to be brought under the new Tribunals Service.

We recommend that the RCEWA's status should remain that of an advisory NDPB, sponsored by DCMS, as opposed to its transfer to an NDPB such as Resource, the Council for Museums, Archives and Libraries.

6.5.2 We recommend no alteration to the composition of the RCEWA.

6.5.3 We recommend that the Chairman of the RCEWA should be independent from both the art market and the museum/gallery world. Whilst a legal background would be an advantage for this post, we do not regard it as a requirement.

6.5.4 We are satisfied that the membership of the Manuscripts, Documents and Archives Working Party is representative of the concerns it addresses.

6.5.5 We consider it of importance that the RCEWA should both retain and be seen to

retain its independence of the DCMS. We recommend that all appropriate steps be taken to further this end including the RCEWA having its own notepaper. With regard to the report by the RCEWA, we understand that under the Export Control Act 2002, the Government will be required to present to Parliament an annual report on the operation of any Order relating to objects of cultural interest. The Department has undertaken a consultation on a draft Order to be made under the Export Control Act 2002, which seeks views as to whether the RCEWA's report should continue to be published as a separate document, or whether it should be included in an annual report from the Secretary of State under the Export Control Act 2002. We consider there is considerable value in the RCEWA making its own independent report to the Secretary of State and we accordingly prefer that they should do so.

6.6 Links that exist, or should exist between the RCEWA and other organisations, and opportunities for partnership working

6.6.1 There appears to be a need for an 'outer circle' of expert advisers to DCMS to be better informed about the export control system and their potential role within it. We therefore recommend that copies of the DCMS guidance to expert advisers should be made available to those in other institutions whom the expert advisers need to consult. The guidance should be clear, succinct and kept up to date.

6.6.2 We have concluded that improved communications with expert advisers would promote better understanding of the system. We recommend that DCMS should experiment with an annual seminar, to which expert advisers and members of the RCEWA would be invited. This would allow expert advisers to:

- clarify understanding of procedures and share best practice;
- advise DCMS on aspects of process which needed to improve;
- encourage onward consultation by expert advisers, who can identify for DCMS colleagues who are frequently consulted by expert advisers so that they can receive relevant guidance;
- address the role of 'championing';
- ensure consistency in the interpretation and application of the Waverley criteria and check for consistency.

6.6.3 We accept that the Advisory Council on the Export of Works of Art provides a satisfactory forum for discussion but recommend that the RCEWA should undertake a review to update its membership.

We understand that Customs & Excise see their role as an independent enforcement authority, and that they should not have an advisory role in the granting or otherwise of individual licences, which might be implied by their attendance at RCEWA hearings.

6.6.4 We recommend that in making a submission to the RCEWA, expert advisers should take account of, and comment upon, conservation.

6.7 The extent to which guidance and codes of practice are followed in respect of RCEWA appointments and members' conduct

6.7.1 We are content that guidance issued by the Office of the Commissioner for Public Appointments (OCPA) and the Guidance on Codes of Practice for Board Members of Public Bodies issued by the Cabinet Office are followed satisfactorily.

6.7.2 We observe that there is a potential for conflict of interest, although we consider it to be more of a problem with members of the RCEWA and independent assessors than for expert advisers. We note that the DCMS draws the issue to the attention of members and independent assessors and asks that any possible conflict of interest is disclosed by them. We also note that, in cases where an expert adviser's institution is pursuing the purchase of an item referred to him or her, the Secretariat re-allocates the case to another adviser. We have concluded, therefore, that the risk of a conflict of interest is kept to a minimum.

6.8 Whether the RCEWA operates in an open and transparent fashion in accordance with the Code of Practice on Access to Government Information

6.8.1 In that the RCEWA is an advisory NDPB, the Parliamentary Ombudsman has no jurisdiction over its members and cannot review its advice. However, we are satisfied that requests for information are dealt with according to the Code of Practice on Access to Government Information by the staff of DCMS who carry out administrative functions in support of the RCEWA, subject to the appropriate exemptions, including that of commercial confidentiality, which is applicable to the information contained on licence applications.

6.8.2 We recommend that those expressing interest in a deferred object might apply to the RCEWA Secretariat for information additional to that published in the Department's press notice and that, where the RCEWA does not find that an object meets any of the Waverley criteria, DCMS considers making an announcement. In both cases, however, the consent of all parties involved with the application would be obtained, given the commercial confidentiality of the licence application.

6.9 The extent to which the RCEWA provides value for money, the scope for increased efficiency gains and the effectiveness of arrangements for administrative support

6.9.1 The opinions expressed by expert advisers and representatives of the art trade, coupled with the increasing volumes of casework lead us to recommend that DCMS management assess the complement and use of resources in ELU. Training and development of staff should address the need for a deeper appreciation of the subject matter to which export licence applications relate.

6.9.2 We have concluded that the RCEWA provides value for money and that arrangements for administrative support are effective. In doing so, we note that expert advisers, members of the RCEWA and independent assessors receive no remuneration for their contributions. We endorse the arrangement that the RCEWA should continue to meet on a monthly basis, with an August recess if possible.

6.10 Whether the RCEWA could make better use of new technology

6.10.1 We understand that management information/statistics derived from hard copy licence applications can now be obtained using the STELA database in ELU. We endorse the investigation of the development of electronic licensing provision by CPU. In providing this opportunity, it would be necessary to enable smaller businesses which did not have the electronic capacity to be able to obtain licences via manual processing. However, the business advantage of e-processing should be encouraged, in line with the Government's business strategy.

6.10.2 Given the variety of objects appearing before the RCEWA, we believe that it would be excessively bureaucratic for DCMS to attempt to maintain a database of experts for onward consultation and that keeping such a database up to date would be difficult. However, we recommend that greater use should be made of e-mail for delivery of material to expert advisers and one e-mail list could be used by both the RCEWA Secretariat and ELU. We understand that a contact address list has been set up which enables the Secretariat to send an e-mail to all members of the RCEWA and that the RCEWA now has its own e-mail address, rcewa@culture.gsi.gov.uk.

6.10.3 We recommend that arrangements for generating publicity and interest among UK collecting institutions, in relation to export-stopped items, should be reviewed. We understand that there is some overlap between press contact lists and that it would be appropriate for DCMS to evaluate whether a bespoke, targeted list for a single mailing would be better, and whether e-mail can be used more extensively. We understand that the DCMS web-site is currently being re-designed, and will improve access to press notices, guidance and annual reports.

6.10.4 We consider that a database of past export-stopped cases is desirable. However, we understand that, as part of the review, the following information has been collected and we recommend that it should be maintained in future: items placed under indefinite stop; cultural goods for which export licences have been refused since 1987; applications withdrawn after an offer had been made; applications withdrawn after interest had been expressed.

6.11 Whether it is appropriate for changes to be made to the system and procedures for controlling the export of cultural goods

6.11.1 OGEL Limits

DCMS consulted the Advisory Council about the OGEL limits in 2002, and higher financial thresholds were introduced on 1 November 2002. As part of the consultation, expert advisers were asked to provide any evidence of 'potentially Waverley' items which they believed would not be caught by the proposed higher thresholds. Art market representatives have for some years expressed concern about a lack of a raise in the thresholds under the Regulation, which has the effect of decreasing the thresholds. The UK continues to press at EC level, but the Commission continues fail to bring forward proposals to adjust the thresholds in line with inflation on the grounds that there is not a majority of support for this among Member States. We support UK representation for there to be a review of licensing thresholds under EC Regulation (EEC) No 3911/1992.

6.11.2 The Waverley Criteria

We recommend some clarifications to the rubric accompanying the Waverley criteria (**Appendix F**), including the association of an object with an important collection, as mentioned below in 6.11.5, and the provision of more up-to-date examples under each criterion.

6.11.3 Fossils

We understand that much work has been done to try and reach a definition of fossils which is acceptable to both legal and scientific experts. Some members of the Review Panel thought that the distinction between man-made and natural items should be preserved, with DEFRA having responsibility for flora/fauna/fossils/minerals etc.

However, we recommend that individual fossils of material value be brought within the UK export control, and therefore within the remit of the Waverley system. We would propose as a means of doing this a definition of a fossil which combines wordings used in an Australian Statutory Instrument, the Protection of Moveable Cultural Heritage Regulations 1987 and the Canadian Cultural Property Export Control, as follows: *a vertebrate or invertebrate fossil or plant fossil or trace fossil, being a specimen of interest for scientific, educational or study purposes and of fair market value in the UK of more than (£).*'

This form of words would of course be subject to consultation before implementation, including the choice of an appropriate value threshold. We understand that the EU regulations are applicable only to collections of fossils, however Article 30 (ex 36) of the Treaty of Rome provides that Member States may have '...prohibitions or restrictions on...exports...justified on the grounds of ...the protection of national treasures possessing artistic, historic or archaeological value...', which would be applicable to individual fossils.

6.11.4 Definition of an Archive

The Working Party on Manuscripts, Documents and Archives has proposed for inclusion in the OGEL an up-to-date professional definition of an archive (which would not be confined to manuscript material) as 'documents in any medium, created and/or accumulated by an individual, family, corporate body or institution, which have survived or been preserved as evidence of their purpose and activities'. The RCEWA has agreed this definition and a consultation is being undertaken regarding its adoption in the OGEL. We recommend support for this policy change and attach considerable importance to it.

6.11.5 Collections

In examining the long-standing issue of the prevention of the export of certain collections abroad, we recognise that owners are free to deal as they wish with a collection in the UK and can therefore dismantle it before the point of export. If any serious attempt were to be made to prevent the dismantling of such collections, action would have to be taken while it were in the UK (e.g. through the use of the AIL provisions or conditional exemption or tax incentives) rather than by attempting to deal with it through using the export control mechanism.

An item, falling within the category that required an export licence and of a value above the threshold that would normally entail referral to an expert adviser, might be of importance to the heritage on account of its having been part of an important collection, whether or not it would otherwise qualify. We therefore recommend expanding the rubric to the third Waverley criterion, to note that an object 'might be considered of outstanding significance either on its own account or on account of its connection with a person, place, event, archive, collection or assemblage.'

We also recommend that an owner should be able to apply for a licence for a whole collection *if he wishes to export it as an entity*, whether or not all the items would otherwise qualify. At present, if an owner wishes to export a collection which has only a limited number of items within it which are referable to an expert adviser for assessment under the Waverley criteria, it is only those items as individual objects which the expert adviser can refer to the RCEWA. If some, or all of them, are deferred from export and acquired by institutions in the UK, this may have the result of breaking

up the collection, as there will be no obligation on an institution, acquiring one or more deferred objects, to acquire the rest of the collection.

If an owner could apply to export a whole collection, the RCEWA, having received the usual advice from experts, could then determine whether or not they were prepared to treat the whole 'collection' as a single unit. If they were, then, if it was deferred, an institution wishing to acquire would be required to acquire the whole as a unit and would not be free to select items out of it. Accordingly, the collection would normally either be acquired as a whole and retained in the country or a licence to export it as a whole would be granted. It would probably be necessary to provide that the RCEWA, when considering whether to accept it as a collection, should have the right to exclude items that were not considered appropriate to be in the 'collection'. Such a proposal would not require a formal definition of a 'collection', an issue which has given rise to much difficulty in the past, as it would be up to the owner to ask for the items to be treated as a collection and up to the RCEWA to decide whether in each case they were willing to accept the items as constituting a 'collection'.

6.11.6 Export Licence Applications

The UK export licence application form contains a reminder that, for articles that have not been imported within the last 50 years, applicants should quote all known provenance and published references with the full description in the section headed 'Goods to be Exported'. There is currently no similar provision on the EC licence application form, but there is an obligation on the Secretary of State, where an EU licence is sought, to check provenance in the sense of ensuring that an object was validly exported from another EU state. We note that changes may be made to the UK licence application form by DCMS, but alterations to the EC application form are a matter for discussion by member states.

Whilst recognising the pressures on the Export Licensing Unit, we recommend that adequate information about the history and provenance of a work should be provided when an application for an export licence is made and that the UK export licence application form should also include a reminder that it is an offence to give false statements for the purposes of applying for a licence. We support the UK's representations to the Commission that applications for EU licences should carry a reminder concerning provenance.

We support the use of a checklist by ELU, which can be used to ensure that basic supporting documentation is always provided by applicants for export licences before papers are referred to expert advisers. These measures will follow through to the stage when an object might appear before the Reviewing Committee, when we recommend that it should be made clear to applicants that they may be required to make a formal declaration that they have provided all such relevant information known to them.

Responses to the consultation demonstrated some misunderstandings of the control, which can be corrected here. ELU do not normally refer to expert advisers applications to export items which have been in the country for less than 50 years. Temporary applications are referred and it is open to an adviser to object to the temporary export of a potentially Waverley item, if the export might jeopardise its condition in any way. There is also a system for tracking the return of items granted temporary licences.

We support retention of the current system of one expert adviser per discipline, with enhanced communication to identify specialists who are onward consulted by expert

advisers and provide support for them by provision of guidance, using electronic means where possible. We agree that expert advisers should continue to perform their duties as a part of their posts. There is an awareness that museums and galleries may now take greater account of the internal cost of such advisory services, and that lack of funding for the purchase of deferred items can be discouraging for expert advisers. Time taken for the scrutiny of licence applications may vary depending upon the level of expertise of the expert adviser, however, preparation of statements for the RCEWA requires research, sometimes original, which takes time.

6.11.7 Valuation and Deferral Period

The RCEWA needs to have satisfactory proof of value in determining fair market price. In the case of auction sales, this can be done by the presentation of invoices. However, more information may be needed in the case of contractual agreements, both in terms of the value put forward, and the nature of the agreement. We recommend that in future, when the RCEWA is not satisfied that there is adequate evidence to support a price proposed by the applicant, evidence in the form of a private contract will only be accepted where the RCEWA can be satisfied a) that such contract price represents the price agreed between parties at arms' length and b) that such contract contains all the terms agreed. This might be provided by an affidavit sworn by a professional adviser but if that or other evidence satisfactory to the RCEWA is not available, then the terms (including price) of such a contract will not be taken into account in reaching a fair price. In such a case, the RCEWA could offer the applicant the option of a third party determination of the value as set out below. If the applicant were not agreeable to following this route, then the RCEWA would be entitled to recommend refusal to the Secretary of State.

We recommend that the process for third party determination of value should be more clearly set out in the Department's guidance, using the following model:

- The applicant should propose a valuation and, as now, would be asked at the meeting to clarify the basis for it;
- The RCEWA would ask the views of the expert adviser as well as RCEWA members and independent assessors and, if these were satisfactory to the RCEWA, it would agree the valuation;
- If the RCEWA remained unsatisfied with the applicant's proposed valuation after hearing the expert adviser's views, it would ask for the evidence relied on by the applicant to justify the applicant's valuation. If the evidence was not properly supported, the RCEWA would ignore it;
- If the RCEWA remained dissatisfied, the applicant and the expert adviser would each propose a valuer acceptable to each other and to the RCEWA and the two valuers so chosen would seek to agree a value;
- Should the two valuers be unable to agree, the RCEWA would appoint a third valuer to hear the arguments of the other two and give his determination on value;
- The RCEWA, having received the value as so determined, would then make its recommendation to the Minister.

6.11.8 Championing Deferred Items

We endorse the current arrangements for championing deferred items, including seeking the interest of private purchasers where appropriate.

6.11.9 Funding for the Purchase of Deferred Items

We have noted from the consultation exercise that, while it is generally accepted that the Waverley system is a fair one, stakeholders perceive a weakness in the implementation of the system caused by inadequate funding for the purchase of deferred items and have put forward various proposals about how this might be addressed. Whilst this Review's remit is to assess the effectiveness of the RCEWA's operation in the context of the export control, we recognise that there is a relationship between its activities and those of funding and acquiring bodies. We will therefore put forward our views to Ministers on the proposals made by stakeholders as a separate exercise. This would appear timely given the welcome announcement by the Chancellor of the Exchequer in the Spring 2003 Budget of a review of the options available for improving support to museums to enable them to acquire and make works of art and culture accessible to all.

6.11.10 Private Offers (The Ridley Rules)

The division of opinion regarding the system for private offers for deferred objects which the consultation exercise revealed was to some extent reflected in our deliberations. On the one hand, some see the Ridley Rules as providing a valuable opportunity to retain Waverley items in this country, with the possibility of future purchase by a UK institution, and that steps should be taken to encourage their use. However, there is also the view that individuals should not be able to benefit from State control of export in this way.

In balancing these views, we have concluded that private offers should be accompanied by a sufficient and demonstrable public benefit. Whilst we regard the current conditions regarding public access, conservation and resale as reasonable, we do not consider the public benefit (whether access or otherwise) to be sufficient. In addition, it remains difficult to ascertain what conditions have in fact been imposed, nor is it certain how binding they are. We therefore recommend that the system for private offers should incorporate the following conditions:

- The conditions relating to such purchases should, in each case, be made known;
- How these conditions are to be enforced should now be agreed;
- Accessibility: this must be sufficient to strike a balance between the public interest and the interest of the purchaser. If the conditions were too demanding, the Rules would be used even less frequently;
- Adequate Security;
- Acceptable Conservation;
- An undertaking not to part with ownership within a period of time, say five years without obtaining the agreement from the acquirer for the benefit of the Secretary of State to continue the provisions as to access and other undertakings.

We also recommend that the distinction between a public and private offeror should be more clearly set out, and that the definition of a public institution should encompass:

- a) Those bodies included in Schedule 3 of the Inheritance Act 1984, as follows:

The National Gallery; The British Museum; The National Museums of Scotland; The National Museum of Wales; The Ulster Museum; any other similar national institution; any museum or art gallery in the UK which exists wholly or mainly for the purpose of preserving for the public benefit a collection of scientific, historic or artistic interest and

is maintained by a local authority or university in the UK; any library the main function of which is to serve the needs of teaching and research at a university in the UK; the Historic Buildings and Monuments Commission for England; the National Trust; the National Trust for Scotland; the National Art Collections Fund; the Trustees of the National Heritage Memorial Fund; the Friends of the National Libraries; the Historic Churches Preservation Trust; the Nature Conservancy Council; any local authority (including National Park Authorities); any Government department; any university or university college in the UK.

b) Any other body or person being approved for this purpose by the Minister.

6.11.11 Refusal of offers and withdrawal of applications

We have considered the situation where an applicant has initially said he would accept a matching offer but has subsequently changed his mind and either rejected such a matching offer when made, or has withdrawn the application, leaving the public institution which has either made the matching offer, or taken steps towards making it, both out of pocket and having wasted time and effort in a fruitless exercise. In the ten years to 2001, 227 items were deferred and offers made in respect of 116. Of these 116 offers made, 17 were refused or the application withdrawn.

We recommend that, at the end of the RCEWA hearing, the applicant should be asked if he would not be prepared to accept a matching offer in any circumstances. If the applicant makes it clear that he would not be prepared to accept a matching offer in any circumstances, then the RCEWA should recommend the refusal of a licence. If the applicant replies that he will consider a matching offer, then there should be a first period of deferral to allow any prospective purchaser to come forward. We recommend that, if at the end of the first deferral period, in the view of DCMS, an institutional or 'Ridley' purchaser has expressed a serious intention to purchase, the applicant should be asked whether he will accept the matching offer from that specific purchaser. If he will not accept such an offer, refusal of the licence should be recommended.

We considered a further proposal that, in outline, if a public institution came forward during the first deferral period with serious intent to make a matching offer, then the applicant would be asked to make a binding offer to sell to that institution and that such offer could not be withdrawn during the period of the second stop. Fuller details of the proposal are set out in **Appendix G**. The offer document would aim to be standard, simple and acceptable to applicants. If an item was found to be of Waverley status at the end of the hearing, the form of the offer document would be given to the applicant to enable him to consider it during the initial stop to be prepared to state whether or not he would enter into it should a public institution come forward. A suggested draft of the offer document is at **Appendix H**.

Whilst the majority of us thought that the proposed measure was both justified and required because of the expense and effort which even one case per year caused a public institution, concern was expressed at whether the incidence of refusals warranted the introduction of an additional measure. An account of issues raised in discussion of the proposal is at **Appendix I**. We recommend, therefore, that the proposal is a reasonable means of preventing the refusal of an offer during the second deferral period, when an applicant has already indicated to the RCEWA at its hearing that such an offer would be acceptable, and that it should be considered for introduction by Ministers.

DCMS OBJECTIVES

The Department's aim is:

1.1 'To improve the quality of life for all through cultural and sporting activities, and to strengthen the creative industries'

1.2 The Department will:

- work to bring quality and excellence in the fields of culture, media and sport;
- make these available to the many, not just the few;
- raise standards of cultural education and training;
- help to develop the jobs of the future in the creative industries.

1.3 To achieve its aim, the Department's objectives are, in partnership with others, to work to:

Sustain and develop quality, innovation and good design, create an efficient and competitive market, including by removing unnecessary regulation and other obstacles to growth so as to develop the tourism and creative industries; and promote Britain's success in the fields of culture, media and sport at home and abroad;

Broaden access for all to a rich and varied cultural and sporting life and to our distinctive built environment; and encourage conservation of the best of the past;

Develop the educational potential of all the nation's cultural and sporting resources; raise standards of cultural education and training; ensure an adequate skills supply for the creative industries and tourism;

Ensure that everyone has the opportunity to develop talent and to achieve excellence in the areas of culture, media and sport;

Maintain public support for the National Lottery and ensure that the money raised for good causes supports DCMS's and other national priorities; and

Promote the role of the Department's sectors in urban and rural regeneration, in pursuing sustainability and in combatting social exclusion.

SIR JOHN GUINNESS CB (CHAIRMAN)

He is a Trustee of the Royal Collection Trust and a Governor of Compton Verney. He was a member of the National Portrait Development Committee and has a deep interest in and knowledge of portraiture, particularly British historical portraits. He was also a member of the East Anglia Regional Committee of the National Trust from 1989 to 1994. He had previously been a member of HM Diplomatic Service and had worked in the Cabinet Office (inter alia involved in the setting up of the National Heritage Memorial Fund) and had been Permanent Secretary of the Department of Energy and Chairman of BNFL. **Appointed 1 December 1995: appointment expires on 30 November 2003.**

AMANDA ARROWSMITH

Trained as an archivist at the Bodleian Library. Ms Arrowsmith subsequently worked in archives for Northumberland, Berkshire and Suffolk County Councils before being appointed Director of Libraries and Heritage for Suffolk in 1990, a post from which she retired in March 2001. She has served as a member of the Lord Chancellor's Advisory Committee on Public Records and is a past president of the Society of Archivists. She currently serves on the Executive Committee of the Friends of National Libraries and on the Eastern Region Committee of the South East Museums Service. She is also Chair of the Heritage Lottery Fund Committee for the East of England. **Appointed 1 February 2002: appointment expires 31 January 2006**

DR DAVID EKSERDJIAN

Editor of Apollo magazine since 1997. The author *Correggio* (1997) and *Parmigianino* (forthcoming 2003), he is an expert on Italian renaissance paintings and drawings. Formerly a Fellow of Balliol College Oxford (1983-86) and Corpus Christi College, Oxford (1987-91) he worked in the Old Master Paintings and Master Drawings departments at Christies in London from 1991-1997, and, in addition, from 1992 was Head of European Sculpture and Works of Art Department there. He has organised and contributed to the catalogues of numerous exhibitions, including *Old Master Paintings from the Thyssen-Bornemisza Collection*, Royal Academy 1988) and *Andrea Mantegna* (Royal Academy, London and Metropolitan Museum of Art, New York, 1992). **Appointed 14 November 2002: appointment expires 13 November 2006**

IAN GOW

The Head of the Curators Department of the National Trust for Scotland. Formerly Curator of Architectural Collections at the National Monuments Record of Scotland. He is Honorary Curator and an Honorary Fellow of the Royal Incorporation of Architects in Scotland and is the Secretary of the Curatorial Committee of the National Trust for Scotland. He has published extensively on the decorative arts and architecture of Scotland. **Appointed 1 December 1994: appointment expires on 30 November 2003.**

DR CATHERINE JOHNS

Former curator of the Romano-British collections at the British Museum. She was trained in prehistoric and Roman Archaeology, and has published and lectured extensively, especially on Roman provincial art, jewellery and silver. Her publications include *Sex or Symbol: erotic images of Greece and Rome* (1982), *The jewellery of Roman Britain* (1996), museum catalogues of Roman treasure finds, and more than a hundred articles in scholarly journals. She has served on the committees of the Society of Antiquaries, the Roman Society, and the British Archaeological Association, and is

currently trustee of the Roman Research Trust and a former Chair of the Society of Jewellery Historians. **Appointed 19 February 2003; appointment expires on 18 February 2007**

TIM KNOX

Architectural Historian at the National Trust since March 1996 and formerly Assistant Curator and Research Assistant at the Royal Institute of British Architects Drawings Collection. He is Chairman and founder member of the Mausolea and Monuments Trust, a Trustee of Spitalfields Historic Buildings Preservation Trust and a member of the Society of Architectural Historians of Great Britain, the Ancient Monuments Society, the Georgian Group, the Victorian Society and the National Arts Collection Fund (The Art Fund). He regularly lectures at home and abroad on subjects such as sculpted wood and the care of outdoor sculpture and has published numerous articles on historic houses, National Trust acquisitions landscape gardens and natural history collections. **Appointed 14 March 2002; appointment expires 13 March 2006.**

MARTIN LEVY

Chairman of H Blairman & Sons. He was Chairman of the British Antique Dealer's Association 1993-94, Council member of the Furniture History Society 1994-96, and is a member of the Collections Committee for the Jewish Museum and a member of the Spoliation Advisory Panel. He has been published by various journals including *Furniture History*, *Apollo* and *Country Life*. **Appointed 1 March 1997; appointment expires on 28 February 2005.**

JOHNNY VAN HAEFTEN

Chairman and Managing Director of Johnny Van Haefte Ltd, the gallery specialising in 17th-century Dutch and Flemish Old Master pictures which he has run for twenty-five years after working at Christie's. Vice Chairman of the Society of London Art Dealers, member of the Board of the European Fine Art Foundation, former council member of BADA and former Chairman of Pictura, the pictures section of the European Fine Art Fair in Maastricht. **Appointed 28 June 2001; appointment expires on 27 June 2004.**

The Chairman of the Reviewing Committee is the Chairman of the Advisory Council and the membership is as follows:

- (i) the independent members of the Reviewing Committee *ex officio*;
- (ii) the departmental assessors on the Reviewing Committee (that is representatives of the Department for Culture, Media and Sport, Department of Trade and Industry, HM Treasury, Foreign and Commonwealth Office, HM Customs and Excise, Scottish Executive Education Department, National Assembly for Wales and Northern Ireland Department for Culture, Arts and Leisure);
- (iii) the Directors of the English and Scottish national collections, the National Museum of Wales and the Ulster Museum, and the Librarians of the National Libraries of Wales and Scotland;
- (iv) the expert advisers to the Department for Culture, Media and Sport, to whom applications for export licences are referred, other than those who are members by virtue of (iii) above;
- (v) eight representatives of non-grant-aided museums and galleries in England, Scotland, Wales and Northern Ireland, nominated by the Museums Association;
- (vi) representatives of: the Association of Independent Museums; the Arts Council of England; the Scottish Arts Council; the Arts Council of Wales; the Arts Council of Northern Ireland; the National Art Collections Fund; the National Trust; the National Trust for Scotland; the National Heritage Memorial Fund; the Heritage Lottery Fund; the Pilgrim Trust; the Resource\Victoria & Albert Museum Purchase Grant Fund; the Resource\Science Museum Fund for the Preservation of Scientific and Industrial Material (PRISM); the Public Record Office; the National Archives of Scotland; the Friends of the National Libraries; the Conference of Directors of the National Museums and Galleries.
- (vii) representatives of:
Royal Academy of Arts; Royal Scottish Academy; British Academy; Society of Antiquaries of London; Historic Houses Association; Royal Historical Society; Council for British Archaeology; Standing Conference of National and University Libraries; Resource: The Council for Museums Archives and Libraries; British Records Association; Scottish Records Association; Society of Archivists; Library Association; Canadian Cultural Property Export Review Board (*observer status*); Royal Commission on Historical Manuscripts
- (viii) representatives of the trade nominated by:
Antiquarian Booksellers' Association (*two*); Antiquities Dealers' Association (*two*); Association of Art and Antique Dealers (*two*); British Antique Dealers' Association (*three*); British Art Market Federation; British Numismatic Trade Association (*two*); Christie's; Fine Art Trade Guild; Society of London Art Dealers (*two*); Sotheby's

EXPERT ADVISERS TO DCMS

D

Category	Expert Adviser
Archaeological material	British Museum, Keeper of Medieval and Modern Europe
Arms and armour	Royal Armouries, HM Tower of London, Master of the Armouries
Books, maps etc	British Library, Keeper of Printed Books, Keeper of Printed Maps
Books (natural history)	Natural History Museum, Head of Library Services
Ceramics	Victoria & Albert Museum, Deputy Curator, Sculpture, Metalwork, Ceramics & Glass Division
Clocks and watches	British Museum, Keeper of Medieval and Modern Europe
Coins and medals	British Museum, Keeper of Coins and Medals
Drawings: architectural, engineering and scientific	Victoria & Albert Museum, Word & Image Department, Head of Designs Section
Drawings, prints, water-colours	British Museum, Keeper of Prints and Drawings
Egyptian antiquities	British Museum, Keeper of Ancient Egypt and Sudan
Ethnography	British Museum, Keeper of Ethnography
Furniture and woodwork	Victoria & Albert Museum, Chief Curator, Furniture, Textiles & Fashion Division
Greek and Roman antiquities	British Museum, Keeper of Greek and Roman Antiquities
Indian furniture	Victoria & Albert Museum, Chief Curator, Asian Division
Japanese antiquities	British Museum, Keeper of Japanese Antiquities
Manuscripts, documents and archives	British Library, Manuscripts Librarian
Maritime material, including paintings	National Maritime Museum
Medieval and later antiquities	British Museum, Keeper of Medieval and Modern Europe
Oriental antiquities (except Japanese)	British Museum, Keeper of Oriental Antiquities
Oriental furniture	Victoria & Albert Museum, Deputy Curator, Asian Division
Paintings, British, modern	Tate Britain, Senior Curator
Paintings, foreign	National Gallery, Director
Paintings, miniature	Victoria & Albert Museum, Word & Image Department, Head of Paintings Section
Paintings, portraits of British persons	National Portrait Gallery, Director
Photographs	National Museum of Photography, Film & Television, Head
Prehistoric and Romano-British antiquities	British Museum, Keeper of Prehistory and Early Europe
Scientific and mechanical	Science Museum, Director

material	
Sculpture	Victoria & Albert Museum, Chief Curator, Sculpture, Metalwork, Ceramics & Glass Division
Silver and weapons, Scottish	Royal Museum of Scotland
Silver, metalwork and jewellery	Victoria & Albert Museum, Deputy Curator, Sculpture, Metalwork, Ceramics & Glass Division
Tapestries, carpets (and textiles)	Victoria & Albert Museum, Deputy Curator, Furniture, Textiles & Fashion Division
Toys	Bethnal Green Museum of Childhood
Transport	Science Museum, Curator of Road Transport
Wallpaper	Victoria & Albert Museum, Word & Image Department, Head of Contemporary Section
Western Asiatic antiquities	British Museum, Keeper of the Ancient Near East
Zoology (stuffed specimens)	Natural History Museum, Keeper of Zoology

REVIEWING COMMITTEE CASES: 1968-2001
E

Year	Cases considered by the Reviewing Committee	Cases where decision on licence application was deferred for a period	Of these, items retained	Value of items retained	Deferred cases where licence was eventually granted	Total value of exported works	% of cases where licence eventually granted
1968-9	12	10	10	337270	-	-	-
1969-70	16	8	6	124360	2	76758	25
1970-1	8	6	5	66081	1	2310000	17
1971-2	8	3	3	1795045	-	-	-
1972-3	14	9	7	85490	2	49200	22
1973-4	19	11.53	9	401115	2.53	225150	22
1974-5	21	12	8	214718	4	103416	33
1975-6	15	13	9	668035	4	202081	31
1976-7	11	8	5	402650	3	299400	38
1977-8	28	20	12	1358505	8	1008484	40
1978-9	311	21	19	1365308	2	108900	10
1979-80	16	12	8	606895	4	512817	33
1980-1	15	12	8	520430	4	5215588	33
1981-2	10	9	7	1004853	2	418500	22
1982-3	16	14	9	224959	5	4033313	36
1983-4	47	29	19	3214550	10	2821010	34
1984-5	43	30	12	1942010	18	23561786	60
1985-6	512	442	25	3739190	19	10645287	43
1986-7	26	15	8	1579979	7	34343922	47
1987-8	32	24	12	10106905	12	8308570	50
1988-9	26	15	8	10633685	7	23649000	47
1989-90	24	15	5	1479452	10	16653839	67
1990-1	27	19	10	3265705	9	36504550	47
1991-2	47	43	18	2092952	23	25985761	54
1992-3	20	15	7	861108	8	21600011	53
1993-4	24	18	7	9079800	11	17867396	61
1994-5	36	29	17	9368514	12	9126154	41
1995-6	27	24	14	6019125	10	22287294	42
1996-7	29	25	12	1556602	13	22731737	52
1997-8	19	15	8	4292300	7	18896762	47
1998-9	20	17	9	2499906	8	21009066	47
1999-00	18	13	10	4551381	3	5024833	23
2000-01	37	35	28	6197949	7	12367972	20

1 This excludes two temporary export cases.

2 This includes 19 items from the George Brown collection.

3 Three cases consisted of two items per case. In each the Committee recommended granting a licence for one item, and deferring a decision on the other.

I IS IT SO CLOSELY CONNECTED WITH OUR HISTORY AND NATIONAL LIFE THAT ITS DEPARTURE WOULD BE A MISFORTUNE?

This criterion refers to national treasures, whose departure from the country would be a misfortune since they possess outstanding artistic, historical, or archaeological value. This category can include items which have been produced abroad, but which have acquired national importance by association with an important person, location or event.

The first criterion was originally intended to catch such objects as the 'Alfred jewel' or the manuscript of Gray's *Elegy* but we interpret it in a somewhat wider context to include items which are of major importance for local history, or which have been part of collections which are of great historical significance, or which are associated with significant historical events, people or places. Examples of 'Waverley One' items include: the deposit from the 'royal' ship burial from Sutton Hoo, the Middleham jewel, the Lutterell psalter, The Dog of Alcibiades, a portrait miniature of Henry Stuart, Lord Darnley, the archive of manuscripts relating to the editing of Newton's *Principia Mathematica*, decorations awarded to Sir William Carnegie in connection with the battle of Trafalgar, Lewis Carroll's photographs of Alice Liddell (the Alice of *Alice in Wonderland*), the Royal Standard belonging to Sir Ernest Shackleton and Captain Scott's sledging flag.

II IS IT OF OUTSTANDING AESTHETIC IMPORTANCE?

The assessment of outstanding aesthetic importance involves a subjective judgement. The Committee does not restrict this criterion to great works of painting or sculpture. We might, for instance, conclude that an exquisite snuff box met this criterion as well as a painting by Poussin. In the case of works by great artists it may be claimed that anything from the hand of Rembrandt is outstanding. However, we are not always swayed by such arguments and may take into account the condition as well as the quality of the work in question and the extent of the damage or restoration to which it may have been subjected.

Examples of 'Waverley Two' items include the paintings *Venus and Adonis* by Titian and *The Holy Family with the Infant St John* by Fra Bartolommeo, a pair of George II open armchairs by William and John Linnell, Henry Moore's sculpture, *Bird Basket*, a George III mahogany commode attributed to Thomas Chippendale, a drawing by Gainsborough, *A Peasant Family Going to Market* and a Van Gogh watercolour, *Harvest in Provence*.

III IS IT OF OUTSTANDING SIGNIFICANCE FOR THE STUDY OF SOME PARTICULAR BRANCH OF ART, LEARNING OR HISTORY?

The object might be considered of outstanding significance either on its own account or on account of its connection with a person, place, event, archive, collection or assemblage. Such items serve as bench marks for assessing other objects since they can throw new light on the study of their type. We believe that 'learning' in relation to culture should cover a wide number of disciplines e.g. art history, archaeology, ethnography, anthropology, palaeontology [subject to definition of 'fossils'], science, engineering, architecture or literature, etc. We would emphasise that this is an illustrative list and not necessarily a comprehensive one.

Examples of 'Waverley Three' items include: a lady's secretaire by Thomas Chippendale, mathematical instruments associated with Charles, Earl Stanhope, ledgers and account books of Messrs Fribourg and Treyer, three albums comprising photographs of Indian architecture and scenery by Samuel Bourne, Shepherd and Robertson c. 1870, a thirteenth-century gold and sapphire clasp, a Hutton racing car, and the *Swan Roll* manuscript.

General statement applying to all criteria

We may take into account the condition as well as the quality of the work in question and the extent of the damage or restoration to which it may have been subjected.

The Present Position

1. If the Reviewing Committee considers an item to be of Waverley Standard the Applicant (A) is asked if A would accept a matching offer. If the answer is 'no' then a stop is confirmed. If the answer is 'yes' then a stop for a limited period (first deferral period) is put on the item and a price (the Price) is determined.
2. If no Public Institution (P/I) comes forward during the first deferral period, wishing to buy, then the Licence is granted.
3. If P/I does come forward during the first deferral period with a serious intent to buy, then the Stop is extended for a second deferral period during which P/I tries to raise the price.
4. If the Price is raised within the second deferral period, then P/I seeks to purchase but A is not bound to accept. If A does not accept then an 'indefinite stop' stop is imposed.
5. If A withdraws the application during the second deferral period or declines P/I offer, then P/I has been put to trouble and expense without recompense.
6. In exceptional circumstances the Minister can extend the second deferral period for a further limited period.
7. If P/I cannot raise the funds to purchase and there is no private purchaser (PP) wishing to purchase for the Price, and on acceptable terms as to access, then the Licence is granted.

Alternative Arrangements Considered

1. As in 1. above, if the RCEWA considers an item of Waverley Standard A is asked if A would, in any circumstance, refuse whatever matching offer were made. If the answer is 'yes' then the Stop is confirmed. If the answer is 'no' then a stop for the first deferral period is put on the item. At this stage A would be given the formal offer document. A is told that if a P/I comes forward in the first deferral period with serious intent to buy the item, A will be asked to sign the formal offer (the Offer) in the form annexed to sell to the P/I. The Offer will be irrevocable during the second deferral period. If the Minister accepts the recommendation he will, as under present arrangements, name the first and second deferral periods.
2. If during the first deferral period P/I comes forward with a serious intent to buy then A is asked if he is prepared to sell to the P/I and, if so, to sign the formal offer document to sell at the Price to the named P/I. Should there be more than one P/I wishing to purchase A can select the one to whom A grants the Offer.
3. If the applicant is the vendor he will only make the offer if the purchaser joins with him in making it. If the applicant is the purchaser, he can make the offer on his own, relying either on his actual ownership or his existing contract to purchase the object, which would enable him to fulfil the offer, if accepted.
4. If A signs the formal offer document then the P/I can accept the Offer at any time during the second deferral period in which event there will be a contract binding on both parties for A to sell to P/I who will buy the item at the Price.

5. If, during the second period, the original P/I wishes to assign the right to accept the offer to another P/I (eg where the latter may be better placed to raise the funds) the vendor is asked to agree to the assignment. If the vendor refuses, the stop is confirmed. If the vendor agrees then the second P/I stands in the place of the first and can accept the original offer if it has the funds but must do so within the original second deferral period (plus any extension given in exceptional circumstances).

6. If by the end of the second deferral period, P/I has not accepted the offer then:

a) If in exceptional circumstances, the Minister considers there should be further time (the Additional Period) for the P/I to raise the funds, such period is named and A is again asked if A is prepared to sell at the Price to be named by P/I. If it is then A makes a further Offer to sell which again cannot be withdrawn during the Additional Period;

b) If A is not prepared to renew the Offer for the Additional Period then the stop is confirmed; or

c) If P/I cannot raise the funds for the Price and drops out but there is PP willing to pay the Price and to buy, on acceptable terms as to access, then PP makes the offer to buy and A can accept or refuse such PP offer as A wishes. If A accepts the offer then the sale to the PP goes ahead. If A refuses then the stop is confirmed;

d) If P/I cannot accept the offer from A and there is no PP willing to offer to buy then the Licence is granted;

The irrevocable offer referred to in 4. above is specific to the named P/I, which cannot transfer it to another without the consent of A. A would have no obligation to make an irrevocable offer to anyone other than the named P/I.

SAMPLE OFFER AND UNDERTAKING

H

OFFER AND UNDERTAKING given jointly by XYZ (The Vendor) and ABC (The Purchaser) [through their joint Agent DEF (The Agent)] to the GHI Museum (The Museum).

The Purchaser has agreed to purchase from the Vendor the Work of Art (the Work) set out in the Schedule hereto but the Title to the Work remains vested in the Vendor pending the completion of the Sale.

NOW the Vendor and the Purchaser [through the Agent] HEREBY offer to sell to the Museum the Work as seen and without warranties at the price and on the terms referred to in the Schedule. AND in consideration of the Museum agreeing to make efforts to raise the amount of the price the Vendor and the Purchaser [through the Agent] HEREBY UNDERTAKE to the Museum not to withdraw such offer prior to the day of 200- but shall be free to withdraw the offer at any time thereafter by notice in writing to the Museum.

SCHEDULE

The Work

The Price

Completion of the Sale

Photographs

£X but reducible to £Y in the event of 'the Douceur' being available to the Vendor at the time of completion.

X weeks after acceptance of the offer

The Vendor will provide facilities to the Museum to photograph the Work and authorises the Museum to use the resulting photographs for the purpose of raising funds to purchase the Work but not for any other purpose.

NOTES

1. If on a sale the title has already passed to the purchaser then such offer and undertaking will be made by the purchaser alone and the original vendor will not be a party to the document which will require consequential amendment.
2. If there is no sale involved but it is the owner of the object who is applying for the licence then the owner alone will make the offer and again the document will require consequential amendment.

1. A majority of the Steering Group who thought the measure both justified and required did so as public institutions (many of whom had expressly made the point) were being put to expense and unproductive effort which could be ill afforded and that even one case a year was unacceptable. There was too the risk that an applicant would initially agree to accept a matching offer on the grounds that he had nothing to lose in that if no public institution came forward, the licence would be forthcoming and should one come forward he was free to refuse the offer if he wished. For these reasons, it was important to put forward preventive measures before the problem escalated even further. If the offer agreement were a straightforward document, owners would only be being asked to abide by their response to a potential purchaser.

2. A minority of the Steering Group accepted the proposal in principal, if there were sufficient evidence of an abuse of the system. However, it was not accepted that the current scale of the problem was sufficient to warrant introducing the measure for all potential applicants, because this additional layer of administration risked unbalancing the system. A voluntary and less prescriptive approach was therefore preferred, or a selective adoption of the measure in situations where an applicant was seen to be exploiting the system. There was also concern about the interplay between the offer scheme and the Ridley Rules and it was not considered appropriate that a private purchaser should receive an offer. The proposal was therefore considered to be more acceptable if an applicant could be given certainty that, should the public institution named in the offer (but no other) fail to purchase the item by the end of the second deferral period (plus one limited extension in exceptional circumstances) an export licence would be granted.

The Steering Group of the Review recommends that the proposal be considered for introduction by Ministers.