

DUE DILIGENCE GUIDELINES

Relating to Sales of Items from Museum Collections

This is a draft version of the Due Diligence Guidelines that is open for consultation until 30th July 2012. Please add your comments on the consultation page on the MA website, or send formal consultation responses to Professor Janet Ulph, janet@museumsassociation.org.

INTRODUCTION

1. Each generation has a responsibility to the next to preserve items in museum collections. This is achieved through responsible collections management. A governing body of a museum must have a collections development policy (also known as an acquisitions and disposals policy) that meets the stated objectives of the museum. Accessioned collections must be properly documented. Collections should be reviewed from time to time both in terms of the policy/collecting objectives and of condition/appropriateness.
2. Responsible disposal of items from a collection is part of good collections management, particularly when transfer within the public domain, or another form of disposal, can improve access to, or the use, care or context of, items or collections.
3. There are certain circumstances in which the sale of an item or items from a collection is acceptable. Sale of items which are genuinely of no relevance to the collection, where no other museum wants the item, and where the monies raised will be applied for the direct benefit of the collections can be considered part of responsible collections management. In certain exceptional circumstances it may be ethically acceptable to sell items. To ensure a sale is ethical it is crucial to maximise public benefit. This requires reconciling the public benefit achieved with money raised from a sale, with the wider public benefit of items being retained in the public domain.
4. These guidelines cover all cases of sale to museums or beyond and are designed to help you ensure that you meet the requirements of the Accreditation Standard and the Museums Association Code of Ethics and can demonstrate that you do. As in the Code of Ethics, these guidelines distinguish between curatorially motivated sale and financially motivated sale. Most of the guidance applies to both, but there are additional requirements for financially motivated disposal.

5. These guidelines are intended for use with accessioned items. It is good practice to follow them for items which have been given to the museum but which have never been accessioned.

6. The documents, which will be produced by following the stages set out below, can be used to demonstrate compliance with the Code of Ethics and the Accreditation Standard. They are:

- I. Documentation relating to the Collections Review (Stage 1.1 below);
- II. The Written Report to the governing body (Stage 1.2 below);
- III. Where appropriate, information on the right to sell (Stage 2.1 below);
- IV. Where there is a financially motivated disposal, a compliance report to sector bodies will be required (Stage 3.7 below);
- V. Written evidence that the due diligence guidelines have been complied with in relation to obtaining professional advice and consultation (Stage 3);

7. To ensure accountability and transparency, a Process Review Report should also be prepared from an early stage, which will incorporate the Written Report, the Compliance Report and a summary of the advice obtained together with information relating to decision making.

BASIC PRINCIPLES

1. Museums act as guardians of the long-term public interest in the collections: Code of Ethics at [6.1]; Collections Development Policy at [13.b].

2. Where a Collections Review results in a decision to dispose of an item from the collection, priority will be given to keeping the item in the public domain, unless it is to be destroyed. It is expected that it will ordinarily be offered in the first instance, by way of gift, to another museum likely to be interested in its acquisition: Code of Ethics (Museums Association, 2008) at [6.0], [6.10]; Collections Development Policy (Accreditation Standard, Arts Council, 2011) at [13.k].

3. In the case of an Accredited Museum, the item should first be offered to another Accredited Museum by way of transfer or sale; if it is not acquired by an Accredited Museum, it should be offered to the museum community at large. If a museum does not accept the item, it may be offered more widely to other interested individuals and organisations, giving priority to organisations in the public domain: Collections Development Policy at [13.l,m].

4. A museum may wish to consider sale of items to fund the long-term sustainability, use and development of the remaining collection: Code of Ethics at [6.0], [6.15]; Collections Development Policy at [13.f].

5. Curatorially motivated disposal can sometimes lead to the sale of items from collections to a museum, or if no museum wants the item, outside the museum sector. In all cases of sale these guidelines should be followed.

6. The Code of Ethics prohibits financially motivated disposals except in certain exceptional circumstances to fund the long-term sustainability, use and development of the remaining collection: Code of Ethics at [6.0], [6.15]; Collections Development Policy at [13.f]. A sale is financially motivated if the disposing museum is considering the possibility of sale outside the museum sector, in circumstances when it is likely that another museum would wish to acquire the item if it could afford to do so.

7. In order to be ethically acceptable, a financially motivated disposal must meet all the requirements of the Code of Ethics. In particular, it must be demonstrated that:

- It will significantly improve the long-term public benefit derived from the remaining collection;
- It is not to generate short-term revenue (for example to meet a budget deficit);
- It is as a last resort after other sources of funding have been thoroughly explored;
- Extensive prior consultation with sector bodies has been undertaken;
- The item under consideration lies outside the museum's established core collection as defined in the collections policy.

8. The members of the governing body of a museum should never permit the disposal of an item from its core collection by sale because this will mean that the governing body is not ensuring that the objectives of the museum are being met.

9. There must always be sound curatorial reasons for disposals, even if the primary motivation for disposal is financial: Code of Ethics at [6.14]; Collections Development Policy at [13.b]. Individual collection development policies should expand on this.

FINANCIALLY MOTIVATED DISPOSAL

1. A sale is financially motivated if the disposing museum is considering the possibility of sale outside the museum sector, in circumstances when it is likely that another museum would wish to acquire the item if it could afford to do so.

2. Museums pursuing financially motivated disposal should initially get in contact with the relevant Accreditation Assessing Organisation (see list on page 25) and the Museums Association by using the First Contact form, and later by using the Compliance Report, see 1.5 and 3.7. Using this format, museums will be able to give both organisations the same report and supporting information. For information, below is a

summary of how the two organisations will advise financially motivated disposals and determine whether the proposed actions meet the requirements of the Code of Ethics/Accreditation Standard.

Seek advice from the Museums Association on financially motivated sale

3. In line with the requirement of the Code of Ethics to consult sector bodies on proposed financially motivated disposal (Code of Ethics 6.14iv), the Museums Association expects museums to seek **formal** advice from the Ethics Committee. Upon receiving the Compliance Report, the Ethics Committee of the Museums Association will provide advice about whether it believes the proposed sale complies with the Museums Association Code of Ethics.

4. Please note that the Museums Association evaluates proposed financially motivated disposals carefully and it is likely to take several months to provide a definitive opinion, particularly as it is often necessary to discuss the proposal at a meeting of the Museums Association Ethics Committee. As well as considering the overall public benefit of the proposed disposal, the Ethics Committee may raise detailed points about the requirements of the Code of Ethics.

Overview - Accredited Museums and Financially Motivated Sale

5. Accredited Museums will receive advice from the relevant Accreditation Assessing Organisation following the provision of the compliance report. Accredited Museums should seek advice from the relevant Accreditation Assessing Organisation regarding how to utilise monies received from regular rationalisation activities in compliance with the Collections Development Policy (Accreditation Standard, 2011).

6. If a financially motivated sale proposal is likely to form case law for the Accreditation scheme, the Accreditation Assessing Organisation will prepare a report and a recommendation to the earliest Accreditation panel **before** the sale takes place.

7. The panel will consider the assessment and recommendation, focusing on whether the proposal is likely to comply with the requirements of Accreditation. The outcome may be:

- proposal complies with the Accreditation Standard
- proposal broadly complies, but should be amended to ensure full compliance
- proposal does not comply with the Standard, and should be reconsidered

8. The panel will:

- provide clear guidance, if necessary, on how the process should be amended to maintain compliance with the Accreditation Standard
- provide clarity regarding the museums Accredited status, and the likely Accredited status following the completion of a financially motivated sale

- direct the relevant Accreditation Assessing organisation to monitor the implementation of the disposal process.

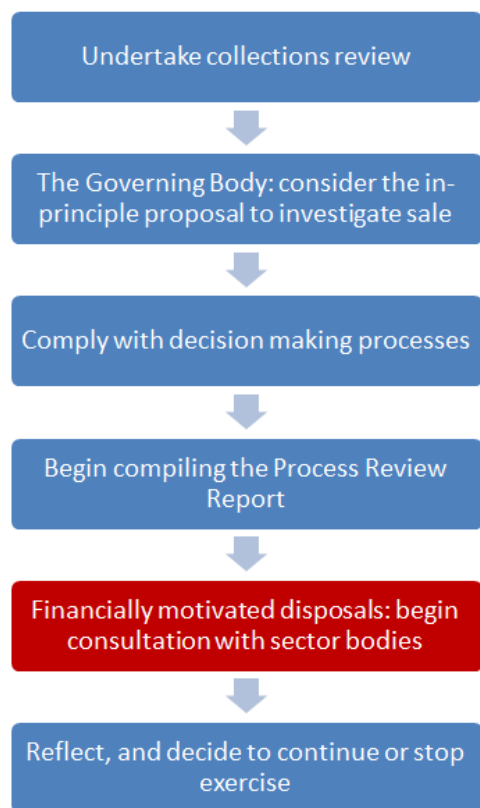
9. Once a sale has been completed, and the Final Report (as 5.2) has been provided, the relevant Accreditation Assessing Organisation will provide a second assessment and recommendation to the first available Accreditation panel. This assessment will outline with process undertaken since guidance was first provided (either by the Assessing Organisation or a panel). The recommendation and outcome may be:

- Full Accreditation (the disposal complies with the Standard);
- Provisional Accreditation (the disposal complies with Standard but improvements have been identified to ensure long term compliance); or
- Removal (the disposal did not comply with Standard).

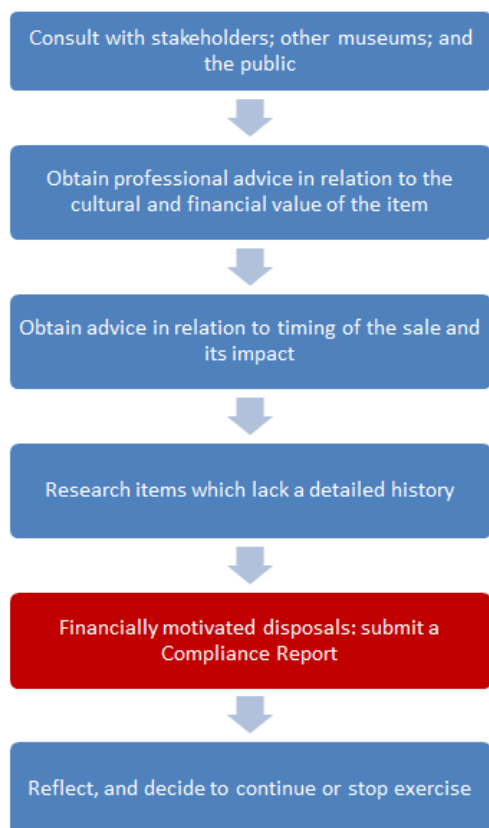
10. In the case of Removal for the reason of a non-compliant financially motivated sale, the governing body / museum will also be excluded from participation within the Accreditation Scheme for a period of five years.

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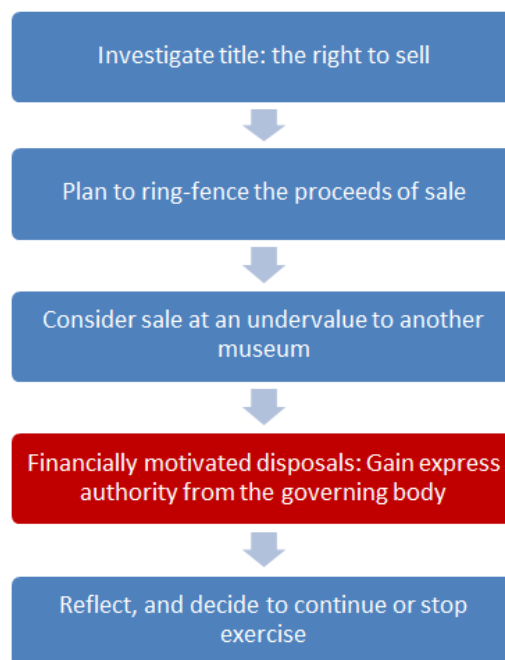
Stage 1: Assessment and In-principle Decision Making



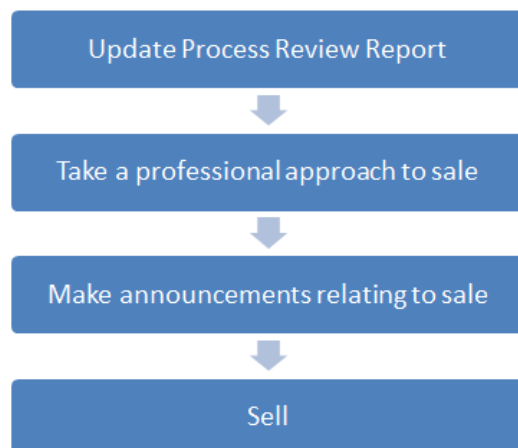
Stage 3: Consultation and Advice



Stage 2: Planning and Investigation



Stage 4: The Sale



Stage 5: Post-Sale and Record Keeping



STAGE 1: ASSESSMENT AND IN-PRINCIPLE DECISION MAKING

1.1. Undertake a Collections Review

1.1.1. Prior to sale, there must have been a thorough collections review, which will identify possible candidates for disposal. For guidance on collections review see <http://www.museumsassociation.org/collections>.

1.1.2. Museums should ordinarily give priority to retaining items in the public domain by free transfer - offering them as a gift to other suitable museums (unless they are to be destroyed). If a museum is nevertheless considering selling an item to a museum, or outside the museum sector, then the stages set out here should be followed in addition to referring to the relevant parts of the Disposal Toolkit.

1.1.3. Any decision to sell should take account of the need for the item to be outside the core collection, and for there to be sound curatorial reasons for the disposal: Code of Ethics at [6.14]; Collections Development Policy at [13.b].

1.1.4. Demonstrating that items are outside the core collection should include consideration of:

- The statement of purpose of the museum and the criteria for future collecting and disposal;
- Details of when the criteria were adopted and any previous version, if criteria have changed in the past ten years;
- The historic legacy of collecting, including dates when reviews of the collection have been undertaken and any outcomes from such reviews;
- The number and nature of items selected for transfer to another museum or sale;
- Evidence relating to why each item was acquired in the first place;
- The impact of the disposal of each item on the remainder of the collection;
- When and for how long the selected items have been on public display at the museum or elsewhere, or have been used for research or any other activity.
- The collecting policies of other museums and other organisations collecting in the same or related areas or subject fields;
- Whether the item would fit better, and be more widely used and accessible, in another museum's collection;
- How the particular items selected for disposal were selected; and
- Why other items were not selected instead. For example, a decision to sell high value items relative to the collection as a whole may require a more detailed explanation of how this decision was arrived at in order to ensure and demonstrate that items are not being selected for sale solely on the grounds of their financial value.

1.1.5. Some items are seen as deserving of special protection because they are viewed as pre-eminent for their national, scientific, historic or artistic interest. Pre-eminence has a legislative basis in assessing objects for Acceptance-in-Lieu (S 230 Inheritance Tax Act, 1980) conditional exemption, private treaty sales, and, from July 2012, the Cultural Gifts Scheme. It is therefore good practice to confirm that the item selected for disposal is not pre-eminent, which is assessed using the following questions (see Section 11.23 of <http://www.hmrc.gov.uk/inheritancetax/conditionalexemption.pdf> for further information):

- Does the object have an especially close association with our history and national life?
- Is the object of especial artistic or art-historical interest?
- Is the object of especial importance for the study of some particular form of art, learning or history?
- Does the object have an especially close association with a particular historic setting?

1.1.6. If the item is viewed as pre-eminent, it should only be transferred or sold to another UK museum, to retain it within the public domain.

1.2. The Governing Body: consider the in-principle proposal to investigate sale

1.2.1. Wherever the impetus to sell items from collections comes from, at an early stage, the governing body should record 'in principle' agreement to sale of collections, as it should to any programme of disposal. A Written Report giving professional advice must be produced for the consideration of the governing body of the museum. Documentation relating to the Collections Review should accompany this report.

1.2.2. The Written Report should refer to the Collections Review process.

1.2.3. The Written Report should cover:

- Justification for the item being outside the museum's core collection (1.01 above);
- Details of the reasons for proposing sale, rather than free transfer to another museum and how priority will be given to keeping the item in the public domain;
- Notes of anticipated legal and ethical implications of sale: Code of Ethics, at [6.8];
- Details of the obligations incumbent on the museum by participation in voluntary schemes, such as the Code of Ethics or Accreditation, the UK standard for museums and galleries;
- Relevant requirements contained in the Collections Development Policy (or similar) and, in particular, clauses relating to the museum's statement of purpose, and the museum's criteria for future collecting and disposal;

- The implications of the sale for the remaining items in the collection, and any advice obtained prior to the meeting.
- Assessment of whether the sale is likely to be deemed financially motivated and, if so, the implications.

1.2.4. The Written Report can cross-refer to the Collections Review in satisfying these requirements, as appropriate.

1.2.5. The Written Report to the governing body will often become a public document (such as a report in relation to a local authority museum), so particular attention should be paid to communicating the proposal in a manner which safeguards the reputation of the museum.

1.3. Comply with decision making processes

1.3.1. Throughout the process, compliance with internal procedures must be maintained to ensure a robust audit trail. Appropriately minuted meetings, complying with the institution's constitution and internal procedures, should be held involving staff and the governing body.

1.3.2. A decision to dispose of an object, whether by transfer or sale, will be the responsibility of the governing body of the museum acting on the advice of professional curatorial staff, if any, and not of the curator of the collection acting alone: Collections Development Policy at [13.h]. The governing body must satisfy itself that decisions to dispose are informed by the highest standards of expertise and take into account all legal and other attendant circumstances: Code of Ethics at [6.8].

1.3.3. The process should reflect principles of good governance. Six principles are as set out, in the *Good Governance: A Code for the Voluntary and Community Sector*. The members of the governing body are expected to:

- Understand their role, their legal duties, and their responsibilities as stewards of cultural items;
- Ensure that the purposes of the museum are carried out and that the museum acts in the long term public interest;
- Work effectively both as individuals and as a team;
- Exercise effective control so that legal and ethical requirements are complied with;
- Behave with integrity, maintaining independence in decision making, and identifying and managing any conflicts of interest;
- Be open and accountable: members must promote and protect the reputation of the museum and must engage in a consultation process with stakeholders, reflecting upon the information and advice received.

1.3.4. In addition to disclosing any conflicts of interest, the members of the governing body must take care in relation to decision making: they must engage in a consultation process with stakeholders, and must reflect upon the information and advice received in relation to a prospective sale.

1.3.5. The process of sale must be carried out openly and with transparency: Code of Ethics, at [6.11]. Collections Development Policy at [13.a].

1.4. Begin compiling the Process Review Report

1.4.1. Throughout the process of any disposal, and particularly sale, it is best practice to have a single document or file recording all key information and decisions and to update this throughout the disposal process. This is the Process Review Report.

1.4.2. Preparing the Process Review Report will make it possible to produce information in different forms to serve: internal management needs (checklist), governing body decision making, requesting advice from others (eg MA, Accreditation Assessing Organisation), providing information to public and media.

1.4.3. The Process Review Report should provide opportunity for reflection by the governing body, as the Report looks backwards to the Collections Review and the process of consultation and obtaining of professional advice, and ring-fencing or restricting proceeds of sale.

1.4.4. As the decisions relating to the sale progress, the Process Review Report will include information relating to the following issues:

- I. The number and nature of the items which the governing body has confirmed should be selected for disposal by transfer or sale.
- II. The description of each item, bearing in mind that if an item is eventually sold there are legal obligations owed towards any purchaser in relation to the description and condition of the item (Sale of Goods Act 1979, sections 13 and 14). Items can be sold even if they are in poor condition, but their defects must be openly acknowledged.
- III. The reasons for disposal (see the Collections Review and the Written Report to the governing body at Stage 1):
 - a) Whether the planned disposal accords with the institution's stated long-term collections policy approved by its governing body and whether it serves the long-term public interest;
 - b) Whether the Collections Review demonstrated in clear terms that the item is outside the core collection as defined in the collections policy;
 - c) Whether there are museums and other organisations which hold the same material or material in related fields;

- d) Whether similar items (such as duplicates) in the collection have or are being transferred to other museums as part of a process of transfer or sale;
 - e) Whether the implications of the disposal for the remaining items in the collection have been fully considered.
- IV. Whether the museum has legal title to the items, bearing in mind that there are legal obligations owed towards any purchaser to transfer legal title (Sale of Goods Act 1979, section 12) (stage 2.1):
- a) Whether the museum can take steps to overcome any problems which restrict its ability to sell the item. For example, if an item is on loan to the museum, the lender should be contacted to ascertain whether he/she wishes to have the item returned or whether he/she would prefer to transfer legal title in the item to the museum so that it can be sold.
- V. Whether the contemplated application of the proceeds of sale should meet strict ethical guidance (stage 2.2).
- VI. Whether priority has been given to keeping the items in the public domain; in particular, whether it can be demonstrated that preference has or will be given to expressions of interest from other museums (and, in the case of Accredited Museums, to other Accredited Museums in particular). For example:
- a) Whether any announcement offering to transfer an item, has received sufficient publicity in advance to allow time for expressions of interest to be made by other museums: at least two months is necessary for this purpose;
 - b) In a situation where another museum has offered less than market value for an item, whether priority has been given to retaining the item in the public domain by accepting that offer;
 - c) Whether plans have been made to make an announcement relating to the sale of an item, allowing sufficient time for expressions of interest to be made by other museums: at least two months is necessary for this purpose.
- VII. In the context of a financially motivated disposal, the extent to which the circumstances are considered to be exceptional and whether the governing body has fully considered the extent to which the sale:
- a) will significantly improve the long-term public benefit derived from the remaining collection;
 - b) Is not to generate short-term revenue;
 - c) Is as a last resort after other sources of funding have been thoroughly explored.
- VIII. What plans have been made to sell on the open market if there are no expressions of interest from museums by the end of the two month period.
- IX. Whether consultation to date has been properly considered:

- a) with stakeholders such as donors, researchers, the curatorial staff and governing bodies of other museums, and local and source communities;
 - b) for professional advice, such as from relevant specialists, auctioneers, dealers, and insurers.
- X. Details of planning in relation to carrying out further consultation if needed:
- a) with stakeholders, particularly in relation to an item's cultural value and the public interest (Stage 3);
 - b) for professional advice on an item's cultural value, its financial value and the timing and manner of sale (Stage 3).
- XI. Details of planning to ensure that public confidence in museums is maintained and the long term local and general public interest is served in carrying out this sale: Code of Ethics at [6.9], [6.10].

1.5. Financially motivated disposals: Begin consultation with sector bodies

1.5.1. Where a financially motivated disposal is being considered, museums are encouraged to seek advice at the earliest possible stage.

1.5.2. If the sale might be seen as financially motivated, the views of the relevant Accreditation Assessing Organisation and the Museums Association must be formally sought at this stage by completing the First Contact form, available from either organisation.

1.5.3. Upon completion of the First Contact form, the museum will receive a jointly signed response from the MA and Accreditation Assessing Organisation either:

- Confirming that the plans for the sale, from the information provided, appear to be curatorially motivated
- Raising concerns that the sale may be financially motivated, confirming that a Compliance Report will be required later to allow advice on satisfying the requirements of the Code of Ethics and Accreditation.

1.5.4. Museums should confirm that a Compliance Report will be supplied later (see 3.7) to enable further advice to be provided in relation to compliance with Accreditation and the Code of Ethics.

STAGE 2: PLANNING AND INVESTIGATION

2.0.1. Having made the 'in-principle' decision to further investigate sale, it is necessary to investigate legal and ethical issues in detail.

2.0.2. The disposal of collections should be guided by:

- a museum's statement of purpose
- the legal basis on which the collections are held
- the public benefit derived from the effective use and management of the collections
- an assessment of the needs of the museum's collections
- the collections held by other museums and organisations collecting in the same or related geographic areas or subject fields.

2.0.3. The following issues should be considered in particular: the museum's right to sell, ring-fencing of proceeds of sale, and consultation and advice. If the disposal is financially motivated, an extensive enquiry will be needed into whether the disposal fulfils the purpose of the museum and will be in the public interest.

2.1. Investigate title: the right to sell

2.1.1. The governing body must have legal title to an item: Code of Ethics, at [6.8]; Collections Development Policy at [13.c].

2.1.2. The following matters need to be considered and recorded in the Process Review Report:

- Can it be established by reference to accession and other records that the item is owned by the institution? There are a number of ways in which a museum can establish ownership. For example, a Deed of Gift or a letter or note from the donor; a letter of an executor or administrator where items have been left to a museum in a Will; by a copy of the Will itself; or a receipt written out by museum staff.
- Are there any restrictions imposed upon dealing with the items which have been selected for sale? Any agreements with donors must be taken into account: Collections Development Policy at [13.c].

For example, it will need to be considered whether there is a restriction:

- a) because the item has been transferred to form part of the 'permanent endowment' of the institution and is therefore inalienable. For example, conditions may have been imposed upon items which formed part of the original collection of a museum and which can be found in the governing document when it was established as a charity; or these conditions may have been agreed at the time when the item was accepted by the museum; and/or

b) by virtue of a trust or condition imposed by a donor either regarding his/her original gift of the item itself or because it was acquired out of funds he/she provided. Although a donor may simply transfer an item by Deed of Gift, or delivery with an accompanying letter, or by Will, to a museum without imposing any conditions, this cannot be assumed. Records will therefore need to be checked. A donor might, for example, provide by Deed or Will that if the original terms of the gift are not respected, the item should be given to another charity instead.

Another example is where the donor requires by Deed or Will that the item be returned if it is not used for specified charitable purposes. However, in these circumstances, the donor could be approached to discover whether he wishes to disclaim any right to demand the return of the gift.

- Are there any statutory restrictions preventing sale? See, for example, in relation to the British Museum, section 3(4) of the British Museum Act 1963 and, in relation to the National Gallery, the Tate Gallery and the National Portrait Gallery, sections 4 and 6 of the Museums and Galleries Act 1992.
- As regards museum items owned by local authorities, under which statutory provisions is the local authority proposing to exercise its power of sale?
- Was the item acquired with assistance from some external funding body, and if so what were the terms (if any) of the grant and do they involve repayment of the grant on sale? Collections Development Policy at [13.d].
- Whether there are any tax implications in relation to the sale.

2.1.3. Appropriate advice should be sought where the answer to any of these issues is unclear.

Note: if the museum has acquired possession of an item by way of loan, it must not be sold (unless legal title can be obtained) because, in addition to ethical considerations, this could give rise to a liability to compensate not only the owner but also the purchaser.

2.2. Plan to ring-fence or restrict the proceeds of sale

2.2.1. If an item is sold, museums should restrict the proceeds of sale to ensure that they are spent solely and directly for the benefit of the collections: Code of Ethics, at [6.15]: Collections Development Policy at [13.j].

2.2.2. The proceeds of sale should be applied for the long-term sustainability, use and development of the collection. It cannot be spent upon short term measures, such as to meet a budget deficit: Code of Ethics, at [6.14, 6.15].

2.2.3. In the case of Accredited Museums, this normally means the purchase of further acquisitions, although in exceptional cases, improvements relating to the care of the collections in order to meet or exceed Accreditation requirements relating to the risk of

damage to and deterioration of the collections may be justifiable: Collections Development Policy at [13.i].

2.2.4. If in doubt about the proposed use of such restricted funds consult sector bodies.

2.2.5. If the museum intends to create an endowment trust, the sole purpose of the endowment trust should be the long-term sustainability, use and development of the collection and must reflect the guidance provided by the Code of Ethics and the Collections Development Policy set out above.

2.2.6. Plans to restrict the proceeds of sale should be recorded in the Process Review Report.

2.3. Consider sale at an undervalue to another museum

2.3.1. If the governing body of a museum is planning to sell an item, it will ordinarily seek the best price for the item in order to benefit the remaining collection. However, where the museum collection is held for the benefit of the public (and this will be the case, for example, if it is registered as a charity with the Charity Commissioners), it is not obliged to seek the best market price for an item where it is selling this item to another museum with charitable purposes. This is because a sale at a discount will benefit the public by ensuring that the item is retained within the public domain.

2.3.2. The governing body of a museum contemplating a sale at less than the market price should ensure:

- That this course of action can be justified as in furtherance of the museum's own purposes and that it is in the museum's best interests;
- That the members of the governing body are satisfied that the item would remain in the public domain and would be accessible to the public; and
- Any restrictions which may have been placed on the item when it was originally donated continue once the sale has been completed or any restrictions the selling charity put on the use of the item are met.

2.3.3. Plans for sale at an undervalue to another museum should be recorded in the Process Review Report.

2.4. Financially motivated disposals: Gain express authority from the governing body

2.4.1. After consideration of all of the relevant documents and professional advice detailed above, the governing body will need to formally agree to the financially motivated disposal.

2.4.2. A disposal is financially motivated if the disposing museum is considering the possibility of sale outside the museum sector, in circumstances when it is likely that another museum would wish to acquire the item if it could afford to do so.

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STAGE 3: CONSULTATION AND ADVICE

3.0.1. The process of consultation and taking advice may provide an opportunity to learn more about the items which have been selected for sale but should also be seen as a further opportunity for reflection.

3.0.2. This process should be carried out in an open and transparent manner and with care and sensitivity to public perceptions: Code of Ethics, at [6.11] and [6.12]; Collections Development Policy at [13.a].

3.0.3. Details of all consultation and advice obtained should be recorded in the Process Review Report.

3.1. Consult with stakeholders

3.1.1. Stakeholders must be consulted in relation to the sale: Code of Ethics at [6.12].

3.1.2. Stakeholders include: the donor, the donor's family, researchers, local and source communities and others who have an interest in a proposed sale. Where appropriate, the views of colleagues and sector bodies should be sought.

3.1.3. Consulting sector bodies is essential if the sale is financially motivated: Code of Ethics at [6.14.iv].

3.2. Consult with other museums

3.2.4. Museums should consult a minimum of two other museums in relation to the items which are selected for sale and should consider their responses. The consultation process should include discussion of the intrinsic cultural value of the items and the availability of similar items to the public.

3.2.5. One method of consultation is to place an advert on the Museums Association's Find an Object web listing service announcing that a museum is considering sale of an item. Museums can use this as an opportunity to test their rationale for sale and to seek further information about the items and their context.

3.3. Consult with the public

3.3.1. Museums should consult local communities by publicising the sale in a manner which is appropriate in the circumstances. This may include displaying the item in the museum for the duration of the public consultation, involving the local media, and providing details of the proposed sale on the museum's website. Museums should make best efforts to obtain comments from the public not only in relation to the proposed sale but also in relation to any information which they may possess in relation to the item to be sold.

3.3.2. The public consultation should last for a minimum period of 12 weeks prior to taking the final decision about the sale and should include full details of all the items proposed for sale, in line with HM Government Code of Practice on Consultation.

3.3.3. Museums should make every effort to ensure that the process of disposal by sale is transparent and well considered. To this end, museums should reflect on the contents of the responses to its consultation process.

3.4. Obtain professional advice in relation to the cultural and financial value of the item

3.4.1. Museums are expected to take advice in relation to:

- an item's cultural value;
- an item's financial value;
- the manner in which an item will be described.

3.4.2. On each issue, advice should be sought from a minimum of two independent experts in the field. Where qualified to do so, an expert may advise on more than one issue. Independent experts could include auction houses, dealers, and specialists in museums or elsewhere.

3.4.3. The advice sought should be reasonable and proportionate to the context and will depend upon the cultural and financial value of the item, and whether there is a complete history in relation to its provenance.

3.4.4. The advice should be retained as part of the museum's collections management.

3.5. Obtain advice in relation to timing of the sale and its impact

3.5.1. Advice should also be sought from a minimum of two experts who operate in the relevant market (such as auction houses and dealers) in relation to the timing of the sale and the state of the market, not only in general but in relation to the items which it is proposed to sell. If it is proposed to sell a number of similar items, or a number of works by the same artist, advice should include whether such sales should be staggered over a period of time.

3.5.2. If an item has been acquired from a living artist, advice must be sought in relation to the impact of any sale on the market in relation to the value of the artist's other work with a view to ensuring that the artist's livelihood is not seriously affected.

3.6. Research items which lack a detailed history

3.6.1. Museums should seek further advice and undertake more research where an item from the collection lacks a detailed history of ownership.

3.6.2. Great care needs to be taken in describing items so that any purchaser is aware of any problems in relation to its provenance.

3.6.3. In particular, museums should pay attention to three specific concerns:

I. Illicit material

Reasonable efforts should be made to investigate the provenance of the item. If there is any risk that the item may be illicit, experts in the relevant field should be consulted and searches of relevant electronic databases such as the Art Loss Register should be made.

II. Fakes and forgeries

An item should not be sold without further research if it is evident that more work is needed in relation to its authenticity.

If it is discovered that an item is a fake or forgery:

- This fact must be disclosed to a purchaser in order to avoid liability;
- A museum should make best efforts to ensure that there is no risk that the item could be presented as genuine by, for example and where appropriate, registering the item with the Art Loss Register.

III. "Sleepers"

Museums should avoid a hasty sale where there is a possibility that further research might reveal that the item has a far greater financial or cultural value than originally appreciated.

3.6.4. Research efforts should be proportionate to the apparent cultural value of the item. Greater care may be needed where it is known that an item originates from another country and where there is a risk that the source nation may wish to make a claim for repatriation, Collections Development Policy at [11].

3.7. Financially motivated disposals: submit a Compliance Report

3.7.1. A Compliance Report should be submitted to the Museums Association and the relevant Accreditation Assessing Organisation where there is a financially motivated disposal. Museums that need to submit a Compliance Report will already have been in contact with their Accreditation Assessing Organisation and the Museums Association at stage 1.5. The Compliance Report should focus upon how the financially motivated disposal will serve the long term public interest: Code of Ethics at [6.9] and [6.10].

3.7.2. The Compliance Report should draw on information in the Process Review Report. It should include:

- The extent to which the circumstances are considered to be exceptional: Code of Ethics, at [6.14]; Collections Development Policy at [13.f];
- The extent to which, and the manner in which, the sale will significantly improve the long-term public benefit derived from the remaining collection: Code of Ethics at [6.14.i]; Collections Development Policy at [13.f]. This might include, for example, plans to purchase a new item or items to join the permanent collection, or the creation of an endowment fund to increase the long-term sustainability and use and development of the collection.

- Plans to advertise the proposed sale amongst other museums or other public institutions, including both electronic forms of communication and publication in journals such as the Museums Association's Find an Object listing service and Museums Journal for a period of at least two months¹;
- Whether the sale is a last resort after other sources of funding have been thoroughly explored: Code of Ethics, at [6.14.iii]; Collections Development Policy at [13.f]. Note: there needs to be evidence that a range of options have been explored, not all of them monetary. Exploration of other funding sources needs to be proportionate to the amounts of money concerned.
- The Compliance Report should confirm that:
 - the sale is not intended to generate short-term revenue: Code of Ethics, at [6.14.ii]; Collections Development Policy at [13.f];
 - extensive consultation with sector bodies has been undertaken: Code of Ethics, at [6.14.iv] Collections Development Policy at [13.g];
 - the item under consideration lies outside the museum's established core collection as defined in the collections policy: Code of Ethics, at [6.14.v].
- The Compliance Report should state what will happen to the proceeds of sale, which will need to be ring-fenced: see 2.02 above.

3.7.3. The Museums Association and the relevant Accreditation Assessing Organisation will advise the museum on their compliance with the requirements of the Code of Ethics and Accreditation.

3.7.4. The Museums Association evaluates proposed financially motivated disposals carefully and it is likely to take several months to provide a definitive opinion, particularly as it is often necessary to discuss the proposal at a meeting of the Museums Association Ethics Committee. As well as considering the overall public benefit of the proposed disposal, the Ethics Committee may raise detailed points about the requirements of the Code of Ethics.

¹ <http://www.museumsassociation.org/collections/find-an-object> When advertising an object for sale on Find an Object and in Museums Journal, you will be asked to complete the First Contact form. Only once a disposal by sale has been confirmed as complying with the Code of Ethics, will the advert be published.

STAGE 4: THE SALE

4.1. Update Process Review Report

4.1.1. Updating the process review report should provide opportunity for reflection, as the Report looks backwards to the Collections Review and the process of consultation and obtaining of professional advice, and ring-fencing proceeds of sale.

4.2. Take a professional approach to sale

4.2.1. Once it is clear that the sale is in the long term interests of the public, museums should aim to maximise the financial return (subject to offering the item to another museum at a lower value, see 2.3). This will usually mean that there is an open market sale by auction.

4.2.2. Consideration should be given to matters such as the timing of the sale and its location, the choice of auctioneer and their contract terms (such as whether it is possible to negotiate fee waivers).

4.2.3. Museums can, subject to advice, consider selling items online but, in doing so, should choose the online auction site with care in order to protect their reputation. For example, some sites such as eBay might be considered appropriate in relation to items of a relatively low cultural and financial value.

4.3. Make announcements relating to sale

4.3.1. All sales should be announced to museums prior to an approach that is likely to result in the object leaving the public domain, e.g. open market sale by auction. Announcements relating to sale by museums will indicate the number and nature of specimens or objects involved, and the basis on which the material will be transferred to another institution. Announcements for sales that comply with the Code of Ethics will normally be placed on Find and Object on the Museums Association website, in the Museums Association's Museums Journal, and in other specialist journals where appropriate.

4.3.2. A period of at least two months will be allowed for an interest in acquiring the material to be expressed: Collections Development Policy at [13.m]. It is recommended that it should be at least six months where the item is culturally important, see 1.1.5.

4.3.3. When a museum is willing to consider sale at a less than market rate, or free transfer, to another museum in order to keep the object in the public domain (see 2.3), it should state this intention in advertising. The museum should carefully consider any interest they receive from museums wishing to acquire the objects to ensure they reconcile the public benefit achieved with money raised from a sale, with the wider public benefit of items being retained in the public domain.

4.3.4. If the announcement is placed by an Accredited Museum and, at the end of this period, if no expressions of interest have been received from any other Accredited Museum, the item may be offered to other museums or organisations in the public domain: Collections Development Policy at [13.m].

4.3.5. Members of the governing body and museum staff must not purchase items being disposed of by the museum.

4.4. Sell

4.4.1. Having ensured that all the requirements of Accreditation and the Code of Ethics have been met, confirm the decision to sell and, if appropriate, sell the item(s).

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STAGE 5: POST-SALE and RECORD KEEPING

5.1. Keep full records

5.1.1. The process of documenting the sale should be transparent: Code of Ethics, at [6.16]; Collections Development Policy at [13.a].

5.1.2. The Process Review Report should be completed and full records should be kept of the process of transfer or sale, including a detailed description of the item transferred or sold, in accordance with SPECTRUM Procedure on deaccession and disposal. These should be accompanied by photographic records where practicable, Arrangements should be made to ensure that they are available for future reference: Collections Development Policy at [13.o/s].

5.1.3. The form recording transfer of title, which should include the name and contact details of the recipient or purchaser, should be retained for future reference.

5.1.4. Steps must be taken to ensure that the Process Review Report, which will include records of decision making, the professional advice obtained and minutes of internal meetings, is preserved.

5.2. Financially motivated disposals: Submit final report to Museums Association and Accreditation Assessing Organisation

5.2.1. In the case of financially motivated disposals, a final report should be provided to the Museums Association and the relevant Accreditation Assessing Organisation detailing the method of sale, the sale price, and details of how money raised from the sale has been or will be ring-fenced.

5.2.2. For Accredited Museums, this information will be used in decision-making about the museum's compliance with the Accreditation Standard and whether the museum's status within the scheme is altered. Where a museum remains fully or provisionally accredited, this information will also be used in future monitoring of the museum.

GLOSSARY

Disposal: this phrase includes the permanent removal of items accessioned into the collection of a museum, with a view to divesting the governing body of ownership, by way of:

- transfer to other museums;
- sale;
- repatriation; or
- destruction (because, for example, the item poses health risks).

Financially motivated disposal: a sale is financially motivated if the disposing museum is considering the possibility of sale outside the museum sector, in circumstances when it is likely that another museum would wish to acquire the item if it could afford to do so.

Governing body: this is the organisation which normally owns the collections. If another legally separate organisation has been given powers to acquire and/or dispose of collections on behalf of the governing body, this must be made clear in the policy.

Public domain: represented by organisations whose main purpose is to benefit the public.

RESOURCES

Accreditation Standard

The Accreditation Scheme sets nationally agreed standards for museums in the UK. There are currently just under 1,800 museums participating in the scheme, demonstrating their commitment to managing collections effectively for the enjoyment and benefit of users. The standard is available online at:

<http://www.artscouncil.org.uk/what-we-do/supporting-museums/accreditation-scheme/>

Code of Ethics for Museums

Developed by the Museums Association Ethics Committee and voted for by MA members, the code of ethics defines current consensus over the principles that guide museum practice. The code of ethics is available at:

<http://www.museumsassociation.org/ethics/code-of-ethics>

HM Government Code of Practice on Consultation

The Government has a Code of Practice on Consultation. This Code sets out what people can expect from the Government when it runs formal, written consultation exercises on matters of policy or policy implementation. It is available online at:

<http://webarchive.nationalarchives.gov.uk/+/http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>

Good Governance: A Code for the Voluntary and Community Sector

The Code was created by the Association of Chief Executive Officers (ACEVO), Charity Trustee Networks (CTN), the Institute of Chartered Secretaries and Administrators (ICSA) and the National Council for Voluntary Organisations (NCVO). It is available online at: http://www.charity-commission.gov.uk/Charity_requirements_guidance/Charity_governance/Good_governance/governancecode.aspx

SPECTRUM: the UK Museum Collections Management Standard

The SPECTRUM standard is used by museums to improve the management, sustainability and use of their collections. It is available online at: <http://www.collectionslink.org.uk/programmes/spectrum>

LIST OF ACCREDITATION ASSESSING ORGANISATIONS

England	ACE: Arts Council England
Northern Ireland	Northern Ireland Museums Council
Scotland	Museums Galleries Scotland
Wales	CyMAL