

Royal Society response to the Department for Culture, Media and Sport consultation on 'Care of Historic Human Remains'

October 2004

The Royal Society welcomes the opportunity to contribute to the Department for Culture, Media and Sport's consultation on 'Care of Historic Human Remains'. With regard to the issue of the repatriation of human remains, the Society welcomes the decision by the Government to grant nine specified national institutions the ability to "transfer from their collection any human remains if it appears to them to be appropriate to do so for any reason" (Human Tissue Bill, clause 48(1)), which will enable the repatriation of human remains.

Value of collections

- Public collections of human remains cover a wide range of material, from numerous locations and from a wide period of time, and provide a valuable historical resource about a wide range of scientific issues, such as anthropology, medicine, epidemiology and population studies. Research using human remains, such as the extraction and analysis of ancient DNA from remains, can provide insight into human evolution. Analysis of ancient bones and tissue can also provide evidence for understanding the history of human disease and human nutrition, with the latter contributing to information on crop biodiversity and climate change.
- Care should be taken to ensure that new legislation does not place restrictions on legitimate work by scientific researchers, and it is our opinion that every effort must be made to protect the future of this valuable work. Researchers who carry out work using human remains do so sensitively and with respect for the remains that their work relies upon. It is essential that any new legislation ensures an appropriate balance between the protection of the rights of claimant communities and maintaining access to collections of human remains for the benefit of scientific researchers and the general public who visit these collections.

Legislative changes

- It is important that the changes that are made to the current legislative system are robust, clearly defined and developed in consultation with those parties that will be affected by them. The Society agrees with the consultation's proposal to make legislative modifications so that claims of property can be made by communities with recent, direct genealogical links to human remains.
- Legislative changes should enable freedom for institutions so that the diversity of this community can be maintained. Any procedural guidance should aim for consistency at the national level but enable flexibility for individual institutions. We recommend that claims should be judged on a case by case basis, with the initial layer of decision-making being an institution's Trustees, due to the variety of skills and areas of expertise that Trustees can provide. These Trustees should be allowed to make their own informed judgments, within the context of sensible legislative

guidelines, with the option of consulting with advisory panels for advice and assistance in decision-making.

- The requirement for institutions to proactively obtain consent for the retention of human remains would place a huge financial and administrative burden on such institutions. Instead the responsibility for initiating deliberations should rest with claimant communities. Institutions have a responsibility to be open and transparent about the nature of their collections, in terms of identity and provenance, and to engage in discussion when sought by claimant groups.

Assessing claims

- Institutions should be open to discuss claims where these are initiated by potential claimants. However, there may be difficulty in handling requests from communities who lack recent, direct genealogical links to the remains that they wish to claim. We recommend that any legislative changes to the current system include guidance on how institutions can assess such cases.
- When making an assessment on whether to return human remains to a claimant community, due consideration should be given to their benefit to scientific research and public knowledge by remaining within an institution. The scientific significance of remains can be inferred from the provenance and history of a collection and, as mentioned in Question 8, the age of remains is a factor when assessing the scientific significance of the remains and in establishing genetic and cultural identity.
- Institutions have a responsibility for the long-term preservation of an archive, as well as a duty to facilitate public education and scientific understanding, and this may be compromised where the disposal practice of a claimant group would result in the destruction of remains, such as burial or incineration.

Code of Practice

- We believe that the museums community would welcome measures to enable them to engage with claimant communities. As proposed in Question 3, a non-mandatory code of practice would provide guidance to both the institutions and potential claimants and help ensure procedural consistency.
- There is a great diversity within the museums community on what is held, how it was obtained, and what, if any, calls for repatriation have been received. This will make it difficult for institutions to comply with a strict code of practice. We recommend that any code of practice reflects this diversity and it should aim for consistency at the national level but enable some flexibility for those individual institutions that vary in scale and type of collections.
- Guidance should be balanced and not weigh the aims of one party more than the other. It should be drawn up in consultation with representatives from stakeholder groups, including claimant communities, representatives of museums community and scientific researchers.
- It would be preferable for any new legislative system to enable individual institutions to decide on the majority of claims for return. However, it is possible that there may be difficulties in reaching a decision or that the decision is disputed by the claimant. Therefore, a code of practice should provide a clear decision-making process for museums to follow when assessing claims, and provide guidance on appeals process and dispute resolution, such as consultation with an advisory body.

Advisory Panel

- As previously stated, advisory bodies could be useful in helping to resolve disputes to the greatest degree of satisfaction of all parties involved. However it is important that the advisory panel should not override the views of properly appointed trustees. Local or regional advisory panels may be more appropriate than a national Advisory Panel as these would be smaller and more informal forums, which may more readily facilitate discussion and decision-making. However, care must be taken to avoid unnecessary duplication of effort.
- The Royal Society would not advocate the involvement of senior Government officials in dispute resolutions, and every effort should be made to ensure that the new legislative system is robust enough to facilitate decision-making at lower levels, such as through advisory bodies. If a position is reached where additional measures are needed to secure agreement, it may be more appropriate to involve external, experienced, mediators.

Licensing authority

- It is our belief, based on our interpretation of the Human Tissue Bill, that the licensing regime issued by the Human Tissue Authority will focus on issues related to recent human remains and material from living subjects. It may therefore be inappropriate for the Authority to also regulate collections of older human remains. Additionally, the Authority's remit and membership have yet to be finalised, and may make it unsuitable to regulate this issue. It is important, if the Authority is given a role in regulating collections of historic human remains, that its remit and membership reflect this.
- If the new legislative system does require a body to provide scrutiny then it should not overly interfere in the work of an institution, such as through regular inspection. Its main responsibility should be advising institutions but not be responsible for ensuring compliance. It should aim to achieve a balance between ensuring that the processing of claims by institutions complies with the new legislative system and enabling the use of human remains for scientific understanding and public understanding.

Implementation

- The timing and operation of any licensing regime are dependent on its remit and should be determined in consultation with institutions that will be responsible for its implementation.
- As previously stated, our preference would be for non-mandatory guidance, in the form of a code of practice.
- It is impossible to gauge the potential impact of new legislation on the operations of institutions but there will inevitably be resource implications that would require careful assessment.

Openness

- Institutions should be open and transparent about the nature of their collections, in terms of identity and provenance. There should be consultation within their community to ensure consistency of information, and it may be the responsibility of larger institutions to take the lead on developing this practice. Information on this within the code of practice could help ensure consistency and provide clarity of procedure for potential claimants.
- We do not believe that there should be a survey of 'sacred' objects in UK institutions, as such a survey would be subjective as it is impossible to define what is sacred, and would be both time-consuming and resource-intensive.