

1. CULTURAL PROPERTY MANAGEMENT

1.1 The British Library holds collections and collection items, created in the United Kingdom or abroad, which are of cultural importance to people in this country and throughout the world. The collections cover a wide range of formats including printed books, manuscripts, archives, sound recordings and digital documents, published or unpublished. The Library has both a growing responsibility and growing opportunities to increase access and engagement with the collections which it safeguards for people in the United Kingdom and across the world.¹

1.2 Cultural Property Management is a key component of the British Library's work across all its Purposes. When handled appropriately, cultural property provides opportunities for collaborative work with government bodies, institutions and groups of people in the United Kingdom and abroad, and for fostering good relations nationally and internationally. It may be done through exhibitions and cultural events, and shared creation of learning resources, or it may be done by enabling collections in several institutions to be more easily examined together, through digitisation and research programmes. This is supported by the Library's programme Heritage made Digital and can take the form of re-connecting dispersed collections or it might mean creating entirely new opportunities for people to make connections which were previously hard or impossible to make.

1.3 This paper aims to

- Set out the legal framework for the British Library's work with cultural property
- State the British Library's policy to the management of its existing collections of cultural importance
- State the British Library's policy for the legal and ethical acquisition of future collections which are or may become of cultural importance
- Provide a framework for consistent, appropriate, informed and timely responses to cultural property restitution claims
- Provide guidelines for the assessment of potential future claims
- Provide a framework for specific policies and procedures relating to cultural property management
- Provide the greatest possible transparency of the Library's management of cultural property

The paper has the following structure:

1 Introduction

2 Towards definitions

2.1 An inclusive concept of cultural heritage

2.2 A narrower, unstable category of cultural heritage

3 Legal and ethical concerns for the inclusive category of cultural heritage

4 Legal and ethical concerns for the narrower concept of cultural heritage

4.1 The existing collections

¹ See *Living Knowledge, The British Library 2015-2023*,
<https://www.bl.uk/aboutus/foi/pubsch/pubscheme3/living-knowledge-2015-2023.pdf>

- 4.2 Enabling diverse voices
 - 4.2 Nazi spoliation
 - 4.3 Human Remains
- 5 Basic responsibilities for work with cultural property
- 6 Claims for restitution or repatriation of cultural property
 - 6.1 Considering claims
 - 6.2 Justification for retaining claimed items
 - 6.3 Assessing a claim
 - 6.4 Risks
- 7 Limitations on the powers of the Board to deaccession
 - 7.1 Nazi spoliation
- 8 Flowchart for decision making
- 9 Future acquisitions

Appendix 1 BL policies and procedures relating to materials falling under the inclusive concept of cultural heritage.

Appendix 2 British Library policies and procedure relating to the narrower category of cultural property

Appendix 3 British Library policies and procedures relating to future heritage acquisitions and due diligence.

2. TOWARDS DEFINITIONS

2.1 An inclusive concept of cultural heritage.

All the British Library's collections may be considered cultural heritage. This includes our very extensive British collections acquired under legal deposit legislation. Neither the Legal Deposit Libraries Act 2003² nor its predecessors state the purpose of legal deposit. A working party set up in 1998 by Chris Smith, then Secretary of State for Culture Media and Sport, Chaired by Sir Anthony Kenny, Chairman of the British Library Board, focused nearly exclusively on Legal Deposit "underpin[ning] the nation's academic, research, and educational sectors."³ This conforms with the British Library Act which defines the function of the British Library "as a national centre for reference, study and bibliographical and other information services, in relation both to scientific and technological matters and to the humanities." However, in the debates in the Houses of Parliament a wider range of views of the aims of legal deposit were expressed, including functions relating to the nation's cultural heritage.⁴

From the perspective of our users our Legal Deposit collection serves not only to give access to research outputs. It also serves as documentation of the nature of life in Britain and of Britain in the world, unmatched by other United Kingdom cultural institutions in its inclusivity, in its breadth, and in its depth. This suggests that a very broad, inclusive notion of "cultural heritage" underlies contemporary legal deposit and by extension other non-rare mass-produced items in our collection.

² <http://www.legislation.gov.uk/ukpga/1972/54/contents>

³ See the report on the Working party on Legal Deposit, on the British Library's website: <http://www.bl.uk/aboutus/stratpolprog/legaldep/report/>

⁴ For the Second Reading in the House of Commons see *Hansard*, 14 Mar 2003: Columns 577-593 <https://publications.parliament.uk/pa/cm200203/cmhansrd/vo030314/debtext/30314-15.htm>

All the British Library's collections therefore offer opportunities for research and engagement associated with cultural property and also need to be developed and managed with a sensitivity commensurate with their cultural importance. Different types of collections however require levels and types of management to enable different forms of engagement.

2.2 A narrower, unstable concept of cultural property

The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970, refers to a much narrower subset of what we may regard as cultural heritage materials.

The UNESCO Convention sees cultural property from the perspective of states, stating that "the term 'cultural property' means property which, on religious or secular grounds, is specifically designated by each State as being of importance" and it set the bar high when it requires each state to create "a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage". Despite its opening reference to "the cultural life of all people" and the "civilization of Man", the UNESCO Convention has therefore sometimes been interpreted as giving weight to an understanding of culture as that which distinguishes one group of people from another and giving less weight to the world-wide importance of any one form of cultural heritage. It may also be interpreted as giving less importance to cultural creations of groups and individuals who may be less favoured by current political configurations within the territory where they live or have lived. It must however be understood that the UNESCO Convention placed cultural property under the protection of the states signatory to the Convention for the practical reason that they are only organisms which can assume the responsibility for enforcement.

The UNESCO Convention specifies types of material as cultural property, including the following materials which are typically held in libraries:

'original engravings, prints and lithographs ... rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections; postage, revenue and similar stamps, singly or in collections; archives, including sound, photographic and cinematographic archives'.⁵

UNESCO further emphasises the cultural importance of materials held in libraries and archives through their prominent inclusion in its Memory the World programme, created in 1992.⁶

⁵ http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html#AUTHORITATIVE

⁶ See <http://www.unesco.org/new/en/santiago/communication-information/memory-of-the-world-programme-preservation-of-documentary-heritage/>

When the UK government accepted the UNESCO Convention on 1 August 2002, it interpreted “the term ‘cultural property’ as confined to those types of objects which were listed in the Annex to Council Regulation (EEC) N° 3911/1992 of 9 December 1992.”⁷ The Annex sets financial thresholds for the listed categories of materials. The table below sets out the categories and thresholds which are of greatest relevance for the British Library:

Category	Value threshold
Incunabula and manuscripts, archives	£0
Drawings, engravings, photographs, printed maps	£12,135
Books [i.e. printed books], collections	£40,450
Pictures	£121,350

The Dealing in Cultural Objects (Offences) Act 2003 refers to “cultural objects” which it describes as objects of historical, architectural or archaeological interest.⁸

The Annex to Council Directive 1993 / EEC, on which the UK Government based its understanding of cultural property, referenced a judgement of the European Court of Justice for the definition cultural property.⁹ The Court was concerned with the application of customs tariffs and needed to establish what characteristics are required for an item to belong to one or several of the types of cultural property listed in the Customs Regulations.¹⁰ One of these is “collectors’ pieces”. The Court identified four characteristics of a “collectors’ piece”, items which:

- are relatively rare
- are not normally used for their original purpose
- are the subject of special transactions outside the normal trade in similar utility articles
- are of high value (presumably compared to “similar utility articles”)

⁷ The full phrase is: *The term ‘cultural property’ as confined to those types of objects which were listed in the Annex to Council Regulation (EEC) N° 3911/1992 of 9 December 1992, as amended, on the export of cultural goods and in the Annex to Council Directive 1993 / EEC of 15 March 1993, as amended, on the return of cultural objects unlawfully removed from the territory of a Member State.* See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31992R3911> and <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31992R3911>. The UK accepted the Convention with specific reference to the 1992 regulations. They are no longer in force having been replaced by regulations of 2008. See <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32009R0116>

The value thresholds have remained unchanged. They must be expected to change in future regulations, but it would seem that the UK is bound by the values of the Annex to the 19923 regulations.

⁸ <http://www.legislation.gov.uk/ukpga/2003/27/section/2>

⁹ <http://curia.europa.eu/juris/showPdf.jsf?jsessionid=9ea7d0f130d51c38213877ed43a0be01f5b6589aebbf.e34KaxiLc3eQc40LaxqMbN4PaxyLe0?text=&docid=93504&pageIndex=0&doclang=EN&mode=lst&dir=&cc=first&part=1&cid=106146>

¹⁰ The Court referred to Abschnitt 21, Kapitel 99 of the regulations of 1969; see

http://publications.europa.eu/resource/ellar/ab96f31d-a57a-4110-889c-51bd5a77cd0b.0001.01/DOC_1

The substance of the regulations is however identical in chapter 21, section 95 of the now current Council Regulation (EEC) no 2658/87 of 23 July 1987 on the Tariff and Statistical Nomenclature and on the Common Customs Tariff, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31987R2658>

The judgment of the European Court of Justice is apparently the only legal document seeking to establish defining characteristics of cultural property.

The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage defines intangible cultural heritage in such a way that British Library collection items are probably all out of scope. However collection items may represent or reproduce intangible cultural heritage as understood by the Convention and can therefore be of great cultural significance.¹¹

The Cultural Property (Armed Conflicts) Act 2017¹² enacts the Hague Convention of 1954¹³ and refers to its definition which has no financial thresholds: “movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above.”¹⁴

If the list of types of cultural property in the UNESCO Convention tends towards an understanding of “cultural property” as a stable characteristic of types of objects, the Hague Convention gives unequivocal emphasis to cultural property as being of importance to “every people” (Article 1.a): the defining characteristic is not inherent in objects but in people’s perceptions of them. This does not diminish the specificity of each cultural creation, the intimate link of which with the universality of humanity articulated in the preamble. There it is stated “that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.” The importance given to the universal equivalence of human cultural expressions must be understood within the context of the creation of the Hague Convention, after the devastation and racist spoliation which took place during the Second World War. In this it is close to the European Convention of Human Rights which came into force in 1953¹⁵ and the Universal Declaration of Human Rights of 1948 which emphasises the universality of the “the human family.”¹⁶

¹¹ UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 2003, <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>

¹² <http://www.legislation.gov.uk/ukpga/2017/6/section/2/enacted>

¹³ *Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954*. Pdf of the original document:

<http://unesdoc.unesco.org/images/0008/000824/082464mb.pdf> Searchable version:

http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html

¹⁴ Article 1.a

¹⁵ Convention for the Protection of Human Rights and Fundamental Freedoms:

https://www.echr.coe.int/Documents/Collection_Convention_1950_ENG.pdf

¹⁶ <http://www.un.org/en/universal-declaration-human-rights/index.html>; For instance in the Preamble.

More recently academic work has emphasised the instability of “cultural property”.¹⁷ This is consonant with long-standing research into the history of collecting and of collecting institutions, where it is well documented that collecting interests and associated market prices for cultural property can change radically and fast. Similarly items which were in the past deemed controversial or trivial, offensive or inoffensive may now be regarded the other way round.

Items can have a long-standing importance, they can acquire a new but still profound meaning for groups of people, and their importance can equally diminish over time.

The British Library’s collections may be of cultural importance to several community groups and nations simultaneously, who may associate meanings with them which are profoundly at variance. Cultural heritage items were produced and used in societies which were subject to change and conflict, then as now, in response to interaction, trade or war. They were created in contexts where they could express power relationships and they may have changed hands in circumstances involving force several items. They can also today express and be used to express conflicts between or even within nations or groups. The past was not harmonious, it is often contested, and it can become the basis for current conflicts. Informed by this background the British Library seeks to take into account the potential for creating or for exacerbating existing tensions or conflicts when we handle cultural property in our custodianship.

All these perspectives inform the British Library’s understanding of the cultural importance of its collections and help determine its policies and procedures. They assist our management of cultural heritage as a constantly evolving category of material. The changing landscape offers opportunities for engaging with diverse audiences around our collections, for essentially it means that there are people who find that our collections are important. But, if not properly managed, we may risk criticism for neglect, ignorance, or insensitivity, undermining our reputation for responsible stewardship and even the integrity of our collections.

In this paper the term cultural property is used because it is the term used in most of the relevant legislation which must guide our actions, while we acknowledge that for some people the term cultural property is perceived as applying Western notions of property rights to non-Western cultural expressions. The term cultural heritage is therefore increasingly used, but even this implies ownership and stability over time, and fails to capture the dynamism and the instability which is inherent in the notion of culture.¹⁸

¹⁷ E.g. Naomi Mezey, ‘The paradoxes of cultural property’, *Columbia Law Review*, December 2007, Vol.107(8), pp. 2004-2046 and Laurajane Smith, *The Uses of Heritage* (Routledge: London and New York, 2006).

¹⁸ See notably Naomi Mezey, ‘The paradoxes of cultural property’, *Columbia Law Review*, December 2007, Vol.107(8), pp.2004-2046, at p. 2005;
<https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1902&context=facpub>

3. LEGAL AND ETHICAL CONCERNS FOR THE INCLUSIVE CATEGORY OF CULTURAL HERITAGE

We have a duty to ensure that our current collecting responsibly reflects the richness and the complexity of life in contemporary Britain and the role of Britain in the world.

A number of legal and ethical concerns must be taken into account when managing collections which fall under the inclusive definition of cultural heritage. The British Library has policies and procedures in place for dealing with these issues to ensure that we manage and develop the collections within the restraints imposed by current legislation. Simultaneously we must take account of the fundamental purpose of the Library to document issues of contemporary importance for current and for future researchers, so that they can investigate issues which are controversial today. The main mitigations against the risk of infringement against the existing legislation are non-acquisition, identifying potentially infringing items, suppressing catalogue records and/or restricting access.

See Appendix 1 for British Library policies and procedures relating to materials falling under the inclusive concept of cultural heritage

4. LEGAL AND ETHICAL CONCERNS FOR THE NARROWER CATEGORY OF CULTURAL PROPERTY

4.1 The existing collections

A very large part and very important part of the cultural property of which we are custodians was created in the United Kingdom. Numerically, the overwhelming majority of the British Library's cultural heritage collections were acquired directly or indirectly as part of normal trade in objects either created to be traded or habitually traded, part of the "interchange of cultural property among nations". The British Library understands that these two observations do not diminish the legitimate interest in such objects by groups in the UK or elsewhere who consider them uniquely important for them, and the British Library welcomes their interest as an opportunity for collaboration.

"For reasons of history – cultural, imperial, mercantile – the British Library's collection is perhaps the most international of its kind anywhere in the world, with rare or unique items reflecting all major language groups and faith traditions. We have both a growing opportunity and growing responsibility to use the potential of digital to increase access for people across the world to the intellectual heritage that we safeguard."¹⁹

The British Library supports the opening statement of the UNESCO Convention

¹⁹ *Living Knowledge, The British Library 2015-2023*,
<https://www.bl.uk/aboutus/foi/pubsch/pubscheme3/living-knowledge-2015-2023.pdf>

“that the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations.”²⁰

The British Library believes that all human cultural creativity is accessible to be understood by others and can expand our horizons beyond our own cultural spheres, creating new insights and promoting greater human understanding and mutual respect. In conformity with the UNESCO Convention the British Library believes that there is great educational and research value in collections which enable the creative productions of various cultures and civilisations to be critically studied and enjoyed jointly by people worldwide.

This understanding is not in conflict with our appreciation that cultural objects are produced in specific cultural circumstances nor that they can be especially meaningful to certain groups of people. Therefore British Library likewise supports the statement of the UNESCO Convention that cultural property “can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting.”

The British Library also acknowledges the importance of understanding the conditions which led to the collections and individual items now in the British Library. This is of importance for items created within the current borders of the United Kingdom, and for items created elsewhere including those parts of our collections which can be associated directly or indirectly with the British imperial expansion.

4.2 Nazi spoliation

In conformity with UK legislation, especially the Holocaust (Return of Cultural Objects) Act 2009,²¹ the British Library endeavours to identify items in its collections which have been spoliated between 1933 and 1945, the period of Nazi domination in Europe.

The Library works closely with the National Museum Directors Council’s Working Group on Nazi spoliation and follows the guidelines and procedures agreed by the NMDC, and its Statement on Spoliation of works of art during the Holocaust and World War II period, last updated 2016.²²

²⁰ http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html. This sentiment is captured in *Living Knowledge, The British Library 2015-2023*, ‘International’, p.32; <https://www.bl.uk/aboutus/foi/pubsch/pubscheme3/living-knowledge-2015-2023.pdf>

²¹ <https://www.legislation.gov.uk/ukpga/2009/16/contents>

²² <https://www.nationalmuseums.org.uk/what-we-do/contributing-sector/spoliation/> and https://www.nationalmuseums.org.uk/what-we-do/contributing-sector/spoliation/spoliation_statement/

The Library is further guided by the Washington Conference Principles on Nazi-Confiscated Art 1998²³ and by the guidelines of the Museum and Galleries Commission of 2000.²⁴

See section 8.1 for the library's procedures when it identifies items in its collection as spoliated in the Nazi period or when it receives a claim concerning such items.

4.3 Human Remains

The Human Tissue Act 2004 covers activities relating to human tissue.²⁵ The British Library's position in relation to the Act and more widely to human tissue is set out in the Policy Relating to Human Remains in the British Library (December 2017).²⁶ We have undertaken an extensive examination of our collections and their records and have identified no items which contain human remains which are covered by the measures of the Act.

5 BASIC PRINCIPLES FOR RESPONSIBLE WORK WITH CULTURAL PROPERTY

The mission of the British Library is to "make our intellectual heritage accessible to everyone, for research, inspiration and enjoyment."²⁷ This supports fundamental democratic principles around transparency, inclusiveness and participation, with a bearing on social issues relating to an uneven social and geographic distribution of access to information, nationally and internationally.

We strive to provide an open and shared documentary basis of material which users can trust to be what it is stated to be. This facilitates an informed diversity of perspectives and it promotes informed reflections on a shared and contested past which has contributed to form the present and may form the future. By being transparent and open in our handling of cultural property we contribute to enhancing trust in the British Library as a public institution.

The British Library's diverse collections enable us to work closely throughout the United Kingdom and across the world with people with diverse backgrounds, whether politically, socially, religiously, geographically or in other ways.

The interest which is associated with cultural property of all types in our collections provides us with responsibilities but equally with opportunities for enhancing our work to explore the collections for culture, for research, or for learning in a national or in an international context, to "work with partners around the world to advance

²³ <https://www.state.gov/p/eur/rt/hlcst/270431.htm>

²⁴ *Restitution and repatriation: Guidelines for good practice* (Museums and Galleries Commission, 2000); ISBN 0948630914.

²⁵ <https://www.legislation.gov.uk/ukpga/2004/30/contents>

²⁶ H:\Collections and Curation\Head of Collections and Curation\CULTURAL PROPERTY\Policy\Controversial Stock\Human_Remains_Policy_Dec._2017

²⁷ *Living Knowledge, The British Library 2015-2023*, p. 11.

<https://www.bl.uk/aboutus/foi/pubsch/pubscheme3/living-knowledge-2015-2023.pdf>

knowledge and understanding".²⁸ The British Library seeks to achieve this through work on all its stated Purposes.

Custodianship

- Providing comprehensive and trustworthy information accessible through on-line catalogues - not to neglect or disrespect the cultural creations of others
- Recording the provenance of collections or items, and making the information discoverable - not to seem to hide or undervalue the origin of items
- Looking after things which are important to others -demonstrating high levels of stewardship, by providing storage with excellent environmental standards, conservation provisions, and levels of physical safety and security
- Monitoring external events to remain sensitive to a changing environment
- Maintaining and regularly updating a Cultural Property Issues List used for prioritising and assessing collections for all custodianship and engagement purposes
- Prioritising collections on the Cultural Property Issues List for possible collaborative work with interested regions, nations, institutions and secular or religious groups
- Seeking to enhance information about these collections through knowledge sharing and to enhance their visibility on site and off site.
- Being open and transparent about the parameters for selecting collections which will have enhanced visibility, for instance through digitisation

Research and International

- Making collections available to all bona fide researchers on-site in our reading rooms
- Making collections available on-line to everyone in the UK and anywhere in the world through our major programme Heritage Made Digital in awareness of cultural sensitivities
- Making research insights into our collections of cultural heritage accessible and enjoyable through our social media platforms
- Jointly creating knowledge exchange opportunities
- Working with national and international partners, leading to a better informed understanding of cultural heritage collections, including but not only on potentially contested cultural property
- Interacting with foreign governments, through their diplomatic representatives in the UK or directly with their government departments;
- Developing and maintaining close contacts as a basis for sustained collaborative work with representatives of regions, nations and other groups who have a special interest in our collections as cultural property
- Taking the initiative to engage and collaborate with relevant national/international groups of people when potentially sensitive items are newly identified

²⁸ *Living Knowledge, The British Library 2015-2023, 'International', p.32;*
<https://www.bl.uk/aboutus/foi/pubsch/pubscheme3/living-knowledge-2015-2023.pdf>

- Collaborating with international bodies, for instance CENL, CERL, IFLA, UNESCO, and other Non-Governmental Organisations
- Supporting the work of UK government agencies where this promotes the Library's long term purposes while maintaining the Library's intellectual independence;
- Engaging with non-UK funding bodies or with private charitable bodies.

Culture and Learning

- Working collaboratively with people throughout the UK of varied cultural, geographical or religious backgrounds
- Creating and co-creating a varied and accessible public programme of exhibitions and events
- Creating and co-creating resources for learners of all ages, also using languages other than English where this is appropriate
- Enabling a diversity of voices to engage in informed public discourse about the collections – opening our collections for public discourse on-line and on-site
- Demonstrating the benefits for all audiences that flow from good management and stewardship of cultural property
- Contextualising cultural property issues for a wider audience

Good governance

- Ensuring compliance with the changing legislative framework relating to cultural property
- Publishing policies and procedures
- A flexible and transparent loans policy enabling collection items to be interpreted in a variety of contexts, underpinned where needed by immunity from seizure or similar guarantees
- Dealing appropriately with financial gain made from culturally sensitive collections
- Regular cultural property training of appropriate staff
- Creating an increasingly diverse workforce to enable a diversity of voices to speak for the BL on all BL collections
- Responding in a timely, transparent and constructive fashion to claims for restitution or repatriation
- Cooperating with claimants
- Respecting a wish for confidentiality of claimants or potential claimants
- Accountable and FOI-able communications relating to restitution claims, resolutions and disputes

6 CLAIMS FOR RESTITUTION OR REPATRIATION OF CULTURAL PROPERTY

Cultural restitution is here taken to describe the act of making good a legal wrong, returning cultural property to its rightful owner. A claimant may be able to show higher legal rights, or may present a persuasive moral case for the items to be returned.

Cultural repatriation is here understood as an act whereby cultural property is returned to its place of creation, to a place where it was previously held, or near to

such a place, but not necessarily to a former owner, and not necessarily in recognition of an earlier act of wrongful or illegal appropriation.

Claims may not be formal requests from established authorities or from other interested parties, but may be made in the public arena, published in the media or made orally.

Some claims may be made on a purely legal basis, but many are likely to be made on the basis of cultural and political values. The British Library acts on the understanding that they may reflect complex and long-standing historical sensitivities, and equally that they may reflect more recently developed sensitivities and current political or cultural concerns.

Claims may be associated with questions about national or regional identity, religious belief or the self-determination of groups and communities within existing states. They may be associated with relatively short-term political interests. The function of cultural property may be part of a contested political, cultural or religious environment in the areas of origin and among communities with roots in those areas even if no longer resident there

In all cases it is likely that there will be moral and historical as well as contemporary political sensitivities, and in cases brought by individuals there may be significant personal sensitivities which need to be respected. A mishandled claim can distress claimants, and harm our reputation as an ethical and responsible cultural institution.

6.1 Considering Claims

The British Library takes all forms of claims seriously and will seek to engage sensitively, efficiently and appropriately with claims and claimants in awareness of their contexts.

The British Library may only dispose of property lawfully and the Library may be unable to act on claims which are or seem to be ethically compelling by the standards of contemporary public life.

When it is within the powers of the British Library Board to so, the British Library's reputation for responsible management of cultural property will be enhanced from positive responses to well-founded claims.

When considering a claim, the British Library will need to take account of its legal obligations and moral and public responsibilities and of its accountability to its stakeholders. A claim may present a threat to the integrity of our collections. It may run counter to our responsibility to manage the national collections for the public benefit, to guarantee their stability and to ensure access to them for everyone. Any claim will be considered against the public benefit of retention.

6.2 Assessing a claim

Fundamental issues to be clarified of any claim are

- the legal status of the items in question
- the powers of the British Library Board to accede to the request
- whether the claim relates to spoliation during 1933-1945 (see section 8 below)

Seeking to gain clarity on the questions listed below will assist the Library in assessing the weight attached to a claim. The same questions are used to identify collections to be included on the Cultural Property Issues List:

- Were the items produced to be sold, otherwise traded, or exchanged?
- Were the items at a later point normally sold, traded or exchanged?
- Were the items removed from their place of creation as part of normal trade or exchange?
- Did the items arrive in the Library directly or indirectly as a result of normal trade or exchange?
- Were the items created for a specific location?
- Were removals from such specific locations standard for this sort of items?
- Were the items removed from their place of creation or from their legal ownership by the use of force or other undue pressure?
 - If yes, was this illegal at the time?
 - If yes, was the acquisition by the British Library or its predecessor institutions closely associated with the process of removal?
- Had the items already previously been separated from a location or a context for which they were created?
- Did the items still serve their original cultural purpose before their acquisition?
- Are other instances of such items still normally used for their original purpose?
- Is there a cultural continuity between the contemporary claimants and the communities from which the collection item originates of:
 - (a) religious/spiritual belief; and/or
 - (b) cultural customs and practices?
- Is there a family relationship between the claimants and the original owners or creators of the items?
- Does the claimant in other ways represent the former owners of the items or their heirs?
- Is there a potential for a claim from more than one community or country with an interest in the items, and are their interests compatible or conflictual?
- Has the presence of the item in the British Library been known for a long time?
- Have claims been made by this or other applicants before?

In assessing any claim, the BL will take account of number of general considerations related to the public benefit of retention, including the following

- The importance of promoting mutual understanding by enabling the knowledge and creativity of various cultures and civilisations to be researched, interpreted and appreciated together, by the citizens of the UK

and by our many visitors to the British Library from all parts of the world, and world-wide on-line

- The Library's promotion of the contextual interpretation of collections and collection items. This is based on an awareness that all intellectual creations represent a shared humanity while being rooted in specific cultures, periods and areas,
- The Library's aim to support scholarship which seeks "sometimes against the odds, to reach across boundaries of languages, politics, faith and geography"²⁹
- The interpretation of the Library's collections and collection items in a broad national and international context through our cultural engagement programmes in ways which reach, delight, and engage the widest possible public

7 LIMITATIONS ON THE POWERS OF THE BOARD TO DEACCESSION

The Board may not dispose of any property in its possession, however overwhelming the ethical case, unless doing so is lawful. The British Library Act of 1972 and other legal and quasi-legal instruments effectively prevent the disposal or deaccessioning for a very large part of its collections. The British Library's policy for deaccessioning is found on its public website:

<http://www.bl.uk/aboutus/stratpolprog/coldevpol/deaccessioning/>

A summary of the limitations of the powers of the Board to deaccession is contained in the Appendix.

7.1 Nazi spoliation

The limitation imposed by the British Library Act may be overruled for items covered by the Holocaust (Return of Cultural Objects) Act 2009, "An Act to confer power to return certain cultural objects on grounds relating to events occurring during the Nazi era".³⁰

The Act contains a "sunset clause" terminating its validity in 2019. The British Library has supported its proposed indefinite extension and anticipates that this will be implemented in the course of 2018.

A restitution claim under the Holocaust (Return of Cultural Objects) Act 2009 must be considered by the Spoliation Advisory Panel. If they decide in favour of a claimant the Secretary of State authorises the British Library Board to transfer the item to the claimant. The British Library Board will then in all normal circumstances proceed to return the item to the claimant as the rightful owner.

²⁹ *Living Knowledge, The British Library 2015-2023, 'International', p.32;*

<https://www.bl.uk/aboutus/foi/pubsch/pubscheme3/living-knowledge-2015-2023.pdf> in part expressing the sentiment of the Preamble of the UNESCO Convention of 1970 http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html.

³⁰ <https://www.legislation.gov.uk/ukpga/2009/16/contents>

The British Library will not contest claims which it judges to be valid and will provide claimants with all reasonable support in the claims process.

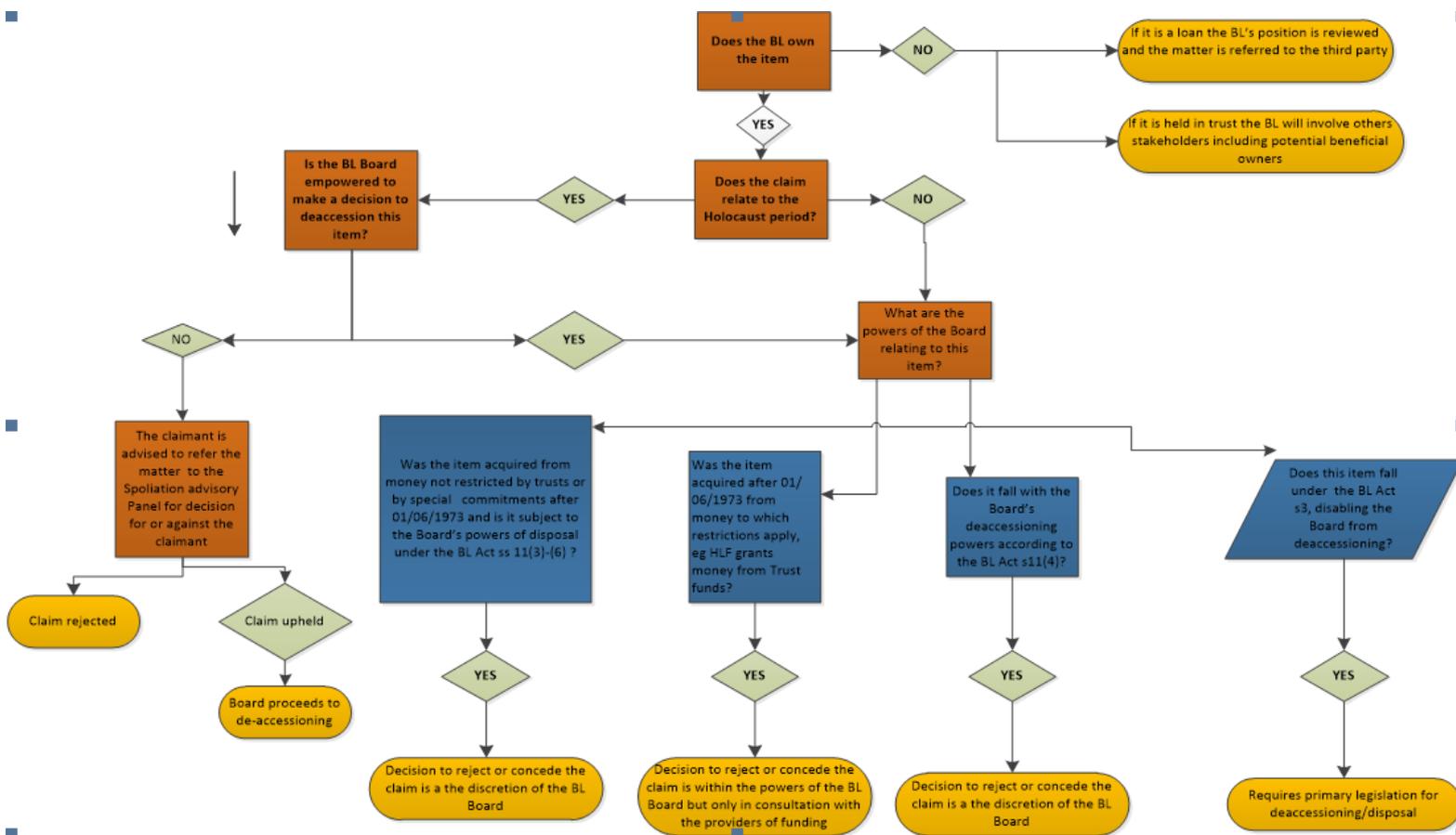
The Library actively seeks to investigate its collections for relevant items, and will itself seek to inform potential claimants about relevant items it may discover in its collection.

The Board may approve, and has in the past approved, the restitution of Nazi spoliated items acquired after June 1973 without seeking the approval of the Spoliation Advisory Panel.

The practicalities of dealing with such claims are set out in Protocol for Handling Restitution Claims (last updated November 2015) and Procedural Guidance How to Handle Restitution Claims (last updated November 2015). Both are available on the Intranet.

See Appendix 2 for specific British Library policies and procedure relating to the narrower category of cultural property

8 FLOWCHART FOR DECISION MAKING IN THE CASE OF RESTITUTION CLAIMS



9 FUTURE ACQUISITIONS

For the purpose of this paper an “acquisition” is taken to be any material which the Library purchases, receives, hires, borrows or accepts.

The aim with our policies and procedures is to avoid that legal problems will arise from future acquisitions, although cultural changes will inevitably give rise to new ethical and moral issues with materials which now seem uncontroversial.

The British Library’s approach takes fully into account the approach set out in the DCMS guidelines on *Combating Illicit Trade* (October 2005), the basic principles of which are:

“Museums should acquire and borrow items only if they are legally sound. They should reject an item if there is any suspicion about it, or about the circumstances surrounding it, after undertaking due diligence. Documentary evidence, or if that is unavailable an affidavit, is necessary to prove the ethical status of a major item. Museums should acquire or borrow items only if they are certain they have not been illegally excavated or illegally exported since 1970.”³¹

The main parts of legal framework for future acquisitions is

- *Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954* (The Hague Convention) First Protocol, The Hague, 14 May 1954; - Second Protocol, The Hague, 26 March 1999
- *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Cultural Property*, 1970
- The International Council of Museums (ICOM) *Code of Professional Ethics* (1986), amended 2001, revised 2004
- Council Directive 93/7/EEC of 15 March 1993 on *The return of cultural objects unlawfully removed from the territory of a Member State*, appendix amended by Directive 96/100/EC 1997 and Directive 2001/38/EC
- *UNIDROIT Convention on stolen or illegally exported cultural objects*, 1995 (not ratified or accepted by the UK)³²
- *Dealing in Cultural Objects (Offences) Act 2003*
 - Dishonestly dealing in a cultural object that is tainted, knowing or believing that it is tainted
 - Dealing means acquires, disposes of, imports or exports
 - Tainted if removed from a building or structure or monument of historical, architectural, or archaeological interest
 - ‘Bodies corporate’ rule – individual officer as well as the corporate body is liable for prosecution
 - Up to seven years in prison and/or a fine

³¹ *Combating Illicit Trade: Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material* (October 2005), p. 3

³² <http://www.unidroit.org/instruments/cultural-property/1995-convention>

- The Iraq (United Nations Sanctions) Order 2003, SI 2003/1519
- The Human Tissue Act, 2004.³³ Advice based on this is given in the DCMS *Guidance for the Care of Human Remains in Museums* (October 2005)
- DCMS guidelines, *Combating Illicit Trade* (2005)
- Tribunals, Courts and Enforcement Act (2007):³⁴ Part VI provides immunity from seizure for cultural objects which are loaned from overseas to temporary public exhibitions in approved museums or galleries in the UK where conditions are met when the object enters the UK.
- The Collections Trust SPECTRUM guidelines on accessions (last revised 2017)
- Cultural Property (Armed Conflicts) Act (2017), which ratifies and incorporates in to UK law the Hague Convention of 1954 and the Protocols of 1954 and 1999
 - A person – and a body incorporated under the law of any part of the United Kingdom - guilty of an offence under this section in England and Wales is liable
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine (or both);
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both).
- It is anticipated that the Government will introduce legislation to implement a ban the trade in ivory. Government published the results of a consultation on 3 April 2018. The proposed measure will not affect the right to own, gift, inherit or bequeath items containing historic ivory. The proposed measure will create a further area where British Library staff could be asked to provide specialist advice to Government, as the measure will exempt the rarest and most important items of their type, at least 100 years old, their rarity and importance assessed by museums before exemption permits are issued. The measure also includes exemptions relating to
 - donations, exchanges and commercial activities to, and between Accredited Museums
 - items with less than 10% ivory by volume made prior to 1947 – this may be of relevance for future acquisitions of historic bindings
 - musical instruments with an ivory content of less than 20% and made prior to 1975
 - portrait miniatures painted on thin slivers of ivory which are at least 100 years old.

Ethical acquisitions policy

To ensure that the Library pays full attention to the legal, quasi-legal and ethical issues it has adopted an Ethical Acquisitions policy, regularly updated to reflect the changing environment, most recently revised in March 2017.

³³ <https://www.legislation.gov.uk/ukpga/2004/30/contents>

³⁴ <http://www.legislation.gov.uk/ukpga/2007/15/contents>. See also <http://www.bl.uk/aboutus/stratpolprog/immunity-from-seizure/index.html#top>

Due Diligence and the Heritage Acquisitions Group

To ensure conformity of current acquisition with the Ethical Acquisitions Policy the Library has in place a Due Diligence Policy supported by Due Diligence Guidelines.

Government guidance distinguished between “major” and “minor” items from a Due Diligence perspective, recognising that many acquisitions are of low financial value and also carry a very low risk of being contentious cultural property. For instance the British Library acquires a number of nineteenth-century books printed in Britain. The vast majority of these are assessed as being low risk from a cultural property management perspective, and therefore “minor”.

The Library’s heritage acquisitions are coordinated and monitored by the Heritage Acquisitions Groups, which ensure compliance with the Ethical Acquisitions Policy, that Due Diligence has been exercised and documented, and that acquisitions meet the Library’s Heritage Acquisitions Policy.

No proposal can be made to the Heritage Acquisitions Group unless the proposer has attended special Due Diligence training within the last three years. A Due Diligence form must be completed and signed by a head of the relevant collection department and the Head of Collections and Curation.

The Heritage Acquisitions Group ensures transparency and accountability in the acquisition of items valued about £10,000 which cannot be acquired following the Library’s standard procurement rules. The categories considered by Heritage Acquisitions Group recall the criteria of the European Court of Justice quoted above, that collection items are distinct from other items of the same type by being of “high value” and traded “outside the normal trade in similar utility articles”.

The value threshold set by government guidance for considering an item a “major” heritage acquisition is £20,000. By requiring all items valued at £10,000 or above to go to the Heritage Acquisitions Group, the Library has set a more demanding bar.

Items valued at less than £10,000 may still be considered major items and will then require a full due diligence assessment. The Due Diligence Guidelines and training provides some guidance on this, but a decision must be made on the professional assessment of the acquiring curator. Items deemed minor will be documented on a quarterly basis with brief descriptions setting out which items or groups of items are considered “minor” from a due diligence perspective. All Due Diligence Forms are centrally archived.

The Heritage Acquisitions Group also ensures that donations and long-term incoming loans, from a content perspective, are compatible with the Heritage Acquisitions Policy. The process for documenting Due Diligence for all incoming short-term loans for exhibitions requires approval of the loan by the head of the relevant Collection and the Head of Collections and Curation.

See appendix 3 for British Library policies and procedures relating to future heritage acquisitions and due diligence.

Appendix 1

BL policies and procedures relating to materials falling under the inclusive concept of cultural heritage.

	Relevant legal instrument	BL policies and procedures
Terrorism	Terrorism Act 2006 ³⁵	“Guidance for curators on dealing with material that may be subject to the Terrorism Acts (2000, 2006, and others)” (March 2017) <i>H:\Collections and Curation\Head of Collections and Curation\CULTURALPROPERTY\Policy\Controversial Stock\ Terrorism Acts Guidance for curators - v2 23.3.2017</i>
Child Pornography	Protection of the Children Act 1978, as revised ³⁶	“The management of controversial, extremist or inflammatory material at the British Library” (December 2007) <i>H:\Collections and Curation\Head of Collections and Curation\CULTURALPROPERTY\Policy\Controversial Stock\Controversial Stock</i>
Racial Hatred	Racial and Religious Hatred Act 2006 ³⁷	“The management of controversial, extremist or inflammatory material at the British Library” (December 2007) <i>H:\Collections and Curation\Head of Collections and Curation\CULTURALPROPERTY\Policy\Controversial Stock\Controversial Stock</i>
Libel	Defamation Act 2013 ³⁸	“The management of controversial, extremist or inflammatory material at the British Library” (December 2007) <i>H:\Collections and Curation\Head of Collections and Curation\CULTURALPROPERTY\Policy\Controversial Stock\Controversial Stock</i>
Data Protection	Regulation (EU) 2016/679 of the Parliament and of the Council ³⁹ becomes UK law on 25 May 2018 replacing the Data	The Library’s compliance with the Data Protection Act is overseen by Corporate Information Management Unit. A document in preparation by R. Price sets out curatorial procedures relating to personal data held in archives in the collections.

³⁵ <http://www.legislation.gov.uk/ukpga/2006/11/introduction>

³⁶ <http://www.legislation.gov.uk/ukpga/1978/37>

³⁷ <http://www.legislation.gov.uk/ukpga/2006/1/schedule>

³⁸ <http://www.legislation.gov.uk/ukpga/2013/26/contents/enacted>

³⁹ <http://ec.europa.eu/justice/data-protection/>.

	Protection Act 1998. ⁴⁰	
--	---------------------------------------	--

Appendix 2

British Library policies and procedure relating to the narrower category of cultural property

Policy areas	Library policies and procedures
De-accessioning policy	The Library's Deaccessioning Policy is published on the Library's website: http://www.bl.uk/aboutus/stratpolprog/coldevpol/deaccessioning/ Guidelines for the implementation of the Policy is found on the Intranet: http://intranet.ad.bl.uk/policies/deaccessioning-and-disposal
Nazi spoliation	See Protocol for Handling Restitution Claims (last updated November 2015) and Procedural Guidance How to handle Restitution claims (last updated November 2015). http://intranet.ad.bl.uk/britishlibrary/~media/intranet/docs/how%20to/collections/procedural%20guidancerestitutionclaims06112015.pdf and http://intranet.ad.bl.uk/britishlibrary/~media/intranet/docs/how%20to/collections/procedural%20guidancerestitutionclaims06112015.pdf
Human Remains	Policy relating to Human Remains in the British Library's collections (10 December 2017). H:\Collections and Curation\Head of Collections and Curation\CULTURAL PROPERTY\Policy\Controversial Stock\Human Remains Policy Dec. 2017
List of collections and items which are currently managed as potentially sensitive cultural property	The Cultural Property Issues List H:\Collections and Curation\Head of Collections and Curation\Cultural Property Issues List. This is a live file regularly updated and version controlled.
Intangible Cultural Heritage	UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 2003, http://unesdoc.unesco.org/images//0013/001325/132540e.pdf

Appendix 3

British Library policies and procedures relating to future heritage acquisitions and due diligence.

Ethical Acquisitions Policy, last revised March 2017	http://www.bl.uk/aboutus/foi/pubsch/pubscheme5/ETHICALFUTUREACQUISITIONSPOLICY.pdf
--	---

⁴⁰ <http://www.legislation.gov.uk/ukpga/1998/29/contents>

05.02.2018_Cultural_Property_Managment_Framework_

Due Diligence Guidelines, last updated June 2017	http://intranet.ad.bl.uk/britishlibrary/~media/intranet/docs/how%20to/collections/due%20diligence%20guidelines.pdf
Due Diligence Form, last updated June 2017	http://intranet.ad.bl.uk/how-to/work-with-cultural-property
Acquisitions Form,	http://intranet.ad.bl.uk/britishlibrary/~media/intranet/docs/how%20to/collections/acquisitions%20form.pdf
Heritage acquisitions policies	http://intranet.ad.bl.uk/policies/heritage-acquisitions

Head of Collections and Curation

13 December 2018