

RETURN TO AN ADDRESS OF THE HONOURABLE THE HOUSE OF COMMONS
DATED 15 OCTOBER 2014 FOR THE



**REPORT OF THE SPOILIATION ADVISORY PANEL IN RESPECT OF
A SILVER-GILT RENAISSANCE SALT IN THE POSSESSION OF THE
ASHMOLEAN MUSEUM**

The Honourable Sir Donnell Deeny

*Ordered by the House of Commons
to be printed 15 October 2014*

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REPORT OF THE SPOILIATION ADVISORY PANEL IN RESPECT OF A SILVER-GILT RENAISSANCE SALT IN THE POSSESSION OF THE ASHMOLEAN MUSEUM

INTRODUCTION

1. On 21 September 2011 lawyers acting for the Estate of the late Emma Ranette Budge (the Estate) commenced one of a series of claims on behalf of the Estate for works of art currently in the possession of museums and galleries established for the public benefit in the United Kingdom. A number of issues arising from these claims are common to all of them.
2. The claim has been brought by Rosbach, Fremy, Felsberg, Rechtsanwälte (lawyers) of Berlin and Mel Urbach, attorney of New York on behalf of Michael Rosenblat. Mr Rosenblat was, by Order of the Amtsgericht Hamburg of 28 December 2007, appointed executor of the Estate of Emma Ranette Budge, née Lazarus. The Order records that she was born on 17 February 1852 in Hamburg and died there on 14 February 1937. A Certificate of the Court of 23 September 2008 lists the original heirs to the Estate. Copies of these documents and a Notarised Acknowledgment from Michael Rosenblat are to be found in Appendix 1.
3. The object sought by the Claimant Estate and dealt with in this Report is in the Ashmolean Museum of Art and Archaeology, University of Oxford (the Museum). It is a silver-gilt salt or large salt-cellar (the Salt) which is believed to have been made in France or Belgium, circa 1560. It is square in appearance, approximately 34 cm. high, with the top surmounted with the figure of an old man in a tunic holding a spear. On the sides there are two silver-gilt plaques of the Nativity and the Resurrection and also two enamelled plaques which are believed to be French and to date from the first half of the 14th century.

THE PANEL'S TASK

4. The task of the Spoliation Advisory Panel (the Panel) is to consider claims from anyone, or their heirs, who lost possession of a cultural object during the Nazi era (1933–1945) where such an object is now in the possession of a UK national collection or museum or gallery established for the public benefit and to advise the claimant, the institution and, where it considers it appropriate, the Secretary of State for Culture, Media and Sport on what action should be taken in relation to the claim (see our Constitution and Terms of Reference, Appendix 2). This claim was referred to the Panel by letter of 27 February 2013. The Panel's paramount purpose is to achieve a solution which is fair and just to both parties.
5. In making this Report the Panel has considered the submissions and the evidence submitted on behalf of the Claimant and the Museum in order to establish whether the Estate of Mrs Budge was deprived of the item as a result of spoliation and if so, and assuming the Estate does not have legal title to the same, to assess the moral strength of the Claimant's case and whether any moral obligation rests on the institution. In reaching any conclusion of fact the Panel will do so on the balance of probability recognising the difficulties of proof in all the circumstances including the lapse of time since the Claimant lost possession of the object.

THE CLAIMANT'S STANDING

6. Emma Budge was born in Hamburg but she and her husband Henry resided in the United States for many years in the late 19th and early 20th centuries. Henry Budge there accumulated great wealth, through his involvement in banking and the expansion of the railways inter alia. He returned to Germany and bought and rebuilt a villa on the Alster Lake in the middle of Hamburg. It was known as the Budge Palais. He and his wife were art collectors. They had no children. Henry Budge died on 28 October 1928 at the age of 88.

7. Emma Budge had obtained American citizenship while resident in the United States of America. However, it does not appear that probate of her Estate has been taken out by any person in the United States; see, for example, the Order of Edward R Korman, US District Judge of 28 February 2012. On the other hand there is an Order of what appears to be the appropriate German Court. Mrs Budge was resident in Germany at the time of her death where her Will and the Codicils to her Will were made in her lifetime. Her property, including, on the contention of the Claimant, the work of art in question, was in Germany at the time of the dispositions and at the time of her death. The Panel concludes therefore that the executor duly appointed by the German Court is entitled to represent the Estate. The number of original heirs, fifteen, would render it impracticable, in all likelihood, for a particular heir now to receive a particular work of art. However the duty of distributing the Estate, by way of realising its assets as appropriate, and distributing the same to the present day heirs, presumably under the supervision of the German Court and in accordance with German law, falls to Mr Rosenblat.

WILLS AND CODICILS OF EMMA BUDGE

8. Initially Mrs Budge was not significantly affected by the coming to power of the Nazis in 1933 despite being Jewish. It is believed that this was due in part to her American citizenship. Indeed, she felt able to refuse an offer of 800,000 Reichsmarks from the National Socialist Party in Hamburg to purchase the Budge Palais saying she would not sell it even for 3 million marks. However, she made a Will on 5 October 1933, revoking earlier wills and stipulations, which reflected “the economic and political situation within Germany which make it illogical for me to continue to uphold a stipulation I made in favour of the city of Hamburg” (clause 1). All or most of the Budges’ relatives were Jewish. The executors were to be professing Jews. In clause 6 of that Will she bequeathed her art collections and art objects in her house at Harvestehuder Weg 12 (Budge Palais) to the executors and instructed them “to distribute these collections and objects among suitable museums or similar institutions in Germany or the United States of America or other countries...” In the same

clause she made an express bequest of textiles to the Metropolitan Museum in New York.

9. However, in a Codicil of 11 June 1934 at part B she revoked that section of her Will of 5 October 1933 and replaced it with the following:-

“With regard to the recipients of some or all of the art objects, I intend to give more detailed instructions in due course. If these instructions are not forthcoming, the executors shall be entitled, at their own discretion and in consultation with Mr Albert Rothbart, New York, to donate individual items to museums or similar institutions, for instance to the Metropolitan Museum in New York, on condition that these institutions are willing to put the said items on display.

The executors are then given a discretion to sell the remaining art at auctions at their own discretion with the proceeds from the sale of those and of any household articles to “be added to the Estate, which is to be disposed of in accordance with sections IV, VII, VIII and IX of the Will”.

10. Mrs Budge made a further Codicil on 21 November 1935. Paragraph E of it is of key importance here and reads as follows:-

“I will be giving more detailed instructions in due course on what is to happen with the contents of my house and my art and other valuables. If these instructions are not forthcoming, the executors shall take decisions based on previous stipulations. When it comes to realising the value of my collections, I advise them to consult not only Rosenbaum, now with offices only in Amsterdam, regarding the porcelain but also Mr Börner in Leipzig, especially regarding the paintings and engravings. The sale of all these objects within the borders of the German Reich is unlikely to be advisable.”

11. One should read both Codicils and the Will together. In the event the executors did not distribute any works of art to the institutions in Germany or the United States or other countries or certainly not to any significant extent. The sections of the Will referred to in the codicil of 11 June 1934 can be summarised as follows.

Section IV deals with debts owed by the Estate and the cost of administration.

Section VII deals with specific bequests which are to be made to a series of employees and others of sums of money “from the residue”.

Section VIII distributes percentages of the remaining residue to a series of individuals, largely the nephews and nieces of Mrs Budge and of her late husband. There is an express provision at VIII (12) for the offspring of these persons to “receive in equal shares per stirpes, but not per capita, that sum that the deceased person in the above list would have received had he or she survived me”.

Section IX of the Will provides that only when those other bequests have been dealt with should gifts be made to charitable organisations or institutions in New York City and to the Emma and Henry Budge Foundations in three German cities.

12. The Panel therefore concludes that if works of art are to be transferred from collections in the United Kingdom it is likely that they would be sold because of the number of heirs, and the proceeds of sale would form part of the residue of the Estate. The proceeds would then go to the descendants of persons expressly named as beneficiaries by the late Emma Budge who are either entirely or very largely the collateral descendants of herself and her late husband, subject to the executors discretion “to donate individual items to museums or similar institutionson condition that these institutions are willing to put the said items on display.”

THE 1937 SALES

13. Following the death of Emma Budge on 14 February 1937 the heirs were either already abroad or preparing to leave Germany in the face of persecution.
14. Given the insuperable problems of transferring property belonging to Jews out of Nazi Germany in 1937 the executors sent the collection in five furniture vans to Berlin for auction. This was conducted by the Aryanised Jewish auction house of Paul Graupe 4-6 October and 6-7 December 1937. Despite the absence of reserve prices, a million Reichsmarks were netted in the sales. But this sum was paid into a blocked account in M. M. Warburg, a formerly Jewish bank by then controlled by Nazi supporters. The heirs had no access to it.
15. The Jewish executors were pushed aside in favour of Emma Budge's former tax adviser, Gottfried Francke, who was not Jewish and was acceptable to the regime. Given that Emma Budge had advised against selling in Germany and given the imposition of Mr Francke as a non-Jewish executor, the Panel concludes that this can be regarded as a forced sale.
16. The prices realized of some of the items sold were below market value. While in the first year or so of the Nazi regime fair market prices may have been achievable this is much less likely to have been true by the time of this sale. It is likely to have been a sale at an undervalue, although the price for this object was far from negligible. For the reasons set out herein the Panel does not consider it necessary to go into this particular issue in any further detail.
17. As stated above, the proceeds of the sale were paid into an account in a Nazi controlled former Jewish bank, M. M. Warburg. There is no evidence that the executor effectively in control attempted to pay let alone succeeded in paying any of the proceeds to the heirs. By then, as Jews they were subject to expropriatory taxes. The Panel concludes that none of the proceeds of the sale went to the heirs of Mrs Budge.

18. In assessing the strength of the Claimant's moral claim it is right to consider whether the heirs have otherwise been compensated for the loss of the cultural objects. The Secretary to the Panel has communicated with the German authorities as to whether compensation was paid following the conclusion of the Second World War under either the Federal Compensation Act or under the Federal Restitution Act. The Panel enquired from the Claimant about compensation from the City of Hamburg. It received, in confidence, a copy of the Agreement of 21 April 2011 between the City and Michael Rosenblat. Having considered the responses the Panel has concluded that the Estate has not been otherwise compensated for these works of art.
19. An additional factor which has to be taken into account here is that Emma Budge had substantial sums of money in a Swiss bank account at the time of her death. One possibility the Panel has to consider is that the proceeds of the auction sale in Hamburg went into that account but there is no evidence in favour of such conclusion and the evidence that does exist would point firmly against the likelihood of that having happened.
20. On the contrary, it is believed that the Nazi authorities learnt of the Swiss bank account. They arrested two of the heirs who were still in Germany and imprisoned them in Buchenwald concentration camp to force the other heirs to transfer to the German authorities what is believed to be two-thirds of the value of the money in the Swiss bank account in order to obtain the release of the co-heirs.
21. The Panel has seen Orders of the US District Court in New York dealing with a claim brought by the heirs of one of Mrs Budge's heirs, Professor Siegfried Budge. In response to a direct question from the Panel Mr Urbach has disclosed that the heirs of Siegfried received an award in seven figures representing their 11% percentage share of the value of the account; the other heirs missed the deadline and were not eligible to join the claim. However, consistent with the view the Panel has formed that the Claimant is

the executor of the Estate, the fact that some of the heirs have made a recovery in respect of part of an unrelated asset of the Estate does not appear to the Panel to be a reason to defeat this claim.

HISTORY OF THE OBJECT

22. It is not necessary in this case to juxtapose the cases advanced by the Claimant and the Respondent, as the Museum has from the beginning stated that it will follow the recommendation of the Panel and, although without detailed information on the circumstances of the previous sale, does not contest the facts asserted by Mr Lothar Fremy on behalf of the Budge Estate.

23. The Salt was item number 251 in the auction of October 1937. It is recorded as being sold to "Kronheimer" for 7,100 Reichsmarks. The Claimant submits that it can be assumed that this was Max Kronheimer, the husband of Lizzy Kronheimer, née Bernstein, the niece of Emma Budge. The Panel returns to this at paragraph 28 below.

24. It is not known whether Mr Kronheimer actually obtained possession of the Salt. What is known is that it reappeared at auction in Berlin. This auction was held by Hans W Lange on 27-29 January 1943. The purchaser is not known.

25. The Panel is grateful to Mr Martin Levy for his researches into this matter on its behalf. With the assistance of Christies, he has located the sale of the object as Lot 22 in a sale held by that auction house at Amsterdam on 29 November 1994. Although the dating of the object in the catalogue differs from that now favoured, it is clearly from the description the same item.

26. Shortly after that it was acquired by Mr Michael Wellby. He was a member of a family active as silver makers during the 19th century and was a collector himself, from at least the early 1960s. While his father was also a collector it is thought that it was Mr Michael Wellby who acquired the Salt. He was not named as the purchaser in Christies' records of the sale of 1994.

27. Although Mr Wellby was a knowledgeable collector it appears that, unfortunately, he himself kept little or no record of his purchases. What is known is that in 2012 he bequeathed to the Museum a large collection of silver and other precious and exotic objects. The Museum announced this acquisition on 31 January 2013 and shortly afterwards informed the Commission for Looted Art of items that the Museum considered had “amber light” provenances. Following this the Museum received a claim from Mr Lothar Fremy, acting on behalf of the Claimant.

WHO SHOULD THE CLAIMANT BE?

28. A Kronheimer was recorded as the purchaser in 1937. If indeed it was Max Kronheimer, he was a Jew in Germany at that period. The Panel was concerned that if he owned the object and it was later despoiled from him, his estate would be the correct Claimant here. This was addressed by Mr Lothar Fremy who was also the lawyer to the heir of Max Kronheimer. He furnished a copy of an inheritance certificate from the Amtsgericht Hamburg of 23 May 1952 recording that Max Kronheimer died on 26 October 1951 and that his heirs were his wife, Lizzy, and his son, Herbert Julius Kronheimer. A further document from the Agencia Magno of Lisbon, Portugal, records the death of Lizzy Kronheimer on 6 July 1972. A further document from the Consulate of Portugal at Berne records the marriage of Herbert Julius Kronheimer, born at Hamburg, son of Max and Lizzy Kronheimer, to Kathleen Helen Maud Hayes-Allen on 13 August 1984. Her son, from a previous marriage, was Julian Rivers-Kirby, as the Panel ascertains from his birth certificate of 20 September 1932. Herbert Julius Kronheimer had no children of his own and his step-son Mr Rivers-Kirby is stated by Mr Fremy to be his heir.

29. The Panel has been provided with a Power of Attorney signed by Mr Rivers-Kirby on 22 October 2005 entrusting to Messrs Fremy and Rosbach any claims he might have with regard to the Estate of Emma Budge, née Lazarus (presumably as the heir at law of her great nephew, his step-father). On foot of that Power of Attorney Mr Fremy informed the Panel by email of 13

September 2013 that his client did not “want to file an individual claim for himself and agrees that only the Budge Estate has the right of restitution for this artefact.” No other “Kronheimer” has emerged to claim this item. On balance the Panel concludes it was Max, or his wife, who bid successfully for the Salt. Their step-grandson and heir waives any claim. The Panel is therefore satisfied, on the balance of probabilities, that Mr Rosenblat as executor of the Budge Estate is the proper Claimant here.

LEGAL TITLE

30. The Panel’s Terms of Reference require it to consider both the original title of the Claim object and the current title of the Respondent institution but not to determine legal rights; see paragraphs 8 and 15 (a), (d) and (f).

31. The Panel has not had detailed argument on the point of enduring title. The Panel accepts that the Estate had legal ownership of the Salt before its consignment to the 1937 sales. However, the Panel has concluded on the balance of probability that the 1937 sales, despite the circumstances in which they were conducted, conferred a good title if the purchaser paid for and received the Salt but that is uncertain. In the alternative, even if the 1937 sales did not pass good title then the sale and purchase at the Lange sale in 1943 would constitute an unlawful conversion of the Salt and would trigger the six-year limitation period in force in this country under section 2 of the Limitation Act 1939. It follows that by 1949 the Estate’s original legal title here was statute-barred by section 3 of the 1939 Act. The Panel considers that the Museum now has legal title.

THE PANEL’S CONCLUSION

32. As recorded above, the sales of 1937 deprived the Estate of Emma Budge of its works of art, including this Renaissance Salt, without receiving fair or any value for them then or since as a result of antisemitic intervention in the administration of the estate at the time of the sales. The Claimant has a strong moral claim to the restitution of the object, which the Museum does not

seek to gainsay. The recommendation of the Panel is that the Museum should return the Salt to the Estate of Emma Budge, given the circumstances of its loss to that Estate in Nazi Germany in 1937.

15 October 2014

The Honourable Sir Donnell Deeny – Chairman
Professor Sir Richard J Evans – Deputy Chairman
Sir Terry Heiser
Professor Peter Jones
Martin Levy
Peter Oppenheimer
Professor Norman Palmer
Professor Liba Taub
Baroness Warnock
Anna Souhall

Appendix 1: Certificate of 23 September 2008 and Notarised Acknowledgment from Michael Rosenblat.

Appendix 2: Constitution and Terms of Reference

Certificate for the execution of Emma R. Budge's will



Amtsgericht Hamburg

Geschäfts - Nr.: 74 VI 556/37

Hamburg, 28. Dezember 2007

Testamentsvollstreckerzeugnis

Herr Michael Rosenblat, geb. am 3. August 1954 in Düsseldorf,

ist zum Testamentsvollstrecker über den Nachlass der

am 14. Februar 1937 in Hamburg
verstorbenen, zuletzt in Hamburg
wohnhaft gewesenen

Emma Ranette Budge, geb. Lazarus,

geboren am 17. Februar 1852 in Hamburg,

ernannt worden.

Die Erblasserin hat angeordnet, dass der Testamentsvollstrecker, soweit zulässig, von allen gesetzlichen Beschränkungen befreit sein soll.

Willamowius
Richterin

Vorsteherin - 1 - Ausfertigung
wird dem Testamentsvollstrecker zugeh.
Hamburg, den 07.01.2008.
Junge, Justizsekretär
als Urkundsbefehlshaber der Geschäftsstelle



The German inheritance certificate regarding the estate of Emma R. Budge, nee Lazarus was issued on September 23, 2008:

German inheritance certificate for the estate
of Emma Budge



Amtsgericht Hamburg

Geschäfts - Nr.: 74 VI 556/37

Hamburg, 23. September 2008

Gemeinschaftlicher Erbschein

Die am 14. Februar 1932 in Hamburg geborene,
zuletzt in Hamburg wohnhaft gewesene

Emma Ranette Budge
geb. Lazarus

ist am 14. Februar 1937 in Hamburg verstorben
und beerbt worden von

1. den Kindern von Alfred Lascar und Maria Lascar
 - a) Gretha Marie Louise Lascar,
geb. am 17. August 1900 in Hamburg,
nachverstorben am 11. Juli 1980 in Hamburg
 - b) Edgar Walter Lascar,
geb. am 17. September 1895 in Hamburg,
nachverstorben am 22. Februar 1963
 - c) Gertrud Margareth Lascar,
geb. am 23. April 1894 in Hamburg

zu je 2/94

2. Ludwig Bernstein,
geb. 1876 in Hamburg,
verstorben am 3. Juli 1942 in Taunton, GB

zu 11/94

3. Herbert Julius Kronheimer,
geb. 5. Juni 1910 in Hamburg,
verstorben am 11. Juli 1984 in Delemont, Schweiz

zu 11/94

- Robert Rothbart,
geb. 8. Dezember 1874 in Frankfurt/Main,
verstorben am 21. Oktober 1965 in New York, USA zu 12/94
5. Dr. Siegfried Budge,
geb. am 18. Juni 1869 in Frankfurt/Main
verstorben am 1. September 1941 in Hamburg zu 11/94
6. Rudolf Hermann Ganz,
geb. am 9. April 1901 in Frankfurt/Main,
verstorben am 7. Januar 1965 in Chicago, USA zu 8/94
7. Frieda Felsenberger, geb. Rothbart,
geb. am 3. Oktober 1870 in Frankfurt/Main,
verstorben am 8. Mai 1968 in Detroit, USA zu 7/94
8. Marie Adler, geb. Felsenberger,
geb. am 1. Juli 1895,
verstorben am 8. September 1990 in New York zu 2/94
9. Jenny Reichenbach, geb. Rothbart,
geb. am 29. Januar 1868 in Frankfurt/Main
verstorben am 12. Dezember 1945 in London zu 7/94
10. Martha Ganz, geb. Ganz,
geb. am 27. August 1866 in Mainz,
verstorben am 24. Juni 1942 zu 6/94
11. Henry und Emma Budge-Stiftung Hamburg
Uhlenhorster 7-11, 22085 Hamburg zu 5/94
12. Emma Budge-Stiftung Hamburg
Uhlenhorster Weg 7-11, 22085 Hamburg zu 5/94
13. Henry und Emma Budge-Stiftung Frankfurt/Main
Wilhelmshöher Straße 279, 60389 Frankfurt/Main zu 5/94

Testamentsvollstreckung ist angeordnet.

Bremer
Richter am Amtsgericht

Vorstandende, Ausfertigung
wird den Erben erteilt
Hamburg, den 26.09.2008
Junge, Justizhauptsekretär
als Amtsgewalt der Geschäftsstelle



Amtsgericht Hamburg

Domitorwall 13, 20354 Hamburg
Postanschrift: Postfach 30 51 21 20348 Hamburg
Geschäftszeit Mo, Di, Do und Fr von 9 bis 13 Uhr
Mittwochs keine Sprechzeiten
Fernsprecher (040) 42828 - 0 (Vermittlung)
Telefax (040) 42843-3073

Geschäfts-Nr. (bei allen Schritten angeben) + Abteilung	Zimmer d. Gesch. Stelle	Fernsprecher (Durchwahl)	Datum
74 VI 556/37	72-76	3 008	42843 - 4042
			18.02.2011

Beschluss

In der Nachlasssache der am 14.02.1937 in Hamburg verstorbenen

Emma Ranette Budge, geb. Lazarus

beschließt das Amtsgericht Hamburg, Abl. 72-76,
durch den Richter am Amtsgericht Bremer:

Der Erbschein des Gerichts vom 23. September 2008 wird hinsichtlich des Geburtsdatums
der Erblasserin dahin berichtigt, dass diese am 17. Februar 1852 geboren ist.

Bremer
Richter am Amtsgericht

ausgefertigt

Heinsen, Justizsekretärin
als Urundsbeamt der Geschäftsstelle



Acknowledgement

Germany

Free and -Hanseatic City of Hamburg

Adress: Rathausmarkt 10/Mönckebergstr. 22, 20095 Hamburg

13. November 2013

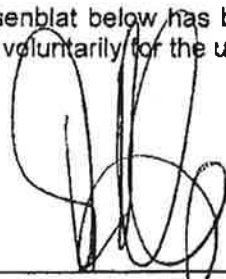
I, Dr. Gerd H. Langhein,
Notary Public

in and for the Free and Hanseatic City of Hamburg, Germany

duly appointed, commissioned and sworn as notary for said City and said state do hereby certify that today

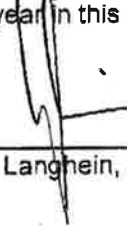
1. There appeared before me in person Michael Rosenblat, known to me, proving furthermore his identity by identity-card, a certified copy of which is attached hereto as ANNEX 1.
2. He produced to me the order of the Amtsgericht Hamburg of 28 December 2007, a copy of which is attached hereto as ANNEX 2. Furthermore I certify that according to this order he is the sole administrator of the estate of the deceased Emma Ranette Budge born Lazarus, named in ANNEX 2 and as such entitled to represent the estate.
3. That he has authorised the attorneys at law Lothar Fremy, Jörg Rosbach and Mel Urbach to represent him in all matters relating to the afford mentioned estate, according to the power of attorney, attached hereto as ANNEX 3.
4. That Mr. Rosenblat solemnly declared that in the event of him receiving from the Département for Culture Media & Sport either art objects or monetary payment in respect of any of the claims that he will distribute it in accordance of the wills and codicils of the late Emma Bude, as required by German law and subject supervision, where appropriate of the Amtsgericht Hamburg.
5. That the signature of Mr. Rosenblat below has been signed in my presence and the he executed the same freely and voluntarily for the uses, purposes and considerations herein expressed.

Signature:



(Michael Rosenblat)

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the City of Hamburg, the day and year in this certificate first above written.


(Dr. Gerd H. Langhein, Notary Public)

- my commission expires with life.



SPOILIATION ADVISORY PANEL

CONSTITUTION AND TERMS OF REFERENCE¹

Designation of the Panel

1. The Secretary of State has established a group of expert advisers, to be convened as a Panel from time to time, to consider claims from anyone (or from any one or more of their heirs), who lost possession of a cultural object ("the object") during the Nazi era (1933 -1945), where such an object is now in the possession of a UK national collection or in the possession of another UK museum or gallery established for the public benefit ("the institution").
2. The Secretary of State has designated the expert advisers referred to above, to be known as the Spoliation Advisory Panel ("the Panel"), to consider the claim received from On for in the collection of("the claim").
3. The Secretary of State has designatedas Chairman of the Panel.
4. The Secretary of State has designated the Panel as the Advisory Panel for the purposes of the Holocaust (Return of Cultural Objects) Act 2009.

Resources for the Panel

5. The Secretary of State will make available such resources as he considers necessary to enable the Panel to carry out its functions, including administrative support provided by a Secretariat ("the Secretariat").

Functions of the Panel

¹ Revised following enactment of the *Holocaust (Return of Cultural Objects) Act 2009*

6. The Panel shall advise the claimant and the institution on what would be appropriate action to take in response to the claim. The Panel shall also be available to advise about any claim for an item in a private collection at the joint request of the claimant and the owner.
7. In any case where the Panel considers it appropriate, it may also advise the Secretary of State
 - (a) on what action should be taken in relation to general issues raised by the claim, and/or
 - (b) where it considers that the circumstances of the particular claim warrant it, on what action should be taken in relation to that claim.
8. In exercising its functions, while the Panel will consider legal issues relating to title to the object (see paragraph 15(d) and (f)), it will not be the function of the Panel to determine legal rights, for example as to title;
9. The Panel's proceedings are an alternative to litigation, not a process of litigation. The Panel will therefore take into account non-legal obligations, such as the moral strength of the claimant's case (paragraph 15(e)) and whether any moral obligation rests on the institution (paragraph 15(g));
10. Any recommendation made by the Panel is not intended to be legally binding on the claimant, the institution or the Secretary of State;
11. If the claimant accepts the recommendation of the Panel and that recommendation is implemented, the claimant is expected to accept the implementation in full and final settlement of his claim.

Performance of the Panel's functions

12. The Panel will perform its functions and conduct its proceedings in strictest confidence. The Panel's "proceedings" include all its dealings in respect of a claim, whether written, such as in correspondence, or oral, such as at meetings and/or hearings.

13. Subject to the leave of the Chairman, the Panel shall treat all information relating to the claim as strictly confidential and safeguard it accordingly save that (a) such information which is submitted to the Panel by a party/parties to the proceedings shall normally be provided to the other party/parties to the proceedings in question; and (b) such information may, in appropriate circumstances, including having obtained a confidentiality undertaking if necessary, be communicated to third parties. "Information relating to the claim" includes, but is not limited to: the existence of the claim; all oral and written submissions; oral evidence and transcriptions of hearings relating to the claim.

14. In performing the functions set out in paragraphs 1, 6 and 7, the Panel's paramount purpose shall be to achieve a solution which is fair and just both to the claimant and to the institution.

15. For this purpose the Panel shall:

- (a) make such factual and legal inquiries, (including the seeking of advice about legal matters, about cultural objects and about valuation of such objects) as the Panel consider appropriate to assess the claim as comprehensively as possible;
- (b) assess all information and material submitted by or on behalf of the claimant and the institution or any other person, or otherwise provided or known to the Panel;
- (c) examine and determine the circumstances in which the claimant was deprived of the object, whether by theft, forced sale, sale at an undervalue, or otherwise;
- (d) evaluate, on the balance of probability, the validity of the claimant's original title to the object, recognising the difficulties of proving such title after the destruction of the Second World War and the Holocaust and the duration of the period which has elapsed since the claimant lost possession of the object;
- (e) give due weight to the moral strength of the claimant's case;

- (f) evaluate, on the balance of probability, the validity of the institution's title to the object;
- (g) consider whether any moral obligation rests on the institution taking into account in particular the circumstances of its acquisition of the object, and its knowledge at that juncture of the object's provenance;
- (h) take account of any relevant statutory provisions, including stipulations as to the institution's objectives, and any restrictions on its power of disposal;
- (i) take account of the terms of any trust instrument regulating the powers and duties of the trustees of the institution, and give appropriate weight to their fiduciary duties;
- (j) where appropriate assess the current market value of the object, or its value at any other appropriate time, and shall also take into account any other relevant circumstance affecting compensation, including the value of any potential claim by the institution against a third party;
- (k) formulate and submit to the claimant and to the institution its advice in a written report, giving reasons, and supply a copy of the report to the Secretary of State, and
- (l) formulate and submit to the Secretary of State any advice pursuant to paragraph 7 in a written report, giving reasons, and supply a copy of the report to the claimant and the institution.

Scope of Advice

16. If the Panel upholds the claim in principle, it may recommend either:

- (a) the return of the object to the claimant, or

- (b) the payment of compensation to the claimant, the amount being in the discretion of the Panel having regard to all relevant circumstances including the current market value, but not tied to that current market value, or
- (c) an ex gratia payment to the claimant, or
- (d) the display alongside the object of an account of its history and provenance during and since the Nazi era, with special reference to the claimant's interest therein; and
- (e) that negotiations should be conducted with the successful claimant in order to implement such a recommendation as expeditiously as possible.

17. When advising the Secretary of State under paragraph 7(a) and/or (b), the Panel shall be free to recommend any action which they consider appropriate, and in particular may under paragraph 4(b), recommend to the Secretary of State the transfer of the object from one of the bodies named in the Holocaust (Return of Cultural Objects) Act 2009.

