



RETURN TO AN ADDRESS OF THE HONOURABLE THE HOUSE OF COMMONS
DATED 10 JUNE 2014 FOR THE

**REPORT OF THE SPOILIATION ADVISORY PANEL IN
RESPECT OF THREE MEISSEN FIGURES IN THE
POSSESSION OF THE VICTORIA AND ALBERT MUSEUM**

The Honourable Sir Donnell Deeny

*Ordered by the House of Commons
to be printed 10 June 2014*



© Crown copyright 2014

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.2. To view this licence visit www.nationalarchives.gov.uk/doc/open-government-licence/version/2/ or email PSI@nationalarchives.gsi.gov.uk Where third party material has been identified, permission from the respective copyright holder must be sought.

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at enquiries@culture.gov.uk

Print ISBN 9781474105637

Web ISBN 9781474105644

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

ID 29051401 06/14 40795 19585

Printed on paper containing 75% recycled fibre content minimum

REPORT OF THE SPOILIATION ADVISORY PANEL IN RESPECT OF THREE MEISSEN FIGURES IN THE POSSESSION OF THE VICTORIA AND ALBERT 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, Rechtsanwaelte (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 works sought by the Claimant Estate and dealt with in this Report are in the Victoria and Albert Museum, London (the V&A) and are catalogued as follows:
 - (i) Hard-paste porcelain figure of a harlequin with a pipe and monkey, painted in enamels, modelled by J J Kaendler, made by Meissen, Germany, 1740-1741 (V&A No. C.14-1984);
 - (ii) Hard-paste porcelain figure of a seated woman with a dog and servant, painted in enamels, modelled by J J Kaendler, made by Meissen, Germany, 1737-1740 (V&A No. C.23-1984);
 - (iii) Hard-paste porcelain figure of a butcher, painted in enamels, possibly modelled by F E Meyer, made by Meissen, Germany, circa 1750 (V&A No. C.137-1993)

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 museum or gallery established for the public benefit, such as the V&A; 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 the Panel's Constitution and Terms of Reference, Appendix 2). If the Panel recommends the transfer of an object from the collection belonging to one of the bodies named in Section 1 of the

Holocaust (Return of Cultural Objects) Act 2009 (such as the V&A) to the Claimant and the Secretary of State approves the Panel's recommendation the institution is empowered to return the items in question to the Claimant. 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 these items 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 objects.

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, U.S. District Judge of February 28 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 works 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 relatives of the Budes 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 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 bequeath 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, subject to what we say below, because of the number of heirs, and the proceeds of sale would form part of the residue of the Estate. Subject to the Executor exercising his discretion “to donate individual items to museums or similar institutions on condition that these institutions are willing to put the said items on display”, the proceeds would then go to the descendants of persons expressly named as beneficiaries by the late Emma Budge, all or most of whom are the collateral descendants of herself and her late husband.

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 on 4-6 October and 6-7 December 1937. Despite the absence of reserve prices, a million Reichsmarks were netted in the sales. This sum was paid into a blocked account in M.M. Warburg, a formerly Jewish bank by then controlled by Nazi supporters and 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 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. 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 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 also enquired from the Claimant about compensation from the City of Hamburg and 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 a 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.

THE RESPONDENT'S CASE

22. The initial claim brought by Mr Urbach was related to two of the three Meissen pieces (C.14 and C.23 – 1984) described at paragraph 3 above. Researches by the V&A identified a third figure that was once part of the Budge collection (C137-1993). That was given to the V&A by “warder B. W. Potts” in 1993; the Museum says it was not known at that time that it had been part of the Budge collection. It was only comparison of the three pieces and attached labels after this claim emerged that revealed this provenance.
23. The two other figures were gifts from Mrs Josa Finney of Rome, the widow of Oswald James Finney. She died in 1983. They were two of twenty-seven Meissen porcelain figures donated at that time. The Finneys are not named in the original list of buyers at the 1937 sale. The V&A file contains an undated handwritten memo of circa 1982 stating that the Finney collection was bought from a dealer, “much of it from the Budge collection”. The Museum states that the circumstances of the sales in 1937 “were not known until the 1990s”.
24. It may well be that further research should have been carried out in the 1980s with regard to these pieces. However, the V&A candidly concedes that in the state of present knowledge the Budge sale constituted a sale below value and could be considered a forced sale. It also helpfully points out that several institutions in Germany, United States and Switzerland have returned items from the Budge collection. These figures are “significant and desirable parts” of the collection which it would be unhappy to lose but it concedes that it must “accept the primacy of the need for a legal and ethical response to the Budge’s heirs’ claim”. All three are on permanent display to the public.
25. The V&A has provided the Panel with current market valuations of the three pieces which show that the 1993 gift is of significantly less market value than C14 and C23 of 1984.
26. The Panel’s Terms of Reference require it to consider both the original title of the Claimant to the object and the current title of the respondent institution: Paragraphs 15(d) and 15(f), and see Paragraph 15(a). In this case the Claimants maintain that they had before their dispossession, and retain to the present day, legal title to the figures.
27. The Panel has not had the benefit of detailed argument on the point of enduring title. The Panel accepts that the Estate had legal ownership of the figures before their 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 on the acquirer, which title thereafter passed (through various intermediate acquirers) to the V&A. If the 1937 sale was not competent to pass title to the acquirer, the Panel concludes on the balance of probabilities that the acquisition of the two figures by Mr and Mrs Finney was in effect an unlawful conversion of those figures, which triggered the six-year limitation period imposed by section 2 of the Limitation Act 1939 meaning that the Estate’s original legal title was statute-barred many years ago. The Panel further

concludes on the balance of probabilities that similar sale and purchase, with similar legal effects, would have preceded the donation of the third figure by Mr B W Potts. It follows that the Claimants' original title has expired by virtue of section 3 of the Limitation Act 1939. We conclude that the Museum has legal title to all three objects.

THE PANEL'S CONCLUSIONS

28. The sale of 1937 deprived the Estate of Emma Budge of these works of art without receiving fair or any value for them then or since. The recommendation of the Panel is that the V&A should offer to return the figures to the Estate of Emma Budge, given the circumstances of their loss to that Estate in Nazi Germany in 1937. However, Mrs Budge expressly contemplated and originally directed that some or all of her art objects would go to museums in Germany, the United States or other countries, a description which would include the V&A. The Panel invites the Executor of the Estate to consider carefully in the light of the discretion granted to him as her executor by the testatrix, whether it would be more appropriate for one of the pieces to remain in this internationally respected institution. If he were to agree to such a course, the Panel recommends that a notice describing the provenance of the piece be displayed alongside it whenever or wherever it is exhibited.

10 June 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
Anna Southall
Professor Liba Taub
Baroness Warnock

Appendix 1: Order of the Amtsgericht Hamburg of 28 December 2007, Court 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 angeteilt
 Hamburg, den 07.01.2008.
 Junge, Justizobersekretärin
 als Urkundsbekanntgeberin 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 Hamburgzu je 2/94
 2. Ludwig Bernstein,
geb. 1878 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 6/94
7. Frieda Feisenberger, 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. Feisenberger,
geb. am 1. Juli 1895,
verstorben am 6. 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 A. Ausfertigung
wird den Erben erteilt.
Hamburg, den 26.09.2008

Junge, Justizhauptsekretär
als Urkundsbeamter der Geschäftsstelle





Amtsgericht Hamburg

Dammtorwall 13, 20354 Hamburg
Postanschrift: Postfach 30 01 21, 20348 Hamburg
Geschäftszeit Mo, Di, Do und Fr von 9 bis 13 Uhr
Mittwochs keine Sprechzeiten
Fernsprecher (040) 42828 - 0 (Vermittlung)
Telefax (040) 42843-3973

Geschäfts-Nr. (bei allen Schreiben 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

Heisen, Justizsekretärin
als Urkundsbeamtin der Geschäftsstelle



Acknowledgement

Germany

Free and -Hanseatic City of Hamburg

Address: Rathausmarkt 10/Mönckebergstr. 22, 20095 Hamburg

13. November 2013

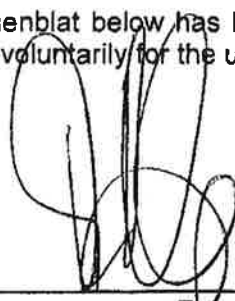
I, Dr. Gerd H. Langhein,
Notary Public

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

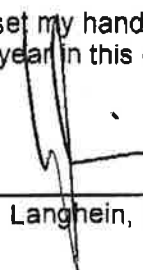
1. There appeared before me in person Michael Rosenblat, known to me, proving furthermore his identity by identity-card, a certified copy of which is attached hereto as ANNEX 1.
2. He produced to me the order of the Amtsgericht Hamburg of 28 December 2007, a copy of which is attached hereto as ANNEX 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 Department 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 fromOn 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

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

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

- (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.

ISBN 978-1-4741-0563-7



9 781474 105637