RETURN TO AN ADDRESS OF THE HONOURABLE THE HOUSE OF COMMONS DATED 18th MARCH 2024 FOR THE

SECOND REPORT OF THE SPOLIATION ADVISORY PANEL IN RESPECT OF THREE RUBENS PAINTINGS NOW IN THE POSSESSION OF THE COURTAULD INSTITUTE OF ART, LONDON

The Right Honourable Sir Alan Moses

Ordered by the House of Commons
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SECOND REPORT OF THE SPOLIATION ADVISORY PANEL IN RESPECT OF THREE RUBENS PAINTINGS NOW IN THE POSSESSION OF THE COURTAULD INSTITUTE OF ART, LONDON

INTRODUCTION

1. This Report concerns three claims made in respect of three paintings, or oil sketches, by or attributed to Sir Peter Paul Rubens, owned by the Samuel Courtauld Trust and in the possession of the Courtauld Institute of Art. They are:

   St Gregory the Great with Ss Maurus and Papianus and St. Domitilla with Ss Nereus and Achilleus (1606-1607) (P.1978.PG.352);

   The Conversion of St. Paul c 1610-1612 (P.1978.PG.356); and

   The Bounty of James 1 Triumphing Over Avarice, for the ceiling in the Banqueting House, Whitehall c.1632 (P.1978.PG.377).

2. Images of the three paintings are at Appendix 1.

3. The three paintings were part of a respected and important collection of drawings and paintings accumulated by Franz Wilhelm Koenigs (Koenigs). In 1931 Koenigs transferred most of his collection to N.V. Bankierskantoor Lisser & Rosenkranz, a Dutch bank now in liquidation (the Bank), to secure a loan. In 1935 he transferred 47 paintings, including the three paintings in issue to the Bank as security for a further loan. The Bank went into voluntary liquidation in April 1940 and sold the three paintings to Count Antoine Seilern. After the war he brought them to England and made a bequest of them to the Courtauld, in whose possession they remain. They were the subject of a Report by this Panel, differently constituted, dated 28 November 2007 (HC 63) (Appendix 2). This Report should be read with the earlier Report of the Panel.

4. In that Report the Panel rejected the claim of Ms Christine Koenigs, the granddaughter of Franz W. Koenigs on behalf of some of his heirs. The task it identified (paragraph 6) and the Rules it applied (Appendix 2) are the same as those applied by this Panel.

THE CLAIMS

5. Ms Koenigs now advances what she alleges is a different claim on behalf of herself and seven out of thirteen of the heirs of Franz Koenigs, in his capacity as holder of 2.4% of the shares in the Bank. In a separate claim, Mr. Gal Flörsheim claims restitution of the three paintings as sole heir of Salomon Jakob Flörsheim who was one of the main shareholders; he and his long-term business partner Siegfried Kramarsky owned about 85% of the shares between them. In circumstances which we describe later in this Report, Mr Flörsheim

also claims as a very recently appointed liquidator of the Bank with his co-liquidator, Mr Dolev. Although the arguments advanced on behalf of the claimants differ in some respects, it is convenient to deal with all the claims together in one Report.

6. This is the fifth occasion on which claims relating to the three paintings, or relevant to those claims, have been considered by restitution panels either in the United Kingdom or in the Netherlands:

   (i) In 2003 the Dutch Government's Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (the DRC) rejected Ms Koenigs's claim[1];

   (ii) In 2007 Ms Koenigs made an unsuccessful claim to this Panel to which we have already referred in paragraph 3 (Appendix 2);

   (iii) In 2013, after Ms Koenigs had requested further advice on the basis of an assertion of new facts, the DRC upheld their previous advice[2];

   (iv) On 13 June 2022, the DRC rejected a claim made by Ms Koenigs in the same capacity as she and Mr Flörsheim now advance their claims, namely as heirs to shareholders in the Bank. Ms Koenigs had sought restitution of 26 paintings from the Netherlands Art Property Collection. The DRC concluded that under Dutch law the shareholders of the Bank had no right to paintings which were owned by the Bank[3].

7. A number of conclusions reached in the Report of 2007 by the Panel are central to consideration of the claims now made:

   (i) By a Loan Agreement of 1 June 1935, Koenigs's drawings and paintings, which included the three Rubens paintings, served as security for loans made to him by the Bank and by early 1940 he had failed to discharge the loan (paragraph 30);

   (ii) The Courtauld's title to the paintings is legally impregnable, since any legal claim is time barred under English law (paragraph 32);

   (iii) "The claimant's grandfather was deprived of the paintings neither by theft, nor by forced sale or by sale at an undervalue, but as a result of the Bank calling in the loan and realising its security. Any forced sale stemmed from the Bank's own need to sell because of the impending

[1] "The Koenigs Collection", Dutch Restitutions Committee, Report number: RC 1.6, 3 November 2003 https://www.restitutiecommissie.nl/en/recommendation/the-koenigs-collection/

[2] "Koenigs (II)", Dutch Restitutions Committee, Report number: RC 4.123, 12 November 2013 https://www.restitutiecommissie.nl/en/recommendation/koenigs-ii/

[3] "Lisser & Rosenkranz (B)", Dutch Restitutions Committee, Report number RC 1.195-B, 13 June 2022 https://www.restitutiecommissie.nl/en/recommendation/lisser-rosenkranz/

German invasion of the Netherlands. The Bank had the right to sell the paintings because of the loan agreement entered into by Koenigs in 1935, formalising the earlier 1931 loan agreement. This was a loss suffered by Koenigs for commercial reasons and not as a result of Nazi spoliation or any form of duress. This is sufficient to resolve the case in the Courtauld's favour." (paragraph 29);

(iv) The Panel rejected any independent moral claim because Franz Koenigs never intended to leave his drawings or paintings to his heirs (paragraphs 35-36). It said:

"Even if it were the case that Count Seilern acted in breach of Dutch law, the facts remain that he brought the paintings to England, he conserved them, he wrote about them and without seeking any payment he passed them on by way of legacy to the Courtauld for the benefit of the public and scholars. The Panel does not consider that the grandchildren of Koenigs, who himself pledged the paintings initially as security, and who intended them ultimately to remain at the Museum, could ever have had a superior moral claim to the paintings than that of the Courtauld, who hold them for the public benefit and received them from a man who paid a fair value for them."(paragraph 36);

(v) No criticism attaches to the Courtauld in relation to the acceptance of the bequest from Count Seilern (paragraph 37).

8. The Panel acknowledges that the claims by heirs to shareholders of the Bank, and by its liquidators, are not the same as the claim made back in 2007. The previous conclusions as to whether and how the Bank acquired title to the paintings and the sale to Count Seilern are matters which it has considered afresh in the light of the claims now made and further documents and information which have come to light since the earlier Report. We should say at the outset that some of the doubts previously expressed by the Panel can now, with greater confidence, be put to rest.

9. Although we shall consider and report on those questions we should start with a preliminary issue which is fundamental to two of the three claims now made. That is the question of the standing of these claimants to make claims for restitution of the paintings from the Courtauld.

LOCUS OR STANDING TO MAKE CLAIMS

10. The Bank was a Dutch bank and, accordingly, the law relating to shareholders of a bank, their entitlement to the assets and the rules relating to liquidation of a bank are matters of Dutch law. Those matters have been concluded by the DRC in its Recommendation of 13 June 2022. The DRC concluded that the Koenigs collection of drawings and paintings were "in the full and free ownership" of the Bank. It stated:

"There is no legal or other basis for concluding that the shareholders of a limited company can have ownership rights applied to items that are in the ownership of the company. By definition, the item is owned by the limited company and not owned by the shareholders. The shareholders are only the owners of the shares they hold in the company."

11. The DRC concluded that as shareholder of the Bank, Franz Koenigs was not co-owner of any of the works of art which were the subject of the loan agreement he had made with the Bank in 1935.

12. It seems to the Panel that that conclusion is sufficient to determine the claims of those claimants who are claiming in their capacity as heirs to shareholders in the Bank. If the DRC has rejected the claim of a shareholder of the Bank under Dutch law, it does not seem to the Panel that it could or should entertain any claim, legal or moral, within its own United Kingdom jurisdiction.

13. In any event, if English law applied, neither of these claimants would be able to bring a claim, even leaving aside considerations of limitation. Where a company is in liquidation, the rights vest in the liquidators and no case has been advanced that the liquidators acted unlawfully or wrongly in circumstances which would entitle minority shareholders to bring a claim to enforce a company's rights.

14. The Bank went into voluntary liquidation on 2 April 1940 and the liquidation was completed on 30 September 1962, more than 60 years ago. It is understandable that many claims were delayed in the aftermath of war but the Panel has received no explanation as to why these claims were delayed by over 60 years.

15. On 20 April 2023 a Dutch Court made an Order appointing Mr Gal Flörsheim liquidator, with another co-liquidator of the Bank. No explanation has been given as to the effect of this appointment. The Panel was informed on 22 June 2023 of an intention to claim as liquidator. On 7 August 2023 his legal adviser, Mr Fremy, confirmed that Mr Flörsheim and his co-liquidator wished the Panel to consider the liquidators' claim with the other claims, without any further submissions. Despite the fact that there has not been any explanation for the delay in seeking this appointment or in making a claim as liquidators, the Panel has considered their claim, although for reasons which will become apparent, it does not raise any different issues.

16. That two of these claims are made by heirs to some of the shareholders in the Bank does, however, serve to illustrate a fundamental aspect of claims to restitution. The Panel's Terms of Reference (Appendix 3) require it to assess the moral strength of a claimant's case (Paragraph 15 (e)). Restitution is designed, so far as possible, to return works of art, or if that is not possible, provide some alternative remedy, where those works have been lost during the period of Nazi persecution. A system of restitution recognises moral claims because it acknowledges the effect of the confiscation and loss of works of art on those who suffered persecution by the Nazi regime. Confiscation and theft of works of art were an essential part of that persecution. The system of

restitution, in the context of the Washington Principles, is not intended to provide compensation for shareholders of a bank, which suffered financial loss on the disposal of its assets, even where that disposal took place under the pressure of imminent Nazi control. Shares, as the Panel has said previously, are not cultural objects (cited *infra* paragraph 19).

17. The Panel has taken account of previous Reports on claims by the heirs of shareholders. In a Report (HC10 24 November 2004), the Panel considered a claim for restitution of what was then believed to be a Chardin in the Burrell Collection by the heirs, described as shareholders, of five former Jewish partners in a Munich Art gallery, which lost possession of the work as a result of a forced sale in June 1936. The gallery was forced to liquidate its entire stock at auction to meet an extortionate and, in part, retrospective tax demand. The owners of the gallery were leading international art dealers with a reputation for their expertise and sense of honour. The tax demand was designed to destroy this Jewish partnership.

18. The Panel upheld the moral claim to the painting and recommended restitution. They made no reference to the rights of those whose heirs were making the claim other than to describe them as losing "possession of their (sic) property as a result of Nazi oppression" (paragraph 32).

19. A similar claim was made by the same heirs to the Biccherna Panel in the British Library (HC 209 12 June 2014). In this Report the Panel accepted that "the Gallery's shareholders had legal ownership" prior to the consignment of the work to auction (paragraph 22). The Panel concluded that the fair and just resolution was transfer of the Biccherna work to the claimants.

20. These claims are miles away from the present claims made by heirs to those who held some of the shares in the Bank, and by the recently appointed co-liquidators of the Bank, not least because the Bank acquired the paintings only to redeem security for the loans they had previously made to their owner, Koenigs. The claimants' circumstances bear no relation to the position of those who had shares in the Munich art gallery which had owned the Chardin and the Bicherna. No legal arguments appear to have been advanced in relation to those claims. This is not surprising: the moral case was overwhelming. The shareholders had in effect owned those paintings, they had had the pride of ownership. That had been deliberately destroyed by adopting the bogus device of the retrospective tax claims.

21. Of greater relevance is the Report of the Panel in relation to a Renoir in the possession of Bristol Museum and Art Gallery (HC 440), 16 September 2015. The claimant was a German Company of art dealers, part of the Margraf Group, the shares in which were owned by, amongst others, Jakob and Rosa Oppenheimer who had fled to France. The company was liquidated by the Nazis in the late 1930s and the liquidator at the time of the claim was a French lawyer acting on behalf of the heirs of the Oppenheimer owners, and she had been appointed by a German Court.

22. The Panel noted that the Oppenheimers were shareholders and thus had no proprietary right to the painting under English law (there was no evidence about German law (paragraph 76)). The Panel continued:

    "The Panel considers the heirs' only spoliation claim as the surviving heirs would be for the shares in Margraf and the attendant rights of which the Oppenheimers were deprived by the Nazis when the shares were passed over to Mrs Beer……Shares are not cultural objects and so do not fall within the Panel's Terms of Reference" (paragraph 77).

23. The Panel considered the moral claim, recording that the Margraf group lost possession of the painting as a result of indebtedness to its bankers and the Oppenheimers' own financial position in 1929 and not as a result of the Nazi persecution to which they were subjected (paragraph 82).

24. This earlier Report does demonstrate the difficulties of any legal and moral claim by shareholders. But, at least, the shareholders in that claim had held shares in an entity, the Margraf Group, which had owned and possessed the painting until forced by debt to relinquish possession and ownership. The claim was made by a court-appointed liquidator on behalf of those heirs. These present claims are made by heirs to shareholders and co-liquidators of the Bank which only ever acquired ownership by redeeming the security it held for loans it had made to the owner of the painting. The Panel is of the view that the claimants making the present claims in their capacity as the heirs of shareholders have no standing to do so in Dutch or English law. The Panel will, however, consider their moral claims, and that of the co-liquidators, in the light of the previous ruling of the Panel in 2007 and the material and evidence which has since emerged.

VOLUNTARY LIQUIDATION OF THE BANK IN APRIL 1940 AND FORCED SALE OF ITS ASSETS

25. The claimant, Mr Gal Flörsheim, accepts that Koenigs transferred ownership of the collection, including the three paintings in question, to the Bank, in return for which the Bank discharged Koenigs's debt on 2 April 1940. It is not clear now whether Ms Koenigs also accepts that; she previously had disputed transfer of title, but she has never explained how that dispute advances her case as heir to a shareholder of the Bank. If no transfer took place then her claim as shareholder has no basis.

26. The circumstances of the loan and its redemption were recorded by the previous Panel but are now supported by the greater detail, to be found in the documents of loan and rulings of the DRC.

27. The 2013 DRC Recommendation refers to a hand-written statement by Koenigs dated 9 September 1931 confirming that his collection of drawings was security for a loan of up to FL 1.5 million. This was formalised in a legal instrument dated 2 October 1931, in which the amount borrowed was stated to be FL 1.15 million. On 1 June 1935 a new loan agreement was entered into, which recorded the amounts borrowed as FL 1.375 million and GBP 17,000 (together

totalling FL 1.5 million), with interest at 4% for a term of five years expiring on 31 May 1940. 47 paintings were added to the drawings as further security.

28. The loan agreement allowed for early repayment but, in the event it remained outstanding or the Bank entered into liquidation, then it provided that the Bank would be entitled irrevocably to end the agreement and to sell the drawings and paintings.

29. There are two features of the Loan Agreement in 1935 which the Panel would underline. First, the Loan Agreement was made long before there was any question of threat to the Bank of German invasion or Nazi persecution of Jews in the Netherlands. It was this consideration which led the DRC to decline to reverse the burden of proof in Ms Koenigs' claim to the DRC (see paragraph V9, 2003 Recommendation). Second, the Loan Agreement's reference to liquidation encompasses voluntary liquidation of the Bank; under the Agreement liquidation is not necessarily linked to its financial position.

WAS THE SALE OF THE WORKS BY THE BANK AT AN UNDER-VALUE OR A FORCED SALE?

30. The claims of all of these claimants rest, in part, on circumstances which show the Bank was under pressure to sell the three paintings to Count Seilern as a result of justified fear of Nazi persecution. They rely on those circumstances to show that they were sold at under-value. Mr Gal Flörsheim's claim contains a moving and vivid account of the plight of the Bank when Nazi invasion of the Netherlands was imminent. The Courtauld rightly accepts that account. The Bank put itself into voluntary liquidation on 2 April 1940, just under two months before the Loan Agreement with Koenigs expired, in order to avoid confiscation of its assets in a Netherlands controlled by the Nazis. This Panel had earlier concluded that the probable reason why the three paintings were not recovered by their former owner was Koenigs' failure to discharge the loan, because he either could not or chose not to do so (paragraph 30, 2007 Report). This was relevant to a claim by an heir to the original owner of the paintings. In the context of claims by heirs to shareholders of the Bank, and its co-liquidators, it is also important to record that, as Mr Flörsheim has shown, the Bank sold the paintings as a consequence of its decision to liquidate its assets in the face of threat of the invasion.

31. However, it does not follow that the sale of the three paintings owned by the Courtauld was a forced sale or a sale at under-value, as the claimants contend. There is an important distinction between a forced sale in consequence of specific action, and a liquidation of assets under pressure from the circumstances which prevailed at the time. There was no forced sale, in the view of the Panel.

32. It must be recalled that the Bank's concern was to recover the amount it had previously loaned to Koenigs. This it did, in part, by selling his collection of drawings and paintings for an amount which at least recovered what it had lent. In order to achieve this both Koenigs and the Bank appointed an art dealer, Jacques Goudstikker, to facilitate the sale of the collection. The collection, while

security for his debt, had been loaned by Franz Koenigs to the Boijmans (now the Boijmans Van Beuningen) Museum. Mr van Beuningen bought the drawings and 12 of the paintings for FL 1 million on 9 April 1940; some of them, as the earlier Report notes (paragraph 30) sold at undervalue and the remaining 35 paintings were collected by Mr Goudstikker on 19 April so he could take them to his gallery in Amsterdam on behalf of the Bank.

33. At this stage, the Panel should record, long after these claims were made, it received an unsolicited report, described as an "Amicus Brief" from Mr Clifford Schorer, emeritus president of the Worcester Art Museum, Massachusetts, dated 19 June 2023. The Panel has read this document and Ms Koenigs and the Courtauld have made comments on it.

34. The report considers the claims which have been made for restitution, and described the circumstances and consequences of the sale by the Bank of the drawings and paintings it had acquired following the failure of Koenigs to satisfy the loans. It also comments on the purchase by Count Seilern and its circumstances.

35. In the Panel's view the report does not provide any evidence which causes it to re-consider, let alone change the views it has reached on the basis of the evidence from the claimants and the Courtauld.

36. By letter dated 8 August 2023, the John V Croul Professor of European History at Claremont McKenna University provided further material to describe the well-founded fears of Nazi persecution felt by Dutch Jews in 1940. This supports the evidence of the pressure the Bank was under to liquidate its assets. But it does not lead to a different conclusion from that which the Panel has recorded at paragraph 31.

37. Count Seilern bought the three paintings for a total of FL 36,168, as a later letter dated 10 December 1946 written by Mr H Herrndorf (on behalf of the Bank in liquidation) confirmed. There is no basis for saying that they were not paid for or that the Count did not acquire title to them.

38. The claimants seek to show that the circumstances surrounding the Count's acquisition are murky, that he was seeking to profit from the terrible plight in which the Bank found itself and that the paintings were bought for far less than they were worth, a 33% undervalue.

39. Ms Koenigs has been at pains to establish that Count Seilern was of a character that makes it more likely he would have taken advantage of the Bank and Mr Goudstikker. She seeks to persuade this Panel to find out more about what she suggests were his under-cover activities.

40. There is no evidence of this and no basis for the Panel to make more enquiries. The Count's behaviour in relation to Jewish refugees and his bequest to the Courtauld have hitherto been praised and the evidence the Panel has does not undermine that assessment or provide a basis for further investigation, even if that were possible.

41. The previous Report (paragraph 33) had suggested that the means by which the paintings were brought to England after the war might have been unorthodox. The correspondence between Count Seilern and Jan van Gelder, director of the Mauritshuis 1945-6, now shows that the three paintings stored in the Amsterdamsche Bank between December 1940 and August 1945 were exported with van Gelder's help and not, as was previously suggested, smuggled out in an army jeep. The letters now provide powerful evidence that the export was not concealed and was above-board.

42. There remains the question of whether the paintings were sold at an under-value. Mr Flörsheim relies on a report from two researchers, Mr Eyal Dolev and Mr Alfred Fass, annexed to his lawyers' letter dated 31 January, 2023. They rely on notes of Mr Goudstikker's asking price and Count Seilern's offer ($21,200 as compared to $19,000). This difference of 15% is to be expected and does not come near to establishing under-value. Part of the contentions made in the report fails to take into account a 20% commission charged by Mr Goudstikker.

43. The report also contends that the paintings were worth 'double' the amount paid. This is an unsubstantiated assertion based on comparing the average price paid for all the paintings in the collection that were sold with the prices paid for the three paintings. The average price paid does not constitute evidence of the value of any individual painting.

44. The only evidence as to value to be found is a comparison between insurance values in the Boijmans Museum in 1935-6 and the prices paid by Count Seilern. This shows he paid a much higher figure FL 45,250 as compared to FL 15,000. But the Panel does not place any great weight on what remains the only evidence of value. The Panel refers to its previous Report (at paragraph 21). At the time of that Report Ms Koenigs, claiming as heir, conceded that the price paid for the paintings was fair. It also noted that Count Seilern was open about the provenance of the paintings in his 1955 publication.

45. In short, there is no basis for concluding that Count Seilern took undue advantage of the Bank's plight or of the circumstances when he was presented with the opportunity to buy paintings in which he had long shown a great interest. The Panel repeats the earlier conclusion of the previous Report that there is no foundation whatever for suggesting that the Courtauld should have been on guard in relation to the bequest.

MORAL STRENGTH OF THE CLAIMS

46. Behind many of the tragic claims for restitution lies the loss to persecuted families of their relatives and of the art they owned and treasured as a central part of their cultural lives. This is at the heart of the moral imperative of a system of restitution and the Washington Principles. This underlines a crucial distinction between their claims for restitution and claims such as these. The Bank acquired title to these paintings as part of a process of recovering the sums it had lent. The sale of these paintings concluded that process. The Bank did

recover its loans and thus neither the shareholders nor the Bank suffered any loss. The threat of Nazi invasion triggered the Bank's sale of its assets but, so far as the three paintings are concerned, it did not cause any loss to the Bank. Indeed, it appears to have made a small profit, receiving a total of FL 847,768 on the sale of the paintings it had previously held as security, FL 3,210.13 in excess of the amount outstanding. The shareholders can, therefore, have no cause for complaint.

47. The Panel re-iterates the weakness of the moral claim of the heirs to shareholders of the Bank, and of its liquidators. In essence, they have no moral claim to the paintings, particularly when compared to the claims of those who seek restoration of works of art of which they were deprived by Nazi persecution. The three paintings in the hands of the Bank had been security for loans, security which was realised in full.

48. The Panel also repeats the previous conclusion as to the moral claims:

    "The Panel does not consider that the grandchildren of Koenigs, who himself pledged the paintings initially as security, and who intended them ultimately to remain at the Museum, could ever have had a superior moral claim to the paintings than that of the Courtauld, who hold them for the public benefit and received them from a man who paid a fair value for them" (paragraph 36).

THE PANEL'S CONCLUSION

49. The Panel concludes that the claimants have neither a legal nor a moral claim to the three paintings. That they may be enjoyed in a public museum does indeed fulfil the wishes of their previous owner.

18th March 2024

The Rt Hon Sir Alan Moses - Chairman
The Rt Hon Sir Donnell Deeny
Christopher Baker
His Honour Judge Tony Baumgartner
Professor Sir Richard J Evans
Professor Miranda Fricker
Martin Levy
Peter Oppenheimer
Ms Anna Southall
Oliver Urquhart Irvine

Addendum:

The parties were shown this Report prior to publication for the purposes of allowing them to suggest any typographical or clear factual errors. Both claimants, having read the Report, chose to seek to withdraw their claims. The Panel has declined their request. It is not right nor fair to the Respondents to allow claimants to pursue claims and then withdraw once they have seen that the advice contained in the Report is adverse to their interests. To do so would be likely to infringe the principle of finality, create uncertainty and be unfair to the Respondents.

The claimants also sought the removal of their names from the Report, a request which the Panel also declined. The Panel's proceedings are a quasi-judicial dispute resolution process, and as such any departure from transparency must be properly justified. Ms Koenigs and Mr Fremy (representing Mr Flörsheim) are both familiar with the Panel's procedures and would have been aware that claimants are usually named in its Reports. The Panel has on occasion anonymised its reports where a request for it to do so was made at the outset of the proceedings. In the present case, the claimants sought anonymity only at the end of the proceedings, after discovering that the Panel's conclusions were not in their favour.

The identities of the claimants in this case are relevant to the substance of the Report, in light of the history and context in which the claims were made. With regard to Ms Koenigs, it is important to recall that she did not represent all the heirs. She was named in the Panel's 2007 Report (HC 63) and this current Report relies, in part, on the reasoning in that earlier Report. The Panel draws attention, in the current Report, to the numerous claims made by Ms Koenigs. It is a necessary part of the reasoning of the Panel (see Terms of Reference 13(b)) that Ms Koenigs has made successive claims, in two different capacities. She ought to have made these claims at the same time. The Panel's Report is intended to emphasise the importance of finality: it is a point which cannot be made cogently without reference to the identity of the claimant.

With regard to Mr Flörsheim and Mr Dolev, they chose to expose their names to the public as co-liquidators in their application to the Dutch court and to bring a claim in that capacity. Again, not all the shareholders joined in this claim and it seems to the Panel necessary, therefore, that they also should be named. In any event, once Ms Koenigs has been named the Panel do not think it right that Mr Flörsheim and Mr Dolev should remain anonymous.

Appendix 1: Images of the three paintings
Appendix 2: Report of the Spoliation Advisory Panel in respect of three Rubens paintings now in the possession of the Courtauld Institute of Art, London, 28 November 2007, HC 63
Appendix 3: Panel's Constitution and Terms of Reference

APPENDIX 1

Images of the three paintings

St. Gregory the Great with Ss Maurus and Papianus and St. Domitilla with Ss. Nereus and Achilleus

The Conversion of St. Paul

The Bounty of James 1 Triumphing Over Avarice

APPENDIX 2

RETURN TO AN ADDRESS OF THE
HONOURABLE THE HOUSE OF COMMONS
DATED 28 NOVEMBER 2007 FOR THE

REPORT OF THE SPOLIATION ADVISORY PANEL IN RESPECT OF THREE RUBENS PAINTINGS NOW IN THE POSSESSION OF THE COURTAULD INSTITUTE OF ART, LONDON

The Right Honourable Sir David Hirst

Ordered by the House of Commons
to be printed 28 November 2007

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REPORT OF THE SPOLIATION ADVISORY PANEL IN RESPECT OF THREE RUBENS PAINTINGS NOW IN THE POSSESSION OF THE COURTAULD INSTITUTE OF ART, LONDON

Introduction

1. In 2006 the Trustees of the Samuel Courtauld Trust received a claim from Ms Christine Koenigs (the claimant) in respect of three paintings, more properly called oil sketches but known hereafter as "the paintings", by Sir Peter Paul Rubens (1577–1640), in the possession of the Courtauld Institute of Art (the Courtauld). The paintings in question are:

> *St. Gregory the Great with Ss. Maurus and Papianus and St. Domitilla with Ss. Nereus and Achilleus. 1606–1607;*
>
> *The Conversion of St. Paul, c.1610–1612;*
>
> *The Bounty of James I Triumphing Over Avarice, for the ceiling in the Banqueting House, Whitehall, c.1632–1633.*

2. The claimant is the granddaughter of Franz W. Koenigs (1881–1941), a German businessman and art collector. She claims on behalf of his heirs, other than his son W. O. Koenigs, who has not supported her claim. The Courtauld rejects this claim.

3. It is not in dispute that the paintings were owned by Franz Koenigs (Koenigs) who was by birth a German national and moved to the Netherlands between the wars. In 1935 he lent his considerable collection of Old Master drawings and paintings to the Boymans Museum, Rotterdam. In the same year he took out a loan from the Lisser & Rosenkranz Bank of Hamburg (the Bank), under an agreement formalising an earlier loan made in 1931. It is relevant to note that while Koenigs was not Jewish, the proprietors of this Bank were for the most part Jewish. To secure the loan, he provided his collection at the Museum as collateral. Subsequently the Bank moved to the Netherlands in the face of the Nazi oppression of the Jewish people in Germany. On 2 April 1940, on the eve of the German invasion of the Netherlands, the Bank went into voluntary liquidation and exercised its right to call in the loan. The liquidators advised the Museum of their intention to realise their security by taking possession of the works of art, with the knowledge of Koenigs. Some of these, including the three paintings in question, were bought in May 1940 by a well-known collector, Count Antoine Seilern. He subsequently bequeathed them to the Home House Society in 1978 as part of the Princes Gate Bequest. They are now owned by the Samuel Courtauld Trust (the successor body of the Home House Society) for the benefit of the Courtauld.

4. This change in ownership in early April 1940 was evidenced by three crucial letters to the Museum, two from the Bank and one from Koenigs himself, as follows, so far as relevant:

> **Bank to Museum 2 April 1940**
>
> "We are pleased to report that we have acquired by way of payment from Mr F. Koenigs the collection of drawings that he previously loaned to you (…). Following this transaction, which has transferred the said drawings to our full and unrestricted ownership, we intend to have the drawings removed by our shipping agent in the course of this week …"
>
> **Koenigs to Museum 2 April 1940**
>
> "Since I have not heard anything more from you regarding the collection of drawings that I previously loaned to you, I have been compelled to give these drawings by way of payment to N. V. Bankierskantoor Lisser & Rosenkranz (in liquidation) of this city, which means that full and unrestricted ownership of these drawings has been transferred to said party."

Bank to Museum 8 April 1940

"We are pleased to inform you that the paintings which Mr F. Koenigs previously loaned to you were transferred to our full and unrestricted ownership on 2 April 1940."

5. In 2003 the Dutch Restitution Committee, whose task is similar to our own, considered an almost identical claim from Christine Koenigs for numerous drawings still situated in Holland, and rejected it on the grounds that Koenigs lost the drawings for an exclusively economic or business reason resulting from the Bank's exercising its right to realise its security. Ms Koenigs disputes this finding, which is of course not binding on us.

The Panel's Task

6. The task of the Spoliation Advisory Panel is to consider claims from anyone, or from their heirs, who lost possession of a cultural object during the Nazi era (1933-45) where such an object is now in the possession of a UK museum or gallery established for the public benefit, such as the Courtauld, and to advise 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 at Appendix 1).

7. In making the report which follows, we have considered the submissions and evidence submitted by the claimant, and by the Courtauld through its solicitors, in order to establish whether Koenigs was deprived of these paintings as a result of spoliation and if so, to assess the moral strength of the claimant's case, and whether any moral obligation rests on the Courtauld.

The Claimant's Case

8. Koenigs was born in 1881, the son of a prominent German banker and a Dutch mother. From an early age he was a collector of prints, drawings and oil sketches by the Impressionists and Old Masters. He represented his family in various companies. In 1921 he founded a business in the Netherlands and in 1923 he moved his family there from Berlin. The financial crash of 1931 caused a considerable threat to his interests: however, the claimant contends that by 1935 his debts had been paid off. In April 1935 he loaned his collection of 47 Old Master paintings and 2,535 drawings to the newly constructed Boymans Museum in Rotterdam. On 1 June 1935 he signed the agreement with the Bank for a loan in the amount of 1,375,000 Dutch Florins and £17,000 for five years at 4% interest. Koenigs had the right to pay off the loan before maturity and the lenders had the right to pre-payment in certain eventualities, including their own liquidation. Koenigs provided his collection at the Museum as collateral for this loan. The claimant says that it is not known why the loan was taken out, because Koenigs did not need it.

9. On 9 February 1939 Koenigs received Dutch citizenship. In 1939 and 1940 he was negotiating with the Museum to achieve the aim of changing the status of his collection from a long-term loan to a permanent fixture by way of part sale and part donation. The proposal was that Koenigs would donate two-thirds of his collection to the Museum and that the Museum would raise, through its Stichting (foundation), a sum equivalent to one-third of the value of the collection, which would then be used to discharge the loan to the Bank. War broke out on 3 September 1939. The claimant alleges that persons connected with the Museum, namely a director of the Museum, Dr Dirk Hannema and one of its benefactors, Mr D. G. Van Beuningen, conspired to take advantage of the situation.

10. By April 1940 it was widely anticipated that the Nazis would invade the Netherlands. The Bank had moved to the Netherlands and, with the object of avoiding confiscation in a Nazi-run Holland, it was put into liquidation on 2 April 1940. The claimant acknowledges that the Rubens oil sketches were among the paintings referred to in the letter quoted in paragraph 3 above, but she contends that all the drawings and 12 of the paintings were then bought at an undervalue by Van Beuningen, who had conspired to take advantage of the vulnerable position of the Jewish-owned Bank.

11. However, the paintings in the Courtauld came there by a different route. They were three of 35 paintings which were not sold to Van Beuningen but were entrusted to the art dealer, Jacques Goudstikker, whom the Bank informed by letter dated 8 April 1940 that negotiations regarding the sale of this part of the collection of drawings and paintings would take place only through him.

12. The claimant sets out in detail in her submission the exchange of telegrams in April and May 1940 which led to the sale of the paintings to Count Seilern, including one to the Count from Johannes Wilde, a Viennese professor and former tutor to the Count, who had fled from Vienna in 1939. Both were despatched from Wales, the first dated 24 April 1940 saying that "the paintings are not available at Goudstikker's", followed by another two days later saying that they "are now in the possession of Goudstikker". The claimant submits that the former undermined Goudstikker's authority.

13. The claimant states that the Count had dual Austrian and English citizenship from birth but, at the time in question, he had renounced his Austrian citizenship and was a British subject, recently relocated to England. Having agreed to buy the paintings, he did not in fact physically receive them until 1945. This was because Holland was invaded on 10 May 1940. However Count Seilern did pay for the paintings at the time and he also subsequently paid for storage and insurance charges, pending their delivery to him. Meanwhile, Goudstikker embarked for the USA to join his wife, who was already there; but he was killed in an accident on board shortly after the vessel's departure.

14. It is contended by the claimant that in August 1945 Count Seilern visited the home of Dr. J. G. Van Gelder, a leading Dutch art expert, and received the paintings, which had been stored in the Amsterdamsche Bank NV from 13 December 1940 to 8 August 1945.

15. The claimant also contends that:

(i) The three paintings were sold only because the Bank had to be put into liquidation as a Jewish bank to avoid seizure of its assets, in view of the impending Nazi invasion of the Netherlands.

(ii) Neither Koenigs nor the Bank had in fact given their consent to the sale of the paintings.

(iii) The payment by Count Seilern was not to the Bank (or Koenigs) but to Goudstikker's wife at the Bankers Trust in New York. Moreover the Bank subsequently received payment for the painting "*Gregory and Domitilla*", less a 20% unauthorised commission, but was never paid for "*The Conversion of St. Paul*" or "*The Bounty of James I*", which were much more valuable.

(iv) Koenigs was strongly opposed to the Nazi regime and provided strategic economic information to Dutch military intelligence as early as 1938, and also assisted Jewish fugitives from Germany.

(v) Koenigs himself was murdered on Cologne Railway Station on 6 May 1941, most probably because he was a known anti-Nazi; otherwise he would have nullified the sales after the war.

(vi) After the war, the paintings were collected from the Amsterdamsche Bank by Count Seilern, dressed in his British army uniform and driving a jeep, and then illegally removed from Holland without the required export licence. The claimant accepts that while Count Seilern paid less than the asking price, the price he paid for the paintings was a fair one.

The Courtauld's Case

16. The solicitors for the Courtauld rely on the conclusion of the Dutch Restitution Committee concerning the realisation of the Bank's security. They point out that the Committee was satisfied that, in the 1939-40 negotiations, Goudstikker was acting on behalf of Koenigs with regard to the paintings and drawings. He was also aware that the Bank had an interest in the matter, in the light of both the correspondence with the museum (quoted in paragraph 4 above) and the Bank's letter to Goudstikker dated 8 April 1940 (referred to in paragraph 11 above).

17. The Courtauld stresses that in his letter of 2 April 1940 to the Museum, Koenigs himself wrote that he had been "*compelled to give these drawings by way of payment to NV Bankierskantoor Lisser & Rosenkranz (in liquidation) of this city, which means that full and unrestricted ownership of these drawings has been transferred to said party*". It is true the reference is to drawings, but the Courtauld suggests by implication that this must be true of the paintings also, as the Bank asserted in its letter of 8 April 1940. "*Compelled*" here is a reference to the Bank going into liquidation and therefore being lawfully entitled to call in its security. The Bank was certainly acting under the compulsion of the impending Nazi invasion, but the compulsion on Koenigs was his earlier loan agreement of 1935 with the Bank. What is significant, according to the Courtauld, is Koenigs' acknowledgement that the Bank now had "*full and unrestricted ownership of these drawings...*", together with the Bank's own reference in its letter of the same date to obtaining delivery of the paintings from the Museum. Pursuant to this, Goudstikker collected the 35 paintings not sold to Van Beuningen on 19 April 1940 from the Museum, for transportation to his gallery in Amsterdam on behalf of the Bank, which was duly informed.

18. The Courtauld asserts that the 1935 loan agreement with the Bank formalised the earlier loan of 1931, and that there is consequently no mystery about why the 1935 loan was needed, as the claimant suggests. Given that the claimant accepts the validity of the 1935 loan agreement, this issue is anyway irrelevant to the resolution of the matter.

19. The Courtauld contends that the issue of whether or not there was a conspiracy by Van Beuningen and Hannema in relation to the other drawings and paintings is also irrelevant, because it does not undermine the Bank's entitlement to the ownership of the paintings presently under consideration, nor that of its successors in title, Count Seilern and the Courtauld.

20. The Courtauld disputes the claimant's suggestion that Goudstikker did not have the authority to act on the Bank's behalf, and says that the Bank's letter of 8 April 1940 to him provided such authority: the only query posed by the claimant against his authority is the telegram of 24 April 1940 from Johannes Wilde to Count Seilern (referred to in paragraph 12 above) saying that the paintings were "not available at Goudstikker's". It is suggested by the Courtauld that this could either be a typographical error (i.e. "not" instead of "now") or a mistake on the part of Wilde who was not in the Netherlands at the time but in Wales. The first telegram hardly seems enough to contradict the other clear evidence of Goudstikker's appointment as an agent of the Bank, particularly in the light of the second telegram two days later, apparently contradicting the first.

21. As to the claimant's contention that Count Seilern's own acquisition was tainted because he was taking advantage of the Nazi oppression of the Bank, the Courtauld argues that this allegation appears to be based on a series of suppositions and inferences with little or no evidential basis. In any event the Courtauld emphasises that the price paid by Count Seilern was consistent with insurance valuations and that the claimant herself concedes that the price Count Seilern paid for the paintings was a fair one. This affords strong evidence that there was therefore no wrongful taking by him of the Bank's property, let alone of Koenigs' property. The Courtauld also notes that, in his 1955 publication "*Flemish Drawings and Paintings at 56 Princes Gate London SW7*", Count Seilern wrote openly about the provenance of the paintings.

22. The Courtauld states that in any event, under the law of the United Kingdom, which is the relevant law for these purposes, any claim by Ms Koenigs is time-barred by the limitation period laid down by the Limitation Act 1939 (as amended). The Act was in force in 1978, when the Courtauld acquired the paintings. This, the Courtauld contends, is a conclusive answer to all the issues of Dutch law raised by or on behalf of the claimant.

23. The Courtauld also quotes the Inter-Allied Declaration against Acts of Dispossession of 1943 (see Appendix 3) and submits that the acts of Count Seilern could not be designated as looting or plunder under the terms of the Declaration.

Expert Evidence

24. The claimant submitted a legal opinion from Professor H. C. F. Schoordijk, Emeritus Professor of Civil Law at the Universities of Tilburg and Amsterdam.

25. Professor Schoordijk states that Goudstikker's authority to sell the paintings to Count Seilern was uncertain; that under Dutch law the transfer of ownership of the paintings to the Bank in April 1940 was fiduciary and that, consequently, the Bank would have been obliged to sell the collection by public auction. He also states that the sale of the pictures to Count Seilern did not confer title until the goods were actually delivered to him.

26. In response to questions submitted by the Panel, Professor Schoordijk reiterated his opinion, which was supported by Dr. Th. M. de Boer, Professor of Private International Law and Comparative Law at the University of Amsterdam.

27. Also in response to our questions, the Courtauld submitted a legal opinion on the Dutch law issues provided by A. B. van Rijn and W. I. Wisman of Pells Rijcken & Droogleever Fortuijn, advocates and notaries of The Hague. They contend that the views of the claimant's experts are ill-founded as a matter of Dutch law.

28. As an appendix to her submission, the claimant annexed a report by Dr H. B. Junz, an economist, written in response to the findings of the Dutch Restitution Committee. Dr Junz contends that the transaction could only have taken place under duress, since neither the Bank nor Koenigs was subject to the financial pressures which the Committee identified as the deciding factor: this she describes as the only logical explanation.

The Panel's Conclusions

29. The paramount purpose of the Panel, pursuant to paragraph 11 of its Constitution and Terms of Reference (see Appendix 1), is to achieve a solution which is fair and just, both to the claimant and to the institution. For that purpose it shall make such enquiries as it considers appropriate and take the various other steps set out in paragraph 12 of the Terms of Reference. One of those is to "*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*". It is the Panel's view that the claimant's grandfather was deprived of the paintings neither by theft, nor by forced sale or by sale at an undervalue, but as a result of the Bank calling in the loan and realising its security. Any forced sale stemmed from the Bank's own need to sell because of the impending German invasion of the Netherlands. The Bank had the right to sell the paintings because of the loan agreement entered into by Koenigs in 1935, formalising the earlier 1931 loan agreement. This was a loss suffered by Koenigs for commercial reasons and not as a result of Nazi spoliation or any form of duress. This is sufficient to resolve the case in the Courtauld's favour. However, we propose, in fairness to both sides, to examine the remaining issues.

30. It cannot be disputed, and is not disputed by the claimant, that Koenigs had very substantial debts and creditors in 1931, although his business subsequently returned to profit and repaid its foreign debts by 1934. But again, there is no doubt that the loan agreement of 1 June 1935 between Koenigs and the Bank did provide that Koenigs' drawings and paintings would serve as security for the loan. We note the careful exposition of the facts by the claimant in her reiteration of her claim. She lays stress on the sale, ultimately to Hitler via Van Beuningen, of the other part of the art collection at an apparent undervalue. Nevertheless we conclude that the probable reason why Koenigs failed to discharge the loan to the Bank in early 1940 was because he could not, or chose not to do so. The inevitable inference must be that, although he probably realised that the bulk of his collection was being sold at an undervalue, he was not in a position, either in practical financial terms or perhaps in law, to buy the collection back himself from the Bank.

31. We record in paragraph 15 (iii) above the claimant's assertion that Count Seilern failed to make due payments to the Bank. The supporting evidence is very thin but, even assuming these assertions are correct, they do not avail the claimant, since any loss incurred would have been suffered by the Bank and not by Koenigs. We also record in para 15 (iv) above the claimant's assertion that Koenigs was strongly opposed to the Nazi regime but we do not consider that this attitude, however commendable, has any bearing on the claim.

32. The questions of Dutch law referred to above are complex, but it is unnecessary for us to resolve them, given that, as the Courtauld rightly contends, any legal claim to the paintings is time-barred. The Limitation Act 1939 (as amended) extinguishes an owner's right to sue, even against a thief, thus rendering the Courtauld's legal title impregnable under English law. In reaching this conclusion, we are fulfilling our obligation in paragraph 12 (f) of our Terms of Reference, to "*evaluate, on the balance of probability, the validity of the institution's title to the object*".

33. Under paragraph 12 (e) the Panel must "*give due weight to the moral strength of the claimant's case*". It is right to recognise that the removal of the paintings from the Netherlands by Count Seilern, albeit with the assistance of a prominent member of the Dutch art establishment, Dr van Gelder, may have been somewhat unorthodox, although there is no concrete evidence to support the claimant's graphic portrayal of the precise circumstances. The Panel notes, moreover, that the moral character of the person who ultimately acquired the object at the time is not an express consideration which the Panel is asked to address under paragraph 12 (e), in contrast to the moral obligation on the institution currently holding the objects in question.

34. The Panel tested this matter in another way by taking the contentions of the claimant and her advisers at their highest to see where they lead. If they had been correct in saying that there was not a valid transfer of legal title to the paintings to Count Seilern in either 1940 or 1945, despite his payment of a fair price to Goudstikker, would the claimant then be morally entitled to succeed in her claim to restitution or other relief?

35. In answer to this question, it must be borne in mind that it is an intrinsic part of the claimant's case, (see paragraph 9 above), that it was Koenigs' intention in 1939 and 1940 that about two-thirds of his collection would remain in the Museum, where it was then on loan; and that the smaller part would be sold to discharge the loan owed to the Bank, which she legitimately points out was about a third of the then estimated value of the collection. Consequently, it is hard to see why she or any other descendants of Koenigs have any moral claim at all. There is no evidence that he ever intended to leave these drawings and paintings to his heirs. If anyone suffered here it was one of two other parties. Either the Bank suffered because Goudstikker did not pay it the money that it was owed and, therefore, its assets were reduced; or the Museum suffered because otherwise it would have acquired more of Koenigs' art collection. In these circumstances the Panel cannot see what moral claim the claimant has to the paintings.

36. While this is a conclusive answer to the moral claim, the Panel is fortified in its conclusion by a further consideration. Even if it were the case that Count Seilern acted in breach of Dutch law, the facts remain that he brought the paintings to England, he conserved them, he wrote about them and without seeking any payment he passed them on by way of legacy to the Courtauld for the benefit of the public and scholars. The Panel does not consider that the grandchildren of Koenigs, who himself pledged the paintings initially as security, and who intended them ultimately to remain at the Museum, could ever have had a superior moral claim to the paintings than that of the Courtauld, who hold them for the public benefit and received them from a man who paid a fair value for them.

37. Finally, we consider it right to record our opinion that no criticism attaches to the Courtauld in respect of the manner and circumstances of its acceptance of the bequest of these paintings. In our view the Courtauld had no occasion to question the title of Count Seilern or the moral propriety of his acquisition of the paintings.

Conclusion:

38. It is the recommendation of the Panel that this claim be rejected.

28 November 2007

The Rt Hon Sir David Hirst – Chairman
Sir Donnell Deeny
Professor Richard J Evans
Sir Terry Heiser
Professor Peter Jones
Martin Levy
Peter Oppenheimer
Professor Norman Palmer
Ms Anna Southall
Dr Liba Taub
Baroness Warnock

Appendix 1: Terms of Reference
Appendix 2: Washington Declaration
Appendix 3: Inter-Allied Declaration

APPENDIX 3

SPOLIATION ADVISORY PANEL
CONSTITUTION AND TERMS OF REFERENCE[4]

Designation of the Panel

1. The Secretary of State has established a group of expert advisers, from which a Panel will be convened, 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 designated ……..... as 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.

[4] Revised following enactment of the Holocaust (Return of Cultural Objects) Act 2009.

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)).

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 or parties to the proceedings shall normally be provided to the other party or parties;

   (b) the report of the Panel shall set out such information as is necessary to explain the reasons for the Panel’s conclusions;

   (c) such information may, in appropriate circumstances (including having obtained a confidentiality undertaking if necessary), be communicated to third parties as necessary for the Panel to perform its functions (eg. for research purposes); and

(d) the Panel will normally, subject to the discretion of the Chairman, disclose the fact that a claim has been made and identify both the object and the institution.

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) take account of any relevant statutory provisions, including stipulations as to the institution's objectives, and any restrictions on its power of disposal;

(h) 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;

(i) 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;

(j) 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

(k) 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.

16. The Panel will only consider whether any particular moral obligation rests on the institution if it finds it is necessary to do so to enable it to arrive at a fair and just recommendation. For that purpose, the Panel shall take into account any relevant consideration (including the circumstances of its acquisition of the object and its knowledge at that time of the object's provenance).

Scope of Advice

17. 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.

18. 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 7(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.

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