

# Foul Play or Opportunity Knocks?

Deaccessioning and disposals  
in UK museums

Edited highlights from  
Farrer & Co conference  
10 May 2011, The National Gallery



## When is it appropriate for public collections to sell works of art?

This contentious question was the subject of a conference at the National Gallery in May 2011 that brought together the country's leading museum professionals. Hosted by law firm Farrer & Co as part of an annual event series, the conference included contributions from British politicians and legal advisers, as well as UK and international gallery directors, who helped put a complex issue into a global context.

The sale of art (also known as deaccessioning or disposal) was being debated at a critical moment. Although disposal had taken place sporadically during the twentieth century, there was a strong presumption against sales established in the Code of Ethics of the Museums Association (MA), the sector's written principles for best practice. But in 2005, the Watts Gallery in Guildford asked the MA whether they could dispose of works in order to fund urgent building restoration, collection conservation and the establishment of an endowment. The fact that the gallery's building was at risk put the issue into sharp focus: would it be better to let the gallery deteriorate further or allow the sale of art works that were not core to its collection?

The MA concluded that the latter was the better evil and changed the Code of Ethics in 2007 to allow financially motivated disposal in 'exceptional circumstances'. Since then this definition of 'exceptional circumstances' had been tested by an increasing number of collections wishing to raise money. Many of these had been owned by local authorities under financial pressure due to cuts in their funding from Government.

Featuring over fifteen high-profile speakers, giving often very different perspectives, the conference analysed the issue in the broad terms to work towards a new consensus for the future.

## **Dr Stephen Deuchar, Director, the Art Fund**

**“The debate about deaccessioning should become more sophisticated.”**

In his introduction to the conference as chairman, Deuchar urged that the debate should aim for greater nuance than in the past – he argued that a single set of principles on disposal would never be able to cover all museums adequately. He also challenged the speakers and audience to cover five key issues: whether money should ever change hands between public collections; the problem of objects being stored for seemingly no purpose; sanctions to curb unethical disposal; the value of the American ‘trading up’ model; and how to balance the needs of now with those of the public in the future.

### **Perfect timing**

“As predicted, the relaxation in the Museum Association’s guidelines about disposal, as well as the economic downturn and public spending cuts, has meant that sales from public collections are on the up. Only last week The Art Newspaper outlined the planned sale of over 400 works of art by four local authorities, and for every council that has publicly outlined its intention to sell, there will be several more reviewing what they own, and we at the Art Fund know this to be true. We often get phone calls from worried curators saying that their bosses have started eyeing up the paintings on the walls and asking how much things are worth.”

### **A new sophistication needed**

“I don’t expect or even seek consensus, but I do hope for agreement that the debate about deaccessioning should in some way become more sophisticated. It seems to me to be unsophisticated, for example, to believe that there is somewhere a single set of principles that will correctly apply to all museums regardless of their purposes, objectives, funding context and public functions. We may have to acknowledge that the right rules ethically speaking for, say, the National Gallery are not incontrovertibly the right ones for the Oxford Museum of Science, or any number of other examples I might make.”

### **Some key issues**

“The first is around public interest. Rightly or wrongly, museum and gallery collections have been acquired for public consumption. We have a national collection full of wonderful, beautiful, sometimes frankly bizarre objects. Some might argue that we have too much of it, but in toto it is surely a national collection built for public benefit. Can it ever be right that if one public UK museum wishes to acquire an object that another public museum no longer wishes to keep that money should change hands between the two?

Second, this national collection should be used actively for the benefit of the public. The Art Fund recently did some research. We asked 100 museums about their reserve collections and their views on current practice on disposal. 89%, nearly 90%, of those museums said they had objects in store that had not been displayed, touched or consulted for more than 10 years... stored objects must have some known, tangible and identifiable purpose.

Third, when sales of museum objects do occur, and whatever this conference might or might not resolve, they certainly will continue to occur, how do we enforce the linkage of the sale proceeds to the growth and development of the collections rather than simply allowing asset stripping? While some may argue that in these impoverished times there is actually a widespread danger that sales from public bodies are presented as the only alternative to museum closures, and that it becomes an unstoppable trend, we have only moral sanctions to call on, not legal ones.

Fourth, should we contemplate the American model of allowing museums to trade up – say, museums could be permitted to sell two lesser Turners for one great one. By consequence we

may have smaller public collections, but would they not maintain better art? This would of course mean an end to the Museum Associations notorious 'exceptional circumstances' rule that's such a difficult grey area.

And finally, the perennial issue really: how do we balance the needs of now with the needs of the public in the future? Can museums looking to dispose ever not be influenced by fashion? Everyone gets rid of things when their peer group ceases to be interested in them, never when they are at their height of their reputation. Of course, the converse is true with purchasing. Can we learn from the mistakes of some museums in the past - for example, the Lady Lever Gallery in 1958 is perhaps the most famous one - where decisions to dispose have later been woefully regretted?"

## **Ed Vaizey MP, Minister for Culture, Communications and Creative Industries**

**“I want to discourage unnecessary sales and open up a new debate about how we can make collections work harder.”**

The Government’s position was one of support for the Museum Association’s reformed Code of Ethics and caution on disposals, encouraging local authorities and collection managers to always put the public interest first. The minister highlighted that sales could, for example, deter future benefactors at a time when the Government was keen to encourage philanthropy. Although Vaizey’s keynote speech welcomed continued debate about de-accessioning, it also called for much more discussion on how collections could be used in creative new ways, to both engage communities and raise more revenue.

### **Reasons to be wary**

“Collections should not be seen as a kind of financial larder to be raided when times are hard. Institutions have to consider the full ramifications of any disposal. Any disposal construed as financially motivated does damage public confidence in institutions... If institutions are not seen to be entirely ethical in the disposal of any items, that provides significant deterrents with regard to future legacies and bequests, and certainly could have an impact on the growth and vitality of our public collections. That would not be welcome particularly, at a time when this Government is keen to encourage philanthropy.”

“Contravention of the Code of Ethics can lead to the withdrawal of accreditation... which can have adverse effect on the reputation and credibility of a museum.... While I believe that decisions about local authority managed collections must be taken at the local level, I would always encourage all local authorities to carefully weigh all the relevant factors before selling any works of art. My message is that applying short-term solutions can have long-term damaging legacy.”

“Donors are likely to be very reluctant to give to museums and galleries who have a history of selling off items in their collections. And institutions need to avoid cherry picking – selling the best parts of their collections to raise the most money. That’s a disaster for the institution itself and for the public...”

### **Collections can work harder**

“I want to discourage unnecessary sales and open up a new debate about how we can make collections work harder. Some collections need to be far more innovative to ensure their objects are shared more widely... I want museums to think about their loan policies more radically... extending offers to local schools, universities and business... There is no reason why institutions cannot be inventive in enabling their collection to be seen by more people in the community while at the same time generating income. For example, I would have no trouble with a museum lending a picture to a major local business for display in its public area but also charging for the privilege.”

**Dr Nick Merriman**, Director, Manchester Museum & Convenor, Museums Association's Ethics Committee

“Rather than changing the Code of Ethics again, I think we need to work on more detailed supplementary advice about financially motivated disposal, based on the experience we have gained in the last few years.”

Merriman set out the Museum Association's Code of Ethics for the disposal of objects from public collections, after explaining the context in which they were established in 2007. He described some examples of financially motivated disposal that have since hit the headlines and, in conclusion, he called for transparency, openness and extra advice for those museums considering sales to raise revenue.

#### The situation before

“For at least 30 years the Museums Association's Code of Ethics had ‘a strong presumption against disposal out of the public domain’ – as the 2002 Code stated it – which generally became shortened into a perception that there was a strong presumption against disposal full stop.

The strong presumption against disposal that had dominated museum thinking for decades had to be set alongside growing concern that collections held in museums were not being used to their potential. This stemmed right back to the 1980s when a report by the National Audit Office into the collections of some national museums identified huge backlogs in conservation and documentation and amongst things queried why these museums were still collecting actively when they didn't fully know what they had and were struggling to look after it effectively.”

#### The new framework

“The new changes to section 6 of Code of Ethics... were put forward at the 2007 AGM and approved by the overwhelming majority. The major change in the wording was that from a strong presumption against disposal there is now ‘a strong presumption in favour of the retention of items within the public domain...’ ...There was also a change for the first time to recognise a special kind of disposal, which is a financially motivated one.” [1]

#### Exceptional circumstances

“One of the things that influenced the admission for the first time of financially motivated disposal in exceptional circumstances was the case of the Watts Gallery, which in 2005 approached the MA for advice. Trustees and staff had ambitious plans to improve the way they looked after the collections and the building and make them more accessible to the public, including establishing a permanent endowment for the care and use of the collection. They were exploring all avenues of fundraising but it had become clear to them that the only way they could realise their plans was to sell some works of art that were not by Watts and, they argued, not core to their collection. At that time, this was not permitted by the Code of Ethics. The question this raised, was ‘is it better for collections to remain in an unsatisfactory state, or is it sometimes ethically justified to sell some works so that the overall conditions and use of the majority can be significantly improved?’

As a result of the changes to the Code of Ethics in 2007, the Watts Gallery sold two paintings in 2008 and raised £1.5 million towards its endowment, working closely with the MA. It has raised £11 million towards a major refurbishment and will re-open to the public in mid-June after two and a half years of closure.”

“Perhaps surprisingly, given initial fears, there have only been a very small number of proposals to undertake financially motivated sales cases since 2007. The first of these from Southampton was

to sell two works of art to contribute towards the costs of a new building. We had long discussions with them and concluded that they didn't meet the requirement that selling collections should only be done as a last resort after other sources of funding had been explored – and as I understand it, they've now found the money elsewhere and dropped the plans..."

"Another case has been The Royal Cornwall Museum, which by its own analysis has been living beyond its means for some years and faces a reduction in one of its key sources of external funding. Like the Watts Gallery it has long-term plans to raise funds to build an endowment – but like them they realised it would take too long to build one up before financial problems became unsustainable, and so they realised they would have to sell some art works to generate the funds... they took great pains to try to meet the criteria in the Code, and after over a year of discussions the Ethics Committee was able to announce that the proposal met all of the criteria. Two paintings were sold in June 2010 for a total of £2million."

"The final case is that of Bolton Museum & Art Gallery, which is proposing to sell artworks to raise funds towards moving all of the Museum's collections into greatly improved and more accessible storage. This case is still not concluded so it is not appropriate to go into much detail, but again the Ethics Committee has been advising Bolton closely on both the proposal and the process...."

### **More detailed advice is necessary**

"Since 2007 we have had a small number of financially motivated disposals, mostly of art works. In all of these cases, the museums or galleries have had the best long term interests of the collections at heart, and have I believe done their best in often difficult circumstances to raise funds for their long term future in an ethical way. The MA and Museums, Libraries and Archives Council have generally worked well together to give advice. We still believe financially motivated disposal has a role to play when done appropriately. What I do think we need to do though is to develop clearer communication about this separation between routine and uncontroversial collections mobility, for subject areas such as social history, archaeology and natural sciences, and the controversial area of financially motivated sales. Rather than changing the Code of Ethics again, I think we need to work on more detailed supplementary advice about financially motivated disposal, based on the experience we have gained in the last few years."

[1] For more information on the criteria that the MA uses to assess whether or not a proposal for disposal is ethically acceptable, visit [www.museumsassociation.org/ethics/ethics-of-disposal](http://www.museumsassociation.org/ethics/ethics-of-disposal)

## **Julian Smith, Partner, Farrer & Co**

**“A compelling moral case is not usually of itself able to overcome an effective legal bar to deaccessioning.”**

Julian Smith addressed the legal considerations when it comes to deaccessioning, as opposed to curatorial and ethical issues. He brought up questions about the responsibilities of trustees, what body should have oversight, how long any prohibition should last and the relationship of UK laws on the subject to those in Europe and elsewhere.

### **Ask the questions in the right order**

“Trustees considering disposal from a collection must, in my mind, contemplate three key questions:

- Why do we have it? (The curatorial question)
- Can we dispose of it? (The legal question)
- Should we dispose of it? (The ethical question)

That is the logical order of enquiry, and perhaps some attempts at deaccessioning fail simply because the ‘should’ question is posed and purportedly answered long before the ‘can’ question.”

### **Legal ascendancy**

“A compelling moral case is not usually of itself able to overcome an effective legal bar to deaccessioning. Nor actually is the ‘should’ question only about morals and ethics. Charity trustees are duty-bound when considering a disposal to consider all factors relevant to their institution’s welfare: its finances, its reputation, its capacity to attract new donations, the consequences of deaccreditation and so on.”

### **Legal issues to explore**

“I would expect to see addressed the following high-level legal policy issues in any exploration of this subject, in order to find new solutions, if people think new solutions are needed:

First, discretion. If I’m a trustee of an institution, I’m duty-bound to act in that institution’s best interest. It’s for me to decide how best to promote the charitable objective of that institution. Yet we have a legal system which allows one or both my hands to be tied behind my back on this subject. Is this sensible, and if so how much hand-tying should be allowed?

Secondly, evolution. Things change. If an inhibition on disposal exists, how long should it be allowed to persist?

Third, forum. If an inhibition is to be lifted, who’s best placed to decide whether it should be lifted or not? Parliament, courts, a specialist body?

Last but not least, we have to recognise to some extent that this is now an international stage. With UK charity tax relief now extended into European institutions, will demanding donors ‘jurisdiction shop’ – decide which public collections in which legal regime will their views best be respected on deaccessioning?”

**Gary Tinterow**, Engelhard Chairman of Nineteenth-Century, Modern and Contemporary Art, Metropolitan Museum of Art

“In America we have the sense that things may leave a museum: they may be then bought at auction by another museum, they may be bought by a private collector who may then donate it to another museum. We see things as constantly changing and growing and evolving in an organic way...”

Garry Tinterow gave an American perspective on deaccessioning, first describing the similarities to the UK across the Atlantic and then explaining a key difference: the emphasis in the United States on the sale of a work deemed inferior in order to fund the purchase of an object of higher quality. Tinterow said this practice was founded on the attitude in America that collections never stand still; instead they grow and improve through sale to and acquisition from other collections, both public and private. He also affirmed that the curatorial staff and Trustees who choose works for acquisition are the same who choose works for sale.

#### Transatlantic comparisons

“We have very few national collections in America. There’s the Smithsonian, there’s the National Gallery of Art, and I believe - although I’m not certain - that those collections are inalienable. The National Gallery of Art certainly doesn’t sell works: it’s government property and I don’t know of any instances where they’ve separated themselves through disposal.

In America, just as here, organisations, like the AAM (the American Association of Museums) and the AAMD (the American Association of Museum Directors), set guidelines that all proceeds used from the sale of works must be to acquire other works of art, or for the maintenance and care of other works of art...

We have similar safeguards as well. We have accrediting organisations - the AAM and AAMD - and if an institution loses its accreditation it can no longer be eligible for federal grants and most charitable grants.... That’s the police function of the professional entities, to make sure that organisations abide by these standards.

We have similar criteria to yours about whether the object is not relevant to the mission of the museum or has little value, is redundant, a duplicate, not necessary for research or study, of lesser quality of other objects of the same type, lacks sufficient aesthetic merit or art-historical importance, or if we’re ordered to return an object because of a claim or legal issue.”

#### Trading up

“We owned two decorative panels by Renoir from a door that decorated the apartment of one of Renoir’s patrons, painted in the late 1880s/early 1890s, and we found them to be redundant. We had very fine paintings, magnificent paintings by Renoir; these were, we thought, insignificant works that had a decorative value, and we sold them and the proceeds we used to acquire a Delacroix.

It was a big purchase for us, so we also used the proceeds from the sale of a Monet - we have some 40 paintings by Monet and one, which came as a gift in 1961, we felt inferior to nearly every other picture by Monet we had... We checked with the donors and there were no problems with the family for us to sell it, so we sold it as well at auction, together with another little painting. Lovely that it was, we had a very similar, much more important, better finished painting of a similar scene.”

### Artworks leave but are never lost

"In America we have the sense that things may leave a museum: they may be then bought at auction by another museum, they may be bought by a private collector who may then donate it to another museum. We see things as constantly changing and growing and evolving in an organic way, and we don't have as much as one has in Europe the notion of irrevocable loss: the notion that if it leaves the public domain then it is lost forever. That's not the case in the United States and we see things come around and turn around and our collections constantly growing."

"For us, the same people who make the decisions about works coming in - and at the Met, I would say we probably refuse more works of art than we accept - are the people who make the decisions about works going out: individuals and bodies of trustees who allow works in and allow them to leave."

### Dr Johann Kräftner, Director of the Collections of the Prince of Liechtenstein, Vaduz

**"We have this policy to replace good things with better things."**

Kräftner told the audience that, from their very beginning in the seventeenth century, the Princely Collections of Liechtenstein have always regularly sold works of art, depending on the changing tastes of the princes and their advisors. Like many museum administrators in America, he can sell works at auction to raise funds to purchase finer works.

### Similar to the US

"I must say, after the lecture of my colleague Gary Tinterow, that the Princely Collections and the Met are very close in many things, even though we are on the opposite side of the world, and we are situated in middle Europe in one of the oldest and most serious collections of old art."

### Selling depending on taste

"I want to give you an overview of how the Liechtenstein collections - these private collections of the Princes of Liechtenstein - have dealt with selling and buying art over the last 400 years.

One could start with Prince Johann Adam Andreas who brought in the collection... but I want to jump 300 years on to Prince Johann II, because he's a really interesting person. He was ruling in the second half of the nineteenth century and died 1929. And he was a man who really gave an order to the collection in a scientific way... he had art historian Wilhelm von Bode who gave him advice and who really formed the collection. He brought together all this wonderful Renaissance painting... and he had a very special taste focused on medieval art and focused on Christian art.

But this taste was also crucial to the collection as he also decide to sell many, many things from before... For instance a very important group of paintings for the decoration of the palace of Johann Adam Andreas - the Franceschini paintings - was sold because he hated naked figures in his gallery."

### Auctions still today

"So now at Sotheby's in London we're selling [a painting] but we have 25 others that are much better, so we decided to give away this one... So we have this policy to replace good things with better things, and perhaps sell weaker things."

## **Sir Simon Jenkins, Chairman, The National Trust**

**“The hoarding instinct is, I have to say, close to being immoral.”**

The extensive sales and acquisitions practice of The National Trust made the disposal debate very relevant to the organisation, explained Jenkins. He made clear that the Trust’s policy on deaccessioning was in line with the current ethical guidelines. But Jenkins vehemently attacked the hoarding of objects in basements and attics, and gave his support for those families who sell work in order to improve their collections.

### **Many museums in one**

“The Trust, I should explain, is a museum: in fact it is 142 accredited museums. We’ve got something like 2,000 Old Masters, a million antique books. We spend about £12 million a year with very considerable help from AIL and many other benefactors on acquisitions each year. We have to process about £50 million of legacies of all sorts each year – cash, property, but also chattels and works of art – and this is really a huge undertaking. So the sorts of things that we’ve been discussing this afternoon are highly relevant to the National Trust.”

### **Sales procedures at the Trust**

“I get every week a huge wodge of paper that indicates what’s been bought and sold. It’s a horrendous amount and I can’t possibly pretend to go through it all. We are a very big antique dealer and the terms on which we dispose are very carefully laid down and monitored. I honestly don’t think it goes wrong often, although obviously sometimes it does go wrong.

Our presumption is in favour of keeping things. We do not sell for general revenue. We do not sell without the normal authorisation procedures. We normally offer to museums in the approved fashion. We’re very careful if we’ve got something that in some sense is attached to a grant that we repay the grant if we sell the object, and so on and so forth.”

### **Against hoarding**

“But the thing that I think is most relevant to the conservation today, and I hope the Trust is less guilty of it than most, is what I can only describe as the hoarding instinct.

The hoarding instinct is, I have to say, close to being immoral. I feel more strongly about this than anything we’re discussing. I just cannot take vast amounts of fine art sitting in basements in London any more than I can take them sitting in attics all over the country. People painted pictures for other people to look at them. If we cannot show them the pictures, we should give them to someone else who can. The idea that there is something ideologically grand about constantly acquiring works of art so scholars can see them is the ultimate form of elitism.”

### **Keeping collections alive**

“Part of the task of the great collector is to have a collection that is living. It’s about acquiring new works. I go to Burton Agnes Hall or to Chatsworth House and I see modern art living happily alongside great works because that’s what the family want to do. I imagine they don’t sell very much but they probably sell something: what’s wrong with that if you’re improving the collection? I just like to think that the National Trust is the place people go to see living collections of art, not dead ones.”

## **Dr Nicholas Penny, Director, National Gallery**

**“The idea remained that what had been bought for the National Gallery with public money must be on public display.”**

Dr Penny spotlighted the criticism the National Gallery received from nineteenth-century commentators who believed the gallery was “being filled with curiosities”. He argued that the gallery has always emphasised the display of superb artworks rather than the hoarding of more minor examples. Penny said the picture across the UK was less positive, with “acres of second-rate paintings” in storage to consider.

### **A special collection**

“Museums and galleries come in many different forms, which tends not to be acknowledged in the polemics concerning deaccessioning. I believe there is only one type of art collection which it’s reasonable to propose should have the great majority of its holdings on permanent, or at least daily, exhibition. And that’s a collection of masterpieces bought for the public, for the public’s edification and the public’s entertainment and with money provided from the public purse... The National Gallery was founded as just such a collection and the only obstacle to display is shortage of space.”

### **The imperative of display**

“The funniest and most violent critic of the National Gallery was probably Charles Allston Collins, a painter and critic who, in Dickens’ *All the Year Round* in 1860, wrote that he thought the pernicious influence of “Professor Waghorn” – this must be an allusion to Dr Gustav Waagen, the eminent German art historian and Director of the Painting Collection in Berlin – was leading to the gallery being filled with curiosities.... There was a great deal of debate, but I don’t think any of my predecessors felt that the gallery should be filled with interesting specimens rather than superb examples of the art of painting.

The idea remained that what had been bought for the National Gallery with public money must be on public display, even though some poor works did enter the collection that the gallery’s officials wished to dispose of.”

### **The nationwide picture**

“The Public Catalogue Foundation, that admirable institution, has indeed revealed all sorts of hidden wonders – but one’s first impression going through their published catalogues is how many acres of second-rate paintings there are in store all over the UK and how very difficult this problem is to deal with, because I don’t think they can all be sent to London as a solution.”

### **An Un-American Attitude**

“There is a different attitude in America. We often think here that people won’t give to collections if they find out that stuff given ten years earlier has been sold off... but people do continue to give vigorously in America to institutions that have sold off stuff bought by a previous generation of millionaire benefactors. But it is the case over here that it’s really dangerous – and that certainly applies to this institution.”

## Dr Timothy Potts, Director, Fitzwilliam Museum

### “Deaccessioning policy should not attempt by stealth to achieve heritage objectives.”

Potts disclosed that deaccessioning had never taken place in the three international museums of which he was a director, except in the form of what he called “deaccessioning light”: when objects are acquired but not formerly accessioned, so that they can be simpler to sell if deemed not up to standard. He also argued that national heritage policy – whether an object forms part of a nation’s heritage and should therefore be banned from export – should not be considered as part of museum’s disposal policy.

#### International perspective

“I suppose I’ve been invited to speak since I’ve been the director of three museums on three different continents: the National Gallery of Victoria in Melbourne, the Kimbell Art Museum in Fort Worth, Texas, and now the Fitzwilliam in Cambridge. So I have had experience of collecting policies and deaccessioning policies in Australia, in the United States and in Britain, so hopefully I bring some sort of international perspective on this.”

#### “Deaccessioning light”

“I have never deaccessioned. I did do it once at the Kimbell Art Museum, but it doesn’t really count – it was a case of a higher moral imperative, and that was the restitution of a Turner that had been the subject of a forced sale under the Vichy Regime in France, so it was given back to the family.”

“At the National Gallery of Victoria deaccessioning did take place during much of the twentieth century. I very much regret the silver and the decorative arts that was sold... The curatorial culture when I was there in ‘90s was very much hostile to deaccessioning and again, none occurred during my tenure, with the exception of contemporary art, where we had a development collection. We acquired works, we paid for them, we owned them, but we didn’t accession them. After five years we reviewed them to see if they were up to standard or interesting enough; if we were still unsure, we waited another five years, thus ten years in all, and then made the decision to accession or not. If not deemed worthy of accessioning, they were sold or given back to the artist. It was ‘deaccessioning light’ if you like: it’s one of the ways where museums do sell things, but they sell things before their accession rather than after.”

“Deaccessioning can only be as right or wrong as the mission it serves. For a museum like the Kimbell, which set its sights very clearly on collecting a small number of ‘masterpieces’ and upgrading whenever a better work came along, deaccessioning has been a spectacular success. For a museum of record like the National Gallery, on the other hand, deaccessioning in any significant way would have been a betrayal of its self-consciously historical role and a disaster to the integrity of its collections. This is not a contradiction, just a reflection of these institutions’ very different missions.”

#### It’s not about heritage

“Deaccessioning policy should concern itself purely with the museological issue of what is best for museums, considering them as an international community charged with professional best practice and the sharing of knowledge. It is for heritage policy to decide, as indeed it does decide, which subset of museum objects are of outstanding heritage importance and to what extent and in what manner restrictions should be placed on their export from the UK. Deaccessioning policy should not attempt by stealth to achieve heritage objectives that cannot carry conviction in open debate.”

#### Conclusions

“Generalising the issue of deaccessioning, it comes down to this: to what extent do we want museums to become museums of themselves – a record of how they have become what they are?... And for me the main thing that I take away from the meeting today is the general agreement that there is no one rule on deaccessioning that is suitable for all collections.”

## Edward Manisty, Consultant, Farrer & Co

“It seems to us that existing sanctions for breach of ethical standards provide little real deterrent.”

Manisty proposed a four-part framework to firm-up what is both legal and ethical when it comes to disposals: the grading of items across collections, the formation of a committee reporting to the Secretary of State on the subject, the ringfencing of proceeds and stricter penalties for infractions.

### Rationalisation required

“In the long term, the sector must address the need for a wholesale rationalisation of collections. All museums probably have capacity issues when it comes to collection care. These include limited resources, lack of dedicated staff time to deal with these issues and inadequate storage space.... There should be a greater openness about why objects are being collected or disposed of; what public benefits they offer to museum users and the wider community; and the long term implications of caring for them in terms of time, money and other resources.”

### Legal stages

“In writing our article for Art Antiquity and Law, Julian Smith and I thought we should have a shot at coming up with a new framework to assist curators and museum trustees in penetrating the ethical and legal jungles when deaccession becomes an issue.”

“We tried to outline a possible new “nuts and bolts” approach which has four key components:

1. Assessment of qualitative standard by listing
2. A clear and transparent route towards deaccession of listed items guided by a Supervisory Committee reporting to the Secretary of State at the DCMS.
3. Ringfencing of proceeds of sale to ensure application in accordance with prevailing ethical thinking.
4. Meaningful penalties to be imposed upon an institution that steps out of line.”

### Qualitative Standard by Listing

“The nature of the gradings and their consequences, would be a matter for the sector and the Government. Perhaps there might be categories like the following:

Grade 1: Presumption that such objects should never be considered for disposal outside the sector:

Grade 2: An object, collection or group of objects not of sufficient quality to fall within Grade 1 but nonetheless of such significance that its removal from a public or semi-public institution would be an undoubted misfortune. Such objects only to be considered for disposal when compelling and exceptional circumstances arise.

All objects not listed Grade 1 or Grade 2 would be disposed of with a minimum of formality.”

### Supervisory Committee

“This would operate along the lines of The Reviewing Committee on the Export of Works of Art & Objects of Cultural Interest, reporting to the Secretary of State at the DCMS, who would retain ultimate control. Its secretariat would provide a sounding board for the Secretary of State in regard to deaccession issues generally. Otherwise its primary tasks would be to supervise the listing process...; assess in terms of ethics and law arguments for and against deaccession...; advise the Secretary of State whether the proposed application of the proceeds of sale accords with prevailing

ethical and legal principles; and monitor threatened infractions... enforcement procedures and penalties to be imposed."

### **Ringfencing proceeds**

"For what purposes may deaccession proceeds be applied? This is a matter for the sector to consider with the Government. I am not going into this, merely saying that as matters stand the parameters in ethical terms of the acceptable and unacceptable are very unclear to me. What ringfencing exists under current rules, and how might matters be improved? What of endowments in this context?"

### **Pains and penalties**

"It seems to us that existing sanctions for breach of ethical standards - effectively expulsion from the MA and the Accreditation Scheme - provide little real deterrent. We all know that five years from being expelled Buxton Museum was readmitted under both heads, and Bury may apply for readmission in the near future, as the five-year period will expire later this year."

## **Hilary Bracegirdle, Director, Royal Cornwall Museum**

**“I’ve been surprised to find we’ve subsequently been offered more paintings and from very interesting collections.”**

Bracegirdle reported that the Royal Cornwall Museum’s recent sale of Victorian paintings, although the result of a long and difficult process of negotiation and consultation, has not affected the Museum’s relationship with the public or donors detrimentally.

### **Public support**

“I don’t think anybody I know came into the museum business feeling positive about disposals despite all the arguments we’ve heard pro and con today. I was asked at my interview how I felt about deaccessioning and I immediately said it would be a terrible thing to do for financial gain because it would undermine the public’s confidence in ever giving anything to a museum...”

“But I’ve been very surprised by the reaction both in terms of when we’ve consulted the public and in terms of what has happened subsequently... When we did our public consultation we only had one letter against, and that said it felt we were disposing of these paintings because we were middle-aged women who were jealous of the younger female form!”

### **The position of patrons**

“Donors and patrons are not fools and they will not invest in an organization which isn’t sustainable. In a recent case a prospective donor went with a fine tooth comb through our accounts and business plans and met key staff and Trustees - and decided to leave us an internationally significant collection because we have an endowment fund. I’m always up front about why we took this action and it allows me a hook to say to people who want to give us anything - particularly if it’s a large collection or a very valuable collection - ‘would you consider endowing your gift to us?’ This legacy is now coming with a considerable endowment. Just as with gifts of houses to the National Trust, people are beginning to realise that new acquisitions come with responsibilities and that they can actually help us face those. Indeed, converse to received wisdom, we have never before been offered so many paintings and from very interesting collections. ”

**Dr Bendor Grosvenor**, Director, Philip Mould Ltd

“You can’t really start selling stuff unless you know exactly what it is you are selling.”

Grosvenor said that many in the art trade looked forward to greater deaccessioning. But, from his view point in the trade he wanted to flag up the risk that works of art which are wrongly attributed by local authority collections could be sold by mistake, or for lower prices than they should be. He backed Edward Manisty’s call for a panel to give advice, something he too had been lobbying for.

#### Missing a masterpiece

“One benefit, as unpalatable as it may be, is that by going into museum basements and thinking ‘we can raise some money’, museum directors and curators look afresh at their collections... The new director of the Brooklyn Museums was having a rummage around his basement of things that were listed for sale, and he came across a lost portrait by Gerrit Dou.”

“My concern is whether curators in this country are able to spot those missing Gerrit Dous. In the Victoria and Albert Museum is a triptych portrait catalogued as attributed to Joseph Highmore, but it is unquestionably by Andrea Soldi. I’m not claiming it is a particularly important picture or that the V&A will ever want to sell it... but the point is, you can’t really start selling stuff unless you know exactly what it is you are selling.”

#### In support of a panel

“Some curators in regional museums aren’t equipped any more to look at questions of attribution, as connoisseurship is a dying art - modern curatorship is as much about administration as it is about scholarship... that is why I would echo Edward’s thoughts for some sort of panel. It doesn’t need to be set up in legislation - it could be an ad hoc sort of thing - a panel of experts to which regional museums could go to seek reassurance that they’re selling the right thing. One final point is that, thanks to Fred Hohler and his Public Catalogue Foundation, we can look at regional museums as part of our national collection, and if we have some form of deaccessioning committee we can think about deaccessioning on a national scale, and focus on where the gaps in our collections and deficiencies are.”

**Mike Harris**, Head of Leisure and Culture, Southampton City Council

“There’s a grey area about how the proceeds of any disposals might be used ‘for the benefit of the collection’”

Harris defended Southampton City Council’s decision to propose disposal to fund a new cultural quarter. He said that such proposals were more preferable than retrenchment and asked for greater clarity, simplicity and speed in the deaccessioning process.

#### Austerity anxieties

“From the local government perspective, it is very clear we have a period of financial austerity ahead of us. One option is to hunker down, retrench and see whether we can survive over the next period of time with services diminishing and deteriorating over time. Or we can look at an alternative way of refreshing our services and the offer we make to our residents and visitors.”

“There is a real fear of having a fine collection that we preserve in storage while the environment in which we present exhibits deteriorates... that’s not what museums are there to do. They’re there to inspire, to educate, to share, and we need good quality environments in which to do that, and we need to be open and innovative in how we secure resources.”

#### Who makes the decision?

“Who are the decisions makers for the collection that has been bequeathed to Southampton? Is it curators, is it professional bodies, is it the public... is it elected representatives, is it the media? Southampton has been subject of plenty of ill-informed media frenzy and public response. But we’re about using proceeds to invest in the cultural sector and make it a centrepiece of the city’s cultural renaissance.”

#### Simplify the system

“A simple disposals process is needed - that’s not saying that wouldn’t be robust or rigorous. But five years for a process seems an awful long time for a gallery to hang on and survive while it is looking to do the right thing... There’s a grey area about how the proceeds of any disposals might be used ‘for the benefit of the collection’. It’s not clear, like in the States where there is very firm presumption that it’s about new acquisitions... I think that is something that would be helpful to clarify.”

## **Diane Lees**, Director General, Imperial War Museum

“There’s nothing like a process to incapacitate people’s ability to take responsibility for their decisions.”

After describing how the Imperial War Museum’s has a unique disposal policy for a national collection, Lees brought up a range of myriad ideas for further thought and discussion. She also advised against over-legislation and the need for a whole new framework to clarify the disposal process.

### **Special status**

“The Imperial War Museum is unique in that its Trustees under its Act of Parliament are empowered to dispose and sell from the collections. They’re also empowered to use that money to invest in the collection or “defray the expenses of the board”... our board acts responsibly and absolutely would not use that legislation unless in desperate straits.”

### **Some ideas**

“I’m interested in a few ideas. What’s the legal definition of perpetuity? And should we be using that word with donors anymore if we want to manage our collections effectively?... I’m interested in asking whether the history of an institution and a collection are irrevocably linked – the music collection from the V&A is now on display at the Horniman Museum, for example. I’d also like to make the observation that decomposition is not a method of collections management.”

### **Too much legislation**

“There’s a mistake in over-legislating for bad behaviour. There’s nothing like a process to incapacitate people’s ability to take responsibility for their decisions... I think it’s important that we maintain that curatorial overview and I agree with Bendor that there are issues about access to curatorial advice. That’s something we can sort out without creating a whole new framework to comply with. And if you’re creating one framework it is never going to fit everybody – it’s always going to be on a case by case basis.

### **Reforming Accreditation**

“The Museums, Libraries and Archive Council’s accreditation scheme has a very specific disposals format that has to be approved by local authorities. That puts a dichotomy between decision-making that is locally enabled and what the council has legally and ethically signed up to... looking at the way the accreditation scheme works will be critical in moving us forward.”

**Sally Osman**, Integrated Communications Specialist and  
Art Fund Trustee

“The sense that the language is black and white and pretty negative doesn’t help the debate or institutions to control the debate when the situation becomes public.”

Osman focused on how public perceptions of deaccessioning could be improved with more positive language and a greater emphasis on narrative.

**Forgetting the public**

“There’s a voice that’s missing in this debate and that I think it is the public’s voice. It can be very powerful. If we assume disposals are going to increase, we need to think about how that debate plays out in the public arena and what role the public have.

There’s a different language in UK in comparison to our colleagues from the United States and Europe. There it is about possibility, it is about opportunity. We use language that is slightly impenetrable – deaccessioning, disposal – that most people in the public won’t understand...

The sense that the language is black and white and pretty negative doesn’t help the debate or institutions to control the debate when the situation becomes public. It allows commentators to immediately characterise the issues as black and white and negative.”

**Narrative is crucial**

“When we make decisions around the table at the Art Fund, clearly one of the most important decisions is the integrity and the quality of the piece that has come before us. How does that fit in with someone’s collections policy and is it a good match? What is the organisation going to do with it? How is it going to unlock new research? How is it going to bring more people in to enjoy it, to enrich, to enlighten?

The stronger the narrative the easier it is in terms of the decision we can make. A strong narrative builds a strong relationship between the institution and the public: that’s when you build trust, when curatorial confidence is increased, so that when difficult decisions have to be made about disposal... it makes the decisions easier to frame with the public and it can be more open and more transparent. You can turn the language from negative to positive.”

**Stephen Roberts**, Policy Legal Adviser, Charity Commission

“It is for us to be satisfied that the decision of the trustees is within the spectrum of decisions which a reasonable body of trustees might make.”

Roberts explained that deaccessioning was not an area of expertise for the Charity Commission. He indicated that the organisation’s main role was not to decide what was best for a charity, but to be sure that a charity’s trustees made decisions that a reasonable body of trustees might make.

**The Charity Commission’s role**

“The Charity Commission has on occasion assisted charities with the issues discussed here, particular with regards to legal powers. But I don’t want to overstate this matter, because deaccessioning is not a large area of work for us.”

“Some publicity has recently been given to our role in safeguarding the public interest, though our objectives have long included increasing public confidence in charities... We are, of course, specifically precluded from exercising functions that correspond to those of a charity trustee in relation to a charity, or be directly involved in the administration of a charity. It is for the trustees to decide what is in the best interests of a charity. It is for us to be satisfied... that the decision of the trustees is within the range of decisions that a reasonable body of trustees might make....”

**Speakers from the floor**

**Diane Gwilt**, Head of Collection Care and Access Projects, National Museums Wales, and member of the Accreditation Committee, Museum, Libraries and Archives Council (MLA)

“Much reference has been made today to the Museum Association (MA) Code of Ethics and MLA Accreditation Status. I have been involved in some of the recent deaccessioning cases as a member of the MLA Accreditation Committee. The MA Ethics Committee may well decide that the disposal proposal doesn’t conflict with the code, but the Accreditation Committee may well decide that it contravenes an organisation’s Accreditation Status. We may welcome the validity of a multiplicity of views, but how helpful is this on a practical level?”

**Stephanie Crossley**, Assistant Director for Culture and Community Services, Bolton Council

“I’ve listened to the name of my council being mentioned several times today, not always helpfully. Local authority museums are very different; we work within a political environment and as a chief officer at the moment I’m swimming the choppy waters between MLA accreditation and political will at a time when we have to find £60 million in saving in two years, from a total council budget of £220 million. You don’t need to be a genius to figure out that’s not easy... I think given that the governing body is a democratically elected executive, I need more support to emerge from this not from my bunker but finding a dynamic way through that’s still allows the people of Bolton the facilities for which they pay.”

“I’d like to thank Sally Osman in particular, because there’s this whole presumption about who is in charge of this process... Sally is quite right: the most interesting poll we’ve had was in our daily newspaper in Bolton where people broadly supported what we want to do. They don’t like it, but then they don’t like their children centres closing either.”

## **Charles Sebag-Montefiore, Former Trustee, The Art Fund**

"If you think of this in terms of accounting conventions, one separates out income and expenditure on one hand and capital assets on the other. I think it's very dangerous when you're faced with a revenue deficit to sell a capital asset. I can't get my head around that, because at the end of the year you haven't fixed the revenue deficit, you've lost your capital asset."

## **Alastair Lang, Curator of Pictures and Sculpture, The National Trust**

"We have touched on much less today when is it appropriate and when is it inappropriate to break up something that has been formed historically by an individual, by a family, not only in country houses but in museums.

I do think there are certain collections, like the Kimbell Art Museum... that are personal collections that could be retained. Why is it called the Kimbell Art Museum other than that it was formed on the basis of that family's collection? One of the things in America that is rather disturbing is that historical phenomena in terms of collecting - for example, the way whole rooms were imported from Europe - has been swept away in the last few years. There is in America much less inclination to preserve things for their historical importance and merit."

## **Maurice Davies, Head of Policy and Communication, Museums Association (MA)**

"America is different, but it's very important to remember that Southampton and Bolton are also different. One of the least edifying aspects of the debate in particular with Southampton and to a lesser extent Bolton has been the attempt to apply metropolitan values of fine art experts to very different local circumstances, and it's something the MA has meticulously tried to avoid. Our Ethics Committee has said that the proposals for Southampton and Bolton would absolutely increase public benefit. In both cases there were points of process and detail that we raised and we asked for more work to be done, but on the big picture we judged that the proposals did meet the requirements of the code to increase public benefit.

In view of previous comments, it's also important to say that while the processes are not as simple as they could be, there has not been a case where in the end the MLA Accreditation Committee and MA Ethics Committee have disagreed - we have always ended up with the same decision."