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THE MUSEUMS ASSOCIATION'S CODE OF ETHICS 2015

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INTRODUCTION

There has been a transformation in museum practice in the UK since the Museums Association ("MA") first introduced an ethical code in 1977 called a Code of Practice for Museum Authorities. The pace of change in recent years has been such that the MA's 2007 Code of Ethics stated in its introduction that museums faced "unparalleled challenges" and acknowledged that the 2007 Code must be a "constantly evolving document." During 2014 and 2015, the MA carried out a review of the 2007 Code and consulted stakeholders. Workshops were held to assist in identifying areas where the Code might be out of date. A new Code of Ethics was finally agreed at the MA's annual general meeting on 5 November 2015.² It might seem puzzling to find that the MA has replaced the relatively recent 2007 Code of Ethics. However, the new Code states that the original Code of 1977 was updated in 1987, 1991, 2002 and 2007. It is a reminder that regular reviews are appropriate as part of a process of accepting sector-wide change.

Underpinning the ethical principles contained in the Code is the need to promote public trust in museums. A few years ago, a survey revealed that the public had lost faith in a number of public institutions but still trusted museums.³ Public support of museums is vital because it makes museums sustainable in the long term.⁴ The issue of public trust is therefore flagged up in the opening statement to the Code of Ethics of 2015:

"Museums are public-facing, collections-based institutions that preserve and transmit knowledge, culture and history for past, present and future generations. This places museums in an important position of trust in relation to their audiences, local communities, donors, source communities, partner organisations, sponsors and funders. Museums must make sound ethical judgements in all areas of work in order to maintain this trust."

¹ The writer is grateful to the AHRC for supporting this research with an AHRC Fellowship. I would like to thank Isabel Wilson of Arts Council England and Alistair Brown, Policy Officer, Museums Association, for their comments. The writer is responsible for the views expressed in this article.

² <http://www.museumsassociation.org/ethics/code-of-ethics>

³ See *Britain Thinks: Public perceptions of – and attitudes to – the purposes of museums in society*. 2013. Museums Association Report. Research found that people have a strong emotional attachment to museums and that museums hold a unique position of being trusted.

⁴ In relation to analysing sustainability in terms of public value, see C.A. Scott (ed), *Museums and Public Value: Creating Sustainable Futures* (Routledge, 2013)

The key challenges for the Museums Association in revising the 2007 Code would be to identify core values in the museum sector, to reflect current ethical dilemmas, to be in tune with both the profession's and the public's sense of ethics, and to establish clear principles. The purpose of this article is to analyse the strengths and any weaknesses of the 2015 Code of Ethics and to consider whether the Code assists in maintaining public trust.

THE ROLE OF AN ETHICAL CODE

Codes of ethics are necessary to assist those working in the museum sector in making difficult decisions in relation to the future direction of their own museum, its collections, and its relationship with the community. The provision of a set of ethical principles which have been agreed by the sector means that museum personnel do not rely upon their own personal sense of ethics, which may vary from one individual to another. This is precisely why an extensive consultation period would have been necessary in drafting a new code.

It is expected that, like its predecessor, the principles set out in the new Code of Ethics will exert an influence not only over the decisions made by museum staff but also the decisions made by their governing bodies. In its introduction, the new Code states:

"The code applies to governing bodies, to those who work for museums, paid or unpaid, to consultants and those who work freelance, and to those who work for or govern organisations that support, advise or provide services to museums, including the MA. Those working in associated sectors such as archives and heritage organisations may also choose to adopt this code. They should observe the spirit, as well as the letter, of the code."

A code of ethics also has a role to play in dealing with outsiders, such as solicitors, because a code will demonstrate that legal rules are not the only consideration and that museums must also comply with potentially higher ethical standards.

THREE KEY PRINCIPLES

The new Code of Ethics is quite intentionally much shorter than the 2007 version, in order to ensure that certain key principles are brought to the fore. Subsidiary principles can be found in a different document on the MA's website, entitled "Additional Guidance to the Code of Ethics 2015." The three key principles to be found in the new Code are: public engagement and public benefit, stewardship of collections, and individual and institutional integrity. These principles each have a set of sub-principles which flesh out these main ideas to a degree. Although the principles embody ideas which could be found in the Code of Ethics of 2007, the objection which could be made was that they were lost in further detail. The new Code is intended to be up to date and more focused and easier to use than its predecessor. There was a concern that people were not sufficiently familiar with the key principles in its predecessor because it was time-consuming to read.

The three key principles are intended to reflect the distinctive nature of the museum sector. At the MA's annual general meeting in 2015, it was observed that different professional bodies had different types of guidance which reflected their core values. For example, a core value for a practising solicitor would be the duty of confidentiality to his clients; a core value for a journalist might be an obligation to protect his sources. But arguably caution is needed

in comparing museum professionals with certain other professions because, more than most professions, museums depend upon public trust. This is precisely why the standards of integrity set for its employees should go beyond what the law requires and should reflect public expectations.

PUBLIC ENGAGEMENT AND PUBLIC BENEFIT (PRINCIPLE 1)

The first key principle is concerned with encouraging museums to work with existing communities and to reach out to new ones. The new Code states that, “Museums and those who work in and with them should:

- actively engage and work in partnership with existing audiences and reach out to new and diverse audiences
- treat everyone equally, with honesty and respect
- provide and generate accurate information for and with the public
- support freedom of speech and debate
- use collections for public benefit – for learning, inspiration and enjoyment.”

This first principle highlights how much has changed in the museum sector. Earlier versions of the Code placed more emphasis upon the museum’s role in protecting and preserving collections for the public benefit. The new Code states that museums must “reach out to new and diverse audiences.” Museums were always expected to interpret their collections of course but there is now an expectation that they will present and explain them in a way which makes them accessible to under-represented sections of the public.⁵ Museums are expected to be proactive by including stories from ordinary workers and from others who may have been overlooked in earlier times when certain museums might have been more elitist in their culture.⁶

The obligation in the first principle to generate accurate information for the public is modified by the previous stated obligation to treat everyone equally: it means that information must not only be truthful but also balanced and respectful. Thus, at 1.(b), museums are cautioned to be aware that some items in a collection may be controversial or upsetting and that, in these circumstances, consultation of stakeholders will be necessary and advance notice to visitors may be appropriate. Museums are also reminded that access to certain objects in the collections may need to be restricted in order to respect cultural sensitivities. There are further principles in the Additional Guidance which are valuable in tackling current issues, such as the use of digital media. There is a reminder in 1.(c) that, in seeking new audiences, museums must not forget the requirements of existing users who may find digital media disruptive.

There is further guidance at [1.1] of the 2015 Code which emphasises that the public’s engagement with the museums, their collections and information must be “meaningful” and “without discrimination.” The Additional Guidance 1.(d) provides more detail on “meaningful participation” with communities, collaborators and supporters of the museum, suggesting that museums should:

⁵ C. Lagerkvist, “Empowerment and anger: learning how to share ownership of the museum” (2006) 4(2) *Museum and Society* 52, 53, 55.

⁶ M. Ross, “Interpreting the new museology” (2004) 2(2) *Museum and Society* 84, 85.

“Treat audiences as active participants in the work of the museum, by seeking their views and valuing their contributions, balancing this with the museum’s editorial integrity.”

The idea of meaningful engagement will have been informed by academic discussion regarding the social role and impact of museums. Sandell has argued, for example, that museums can act as agents for social inclusion at individual, community and societal levels.⁷

The Additional Guidance 1.(d) also exhorts museums to become involved in the current concerns of its users, stating:

“Museums benefit from being socially relevant, by engaging with the interests and changing needs of their audiences, and promoting debate on issues that affect them. Keep up-to-date with social and economic change affecting audiences and potential audiences of the museum. Consult and work collaboratively with other organisations to address social disadvantage and exclusion where appropriate.”

The notion of the socially responsible museum has implications for collections, because it means that decisions to acquire and display an object will be concerned to communicate ideas, such as equality, diversity and social justice.⁸ Museums must reach out with these ideas to everyone, regardless of their age, sex, class or ethnicity. It has been argued that museums have a role to play in promoting human rights in the widest sense (going beyond the European Convention on Human Rights to include, for example, the right to clean water).⁹ This role of “social agent” will often fit with the educational purpose of the museum itself. Fleming has argued that, as the public trust museums, the public would expect them to tackle human rights issues.¹⁰

An interesting example of socially engaged practice can be seen in the manner in which a large pot by “Dave the Potter” was curated at the Milwaukee Art Museum in the USA. Dave had been a slave in South Carolina and had produced more than 100 pots between 1834 and 1862 to store rations. These pots were of great interest from a historical perspective because Dave had signed and dated many of them. Although slaves were forbidden from reading and writing at that time, Dave had taught himself to do so. Dave had also added short poetic verses on some of the pots. For example, the pot on loan to the Milwaukee Art Museum said, “When you fill this jar with pork or Beef, Scot will be there to get a peace. Dave.”¹¹ This pot was interpreted and displayed by Theaster Gates in an exhibition called “To Speculate Darkly.” It was used to create a bridge between the Museum and the local

⁷ R. Sandell, “Museums as Agents of Social Inclusion” (1998) 191 *Museum and Society* 45. See also; A. Newman, F. McLean and G. Urquhart, “Museums and the Active Citizen: Tackling the Problems of Social Exclusion” (2005) 9 *Citizenship Studies* 41. See further, *Centres for Social Change: Museums Galleries and Archives for All: Policy Guidance on Social Inclusion for DCMS Funded and Local Authority Museums, Galleries and Archives in England* (DCMS, 2000).

⁸ R. Sandell and E. Nightingale (eds), *Museums, Equality and Social Justice* (Routledge: London and New York, 2012); R Sandell “Constructing and Communicating Equality: The Social Agency of Museum Space.” at 185 in S Macleod (ed) *Reshaping Museum Space: Architecture, Design, Exhibitions* (2005, London: Routledge); J. Marstine, “The Contingent Nature of New Museum Ethics” in J. Marstine (ed) *The Routledge Guide to Museum Ethics: Redefining Ethics for the Twenty-First Century Museum* (Routledge: London and New York, 2011) at 10.

⁹ D. Fleming refers to human rights in this broad way (without reference to the law) in discussing the establishment of the Federation of International Human Rights Museums in 2008: D. Fleming, “Human Rights Museums: an Overview” (2012) 55(3) *Curator: the Museum Journal* 251, at 252.

¹⁰ *Ibid.*

¹¹ A far more extensive explanation of the facts can be found in an excellent article by J. Marstine “Cultural Collisions in Socially Engaged Practice” (2013) *Museum Worlds: Advances in Research* 153, 165.

black community, which had suffered years of unemployment and deprivation. Dave's pot was taken out of the museum and transported to deprived areas where African-American communities could understand and learn from it. Poetry readings were organised in schools. People were encouraged to engage with the pot so that, for example, when the pot was in the museum, visitors were invited to write their own short verses on a computer and these verses would then be projected above the pot onto the wall. Lasser observed that one aim was to show that there were lessons which could be extracted from the past to address present concerns;¹² hearing about Dave's life and looking at the pot which he created could inspire visitors who faced difficult circumstances.

The exhibition of Dave's pot stimulated vigorous academic debate. Cole commented that Lasser's discussion of the exhibition¹³ emphasised the educational role rather than the curatorial role.¹⁴ Lasser responded by expressing concern that Cole appeared to portray his actions as ones concerned with Dave's poetry; in Lasser's view, the focus of the outreach programme included the creation of the pot itself and not just the words alone.¹⁵ The pot could be interpreted to provide a message about the place of labour and craft in modern America. In Lasser's view, there are many everyday objects from the past which may possess a compelling story and which may well have contemporary relevance and it is the job of curators, educators and other museum staff to identify them and to consider how the public may effectively engage with them.

The curation of Dave's pot provides a perfect example to illustrate how a museum can reach out to new audiences and, in particular, to people who are not mainstream museum goers and who could be described as largely disenfranchised.¹⁶ Korn observed that it showed how a museum could make a historical artefact relevant to young people.¹⁷ Goldring suggested that those who engaged with Dave's pot obtained a wider vision as a result.¹⁸ The exhibition illustrates Sandell's argument that museums can work towards a fairer society by engaging in community wide advocacy work.¹⁹ This type of engagement should have the long term effect of making the museum more sustainable.

Could one criticise the Code of Ethics 2015 because it did not spell out the role of the museum as an agent for social inclusion? I would suggest not. The new Code needs to be flexible enough to encompass every type of museum in the UK and each museum will have its own mission. Some museums, such as social history museums, may be in a better position to act as an advocate for social justice and human rights. It is sufficient that the Code encourages museums to reflect upon how they are interpreting their collections, to consider whether their information is accurate, impartial and balanced, and to reach out to new audiences. These are laudable goals which help to maintain public trust and which seem correctly positioned in the first part of the Code.

¹² E.W. Lasser, "An unlikely match: on the curator's role in the social work of the museum" (2012) 27:3 *Museum Management and Curatorship* 205.

¹³ Ibid.

¹⁴ C. Cole, "Comment: an unlikely match: on the curator's role in the social work of the museum" (2012) 27:3 *Museum Management and Curatorship* 212.

¹⁵ E.W. Lasser, "Reply; an unlikely match: on the curator's role in the social work of the museum" (2012) 27(3) *Museum Management and Curatorship* 221, 222.

¹⁶ F. Wilson, "Comment: an unlikely match: on the curator's role in the social work of the museum" (2012) 27:3 *Museum Management and Curatorship* 219, 220.

¹⁷ R. Korn, "Comment: an unlikely match: on the curator's role in the social work of the museum" (2012) 27:3 *Museum Management and Curatorship* 217

¹⁸ V. Golding, "Comment: an unlikely match: on the curator's role in the social work of the museum" (2012) 27:3 *Museum Management and Curatorship* 214.

¹⁹ On the capacity of museums to act as agents for social change, see R. Sandell, *Museums, prejudice and the reframing of difference* (Routledge: New York, 2007) 5.

STEWARDSHIP OF COLLECTIONS (PRINCIPLE 2)

The second key principle is concerned with stewardship of collections. The new Code states that, "Museums and those who work in and with them should:

- maintain and develop collections for current and future generations
- acquire, care for, exhibit and loan collections with transparency and competency in order to generate knowledge and engage the public with collections
- treat museum collections as cultural, scientific or historic assets, not financial assets.

Maintaining and Developing Collections

Although a precise figure of items in museum collections is not available, it was estimated in 1999 that UK museums had 149 million objects in their possession.²⁰ All of these objects must be protected from loss, damage or deterioration. Principle 2.(a) of the Additional Guidance reminds museums that they should have a Risk and Mitigation Strategy to anticipate threats to collections.

Collections are central to a museum's mission. Some objects can be expected to be used to engage the general public, whilst other objects are likely to be of interest to researchers in specialist fields. These collections would be impossible to quantify in terms of their cultural value. Writing in the Museums Association's journal in 2015, Simon Stephens stated that,

"The objects range from those worth millions of pounds to others that are of little or no monetary value but of great personal significance ... And the range of objects is remarkable – art, social history, industrial, ethnographical, archaeological, the list goes on and on ... Caring for such a huge number and range of items puts museums in a unique and privileged position, but it is also complex and challenging. So having an ethical framework to help guide us is vital."²¹

Principle 2.1. of the 2015 Code reflects the principle that museums have possession of these objects for the benefit of others:

"Preserve collections as a tangible link between the past, present and future.²² Balance the museum's role in safeguarding items for the benefit of future audiences with its obligation to optimise access for present audiences."

²⁰ S. Matty (ed) *Overview of Data in the Museums, Libraries and Archives Sector* (Museums, Libraries and Archives Council, 2004) at p 44, referring to the DOMUS survey in 1998 (S. Carter, B. Hurst, R.H. Kerr, E. Taylor, P. Winsor, *Museum Focus. Facts and Figures on Museums in the UK*, Issue 2 (London:MGC, 1999).

²¹ S. Stephens, "Code of Ethics Vital for Maintaining Integrity" *Museums Journal* Issue 115/11 1 November 2015, p 4. <http://www.museumsassociation.org/museums-journal/comment/0112015-editorial>

It is supported by the Additional Guidance which discusses the need to provide impartial information about collections and to consult source communities. The Additional Guidance also sets out principles regarding the repatriation of human remains and other property in museum collections. These ethical principles encourage professionals to reflect and to consider what effect their actions may have upon current members of the public and future generations.²³

Acquisitions

The section on stewardship in the 2015 Code begins by reminding museum staff that they must take a professional approach to collections management. Principle 2.2 calls for museums to have detailed and transparent collections policies which are subject to review; principle 2.3 insists that museums should only accept objects if they can care for them properly. The Additional Guidance adds that,

“Items should be acquired only after thorough consideration of their long-term significance and how they will be used to the benefit of the public.”

This point is significant: there is little benefit in accepting an item which, within a short while, has become a burden in the sense that neither researchers nor the general public are interested in engaging with it. Museum professionals have reported to this writer that the process of disposing of objects has encouraged them to further refine their collections policies. Furthermore, if a museum accepted an object and then disposed of it a few months later, and this became known, there could be a public outcry. For example, the Combined Military Services Museum accepted a donation of medals and assured the donor that they would be kept forever. The donor was shocked to find that the medals had been sold on Ebay for £32 a few months later. This story was splashed across some national newspapers and the museum was roundly condemned.²⁴ From an ethical perspective, the medals should have been transferred to another museum or returned to the donor.²⁵

The Significance of the 1970 UNESCO Convention and Due Diligence Procedures

Principles 2.4 and 2.5 in the Code tackle the problem of the illicit trade in art and antiquities. Principle 2.4 requires museums to adopt due diligence measures to check on the ownership of an object prior to purchasing it, borrowing it or accepting it as a gift. Principle 2.5. states:

“Reject any item for purchase, loan or donation if there is any suspicion that it was wrongfully taken during a time of conflict, stolen, illicitly exported or illicitly traded, unless explicitly allowed by treaties or other agreements, or where the museum is co-operating with attempts to establish the identity of the rightful owner(s) of an item.”

²² For academic discussion regarding how objects from the past may provoke the public to consider the passage of time and to “time travel,” see for example L. Bedford, “The Thoughtful Museum: Musing about Time and Museums” (2012) 55(4) *The Museum Journal* 393

²³ See Principle 2.1. in the new Code. For discussion of collecting on the basis of “inter-generationality,” see A Brown, “Out of sight: Unseen Public Collections” *Apollo: the international art magazine*, 2 November 2015. Available at: <http://www.apollo-magazine.com/out-of-sight-unseen-public-collections/>

²⁴ See, for example, D. Townend, “Heartbreak as Hero’s Medals given to Museum in tribute only to have them sold off on Ebay” (2015) *The Daily Express* 10 August.

²⁵ J Ulph, “Dealing with UK Museum Collections: Law, Ethics and the Public/Private Divide” *International Journal of Cultural Property* Issue 2-3 / August 2015, 177, 182-183.
<https://ira.le.ac.uk/handle/2381/33179>

There is a strong moral imperative to avoid accepting or purchasing cultural objects which have been looted or stolen. In particular, where objects of antiquity are dug out of the ground or forcibly removed from some ancient monument, their removal not only robs a vulnerable country of information about its history but may partially strip the cultural object itself of its identity. Information relating to the depth at which an object is buried, might well have indicated its age, for example.²⁶ The impairment of the accumulation of knowledge about particular types of antiquity makes it easier for forgeries to be accepted as genuine and to circulate in the market.²⁷ The new Code of Ethics deals with this issue quite succinctly in Principles 2.4. and 2.5. but then fleshes out these principles in the Additional Guidance.

The new Code does not include any mention of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970. Its omission might surprise lawyers and archaeologists because the impact of this Convention upon museums has been immense. The Convention required governments to protect their cultural property. Article 5(b) put pressure upon the government to ensure that important cultural objects were documented in a national inventory. Article 5(c) required governments to support the development of museums and other public institutions to preserve and exhibit cultural property. The Convention also pressed the international community to take steps to deter the import of cultural objects which had been looted or stolen elsewhere. Thus, Article 7(b) required governments to forbid the import of inventoried objects stolen from museums or other public buildings belonging to other Contracting States. Article 7(a) stated that governments should ensure that their public museums should not acquire objects exported illegally from another Contracting State after 1970.

One reason why the Convention may have been omitted is that it is difficult to know where to place it: although there is a section with "Additional information" at the end, it does not fit neatly into the sub-categories. Yet it could be argued that it should be in the sub-category entitled "Development of the Code of Ethics." By Article 5(e) of the Convention, governments were obliged to establish "rules in conformity with the ethical principles set forth in this Convention;" these ethical principles would include protecting cultural objects and ensuring that museum professionals had due diligence procedures in place to check an object's provenance before acquiring it. Although the Convention was not ratified by the UK Government until 2002, it had a huge impact from its inception: it provided the impetus for the creation of codes of museum ethics in the 1970s and 1980s across the world. Before the Convention, the only significant code of ethics was the Code of Ethics for Museum Workers, created by the American Association of Museums (AAM) in 1825.²⁸

The 1970 Convention has therefore been immensely important in acting as a catalyst for change. Unfortunately, although museum professionals should be aware of the existence of the Convention, the fact that it spurred the development of ethical codes does not seem to be so well known. It is not discussed in books on museum management, which may well refer to the early codes without reference to the Convention itself. Museum professionals may not be familiar with the details of the Convention and will not appreciate that it is an ethical as much as a legal document. The Preamble and the earlier provisions have a strong

²⁶ C Renfrew, *Loot, Legitimacy and Ownership: The Ethical Crisis in Archaeology* (Duckworth & Co Ltd, 2000). See also S Mackenzie and P Green, *Criminology and Archaeology* (Hart Publishing, 2009) 2.

²⁷ P. Gerstenblith, "Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past" (2007) 8 *Chicago Journal of International Law* 169, 172.

²⁸ This code was subsequently revised in 1987 and 1993/4: G Edson, *Museum Ethics* (Routledge: London and New York, 1997) at 13.

ethical tone. For example, in the Preamble itself, it is stated that museums “should ensure that their collections are built up in accordance with universally recognised moral principles.”

However, the Additional Guidance does refer to the UNESCO Convention. Provision 2(g) of this Guidance spells out that museums are expected to take due diligence steps to verify ownership and to reject any object where there is a suspicion that it has been stolen or looted after 1970, when the UNESCO Convention was agreed. It is stated under the sub-heading,

“Report illicit trading:

Contact colleagues and appropriate authorities both in the UK and overseas for any information or advice that may be necessary to inform judgement regarding the legitimacy of items considered for acquisition or inward loan. Report any other suspicions of illicit trade to other museums collecting in the same area and to organisations that aim to curtail the illicit trade. Report any suspicion of criminal activity to the appropriate police unit. Decline to offer expertise on, or otherwise assist the current possessor of any item that may have been illicitly obtained, unless it is to assist law enforcement or to support other organisations in countering illicit activities.”

This provision relating to reporting will need further clarification. There is a danger that a museum which was suspicious about an object offered for donation might misinterpret this provision and assume that it must contact the police immediately. There is a risk of reputational damage in contacting the police prematurely. For example, suppose on the death of their father, a family offers his treasured religious items to a local museum. If the museum suspects that these religious items have been smuggled into the country and immediately notifies the local police without further enquiry, the family – still in mourning – may need to be interviewed so that the police can learn how the deceased came to acquire these items. This could be traumatic for the family. In ordinary circumstances, it is much better if a museum consults with other museums with the appropriate expertise to obtain their views before contacting the police. These museums may be able to confirm that there is no basis for suspicion. However, if the museums concluded that the provenance of the items does deserve further scrutiny, the group of museums together should be able to provide a report to the police which will be much better informed. This would make the work of the police easier in determining whether action should be taken.

The new Code is intended to set out basic principles. Apart from the MA’s Additional Guidance, the Arts Council’s Accreditation documents build upon those principles. Every accredited museum must follow the Collections Development Policy Template, which emphasises the importance of due diligence procedures in deterring the illicit trade.²⁹ In particular, it is stated that:

9.2 The museum will not acquire any object or specimen unless it is satisfied that the object or specimen has not been acquired in, or exported from, its country of origin (or any intermediate country in which it may have been legally owned) in violation of that country’s laws. (For the purposes of this paragraph “country of origin” includes the United Kingdom).

9.3 In accordance with the provisions of the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which the UK ratified with effect from November 1 2002, and the Dealing in Cultural Objects (Offences) Act 2003,³⁰ the museum will

²⁹ The link to the document can be found on the Arts Council’s website at: <http://www.artscouncil.org.uk/accreditation-scheme/support-and-advice>

³⁰ Museums in Scotland currently omit the reference to the 2003 Act because the Act does not apply to Scotland.

reject any items that have been illicitly traded. The governing body will be guided by the national guidance on the responsible acquisition of cultural property issued by the Department for Culture, Media and Sport in 2005.

Museums also have the benefit of supplementary material which is freely available. For example, there is an excellent 2004 publication entitled *Acquisition: Guidance on the Ethics and Practicalities of Acquisition*, which is available on the MA's website. As indicated in the Collections Development Policy Template, the Department for Culture, Media and Sport has also produced helpful guidance.³¹ The Museums Association plans to provide more guidance on acquisitions in anticipation of the ratification by the UK Government of the Hague Convention 1954 and its two Protocols.

Disposals

There may be good reasons for deaccessioning an object from a collection and transferring it elsewhere. Principle 2.8 therefore reminds museums that it is a normal part of collections management to consider disposal and that it begins with a curatorial review. Cultural objects should not be hoarded by a museum: if members of the public are not engaging with these objects, it is in the public interest to investigate whether they would be enjoyed if they were transferred to a museum in a different locality.³² Principle 2.8 adds that museums must "Ensure transparency and carry out any disposal openly, according to unambiguous, generally accepted procedures." The reference to "generally accepted procedures" will include the guidance to be found in the Disposal Toolkit. This document, along with further legal guidance and a booklet on curatorially motivated disposals, can be found on the MA's website.³³

Transferring, selling and making other decisions in relation to unwanted objects in collections is an immensely time-consuming process which can be fraught with difficulty. In the introduction to the new Code there is a general warning that,

"Ethical reflection is an essential part of everyday museum practice. This code cannot contain all the answers to the ethical issues that museums face. Some actions that constitute a breach of the code will be more clearly distinguishable than others."

This comment is particularly apt in relation to disposals. For example, a number of museums were given large quantities of archaeological material in the mid to late 20th century by local archaeological societies. Much of this material was reportedly of low cultural value. Museums have faced a dilemma in deciding how to dispose of this material. Some archaeologists consider that all archaeological material should be stored in perpetuity regardless of its current scientific value. It has been tentatively suggested that fossils could be sold in museum shops. However, museum professionals fear that this type of sale could

³¹ DCMS Cultural Property Unit, *Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material* (October 2005). See also N. Brodie, J. Doole and P. Watson, *Stealing History: the illicit trade in cultural material* (McDonald Institute for Archaeological Research, 2000).

³² Charity law reflects this approach: see Museums and Art Galleries Report, R10 (Version 08/02) at [A.27]. available at: <https://www.gov.uk/government/publications/museums-and-art-galleries-rr10>.

³³ The Disposal Toolkit is available at: <http://www.museumsassociation.org/download?id=1075416>. Additional Guidance on Financially Motivated Disposal (Appendix 4 of the Disposal Toolkit) can be found at: <http://www.museumsassociation.org/download?id=1075417>. A booklet on Guidance on Curatorially Motivated Disposals written by Janet Ulph can be found at: <http://www.museumsassociation.org/download?id=11510>

damage the reputation of the museum. Where the ethical position is uncertain, a museum is best advised to consult other museums and, if appropriate, the Ethics Committee of the Museums Association on this issue.³⁴

The 2015 Code made no significant change to the ethical principles governing deaccessioning and disposal of objects from museum collections. Consequently, the general principle is that museums should only consider disposal where it is in the public interest to do so; as a result, there is a strong presumption that heritage objects which have been removed from collections should continue to be retained within the public domain. Until 2007, selling cultural objects at auction to the highest bidder, whether in order to obtain funds to help the museum or for some other purpose, was strictly forbidden. For example, the 1994 code baldly stated that “Decisions to dispose should never be taken as a means of raising money.” There was a fear that, if museums had complete freedom to sell, their governing bodies could strip their collections of the best pieces and the proceeds of sale could be frittered away. It would betray public trust.

However, this blanket prohibition on what is known as “financially motivated disposal” came under fresh scrutiny in 2005, when the Museums Association published a report, *Collections for the Future*. The report suggested that museums needed to consider how to make the most of their collections. The report signalled a cautious reappraisal of the ethical restraints upon disposal in response to concerns that they might simply encourage stagnation. Following the publication of the report, the Museums Association engaged in extensive consultation and received over 90 individual submissions from museums and other organisations. There appeared to be a consensus that sales for financial reasons to raise money could be approved in certain limited circumstances where the sale was responsibly carried out. As a result, the Code of Ethics 2007 permitted financially motivated disposals but subject to severe restrictions which appear to be designed to ensure that public trust is safeguarded. These constraints have been carried through into the 2015 Code. Principle 2.9 states that museums should,

“Recognise the principle that collections should not normally be regarded as financially negotiable assets and that financially motivated disposal risks damaging public confidence in museums.

Refuse to undertake disposal principally for financial reasons, except where it will significantly improve the long-term public benefit derived from the remaining collection.³⁵ This will include demonstrating that:

- the item under consideration lies outside the museum’s established core collection as defined in the collections development policy
- extensive prior consultation with sector bodies and the public has been undertaken and considered
- it is not to generate short-term revenue (for example to meet a budget deficit)
- it is as a last resort after other sources of funding have been thoroughly explored.”

³⁴ C. Smellie, “Solving the Archaeology Storage Crisis” Museums Association Comment. Available at <http://www.museumsassociation.org/comment/16032015-access-is-key-to-the-problem-of-archaeology-archives>. See further, the Federation of Archaeological Managers and Employers’s Report by R. Smith and A. Tindall, *A survey of archaeological archives held by archaeological practices in England, Scotland and Wales* (2012).

³⁵ For example, the Ethics Committee of the MA decided that Croydon Council was in breach of the Code of Ethics in selling part of the Riesco Convention in 2013 because it did not intend to use the sale proceeds for the long term benefit of the remaining collection. Instead, the Council had decided to spend the proceeds on refurbishing Fairfield Halls, its local art centre. Croydon Council resigned from the MA and Croydon Museum was stripped of its accredited status by Arts Council England. See P. Steel, “Croydon stripped of Accreditation” Museums Journal 05.12.2013, available at <<http://www.museumsassociation.org/museums-journal/news/05122013-croydon-museum-loses-accreditation>>

In tune with the brevity of the new Code, no definition of a financially motivated sale is provided in the Code itself. It is a matter of turning to the Disposal Toolkit, which provides the following definition: "A sale is financially motivated if a primary reason for disposing is to raise funds."³⁶ This definition is intentionally wide in scope so that it includes not only sales where the sole reason is to obtain money but also sales where it is one of a number of reasons. Where a museum does want to sell, such as where it needs funds to repair a roof of a building in which some of its collections are stored, it is expected to follow the guidance contained in Appendix 4 of the Disposal Toolkit in relation to financially motivated disposals.³⁷ The guidance requires museums to contact the Ethics Committee of the Museums Association and the Arts Council at an early stage. If what was proposed was not a financially motivated sale (such as where for example the object had already been offered to museums and no home had been found) the museum could be informed accordingly and could feel reassured that there were no ethical objections to its planned course of action.

Some local authorities have sold objects from their collections in the past in order to meet budget deficits and have been censured by the Museums Association for treating a museum's collection as a financial asset.³⁸ If the Code of Ethics is flouted, the museum may be stripped of its accreditation by the Arts Council for a lengthy period. This sanction will mean that the museum is ineligible to apply for public grants. The sale of the Sekhemka statue by Northampton Borough Council (NBC) for almost £16 million in 2014 is a recent example of a financially motivated sale which did not comply with the 2007 Code of Ethics.³⁹ NBC commissioned a valuation of its collections in 2010 and, upon discovering the high value of the statue, began to plan to sell it to raise money. The detailed guidance in Appendix 4 of the Disposal Toolkit on financially motivated sales had not been drafted at that time. Even so, it was clear that the process of disposal of the Sekhemka statue did not satisfy the requirements of the Code. The most obvious objection was that the sale was not one of last resort. But I would suggest that there were other objections which could have been made in addition. For example, it was not clear that the statue was not part of the core collection. In my opinion, there had also been inadequate consultation with stakeholders.⁴⁰ As it was not a sale of last resort, NBC's museums were duly stripped of their accredited status by the Arts Council England for a minimum period of five years after the sale took place.

The sale of the Sekhemka statue could be seen as a high point where a local authority acted in clear disregard of ethical principles. It is feared that the statue has been purchased by a private collector and will not be seen in public again. The sale posed an obvious and serious risk of eroding public trust and deterring public giving. Subsequently there was a joint

³⁶ Italics added ("a" primary reason).

³⁷ This writer was heavily involved in revising the Toolkit and in drafting the guidance on financially motivated sales. See further, J. Ulph, "The Sale of Items in Museum Collections" chapter 11 in N. Hopkins (ed), *Modern Studies in Property Law, Volume 7* (Oxford: Hart Publishing, 2013), 217.

³⁸ See S. Heal, "The great giveaway," *Museums Journal* 106/10 (October 2006): 32-35; I. Robertson, "Infamous deaccessions," in A. Fahy (ed) *Collections Management* (Routledge, 1995), 168; T. Jenkins, "Just Say No: You Cannot Be Too Careful in Embracing Disposal" in P. Davies (ed) *Museums and the Disposal Debate* (Edinburgh, MuseumsEtc Publishing, 2011) 72. See also 6th Report, *Caring for Our Collections*, at [3.11], HC 176-II, published on 27 June, 2007.

³⁹ <http://www.bbc.co.uk/news/uk-england-northamptonshire-28602849>.

⁴⁰ Consultation is not a legal requirement but it is an ethical requirement in relation to financially motivated disposals. However, where there is a legal requirement to consult, helpful guidance can be found in the decision of *R v Brent LBC, exp Gunning* (1985) 84 LGR 168, where it was stated that the consultation must be fair: it must be carried out at a formative stage and it must provide sufficient information so that people can engage in the process and allow adequate time for consultation and response and the product of the consultation must be conscientiously taken into account.

statement from ten funding, membership and development, bodies in the museum sector noting that “people value the permanence of museums and their collections.” The statement added that, although financially motivated disposals might be ethical in “rare and exceptional circumstances, this must be determined on a case by case basis under the independent oversight of the Museums Association Ethics Committee and Arts Council England’s national Accreditation Panel.”⁴¹

Although the museum sector has taken a firm stand against reckless selling of museum collections, the views of the public are not so cohesive. In 2015, a pressure group called the TaxPayers Alliance criticised museums for placing only a small percentage of their collections on display.⁴² It is perfectly reasonable to suggest that museums should more actively lend or dispose of objects which are not being exhibited but the TaxPayers Alliance appeared to go further and to view collections as financial assets, which could be sold to pay for the running costs of museums during tough financial times. Alistair Brown, Policy Officer at the Museums Association has expressed concern that the research by the Alliance betrays a lack of understanding of museums and their collections.⁴³ It is accepted that some museums have sometimes collected too much in anticipation of what future generations will value. Responsible disposals of objects, such as 200 from 400 duplicate items, could be part of good collections management. However, the TaxPayers Alliance may exert too much pressure with their views. If museums lost their funding, the result could be small collections of inferior objects bolstered by digital displays. Physical objects can have an immediacy and intimacy which cannot easily be replaced.

INDIVIDUAL AND INSTITUTIONAL INTEGRITY (PRINCIPLE 3)

The new code states that museums and those who work in and with them should:

- act in the public interest in all areas of work
- uphold the highest level of institutional integrity and personal conduct at all times
- build respectful and transparent relationships with partner organisations, governing bodies, staff and volunteers to ensure public trust in the museum’s activities.

There are further sub-principles which are concerned with personal conduct, encouraging everyone working in the museum sector to avoid pursuing their own self-interest and to act in a way which is for the public benefit. Principle 3 is exceptionally wide-ranging and includes a variety of issues such as diversity in the workforce and environmental sustainability. The Additional Guidance covers further ground, such as working fairly with volunteers.

One of the aims of the workshops organised by the Museums Association was to identify areas where the 2007 Code of Ethics might be seen as out of date. At the Leeds workshop in June 2015 which this writer attended, one issue which caused particular concern was the ethics of accepting sponsorship from certain companies. This issue had come to the fore because of newspaper reports that the presentation of a climate change programme in the Science Museum in London might have been influenced by an oil company which had sponsored it and which might have been concerned to divert attention away from the

⁴¹ <http://www.museumsassociation.org/download?id=1141616>

⁴² “Government Art.” Available at: http://www.taxpayersalliance.com/government_art_research.

⁴³ A. Brown, “Out of sight: Unseen Public Collections” *Apollo: the international art magazine*, 2 November 2015.

question of whether its operations had any impact upon global warming. In response, the Science Museum denied that the company had exercised any control.

Commercial sponsorship is tackled in principle 3.6 of new Code:

“Carefully consider offers of financial support from commercial organisations and other sources in the UK and internationally and seek support from organisations whose ethical values are consistent with those of the museum. Exercise due diligence in understanding the ethical standards of commercial partners with a view to maintaining public trust and integrity in all museum activities.”

As Geraldine Kendall has noted on the Museums Association’s website, “The MA’s revised Code of Ethics does not say museums should avoid any specific types of company, but does say museums must find sponsors who share their ethical values.”⁴⁴ In other words, the Code does not ban oil companies from sponsoring museums; instead, it encourages museums to make enquiries of any company offering funding to understand their ethical standards.

At first glance, it might appear that neither the Code nor the Additional Guidance address the question of the relationship between the sponsor and the museum. Yet the details of a relationship can matter in relation to the museum’s independence. There is a significant difference between a sponsor which demands extensive control of an exhibition, with its name boldly displayed on the museum’s website and in any exhibition, and a sponsor which privately injects money but does not expect any publicity and does not attempt to influence the museum in any way. However, if one cross-refers to the first Part of the new Code dealing with public benefit and public engagement, one finds that there is important guidance which regulates the relationship between the museum and a potential sponsor. Principle 1.2 states that museums should,

“Ensure editorial integrity in programming and interpretation. Resist attempts to influence interpretation or content by particular interest groups, including lenders, donors, and funders.”

As the Code is intended not only to guide museums but also to inform outsiders of the conduct expected of museums, this direction is expected to be understood and absorbed by potential sponsors.

Commercial sponsorship of museum exhibitions is a problematic area and one which does attract media attention. It is difficult to set out clear principles which will deal with every eventuality. Where a museum has concerns, it can ask the Ethics Committee of the Museums Association for further guidance. This seems to be the most appropriate way forward, whereby any serious issues about sponsorship are dealt with on a case by case basis.

CLARITY

One might assume that ethical principles need not be as clear and precise as the provisions to be found in a statute. For example, Edson has argued that

“A code of ethics should be a study guide rather than a prescription for the museum professional. It should stimulate reflection, discussion, and self-assessment by

⁴⁴ G. Kendall, “BP influence over museums called into question” Museums Journal 04.05.2016. Available at: <http://www.museumsassociation.org/museums-journal/news/04052016-bp-influence-called-into-question>

museum workers at all levels.⁴⁵ ... As professionals, museum workers must be concerned with not only what museums are at a given moment, but what they can be and ought to be.”⁴⁶

There is no doubt that museum staff may well see the Code of Ethics as providing aspirational goals which stimulate discussion and reflection and assist them in the process of decision making. In discussing the notion that museums can act as agents for social inclusion, Janet Marstine has argued that:

“Contemporary museum ethics is not a canon of ideas based on consensus. The principal ethical debates of the twenty-first century are marked by strong differences of opinion from diverse contributors, not neatly settled through negotiation; this is a sign of health.”⁴⁷

In a similar vein, it was suggested by a speaker at the MA’s annual general meeting in 2015 that, whereas the Solicitors’ Code of Conduct needed to be clear because a solicitor would face disciplinary proceedings if s/he failed to follow its rules, the MA’s Code of Ethics could be more flexible, as it attempted to balance the interests of future generations with the need to satisfy the desires of the current members of the public. However, the position is not as straightforward as this comment might suggest. The Arts Council England can strip a museum of its accreditation if it is found to have behaved unethically (as in the case of the sale of the Sekhemka statue by Northampton B.C.). Yet, as the Arts Council is a public body, its decisions can be challenged by way of judicial review.⁴⁸ If it failed to behave in an impartial manner or if it engaged in an unfair process, any decision regarding loss of accreditation could be challenged. A degree of clarity and predictability therefore matter. This is one reason why the guidance on financially motivated disposals (in Appendix 4 of the Disposal Toolkit) insists that museums must consult the Ethics Committee of the Museums Association and the Arts Council at an early stage in the disposal process.

PUBLIC TRUST AND CODES OF ETHICS

The style of the new Code is deliberately upbeat and proactive. Museums are instructed to “actively engage,” “treat everyone equally,” “support,” “act,” “uphold,” and “build.” The wording is quite forceful and appears to set out a series of duties. Indeed, Edson has argued that ethical codes should establish a series of duties to ensure that high professional standards are maintained.⁴⁹ However, these duties are not necessarily duties in a legal sense. I would suggest that the duties are best understood as ethical ones, which at times mirror legal duties (such as in relation to conflicts of interest) and at times go beyond the law (such as in relation to the notion of transparency, which runs like a thread through the Code). This interpretation seems fitting as, in making the Code of Ethics more succinct, it appears that legal references have been filleted out and placed in the Additional Guidance. What remains appears to be a code of ethical rules rather than a hybrid of ethics and law.

⁴⁵ Gary Edson (ed), *Museum Ethics* (Routledge: London and New York, 1997) at 14.

⁴⁶ *Ibid*, at 19.

⁴⁷ J. Marstine (ed) *The Routledge Companion to Museum Ethics: Redefining Ethics for the Twenty-First-Century Museum* (Routledge: London and New York, 2011) 6.

⁴⁸ *R. (on the application of Asian Music Circuit) v Arts Council England* [2012] EWHC 1538.

⁴⁹ G. Edson, *Museum Ethics* (Routledge: London and New York, 1997) at 10-11.

But to whom are these ethical duties owed? In law, duties are normally owed to a person or to a group of people and it is the relationship between them which generates these duties. In law, those duties may be to take care in a particular course of conduct, or they may be to act with loyalty and good faith; however, it is the nature of the relationship between people which will explain precisely what duties exist and why.⁵⁰ As regards codes of ethics governing the museum sector, I would suggest that the basis for the duties is the relationship which museums enjoy with the public. It is because a museum depends upon public trust that the standards of integrity set for its employees may well go beyond what the law requires.

In the Additional Information, the 2015 Code asserts that it is consistent with the Code of Ethics for Museums produced by the International Council of Museums (ICOM) which is intended to be used worldwide. This is essential as a number of the national museums pay particular regard to the ICOM Code. The concept of public trust appears to underpin both codes. The ICOM Code includes a number of references to this idea in the context of stewardship of collections.⁵¹ In the introduction to Part 2 of the ICOM Code, it is stated:

Museums have the duty to acquire, preserve and promote their collections as a contribution to safeguarding the natural, cultural and scientific heritage. Their collections are a significant public inheritance, have a special position in law and are protected by international legislation. Inherent in this public trust is the notion of stewardship that includes rightful ownership, permanence, documentation, accessibility and responsible disposal.

I would suggest that, in their approach to museum collections, both codes can be said to be similar. Both are concerned to preserve cultural heritage. The ICOM Code does not descend into any detail on domestic laws because it is an international code which is intended to be relevant to museums based in any country. Even so, it covers a wide range of issues relating to interpretation, care, acquisition and disposal of cultural objects. It also deals with practical matters at the beginning, such as physical resources, health and safety and insurance. The MA's 2015 Code meshes with the ICOM Code without difficulty. But it can be argued that the style of the MA's 2015 Code makes it appear more modern and outward looking: it deals with current issues such as digitalisation and freedom of expression and there seems to be a greater sense of vitality in how it is expressed.

CONCLUSIONS

The drafters of the Code of Ethics faced a difficult task of balancing competing concerns. One aim would have been to provide a clear set of ethical principles to create a degree of predictability in relation to professional conduct. It is important to achieve some consistency when it comes to making difficult decisions in relation to collections, the future direction of the museum, and its relationship with the community. Yet museums have varied missions and care for so many different types of object that any code needs to have flexibility and room for debate.⁵² A particular challenge would have been to provide guidance regarding public engagement and public trust, which do not lend themselves to well defined rules,

⁵⁰ See Paul D. Finn, *Fiduciary Obligations* (Carswell, 1977) p. 2.

⁵¹ In relation to the ICOM Code, see [2.0], [2.13], [2.16].

⁵² S. Stephens, "Code of Ethics Vital for Maintaining Integrity" *Museums Journal* Issue 115/11 1 November 2015, p 4. <http://www.museumsassociation.org/museums-journal/comment/0112015-editorial>

whilst also offering sufficiently clear forewarnings regarding what might be seen as unethical conduct.

Although the Code of Ethics for Museums 2015 naturally contains many of the same guiding principles as its predecessors, such as adopting due diligence procedures in relation to acquisitions, it appears fresh and energetic. It can be praised for its succinctness. The new Code is much more accessible now that much of the detail, along with the more legal information, has been removed and placed in the Additional Information. It will hopefully be the first port of call for a busy professional rather than one of last resort. However, its great strength is in capturing current concerns, such as the idea that museums can play a positive role in relation to social change.⁵³ Yet arguably the greatest triumph of the new Code is that it appears more modern and relevant. Its emphasis upon the need to provide impartial and balanced information and to promote social inclusion and transparency should enhance public trust and assist the sustainability of all museums.

⁵³ See "Museums change lives," available at <http://www.museumsassociation.org/museums-change-lives/25062013-the-vision>.