

Institution: University of Leicester		
Unit of Assessment: 18		
Title of case study: Museum Collections: creating guidance and reforming the law to ensure museums manage collections in a caring and sustainable manner		
Period when the underpinning research was undertaken: 2011 – 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Janet Ulph	Role(s) (e.g. job title): Professor of Commercial Law	Period(s) employed by submitting HEI: 2010 - Present
Period when the claimed impact occurred: 2013 – 2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>Due to her research and expertise on the law relating to management of museum collections, from 2011, Ulph led or was centrally involved in a series of significant initiatives concerning guidance and law reform for museum collections. Her distinct contribution has three separate strands: (1) changing the guidance and practice on disposals from museum collections in the United Kingdom (2) developing guidance on museum closures in the United Kingdom; and (3) putting proposals for law reform relating to museum collections in England and Wales on to the policy agenda.</p>		
2. Underpinning research		
<p>Starting in 2011, Ulph drew upon her extensive expertise in the field of heritage law and personal property law to research the management of museum collections in the United Kingdom. In 2011/12 she held an AHRC/ESRC Placement Fellowship with the Museums Association, for a research project on 'The Ethical and Legal Aspects of Sales from Museum Collections'. That research led to an academic paper on establishing a due diligence process prior to the sale of collection items [R1] and to her development of Museums Association guidance on 'financially motivated' sales, where a museum sells a collection item with an intention to raise funds [E1, discussed below].</p> <p>Ulph went on to hold an AHRC Leadership Fellowship in 2014 and 2015 for a research project on 'The Status of Museum Collections'. Arising out of this project, she published journal articles on the law and ethics of dealing with museum collections [R2], on the Museums Association's Code of Ethics of 2015 [R3], and on museum items whose ownership is uncertain [R4]. She also developed the Museums Association's 'Guidance on curatorially motivated disposal in England, Wales and Northern Ireland' [E2, discussed below].</p> <p>Ulph's research focused upon responsible management of museum collections. This included analysis of the relationship between law and ethics in relation to acquisitions [R5] and disposals [R1, R2, R4] and discussion of whether ethical principles can provide effective guidance in situations where the law may not [R3]. Her research explored how the need for financial sustainability has created tensions when balanced against an ethical obligation to recognise and protect the special cultural value of heritage items held for the public benefit. The research followed an interdisciplinary approach, drawing upon legal and ethical sources, as well as museological, archaeological and palaeontological literature and debates.</p>		

Ulph's research led to two key recommendations concerning the law relating to museum collections that would set the agenda for policy in the area. First, as her research showed that the law governing local authorities' museum collections was highly uncertain, she recommended that legislation be adopted to clarify the powers of local authorities in relation to their collections, especially in relation to sales and other disposals [R1, R2]. Secondly, she recommended that accredited museums, archives and libraries should be able to obtain legal ownership of objects if they have had them in their possession for a minimum of 30 years, and reasonable efforts have been made to locate any possible owner [R4]. This was intended to address the common situation that museums may not know the owner of certain collection items, so that they cannot confidently dispose of or repair the items concerned or transfer them to other museums (including in cases of repatriation).

3. References to the research

R1. Janet Ulph, 'The Sale of Items in Museum Collections' chapter 11 in N. Hopkins (ed), *Modern Studies in Property Law, Volume 7* (2013, Oxford: Hart Publishing), 217-241.

R2. Janet Ulph, 'Dealing with UK Museum Collections: Law, Ethics and the Public/Private Divide' (2015) 22 *International Journal of Cultural Property* 177-204.

R3. Janet Ulph, 'The Museums Association's Code of Ethics 2015' (2016) XXI (2) *Art Antiquity and Law* 143 – 156.

R4. Janet Ulph, 'Frozen in Time: Orphans and Uncollected Objects in Museum Collections' *International Journal of Cultural Property* (2017) 24, 1-28.

R5. Janet Ulph, 'Acquiring Fossils: A Complex Picture' *The Geological Curator* (2018) 10 (10) 517-521.

4. Details of the impact

Changing guidance and practice relating to disposals in the heritage sector

The main purpose of Ulph's AHRC/ ESRC Placement Fellowship in 2011-2012 was to collaborate with the Museums Association in developing its guidance on the sale of items from collections. The Museums Association and the Arts Council decided that, with Ulph's assistance, the general guidance on disposals in *The Disposal Toolkit: Guidelines for Museums* [E1] should be updated. Ulph advised on key aspects of this document – including obtaining the advice of the Charity Commission to the effect that minor items such as medals or wedding dresses could be returned to owners where that was possible, and beneficial to the museum and in the public interest.

Ulph was also the main author of a separate Appendix 4 to the *Disposal Toolkit* entitled *Additional Guidance on Financially Motivated Disposal*, which relates to sales of collection items [Appendix to E2: Ulph recognised as lead author at p 3]. This guidance was entirely novel, as no equivalent provision had previously been made for sales from collections. Appendix 4 sets out key points that museums should reflect upon at each stage of the process, including legal issues relating to ownership, the obligations of a seller, export laws, and practical ethical matters, such as early consultation with public bodies. To quote the policy officer of the Museums Association "Ulph introduced the concept of a due diligence process for all disposals" [E8].

The significance of the *Disposal Toolkit*, including its Appendix 4, is that the Museums Association's Code of Ethics requires all museums to follow this guidance. In March 2015, the Museums Association, Arts Council England and other stakeholder bodies issued a formal Joint Statement condemning unethical sales and declaring that museums engaged in financially motivated sales were required to follow the procedure set out in the *Disposal Toolkit*. Arts Council England museum accreditation guidance ([E3], 2019) includes requirements that all accredited organisations follow processes set out in the Museums Associations Disposal Toolkit and includes a section on financially-motivated disposal. To quote a senior manager at the Arts Council England, the guidance on disposal and sale “are embedded and well-used across the museum sector” [E13].

If a sale was viewed as unethical, a museum's reputation would be damaged, and it would risk losing its accreditation, and thereby the opportunity to apply for government grants. Prior to the publication of Appendix 4 in 2014, unethical sales had been an increasing problem: for example, Croydon Museum was publicly stripped of its accreditation for this reason in 2013, followed by Northampton Museums Service in 2014. Since 2015, however, no museum has been found to have been involved in an unethical sale, and that change can be attributed to the guidance.

Ulph went on to work with Arts Council England and the Museums Association in 2014-2015, when she held an AHRC Leadership Fellowship to enable further research on the legal and ethical status of museum collections. In 2015, she was sole author of a 59-page document entitled *Guidance on Curatorially Motivated Disposal in England, Wales and Northern Ireland* [E2]. The guidance is wide-ranging in scope and advises on key issues for museums, such as how to distinguish between a gift, a loan and a trust, the implications for the museum if it does not clearly own a collection item and dealing with competing claims regarding a collection item. According to the Association's policy officer “*The Museums Association publishes this guidance on its website as part of our core suite of advice on disposal from collections, and it has been downloaded thousands of times since publication*” [E8].

The 2015 guidance has frequently proven indispensable to museums seeking to resolve problems with other museums and with benefactors [E8]. Individual museums have sought direct assistance from Ulph: for example, the Norfolk Museums Development Officer sought advice when the museum was struggling to persuade the owner to take back a railway carriage, and Ulph's assistance led to important cost savings for the museum [E11].

Since 2011, Ulph has been involved in some 30 workshops organised by the UK Registrars Group, the Collections Trust, and national museums, or regional groups, such as the Museum of London, Museums East and Museums Development North West (MDNW). The workshops primarily involved discussion of curatorially motivated and financially motivated disposals, acquisitions, and museum closures. Evidence of the practical effect of these workshops is provided by a museum curator who had worked for Fylde Council in Lancashire: in her words, as a result of Ulph's advice on disposals at a workshop in 2017, “*there had been an about-turn in the views of Council leaders and the idea of selling from the collection had been dropped*” [E12].

Influencing sector-wide guidance on museums facing closure

In 2016, Ulph was invited to be a member of a team convened by Arts Council England to consider the response to the High Court judgment in *R (Hall) v. Leicestershire County Council* [2015] EWHC 2985, a judicial review challenge to a planned museum closure. In his judgment, Mr Justice Blake had remarked upon the absence of policy guidance concerning museum

closures from the Department for Culture, Media and Sport, the Heritage Lottery Fund, the Art Fund and the Museums Association. The Arts Council England group produced novel guidance, first published by the Museums Association in 2017, entitled *Museums Facing Closure: Legal and Ethical Issues* [E4]. To quote a senior manager at Arts Council England, Ulph “*had a leading and highly influential role as the only legal representative and expert in cultural property law*” [E13]. Her contributions addressed the implications of insolvency, of the public sector equality duty, charity law, and the ownership of collections.

The guidance concerning closures has continued to be highly relevant to the sector. To quote the Museum Association, “*In 2016-17, Prof Ulph advised the Museums Association on the production of guidance on Museums Facing Closure – an issue that has unfortunately been at the forefront of the sector’s concerns during austerity and more recently Covid-19. Indeed, this document has become a key part of the sector’s response to the challenges of the pandemic*” [E8]. The Collections Trust noted the value of the guidance in its June 2020 evidence on the impact of COVID-19 to the House of Commons Digital, Culture, Media and Sport Committee [E7].

Ulph’s expertise in relation to museum closures also led to an invitation from Lancashire County Council to a meeting on 3 August 2016 to discuss its plans to close five museums, and to disperse thousands of heritage objects. Participants at the meeting included a council member, representatives of the council legal department, and professionals from the museums concerned. As a result of Ulph’s advice, the local authority changed its disposal plans and Ulph was informed that her input was “*crucial*” to the decision to retain ownership of certain collections [E10].

Putting the need for museums law reform on the policy agenda

Through her research published in 2013 [R1], 2015 [R2] and 2017 [R4], Ulph has advocated for new legislation for England, Wales and Northern Ireland concerning museum collections, to clarify the powers of local authorities, and to address the highly uncertain legal regime relating to ownership of collections.

In 2016, she responded to the call by the Law Commission for England and Wales for suggestions for law reform, making the case for the legal regime relating to museum collections to be reformed. Relying on her published research [R1–R4], she persuaded the Law Commission that law reform was needed and would serve the public benefit (see testimonial of Law Commissioner [E9]). The Law Commission then consulted the Department for Digital Culture Media and Sport, which accepted the need for law reform on behalf of the Government [E9]. The Commission went on to include museum collections as a confirmed project in its 13th *Programme of Law Reform*, published in December 2017. It identified the two issues flagged by Ulph – uncertainty as to legal ownership, and the powers of local authorities over collections - as the main ones it planned to examine [E5, paras 2.27 and 2.28].

The law reform project outlined by Ulph in 2016 has remained high on the policy agenda in the cultural heritage sector. In February 2017, she gave a presentation on it to a meeting of the All Party Parliamentary Group (APPG) for the Protection of Cultural Heritage. At that meeting the APPG agreed that local authority powers in relation to museum collections needed further examination and that there should be new legislation to deal with uncertainty regarding ownership. At the APPG meeting the Department for Digital, Culture, Media and Sport announced its own independent review into museums by Neil Mendoza, whose report in

November 2017 supported an exploration of “how museums might acquire legal ownership of these objects where no owner can be traced after an appropriate length of time” [E6, at p. 45]. More recently, the Collections Trust’s June 2020 evidence on the impact of COVID-19 stated that “*in view of the fact that proving title to the collections of insolvent museums is about to become very pressing indeed, we ask that the Law Commission be supported to fast-track this investigation*” [E7].

The public benefit of new guidance and law on museum collections

There are approximately 2,500 museums in the UK of which about 1,800 have become accredited [see E8]. According to the Museums Association, visitors are likely to exceed 100 million each year [<https://www.museumsassociation.org/about/faqs/>].

Ulph’s research is therefore of wide public benefit, in that it recognises and protects the special cultural value of heritage items, by promoting responsible management of museums through the development of guidance and law reform proposals relating to museum collections.

5. Sources to corroborate the impact

E1. Museums Association, (1) *Disposal Toolkit: Guidelines for Museums* and (2) *Additional Guidance on Financially Motivated Disposal* (2014)

<https://www.museumsassociation.org/campaigns/collections/disposal-toolkit/#>

E2. Museums Association, *Guidance on curatorially motivated disposal in England, Wales and Northern Ireland* (first published 2015; revised, 2016).

<https://www.museumsassociation.org/app/uploads/2020/06/19102015-curatorially-motivated-disposal-12.pdf>

E3. Arts Council England Accreditation guidance (March 2019)

https://www.artscouncil.org.uk/sites/default/files/download-file/Accreditation_Guidance_Mar_2019_0.pdf

E4. Museums Association, *Museums Facing Closure: Legal and Ethical Issues* (2017, Ulph acknowledged at p. 18 as member of steering committee which prepared guidance).

<https://www.museumsassociation.org/app/uploads/2020/06/20092017-museums-facing-closure-2.pdf>

E5. Law Commission for England and Wales, *Thirteenth Programme of Law Reform* (Law Com, No 377, 14 December 2017)

<https://www.lawcom.gov.uk/project/13th-programme-of-law-reform/>

E6. *Mendoza Review: An Independent Review of Museums in England* (DCMS, November 2017)

<https://www.gov.uk/government/publications/the-mendoza-review-an-independent-review-of-museums-in-england>

E7. The Collections Trust, *Impact of Covid-19 on DCMS sectors* (15 June 2020)

<https://committees.parliament.uk/writtenevidence/6623/html/>

E8. Testimonial, Policy Officer, Museums Association (15 October 2020)

E9. Testimonial, Law Commissioner for England and Wales (23 October 2020)

E10. Email, Museum Development North West Officer, 20 October 2017

E11. Email, Norfolk Museums Development Officer, 27 February 2019

E12. Email from Dr Amanda Draper, Curator, Victoria Gallery and Museum, Liverpool (formerly employed by Fylde Council), 4 February 2020.