

Institution: University of Portsmouth		
Unit of Assessment: UoA 18: Law		
Title of case study: The elephant in the sale room: Influencing law, policy and practice regarding the sale of “antique” ivory		
Period when the underpinning research was undertaken: 2016 - 2018		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Caroline Cox	Senior Lecturer	1/12/2014 - date
Period when the claimed impact occurred: November 2015 - ongoing		
Is this case study continued from a case study submitted in 2014? N		
<p>1. Summary of the impact</p> <p>Research completed by Caroline Cox and the University of Portsmouth’s <i>Ivory Project</i> has impacted legislation relating to the ivory trade and changes to the enforcement of law relating to the trade. Her research called for <u>enforceable</u> and <u>effective</u> regulations that distinguished the legal ivory trade from the illegal trade in ivory, recommending the ending of self-certification (regarding the age of ‘worked’ ivory objects), the introduction of a registration ‘passport’ for higher value items, and the creation of best practice guides within the antiques trade.</p> <p>She provided written evidence to the October 2017 government consultation into the sale of ivory in the UK as the Conservative party delivered on its manifesto pledge. Her research findings not only provided an empirical underpinning to other consultation responses but were also expressly highlighted in the government’s consultation response. The resulting Ivory Act 2018 reflected many of Cox’s recommendations. Her work was also cited by the Court of Appeal in March 2020 when rejecting an action to prevent the Act from becoming law.</p> <p>Her research was picked up internationally and saw her invited by the Australian Parliamentary Committee to attend the public hearings (July 2018) and provide evidence as a prelude to the Committee recommending the adoption of similar legislation to the UK. While domestically, two major trade associations have subsequently produced best practice guides for their members/readers. More recently her work has attracted the attention of the Metropolitan Police who wish to use the machine learning techniques employed in Cox’s research to (i) more effectively identify illegal ivory being sold online, and (ii) help train British law enforcement agencies to improve their response procedures relating to the online sale of ivory in the UK.</p>		
<p>2. Underpinning research</p> <p>The global demand for ivory makes the illegal ivory trade extremely profitable and has led to an increase in poaching. As a result, wild elephant numbers have dropped by 62% over the last decade, and an estimated 100 African elephants are killed <i>each day</i> by poachers seeking ivory. This sharp decline in elephant numbers has resulted in all Asian, and many African, elephant species being given an Appendix 1 listing (‘threatened with extinction’) under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Despite this, the 1997 Control of Trade in Endangered Species (Enforcement) Regulations legitimised the sale of ivory in the UK under Article 8 (the so-called “antiques derogation”) - provided the ivory was “worked” (i.e., carved) before 1947. This window enabled approximately 2,500 antique dealers and 1,000 auction houses to sustain an annual GBP7.4 million trade in ivory (this is likely to be an underestimate as ivory artefacts are also sold in outlets as diverse as local antique fairs, car boot sales as well as through online platforms) according to the government. Under this legislation, the knowledge of the timing of the working of an artefact (i.e., pre- or post-1947) is therefore critical.</p> <p>Cox’s research was prompted in part by personal experience (her wider family are involved in the antiques trade and had alerted her to the difficulty of dating ‘worked’ ivory) and in part by academic curiosity after two prosecutions brought against members of the antiques trade for the sale of illegal ivory came before the British courts in 2014. One case led to a successful prosecution; the other did not. The Ivory Project was thus conceived with the brief to (i) critically analyse the processes and reasons behind the judgments, and (ii) recommend how the existing legislation might be amended so as to provide further clarity and protection to those dealing in such objects (and thereby reduce/remove the risk of prosecution): <i>‘In view of the potential economic loss to the</i></p>		

antique industry, the British government, together with its CITES partners, while being understandably concerned about the rise in the illegal ivory trade, requires a unified, coordinated policy with regard to the prosecution of Article 8 offences. Following the collapse of the Wilkinson case, clarification is needed both for the trade and their advisors as well as for the prosecuting authorities' (R2, p. 330).

A survey undertaken following consultation and collaboration with the UK's three largest antiques trade associations, The Society of Fine Art Auctioneers and Valuers (SOFAA), The British Antiques Dealers' Association (BADA) and The Association of Art and Antiques Dealers (LAPADA), led to the publication of a journal article in the *International Journal of Cultural Property* (R1) in 2016, followed by "*The Elephant in the Sale Room: An Inquiry into the UK Antiques Trade's Sale of Ivory*" (R2 – the Ivory Report) in March 2017. The research found that there was both a **lack of understanding of the types of ivory artefacts being sold in the UK and also how traders appraise the age of items** of ivory artefacts before sale. The research highlighted that while most respondents used their "knowledge and experience" to assess ivory, this ranged from highly competent specialist dealers and auctioneers (who utilised robust assessment tools and dating techniques) to dealers who had little or no knowledge of what they were selling. Yet, under the 1997 regulations, the onus is placed upon sellers to assure that, beyond reasonable doubt, the piece of ivory being sold had been carved before 1947 (self-certification). Cox conjectured that the reliance upon "self-certification" unintentionally encouraged negligent or criminal sellers to "take the risk" and sell ivory for which they have no proof of age.

The research also identified the significant extent of the illegal trade in so-called "ghost ivory" (post-1947 worked ivory being sold as pre-1947 worked ivory), highlighting the growing need again to more effectively address the illegal ivory trade (R1). In the article *Culture, conservation and crime: regulating ivory markets for antiques and crafts* (R4), Cox and her colleagues provide a comprehensive discussion of the socio-legal and economic options available to policymakers. In particular, Cox called for a significant change to laws governing the sale of ivory in the UK and recommended:

- The UK Government introduces a 'passport-type document' for higher value ivory items.
- Department for Environment, Food and Rural Affairs (DEFRA) provides clear guidance as to what 'documentary evidence' dealers will need to provide as to the origin of an ivory item being offered for sale.
- Antique trade associations compile and make easily available to the wider trade and buyers a "Best Practice Guide" regarding the law and the sale of ivory within the UK and EU.

A subsequent article stressed the need for an **interdisciplinary, joined-up approach in which different stakeholders** - including researchers, conservationists and practitioners - **collaborate** to address the broader issues of wildlife crime (R5).

Research (R4) also disclosed that **dealers were increasingly making use of online sales platforms to sell ivory**, in addition to the more traditional outlets of auction houses, shops and fairs. This prompted Cox and her colleagues to analyse the online trade in ivory artefacts through eBay, the world's largest online auction platform over a ninety-day period. The study, published as *Selective liability, regulated digital commerce, and the subversion of product trading bans: the case of elephant ivory* (R3), discovered 684 items worth GBP52,865 were sold on eBay UK - with the largest number of sellers being based in the US. This suggested miss-selling of ivory was, in fact, taking place transnationally as US sellers were prepared to use eBay as a platform for selling outside the US, thereby circumventing the risk of breaking federal law (the Lacey Act, 16 U.S.A.C. §§ 3371–3378) by selling intra-state. Significantly, the research not only found evidence of repeat sellers, but also exposed **the ease with which ivory was being sold online. Sellers were using simple pseudonyms to sell ivory on the site (e.g. bovine bone), sales which were not picked up by the platform's monitoring systems.** The research findings not only led Cox and team to recommend the global prohibition of the ivory trade, but to also speak out strongly in favour of the continuous monitoring and legal enforcement ('policing') across international web auction programmes to prevent what would then become (if a global ban were introduced) a wildlife crime (R4, p.192).

3. References to the research

(R1) Cox, C. (2017). The Elephant in the Sales Room: An Inquiry into the UK Antiques Trade's Sale of Ivory, The School of Law, University of Portsmouth.

(R2) Cox, C. (2016). The Elephant in the Sales Room: Ivory and the British Antiques Trade. *International Journal of Cultural Property*, 23(3), 321-334, <https://doi.org/10.1017/S094073911600014X>

(R3) Cox, C., & Collins, A. (2020). Selective Liability, Regulated Digital Commerce and the Subversion of Product Trading Bans: The Case of Elephant Ivory. *Human Dimensions of Wildlife: An International Journal*, <https://doi.org/10.1080/10871209.2020.1812775>

(R4) Collins, A., Cox, C., & Pamment, N. (2017). Culture, conservation and crime: regulating ivory markets for antiques and crafts. *Ecological Economics*, 135, 186–194. <https://doi.org/10.1016/j.ecolecon.2017.01.018>

(R5) Smith, P., Pamment, N., Cox, C., Reed, J.A., Chappell, B. & Plowman, C. (2019). Disrupting wildlife crime: the benefits of meaningful collaboration. *Forensic Science International*, 299. e1-e2. <https://doi.org/10.1016/j.forsciint.2019.04.021>

The references contain one report (R1) and four peer-reviewed journal articles (R2, R3, R4 and R5). Two articles (R2 and R4) were published in ABDC A rated journals and adjudged to be of 2* and 3* quality respectively and one (R5) was published in an ABDC B rated journal.

4. Details of the impact

In June 2015 Cox successfully applied for internal project seed funding (GBP3,650.20) for the Ivory Project. In scoping out the project, she came into contact with Caroline Nokes (MP for Romsey and Southampton North) who had been entrusted to lead in fulfilling the Conservative Party's 2015 manifesto pledge to 'press for a complete ban on ivory sales'. Nokes invited Cox to launch the project at a House of Commons curated event on 26 November. A 20-strong panel from the antiques trade, the legal profession, the wildlife lobby, forensic science and restorers and dealers in musical instruments debated the merits (and consequences) of such a ban, causing Nokes to exclaim 'from the heart the ban [as suggested in the Conservative Manifesto] seemed superficially attractive - but it does now appear rather more complex.' The panel welcomed, as a consequence, the study by Cox and offered her their full support (S1).

In 2016, following this initial meeting, Cox worked closely with members of the antiques trade to better understand the trade's knowledge and understanding of the law and regulations on the sale of ivory. This collaboration extended to the development of a comprehensive survey, targeted at trade members, and distributed via the main trade magazine (*Antiques Trade Gazette*, subscribed circulation -16,000, readership – 35,000) and membership lists of BADA, LAPADA and SOFAA, which formed the basis for R1. R1 reported 'Strikingly, none of the organisations we researched had any specific advice on their front facing websites regarding the laws and regulations on the sale of ivory' (p.15). Commenting on the report, Ian Guildford from the National Wildlife Crimes Unit (NWCU) stated 'The University of Portsmouth's work among antique dealers and auction houses in the UK is an important addition to the fight against illegal ivory trading within the UK and abroad' (S2). Charlie Mayhew, chief executive of Tusk, went further, noting that it 'provides real evidence that many dealers know that their industry is complicit in the sale of illegal ivory and consumers are being misled. As long as the government allows the British ivory market to flourish in its current form – with modern ivory passed off as old – there will be a direct link from sale rooms and stall-holders to African savanna, with the market encouraged by traders leading to the killing of even more elephants. Britain's intransigence on tightening up the law on trade is undermining its claim that it is still at the forefront of international efforts to end the illegal wildlife trade.' (S2).

On 6 October 2017, six months after the Ivory Report was published, the British government launched a consultation into the sale of ivory in the UK. A month previously, the government had released a 23-page impact assessment (S3) advocating the closure of all legal ivory markets. The assessment noted 'Although the UK ivory market has not been directly linked to the trade in recently poached ivory, sales of more recent ivory products and particularly raw tusks potentially present a greater risk in terms of opportunity to pass off illegally-sourced ivory as legitimate' (para. 26). It expressly referred to the problem of asymmetric information (the term used by Cox in

R1 when referring to this phenomena) **and referred to Cox's work** twice in the one paragraph – and **three times in the whole impact assessment**. The consultation process ended on 29 December 2017 and by that time it had received one of the largest public responses to a government consultation (71,238 responses), with more than 88% in support of a ban. **Cox provided written evidence to the consultation (S4) in which she iterated the findings of the Ivory Project (R1 and R4)**. Strikingly, her research also proved central to a number of other written submissions. The 62-page response to the consultation submitted on behalf of the Zoological Society of London, the Wildlife Conservation Society, the UK Environmental Investigation Agency, the David Shepherd Wildlife Foundation, and Stop Ivory, for example, mentioned the research of Cox no less than 17 times in advancing their case in support of a total ban on the ivory trade (**S4**). **At the end of the public consultation, Cox was invited by DEFRA to attend a stakeholders' meeting at the Zoological Society of London on the 16 December 2017**. Cox was the only invited academic in attendance at this meeting. The purpose of this meeting was to bring together key stakeholders in the ivory debate ahead of the finalisation of the government's official response to the consultation process (**S5**).

In April 2018, the government published a 34-page response to the consultation (**S6**). It noted *'Having considered the evidence available, including responses to this consultation, the government confirms it will proceed with a ban on commercial activities concerning ivory in the UK that could directly or indirectly fuel the poaching of elephants. We intend the UK's ivory sales ban to be amongst the toughest in the world...'* (p.27), and presaged the introduction of the Ivory Bill 2018. One rationale for the ban was based on the fact that it would not cause financial hardship, as *'... many businesses are not dependent on sales of items containing ivory'* (p.10) a statement that was directly attributed to Cox's underlying research (**R2**). Moreover, the ban exempted a narrow range of items containing ivory (portrait miniatures, musical instruments, *de minimis*, and 'rarest and most important') from the sales ban, providing *'Owners with items they wished to sell... will be required to register their items via an online system'* (p. 30), a requirement strongly redolent of the 'passport-type document' advocated by Cox (**R1**).

The Ivory Bill, introduced into Parliament on 23 May 2018 in the wake of the Consultation Report, received swift passage and became the Ivory Act 2018 following Royal Assent being granted on 20 December 2018. It incorporated three key recommendations provided by the research of Cox,

(i) It completely removed the 1947 antiques derogation – providing greater clarity to sellers and prosecutors alike (*'With the ability for a seller to "self-certify" that their ivory artefact is legal to sell removed, not only is the law much clearer to sellers (i.e. ALL ivory is illegal to sell without an exemption certificate) but it also removes the burden of proof as to age, volume, artistic value, etc. from the prosecution'* (**S4**)),

(ii) It introduced a mandatory certification 'passport' system for items falling within the newly prescribed derogations (*de minimis*, musical instruments pre-1975, and artistic/cultural/historic and museum items), and thereby *'removed the burden from police and law enforcement officers to ascertain whether or not the items is pre or post 1947 worked ivory'* (**S4**).

(iii) The concise framing of the new Act, specifically providing that dealing in ivory is prohibited (s1(1)) and "Dealing" in ivory means (a) buying, selling or hiring it; (b) offering or arranging to buy, sell or hire it; (c) keeping it for sale or hire; (d) exporting it from the United Kingdom for sale or hire; (e) importing it into the United Kingdom for sale or hire (s1(2)), as Cox advocated, meant that *'the new Bill should have a positive effect on the on-line sale of ivory'* (**S4**).

Significantly, despite the Act's overwhelming emphasis on the importance of policing and enforcement (two of the Act's 44 sections relate to criminal and civil sanctions, fifteen to powers of entry, search and seizure, and five to the treatment of seized items), the government has yet to follow Cox's exhortation to both give resources and 'invest in trained officers with the ability and resources to police the online trade' (**S4**).

Following the granting of Royal Assent, a group of antiques dealers formed a company [Friends of Antique Cultural Treasures (FACT) Ltd] to bring a judicial review case against the British Government in the High Court on 16/17 October 2019. While the case failed, the appellants were granted leave to appeal to the Court of Appeal. The Court of Appeal gave their

judgment against FACT on 18 May 2020. In their written judgment, the Court of Appeal emphasized the *'fault lines in the domestic ivory trade'*, and explicitly cited the research of Cox in this regard; *'The University of Portsmouth interviewed dealers who stated that they either know of dealers or auctioneers who would sell post-1947 ivory or that they had witnessed illegal ivory being sold in the UK'* (S7, para. 55).

The research completed by Cox has also impacted at the international level for, on 28 March 2018, the Australian Parliamentary Joint Committee on Law Enforcement opened their inquiry into the trade in elephant ivory and rhino horn in Australia. As a signatory to CITES, Australia is bound by the import and export regulations imposed by the Convention, but has no domestic legislation in place beyond that. Cox was invited by the Parliamentary Committee to attend the public hearings (July 2018) and they welcomed her report (R1) in helping to frame their own legislation. Following the conclusion of the inquiry, the committee recommended legislation similar to that of the Ivory Act 2018 in the UK (total ban on ivory trade, save for a few prescribed derogations) (S8).

Domestically, two further impacts have occurred. First, and somewhat belatedly, both BADA and the Antiques Trade Gazette have - as Cox had urged in 2017 - produced detailed guidance and advice to its members on the law and the sale of ivory within the UK (S9). Second, Cox was approached by the National Wildlife Crime Unit (NWCU) in May 2019 regarding the nature of the machine learning tools that were being deployed to investigate online trading. In the absence of increased governmental funding to support the policing of the Act the NWCU were interested to know if the tools were *'something that can be turned on, run in the background and deliver immediately useful intel or work packages that can (a) be actioned against and (b) something that can be exhibited at any subsequent trial'* as this would *'save a great deal of time in identifying items that may otherwise meet the entry criteria to instigate an investigation by the NWCU'*. In addition, they acknowledged that Cox had *'developed some quite interesting educational material, both in audio/video format and in print. There is a potential play here in terms of better educating the police community in this space and a wider audience through a collaboration of this type'*. An agreement was reached to (i) collaborate in a larger project using machine learning tools to identify illegal ivory being sold online, and (ii) create a training video for enforcement officers that would enable them to correctly identify ivory artefacts being illegally sold online using the methodology designed by Cox and her team (S10).

5. Sources to corroborate the impact

(S1) Arkell, R. (2015) Ivory research project launched, Antiques Trade Gazette, 03.12.2015.

(S2) National Centre for Universities and Business (2018) Global partnership to fight illegal wildlife trade, 18.01.2018, and Action for Elephants UK (2021) AFE Position Statement on the UK Ivory Trade (online).

(S3) Department for Environment Food & Rural Affairs (2017) Impact Assessment: Banning the sale of ivory in the UK.

(S4) Submission to UK Parliament (IVB17), 19.06. 2018 and Response to Consultation, 24.12.2017.

(S5) Email exchange with the Department for Environment Food and Rural Affairs, 24.11.2017 and 06.12.2017.

(S6) Department for Environment Food and Rural Affairs (2018), Banning UK sales of Ivory: Summary of responses and government response, April.

(S7) Friends of Antique Cultural Treasures Ltd, R (on the application of) v The Secretary of State for the Department of Environment, Food & Rural Affairs [2020] EWCA Civ 649, 18.05.2020.

(S8) Email from [text removed for publication], the Australian Parliamentary Joint Committee on Law Enforcement, 21.06.2018.

(S9) Antiques Trade Gazette (2021) UK Ivory Ban (online) and The British Antique Dealers' Association (2021) Antique Ivory (online).

(S10) Letter from Special Inspector Matthew Appleton, North Area Borough Command Unit, Metropolitan Police, 02.02.2021.