



Guidelines for the Care of

Human Remains

in Scottish Museum Collections

Guidelines for the Care of Human Remains in Scottish Museum Collections

Contents

3	Foreword
4	Introduction
6	Acknowledgements
8	Chapter 1: Ethical framework
	Background
	Ethical principles
	Procedural principles
	Procedural responsibilities
11	Chapter 2: Curation, care and use of human remains
	Introduction
	Governance and expert advice
	Acquisition
	Temporary holdings
	Loans
	De-accessioning and disposal
	Storage, collections management and disposal
	Storage
	Storage and collections management policies
	Conservation
	Public display
	Access to collections
	Research and sampling
	Research, frameworks and strategies
	Inventories of collections
25	Chapter 3: Requests for the return of human remains
	Introduction
	Receiving a request

- The nature and scope of the request
- The decision-making process
 - Criteria for decisions
 - After the decision
 - If the decision is to repatriate

- 31 Chapter 4: Legal issues**
 - An introduction to the legal issues surrounding the holding and return of human remains affecting specifically museums in Scotland.*
 - Introduction
 - Legal Advice for the Care of Human Remains in Scottish Museum Collections

- 38 Further reading and resources**
 - As well as suggested further reading, this section gives sources for the references used throughout this publication.*

- 40 Appendix I**
 - Museum Ethnographers' Group (MEG) Guidelines on Management of Human Remains
 - Professional guidelines concerning the storage, display, interpretation and return of human remains in ethnographical collections in the UK.*

- 43 Appendix 2**
 - The Vermillion Accord
 - A World Archaeological Congress position statement on 'Archaeological Ethics and the Treatment of the Dead'.*

- 44 Appendix 3**
 - Museums exempted from section 6A of the Anatomy Act 1984.

Foreword

From Joanne Orr, CEO of Museums Galleries Scotland and Chair of the Human Remains Working Group

Human remains are held in thousands of museum collections across the world, the result of more than three centuries of collecting and scientific study. These collections have been invaluable in piecing together our biological and cultural history. In recent years, however, museums have found themselves at the centre of debates over collecting, displaying and storing human remains. These debates have highlighted the need for human remains to be professionally managed, and for museums to be ready to deal sensitively with any of the issues which can come up, such as requests for repatriation.

Museums also need to be up-to-date with current legislation affecting the holding of human remains. The legal situation in Scotland is significantly different to that in England and Wales. Of particular importance is the Human Tissue (Scotland) Act 2006. Scotland also has its own distinctive cultural traditions on the treatment and use of human remains.

These guidelines are intended to help your museum manage the cultural and practical issues that exist today and ensure the responsible and respectful care of human remains within collections. And, crucially, they contain the only up-to-date guidance on the legal situation written specifically for museums in Scotland.

Curation, exhibition, research and repatriation are complex areas with many ethical issues and challenges. We have taken a straightforward, non-prescriptive approach. Best-practice case studies are provided from across Scotland to help you decide the best ways to care for human remains and to promote the benefits of using best practice to museums, their partners and communities.

We hope that the guidelines will help you balance the need to respect the culture and wishes of communities with a continuing desire to research and discover, ensuring that all interests can be considered fairly, transparently and respectfully.

Introduction

These guidelines have been put together by Museums Galleries Scotland with content provided by an Expert Panel drawn from Scottish museums and other institutions.

Many of the recommendations are in line with those contained in *Guidance for the Care of Human Remains in Museums*, published by the Department of Culture, Media and Sport (DCMS) in 2005, which apply to the rest of the UK. However, our guidance takes full account of the distinct legal situation in Scotland. The result is a document which promotes best practice in a way that is applicable for those working in Scottish museums.

Museums are places where people are encouraged to encounter a variety of experiences with respect and understanding. As such they are an appropriate home for a wide variety of items and we firmly believe that this can, and should, include human remains, grave goods and sacred items. At the same time museums hold their collections in trust for past and future generations. They have continuing responsibilities associated with the objects themselves, and the express and implied wishes of collectors and donors. Museums have a duty to care for their collections and an equal duty to encourage access and understanding for as many people as possible.

Naturally, museums recognise that the groups from which human remains were collected, and the relatives and descendants of people whose remains are in collections, have an interest in their treatment. Descendants and relatives may also have moral and legal questions about how they were acquired. Their interest should be welcomed as contributing to knowledge about the collections and to helping ensure that human remains are curated to the highest ethical standards.

Our aim is to offer guidance rather than to be prescriptive, while emphasising the legal requirements that museums must observe. We also wish to foster an atmosphere in which museums respond openly and fairly to requests about human remains, care for them in the best possible way, and maximise their potential to help us learn more about our past and our common human identity.

In these guidelines, the term 'human remains' is used to mean the bodies, and parts of bodies, of members of the species *Homo sapiens*. This includes osteological material (whole or part skeletons, individual bones or fragments of bones and teeth), soft tissue including organs, skin, cornea, bone marrow, embryos and slide preparations of human tissue, nails and hair. It is acknowledged that some cultural communities give these a sacred importance. Human remains may also include human tissue that may have been modified in some way by human skill. Bound up material and funerary objects are those objects or material other than human remains that are physically bound up with or attached to them in a way that means they can be considered to be inextricably linked.

We use the term 'museums' for all museums and other institutions performing the function of a museum by permanently holding human remains as collections.

Acknowledgements

Expert Panel (past and present):

Patricia Allan	Curator of World Cultures Glasgow Museums
Neil Curtis	Senior Curator Marischal Museum University of Aberdeen
Dr Alison K Brown	Academic Fellow in Anthropology School of Social Science University of Aberdeen
Gill Findlay	Collections Development Manager Museums Galleries Scotland (Co-ordinator, Secretariat)
William Fox	Formerly Cultural Policy Scottish Government
Mark Hall	History Officer Perth Museum & Art Gallery
Chris Henry	Director of Heritage Royal College of Surgeons of Edinburgh
Dawn Kemp	Formerly Director of Heritage Royal College of Surgeons of Edinburgh
Dr Andrew Kitchener	Principal Curator Department of Natural Sciences National Museums Scotland
Dr Henrietta Lidchi	Keeper Department of World Cultures National Museums Scotland
Jackie MacBeath	Museums Development Manager University of Edinburgh
Joanne Orr	Chief Executive Museums Galleries Scotland (Chair)

Sharon Paton Collections Development Manager
Museums Galleries Scotland
(Co-ordinator, Secretariat)

Maggie Reilly Curator of Zoology
The Hunterian Museum
University of Glasgow

Advisors

Joe Logan Health Department
Scottish Government

Dr Alison Sheridan Principal Curator of Early Prehistoric Collections
National Museums Scotland

Richard Welander Head of Collections
Historic Scotland

Dr Kathryn Whitby-Last Senior Lecturer in Law
School of Law
University of Aberdeen

Thanks also to the Department of Culture, Media and Sport Working Group, and in particular to Hedley Swain, Head of Policy at the Museums, Libraries and Archives Council.

Chapter 1: Ethical framework

Background

The presence of human remains in museum collections raises many ethical issues and has been the subject of much debate. MGS has developed these guidelines as a starting point which will allow museums to develop their own ideas, principles and policies. In time we hope that common and consistent approaches will emerge across the sector.

The framework we are putting forward is in two parts. The first sets out some ethical principles that can be used to guide and inform decision-making on the handling and care of human remains, and in claims relating to them. The second looks at procedural principles involved in managing human remains, making decisions concerning their care, or in dealing with claims for repatriation.

The procedural and ethical principles we recommend are designed to underpin the more detailed guidance in the rest of this document. They are also designed to help with:

- decision-making about human remains
- developing an ethical approach to the care of human remains
- identifying the impact our decisions can have
- providing a basis for good communication between museums, individuals and wider communities.

Our framework builds on the work of the DCMS guidance 2005, as well as the 2005 UNESCO Declaration on Universal Norms in Bioethics, The Human Tissue (Scotland) Act 2006 and statements made to the Scottish Government during the passage of that Act. See 'Further Reading and Resources' for more information.

Ethical principles

Museums should make a clear commitment to the highest standards of governance, accountability and responsibility for the treatment of human remains. This includes making sure you follow the relevant laws and codes of ethics, such as those issued by the Museums Association, the International Council of Museums (ICOM) and the Museum Ethnographers Group.

There are other issues to consider as well, such as whether your treatment of the remains could cause offence, the potential for gaining knowledge and understanding, and whether there are any conflicts of interest. These apply not just to the collection, exhibition and display of remains but also to their documentation, storage and research. Given the sensitivity and complexity of some of the issues, there may well be cases where it is valuable to seek expert advice from outside your own organisation.

When discussions are taking place about the treatment of human remains the views of any individuals or groups who are clearly linked to them are particularly important. While it is not always possible to avoid disagreements and reach a consensus, respectful and fair consideration should be given to all points of view.

Procedural principles

Consultation should be the key principle governing the treatment of human remains by museums. One example might be the need to consult with religious groups, or other institutions, if the remains were originally from burial grounds in their care.

Procedural responsibilities

We have identified six sets of responsibilities which museums, and anyone representing them, should exercise in managing human remains, or dealing with claims relating to them.

1. **Rigour:** act with appropriate knowledge, skill and care so that you can justify your decisions.

2. **Honesty and integrity:** to declare conflicts of interest, show honesty in sharing knowledge with all interested parties, and act in a principled manner so that you can be trusted by others.
3. **Sensitivity:** show compassion and sensitivity for the feelings of other people and understanding of different religious, spiritual and cultural perspectives.
4. **Respect:** treat all people and communities with respect, ensuring that adverse impacts on them are minimised, and privacy and confidentiality honoured.
5. **Openness and transparency:** listen, inform and communicate openly and honestly.
6. **Fairness:** act fairly, giving due weight to the interests of all parties, and develop a consistent management process.

I. Chapter 2: Curation, care and use of human remains

Introduction

This section offers basic guidance on how you should approach the care of human remains. Our starting point is that human remains have a unique status, are often of high research value, and should be treated with dignity and respect. This involves the highest standards of collections management, accountability, communication and transparency. Your reasons for holding human remains should be clearly understood and we advise carrying out an ethical analysis on all aspects of their curation, care and use.

Where possible, communities should be informed about human remains you hold which relate to them – this is accepted best-practice in the Museums Association Code of Ethics - and communities should be involved in discussions about how a museum stores, researches, presents or otherwise uses human remains and information about them.

Governance and expert advice

A clear set of practices is needed for dealing with human remains. Even before these are developed, your governing body may wish to consider whether human remains should be kept in your collection. This includes discussing whether good use is being made of them, or if it would be better to transfer them to another museum or to look at return, disposal or reburial.

If you decide that there are good reasons for holding human remains, you should develop a policy for their treatment. The policy should be made public – for example by posting it on your website – and cover the following:

- acquisition
- temporary holdings
- loans
- de-accessioning and disposal
- storage, collections management and conservation

- public display
- access to collections
- research and sampling
- inventories of collections.

These issues may be considered as part of wider museum policies rather than being a separate document. There should always be a clear explanation of why your museum holds remains. You also need to identify clearly who in the organisation has responsibility for each aspect of their care. Suitably skilled and experienced staff should be made responsible for ensuring that your museum has appropriate policies and practices for handling human remains. Alternatively, you should take advice from a suitable external person or organisation, for example the subject specialist network on human remains.

Where human remains are held for purposes other than research, there should be a clear and public explanation and strategy for their use. This might include areas such as display or teaching. There should also be a clear statement on research access, including the circumstances in which researchers can work on material. We also recommend, in line with DCMS guidelines, that museums should make their inventory of human remains publicly available.

Acquisition

The law relating to the rights of ownership and possession of human remains (see relevant sections in Chapter 4: Legal Advice for the Care of Human Remains) means that the acquisition of human remains needs to be considered differently from other museum items. Remains can be added to collections where you are satisfied that:

- they are held lawfully
- provenance is clearly established
- there is no suspicion of illicit trade
- they are of potential value to the museum or wider research community.

Acquisition by transfer: It is legitimate to accept human remains from another institution.

You should accurately record:

- any transfer activity
- the source of the remains
- their history
- copies of related archival material
- provenance information
- all other relevant attendant circumstances as far as they are known.

Acquisition by donation: The acquisition procedure should include a mechanism for confirming reliably that any donation is properly authorised and documented.

Acquisition by excavation: See 'Ownership of human remains collections' in Chapter 4: Legal Advice for the Care of Human Remains and for further information consult Historic Scotland's guidance – The Treatment of Human Remains in Archaeology (1997, revised 2006). Excavations conducted under the auspices of Historic Scotland, or with grant aid from them, must comply with their guidelines. Chance discoveries, which local authority archaeology advisers feel may hold significant archaeological interest, may be eligible for systematic recovery and analysis under the Historic Scotland-funded human remains rapid response call off contract. Initial contact should be made with the appropriate council archaeologist who will normally take matters forward with Historic Scotland. This support is not available where human remains have been identified as part of a planned archaeological operation, whether for research or development-led. Once the call off contract has been initiated, human remains will be treated as if from any other Historic Scotland-supported excavation project.

Temporary holdings

Where human remains are held temporarily, their provenance must be clearly established. You also need a clear justification and legal basis for holding them, for example post excavation analysis or for the purpose of identification.

Partnership agreements: Clear documentation is needed explaining the rights and responsibilities of all those involved. The circumstances in which you may set up partnership agreements include agreements for archaeological sites, for joint research with other institutions, and the holding of remains from church sites that are awaiting re-internment.

Unplanned situations: Individuals or organisations may ask your museum to look after remains. If you accept this responsibility, you will need to be very clear about the basis and circumstances of the request. If you have serious concerns about the provenance of the human remains, you should involve the police.

Loans

You may wish to loan human remains to another institution for various reasons, such as display or research. If you are asked to loan material you should make sure that the borrower meets the legal, ethical and practical considerations discussed elsewhere in this document. Condition reports summarising the state of material should be prepared before it is loaned, particularly as human remains can be more fragile than they appear. In the case of medical collections, the Human Tissue (Scotland) Act 2006 should be consulted.

De-accessioning and Disposal

If you do not wish to transfer human remains to another institution, you need to be proactive in trying to establish whether there are genealogical or cultural descendants who may be interested in accepting them for return or reburial. See chapter 3 for information about responding to requests for repatriation and reburial.

When human remains in medical collections have deteriorated beyond use, disposal should be through an authorised medical disposal company. For organisations without a licence under the Human Tissue (Scotland) Act 2006, disposal should be arranged through a licensed organisation, for example a university which undertakes anatomical dissection. You can also get advice from authorised disposal companies.

We recommend that the relevant statutory and religious authorities should always be consulted in order to ensure that legal, religious and civil traditions are respected.

Storage, collections management and conservation

Storage

The storage of human remains should be actively managed and monitored to meet suitable standards of security, access management and environment. Best practice guidelines for the storage of collections can be found on Collections Link (see 'Further reading and resources').

The following case studies outline different ways of approaching storage which take account of the differing ethical and conservation aspects of storing such collections of human remains:

Case Study: Human Remains in the Archaeological and Ethnographic Collections, University of Aberdeen

The University of Aberdeen's archaeological and ethnographic human remains are stored alongside related cultural collections. For example, prehistoric skeletons from Scotland are housed in custom-made boxes on shelves near to pottery and other grave goods found with them and prehistoric pottery and lithics from the same area. Likewise, Māori toi moko (tattooed Māori heads) were stored next to Māori taonga ('taonga' is 'treasured thing' in Māori and relates to tangible and intangible heritage) before their repatriation, while over-modelled skulls from New Guinea are stored on the same shelves as other objects from New Guinea. All boxes are clearly labelled to show their contents.

Case Study: Ancestral Remains, Glasgow Museums Resource Centre

During Glasgow Museums Resource Centre's second phase of development, a separate storeroom was created for ancestral remains, beside the main World Cultures stores. There are regular public tours and activities in the object stores, as part of the Glasgow Museums' Visitor Programme, and it was considered inappropriate to house ancestral remains in such areas.

The human remains store contains remains from the World Cultures collection and Non-British Ancient Civilizations. These remains are not accompanied by grave goods, as most are unprovenanced and came to the collection without associated material. Provenanced human skeletal remains from Scottish excavations are housed separately. Access to this ancestral remains store is mainly restricted to staff working on the collections, though community delegations and researchers are granted access. A separate outdoor area has been set aside for ceremonies, particularly those that involve smoke or smudging.

Storage and collections management policies

Any museum holding human remains should develop and make public a strategy for their curation and care. You should include information on storage conditions, security, conservation policies, environmental conditions and loans to other institutions. As with all collections, these should demonstrate that the remains are in secure and sustainable storage conditions that do not threaten their long-term integrity. Documentation control and procedures should be developed in accordance with Museums, Libraries and Archives Council's SPECTRUM standards of good practice to ensure that the connection between remains and associated artefacts is maintained.

Whenever it is possible for remains to be separated, each should be given a storage container – specially designed storage boxes for skeletons are now available. Current UK museum practice favours the use of inert packing materials, but we recognise that other cultures may have alternative views on the most appropriate packaging.

Conservation

The integrity of human remains is important in many belief systems and is important for future research and study. The principle of minimal intervention and reversibility should always be applied, avoiding treatments that cause contamination or damage.

Conservation work should only be done when absolutely necessary and you should make sure it follows strict protocols and policies. Any preventative and remedial conservation should be carried out or supervised by an accredited conservator, trained and experienced

in caring for biological materials and overseen by an osteologist. Accredited freelance conservators can be found in the Institute of Conservation's (ICON) Conservation Register (see 'Further reading and resources').

Labelling

To reduce the risk of skeletal remains being lost or dissociated we advise the use of identification numbers, written in waterproof ink and securely attached. SPECTRUM standards offer best practice guidelines on labelling.

Public display

Please also see the legal advice on display of human remains later in this document (Chapter 4, section 1.1.5).

It is appropriate to give careful thought to the display of human remains. They can help people learn more about science and history or understand burial practices. Equally they can bring people into physical contact with past people and can encourage reflection. Surveys show that the vast majority of visitors are comfortable with, and often expect to see human remains (usually skeletons) as part of museum displays.

If you wish to display human remains you could consider the following questions:

- How does the inclusion of human remains contribute to the interpretation and could this be achieved in another way?
- What explanatory material would be provided and will it explain why human remains are on display?
- Should you put up a warning so visitors know that human remains are on display, or even create a specific area for them to be displayed?

Skin and Bone: Life and Death in Medieval Perth

The exhibition ran throughout 2010 at Perth Museum & Art Gallery and displayed human skeletal material in a gallery separate from the rest of the archaeology. Access was via a

flight of stairs and visitors could look at photographs of the gallery before going up. This encouraged those visitors who did not want to be 'surprised' by the human remains to look at the images first and decide accordingly.

The Pathology Museum of the Royal College of Surgeons of Edinburgh, Visitor Notice
(The following notice is positioned to be viewed before visitors enter the display areas.)

Note to Visitors. *The Pathology Museum of the Royal College of Surgeons of Edinburgh has been used to teach and inform medical students and the general public since 1832. The collection of the Royal College of Surgeons of Edinburgh represents the changing nature of medical and scientific teaching and research since the late 18th century. Specimens were collected at times that held different ethical and moral values from our own.*

They are displayed acknowledging the debt to those whose suffering has advanced our knowledge of disease.

Some people can find viewing human anatomical and pathological remains unsettling. Please ask for advice if you are unsure what to expect.

Access to collections

You may wish to give specialist groups or the general public the chance to closely examine and record human remains. This may be to support education courses with a medical, forensic, archaeological or osteological component as these often involve the practical study of human remains. If remains are going to be handled, we recommend that the ethical and legal obligations should be discussed properly with the students and that they should be given guidance on what respectful treatment means in practical terms.

Handling sessions at museums or at special events are a good way in which the general public may learn about archaeological remains. However, including human remains poses particular interpretation challenges. As direct contact by the general public may bring a higher risk of conservation issues or offending religious and other sensibilities, you will need to consider this carefully.

Photographing human remains for publication, research, educational and general museum use is acceptable in most cases, although the views of cultural communities and genealogical descendants should be taken into account where they are known.

Research and sampling

Please also see the legal advice on research relating to human remains later in this document (Chapter 4, section 1.1.4).

There are many reasons for carrying out research on human remains, including studies of human health, diet, aging, development, variation, genetics and mobility. Research can also assist in decisions about curation or repatriation.

Research, or research requests should be assessed in the light of best practice or within a research strategy or framework (see the next section – ‘Research, frameworks and strategies’).

Below are some questions to consider when assessing a research proposal:

- Will the research add significantly to knowledge about the studied human remains or people in general?
- What are the reasons for the research and how does the analysis contribute to the overall research questions?
- Do the researchers have the appropriate skills, knowledge, understanding and resources?
- Have the ethical issues been addressed?
- What is the research methodology and are the techniques reliable?
- Has a pilot study been carried out?
- How are the findings to be disseminated?
- Have the researchers sought the support of appropriate representatives of relevant communities for the research to go ahead?

We strongly recommend that research is only allowed if unused material, along with copies of analyses and publications are given to the museum on completion of the study.

Before allowing sampling for research to take place we suggest that you consider:

- Where destructive sampling is required you will need to decide whether the level of loss is acceptable.
- The sample size should be kept as small as possible to maintain the integrity of the remains and so that future research or display is not compromised. Creating a cast of parts to be damaged or destroyed is a possibility. (Nowadays, non-damaging techniques such as CT scanning are making new kinds of research access to specimens possible).

Once such issues have been discussed, you should ensure that the justifications for sampling and other analyses are fully recorded. Justifications along with the application, sample location and size, the sampling process and eventually the full records of the results of analysis should to be kept with the records for the particular remains studied.

For further information refer to: British Association for Biological Anthropology and Osteoarchaeology: <http://www.babao.org.uk/index/institutions-receiving-skeletal-collections>

Beakers and Bodies, University of Aberdeen

Careful consideration is often needed about when to allow research on remains.

Applications to carry out radiocarbon dating on prehistoric human bones from north-east Scotland, held by the University of Aberdeen, had been turned down because they involved the destruction of large quantities of the material. However, research was allowed, as part of the University's Leverhulme Trust-funded 'Beakers and Bodies' project, thanks to the development of AMS dating, which needed samples of just one gramme.

A pillar drill was used to take samples from areas of bone which would cause the least damage and these were analysed by reputable laboratories using well-established techniques.

A key aim of the project was the wide dissemination of the findings through an academic publication, contributions to popular publications, evening lectures and an exhibition.

The Greig Collection, Royal College of Surgeons of Edinburgh

The study of human remains can have great value for medical research. Gorlan's Syndrome, a form of cancer, was first identified in the 1960s but meticulous case notes accompanying a skull in the Greig Collection held at the Royal College of Surgeons of Edinburgh suggested that it may have been present in a woman patient from 1916. The extraction of DNA from tooth pulp confirmed that this was the earliest known case.

The research was undertaken in 2006 by two leading maxillofacial surgeons with the advice of the museum's Collections Manager, a fully qualified anatomical prosector.

The DNA extraction methods were discussed and agreed in advance of a written proposal being made. The extraction was conducted by the Forensic Department of the Strathclyde Police Force.

For further information visit <http://archive.surgeonsnews.info/docs/issue5-3/pdfs/084.pdf>

Forensic pathology of Beothuk People from Newfoundland, National Museums Scotland

National Museums Scotland has two skulls from the Beothuk people of Newfoundland. They have been identified as coming from Nonosabasut, a chief who died in 1819 in a conflict with Europeans, and his wife, Demasduit. Demasduit was taken into St Johns' society later that year, but died in January 1820 on the journey to rejoin her own people. Although the history of these individuals is well known, it is only recently that their skulls have been subjected to intensive research.

Applications for extracting DNA from teeth were received from North American universities and results were published recently (Reed, 2001; Kuch et al., 2007). NMS only approved the loan of teeth after careful evaluation of the project and the ability of the researchers to extract ancient DNA. The Mi'kmaq, also of Newfoundland, supported the research. Stable isotope analysis of the teeth also provided an insight into the individuals' diets.

More recently, NMS collaborated with Professor Sue Black of the University of Dundee and Dr Ingeborg Marshall, a world authority on the Beothuk, to carry out a forensic pathological study on the skulls to correlate any findings with the historical record (Black et al., 2008). Examination of Nonosabasut's skull revealed that he had suffered a traumatic injury to his chin from a bladed weapon that had partly detached it. This healed but there was a suppurating external wound.

Demasduit's skull had a fracture of the left parietal bone from a high-impact blunt force, resulting in an intracranial haematoma, which could have caused her death, or the fracture could have occurred shortly after death. One possibility is that Demasduit fell on an icy surface and hit her head although her death, a few hours later, was apparently caused by TB. Alternatively the damage could have happened by the mishandling of her body shortly after she died. Further research is planned, including facial reconstructions based on CT scans of both skulls.

For more information see <http://www3.interscience.wiley.com/journal/121517707/abstract>.

Research, frameworks and strategies

You should have a clear, publicly accessible research framework that addresses the human remains in your care. It should be regularly reviewed to make sure it remains relevant. The framework should be applicable to both in-house and external researchers, and could include the following elements:

- a research strategy that identifies priorities and methods for undertaking research and the material it addresses
- a resource assessment that identifies the nature of holdings and the current state of knowledge for the research fields to which they relate (this will draw upon the inventory: see the next section - 'Inventories of collections')
- A research agenda outlining the areas that the material may have the potential to address.

For further information see the Wellcome Trust Ethical Guidelines for medical research (Further reading and resources section).

Inventories of collections

We advise that every museum with collections of human remains should compile, and make public, an inventory of their holdings. You should include known information about the date and provenance of the remains and their exact nature, and the circumstances of their

acquisition. Information that should be made publicly available about human remains collections should include (where possible):

- Numbers of remains: This will normally be by individuals, but might also be individual remains grouped into assemblages or series. Body parts should only be grouped together if there is a clear and proven association between them.
- Physical nature: For example whether skeletal, how complete, their physical condition.
- Date: The estimated date of death, although there could be very wide parameters owing to lack of contextual or documentary information.
- Provenance: The geographical location of where the remains originated and, if known, the context of their recovery and subsequent history. In many instances detailed genealogical and geographical provenance is unknown, especially in the case of remains collected during early scientific expeditions outwith the UK.
- Status within a collection: Such as whether they are fully accessioned, or on loan from another institution.

Under the Freedom of Information (Scotland) Act 2002, (section 38) a deceased person's health records are exempt from public access.

Mummified remains, Glasgow Museums

The accessioning of human remains is not always quick or straightforward. Glasgow Museums have held eight boxes of mummified human body parts since 1982 following the sudden death of the previous holder, a pathologist. The collection comprises over 900 human remains principally from South America and Ancient Egypt, with a small number of samples from Scotland and England. They date from approximately 1800 BCE to the modern era.

The remains were kept at the pathologist's workplace and were passed to the museums for storage by his colleagues. Archival information and a list of contents existed but the deceased's will and estate inventory made no mention of the collection. No additional documentation on the legal status of the collection has been found. Colleagues of the deceased stated that it was highly unlikely that the pathologist would have explicitly bequeathed the remains to Glasgow Museums at that time, as he was not expecting to die in

the near future. All efforts by Glasgow Museums' staff to contact the benefactors of the estate proved fruitless.

Finally, in 2007, 25 years after the remains came to Glasgow Museums, management decided that, as all due process had been followed, the remains should be formally accessioned into the collections. This will not prevent any future claim on the remains, but has allowed Glasgow Museums to account for them and manage them more effectively.

Chapter 3: Requests for the return of human remains

Introduction

Museums may be approached by individuals or groups seeking the return or repatriation of human remains. We strongly recommend that your governing body develops a clear, written and public procedure for dealing with such requests. This should explain the criteria on which a decision will be made and the decision-making process. We recommend that claims are dealt with on a case-by-case basis.

Receiving a request

When a claim is made, we would advise you to take it as an opportunity to open a constructive dialogue. A good first response would be to send a formal acknowledgement of the claim, along with details on how it will be handled. A museum representative should also be given responsibility for seeing the claim through and acting as the claimant's point of contact.

The nature and scope of the request

There are a range of factors you will need to consider when dealing with a claim, some of which may not be covered by the information accompanying the original request. These can include:

- The identity of the claimant and any intermediary/representative, and evidence that they do represent who they claim. For remains in medical collections, this is the 'nearest relative' as defined in the Human Tissue (Scotland) Act 2006 Section 50.
- The connection between the claimant and the deceased and the basis for the claim.
- The specific remains being claimed - the claimant may need your help in identifying these.
- The claimant's wishes for the future of the remains.
- Information the claimant has regarding other potential claimants.

This information may be available from the claimant, or you may need the advice of experts, including from the claimant's national government.

The decision-making process

Your process for handling claims needs to explain who will be involved in the process, such as establishing an expert committee to discuss the case. The final decision should rest, however, with your governing body and not with an individual. The prompt and sensitive handling of requests is very important while the decision-making process should be as open as possible, fully involving the claimant.

We advise that you keep a full documentary record of all discussions. Your governing body will need a written report covering all the facts and evidence about the remains and the claim in order to reach its decision. This should then be kept as part of your archives. Your discussions should cover the future use and display of your records, including photographs, taking full account of the claimant's views as well as the legal and ethical issues.

Sometimes a claim may be contested by a different claimant. If this happens then all claimants should be invited to take part in your decision-making process. In cases where remains are poorly provenanced, you should pursue avenues of investigation including government, indigenous organisations and community representation. The responsibility for the costs and the method of return or repatriation should be considered as part of the decision-making process.

Criteria for decisions

The points below will help you to set the parameters when considering requests for the return or repatriation of human remains and should be fully documented as part of the process.

- The identity of the remains:
What is the evidence that the human remains concerned are those requested by the claimant?

- History of possession:
What is known about the provenance of the remains before their acquisition by your museum and how this relates to your rights of possession? Is there documentation relating to the use and treatment of the remains since their acquisition?
- Connection between the remains and the claimant:
What evidence connects the claimant and the human remains? Is the claimant a genealogical descendent? Claims based on cultural affiliation should be considered. This may include evidence of group identity or any continuity of cultural practices between the original possessors and those making the request. For human remains of UK origin the 'nearest relative' is as defined in the Human Tissue (Scotland) Act 2006 Section 50.
- Representatives of claimants:
If the claimant is acting on behalf of others, what is their right to be a representative?
- Significance of the remains:
What is the significance of the remains to both the claimant and your museum? This may include issues such as the religious, cultural, historical or scientific importance of the human remains to either.
- Consequences of return to the claimant:
Repatriation of ancestral remains may take place under a variety of conditions, one of which is that the community to whom the remains are repatriated is entitled to decide their future treatment. However, the museum considering the repatriation is entitled to ask what the likely future treatment will be.
- Future partnerships:
Future partnerships resulting in additions to your collections, publicity for the museum, increased contextual knowledge of your collections and research opportunities should all be considered.
- Consequences of retention:
What is the likely future treatment and use of the human remains if you retain them? This may include display, research, destruction, alteration or restrictions of access.
- Broader implications of not returning the remains:
Issues you may wish to consider include any publicity the decision would attract, the implications for access and research, and the effect on other partnership opportunities with the claimant, other institutions and donors.

After the decision

Once your decision is made the result should be documented and the claimant should be informed immediately. A full explanation should be provided to the claimant of how and why the decision was reached. They should then be given time to respond. If a request for return is turned down this should not prevent further dialogue with the claimant. Ideally, the claimant and the museum should work together to prepare media statements within an agreed timeframe and approach.

If the decision is to repatriate

If you decide to repatriate or return the human remains the claimant should be fully involved in all decisions regarding their treatment in the period before the transfer. This includes photography, analytical research, media comment and any other event.

For remains that are the subject of claims for return, all associated archival material should be made available to those who have made a successful claim. Some claimant communities may not wish information about the remains to be placed in the public domain. In some instances it may also be culturally unacceptable to photograph ancestral remains or to make existing archival photographs of remains publicly available. We recommend that the community or organisation making the claim be consulted.

You should work with the claimant to deal with any legislative or other procedures such as customs requirements, transport and preferred packing materials. The remains will need to be packed in the knowledge that whoever opens the container may be unfamiliar with museum practice for the transport of remains. What you consider to be necessary for health and safety might be seen as inappropriate by the community. In general we recommend that the packing should be done in a way that will result in the revealing of the remains gradually.

Your museum should provide copies of all the relevant documentary materials in the collections at the same time as the human remains are returned. If possible, precise statements should be provided in advance, with copies accompanying the remains,

describing the previous storage conditions, any chemical treatments, and type and use of packing materials (such as desiccants). Legal advice should be sought in drafting an agreement to return.

You should ask for guidance from the claimant on the management of and access to, documentation relating to remains which will be kept by your museum. This needs to take account of the Freedom of Information (Scotland) Act 2002, the Data Protection Act 1998 and museum ethics, as well as the wishes of the claimant. You should also be ready to help the claimant research provenance where you have access to archives or other material they might have difficulty obtaining.

Repatriation of nine toi moko, University of Aberdeen

In 2007 the University of Aberdeen returned nine toi moko (Māori tattooed human heads) to Te Papa Museum of New Zealand. The university followed the procedure and criteria developed for a previous case and which now form part of the museum's collection policy. Although the decision was the responsibility of the University Court, discussions were delegated to an expert panel consisting of representatives of the court, university museum curators, academic staff from law and anthropology, the director of another major Scottish museum and a nominee of Te Papa.

The main focus of discussion was whether Te Papa was a representative of Māori people as well as of the New Zealand Government, and the role of human remains in Māori culture. As with the previous repatriation case, a verbal presentation by the claimant to the expert panel was particularly helpful in enabling them to come to a unanimous recommendation. The decision to repatriate coincided with the museum having a New Zealand artist in residence, who developed two works that formed the backdrop to the return ceremony. The links with Te Papa have led to a study visit by one of the curators, academic publication by the museum and plans to improve documentation and access to the museum's Māori collections.

Medical Collections, Royal College of Surgeons of Edinburgh

The Royal College of Surgeons of Edinburgh receives around three enquiries a year from people wishing to trace the provenance of remains in the collection. There is a clear procedure under which the person making the enquiry is asked why they wish to trace the

provenance and a request form is sent out to be completed. The Collections Manager discusses the issue with whoever is making the enquiry and tells them about the possible outcomes, issues and options that may arise if a positive identification can be made. No positive identifications have yet been possible.

Chapter 4: Legal issues

Introduction

There are a variety of legal issues with which your museum needs to comply if it holds human remains in its collection. This chapter has been prepared by a legal consultant and is intended as an introduction to the legal issues surrounding the holding and return of human remains affecting specifically museums in Scotland.

A particularly important change in legislation in Scotland came into force with the Human Tissue (Scotland) Act 2006. This sets out rules on issues such as the retention of tissue samples, the use of cadavers and body parts for anatomical examination, and the public display of bodies and body parts.

It is essential that, if you have any specific legal enquiries, these should be handled by an appropriate legal consultant who will be able to advise you more specifically relating to your individual circumstances.

The law stated in this document is correct at the time of publication (April 2011).

Legal Advice for the Care of Human Remains in Scottish Museum Collections

Prepared by Dr Kathryn Whitby-Last, Senior Lecturer in Law, University of Aberdeen

I. Legal issues affecting human remains in museum collections

The law in relation to human tissue has changed following the enactment of the Human Tissue (Scotland) Act 2006, which came into force in April 2006. The Act sets out rules regarding, *inter alia*, the retention of tissue samples, the use of cadavers and body parts for the purposes of anatomical examination and the public display of bodies and body parts. A number of these provisions will be of relevance to museums holding human remains and may affect research on remains or their display.

I.1 Ownership of human remains

In Scots law, in common with other systems, “the issue of ownership of the human body and body parts is very controversial”.¹ The explanation for this may be a resistance to any notion of human remains as a ‘commodity’. It is generally accepted that human remains are *extra commercium* - that it is not possible to assert rights of ownership over them in Scots law.² Unlike in England and Wales, there is no exception to the rule for remains that have undergone the application of skill designed to preserve them for medical or scientific examination.³ That said, in the case of *Dewar v HM Advocate*,⁴ Lord Moncrieff implied that the unauthorised removal of a body before disposal may amount to theft and, according to Gordon, “it is possible to hold that it is theft to steal a body which ... has been gifted to a laboratory, or placed in a museum.”⁵ However, the common law in this area is by no means settled and according to Logie, “there are obvious contradictions in judicial dicta which remain unresolved”.⁶

While the law is reluctant to admit the possible assertion of a right of title *qua* ownership in human remains, there can hardly be room for the denial of a possible right of possession based on a physical holding by one intending to retain control. While the law can bar ownership in certain things, it cannot exclude the possibility of the factual circumstances of possession. Arguably, in the case of possession, the law can do no more than limit a possessor’s protective remedies.

¹ Niall R Whitty “Rights of Personality, Property Rights and the Human Body in Scots Law” (2005) 9 *Edinburgh Law Review* 194, at 221.

² *Robson v Robson* (1897) 5 SLT 351.

³ The English exception was established in *R v Kelly* [1999] 2 WLR 384. Whitty argues that the Scots law doctrine of *specificatio* may apply to human remains to give an equivalent effect to the *Kelly* doctrine but this argument is untested: Niall R Whitty “Rights of Personality, Property Rights and the Human Body in Scots Law” (2005) 9 *Edinburgh Law Review* 194, at 226.

⁴ *Dewar v HM Advocate* 1945 SLT 114 at 116: “a body once it has been interred can no longer be protected by the law against theft.”

⁵ Gordon, *The Criminal Law of Scotland* (3rd ed) (2001) para 14.27.

⁶ *Historic Scotland Operational Policy Paper 5: The Treatment of Human Remains in Archaeology* (2006) annex A, page 19.

Regarding the right of possession, the common law applies a presumption that the possessor of a corporeal moveable is its owner.⁷ This would be potentially relevant to a contested claim, to be decided by application of the common law, in which the present possessor would seek to resist another's assertion of an alleged legal right to possession. The presumption is open to rebuttal by proof of (a) a right of ownership in the thing and (b) that possession by the claimant was lost or parted with in circumstances not consistent with the transfer of that right.

In the case of human remains, the claimant would have to show prior possession of the remains and offer proof that the remains were not lost or parted with on a basis consistent with transmission of the right of possession.

One consequence of the no property in a corpse rule is the effect on acquisition of human remains through excavation. Because human remains cannot be owned it is not theft to remove a body from a grave or tomb.⁸ However, once buried in Scotland, human remains are protected from unlawful disturbance by the crime of violation of sepulchres. This applies only as long as the remains are 'in a condition to be regarded as an object of reverential treatment'.⁹ In *H M Advocate v Coutts*, Lord McLaren stated that, 'I am not prepared to hold as matter of law that there is any precise duration of time that ... justifies the removal of bodies'.¹⁰ The applicability of the offence is therefore a question of fact relating to the degree of decomposition of the body.¹¹ A detailed analysis of the legal position in relation to disinterment can be found in Annex A of *Historic Scotland Operational Policy Paper 5: The Treatment of Human Remains in Archaeology* (2006).

1.2 Loans

Human remains to be loaned from abroad for display in a temporary exhibition may be covered by the anti-seizure provisions in Part 6 of the Tribunals, Courts and Enforcement Act 2007.¹² This enactment protects "cultural objects" from being seized or forfeited (including diligence or sequestration) unless by a court order. Although there is no definition of cultural object in the legislation, the Explanatory Notes to the legislation state: "it will apply to objects of any description". Although human remains should not be considered objects, remains that are physically bound-up with other non-human materials to form an artefact composed of several materials are likely to be covered by the Act.

The DCMS consultation paper that preceded the legislation stated: "immunity from seizure should be available for any object of artistic, cultural, historical or scientific interest".¹³ The Protection of Cultural Objects on Loan (Publication and Provision of Information) Regulations 2008/1159 set out the information which must be published by a museum or

⁷ Reid, *The Law of Property in Scotland*, 1996, para 150 notes that the presumption means that the defender "is at a considerable advantage"; see also generally Carey Miller with Irvine, *Corporeal Moveables in Scots Law*, 2nd ed 2005, para 1.19.

⁸ Hume, i, 85.

⁹ *H M Advocate v Coutts* (1899) 3 Adam 50, at 61.

¹⁰ *H M Advocate v Coutts* (1899) 3 Adam 50, at 62.

¹¹ In 2004 two youths were convicted of the crime of violation of sepulchres after interfering with the mummified head of Sir George Mackenzie, who died in 1691, in the grounds of Greyfriars Kirkyard in Edinburgh.

¹² These came into effect in Scotland on 21 April 2008: The Tribunals, Courts and Enforcement Act 2007 (Commencement) (Scotland) Order 2008 SI 2008 No. 150.

¹³ DCMS, *Consultation Paper on Anti-Seizure Legislation* (2006) Para 1.34

gallery which borrows an object from abroad for a temporary public exhibition if that object is to be protected from seizure or forfeiture.

If the remains to be loaned are from the UK and were previously part of an anatomical specimen¹⁴, in order for possession to be lawful, the institution receiving the loan must be licensed under section 5(5)(a) of the Anatomy Act 1984 or the loan must be from a person so licensed.¹⁵

It is important to note the restrictions on public display that may also apply. These are discussed in Section 1.5.

1.3 De-accessioning / repatriation

Museums intending to de-accession human remains, whether or not in response to a claim for return, should ensure that they have the power to do so. National Museums Scotland is subject to a statutory bar on de-accessioning objects.¹⁶ It may be possible to argue that the terms of this prohibition do not cover human remains because they are not “an object the property in which is vested in them”. However, similar restrictions applied to museums in England¹⁷ and it was deemed necessary¹⁸ to legislate specifically to enable the de-accessioning of remains.¹⁹

It is possible to transfer objects from National Museums Scotland to other institutions if they are listed in Schedule 5 of the Museums and Galleries Act 1992²⁰ but this would not enable repatriation. In the case of a desired repatriation it may be possible to secure the approval of the Scottish Ministers under section 8(3)(d) of the National Heritage (Scotland) Act 1985.²¹

It is also possible that the constitutional documents of a museum or conditions imposed upon a gift or bequest of human remains may restrict the ability of the museum to de-accession human remains.

Museums that rely on public funding may be regarded as public authorities for the purposes of the Human Rights Act 1998. Although the law in this area has yet to be clarified, it is possible that action could be brought under a number of different Articles of the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols if a request to repatriate remains is refused.²²

¹⁴ Defined in section 1(2) of the Anatomy Act 1984.

¹⁵ This applies only where the part is from a body that cannot be recognised simply by examination of the part: Section 5(4) and 5(4)(a) of the Anatomy Act 1984.

¹⁶ Section 8 of the National Heritage (Scotland) Act 1985. A similar bar on de-accessioning objects applies to the National Galleries in section 4C of the National Galleries of Scotland Act 1906.

¹⁷ For example, section 5 of the British Museum Act 1963.

¹⁸ See DCMS, *The Report of the Working Group on Human Remains* (2003)

¹⁹ Section 47 of the Human Tissue Act 2004.

²⁰ Section 6 of the Museums and Galleries Act 1992.

²¹ Dispensation has been granted to National Museums Scotland for the return of a Tasmanian skull and a collection of Māori remains. The Australian Government and Te Papa Tongarewa required designation by the Minister in order to receive the remains.

²² For a full discussion of the issues see: DCMS, *The Report of the Working Group on Human Remains* (2003)

De-accessioning must also take account of the MLA model Acquisition and Disposal Policy for museums participating in the Accreditation Scheme. This states:

‘12h: A decision to dispose of a specimen or object, whether by gift, exchange, sale or destruction (in the case of an item too badly damaged or deteriorated to be of any use for the purposes of the collections or for reasons of health and safety), will be the responsibility of the governing body of the museum acting on the advice of professional curatorial staff, if any, and not of the curator of the collection acting alone.’

It should be noted that this procedure may be impractical for medical collections which deal with the disposal of human tissue on a regular basis. The disposal of a body after anatomical examination has been concluded should, as far as practicable, be in accordance with any wishes expressed by the deceased or surviving relatives.²³

If human remains are to be repatriated, museums should consider the possibility that the remains have been subjected to processes involving harmful substances. In order to avoid potential liability for harm to those handling the remains it is advisable to include a clause in the repatriation agreement specifically excluding liability.

1.4 Research

The Human Tissue (Scotland) Act 2006 requires that the removal of body parts be undertaken only with prior authorisation.²⁴ However, this does not apply where at least 100 years have elapsed since the date of the person’s death.²⁵ Furthermore, where body parts have been removed prior to 1 September 2006²⁶ for the purpose of *inter alia* research, education or training other than during a post-mortem²⁷ or anatomical examination²⁸ they may be retained and used for any purpose.²⁹ Similarly, the restrictions on carrying out post-mortem examinations³⁰ do not apply where at least 100 years have elapsed since the date of the person’s death³¹. Where an organ or tissue sample has been removed prior to 1 September 2006 during a post-mortem it may be retained and used for any purpose.³²

The effect of these exemptions is that many research activities undertaken in relation to human remains in museums will fall outside of the restrictions in the Human Tissue (Scotland) Act 2006.

²³ For the bodies of persons dying prior to 1 September 2006: regulation 4, Anatomy Regulations 1998 SI No. 44. For the bodies of persons dying after that date: regulation 6, Anatomy (Scotland) Regulations 2006 SSI No. 334.

²⁴ The rules for authorisation are set out in sections 6-11 of the Human Tissue (Scotland) Act 2006. Failure to obtain authorisation constitutes an offence under section 16.

²⁵ Human Tissue (Scotland) Act 2006, section 4(d).

²⁶ Human Tissue (Scotland) Act 2006 (Commencement) Order 2006 SI No. 251, article 3.

²⁷ Defined in section 23 of the Human Tissue (Scotland) Act 2006.

²⁸ Defined in section 1 of the Anatomy Act 1984. Restrictions on anatomical examination are set out in sections 2-6 of the Act.

²⁹ Human Tissue (Scotland) Act 2006, section 14.

³⁰ Sections 27-35 and 37 of the Human Tissue (Scotland) Act 2006.

³¹ Human Tissue (Scotland) Act 2006, section 25.

³² Human Tissue (Scotland) Act 2006, section 36.

1.5 Display

Part 5 of the Human Tissue (Scotland) Act 2006 provides for the amendment of the Anatomy Act 1984 to introduce a new regulatory regime for the holding of certain human tissue for public display. Section 53(9) of the Human Tissue (Scotland) Act 2006 introduced section 6A into the Anatomy Act 1984 to prohibit the public display of an anatomical specimen³³ or a body or body-part which has been used for anatomical examination, including one used outwith Scotland for anatomical examination, whether or not the body or body-part has undergone any preservation process. Public display in contravention of section 6A of the Anatomy Act 1984 constitutes an offence.³⁴ It is important to note that the public display of human remains that were not “anatomical specimens” or parts thereof is not subject to control.

The prohibition on public display in section 6A of the Anatomy Act 1984 will not apply in certain circumstances. The remains must be lawfully held under the terms of the Anatomy Act 1984,³⁵ a license to publicly display the body must have been granted by the Scottish Ministers³⁶ and the conditions of section 6A(3), or 6A(5), or 6A(7) or 6A(8) must have been met.

Section 6A(3) applies to a part of a body in two circumstances: The first requires that where a person has requested that their body be used after their death for anatomical examination³⁷ that the request also includes permission for public display. The second applies to imported bodies where anatomical examination is authorised under section 4A of the Anatomy Act 1984 and that authorisation includes authority for public display.

Section 6A(5) applies to anatomical specimens where the specimen is in the course of being used for anatomical examination, the deceased cannot be recognised by the body or part of the body, that no more than three years have passed since the date of the deceased's death³⁸ and the same requirements as in section 6A(3) have been met.

Section 6A(7) applies to body parts where the body has been used outwith Scotland for anatomical examination and where the part was removed from the body during the course of that examination.

³³ Defined in section 1(2) of the Anatomy Act 1984 as a body to be used for anatomical examination or a body in the course of being used for anatomical examination (including separated parts of such a body).

³⁴ Section 11(1)(d) of the Anatomy Act 1984. An offender is liable to a fine not exceeding level 3 on the standard scale or imprisonment for a term not exceeding 3 months: section 11(6).

³⁵ Under sections 5(5) or 3(4) of the Anatomy Act 1984. Section 5(5) provides for a licence granted by the Secretary of State for the possession of body parts after the expiry of authorisation for anatomical examination. Section 3(4) provides authority for the possession of an anatomical specimen if licensed by the Secretary of State under section 3(2)(b) to have possession of anatomical specimens.

³⁶ Issued under the Anatomy Act 1984, section s 6A(9).

³⁷ Under section 4(1) of the Anatomy Act 1984.

³⁸ Section 4B(2) of the Anatomy Act 1984.

Section 6A(8) applies where the body has been used outwith Scotland for anatomical examination and the body was not imported for use for anatomical examination in Scotland; and is not so used at any time.

Of most importance for museums, section 6A(2) provides for an order of the Scottish Ministers exempting persons in control of Scottish museums from the necessity of obtaining the licence for public display. An order in terms of this provision was made in Scottish Statutory Instrument 2006 No. 328³⁹ relating to specified museums.⁴⁰ However, despite having such a licence, no public display is allowed while any procedure⁴¹ in relation to an anatomical examination, or any similar procedure, is being carried out.⁴²

These exemptions enabling public display apply to all holdings of anatomical specimens, even those held before the commencement of the Human Tissue (Scotland) Act 2006.

In the case of anatomical specimens on loan, the exemptions still apply even if the museum is not itself licensed under section 5(5)(a) of the Anatomy Act 1984 to have possession of body parts, so long as there is permission to have possession from a person who is so licensed.⁴³ However, the other requirements must still be met, including the requirement of a licence for public display granted under section 6A(9) of the Anatomy Act 1984 if the museum is not one of those listed in Scottish Statutory Instrument 2006 No. 328.

1.6 Records

Records associated with human remains may fall within the remit of the Freedom of Information (Scotland) Act 2002. Public authorities as defined in section 8(i) of the Freedom of Information (Scotland) Act 2002,⁴⁴ may be subject to requests for information. A deceased person's health record is classified as exempt information,⁴⁵ which means that requests for such information must be denied. However, this exemption ceases to operate 100 years after the information was created.⁴⁶

³⁹ The Anatomy (Specified Persons and Museums for Public Display) (Scotland) Order 2006 which came into force on 1 September 2006.

⁴⁰ National Museums Scotland, Glasgow Museums, the Museum of the Royal College of Surgeons of Edinburgh, the Medical History Museum (University of Dundee and Tayside Health Board), and the University Museums of Aberdeen, Dundee, Edinburgh, Glasgow and St Andrews. See Appendix 3.

⁴¹ This includes dissection, removal and implantation: section 6A(11) of the Anatomy Act 1984.

⁴² Section 6A(10) of the Anatomy Act 1984.

⁴³ Section 5(5)(b) of the Anatomy Act 1984.

⁴⁴ Part 7 of Schedule 1 of the Freedom of Information (Scotland) Act 2002.

⁴⁵ Section 38(1)(d) of the Freedom of Information (Scotland) Act 2002.

⁴⁶ Section 58(2)(b) of the Freedom of Information (Scotland) Act 2002.

Further reading and resources

Legislation

Anatomy Act 1984:

<http://www.legislation.gov.uk/ukpga/1984/14/contents>

Data Protection Act 2001:

<http://www.legislation.gov.uk/ukpga/1998/29/contents>

Freedom of Information (Scotland) Act 2002:

<http://www.legislation.gov.uk/asp/2002/13/contents>

Human Tissue (Scotland) Act 2006:

<http://www.legislation.gov.uk/asp/2006/4/contents>

Guidance

DCMS 2003: Department of Media Culture and Sport, Report of the Working Group on Human Remains: http://www.culture.gov.uk/reference_library/publications/4553.aspx

DCMS 2005: Department of Culture, Media and Sport, Guidance for the Care of Human Remains in Museums: http://www.culture.gov.uk/reference_library/publications/3720.aspx

Historic Scotland 1997 (revised 2006): The Treatment of Human Remains in Archaeology, Edinburgh (Historic Scotland Operational Policy Paper 5): <http://www.historic-scotland.gov.uk/human-remains.pdf>

Museum Ethnographers Group 1994: 'Professional guidelines concerning the storage, display, interpretation and return of human remains in ethnographical collections in United Kingdom Museums', in Journal of Museum Ethnography 6 (October 1994), 22-24
Museum Ethnographers Group website:

<http://www.museumethnographersgroup.org.uk/?p=cms&pid=5>

McKinley, I and Roberts, C 1993: Excavation and post-excavation treatment of cremated and inhumed human remains, Birmingham (Institute of Field Archaeologists Technical Paper 13): <http://www.archaeologists.net/modules/iContent/inPages/docs/burial%20paper.pdf>

Museums Association 2008: Code of Ethics for Museums:

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

World Archaeological Congress 1989: The Vermillion Accord, Archaeological Ethics and the Treatment of the Dead, A statement of principles agreed by Archaeologists and Indigenous peoples at the World Archaeological Congress. (See Appendix 2 of these guidelines).

UNESCO: Universal Declaration on Bioethics and Human Rights 2005:

http://portal.unesco.org/en/ev.php-URL_ID=31058&URL_DO=DO_TOPIC&URL_SECTION=201.html

Wellcome Trust 2005 Ethical Guidelines on Good Research Practice:
<http://www.wellcome.ac.uk/About-us/Policy/Policy-and-position-statements/WTD002753.htm>

MLA Model Acquisition and Disposal Policy:
http://www.mla.gov.uk/what/raising_standards/accreditation/~media/Files/pdf/2010/accreditation/Model_Acquisition_Disposals_Policy_2008.ashx

Resources

Care and conservation of ethnographic objects:
<http://www.conservationregister.com/ethnographic.asp?id=4>

Human Remains Subject Specialist Network:
<http://www.humanremains.specialistnetwork.org.uk/>

Historic Scotland: Human Remains rapid response call off contract information:
<http://www.historic-scotland.gov.uk/index/heritage/archaeology/human-remains.htm>

Licensed Medical Waste Disposal Companies:
http://www.uk-local_search.co.uk/directory/medical+waste+disposal/#7102

Museums Galleries Scotland: advice sheet 'Creating or Improving Stores':
<http://www.museumsgalleriesscotland.org.uk/publications/publication/128/creating-or-improving-stores>

Museums Association Suppliers directory:
<http://www.museumsassociation.org/suppliers/find-a-supplier>

Institute of Conservation (ICON) Conservation Register:
<http://www.conservationregister.com/index.asp>

Collections Link: Advice on marking and labelling museum objects:
<http://www.collectionslink.org.uk/index.cfm?ct=assets.assetDisplay/title/Labelling%20and%20Marking%20Museum%20Objects/assetId/335>

The British Association for Biological Anthropology And Osteoarchaeology (BABAO): List of institutions receiving skeletal collections:
<http://www.babao.org.uk/index/institutions-receiving-skeletal-collections>

Appendix I

Museum Ethnographers' Group (MEG) Guidelines on Management of Human Remains

Professional guidelines concerning the storage, display, interpretation and return of human remains in ethnographical collections in the United Kingdom.

Introduction

1.1 Human remains are defined as including both prehistoric and historic biological specimens as well as artefacts (i.e. items made from human remains which have been altered by deliberate intent) in ethnographic collections in British museums. MEG acknowledges that other groups of museum professionals have overlapping areas of interest in human remains as defined above.

1.2 Different practices have commonly been applied in the curatorship of human remains from western and non-western societies. However, not all human remains in museums are problematic.

1.3 A number of interested parties claim rights over human remains. These include: actual and cultural descendants, legal owners and the worldwide scientific community. Governing bodies, museum curators and others have to evaluate these potentially competing interests and acknowledge that ideas about the legal and moral aspects of holding many sorts of material are complex and may not always coincide.

1.4 Human remains in museum collections were often acquired under conditions of unequal relationships. Ethnic and minority peoples are now taking back control over the preservation and interpretation of their heritage. This is part of the growing politicisation and cultural recuperation which is taking place amongst indigenous peoples in various parts of the world. The claim for the return of human remains may in some circumstances be a method of political self-assertion. In order to take these issues forward, it is necessary to open dialogue between museum professionals and indigenous peoples from a position of equality.

1.5 Attitudes to death and human remains differ from one culture to another, and change within cultures overtime. Curators need to address cases both in the light of the present day situation and in a full and deliberate consciousness of all the historical circumstances. The question of human remains in museums is a developing issue. Therefore, policies made now may need to be reviewed in the future.

1.6 Requests concerning the appropriate care or return of particular human remains must be resolved by individual museums on a case by case basis. This will involve the consideration of ownership, cultural significance, the scientific, educational and historical importance of the material, the cultural and religious values of the interested individuals or groups and the strength of their relationship to the remains in question.

Collection management

2.1 Museum collections are in the public domain and *bona fide* enquirers have the right of access to data on holdings.

2.2 However, it may be appropriate to restrict access to certain specified sacred items where unrestricted access may cause offence or distress to actual or cultural descendants. This may include the provision of separate storage facilities.

2.3 Governing bodies and curators should consider all the ethical and legal implications before considering the active or passive acquisition of human remains.

Display and interpretation

3.1 Curators should take a proactive rather than a reactive position with regard to the display of human remains. Existing display arrangements should be evaluated to consider whether the current treatment is likely to cause offence to actual or cultural descendants.

3.2 The process of preparing a display is a subjective editorial activity. Curators should inform themselves of the concerns of indigenous peoples and where practicable should seek their involvement through consultation.

3.3 Exhibitions in museums carry authority. Curators should be aware of the likely public effects of exhibitions. They should evaluate whether an exhibition is reinforcing cultural stereotypes or broadening an understanding of a particular group of people in a way which is relevant to the present day.

Requests for the return of human remains

4.1 All requests for the return of human remains should be accorded respect and treated sensitively.

4.2 It is the responsibility of the curator to assess the validity of the person or group making requests and to establish the credentials of their claim.

4.3 Long-term loans are considered to be an inappropriate method of responding to requests for the return of human remains.

4.4 The rules and governance of the museum or institution will dictate the parameters for any action.

4.5 Legal ownership of requested items needs to be established before any transfer can be considered.

4.6 Before any decision is made the curator should establish and inform the governing body of the long-term fate of the items under consideration. This may include either the transfer to a museum or a local keeping place, or the return to the community for customary disposal such as cremation or burial.

4.7 The cost and means of return should be considered before a decision is taken.

4.8 In those cases where a museum is free to dispose of items the Museums Association's Code of Ethics and the Museums & Galleries Commission's Registration Scheme⁴⁷ for Museums and Galleries in the United Kingdom should be followed.

4.9 Before any transfer takes place items should be fully documented and a copy should be transferred with them.

These guidelines were adopted at the Museum Ethnographers Group Annual General Meeting on 23 May 1991 and revised at the annual general Meeting on 7 April 1994. They have previously been published in the August 1991 edition of MEG News, in the Museums Journal 71 Vol. 94.7, July 1994 and in the Journal of Museum Ethnography, No. 6, 1994.

Reprinted here with the kind permission of the Museum Ethnographers Group.

⁴⁷ This is now the MLA Accreditation Scheme

Appendix 2

The Vermillion Accord

A World Archaeological Congress position statement agreed by the delegates to a meeting held in 1989 in Vermillion, USA, on 'Archaeological Ethics and the Treatment of the Dead'.

Human Remains

1. Respect for the mortal remains of the dead shall be accorded to all irrespective of origin, race, religion, nationality, custom and tradition.
2. Respect for the wishes of the dead concerning disposition shall be accorded whenever possible, reasonable and lawful, when they are known or can be reasonably inferred.
3. Respect for the wishes of the local community and of relatives or guardians of the dead shall be accorded whenever possible, reasonable and lawful.
4. Respect for the scientific research value of skeletal, mummified and other human remains (including fossil hominids) shall be accorded when such value is demonstrated to exist.
5. Agreement on the disposition of fossil, skeletal, mummified and other remains shall be reached by negotiation on the basis of mutual respect for the legitimate concerns of communities for the proper disposition of their ancestors, as well as the legitimate concerns of science and education.
6. The express recognition that the concerns of various ethnic groups, as well as those of science are legitimate and to be respected, will permit acceptable agreements to be reached and honoured.

Appendix 3

Museums exempted from section 6A of the Anatomy Act 1984

The Anatomy (Specified Persons and Museums for Public Display) (Scotland) Order 2006
SSI 2006 No. 328.

University of Aberdeen Museums (Marischal Museum, Anatomy Museum, Pathology and Forensic Medicine Collection, Zoology Museum)

University of Dundee Museums (Museum Collections, Anatomy Museum, Pathology Museum, University of Dundee/ NHS Tayside Contact, Tayside Medical History Museum)

University of Edinburgh Museums (Natural History Collections, Anatomy Resource Centre)

University of Glasgow, The Hunterian Museum (including the Anatomy Museum)

University of St Andrews, Anatomy and Pathology Collection

Museum of the Royal College of Surgeons of Edinburgh

National Museums Scotland

Glasgow Museums



Museums
Galleries
Scotland

Museums Galleries Scotland,
1 Papermill Wynd, McDonald Road, Edinburgh EH7 4QL
Tel (switchboard) 0131 550 4100 **Fax** 0131 550 4139
Email inform@museumsgalleriesscotland.org.uk
Website www.museumsgalleriesscotland.org.uk

Published by Museums Galleries Scotland April 2011.
A large print version of the text is available on request.

Museums Galleries Scotland is a company limited by guarantee registered in Scotland (No. 74264) and a charity registered in Scotland (No. SC015593).