

## **The Barber Institute of Fine Arts, Due Diligence Policy for Loans**

### **Introduction**

The Barber Institute of Fine Arts operates an ethical loans policy and will not knowingly borrow or display any work for which there is reasonable cause to believe that the work may have been stolen, illegally exported or illegally imported from its country of origin. This policy sets out the principles and procedures to which the Barber Institute of Fine Arts adheres when considering any loan for temporary exhibition, or long term loan for display in the galleries, from governmental, institutional or private lenders.

The Barber Institute of Fine Arts recognises and complies with the principles set out in the following national and international standards:

- Statement of Principles issued by the National Museum Directors Conference on “spoliation of works of art during the Holocaust and World War II period” in 1998;
- Combating Illicit Trade: Due Diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material, published by DCMS, October 2005;
- The UNESCO 1970 Convention on the Means of prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property - with particular attention given to objects originating from areas of conflict or known looting and to ensure that the excavation, importation or transfer of objects has not contravened this convention;
- The ICOM Code of Ethics;
- MA Code of Ethics;
- SPECTRUM: UK Documentation Standard for museums;
- Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- ICOM red list

### **Provenance and due diligence procedures for loans**

The Barber Institute of Fine Arts, Loan Agreement requires the Lender to confirm the following:

- The Lender has legal title to the object(s) and has the lawful right to lend the object(s).
- The Lender is not aware of any past, current or potential claim by any other third party to the lawful title to the object(s).
- The Lender has no reason to believe that the object(s) has been stolen or illegally imported or exported.

Where the Lender wishes to use its own loan documentation, the Lender will be asked to confirm in writing that they can comply with the above statements.

In addition *Due Diligence Forms for Lenders* are sent to each Lender for completion. The form seeks an account of provenance from the lender with supporting documentary evidence, confirmation of ownership and legal authority to lend including information of any third party claims to ownership.

The Head of Collections & Learning assesses the information supplied by the lender using it to support the completion of the *Due Diligence Checklist* to ensure that the work has, as far as possible, a clear history of ownership from its date of creation, particularly through the period 1933-45 and that there is reliable documentation that shows that either the object was out of its country of origin before 1970 or that it was lawfully exported after 1970. Once the *Due Diligence Checklist* is completed the Head of Collections & Learning considers if:

- There are gaps in the provenance of the object
- There are doubts as to the objects ethical status or its legal import/ exportation
- There is no acceptable documentary evidence to support the provenance account

If any of the above statements apply to the object, the Head of Collections & Learning must complete a *Due Diligence Risk Assessment* and where required, seek information from published and unpublished sources and consulting with other curators, scholars, authorities, auction houses, dealers and any other organisations that might hold information that can be used to establish provenance. Gaps in provenance of an object do not automatically mean a loan should not proceed. The information gathered from the *Due Diligence Checklist & Risk Assessment* needs to be considered as a whole and a judgement reached about the risks associated with proceeding.

The Head of Collections & Learning must attach copies of any further information obtained from other sources and notes of any additional research carried out. If there are gaps in provenance and a decision to proceed with the loan is made, the Head of Collections & Learning must additionally record on the form how the decision has been reached.

All documentation is reviewed by the Director of the Barber Institute of Fine Arts, who must countersign both the *Due Diligence Checklist*, and where relevant, the *Due Diligence Risk Assessment* to confirm agreement with the decision taken by the Head of Collections & Learning.

If there is disagreement or any doubt, the loan will not proceed. If a decision is taken not to proceed with the loan for provenance reasons, these reasons must be added to the *Due Diligence Checklist & Risk Assessment*. These documents and all research and documentary evidence is passed to the Exhibitions & Loans Officer for filing.

## Staff Responsibilities

The Head of Collections & Learning is responsible for carrying out Due Diligence checks, with research support from the Exhibitions & Loans Officer and Collections Assistant.

The Exhibitions & Loans Officer is responsible for setting the timetable for completion of the checks, keeping accurate files and publishing the relevant information necessary for Immunity from Seizure protection, when required.

The Director of the Barber Institute of Fine Arts has overall responsibility for compliance with due diligence procedures and must countersign both the *Due Diligence Checklist*, and where relevant, the *Due Diligence Risk Assessment* to confirm agreement with the decision taken by the Head of Collections & Learning.

## Publication of information

Where Immunity from Seizure protection is sought, the Exhibitions & Loans Officer is responsible for publishing specific information about the object(s) in accordance with the Protection of Cultural Objects on Loan (Publication and Provision of Information) Regulations 2008.

Hard copies of national and international standard and guidelines are held by the Exhibitions & Loans Officer for reference.

## Documentation

The *Due Diligence Checklist & Risk Assessment* used for each loan must be completed and signed by the Head of Collections & Learning and countersigned by the Director. The Head of Collections & Learning and Director of the Barber Institute of Fine Arts must be in agreement before a loan can proceed.

All documentary evidence obtained about the provenance of an object will be kept and passed to Exhibitions & Loans Officer for filing. This can include but not limited to; the *Due Diligence Checklist & Risk Assessment*, all relevant correspondence, details of published information, signed loan agreements, lender's evidence, and photographic evidence. Documentary evidence will also be scanned and electronically filed.

If a decision is taken not to proceed with the loan of a work for provenance reasons, these reasons must be added to the *Due Diligence Checklist & Risk Assessment*. These documents and all research and documentary evidence is passed to the Exhibitions & Loans Officer for filing.

All paper records will be retained for 10 years. Electronic records will be kept indefinitely.

### Immunity from Seizure

Part 6 of the Tribunals, Courts and Enforcement Act 2007 provides immunity from seizure for cultural objects which are loaned from overseas to temporary public exhibitions in approved museums or galleries in the UK where conditions are met when the object enters the UK.

The conditions are:

- The object is usually kept outside the UK
- The object is not owned by a person who is resident in UK
- The import of the object does not contravene any law
- The object is brought into UK for purpose of a temporary public exhibition at an approved museum or gallery
- The museum or gallery has published information about the object

The Barber Institute of Fine Arts is an approved institution for the provision of Immunity from Seizure and acts within the parameters set out by the Department for Culture Media and Sport.

In order for Immunity from Seizure to take effect, the Barber Institute of Fine Arts will:

1. Obtain a signed Loan Agreement from the lender
2. Perform Due Diligence by completion of the *Due Diligence Checklist & Risk Assessment* form.
3. If (upon satisfactory completion of Due Diligence) the Head of Collections & Learning and Director agree to proceed with the loan, the Exhibitions & Loans Officer will issue an *Immunity from Seizure Warranty* to the Lender, which clearly states the conditions under which the Immunity from Seizure is to be provided, requests that the Lender acknowledges this and confirms they have the right to enter into this agreement.
4. Once countersigned by the Lender, the Exhibitions & Loans Officer will publish specific information about the object(s) in accordance with the Protection of Cultural Objects on Loan (Publication and Provision of Information) Regulations 2008,
  - for a minimum period of 4 consecutive weeks ending on the day before the object enters the UK.
  - and continue to display this information for a further 12 consecutive weeks after the object has entered the UK, or until the end of the exhibition, whichever is later.

Immunity from Seizure information will be removed from the website after the required period, but web pages and electronic attachments containing the published information will be archived indefinitely.