

Due Diligence Policy and Procedures for Loans

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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 Deputy Director: Research & Collections (DD: R&C) 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 DD: R&C 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 DD: R&C 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 DD: R&C 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 DD: R&C 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 DD: R&C.

If there is disagreement or any doubt, the loan will not proceed. 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 Manager for filing.

Staff Responsibilities

The DD: R&C is responsible for carrying out Due Diligence checks, with research support from the Exhibitions & Loans Manager and Assistant Curator.

The Exhibitions & Loans Manager 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 DD: R&C.

Publication of information

Where Immunity from Seizure protection is sought, the Exhibitions & Loans Manager 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 Manager for reference.

Documentation

The *Due Diligence Checklist & Risk Assessment* used for each loan must be completed and signed by the DD: R&C and countersigned by the Director.

The DD: R&C 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 Manager 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 Manager 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 DD: R&C and Director agree to proceed with the loan, the Exhibitions & Loans Manager will issue an *Immunity from Seizure Warranty* to the Lender, which clearly states the conditions under which the Immunity from Seizure is 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 Manager 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.

Due Diligence Procedure for Loans in

✓ **Exhibition planning**

An awareness of the due diligence process underpins exhibition planning and curators should consider this at the outset when first identifying possible loans and before making the initial request.

✓ **Initial request for loan**

When making the initial request for loan, curators should inform the potential lender that the Barber Institute is unable to borrow works unless due diligence has been satisfactorily undertaken.

✓ **Due Diligence form issued to lender**

When a lender agrees to lend, the Exhibition & Loans Manager issues a *Due Diligence Form for Lenders* to the lender along with the Barber Institute Loan Agreement. 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. Documentary evidence requested can include:

- Museum acquisition record
- Export licence from country of origin
- Publication in a reputable source
- Will/Inventory
- Photographic evidence
- Family correspondence
- Auction catalogue entry
- Receipt of purchase

When returned to Exhibition & Loans Manager the *Due Diligence Form for Lenders* and any supporting documentary evidence are forwarded to the DD: R&C for assessment.

✓ **The DD: R&C assesses information provided by lender and completes *Due Diligence Checklist & Risk Assessment***

This part of the process must be completed a minimum of 6 months before the opening of an exhibition to allow the required time to arrange the publication of details of works on the Barber Institute website to comply with immunity from seizure (where required), and to allow time to make alternative plans if a decision is made not to borrow the work for an exhibition.

The DD: R&C assesses the information supplied by the Lender using it to support the completion of the *Due Diligence Checklist & Risk Assessment* 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.

The 1970 watershed is generally accepted as the key point for an ethical approach to purchasing, acquiring, borrowing, dealing in or selling cultural property because of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

Where the lender is unable to provide the required information or there is doubt concerning the information supplied, the DD: R&C must undertake Due Diligence, completing the checklist and where required, seeking 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 DD: R&C must complete, sign and return the form to Exhibitions & Loans Manager together with the *Due Diligence Form for Lenders* and copies of any evidence supplied. The DD: R&C 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 DD: R&C must additionally record on the form how the decision has been reached.

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 DD: R&C.

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 Manager for filing.

✓ **Immunity from Seizure**

Where the Lender has sought Immunity from Seizure and the *Due Diligence Checklist & Risk Assessment* has been completed and approved by the DD: R&C and Director; the Exhibitions & Loans Manager 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 and requests that the Lender acknowledges this and confirms they have the right to enter into this agreement.

Once countersigned by the Lender, the Exhibitions & Loans Manager 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 must continue to be displayed for a further 12 consecutive weeks after the object has entered the UK, or until the end of the exhibition, whichever is later.

✓ **Documentation**

- Dated records of research notes, correspondence, documentary evidence obtained and notes of any conversations must be kept and passed to Exhibitions & Loans Manager for filing with Exhibition files.
- The *Due Diligence Checklist & Risk Assessment* used for each loan must be completed and signed by the DD: R&C and the Director, and passed to Exhibitions & Loans Manager for filing. This document should also be scanned and electronically filed on the *Registrar/ Due Diligence* folder in the Shared Drive.
- Paper records will be kept for 10 years; electronic records will be kept indefinitely.
- If a decision is taken not to proceed with the loan of a work for provenance reasons, the documentation must be passed to the Exhibitions & Loans Manager for filing.