



## **Restitution and Repatriation Policy**

**Name of governing body:** Horniman Public Museum and Public Park Trust

**Date on which this policy was approved by governing body:** March 2021

**Date of which this policy is due for review:** March 2023

### **1. Introduction**

**1.1** The Horniman Museum and Gardens holds a collection of objects and specimens relating to global cultures and natural environments, falling into the broad disciplines of anthropology, ethno-musicology and natural history. The founding collection was amassed by Frederick Horniman between c 1850 and his death in 1906. It was given 'for the people of London', along with purpose-built buildings and gardens, in 1901. The collection has been added to since then, with the bulk of the holdings made before 1945.

The mission of the Horniman Museum and Gardens is:

'The Horniman connects us all with global cultures and the natural environment, encouraging us to shape a positive future for the world we all share'.

**1.2** As a response to the consequences of the Covid-19 pandemic, we developed a Re-set Agenda which is designed to accelerate the future economic, social and environmental sustainability of the organisation. The key goals in this agenda are:

1. Consult people and work in partnership
2. Address the history and legacy of the Horniman business and institutional collecting
3. Engage wider audiences through programming and communications
4. Enhance our digital capabilities
5. Diversify staff and volunteers
6. Make the Horniman greenhouse gas neutral and more biodiverse
7. Maximise income generation

**1.3** In the light of this, the Horniman is committed to engaging with its many communities, local and across the globe, in discussions about the future of its collections in terms of care, exhibition and ultimate destination. As part of this, we are committed to working with our communities to develop greater transparency about the histories of the collections and to sharing these stories widely.

## **2. Restitution and repatriation**

**2.1** We recognise that the collections in the Horniman have been acquired at different times and under a range of circumstances, some of which would not be appropriate today, such as through force or other forms of duress. We understand that for some communities – whether in countries of origin or in the diaspora -- the retention of some specific objects, natural specimens or human remains is experienced as an ongoing hurt or injustice. In recognition of this, the Horniman trustees wish to set out transparent policies and procedures by which communities can enter into discussion with them about the future of this material, including its possible return.

**2.2** The current document relates to cultural material and human remains. There is a Human Remains Policy (endorsed March 2021) covering care, access, display and restitution, and a more general Collections Development Policy.

### **2.3 Terminology [from Charity Commission guidance]**

‘Restitution’ refers to the return of an object from a museum collection to a party found to have a prior and continuing relationship with the object, which is seen to override the claims of the holding museum.

‘Repatriation’ refers to the return of an object of cultural patrimony from a museum collection, to a party found to be the true owner or traditional guardian, or their heirs and descendants.

## **3. The role of the Board**

**3.1** The Horniman Museum and Gardens is a charitable company limited by guarantee, with a Board of up to twelve trustees. It is also a Non-Departmental Public Body of the government’s Department for Digital, Culture, Media and Sport (DCMS), which provides it with the majority of its funding. This means that, although four of the trustees (including the Chair) are appointed by government, as a group they are at ‘arms-length’ (or independent) from government. Trustees meet four times a year.

**3.2** Trustees are there to ensure that the objectives of the charity are met over the long term, and they discharge this trust on behalf of the public. The Charity Commission is the official regulator, and advises that Trustees have six main duties:

1. Ensure the charity is carrying out its purposes for the public benefit
2. Comply with the charity’s governing document and the law
3. Act in the charity’s best interests
4. Manage the charity’s resources responsibly
5. Act with reasonable care and skill
6. Ensure the charity is accountable

[from <https://www.gov.uk/guidance/charity-trustee-whats-involved#trustees-6-main-duties>]

**3.3** As a result of these duties, trustees must exercise caution about selling or giving away the charity’s assets, which include the collections. Nevertheless, it is possible

to do this under agreed circumstances where a case can be made on ethical or legal grounds. Specific Charity Commission guidance on restitution can be found in the Disposals Toolkit alongside general guidance on disposals from museum collections:

[https://www.artscouncil.org.uk/sites/default/files/download-file/Disposal\\_Toolkit.pdf](https://www.artscouncil.org.uk/sites/default/files/download-file/Disposal_Toolkit.pdf)

## **4. Legal Framework**

**4.1** This policy exists within a national and international legal framework which includes charitable law, and certain instruments which specifically deal with issues of restitution and repatriation. These include:

- UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property (1970)
- Dealing in Cultural Objects (Offences) Act 2003
- Cultural Property (Armed Conflicts) Act 2017
- Return of Cultural Objects Regulations 1994

## **5. Existing Guidance**

In addition to the Disposals Toolkit above, further guidance is given within the Arts Council's document on Restitution of Cultural Property [to come]

## **6. Policy**

**6.1** Taking all of the above into account, the trustees of the Horniman recognise that occasions will arise when it will be appropriate to enter into discussions with stakeholders about the potential restitution or repatriation of cultural objects and human remains which are in its collection and were acquired by force or other forms of duress, by theft, or were communal property which was acquired from a person not authorised to give it. Each discussion will be held on a case by case basis, in recognition of the unique stories and circumstances of each object.

## **7. Procedure**

When an individual or group representing a particular community wishes to discuss the return of material or human remains, the following procedures will apply.

### *Developing a relationship*

**7.1** We strongly encourage initial informal enquiries from a community to explore the holdings of the Horniman, the circumstances of acquisition, and the possibility of a return. Our experience is that the development of a relationship of mutual respect and understanding is fundamental to the exploration of issues of future management of collections, including return. The Horniman will do its best to facilitate such informal discussions, including supporting community members to navigate the collections online, and following up with any other collections data we have, as requested. We will also do our best to provide photographs and video tours of the collection where community members are unable to travel and to share information

about any known archives relating to the items and the way in which the items are currently being used and cared for.

Horniman Collections Online can be found here:

<https://www.horniman.ac.uk/explore-the-collections/>

Informal enquiries should be sent to [enquiry@horniman.ac.uk](mailto:enquiry@horniman.ac.uk) where they will be forwarded to the relevant department.

Information about the member of staff who may receive your enquiry can be found here: <https://www.horniman.ac.uk/about-the-horniman/people/>

### *Making a request*

**7.2** Following this initial exploratory phase, communities may feel that they wish to make a formal request for a return of cultural material or human remains. This request, made in writing and posted or emailed to the Chief Executive of the Horniman, should include the following detail to ensure that Trustees have all the information they need to exercise their responsibilities:

- An introduction to the community representatives and their relationship to the community making the request
- Details of the cultural material or human remains which is the subject of the request for return. Horniman staff will help provide these details.
- The reasons why a return to the community of origin is considered appropriate
- It would also be helpful to have an indication of what it is planned will happen to the material when it is returned. This might include, for example, reburial, exhibition in a museum, retention in a community facility or re-engagement in spiritual/cultural activity.
- Community representatives making the request are welcome to provide any additional information they feel the museum needs in order to make the decision. This might include:
  - Letters of support from the community, partner organisations, or national bodies
  - Information about any other requests that are planned or in process.
  - Advice on any archives, publications, organisations, or individuals whom it would be useful to consult.

A formal emailed request should be sent to: [nmerriman@horniman.ac.uk](mailto:nmerriman@horniman.ac.uk)

A postal request should be sent to:

Chief Executive  
Horniman Museum and Gardens  
100 London Road  
London  
SE23 3PQ  
United Kingdom

## *Responding to a request*

**7.3** When the request is received, the Horniman will send an acknowledgement of receipt within one week, and will provide within 20 working days a timetable for response to the request. This timetable will vary on a case by case basis, depending on the number of objects involved, the archival or accompanying documentation, the complexity of the issues and the timing of trustee meetings. Sometimes discussions may need to be held with other stakeholders such as diaspora communities in the UK, or opinions of specialists with more detailed knowledge sought, including communities of origin. We may also need advice about whether we have the legal right to return the cultural artefact (for example we need to be able to demonstrate that we own it and it is not on loan from another owner). In many cases the advice of the Charity Commission will need to be sought.

**7.4** The Horniman staff will take the request and work on a report which sets out the history of the cultural material or human remains including its circumstances of acquisition and the case made for return. In some cases Horniman staff will contact community representatives to gather more information to support the report.

**7.5** This report will then be taken to a sub-committee with delegated responsibility to make a recommendation on Restitution and Repatriation issues. The subcommittee will review this report to judge to the best of their ability whether the cultural material or human remains may have been acquired:

- illegally from the nation of origin
- through or following physical force
- from people who were not the legitimate owners
- in circumstances where owners were compelled to sell or give them

They will also consider additional factors such as whether the secret and/or sacred nature of the objects makes access to them through exhibition or research unethical, or where the spiritual and/or cultural significance of an object and the impact of its loss is central to a request.

**7.6** Following these discussions, the subcommittee will make a recommendation to the full board. This is likely to be to:

- Agree to the request for return
  - In this case, discussions will be held on the nature of the return to the community group and arrangements put in place (see below); or
- Decline the request for return
  - In this case, clear reasons will be set out for the decision and communicated to the community group; or
- Request further clarification
  - Here, trustees will feel unable to make a decision without further information. This might be from Horniman staff, from the community group, or from other stakeholders. In this case, the community group will be informed and a revised timetable produced.

## *Return*

**7.7** When a return is agreed, discussions will be held over the nature of the return. Whilst in most cases this will involve physical return of the cultural material or human remains, in some instances hybrid arrangements might be made. For example, whilst transfer of ownership will take place in all cases, from time to time the Horniman might wish to request a loan back of some of the cultural material for education and display purposes. Agreement or otherwise to the loan would be determined by the community group. In other cases, a request might be made to make replicas of some of the cultural material for similar reasons. Again agreement or otherwise would be determined by the community group.

**7.8** Physical return of the items or human remains would then be discussed and agreed with both parties. Costs of return would be mutually discussed and a solution found which is acceptable to both parties. Formal documentation of the transfer of title and the removal of the items or remains from the Horniman's collections would complete the process.

## *Appeals and dispute resolution*

**7.9** Appeals relating to a decision may only be made on grounds of procedural irregularity or new evidence. In the event that a community group is not satisfied with the process or the outcome, they may make an appeal in writing, setting out why they feel that the decision is flawed and providing any additional evidence or arguments. This will be reviewed by the full trustee board.

## *Review of policy*

**7.10** This policy and procedure will be reviewed by trustees at least every two years.

March 2021