

Cultural Restitution and Spoliation Policy

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## Policy statement

The Library aims to respond with sensitivity and respect to claims around ownership and cultural restitution of items in the collection, while at the same time maintaining its responsibility to preserve the documentary heritage of Scotland for future generations. The National Library of Scotland’s founding Act stipulates the limited circumstances in which items can be permanently transferred into different ownership. The Library’s decision making is underpinned by this legislative framework and by the [Deaccessioning and Disposals Policy](https://www.nls.uk/media/wlxb3mg0/deaccessioning-and-disposals-policy-2022.docx). Account will also be taken of the [Collections Trust’s](https://collectionstrust.org.uk/cultural-property-advice/restitution-and-repatriation/) guidance on restitution and repatriation and the relevant elements of guidance from Arts Council England’s framework for museums to consider and manage potential restitution and repatriation cases.

This is the first version of a Cultural Restitution and Spoliation Policy for the National Library of Scotland. The organisation has had very limited experience working with potential claimants. As the Library researches and assess claims it is expected that the policy will evolve in response to the knowledge and experience gained.

## Cultural restitution

Restitution is the process by which cultural objects are returned to an individual or a community. Repatriation is the process by which cultural objects are returned to a nation or state at the request of a government.

### Initial enquiries

The Library invites potential claimants to engage in informal discussion. Responding to a cultural restitution enquiry requires the Library to (re)consider our relationship with items in the collection, their history, origins, and acquisition – and most importantly, the people for whom they may have a special meaning today. We welcome the opportunity to do so. Please send initial enquiries to enquires@nls.uk. The Library’s goal is to research and assess a claim in a constructive manner, demonstrating trust and mutual respect.

#### 2.2 Formal claim

A formal claim involving cultural restitution outside the scope of the Holocaust (Return of Cultural Objects) Act 2009 should be addressed to:

The National Librarian,

The National Library of Scotland,

George IV Bridge,

Edinburgh EH1 1EW.

Claims can be sent via [our Contact page](https://www.nls.uk/contact/).

Please include:

* details about the claimant, their identity and contact details and whether they represent a group or organisation (and if so, the source of their authority to do so);
* details about the item(s) claimed;
* the reasons for the claim, describing the claimant’s connection to the item(s) claimed, and their understanding of its/their history;
* details of any other parties the claimant knows may have an interest in the item(s).

The Library will acknowledge receipt of any claim within five business days. Following any necessary clarification of the nature of the claim with the claimant, the Library will appoint a panel made up of the relevant curator(s), the Head of relevant collecting area, and the Rights and Information Manager to investigate the claim and report to the Director for Collections, Access and Research. The panel may co-opt other members of staff as required and external expertise may be called upon as appropriate. The panel will consider:

1. The significance of the object to the claimant. What are the claimant’s reasons why it would be appropriate to transfer the item out of the Library?
2. How the object was removed from its place of origin or from a past owner. How the Library acquired title to the item (in the event of a donation, the wishes of the donor or the donor’s heirs or descendants will be sought and taken into account, where possible).
3. How the Library has engaged with the collection or collection item and the extent to which the collection item has been accessible to the claimant during its time at the library (including to the claimant’s community, where relevant, or related parties) or to other stakeholders.
4. Who is raising the claim. The assessment of the claim is incumbent on understanding who is raising the claim and whether they are the appropriate claimant. The intention and capacity of those making the claim to undertake adequate long-term preservation, security and integrity: the Library will want to satisfy itself that the resulting transfer of material will not prejudice the long-term preservation of the material. The intention and capacity of those making the claim to provide adequate public access: the Library will want to satisfy itself that the resulting transfer of the material will not lead to any significant decrease in access to it.

The investigation will be documented. If a recommendation is made to deaccession this will be done using the Library’s Deaccessioning Proposal form, linking to the investigation documentation as required.

Based on the assessment carried out, the National Librarian will recommend to the Board of the Library a response to the claim. The Board will take a decision, and the National Librarian will communicate this decision, with an account of the reasons for it, in writing to the claimant. There are three possible conclusions to the Library’s assessment of a claim.

1. **The Library agrees to return the item**. This will trigger the completion of the Deaccessioning Form. Under section 3(3)(e) of the National Library of Scotland Act 2012, approval for disposal of any part of the Library’s collections to a new custodian for the purposes of restitution may have to receive Ministerial approval.
2. **The Library does not agree to return the item**.
3. **The Library does not agree to return the item but may agree to fulfilling some of the examples set out in the Appendix.**

## Holocaust (Return of Cultural Objects) Act 2009

As per the Deaccessioning and Disposal Policy, the Library’s disposals are governed by the National Library of Scotland Act 2012 which states that the Library’s power of disposal includes those conferred by section 2 of the [Holocaust (Return of Cultural Objects) Act 2009](http://www.legislation.gov.uk/ukpga/2009/16/section/2).

In the case of any claims from anyone (or from any one or more of their heirs) who lost possession of a cultural object during the Nazi era where such an object is now in the possession of the National Library of Scotland, the Library will act in accordance with the 2009 Act. The Library will only consider the return of an item if the following conditions are met:

* **Condition 1**: The UK Spoliation Advisory Panel has recommended the transfer.
* **Condition 2**:The Secretary of State has approved the Advisory Panel's recommendation.

## Legal Ownership

If a claim challenges the Library’s ownership of an item in its collections based on the legality of the process by which the Library believes it has acquired title to that item, the Library will document the legal basis of its claim to ownership by investigating all available records relating to the acquisition process and to the earlier history of the item.

The investigation will be undertaken by the responsible curator. The analysis and decision will be documented using the standard Deaccessioning Proposal form. Legal advice may be called upon as appropriate. The authorisation to deaccession based on a claim to legal ownership is as set out in the Deaccessioning Proposal form.

If it transpires that the legal grounds for return are not met, or remain unclear, the Library may consider the claim under cultural restitution. This would include situations in which:

* The title of the original owner may have been lost because of the passage of time.
* Legal ownership has been lost if a stolen or misappropriated item has been sold on in a foreign country, depending on the legal rules of that country.
* There are disputed claims that an item was lent to or deposited with the Library by the original owner, or the party from whom the Library acquired the item, rather than ownership being transferred.
* A collection which has been imported or dealt with in a way which constitutes a criminal offence in the UK, or where the UK has a particular international obligation to return an object, might be subject to confiscation by the authorities.

## Deposited collections

The Library holds collections on deposit, which are owned by external organisations and individuals. Claims made about a deposited item or collection will be referred to the depositor. In a situation where a claim is made about a deposited item and there is no active or contactable depositor the Library will apply the Collections Possession and Title policy.

## Appendix 1

In the event of the Library not agreeing to transfer ownership of the item but noting the particular circumstances of the case, the Library will enter into constructive negotiation with the claimant and/or proposed new custodian to address these arguments in other ways. The following list is provided for example only and does not exclude other options.

1. by providing the claimant/proposed new custodian with a surrogate (physical and/or digital);
2. by making a digital version freely available over the Library’s website;
3. by providing opportunities to view the item: in one of the Library’s reading; rooms; as part of a physical exhibition in the Library; via a live virtual reading service;
4. by lending the item for one or more exhibitions (which may or may not be organised by the claimant/proposed new custodian) outside the Library’s buildings;
5. by transferring the item to the claimant/proposed new custodian or to another organisation on long-term deposit, the period of which will be agreed in advance between both parties;
6. by acknowledging, if appropriate, the item’s provenance within its catalogue entry.

## Document information

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* Retention: 1 year after policy superseded then Review for historical and business value

## Document control

| Date | Action |
| --- | --- |
| 28 September 2023 | Minor updates to role titles and change in policy name from “Orphan Collections” to Collections Possession and Title”. Link added public version of EqIA. |
| 4 December 2023 | Minor updates to wording based on feedback from the Library Board. |