



RETURN TO AN ADDRESS OF THE
HONOURABLE THE HOUSE OF COMMONS
DATED 7 MARCH 2012 FOR THE

**REPORT OF THE SPOILIATION ADVISORY
PANEL IN RESPECT OF FOURTEEN CLOCKS
AND WATCHES NOW IN THE POSSESSION OF
THE BRITISH MUSEUM, LONDON**

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*Ordered by the House of Commons
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The Right Honourable Sir David Hirst P.C.

31 July 1925 – 31 December 2011

The Spoliation Advisory Panel records, with much regret, the death of Sir David Hirst on 31 December 2011, after a long illness.

Sir David Chaired the Panel since its establishment in April 2000, oversaw the production of the Panel's 11 previous reports and advised the Government on legislation which became the Holocaust (Return of Cultural Objects) Act 2009. The Act made it possible for 17 national collections to return items lost during the Nazi era following a recommendation by the Panel and where Ministers agree.

All the members of the Panel wish to express their gratitude for Sir David's tireless dedication to the work and wise stewardship over the years. His presence will be sadly missed.

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REPORT OF THE SPOILIATION ADVISORY PANEL IN RESPECT OF 14 CLOCKS AND WATCHES NOW IN THE POSSESSION OF THE BRITISH MUSEUM, LONDON

Introduction

1. On 24 January 2011, Mr Eric Koch of Toronto, Canada, wrote to the late Sir David Hirst, in his capacity as the then Chairman of the Spoliation Advisory Panel, with regard to a possible claim for six clocks in the collection of the British Museum (the Museum) which had belonged to his late mother, Ida Netter, formerly Koch. Mr Koch established in subsequent correspondence that he was claiming on behalf of himself, his brother and the two sons of his sister (the claimants). Mr Koch, his brother and late sister are the three children of Mrs Ida Netter. No legal claim has been advanced and the Panel, having examined the circumstances, does not consider that the claimants have a surviving legal title to the objects described in paragraph 2.
2. The six clocks were briefly described by the Museum as follows:
 - i. France or Netherlands, circa 1545-1550
Horizontal table timepiece of gilt-brass and steel with a diameter of 73mm. BM reference: 1958, 1006.2111.
 - ii. Hans Koch, Munich, circa 1575-1585
Rectangular spring-driven table clock of gilt-brass and steel, length 147mm. BM reference: 1958, 1006.2152.
 - iii. Prague? Mid-16th century
Horizontal table timepiece of gilt-brass and steel, diameter 107mm. BM reference: 1958, 1006.2112.
 - iv. South Germany (Nuremberg?), circa 1535-1545
Horizontal table timepiece of gilt-brass and steel, diameter 57mm. BM reference: 1958, 1006.2150.
 - v. South Germany (Nuremberg?), circa 1535-1545
Horizontal table timepiece, with alarm attachment, of gilt-brass and steel, diameter 74mm. BM reference: 1958, 1006.2151.
 - vi. South Germany (probably Nuremberg), 3rd quarter, 16th century
Drum-shaped, spring-driven table clock with detachable alarm, of gilt-brass, rock-crystal and steel, diameter 92.5mm. BM reference: 1958, 1006.2110.

3. All six of these items had been obtained in the same way by the British Museum. They had been sold by the late Mrs Netter in a Christie's sale in London which took place on 20 June 1939. They were purchased then, or shortly afterwards, by Malcolm Gardiner and acquired from him by Courtenay Adrian Ilbert (1888-1956). The Ilbert collection was acquired in 1958, following the death of Mr Ilbert, by the Museum with the help of donations from Sir Gilbert Edgar CBE and others.
4. Subsequently, the Museum drew to the attention of the Panel the fact that the collection also included eight watches which it had acquired in the same way from the collection of Courtenay Adrian Ilbert and which had been in the Christie's sale of 20 June 1939. The brief descriptions of these are:
 - i. Gilt-brass cased stackfreed watch by Isaak Ebert, Germany, 1617.
BM Reference: CAI.2215.
 - ii. Gilt-brass watch case and dial, anonymous, 19th century (16th-century style).
BM Reference: CAI.2218.
 - iii. Gilt-brass cased stackfreed watch, anonymous, Germany, c.1600.
BM Reference: CAI.2219.
 - iv. Gilt-brass cased stackfreed watch by Jean-Baptiste Letter, Zug, c.1645.
BM Reference: CAI.2319.
 - v. Rock-crystal cased watch by Jacques Sermand, Geneva, c.1655.
BM Reference: CAI.2341.
 - vi. Painted-enamel cased watch, signed Torin of London, c.1710.
BM Reference: CAI.2361.
 - vii. Gold and agate cased watch, anonymous, Geneva, c.1780.
BM Reference: CAI.2377.
 - viii. Gold and enamel cased watch by Estienne Ester, Geneva, c.1670.
BM Reference: CAI.3065.

The Panel's Task

5. The task of the Spoliation Advisory Panel (the Panel) is to consider claims from anyone, or from their heirs, who lost possession of a cultural object during the Nazi era (1933-45) where such an object is now in the possession of a UK museum or gallery established for the public benefit, such as the British Museum; and to advise the Secretary of State for Culture, Media and Sport on what action

should be taken in relation to the claim (see our Constitution and Terms of Reference, Appendix 1). If the Panel recommends the transfer of an object from a collection belonging to one of the bodies named in Section 1 of The Holocaust (Return of Cultural Objects) Act 2009 (the Act) to the claimant and the Secretary of State approves the Panel's recommendation, the Museum is empowered to return the items in question to the claimant.

6. In making our report, we have considered the submissions and evidence submitted by the claimants and the Museum, in order to establish whether Mrs Netter was deprived of these timepieces as a result of spoliation and, if so, to assess the moral strength of the claimants' case and whether any moral obligation rests on the Museum.

The Claimants' Case

7. The claimants' case here is in part derived from disclosures made by the British Museum on its website, following its own researches. Eric Koch is the son of Otto Koch, who died in 1919. Otto Koch had been a partner in the jewellery firm of Robert Koch in Frankfurt, founded by his father of that name in 1879. The firm was continued by Louis Koch, younger brother of Otto. Otto's widow Ida, who was a "sleeping partner" in the firm, married Emil Netter in 1930. He died in 1936. The firm was "Aryanized" in 1938 under the anti-Semitic policies of the Nazi regime. Ida Netter's share of the proceeds was placed into a blocked account to which she had no access. Otto Koch had been a collector of watches and clocks, which she inherited. She managed to bring to England some 161 watches and clocks. There is some uncertainty as to how this was achieved. The claimants believe that an employee of the firm assisted their mother in extracting these items from Germany. In any event, they were then the subject of the sale by Christie's in June 1939.
8. In the 1930s the three children of Ida Netter and Otto Koch had likewise made their way out of Germany. Eric Koch attended Cranbrook School and then proceeded to the University of Cambridge, where he was an undergraduate from 1937 to 1940. His elder brother had made his way to the United States with some money.
9. In his original letter to the Panel of 24 January 2011, Eric Koch asked: "I wonder whether the sale can be considered a forced sale, or a sale under duress?"
10. The claimants subsequently argued that the British Museum "*....has possession of the 14 pieces solely due to my mother's persecution by the Nazis. She had a large, valuable collection of clocks and watches until she was forced to emigrate and leave her assets behind. To have the means to live in London, she auctioned off the part of the collection that she managed to transfer out of Germany.*"

11. By its constitution and terms of reference, the Panel is obliged to “examine and determine the circumstances in which the claimant was deprived of the object, whether by theft, forced sale, sale at an undervalue, or otherwise”.
12. In addition to the fact of the forced emigration or escape of Mrs Netter from Nazi Germany, the claimants rely on the impecunious circumstances in which the family then found itself. Part of those circumstances related to Eric Koch’s attendance at the University of Cambridge. With his consent we received, with the kind assistance of St John’s College, Cambridge, helpful information from its archivist, Mr Malcolm Underwood. This showed that, from the time when the Headmaster of Cranbrook School was writing to the Master of St John’s, on 21 May 1937 until at least June 1940, there was evidence of Eric Koch being in straitened circumstances. He was sometimes in debt to the College. He was sometimes lent money to alleviate want. There is no express reference to his mother’s sale of the clocks and watches at Christie’s, which raised the then substantial sum of money of £2,175. We accept that it was either difficult or impossible for the family to remove money (or other assets) from Germany, apart from this collection of clocks and watches. There is no evidence that Mrs Netter herself had any occupation that she could follow when she came to London at the end of the 1930s.
13. The Panel notes that the claimants have not asserted any enduring title to any of the timepieces and have advanced no grounds on which the sale at Christie’s should be legally impugned. In the circumstances, we see no reason to doubt that the sale in 1939 was effective in passing title to the buyer. Nor do we see any reason why the title thus acquired did not later pass to the Museum.

The British Museum’s case

14. The Director of the British Museum, Mr Neil MacGregor OM, wrote to the Panel on 25 July 2011 on behalf of the Museum. The Museum had acquired the clocks and watches as described in paragraph 3 above. The original sale by Christie’s was on the basis that the timepieces were the “Property of a Lady”. The Museum learned that the vendor was Mrs Ida Netter only when the late Mr John Leopold, then Curator of Horology, ascertained this from Christie’s in 1993. The items form a small part of the Museum’s horological collection.
15. The Netter collection as a whole had sold for the sum of £2,175 in 1939. The current Curator of Horology at the Museum, Mr David Thomson, notes that the hammer prices paid by the dealers who sold on to Courtenay Adrian Ilbert “were not particularly low, having regard to market price fluctuations in that period; and that they sold on to Ilbert at varying mark-ups”.
16. The Museum suggests that this was not a sale at an undervalue. Mr Thomson, in his report of 29 June 2011, draws attention, by way of comparison, to three items sold in a July 1938 sale by Christie’s which eventually formed part of the same collection. He further points out that, in 1939, a detached three-bedroomed bungalow with a garage and garden would have cost £550, and an Austin motor

car could be bought for £122. Therefore the sums made at the sale were substantial. The prices of the clocks and watches varied from some 46 shillings up to 56 guineas.

17. The Museum policy states that its Trustees would not normally seek to exercise its new “power of transfer” under The Holocaust (Return of Cultural Objects) Act 2009 unless satisfied inter alia that the claimant had a strong moral claim to the transfer of the object and unless the “victim has not previously been justly and fairly compensated for the loss”. The Museum draws attention to the fact that the sale did not take place within, and was not directed from within, Nazi-occupied Europe. There was no direct threat of coercion. There is no evidence that Mrs Netter “considered herself unfairly compensated by the prices obtained at auction in the open market in London”. The Museum sought the Panel’s views on whether Mrs Netter had been sufficiently recompensed by other means in the post-war era.

Issues

18. The following four issues fall to be decided in arriving at a conclusion:

- i. Was this a forced sale?
- ii. Was it a sale at an undervalue?
- iii. If it was a sale at an undervalue, was Mrs Netter otherwise compensated after the war?
- iv. Is there any moral obligation on the Museum?

Forced sale

19. The Panel considered the respective submissions as to whether this was a forced sale. This expression is not defined in our Constitution and Terms of Reference. We note the points made by the Museum but we conclude, on balance, that the claimants do meet the minimum threshold for finding that this was a forced sale. The vendor had left Germany owing to the Nazis. Her children had emigrated at an earlier stage. The contemporary correspondence regarding the education of Eric Koch suggests a significant shortage of resources within the family, far more acute than the Netter family would have experienced had they remained in Germany, free from persecution.

20. We conclude, on the balance of probabilities, that Mrs Netter would not have sold this collection when she did, had she remained in Germany and had the Nazis not come to power. In so finding, we do not rule out the possibility that she might, in any event, have sold the collection to fund the education of her children or her own way of life but we consider this to be a more remote prospect.

21. Having concluded on balance that this was a forced sale, the Panel, nonetheless, considers that the sale is at the lower end of any scale of gravity for such sales. It is very different from those cases where valuable paintings were sold, for

example, in occupied Belgium to pay for food¹ or where all assets had to be sold in Germany in the late 1930s to pay extortionate taxes². The sale was not compelled by any need to purchase freedom or to sustain the necessities of life. Furthermore, the sale was arranged by a prominent English auction house with (so far as we can tell) no cause to question the seller's reasons for selling.

The Christie's sale of 1939

22. Having noted the case made by the British Museum, summarized at paragraph 16 above, the Panel asked Christie's either to advise the Panel as to whether, in their own view, with the help of contemporaneous documents, the timepieces were sold at fair market value in 1939, or to seek the views of another expert if they thought that preferable. Neither Christie's nor Sotheby's, who were also approached, felt able to provide this advice. We are grateful to our Panel Member, Mr Martin Levy, for his research into this matter. He formed the view that the prices achieved for the clocks, offered with reserve, ranged from around or just below the reserve to a little more than the reserve and, on occasion, to more than double the reserve. This would seem to imply a reasonably buoyant market, where buyers were prepared to pay higher than suggested prices for particularly sought-after lots. The ups and downs of the prices paid were not, in his view, indicative of a depressed market. Very few clocks remained unsold. As far as we can ascertain at this distance in time, it was not a sale at an undervalue.

Post-War compensation

23. The Panel is grateful to the parties and to the German Federal Office for Central Services and Unresolved Property Issues for their assistance in regard to this final point raised by the Museum. It is clear that Mrs Netter sought and received compensation in Germany following the conclusion of the Second World War, both under the Federal Compensation Act (BEG) and under the Federal Restitution Act (BRU). Having considered this documentation, the Panel has concluded, on the material which it has, that the compensation obtained by Mrs Netter did not include compensation for the clocks and watches which she sold at Christie's in 1939. We do not find that there is any element of double compensation.

¹ *Report of the Spoliation Advisory Panel in respect of a painting now in the possession of the Tate Gallery*, published on 18 January 2001 by Her Majesty's Stationery Office (Ref: Dd5069740 01/01 581622 19585 TJ003409).

² *Report of the Spoliation Advisory Panel in respect of a painting now in the possession of Glasgow City Council*, published on 24 November 2004 by Her Majesty's Stationery Office (Ref: 174049C5 11/04 19585991224).

Moral obligations

24. The Panel is required to take into account and assess not only the moral strength of the claim but also whether any moral obligation rests on the institution, taking into account, in particular, the circumstances of its acquisition of the objects and its knowledge, at that juncture, of the provenance of the objects. The Museum was unaware of Mrs Netter's prior ownership of the property when it was given these items as part of a much larger collection, thanks to the public-spirited action of a number of persons in 1958. The circumstances of the acquisition of the object and the Museum's knowledge at that juncture of the provenance of the objects do not reflect adversely on the Museum. Since obtaining them, the Museum has cared for the items and made them available to scholars. It also carried out the necessary researches in the 1990s to identify Mrs Netter as the previous owner of the six clocks and later again to put this information on the spoliation section of its website. Indeed, this is how the claimants came to learn of their possible claim. It also drew the Panel's attention to the existence of the watches from the same source. We conclude, therefore, that no moral blame rests on the British Museum.

The Panel's conclusions

25. The Panel is obliged by its terms of reference to assess the strength of the claimants' moral claim. While the sale is found to constitute a forced sale, it is at the lower end of the scale of gravity of such sales. But, importantly, the evidence from the Christie's sale indicates and we find that fair and substantial market value was paid to the Mrs Netter as the vendor in 1939. The claimants accept that it is possible, as the Museum argues, that their mother was justly and fairly compensated. In the particular circumstances of this claim, we do so find.

26. We are also obliged by our Terms of Reference to consider whether any moral obligation rests on the institution which is the legal owner of the objects. For the reasons we have given, we conclude that the British Museum owes no moral obligation in this case.

27. We conclude that the moral strength of the claim is, despite the impact of the Nazi era on the claimants' circumstances, insufficient to justify a recommendation that the timepieces be transferred to them, or that an *ex gratia* payment be made to them. However, we do recommend the display alongside the objects, or any of them whenever they are displayed, of their history and provenance during and since the Nazi era, with special reference to the claimants' interest therein.

7 March 2012

The Honourable Sir Donnell Deeny – Chairman
Professor Richard J Evans
Sir Terry Heiser
Professor Peter Jones
Martin Levy
Peter Oppenheimer
Professor Norman Palmer
Ms Anna Southall
Professor Liba Taub
Baroness Warnock

**SPOILIATION ADVISORY PANEL
CONSTITUTION AND TERMS OF REFERENCE³**

Designation of the Panel

1. The Secretary of State has established a group of expert advisers, to be convened as a Panel from time to time, to consider claims from anyone (or from any one or more of their heirs), who lost possession of a cultural object ("the object") during the Nazi era (1933 -1945), where such an object is now in the possession of a UK national collection or in the possession of another UK museum or gallery established for the public benefit ("the institution").
2. The Secretary of State has designated the expert advisers referred to above, to be known as the Spoliation Advisory Panel ("the Panel"), to consider the claim received from onfor in the collection of("the claim").
3. The Secretary of State has designatedas Chairman of the Panel.
4. The Secretary of State has designated the Panel as the Advisory Panel for the purposes of the Holocaust (Return of Cultural Objects) Act 2009.

Resources for the Panel

5. The Secretary of State will make available such resources as he considers necessary to enable the Panel to carry out its functions, including administrative support provided by a Secretariat ("the Secretariat").

Functions of the Panel

6. The Panel shall advise the claimant and the institution on what would be appropriate action to take in response to the claim. The Panel shall also be available to advise about any claim for an item in a private collection at the joint request of the claimant and the owner.
7. In any case where the Panel considers it appropriate, it may also advise the Secretary of State
 - (a) on what action should be taken in relation to general issues raised by the claim, and/or

³ Revised following enactment of the *Holocaust (Return of Cultural Objects) Act 2009*

- (b) where it considers that the circumstances of the particular claim warrant it, on what action should be taken in relation to that claim.
- 8. In exercising its functions, while the Panel will consider legal issues relating to title to the object (see paragraph 15(d) and (f)), it will not be the function of the Panel to determine legal rights, for example as to title;
- 9. The Panel's proceedings are an alternative to litigation, not a process of litigation. The Panel will therefore take into account non-legal obligations, such as the moral strength of the claimant's case (paragraph 15(e)) and whether any moral obligation rests on the institution (paragraph 15(g));
- 10. Any recommendation made by the Panel is not intended to be legally binding on the claimant, the institution or the Secretary of State;
- 11. If the claimant accepts the recommendation of the Panel and that recommendation is implemented, the claimant is expected to accept the implementation in full and final settlement of his claim.

Performance of the Panel's functions

- 12. The Panel will perform its functions and conduct its proceedings in strictest confidence. The Panel's "proceedings" include all its dealings in respect of a claim, whether written, such as in correspondence, or oral, such as at meetings and/or hearings.
- 13. Subject to the leave of the Chairman, the Panel shall treat all information relating to the claim as strictly confidential and safeguard it accordingly save that (a) such information which is submitted to the Panel by a party/parties to the proceedings shall normally be provided to the other party/parties to the proceedings in question; and (b) such information may, in appropriate circumstances, including having obtained a confidentiality undertaking if necessary, be communicated to third parties. "Information relating to the claim" includes, but is not limited to: the existence of the claim; all oral and written submissions; oral evidence and transcriptions of hearings relating to the claim.
- 14. In performing the functions set out in paragraphs 1, 6 and 7, the Panel's paramount purpose shall be to achieve a solution which is fair and just both to the claimant and to the institution.
- 15. For this purpose the Panel shall:
 - (a) make such factual and legal inquiries, (including the seeking of advice about legal matters, about cultural objects and about valuation of such objects) as the Panel consider appropriate to assess the claim as comprehensively as possible;

- (b) assess all information and material submitted by or on behalf of the claimant and the institution or any other person, or otherwise provided or known to the Panel;
- (c) examine and determine the circumstances in which the claimant was deprived of the object, whether by theft, forced sale, sale at an undervalue, or otherwise;
- (d) evaluate, on the balance of probability, the validity of the claimant's original title to the object, recognising the difficulties of proving such title after the destruction of the Second World War and the Holocaust and the duration of the period which has elapsed since the claimant lost possession of the object;
- (e) give due weight to the moral strength of the claimant's case;
- (f) evaluate, on the balance of probability, the validity of the institution's title to the object;
- (g) consider whether any moral obligation rests on the institution taking into account in particular the circumstances of its acquisition of the object, and its knowledge at that juncture of the object's provenance;
- (h) take account of any relevant statutory provisions, including stipulations as to the institution's objectives, and any restrictions on its power of disposal;
- (i) take account of the terms of any trust instrument regulating the powers and duties of the trustees of the institution, and give appropriate weight to their fiduciary duties;
- (j) where appropriate assess the current market value of the object, or its value at any other appropriate time, and shall also take into account any other relevant circumstance affecting compensation, including the value of any potential claim by the institution against a third party;
- (k) formulate and submit to the claimant and to the institution its advice in a written report, giving reasons, and supply a copy of the report to the Secretary of State, and
- (l) formulate and submit to the Secretary of State any advice pursuant to paragraph 7 in a written report, giving reasons, and supply a copy of the report to the claimant and the institution.

Scope of Advice

16. If the Panel upholds the claim in principle, it may recommend either:

- (a) the return of the object to the claimant, or

- (b) the payment of compensation to the claimant, the amount being in the discretion of the Panel having regard to all relevant circumstances including the current market value, but not tied to that current market value, or
 - (c) an ex gratia payment to the claimant, or
 - (d) the display alongside the object of an account of its history and provenance during and since the Nazi era, with special reference to the claimant's interest therein; and
 - (e) that negotiations should be conducted with the successful claimant in order to implement such a recommendation as expeditiously as possible.
17. When advising the Secretary of State under paragraph 7(a) and/or (b), the Panel shall be free to recommend any action which they consider appropriate, and in particular may under paragraph 4(b), recommend to the Secretary of State the transfer of the object from one of the bodies named in the Holocaust (Return of Cultural Objects) Act 2009.



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