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HONOURABLE THE HOUSE OF COMMONS  
DATED 15 SEPTEMBER 2010 FOR THE

**REPORT OF THE SPOILIATION ADVISORY  
PANEL IN RESPECT OF A RENEWED  
CLAIM BY THE METROPOLITAN  
CHAPTER OF BENEVENTO FOR THE  
RETURN OF THE BENEVENTAN MISSAL  
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*The Right Honourable Sir David Hirst*

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# **REPORT OF THE SPOILIATION ADVISORY PANEL IN RESPECT OF A RENEWED CLAIM BY THE METROPOLITAN CHAPTER OF BENEVENTO FOR THE RETURN OF THE BENEVENTAN MISSAL NOW IN THE POSSESSION OF THE BRITISH LIBRARY**

## **Pursuant to Section 2(2) of the Holocaust (Return of Cultural Objects) Act 2009 (the Act)**

### **Introduction**

1. In this case we are considering a renewed claim by the Metropolitan Chapter of the Cathedral City of Benevento in Southern Italy (the claimants) for the return of the Beneventan Missal.
2. The Spoliation Advisory Panel was designated by the Secretary of State for Culture, Media and Sport on 13 April 2010 as the Advisory Panel for the purposes of considering this renewed claim, under the Act.
3. In its earlier report, published on 23 March 2005, *Report of the Spoliation Advisory Panel in Respect of a 12th Century Manuscript now in the Possession of the British Library* (2005 HC406), the Panel concluded, in response to the original claim, that it would be just and fair that the Missal should be returned to the claimants. However, at this juncture, such transfer was precluded by Section 3(5) of the British Library Act 1972.
4. In the meantime, we recommended that the Missal should be returned to the claimants as soon as possible on loan and that the parties should forthwith engage in constructive discussions as to the terms and conditions of such a loan. In the ensuing discussions, the British Library stipulated their standard conditions for all outgoing loans which the claimants endeavoured to meet but eventually without success.

### **The Renewed Claim**

5. The Act provided that various specified bodies, including the British Library Board, may transfer an object from its collection if, inter alia, the Advisory Panel designated by the Secretary of State has recommended its transfer and the Secretary of State has approved such a recommendation.
6. The British Library Board has intimated that, while reserving to itself its absolute discretion, the Board would not oppose in principle the restitution of the Missal to the claimants. However, the Board is anxious that its curatorial concern for the highest standards of stewardship and for accessibility for research should be recognised, and that an acknowledgement should be given of the British Library's loss, should transfer be recommended.
7. The Panel considers that such recognition and acknowledgement are due but do not consider it would be appropriate for the panel to stipulate any conditions for transfer.

## **The Panel's Conclusion**

8. *The Panel recommends*, in conformity with its original conclusion, that the Missal should be returned to the claimants. If the Secretary of State approves this recommendation, the British Library will be free pursuant to Section 2(2) of the Act to transfer the Missal to the Chapter Library in Benevento.

DATE 15 September 2010

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

Appendix: Constitution and Terms of Reference

# **SPOILIATION ADVISORY PANEL CONSTITUTION AND TERMS OF REFERENCE<sup>1</sup>**

## **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 .....on ..... for ..... in the collection of ..... (“the claim”).
3. The Secretary of State has designated ..... as 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
  - (b) where it considers that the circumstances of the particular claim warrant it, on what action should be taken in relation to that claim.

<sup>1</sup> Revised following enactment of the Holocaust (Return of Cultural Objects) Act 2009

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, 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.



