

## Legislative Consent Memorandum: Tribunals, Courts and Enforcement Bill Supplementary Evidence from the Scottish Council of Jewish Communities

We are interested to read the Official Report of the Justice 2 Committee meeting on 9 January 2007 at which the LCM on the Tribunals, Courts and Enforcements Bill was discussed, and we agree with the Minister that *“a balance has to be struck between the benefits of giving immunity and the rights of people, such as victims of the Holocaust, who may legitimately claim ownership of the works of art concerned.”* (col 3107)

We do, however, regret that the Scottish Executive’s *“further consultation with [its] own stakeholders on the specific issue of seizure”* (col 3114) during 2006 did not include Holocaust survivors and representatives of the Jewish community.

We would like to comment on two issues arising from the Committee’s evidence session on 9 January 2007.

1) The Minister stated that: *“museums have to follow guidance on combating illicit trade.....The guidance, which you might want to examine in more detail, makes it clear that not only must museums think that it is okay, they must show that they can establish provenance, that they have considered the matter and that they have evidence that the items can be brought into the country for exhibition.”* (col 3115)

The Committee should be aware that this guidance, *‘Combating Illicit Trade: Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material’* ([http://www.culture.gov.uk/NR/rdonlyres/721E9365-38BE-4AF8-BF8D-BE5B4BF8B21C/0/CombatingIllicitTrade\\_v5.pdf](http://www.culture.gov.uk/NR/rdonlyres/721E9365-38BE-4AF8-BF8D-BE5B4BF8B21C/0/CombatingIllicitTrade_v5.pdf)) is a voluntary code so there is no obligation on museums to comply with the laudable measures set out therein. The NMDC due diligence guidelines on collecting and borrowing works of art stolen during the Holocaust and World War II period are also non-binding ([http://www.nationalmuseums.org.uk/spoliation\\_statement.html](http://www.nationalmuseums.org.uk/spoliation_statement.html)).

In neither case is there an obligation to monitor or report compliance, and we have been informed that the guidelines are often more honoured in the breach than the observance. Without a statutory obligation to monitor and report compliance, Bill Butler’s assumption that *“the provenance of the items would have to be watertight and it would be up to the museums that were borrowing the items to ensure that that was the case because otherwise they would be liable.”* (col 3115) is not tenable.

2) It is not correct that the Bill *“ensures that anyone who wants to bring objects into the country for display is faced with the challenge of establishing the provenance of those items”* (col 3117) as there is no reference whatsoever in the Bill to establishing the provenance of items being brought into the country for display.

Furthermore, we dispute the Minister’s claim that *“Others are anxious that, under the bill, they will be unable to rightfully claim what is theirs, but that is not what the bill is about. It does not prevent that from happening;”* (col 3117) We suggest that, whilst the Bill may not be about preventing Holocaust survivors from claiming what is rightfully theirs, that is, in effect, what it will achieve.

The Bill will effectively prevent a claimant from pursuing a claim in the UK courts because a UK court will be powerless to order an item's retention in the UK until the end of proceedings, and, even if that court decides in favour of a claimant, it will be powerless to order that the item should be restored to him/her.

The Bill will also effectively prevent a claimant from pursuing a claim when, as a result of Immunity from Seizure, it permits an item to be returned to a country which legal system does not admit of claims by Holocaust survivors.

And even when, under Immunity from Seizure, an item is returned to a country which permits of such claims, the Bill may effectively prevent a claimant from pursuing a claim if the greater cost of pursuing that claim in another jurisdiction is prohibitive.

We strongly urge the Committee to bear these issues in mind when drafting its report, and also to bear in mind Lord Janner's statement that the manner in which these proposals have been brought forward in this Bill "*is not the way to obtain decency, fairness and justice.*" (Hansard, House of Lords, 29 November 2006). We therefore once again strongly urge the Committee to recommend to the Scottish Parliament that the Legislative Consent Motion should only be passed on condition that Ministers press for amendments to the Bill that will ensure protection for the rights of the true owners of stolen works of art.

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Note: The Scottish Council of Jewish Communities is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges.