

# APPENDIX I: PROCEDURES AND GUIDELINES

## NOTICE BY THE COUNCIL

### PROCEDURE FOR HANDLING CLAIMS FOR THE TRANSFER OF STEWARDSHIP OF HUMAN REMAINS

The Council, after consultation with relevant institutions within the University, has drawn up a Procedure for handling claims for the transfer of stewardship of human remains.

In October 2005 the Department for Media, Culture and Sport published *Guidance for the Care of Human Remains in Museums*. This non-statutory document provides guidance, and best practice, on the care of human remains, for museums and other institutions in England, Wales, and Northern Ireland, which hold human remains in permanent collections. That Guidance recommended that such institutions prepare and publish a clear process for the handling of claims for the return of human remains. The Council recognizes the need for the University, in common with institutions housing collections which include human remains, to have such a process in place. It expects all institutions in the University to follow the Procedure set out below. A copy of the Procedure will also be available on the University's website at <http://www.registrarysoffice.admin.cam.ac.uk/transfer-stewardship-human-remains>.

#### **Procedure for handling claims for the transfer of stewardship of human remains**

##### **1. Making a request or enquiry**

1.1 Requests or enquiries relating to the transfer of stewardship of human remains in the University's collections should be submitted in writing to:

The Registry  
The Old Schools  
Trinity Lane  
Cambridge  
CB2 1TN

1.2 The Registry shall take responsibility for dealing with the request or enquiry and shall act as the point of contact in respect of such request or enquiry. The Registry may appoint a delegate to act in her or his place under this procedure, and any reference to the Registry in this procedure shall be deemed to include a reference to any such delegate.

1.3 The Registry will openly engage and enter into constructive dialogue with anyone making a request or enquiry. Every attempt will be made to achieve a resolution by informal means through consultation with those with responsibility for the University collection in which the human remains are located, and where appropriate by mediation.

##### **2. Making a claim**

2.1 In the event that it is not possible informally to resolve a request for the transfer of stewardship of human remains, a formal claim for the transfer of such stewardship should be submitted in writing to the Registry at the above address and should include as much supporting information as possible, including information about:

- the identity of the individual(s) or community making the claim and any intermediary or representative;
- the specific human remains being claimed;
- the connection between the claimant(s) and the human remains in question;
- the basis for the claim and the reason for making it;
- the wishes of the claimant(s) for the future of the remains; and
- any information in the possession of the claimant(s) regarding other potential claims in respect of the same human remains.

2.2 The Registry will formally acknowledge the claim in writing and provide an indication of how long it is likely to take for a decision to be made.

2.3 The Registry will consider the information provided by the claimant(s) and may gather further information as necessary, either from the claimant(s), or from other sources, including from the national government of the country from which the claimant(s) originate. The Registry shall also invite those with responsibility for the University collection in which the human remains are located to provide a response to the claim, together with any material which they consider to be relevant to the claim, including expert evidence.

2.4 The Registry may take such steps as may be deemed necessary to advertise or give notice of any request or claim for the transfer of stewardship of human remains with a view to ensuring that any competing claims to the same remains are brought to the attention of the University.

##### **3. Human Remains Advisory Panel**

3.1 The information provided by the claimant(s) and by those responsible for the relevant University collection, as well as any other information gathered by the Registry shall be presented to a Human Remains Advisory Panel, which shall be established in accordance with Annex I.

3.2 The Panel shall consider the information presented to it and, taking into account the criteria set out in Annex II, which are derived from the Department for Media, Culture and Sport's *Guidance for the Care of*

*Human Remains in Museums*, the Panel shall give advice and make recommendations to the University Council regarding the claim. The Panel shall submit its advice and recommendations to the Council in the form of a full written report of all the relevant facts, factors, and evidence.

3.3 The Panel may itself seek additional information or evidence as appropriate from any persons in order to assist it in determining its advice and recommendations to the University Council, including independent advice from experts on ethical, scientific, legal, and political issues.

#### 4. Decision

4.1 Based upon the advice and recommendations contained in the Panel's report, the University Council shall make a decision regarding the claim.

4.2 Once a decision has been made it shall be formally minuted. The Registry shall promptly inform the claimant(s) of the decision and the reasons for it.

4.3 The claimant(s) shall be allowed time to respond. It is possible that further discussions may continue. If a request for the transfer of stewardship of human remains is declined, this shall not preclude future dialogue or communication between parties.

#### 5. Costs

5.1 The costs of administrative support for the Panel, together with any approved costs of any independent expert or third party who is commissioned to provide evidence at the reasonable request of the Panel, shall be met out of central University funds. Claimants shall meet their own costs.

#### 6. Review

6.1 The efficacy of this procedure shall be regularly reviewed by the University Council and this procedure shall be revised as deemed necessary or appropriate in the light of feedback and comment from interested parties.

### ANNEX I

1. A Human Remains Advisory Panel shall be established to give advice and make recommendations to the University Council regarding claims for the transfer of stewardship of human remains held in the University's collections.

2. There shall be three members of the Panel.

3. The members of the Panel will be appointed by the University Council on the recommendation of the Advisory Committee on Committee Membership and External Nominations. One member of the Panel shall be appointed as Chair of the Panel. The Panel shall have a sufficient and appropriate range of expertise amongst its members to enable it properly and fairly to perform its functions.

4. Members of the Panel shall be appointed in their own right, not as representatives of any interests or institutions.

5. Members will be appointed for an initial term of up to five years. Terms of appointment may be renewed.

6. The Registry shall appoint the Secretary of the Panel.

7. The Panel may set procedures regulating its own activities, including procedures for the summary resolution of a claim by one or more members of the Panel. The Panel may at its discretion hear oral evidence or submissions from the parties involved and may at its discretion allow the parties to be represented at such a hearing.

8. The activities of the Panel shall be reviewed by the University Council every three years.

### ANNEX II

#### A. The status of those making the request and continuity with remains

**Genealogical descendants:** If individuals can demonstrate a direct and close genealogical link to the human remains, their wishes would generally be given very strong weight. However, consideration should be given as to whether they are the only people in this category and if they are not, whether there was any risk of harm to others in this category if the request being made were granted.

There may be exceptional cases where remains would not be returned to genealogical descendants. However, it is expected that in the majority of cases they would be, or that consent would be required from the descendants for any further use by the University.

In practice, individuals who died more than 100 years ago may have many descendants from more than one community, so genealogical descent alone may not be the only criteria considered.

In such cases, the University will need to assess the range of potential claimants and gauge how the interests of these individuals might be balanced with any other relevant considerations. The ethical principles will help to guide the University through these cases. The principles of avoiding harm (to the particular individuals concerned) and solidarity (seeking co-operation and consensus) are likely to be particularly important here.

**Cultural community of origin:** The concept of a community can be a difficult one to define. The assumption is that human society is characterized by the creation of communities that individuals feel a part of and which take on a collective set of values, often identified by particular cultural behaviour. It is often far less easy to identify which particular cultural community, or part of a community, has the greatest authority in any particular instance.

When considering claims based on cultural links, the University will need to take care to verify that the group it is dealing with is the only potential claimant, or that, if it is not, the other potential claimants support them. For overseas claims, where there may be doubt on this, advice should generally be sought from the national government concerned. It might also be normal to look for precedents for how a community has acted in the past.

For a community to be recognized and their claim considered it would generally be expected that continuity of belief, customs or language could be demonstrated between the claimants and the community from which the remains originate. Cultures evolve and change through time but these changes can normally be recorded and demonstrated. The relationship between the location of the claimant community and the origin of the remains might also be a consideration.

It would be unusual to accept a claim for return from a group who did not either occupy the land from which the remains came, practice the same religious beliefs, share the same culture or language, or could not demonstrate why this was no longer the case.

The University will need to be assured that a sufficient link does exist and that the group they are dealing with has sufficient authority to make a community claim.

A clear demonstration of a continuity of association between the claimant and the remains will be of great importance in dealing with any claim.

**The country of origin:** In some cases a nation may make a claim for remains, either on behalf of a particular community or for all of its nationals. Such a claim would be considered along similar lines to claims based on cultural community.

#### **B. The cultural, spiritual, and religious significance of the remains**

Where claims are made it would be expected, but not essential, for the claimant group to show that human remains and their treatment have a cultural, religious or spiritual significance to their community. The claim may be being made purely on cultural, spiritual or religious grounds. The claimant group may show that remains were removed without the permission of their community, or at least outside its laws and normal practices. Further the claimant may show that the correct 'laying to rest' of remains is of religious or spiritual importance.

The remains might also be of a particular cultural significance to a community, for example as being from an important family or representing war dead, or victims of a particular event, such as a massacre.

Demonstration through some or all of the ways above, of strong continuous cultural, spiritual or religious significance of particular human remains, will add weight to a claim. This is particularly so in cases where there is clearly a risk of harm to the individuals or communities concerned, for example, where the continued holding of the remains by the University perpetuates a strong feeling of grief amongst claimants.

#### **C. The age of the remains**

The vast majority of claims that have been made for return have concerned the remains of overseas people who died within the last 100 to 300 years. This corresponds most closely to the period when expansion took place by European powers with its subsequent effect on Indigenous peoples – a period that does not go back further than 500 years. It is also the period in which it is more likely for a close genealogical link to be made between the living and the dead.

Archaeological and historical study has shown that it is very difficult to demonstrate clear genealogical, cultural or ethnic continuity far into the past, although there are exceptions to this. For these reasons it is considered that claims are unlikely to be successful for any remains over 300 years old, and are unlikely to be considered for remains over 500 years old, except where a very close and continuous geographical, religious, spiritual, and cultural link can be demonstrated. Some cultures put more emphasis on association with land that has a cultural, spiritual or religious importance and less on relative age. In such cases, the chronological age of the remains may be less significant.

#### **D. How the remains were originally removed and acquired**

There are many cases of human remains being removed and studied without dispute. There are other instances, particularly during the 19th and early 20th century, of remains being removed against the will of individuals, families, and communities.

#### **E. The status of the remains within the University/legal status of institution**

The University should be sure of the exact legal status of the remains within its collections and that it has the right to make decisions over their fate.

The University should identify the remains being claimed and then ascertain why they are being held and how they have been, and are likely to be, used:

1. Are the remains fully documented and the information about them publicly available?
2. Do they have continued, reasonably foreseeable, research potential?
3. Do they form part of a documented access strategy?
4. Are they curated according to the very highest standards?
5. Are they curated in such a way as their long-term preservation is assured?
6. Can the long-term security of the remains be guaranteed within the University?

**F. The scientific, educational, and historical value of the remains to the University and the public**

Many human remains have undoubted potential to further the knowledge and understanding of humanity through research, study, and display. In considering a request for return of human remains, the University should carefully assess their value and reasonably foreseeable potential for research, teaching, and display and should ensure that specialists with appropriate knowledge and experience have assessed this.

If the remains do have value for research, teaching, and display, the University should decide whether this can override other factors, particularly such as the wishes and feelings of genealogical descendants or cultural communities.

**G. How the remains have been used in the past**

In considering the future of remains, consideration may be given to what use they had been put in the past. Evidence of extensive previous research use would normally support an argument for scientific value.

**H. The future of the remains if returned**

The care of remains, if returned, also requires consideration. Some requests might require re-burial or removal from the public arena, whereas some claimants may be prepared to keep the remains in such a way that future research, teaching or even display is possible.

**I. Records of the remains**

Whether a record of the remains exists, or can be made before return, might be a factor in making a decision.

**J. Other options**

There may be more than two options when a claim is made. The University should explore further alternatives if this helps in reaching a consensus. For example, it may be possible that remains would stay in the relevant University collection, but a claimant group would gain a level of control over their future use.

**K. Policy of the country of origin**

Some nation states have developed domestic legislation or policy to govern claims for the return of remains. The University would normally expect to be aware of any policies of the national government from which a claim originated. It is worth considering how a claim would be resolved if made in the country from which the claimants originate, as well as the expectations of the claimant based on the practice in their country of origin.

**L. Precedent**

Claims will generally be dealt with on a case-by-case basis. However, it would be expected that the University would review past cases of claims made to it, or claims of a similar kind made to other collections and their outcomes, as well as giving some thought to the impact of any decision on future claims.