

Spoilation Advisory Panel

Functions and Procedures of the Secretariat & Legal Advisers

The Secretariat

Membership

1. The functions of the Secretariat are performed by three officials in the Cultural Property Unit ("CPU"), a specialist unit within the Museums and Cultural Property Division of the Department for Culture, Media and Sport ("the Department"). The three officials are (i) the Head of the CPU together with (ii) his/her policy advisers. The provision of Secretariat functions to the Spoilation Advisory Panel ("the Panel") is an incident of any appointment to those positions.
2. Appointments to those positions are made in accordance with standard Civil Service procedures, which include a selection process following advertisement of the vacancy. The current incumbents are Hillary Bauer, Mark Caldon and Maria Mourin. As and when new individuals are appointed to these positions, the Panel will be notified in writing.

Functions

3. The Secretariat provides the Panel with:
 - (a) secretarial support: this will include receiving, copying and distributing correspondence to and from the claimant, any relevant institution, Panel members and the Panel's external legal advisers; arranging and (subject to §16 below) minuting Panel meetings; and giving notice of Panel advice and recommendations to the claimant, any relevant institution, the Secretary of State for Culture, Media and Sport ("the Secretary of State") and others; and
 - (b) information and research support: this will include obtaining and providing to the Panel factual material, historical research and expert evidence (e.g. as to valuation).

Requests for such support services are made of the Secretariat by the Panel, principally through the Chairman.

4. The Secretariat does not advise the Panel as to the substance of its advice or recommendations in relation to any claim referred to it. The Secretariat does not have any decision-making function in relation to such claims.
5. Subject to the leave of the Chairman, the Secretariat shall perform its functions in the strictest confidence and treat as confidential and safeguard the confidentiality of any information which it has relating to a claim 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 a claim" includes, but is not limited to, the existence of a

claim, all correspondence, statements of cases, witness statements, documentary evidence, all oral and written submissions, oral evidence and transcripts of hearings relating to a claim.

Independent Legal Adviser

Selection & Appointment

6. The Panel secures independent legal advice from the private sector.
7. The Panel's independent legal advisers are selected and appointed following a competitive tendering process. That process will be handled by the Panel in conjunction with the Treasury Solicitor's Department; the Department will not participate in making the selection, but officials will observe the process of selection to ensure e.g. that the value for money criterion is satisfied.
8. The selection is expected to be made by reference to the following criteria:
 - (a) legal expertise (including relevant experience), particularly in sale of goods, art, public, charity and human rights law;
 - (b) quality of service, including ability to obtain legal advice from other jurisdictions;
 - (c) value for money; and
 - (d) understanding of the proposed job.
9. Independent legal advice is currently provided by Jennifer McDermott, a partner in Addleshaw Goddard, and formerly a partner of Lovells, who were selected following a tendering process in 2000.

Functions

10. The Panel's independent legal advisers provide the Panel with:
 - (a) legal advice: this will include advice relating to the Panel's jurisdiction, and the lawfulness of its procedures and its substantive advice and recommendations;
 - (b) secretarial support: this will include minuting meetings, or parts of meetings, which the Secretariat do not attend.
11. The Chairman of the Panel, with assistance as necessary from the Treasury Solicitor's Department, will instruct the independent legal advisers to carry out any necessary legal research or provide any necessary legal advice required by the Panel (informing the Secretariat of his instructions).

12. The Treasury Solicitor's Department will set a budget or agree hourly rates for the solicitors engaged on such work; and, in conjunction with the Chairman of the Panel, will monitor the work provided to enable them to agree any accounts rendered for it.
13. The independent legal advisers do not advise the Panel as to the substance of its advice or recommendations in relation to any claim referred to it. The independent legal advisers do not have any decision-making function in relation to such claims.
14. Subject to the leave of the Chairman, the independent legal advisers shall perform their functions in the strictest confidence and treat confidential and safeguard the confidentiality of any information which they have relating to a claim save that such information may, in appropriate circumstances, including having obtained a confidentiality undertaking if necessary, be communicated to third parties. "Information relating to a claim" includes, but is not limited to, the existence of a claim, all correspondence, statements of case, witness statements, documentary evidence, all oral and written submissions, oral evidence and transcripts of hearings relating to a claim.

Procedure

15. Representatives of the Secretariat and of the independent legal advisers will (subject to §16 below) attend the Panel's meetings and draft any necessary minutes for approval by the Panel.
16. Once the Panel has secured all the necessary evidence and received all appropriate representations, and it proceeds to consider its substantive advice or recommendation in relation to any claim, the Secretariat will withdraw from the meeting, but the independent legal advisers will remain in attendance.
17. 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.
18. Subject to the leave of the Chairman, the Panel shall treat all information relating to a 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 a claim" includes, but is not limited to, the existence of a claim, all correspondence, statements of cases, witness statements, documentary evidence, all oral and written submissions, oral evidence and transcripts of hearings relating to a claim.
19. Once the Panel has decided what advice or recommendation to give, the Secretary of State and the Chairman of the Panel so instructs, the Secretariat will notify the claimant, any relevant institution, and (if appropriate) any other party as necessary.

20. If the Panel's advice or recommendation is accepted by the Secretary of State and the Chairman of the Panel so instructs, the Secretariat will notify the claimant, any relevant institution, and (if appropriate) any other party as necessary.
21. For the avoidance of doubt, the CPU (including those officials who provide Secretariat services to the Panel) will continue to advise the Secretary of State in relation to matters within its expertise, including the Secretary of State 's response to any advice or recommendations made by the Panel, either in relation to any general issues raised by the claim or in relation to the particular circumstances of an individual claim.