



RETURN TO AN ADDRESS OF THE
HONOURABLE THE HOUSE OF COMMONS
DATED 15th DECEMBER 2010 FOR THE

**REPORT OF THE SPOILIATION ADVISORY
PANEL IN RESPECT OF AN OIL SKETCH
BY SIR PETER PAUL RUBENS,
'THE CORONATION OF THE VIRGIN',
NOW IN THE POSSESSION OF THE
SAMUEL COURTAULD TRUST**

The Right Honourable Sir David Hirst

*Ordered by the House of Commons
to be printed 15th December 2010*



RETURN TO AN ADDRESS OF THE
HONOURABLE THE HOUSE OF COMMONS
DATED 15th DECEMBER 2010 FOR THE

**REPORT OF THE SPOILIATION ADVISORY
PANEL IN RESPECT OF AN OIL SKETCH
BY SIR PETER PAUL RUBENS,
'THE CORONATION OF THE VIRGIN',
NOW IN THE POSSESSION OF THE
SAMUEL COURTAULD TRUST**

The Right Honourable Sir David Hirst

*Ordered by the House of Commons
to be printed 15th December 2010*

© Crown Copyright 2010

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

Any enquiries regarding this publication should be sent to us at The Secretariat, Spoliation Advisory Panel, Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH.

This publication is also available on <http://www.official-documents.gov.uk/>

ISBN: 978 0 10 297004 3

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2403158 12/10 6864 19585

Printed on paper containing 75% recycled fibre content minimum.

REPORT OF THE SPOILIATION ADVISORY PANEL IN RESPECT OF AN OIL SKETCH BY SIR PETER PAUL RUBENS, ‘THE CORONATION OF THE VIRGIN’, NOW IN THE POSSESSION OF THE SAMUEL COURTAULD TRUST

Introduction

1. In this case the Spoliation Advisory Panel (the Panel) is considering a claim by descendants of Herbert M Gutmann (Gutmann) against the Samuel Courtauld Trust (the Courtauld) in respect of an oil sketch titled *The Coronation of the Virgin* (the sketch) by Sir Peter Paul Rubens, now in the Courtauld’s collection. Gutmann’s descendants are represented by Mr Olaf S. Ossmann, Attorney at Law, of Guetlitobelweg 23, Winterthur, Switzerland. Mr Ossmann asserts that the sketch was the subject of a forced sale by auction on 12-13 April 1934 as a result of anti-semitic persecution carried out by the Dresdner Bank against Gutmann, who was Jewish by birth, and that the sketch was sold at below market value. The Claimants seek the transfer of the sketch to themselves. The Courtauld contests the claim.

The Panel’s task

2. The task of the Panel is to consider claims from anyone, or from their heirs, who lost possession of a cultural 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; 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 in the Appendix). Since the Courtauld is a registered charity, it clearly comes within the latter category of institution. For this and other reasons, outlined below, the Panel is satisfied that the claim falls within its jurisdiction. The Panel has been designated by the Secretary of State for Culture, Olympics, Media and Sport as the Advisory Panel for the purposes of considering the claim, under Section 3(2) of the Holocaust (Return of Cultural Objects) Act 2009.
3. In making this report the Panel has considered a series of written submissions by Mr Ossmann, for the Claimants, and by the Courtauld, together with expert reports commissioned by the Claimants from the “Facts and Files” Historical Research Institute in Berlin; expert reports commissioned by the Courtauld from Professor Dieter Ziegler of the Ruhr-University, Bochum, and extensive files of documents provided by both parties. The Panel also held an oral hearing with representatives of the Claimants and the Courtauld on 12 May 2010.
4. The Panel has taken into account all these submissions and documents in order to decide whether Gutmann was deprived of the sketch as a result of spoliation and, if so, to assess the moral strength of the Claimants’ case; to decide whether any moral obligation rests on the Courtauld and to advise the Secretary of State accordingly. In performing these functions, the Panel’s paramount purpose is to achieve a solution which is fair and just both to the Claimants and to the Courtauld.

The sketch and its history to 1934

5. *The Coronation of the Virgin* by Sir Peter Paul Rubens (1577-1640) dates from about 1613 and has been described as measuring 46 cm by 61 cm. It is an oil sketch painted as a modello for the ceiling of the Jesuit church in Antwerp, now destroyed. Although the sketch was described in 1934 as having been painted by Rubens, its attribution to Rubens was questioned in the 1950s. Its authenticity and importance were established beyond doubt while it was in Count Seilern's Princes Gate Collection, in the 1960s, by John Rupert Martin and by Julius S. Held in their respective works on the Antwerp church ceiling painting and on Rubens's oil sketches. Rubens painted three versions of *The Coronation of the Virgin*; this is the first.
6. According to an exchange of letters in 1985 between the Courtauld and Gutmann's daughter, Marion Whitehorn (1921-2007), Gutmann bought the sketch from an art dealer or collector called Mathilde Kocherthaler in the 1920s and hung it as part of his art collection in his house in Potsdam, known as the Herbertshof, which he had acquired in 1919. A photograph has been supplied showing it hanging in the Herbertshof, as illustrated in the biography of Gutmann edited by V. Rheinheimer and published in 2008 (*Herbert M. Gutmann. Bankier in Berlin. Bauherr in Potsdam. Kunstsammler*).

Herbert M. Gutmann

7. Herbert M. Gutmann (1879-1942) was born in Dresden on 15 October 1879, the fourth child of Eugen Gutmann, founder of the Dresdner Bank, a leading financial institution in Germany. Gutmann's father and the entire family converted from Judaism to Protestantism in 1898. Beginning his financial training at the age of 17, Gutmann duly became a director of the Dresdner Bank, joining its executive board in 1910. In 1906 he also founded the Deutsche Orientbank (German Eastern Bank) with his brother Eugen. Herbert Gutmann married in 1913 and the couple lived with their three children in Potsdam and Berlin.
8. In 1931, as the world economic slump took hold, the collapse of the Danatbank led to a more general crisis of the German banking system. The Reich government of Heinrich Brüning stepped in to reorganize the banks, forcing a takeover of the Danatbank by the Dresdner Bank (which was also in trouble and which the government rescued by taking a 75% holding), and requiring the replacement of several members of the executive board by new men. Gutmann left the executive board on 9 September 1931 and was also forced to resign his membership of the executive board of the German Orientbank.
9. Gutmann's income began to decline precipitously and continued to decline after the Nazis took power on 30 January 1933. He lost income from 1931 up to 1934 and beyond because of his removal from the executive board of the Dresdner Bank, and from a decline in the number of his appointments on the supervisory boards of other companies. The Dresdner Bank made transitional annual payments to him for a brief period but these amounted to only a fraction of his previous earnings.

10. In May 1933 the Dresdner Bank asked him to repay a substantial debt it claimed he owed it (detailed below, in paragraphs 28-29, 39-41 and 58-59). Gutmann immediately mortgaged the Herbertshof for 200,000 Reichsmarks; up to this point it had been free of mortgage debts. This did not cover the whole extent of his debts to the Dresdner Bank. In October 1933 the Gutmann family moved out of the Herbertshof, expecting to have to sell it, together with their art collection, which included *The Coronation of the Virgin*, to meet further debts.
11. The Dresdner Bank did not impound and sell Gutmann's art collection. Nevertheless, on 12 and 13 April 1934 he sold his collection through the auction house of Graupe in Berlin. The published catalogue lists *The Coronation of the Virgin* as lot 43, a "beautiful work of Peter Paul Rubens in his own hand". The estimated price was 5,000 Reichsmarks. In fact the sketch fetched 8,100 Reichsmarks. It was the most expensive work sold in the auction.
12. On 30 June 1934 Gutmann was arrested, together with other former active members of centrist and right-wing but non-Nazi parties, as part of the "Night of the Long Knives". In this action, carried out by the SS, Hitler had leaders of the 'revolutionary' stormtrooper movement shot. The SS also arrested and, in some cases, murdered leading figures of liberal and right-wing parties who Hitler feared might support a coup against him led by his deputy Chancellor, the conservative politician Franz von Papen, or play a role in a post-coup administration. It is likely that Gutmann was suspected of falling into this last-named category.
13. Gutmann's arrest reflected his role in political as well as financial life under the Weimar Republic. He was a close associate of Walther Rathenau, the Foreign Minister of the early Weimar years, and of his successor Gustav Stresemann, as well as of former Chancellor Kurt von Schleicher. Gutmann was also a well-known supporter of the German Democratic Party, one of the liberal mainstays of the Weimar Republic, and had been a particular target of the Nazis even before they came to power. In the Reichstag elections of November 1932 a Nazi propaganda poster had described him as a profiteer and a Jewish manipulator. However, in March/April 1934 he had no reason to suppose he would be arrested because of his political past. His arrest during the "Night of the Long Knives" happened suddenly and without prior warning.
14. Gutmann was released a short time after his arrest in 1934. He fled to the UK in October 1936 and died here on 22 December 1942. He was forced to pay 89,000 Reichsmarks in Reich Emigration Tax and, when further punitive tax was levied in 1939, the Herbertshof was sold. Gutmann's remaining assets in Germany were seized on 27 November 1940. During the war, his brother Fritz and his wife were murdered by the Nazis, and other members of the family fled or survived in hiding.

Subsequent history of the sketch

15. The purchaser of the *The Coronation of the Virgin* at the 1934 auction was a Cologne banker, Dr Richard von Schnitzler (1855-1938). The painting was included in an exhibition in Brussels in 1937 as catalogue number 36, on loan from Schnitzler. On the latter's death it is likely that the sketch passed by inheritance to his daughter, Edith, who was married to the banker Baron Kurt von Schröder (1889-1966), a prominent Nazi.

16. Schröder sold it at an unknown date to one Stanley Loomis, who auctioned it at Sotheby's in London on 2 July 1958, where it was purchased by Count Antoine von Seilern (1901-1978) for £7,500. It formed part of Seilern's celebrated Princes Gate Collection bequeathed to the Courtauld in 1978.
17. After 1945 the Gutmann family claimed compensation for excessive taxation (as for instance in the Reich Emigration Tax) and losses under the Nazis but the amount was strictly limited by statute. In total, Gutmann's widow received 26,550 German Marks (DM) in compensation for tax levies under the Nazis, and another 60,000 DM for the loss of furniture and fixtures, plus 16,500 DM for the loss of Gutmann's office and income. The family received no compensation for the loss of its art collection.
18. In 1992 the German Restitution Authority transferred the Herbertshof mansion in (formerly East German) Potsdam back to the Gutmann family. In March 2009 the Vienna Restitution Committee restored to the family the painting *Pappenheim's Death* by Hans Makart; it had also been sold at the Graupe auction in 1934.
19. In 1985, not long after *The Coronation of the Virgin* went on display at the Courtauld, Gutmann's daughter Marion Whitehorn saw it and contacted the Gallery's Director, providing details of the sketch's provenance (see paragraph 6, above); subsequently the Courtauld included this information in its publications. At this time she had no reason to doubt the legitimacy of the sale in 1934.
20. The fact that there was no claim for over 20 years after Marion Whitehorn first saw *The Coronation of the Virgin* at the Courtauld cannot reasonably be held against the Claimants. It was only when documents became available with the collapse of Communist East Germany in 1990 that it became possible to reconsider this matter and it was not until the late 1990s that a more favourable climate for such claims began to emerge. A claim on legal grounds would have been prohibitively expensive and unlikely to succeed. It is only since the Panel was constituted in 2000 that a claim in the UK has been feasible. Moreover, the archives of the Dresdner Bank were closed until the completion of the company-sponsored history in 2006 and it was only at this point that details of Gutmann's financial position and the circumstances of the sale could be thoroughly researched.
21. The Courtauld was informed in October 2006 by Sotheby's Restitution Department of a possible claim for restitution. The Courtauld contacted Gutmann's descendants and, after further correspondence, there was a meeting between the representatives of the descendants and of the Courtauld, following which a formal claim was submitted to the Courtauld in April 2008. The claim was submitted to the Panel in May 2009.

The Panel's objective

22. The Courtauld's legal title to the painting is not contested, in the Panel's opinion properly so, since any legal claim appears to be time-barred under the Limitation Act 1939 (as amended). However, under the Panel's Terms of Reference, paragraph 15(e), it is required to give "due weight" to the moral strength of the Claimants' case. This obligation widens the scope of the Panel's assessment beyond strict legal considerations.

The Claimants' case

General argument

23. The Claimants argue that the debts which Gutmann sold his art collection to repay were fictitious debts imposed by the Dresdner Bank after the Nazi seizure of power because he was classified by the Nazis as Jewish. The Dresdner Bank, 75% state-owned, was quickly Nazified and was encouraged in its persecution of current and former Jewish employees by Reichsbank chief Hjalmar Schacht, who on 6 November 1933 wrote to Propaganda Minister Goebbels alleging that Jewish influence in the financial world was excessive. While there is no documentary record of Gutmann having owed any money to the Dresdner Bank before 1933, documents start recording money owed by Gutmann from this point onwards, beginning with a debt, reported in July 1933, of 200,000 Reichsmarks owed to a Dresdner Bank Share Syndicate set up in 1927, in which Gutmann was a participant. In addition, Gutmann was charged with newly announced debts in connection with the German Orientbank's investments in Egyptian cotton futures in previous years. At the same time, the Claimants argue, he lost a large portion of his income as a result of his dismissal on anti-semitic grounds from the supervisory boards of other businesses. Faced with a loss of income and a mountain of debts imposed by the Nazified Dresdner Bank, both consequences of his status as a Jew in the Third Reich, Gutmann had to put his art collection up for auction in 1934. The Claimants argue that the sale of *The Coronation of the Virgin* was therefore a forced sale. They also argue that comparisons with other Rubens sales at the same time, particularly in London, where he was prevented from selling it due to a ban on his selling his property abroad, imposed by the regime because he was classified as a Jew, show that it was sold at below market value. The Claimants conclude that there is therefore a moral obligation on the Courtauld to return the painting.

The Egyptian cotton futures debt

24. On 24 August 1931 the German Orientbank, which had interests in Egypt and Turkey, was subject to a partial takeover by the Dresdner Bank. The Reich lent the Orientbank 15 million Reichsmarks to help clear its debts, which had mounted as Egyptian cotton prices slumped. Despite increased demand from Germany for Egyptian cotton, the Orientbank continued to make a loss and on 16 March 1933 was taken over in its entirety by the Dresdner Bank, backdated to 31 December 1932.
25. In 1933 the Dresdner Bank recalculated the debts of its present or past Board members resulting from a loss-making cotton futures business initiated under the auspices of the Orientbank. The debts were referred to in documents dating from 1933 onwards variously as "syndicate account German Orientbank", "Mr Gutmann's share of the loss", or "Lindemann & Co.", but the Claimants argue that these were in fact all charged to Gutmann, indicating a manipulation of other debt accounts to his disadvantage.
26. The Claimants assert that the Dresdner Bank calculated the debts differently according to whether the supposed debtors were "Aryan" or Jewish, resulting in a charge to Gutmann of around 180,000 Reichsmarks (the sum varied over time because of fluctuating exchange rates between German and Egyptian currency) where an earlier audit had calculated it at only 47,500 Reichsmarks (25% of the then total). There was no record of any debt before the Nazi seizure of power. The debt, after having been amortized in 1932, was suddenly reactivated on 28 December 1933, charged at 100% and then imposed on Gutmann and

two Jewish former colleagues, Alexander and Nathan. The fourth partner, Lebrecht, who was not Jewish, did not have to repay. By contrast, when Nathan died, the Bank pursued his widow in the courts. Thus, in the Claimants' view, the Dresdner Bank discriminated against the "non-Aryans" and effectively manipulated the figures.

27. Gutmann wrote on 4 January 1934 to the Dresdner Bank pointing out that "I, like the other partners, hold only a 25% stake in this Egyptian business and any further liability on my side is therefore not possible". The Claimants argue that this was a protest against the discriminatory treatment meted out to him by the Dresdner Bank in this matter. On 20 February 1934 the Dresdner Bank stated that the debt should be paid with the proceeds of the Graupe auction, which it then was. Thus, the Claimants argue, Gutmann was forced to sell *The Coronation of the Virgin* by the Dresdner Bank in order to pay a debt that he had not incurred and that was charged to him because he was classified by the Nazi regime as Jewish.

The 1927 Share Syndicate

28. Gutmann had participated in the 1927 Dresdner Bank Share Syndicate to the extent of 250,000 Reichsmarks. On 18 January 1932 an expert report for the Economics Ministry noted that Gutmann and the other Syndicate members were neither entitled to the Syndicate's profits nor liable for its losses. Participation in the Syndicate was a paper transaction only, with no real financial consequences for any of the participants; its sole purpose was to boost the price of the Dresdner Bank's shares.
29. However, after the Nazis came to power in 1933 the 1932 report was disregarded and Gutmann's participation treated as a personal investment. In May 1933 he was asked to repay 200,000 Reichsmarks. Syndicate members who refused to repay were threatened with legal action. The Claimants argue that this was likewise a fictitious debt imposed as part of a wider anti-semitic policy on the part of the Dresdner Bank. The reason why Gutmann mortgaged the Herbertshof for 200,000 Reichsmarks was to pay this debt.

Supervisory boards

30. In 1931, Gutmann sat on the boards of a large number of German companies, earning other emoluments. From 51 in 1931, Gutmann's membership on boards fell to 46 in 1932, to 31 in 1933, to 20 in 1934, to 17 in 1935, to 10 in 1936, to 9 in 1937 and to 8 in 1938. This meant a steady and substantial loss of income.
31. The Claimants argue that Gutmann's loss of income, caused by his removal from supervisory boards, happened mainly after the Nazi seizure of power and was a result of anti-semitic policies pursued by the companies concerned under the influence of Nazism. In addition, they suggest that Gutmann would have expected a further loss of income from his impending dismissal from his position on the committee of the Dresdner Bank overseeing its business in the state of Saxony, which occurred on 20 April 1934.

The 1934 auction

32. The Claimants argue that the sale of *The Coronation of the Virgin* at the 1934 auction was a forced sale because Gutmann was faced with no alternative if he was to pay fictitious or manipulated debts imposed on him because he was classified as a Jew in Nazi Germany and because the Dresdner Bank was, in effect, a Nazi bank.
33. The Claimants go on to argue that the circumstances of the sale robbed Gutmann of the choice as to when and where to sell the sketch. The auctioneer Paul Graupe wrote to the director of the city museum in The Hague urging him to attend the auction “because compared to abroad the prices at the auctions in Germany are very low”. The sketch was sold for 8,100 Reichsmarks, well above its estimated price of 5,000 Reichsmarks. However, the Claimants quote a sum of 36,490 Reichsmarks for an oil portrait by Rubens sold at auction in Munich in March 1934 and a sum equivalent to 21,060 Reichsmarks realized for a Rubens oil sketch at a Christie’s auction in London in the same year. They thus contend that the sale of the painting at the Graupe auction in 1934 was below market value.

The Courtauld’s case

General argument

34. The Courtauld maintains that Gutmann’s decision to sell his art collection in April 1934 was not a consequence of the anti-semitism of the Nazi regime and its influence, if any, on the Dresdner Bank. Gutmann’s debts, it argues, were not fictitious but real. In the Courtauld’s view it was cold financial calculation, rather than any anti-semitic intention to ruin Gutmann, that was behind the Dresdner Bank’s pursuit of Gutmann for repayment of the money. The repayment obligations that led Gutmann to sell his art collection were incurred as a consequence of the banking crisis of 1931, not of the anti-semitism of the Dresdner Bank under the Nazi regime. Gutmann lost most of his income when he was dismissed from the executive board of the Dresdner Bank in 1931 and suffered a further loss of income as he was gradually removed from the supervisory boards of other companies as a consequence, or in order to conform with a 1931 Presidential emergency decree imposing a strict limit on the number of such memberships that could be held by the same individual. He had already been obliged for business reasons to sell his collection of porcelain birds in London in 1932, before the Nazi seizure of power; in the Courtauld’s view, the 1934 sale represented a further step in the same process. The Courtauld argues that the sale was not a forced sale in the sense that it was forced on Gutmann by the Nazi regime and its adherents, nor was *The Coronation of the Virgin* sold below market value, since it realized far more than its estimated price. Thus the Courtauld concludes that it has no moral obligation to return the sketch.

The Egyptian cotton futures debt

35. The Courtauld argues that the debt Gutmann incurred from his investment in Egyptian cotton futures was real, not invented or manipulated by the Nazis or by the Dresdner Bank in conformity with Nazi ideology. The German Orientbank was in trouble, closed during the banking crisis and had to be rescued by the Reich in 1931. On taking over the German Orientbank, the Dresdner Bank began to pursue its debtors. Gutmann's debts, the Courtauld claims, date from this period, i.e. before the Nazi seizure of power.
36. When the German Orientbank was partly taken over by the Dresdner Bank in August 1931, the latter had to deal with the fact that the cotton futures account had been set up as a form of 'insider lending' by Alexander, Gutmann, Lebrecht and Nathan, for their own personal profit. They had attempted to disguise this by using a variety of different names for it. The manager of what was now, after the takeover, the Dresdner Bank's Egyptian branch, Mr Erdoes, was aware of this and replied to enquiries from the Dresdner Bank head office by claiming that the relevant loan approval documents could not be found. This was reported in the 1932 Dresdner Bank audit; in early 1933 Erdoes claimed that the debt had been written off, though only head office had the right to do this. It was only then that head office could clarify the situation and seek the repayment of the debts. The Courtauld argues that this was a process of financial auditing and clarification that had no connection with the Nazi seizure of power.
37. The Courtauld surmises that the Dresdner Bank assumed that each of the four members of the consortium had provided security for the loan by underwriting the investments of all the others. Thus all were jointly and severally liable for the whole debt. However, after the investors had denied this, a Dresdner Bank memorandum of 20 February 1934 concluded that there was no collective liability. The Dresdner Bank required each of the four to pay 25%. Gutmann and Lebrecht accepted their respective 25% shares in the debt. The Courtauld concedes that this was a significant factor in prompting Gutmann to sell his art collection. However, it suggests that, had Gutmann felt the debt was unjust or fabricated, he would have joined the heirs of Henry Nathan in appealing against it, as they did, leading to a court case, which they lost.
38. The Courtauld argues that the Dresdner Bank's treatment of the three Jewish debtors in the consortium was not inequitable. Alexander had left for Paris but was known not to have any money and so was not pursued for repayment. Crucially, the one "Aryan" member of the group, Lebrecht, declared himself unable to pay, in view of the fact that he owed the Bank a further 750,000 Reichsmarks, and eventually reached a settlement with the Bank in 1938, after which the account was closed. So the Courtauld concludes that he was not treated more favourably than Gutmann, who was still in 1934 in a position to pay the debt by liquidating some of his assets.

The 1927 Share Syndicate

39. The 1927 Share Syndicate was a consortium of 62 of the Dresdner Bank's senior members who borrowed money from the Dresdner Bank to purchase shares in it, thus driving up the price (a perfectly legal transaction at the time). Although Gutmann thus bought his shares on behalf of the Dresdner Bank, the Courtauld argues that he was still personally liable for the repayment of the money the Bank had lent him for this purpose.

40. The Courtauld contends that the Reich Finance Ministry obliged Gutmann and the other members of the Syndicate, many of whom were not Jewish, to repay this loan in 1931/2, though only at 20% of the nominal value of the shares. Since the actual value in 1927 was between 140% and 200% of the nominal value, the Finance Ministry was treating the Syndicate members generously. Gutmann began repayment at 1,000 Reichsmarks a month and he continued with it through 1933 and 1934, in contrast to the 15 Syndicate members who did not agree to the repayment.
41. The Courtauld claims that the reason why there is no earlier documentary record of these debts is that the Dresdner Bank's archives for the period before the takeover by the Reich in 1931 were subsequently destroyed.

Supervisory boards

42. On 1 August 1935, Hjalmar Schacht, now Reich Economics Minister, urged "fair treatment" of Gutmann in fixing his pension, which happened on 15 August 1935. The Courtauld argues that this shows that Schacht is unlikely to have pushed for the persecution of Gutmann and the manipulation of his accounts on previous occasions.
43. Indeed, in a letter dated 6 November 1933, Schacht, the Courtauld points out, had urged Propaganda Minister Goebbels to argue in favour of keeping senior Jewish bankers in post in order to deal with Jewish creditors and in particular to avoid losses in commitments involving Jewish counterparties outside Germany. The letter was written in response to a press campaign for a more thoroughgoing policy of dismissal. Thus, the Courtauld argues, the Claimants are reversing the true meaning of this letter when they cite it as demonstrating Schacht's hostility to "Jewish influence" in the banking world.
44. Gutmann was forced, along with all the other directors of the Dresdner Bank, to leave the Executive Board of the Dresdner Bank in 1931, as a consequence of the state reorganization of the Bank after the crash of that year, long before the Nazis came to power. He was not reinstated on the board since Reich Chancellor Heinrich Brüning overrode the wish of the Bank to retain him (Brüning felt personally betrayed by Gutmann when he learned that Gutmann had privately suggested during the banking crisis that the Dresdner Bank might go under, despite Gutmann's public assurances to the contrary.)
45. The Courtauld argues that the principal reason why Gutmann lost his positions on supervisory boards from 1933-34 was because the Dresdner Bank did not support the renewal of his appointment and so other companies lost interest in him. Both these factors, in the Courtauld's view, reflected the fact that Gutmann was no longer part of the Dresdner Bank's senior management and thus no longer privy to useful information that might help it. The Courtauld suggests that it was for this reason that, when his positions came up for renewal after 1931, others were appointed in his stead.
46. The Courtauld asserts that there is no evidence that Gutmann lost these positions because he was classified as Jewish. It notes that the banker Schmidt-Branden, who was not believed to be Jewish, was removed from the Dresdner Bank's executive board together with Gutmann, and also lost positions on other supervisory boards. The two cases are in the Courtauld's view, comparable.

47. The Courtauld argues that the major decline in Gutmann's earnings came between 1931 and 1932 because of his dismissal from the executive board of the Dresdner Bank and not subsequently because of his removal from the supervisory boards of other companies. As a consequence, this cannot have been caused by the anti-semitic policies of the Nazi regime, which came to power only in 1933.
48. An additional reason for the decline in Gutmann's membership of supervisory boards, in the Courtauld's view, was an emergency decree passed on 18 September 1931 that imposed a maximum of 20 board memberships of German companies per person. This came into force in particular cases only when the annual general meeting of a company took place. Some of the memberships that Gutmann lost for this reason, the Courtauld argues, would thus not have appeared in the published handbook of German companies until well into 1933. Thus in the Courtauld's opinion, what might appear to be a loss of a board membership for anti-semitic reasons under the Nazis had in fact occurred for legal reasons, as a result of the emergency decree. In conformity with the terms of the decree, Gutmann's memberships of the supervisory boards of German companies were indeed reduced to 20, the maximum permissible, by 1933.

The 1934 auction

49. The Courtauld asserts that the sale of Gutmann's art collection in 1934 was not a forced sale because the debts which it was intended to repay were not incurred as a result of anti-semitic persecution of him under the Nazi regime.
50. The Courtauld points out that the painting sold in Munich, mentioned by the Claimants, was a fully realized portrait, not an oil sketch. It also notes that *The Coronation of the Virgin* was sold in 1934 for 8,100 Reichsmarks, a price very much above the auction estimate, while other Rubens paintings realized sums of the same order of magnitude at other sales in Germany, such as the *Madonna with Jesus and St John*, sold for 11,000 Reichsmarks on 29 November 1933 at an auction in Berlin, or a half-length portrait of a man, sold at auction in Frankfurt in May/June 1934 for 9,600 Reichsmarks. It thus concludes that *The Coronation of the Virgin* was sold at the market value obtaining for such works by Rubens in Germany in 1934.

The Panel's conclusions

The Egyptian cotton futures debt

51. Arguments about the business ethics of Gutmann's role in the Egyptian cotton futures investment have no relevance to the issue of whether the Bank demanded the repayment of his debt for business reasons or as part of an anti-semitic campaign against him. Nevertheless, an audit report of 18 July 1933 and a Bank memorandum of 5 January 1934 make it clear that the head of the Alexandria branch, Erdoes, had written off the debt without permission from head office. In August 1931 Alexander explained that the investment by the four partners was a private one. The fact that it took so long to clarify its circumstances was a consequence of the absence of documentation and also of obfuscations and delays on the part of Erdoes, who even claimed at one point not to know who the investors were.

52. The Panel is persuaded by the Courtauld's argument that the Dresdner Bank's demand for the repayment of Gutmann's debt incurred through his investment in Egyptian cotton futures was made for financial, not anti-semitic reasons. The documents show convincingly that Gutmann was not discriminated against in the debt recovery, since the one "Aryan" among the four debtors, Lebrecht, was eventually also forced to reach a settlement of the debt with the Dresdner Bank.
53. While the Dresdner Bank calculated the amount owed by the German Orientbank Syndicate (Alexander, Gutmann, Lebrecht and Nathan) at 760,000 Reichsmarks, it proposed to assess it at a quarter of this value, a significant concession to the four participants. Each debtor was then charged with a quarter of the reduced sum, amounting to 47,500 Reichsmarks. In writing to Gutmann on 28 December 1933, the Dresdner Bank informed him that he and the three other partners were personally liable for repayment of the debt, which was noted in the accounts on 31 December 1932, because it was assuming that each had provided security for the loan by underwriting the investments of all the others. It demanded repayment by 1 February 1934 and invited suggestions as to how the money should be repaid. It had sent exactly the same letter to the other three partners. Thus Gutmann was being treated at this point in precisely the same manner as Alexander, Lebrecht and Nathan.
54. In a letter to the Dresdner Bank on 4 January 1934 Gutmann pointed out that he was liable for only 25% of the debt, but he did not complain that he was being treated differently from the other partners. A Dresdner Bank memorandum of 5 January 1934 reported that Lebrecht (the non-Jewish member of the consortium) had also pointed out that he himself was liable for only 25% of the debt and "that there had never been any mention of a total debt liability". The fact that Lebrecht was responding in the same terms as Gutmann indicates that the Bank was not singling out Gutmann for repayment of the entire debt.
55. In a memorandum of 20 February 1934, the Dresdner Bank's legal office accepted that each partner should repay 25%. It left it to the other three to decide whether to repay in German or Egyptian currency and noted that Gutmann had already received permission to repay his share (which, it is clear from the context of the letter, was also 25%) from the proceeds of the Graupe auction. If the auction did not yield a sufficient amount then, the memorandum continued, Gutmann should be consulted again and a decision taken as to whether it should agree to await the sale of his house.
56. A memorandum prepared for the Dresdner Bank's working committee meeting on 26 June 1934 also accepted that Gutmann's debt was to be valued at 25% of the total. Moreover, the fact that his argument in the letter of 4 January 1934 that he should be allowed to wait to sell his house until he got a good price for it was accepted by the Bank (the house was not sold until 1939) suggests that the other arguments he advanced in the letter were accepted too. Thus it is probable that the debt which Gutmann sought to liquidate through the Graupe sale amounted to 47,500 Reichsmarks and not 180,000, and that the proceeds of the sale of the art collection were sufficient to cover the debt.
57. The Panel concludes that the debt incurred by Gutmann and his consortium colleagues on the Egyptian cotton futures investment was a genuine one, that it resulted from speculation engaged in before the Nazis took power, that the Dresdner Bank wrote off 75% of the gross sum, that the repayment from Gutmann of 25% of the remainder was demanded for financial, not anti-semitic reasons and that Gutmann was treated no differently in this matter from any of his three co-investors, whether or not they were regarded as Jewish.

The 1927 Share Syndicate

58. While the Claimants assert that the Dresdner Bank demanded repayment of the 1927 Share Syndicate loan in 1933, they do not dispute the Courtauld's point that the decision to repay the loan had already been taken the previous year, before the Nazis came to power. In an addendum to the Claimants' submission, it is noted that it was in 1932 that the Dresdner Bank treated the investments of the 62 Syndicate members as personal, and offered a compromise – accepted by 47 of the members – of 20% repayment by the time of the next audit, which was in 1933. Gutmann thus owed 50,000 Reichsmarks, which he arranged to repay over time, by agreeing in May 1933 to a reduction of 1,000 Reichsmarks a month in his annual transitional payment of 42,000 Reichsmarks from the Dresdner Bank.
59. The Panel concludes that Gutmann's debt in respect of the 1927 Share Syndicate was called in not as a result of the Nazi seizure of power and the fact that he was classified by the new regime as Jewish, but because of the financial difficulties experienced by the Dresdner Bank in the crisis of 1931-32 and the more aggressive stance towards all debtors, Jewish and non-Jewish alike, taken by the Dresdner Bank after its takeover by the German state.

Supervisory boards

60. Up to 1933 the Dresdner Bank was generally regarded as a "Jewish" bank and indeed many of its senior figures were Jewish. At the time of the Nazi takeover three of the six members of the Board of Directors and nine of the thirteen members of top management were Jewish. However, while the new regime moved to change this state of affairs, it did so only gradually, in a process completed only in 1935.
61. Partly as a result of the slow pace of replacement of Jewish managers and board members, the so-called Nazi factory cells among the Bank's employees (they formed part of the Nazi trade union organization, which was on the more radical wing of the party) began a campaign against the Bank's officials, in particular those of Jewish origin. There were rumours that the entire executive board would be arrested. This kind of pressure could not be without its effect. More than four hundred junior Jewish employees were dismissed by the middle of 1934. The influence of the factory cells only came to an end with the "Night of the Long Knives" at the end of June 1934 (see above, paragraphs 12-13).
62. This campaign by the Dresdner Bank Nazi factory cells may well have been a factor in Gutmann's dismissal from the Saxon state committee of the Dresdner Bank in April 1934. However, it does not appear from the evidence that the factory cells influenced the Bank's treatment of its *former* employees. It should be noted, for example, that Gutmann continued to collect his transitional payments from the Dresdner Bank up to 1935. Had the factory cells been attempting to induce the Bank to persecute him, this would have been an obvious means by which it could have done so.
63. The Courtauld points out that the banker Schmidt-Branden, who was not thought to be Jewish, was removed from the Dresdner Bank's executive board at the same time as Gutmann and likewise also lost positions on other supervisory boards as well. But this is not a convincing comparison, since these declined only marginally in Schmidt-Branden's case, from 17 in 1932 to 14 in 1933, while Gutmann's declined precipitously, from 46 in 1932 to 31 in 1933 and 20 in 1934.

64. The 18 September 1931 emergency decree limited the number of supervisory board memberships on German companies to 20 per person. Gutmann held 37 of these in 1931 (plus 14 foreign company memberships), 34 in 1932 (plus 12 foreign), and 20 in 1933 (plus 11 foreign). Thus he lost his membership of 14 German company supervisory boards from 1932 to 1933. Some of these losses might have happened before the Nazis came to power. However, the Courtauld's argument that the cessation of a board membership might not be recorded in the published companies directory until several months after it happened, applies to the memberships Gutmann lost in 1933 and the early months of 1934 as well as to those he lost in 1932. So the recorded number of 13 German supervisory board memberships for 1934 might therefore also include two or three which he had already relinquished in 1933; and the two more he was recorded as having lost by 1934 might have been lost before the Graupe sale. In any case, he would have been aware by early 1934 that the precipitate decline in his memberships already under way was going to continue.
65. The Courtauld has not disputed the list of supervisory board memberships presented by the Claimants, nor has it sought to question the Claimants' citation of the 1933 general meeting minutes of one company on the supervisory board of which Gutmann sat until this point, which state: "By decision of the general meeting on 6 May 1933, all non-Aryan members have left the supervisory board."
66. In the light of the rapidly intensifying anti-semitic atmosphere of 1933-34, the likelihood is that Gutmann's membership of at least some supervisory boards was not renewed because he was held to be Jewish, and that his classification as a Jew under the Nazi regime was a factor in the loss in 1933-34 of the income he derived from his previous membership of at least some of these boards. The Courtauld has essentially admitted this fact by conceding that 'internal and external anti-semitic pressure would have persuaded the chairmen of supervisory boards to refuse to re-elect Gutmann'.
67. It is not necessary to demonstrate that there were active members and officials of the Nazi Party in the management of banks and companies to show that managers were acting according to the principles of the regime. There is a great deal of research showing that businesses, institutions and organizations of all kinds acted independently of direct regime pressure to accommodate themselves to the new situation, in which Jews were "not wanted" in positions of responsibility.
68. The Claimants argue that Gutmann lost income dramatically from the reduction in his supervisory board memberships as a result of the Nazis coming to power. This left him unable to cover his debts, whenever they had been incurred, and so he had to sell his art collection. The Claimants note that the loss of income from this source, for this reason, was the only factor mentioned in the Vienna Restitution Committee's decision that the Vienna City Museum should restore the painting by Hans Markart, *Pappenheim's Death*, to the family, referred to above in paragraph 18. However, the Vienna Restitution Committee's report did not provide any evidence to support its exclusive reliance on this factor, or to demonstrate that Gutmann's removal from supervisory boards was caused by Nazi anti-semitism.

69. The question arises of precisely how much income Gutmann lost in 1933-34 for this reason. The Claimants suggest that Gutmann's income from supervisory board profit-sharing schemes stood at 127,000 Reichsmarks in 1931, 115,000 Reichsmarks in 1932, 80,000 Reichsmarks in 1933, and 50,000 Reichsmarks in 1934. The decline from 1932 to 1934 was, they argue, a direct consequence of his loss of supervisory board memberships in this period.
70. Professor Ziegler, for the Courtauld, argues that Gutmann's loss of income consequent upon his removal as an executive board member of the Dresdner Bank in 1931 was far more significant. From a sum of 321,993 Reichsmarks in 1930, it fell to 6,462 Reichsmarks in 1933. The Claimants use a slightly different basis for calculation, and come to slightly different figures: on their estimation Gutmann's salary fell from 340,500 Reichsmarks in 1930 to 42,000 in 1933, the same in 1934, and 12,746 in 1935, taking into account the transitional payments mentioned in paragraph 62 above.
71. On the Claimants' own figures, Gutmann's loss of income from his membership of supervisory boards from 1932 to 1934 totalled 65,000 Reichsmarks and there was no loss of salary from the Bank over the same period; he had already lost 298,000 Reichsmarks in salary and bonuses between 1930 and 1932, as a result of his dismissal from the executive board of the Bank, for reasons that had nothing to do with the fact that he was classified as Jewish. The reduced level of his income in 1933-34 was therefore primarily the result of his dismissal from the executive board of the Dresdner Bank.
72. We consider that anti-semitism was the cause of Gutmann's removal from only some supervisory boards; it was by no means the cause of his removal from all of them. In some cases his membership ceased in order for him to conform to the terms of the September 1931 decree, limiting his number of memberships to 20. Some of the decline in his memberships recorded after the Nazi seizure of power was recorded in 1933 but had in fact happened in 1932, although a small number of further losses may have happened in 1933 and early 1934 and were not recorded until later. It is clear, however, that the decline in his income from his membership of supervisory boards prior to the auction of *The Coronation of the Virgin* in April 1934 amounted to a maximum of 20% of his overall decline in income and, in practice, is likely to have been less.
73. In these circumstances the Panel concludes that, whereas Gutmann's loss of earnings as a result of Nazi anti-semitism may have played some small part in his decision to sell *The Coronation of the Virgin*, it was by no means the primary motivating factor, nor was it the principal cause of his inability to meet his debts.

The 1934 auction

74. The Claimants point out that, in his memoir of his grandfather Eugen Gutmann, Gutmann's nephew Bernard Goodman (1914-1991) mentioned the art collection of his uncle having been disposed of at a "forced sale" in 1934. Since Bernard Goodman lived with his uncle in London after the latter's emigration, his view may be taken as representing that of Gutmann.

75. However, the Panel concludes that, even if Gutmann had no alternative but to sell his art collection to meet his debts, he did not sell it because he was forced to do so by Nazi persecution. The debts in question had been incurred as a result of financial speculation undertaken before the Nazi seizure of power. It is relevant to note that Gutmann did not put his art collection up for auction in order to meet fraudulent Nazi tax demands or pay the Reich Emigration (or “Flight”) Tax. As he had previously agreed with the Dresdner Bank, he used the proceeds of the sale to pay the debt he had incurred in the Egyptian cotton futures speculation. Thus the sale of his art collection in 1934 was not a sale forced by Nazi persecution or discrimination.
76. The Claimants have argued, however, that Gutmann might have been able to sell his collection at a higher price had he possessed a greater power of choice as to whether or when to sell. It is significant they suggest that, although Gutmann did not intend to emigrate at this point and so would not have been liable to Reich Emigration Tax (introduced in any case in 1931 and so not a Nazi tax in itself), the export of artworks required the permission of the Reich Finance Ministry and the Reich Chamber of Art (a division of the Propaganda Ministry). Furthermore, by 1934 these bodies were unlikely to have granted this to a Jewish owner, without the imposition of a tax payment that would at least have nullified any financial advantage gained by selling the artworks abroad. They argue that Gutmann was thus, in effect, deprived of the choice of selling the sketch outside Germany. The question therefore arises whether a sale abroad would have been more advantageous.
77. An oil sketch by Rubens, *Two Studies of a Young Man*, sold at Christie’s on 23 November 1934 for £1,560. In early 1934 there were 13.6 Reichsmarks to the pound sterling. Thus the Claimants are correct in estimating the value of this oil sketch at around 21,000 Reichsmarks. However, this was a wholly exceptional work. The *Two Studies of a Young Man* had recently been rediscovered in 1934, was the subject of considerable press coverage, and exceeded its pre-sale estimate by 15 times. In addition, as a study of a head from two different angles, it was particularly arresting, and constituted in effect a picture in its own right.
78. A set of six oil sketches made by Rubens for tapestries, *The Life and Actions of Hercules*, fetched £9,200 (i.e. £1,533 apiece) at Sotheby’s in 1933. The unit price achieved by one of a set of six, however, cannot be regarded as indicative of the price to be expected for a single work, on its own.
79. As the guide price for *Two Studies of a Young Man* suggests, the sums that could normally be expected for Rubens oil sketches in London in the early 1930s were far lower. For example *The Emperor taking the Trident from Neptune*, sold at Christie/s on 8 May 1931 for 16 guineas, *Wrestlers* sold on 20 July 1932 at Christie’s for £31, *The Apotheosis of the Duke of Buckingham*, sold at Christie’s on 27 April 1934 for £89.5s, the *Boar Hunt*, sold at Sotheby’s on 25 July 1934 for £17, or *Minerva and Mars* sold on 3 June 1936 for 60 guineas. The average London price for Rubens oil sketches was thus certainly no higher than that realized in Berlin for *The Coronation of the Virgin*, which did not possess the special attributes conspicuous in the cases of the *Two Studies of a Young Man* and *The Life and Actions of Hercules*. *The Coronation of the Virgin* was not newly discovered, it was not part of an extant series of six and it was not at the time known to be the first of three studies for the ceiling of the Jesuit Church in Antwerp.

80. The auctioneer Graupe, who sold *The Coronation of the Virgin* in Berlin, claimed that prices in Germany were lower than elsewhere in Europe. We are given to understand, however, that this was (and is) a common tactic used by auction houses to attract potential bidders. In this case, growing international reluctance to do business in Nazi Germany, together with currency export restrictions and the low value of the dollar and pound had turned international bidders away from German auctions and Graupe may have been concerned to try to counteract these factors as far as he could.
81. On the other hand, the market for Old Masters had recovered in Germany by 1934 and contemporaries commented on the very high prices paid for *The Coronation of the Virgin* and two other paintings in the auction. The significance of the fact that *The Coronation of the Virgin* fetched 8,100 Reichsmarks as against an estimate of 5,000 cannot be ignored.
82. The Panel's conclusion is that the price obtained for *The Coronation of the Virgin* at the Graupe auction in 1934 was consistent with the market value obtaining for such artworks in Germany at the time and that, had it been sold in London, it would have been unlikely to have fetched a higher price. The fact that Gutmann was effectively unable to sell the work in London does not therefore mean that selling it in Germany was financially disadvantageous to him.

Assessment of the moral strength of the claim

83. The Panel concludes that Gutmann sold *The Coronation of the Virgin* principally in order to pay debts resulting from investments incurred before the Nazis came to power and that the Dresdner Bank's demands for their repayment were made on legitimate financial grounds. It also concludes that at least 80% of Gutmann's loss of income and his consequential difficulty in paying his debt resulted from his enforced resignation from the executive board of the Dresdner Bank in 1931, in the course of the financial crisis of that year and had nothing to do with the fact that he was classified by the Nazis as Jewish.
84. By contrast, anti-semitic persecution under the Nazi regime, which had reduced Gutmann's income from membership of some of the supervisory boards of other companies and from his position on the Dresdner Bank's Saxon State committee, was only a subsidiary and causally insignificant factor in his decision to sell his collection. Moreover, anti-semitism was not the only cause of Gutmann's loss of his position on the supervisory boards of German companies, which also stemmed to a material extent from the operation of the 1931 decree limiting the number of permissible memberships to 20.
85. Consequently, the Panel concludes that it is likely that Gutmann would have sold *The Coronation of the Virgin* together with the rest of his art collection, even had he not been removed from supervisory boards and irrespective of any Nazi persecution to which he was exposed.
86. Furthermore, since *The Coronation of the Virgin* was sold at the market price obtaining in Germany at the time, and would have been unlikely to have been sold at a higher price in London, the transfer of the sketch to the Claimants would in any event over-compensate them.
87. For all these reasons, the Panel concludes that the Claimants' moral case is weak.

The Courtauld's Position

88. The Panel's terms of reference (paragraph 15(g)) require it to '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'.
89. The Claimants accept that the Courtauld acquired *The Coronation of the Virgin* in good faith and that it has made no attempt to conceal its provenance. Similarly, the previous ownership by Gutmann was also published by Seilern in 1969. These actions suggest that both Seilern and the Courtauld were satisfied that the 1934 sale did not constitute spoliation and they had no reason to expect a claim. The Panel sees no grounds for criticism of Seilern or the Courtauld.

The Panel's final conclusion

90. Taking into account all the above circumstances, the Panel considers that the moral strength of the Claimants' case is insufficient to warrant a recommendation that *The Coronation of the Virgin* should be transferred to them or that an *ex gratia* payment should be made to them. We recommend to the Secretary of State accordingly.

DATE 15th DECEMBER 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 REFERENCE¹**

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.

¹ 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(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.



information & publishing solutions

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, telephone, fax and email

TSO

PO Box 29, Norwich NR3 1GN

Telephone orders/general enquiries: 0870 600 5522

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

Email: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Parliamentary Bookshop

12 Bridge Street, Parliament Square,

London SW1A 2JX

Telephone orders/general enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: bookshop@parliament.uk

Internet: <http://www.bookshop.parliament.uk>

TSO@Blackwell and other accredited agents

Customers can also order publications from:

TSO Ireland

16 Arthur Street, Belfast BT1 4GD

Telephone orders/general enquiries: 028 9023 8451

Fax orders: 028 9023 5401

ISBN 978-0-10-297004-3



9 780102 970043