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Author(s): Legg, G.

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in doubt get a licence'. Fine for them to say but they went on to explain that their funding was largely through licensing so they are out to make money to run the bureaucracy. Everyone was staggered when they suggested that the first year's fee would be £5000 whether you are Ditchling Museum with a box of slides or a major medical college like UCL. They claimed that they needed to determine who needs licensing before they could settle on a cost. In other words they do not really know who has human tissue and so have no idea how much 'income' they will make. We argued that it would be better to have the first year free or nominal and then judge what the rate or rates should be. Their 'one size fits all' solution was scorned, but it did not seem likely that they would budge.

As far as the HTA was concerned institutions that have human tissue should know all about the Act and be ready to deal with its consequences. This was clearly not the case, and was obvious to me since I was the only representative from any minor museum. Ignorance of the law was no excuse. An important comment made in connection with this was when small institution do learn that they have material that could be licensable they would dump it rather than go through the trouble and expense of licensing. By dumping it was hoped this was not literal, but rather, the material would be quickly offered to other larger establishments, much in the same way as happened with firearms. Alternatively material will be ignored and not 'declared', but when asked if they were having a human tissue police (tongue in cheek comment) it was said there would be no proactive searching for collections of human tissue and strict policing. In fact if anyone is found to be in breach of the Act they are not liable to prosecution but would have to put matters right one way or the other. No thought had been given to the consequences for those larger museums in terms of additions to their collections and the subsequent cost involved in curation etc. The points were made strongly to the HTA.

It was clear that the position of small museums with the odd collection of a retired doctor's set of pathology slides or odd medical skull had not been considered during the drafting of the Act.

It is interesting to add that not only museums are affected by this Act, but also the media, particularly those involved in filming. All major TV organisations were expressing concerns over filming and raised points that had not come to light during the drafting of the Act. An example – BBC film 'Trauma'. When filming the BBC ask for consent from all concerned in the hospital they are in. Fine, but if someone they are filming dies and they carry on filming that now deceased person probably didn't think, 'Oh, in case I die while you film, I'll give my consent for you to carry on'! Even using film from abroad comes under the legislation when it is screened in the UK. A minefield for the media lawyers.

The HTA strongly acknowledge the Department of Culture, Media and Sport (DCMS) guidelines on human remains in museums, a summary of which need not be given here. The HTA did confirm that the DCMS guidance did, '*while tissue from the living and recently dead (and some consensus reached in the form of the Human Tissue Act 2004), there has been less analysis of these issues associated with older human remains. These older remains are of course not subject of this Code of Practice.*' By 'older' presumably, although not stated, more than 100 years old.

Critical comments had to be in by 28th June. These included the problems raised above, notably those of small museums, and the exorbitant fees likely to be charged in this first instance.

The Human Tissue Act 2004 – Problems with Small Institutions: Museums
-Dr Gerald Legg, Keeper of Natural Sciences,
Booth Museum of Natural History, Brighton

Having read the Code of Practice and attended the informative seminar at the Royal College of Surgeons I would like to make the following observations.

Despite HTA claims that the Act and Code of Practice have been well publicised it is obvious to me that many institutions will be unaware of the far-reaching implications of the Act. It was clear from the delegates at the seminar that few small museums were represented indicating that most will be quite unaware of the Act and its potential impact on their modest if not minimal collections of human remains. This in part is the fault of the museums' sector, particularly the Museums Association, in not properly consulting with its

members so they were aware of the impact and also, perhaps more importantly, they have not been able to put the case for museums to the HTA. If that had occurred then perhaps things would have been more appropriately considered.

Please consider the following points:

1. The Act clearly was not meant to penalise small museums. Applying it without any 'exemption' (even if this was just an initial exemption) is like cracking a nut with a pile driver. There will be many museums that have acquired small amounts of human tissue (as defined by the Act) that are less than 100 years old, for example the odd skeleton or part thereof or the 50 or so pathology slides from a local Edwardian doctor. Documentation may be minimal, if at all present, although it may be obvious that the material is 'about' 90 years old. None will have 'consent', but as I believe it, this would not be a problem with such material as it is completely anonymous. Without original invoices or other documentation how can a small museum prove the age of an old medical skeleton, skull or set of reference slides? Many small institutions will either be in ignorance of the regulations or just ignore them and forget about the odd box of slides.
2. You say, if in doubt apply for a licence. Fine, but as your proposed licence fee is probably more than the entire museum budget for some establishments this is quite ludicrous. As I understand it the HTA is largely self-funding, the licence fees paying for the bureaucracy hence the high level. High fees might be appropriate for huge tissue banks and even museums with large collection but can not be justified for small institutions. It was said at the seminar that the suggested fee was set for the first year as the HTA did not know what the income would be, did not know how many institutions were out there and that after this trial period the fees would be reviewed. Surely, as one delegate said, it would be more sensible to have a low fee, if any at all, for the initial year. After this initial period it would then be possible to make a rational judgement as to what to charge, and perhaps even have exemption categories or a sliding scale of charges.
3. If small institutions discover they have material less than 100 years old and will have to pay £5000 for the privilege of holding them, what will happen? Something like as occurred with the Firearms Act Amendments when they came into force: museums rapidly disposed of weapons, whether they were covered by the change in legislation or not. This caused the quite unnecessarily destruction of many weapons and also forced other museums into the position of having to consider accepting material that would otherwise have been lost. Fine – if a small museum has human remains less than 100 years old, let it give it to another museum that can afford the licensing. No, the larger establishments should not be put into that position. The collection and acquisition of items has to fall within Collections/Disposal Policies. There are direct financial implications when taking in collections as curation costs money, something people all too often forget or do not realise (curatorial time, conservation work, storage space, insurance, ...). Therefore it should not be taken for granted that larger establishments will take in the collections from those that can not consider a licence.
4. Budgets for most museums are built around the April-April financial year and so they will not have funding in place in September; the licence fee will be beyond their financial planning for the year 2006-2007.

Might I suggest that:

Could either a minimal or exempt licence fee be applied for the first year when things are settling down and the HTA knows the extent of the problem and what collections are around.

Small museum collections, as given above, should be totally exempt. Presumably this would entail some legal adjustments: an Amendment to the Act that would have to go before Parliament? Or could the definition of human tissue be interpreted through a judge's ruling to somehow exempt the problematical collections?

An article be written about the Act and museums and published in appropriate journals once the HTA has acted upon the results of the consultation and decided what it is going to do in the light of the comments received. There is a need to broadcast what is going on and not to assume that everyone knows.