



NatSCA

Natural Sciences Collections Association

<http://www.natsca.org>

NatSCA News

Title: Human Tissue Authority - Notes From The Public Display Seminar (22.6.06)

Author(s): Legg, G.

Source: Legg, G. (2006). Human Tissue Authority - Notes From The Public Display Seminar (22.6.06). *NatSCA News, Issue 9*, 8 - 9.

URL: <http://www.natsca.org/article/241>

NatSCA supports open access publication as part of its mission is to promote and support natural science collections. NatSCA uses the Creative Commons Attribution License (CCAL) <http://creativecommons.org/licenses/by/2.5/> for all works we publish. Under CCAL authors retain ownership of the copyright for their article, but authors allow anyone to download, reuse, reprint, modify, distribute, and/or copy articles in NatSCA publications, so long as the original authors and source are cited.

Human Tissue Authority - Notes From The Public Display Seminar (22.6.06)

**-Dr Gerald Legg, Keeper of Natural Sciences,
Booth Museum of Natural History, Brighton**

The Human Tissue Act 2004 provides a new legal framework for the storage and use of tissue from the living and for the removal, storage and use of tissue and organs from the dead. A seminar was held at the Royal College of Surgeons on 22nd June 2006 at which representatives from the Human Tissue Authority (HTA) were present and explained the Act and its ramifications.

As far as the Human Tissue Act is concerned the principle points that directly effect museums are:

- What are human remains in the meaning of the legislation?
- The age of the material and its date of acquisition in relation to the commencement of the Act – how old is it?

Human remains include whole bodies or parts thereof, but exclude hair and nails. For museums like ours this legislation concerns bodies or parts thereof from the dead, and in our case includes skeletal and pathological material. The age of the material is critical in terms of exemption. No licence is required to store/display the body of deceased person or parts of such a body if the person died before 1st September 2006 (the date the relevant section of the act commences) **and** at least 100 years have elapsed. The need for *consent*, a key part of the Act, is not applicable to ‘older’ material and need not concern us as it is inappropriate with respect to our ‘anonymous’ human tissue.

One of the most important regulatory functions of the HTA is licensing. A licence is likely to be required for the use for public display of human bodies and human tissues. The Act lists among the licensable activities:

*‘ the use, for the purpose of public display, of –
- the body of a deceased person, or
- relevant material which has come from the body of a deceased person.’*

References to ‘public display’ in relation to the body of a deceased person do not include:

- *display for the purposes of enabling people to pay their final respects to the deceased,*
- or*
- *display which is incidental to the deceased’s funeral*

An activity will be excluded (from this Section of the Act) if:

- *it relates to the body of a person who died before the day on which this Section comes into force or to material which has come from the body of such a person, **and***
- *at least 100 years have elapsed since the date of the person’s death.*

What is also important is ‘display’ and includes ‘storage’, so if material that falls within the licensable definition of the Act but is not displayed a licence is still required. This is further complicated by the need to include storage and display as separate licensable *activities* within a licence. If material is in more than one building then in some circumstances more than one licence is required! However, there is provision to include *satellites* within a single licence.

For licensing purposes each institution applying for a licence will have a *Licence Holder*, which, should ideally be the corporate body rather than an individual. The Licence Holder will appoint a *Designated Individual* responsible for the implementation of the Act and to ensure the act is adhered to. It is not appropriate to go into the details of this at this stage but only to comment that the person concerned must be of sufficient calibre and have an appropriate scientific background and understanding of the Act.

Once an institution is licensed the HTA inspect the Licence Holders to ensure standards are maintained.

Should other museums and we need a licence? This is the critical and potentially, at least at the present time, expensive problem. Do our remains predate August 31st 1906, i.e. are they more than 100 years old as of the commencement of the Act? In some cases this is difficult to say. The HTA’s comment on this was ‘if

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