

EXTENDED GUIDANCE NOTES FOR THE UEHIRO DECISION AID FOR THE RESTITUTION OF CULTURAL ARTEFACTS

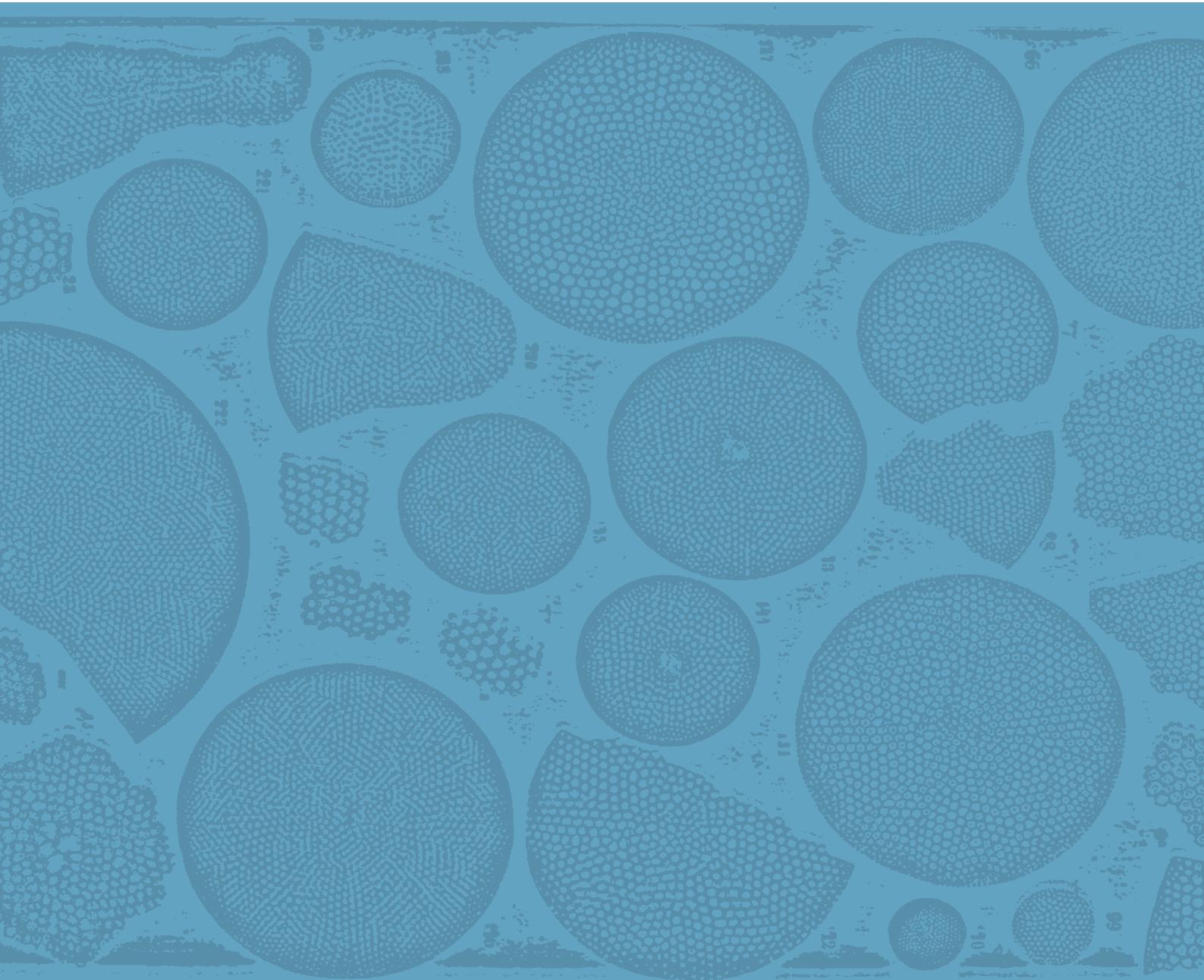




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The Purpose of this Document

This document provides users of DARCA with further detail on some of the key terms that are used within the decision aid, as well as collecting guidance notes on each of the questions included in the aid in one place.

The guidance notes included for each question in this document are slightly more detailed than those that appear in DARCA itself. However, these notes do not go into substantive detail about the relevant academic literature and arguments that have informed these notes. For more detail on how this literature has informed the design of DARCA, we direct the reader to the full academic rationale.

For ease of navigation, this document enumerates all of the questions that are incorporated into DARCA (Q.1-12). However, due to the logic of the DARCA, individual users will not encounter *all* of the questions listed below, since answers to earlier questions may render some of the later questions irrelevant. The full argumentative logic of DARCA can be found in the appendix of the full academic rationale.

Introduction

There is growing public interest and debate around the ethics of cultural restitution and repatriation. These terms refer to the return of cultural objects either to their original owners (*restitution*) or to their place of origin (*repatriation*). High-profile cases, such as the Parthenon Marbles, the Rosetta Stone, and the Benin Bronzes, have brought these issues into the spotlight.

These debates have become especially important for trustees of museums in the UK. Recently, trustees have resorted to the Charities Act 2011 in England and Wales in order to seek approval of the Charity Commission to make *ex gratia* applications of property based on a ‘moral obligation’ to return, as set out at section 106 of the Act. Recent changes to this legislation could extend this ability to trustees of national institutions, like the British Museum, otherwise prevented from doing so by their governing Acts. The question of whether an institution has a moral obligation to return an artefact is therefore both culturally and legally significant. Trustees are increasingly likely to confront this issue. However, making such determinations is rarely straightforward: it often requires uncovering historical facts about the artefact and navigating complex philosophical questions about morality and justice.

The **Decision Aid for the Restitution of Cultural Artefacts (DARCA)** is designed to support users in making well-reasoned and justifiable decisions about whether a cultural institution may be considered to have a moral obligation to return a specific item. This document provides extended guidance for using DARCA to supplement the notes provided in the decision aid itself. A full academic rationale for the tool’s design is available separately – users are advised to consult this latter document for more information about the philosophical arguments underlying these extended guidance notes.



Terminological Clarifications and the Scope of DARCA

Defining ‘Cultural Artefacts’

DARCA applies to cases involving claims for the potential return of what it terms ‘cultural artefacts.’ This label is intentionally chosen. While UNESCO often uses the term ‘*cultural property*’—broadly defined as items designated by states as having cultural importance—DARCA avoids this term for two reasons:

- In the philosophical literature, ‘*cultural property*’ sometimes refers to a narrower category of items
- The word ‘*property*’ carries legal connotations that may not reflect the broader moral or cultural dimensions at stake.

Additionally, UNESCO’s definition centres on a state’s designation of cultural significance, whereas DARCA acknowledges that other communities and groups may also attribute cultural significance to artefacts. Thus, ‘cultural artefact’ is used here to cover a similar range of items while avoiding these limitations.

Defining ‘Claimants’

Throughout DARCA, ‘claimants’ refers to those making a request for restitution or repatriation. As Arts Council England Guidance makes clear, claims can arise from a wide range of sources including (amongst others) particular individuals (such as a descendant of a previous owner of the item); a community of origin or related organisation; a museum or other cultural institution; a foreign state; organisations specially designated for dealing with restitution claims.

The intention is that DARCA should be used iteratively, as a means of responding to claims as they arise. As such, it does not address the weighing up of one claim (or potential claim) against another. That said, the existence of a competing claim might potentially be relevant to the answer to some the questions raised by DARCA, such as the assessment of the importance of the object to the claimant, and the closeness of a claimant’s relationship to the victims of a morally illegitimate removal of an object.

In cases in which there are multiple, perhaps competing, claimants for a particular artefact, users are advised to complete DARCA separately for each respective claim, and to compare outcomes across these claims.

Defining ‘Moral Obligation’

DARCA’s goal is to help users assess whether there is a moral obligation to return an artefact. In this context, an institution’s being under such an obligation should be understood as its having a strong moral reason to act. When one party has a *strong* moral reason, we say that if



they were to refrain from acting on that reason without justification or excuse, this would amount to a failure to do what is morally required of them, or what they have a moral duty to do. Not all moral reasons are strong enough to generate these kinds of duties. It is important to note that institutions can also sometimes be under competing moral obligations. The DARCA tool aims in part to help to guide users in navigating such conflicts in the context of restitution and repatriation, through a structured series of questions.

DARCA's Relationship to Art Council England Guidance

Existing guidance from the Arts Council on restitution and repatriation outlines comprehensive advice for trustees about procedures that institutions ought to follow in coming to a decision about whether they are under a moral obligation to dispose of an item. This advice includes, amongst other things, the recommendation that trustees:

- a. gather sufficient information to ensure that their decision is suitably informed;
- b. be transparent about their decision-making process;
- c. involve multiple stake-holders.

DARCA has little to add to the Arts Council's comprehensive guidance on these points. Instead, DARCA is intended to supplement this procedural guidance by providing a decision aid that facilitates a deeper engagement with substantive ethical issues in this context, as detailed below. That said, users are encouraged to use DARCA in accordance with this existing procedural guidance.

In addition to factors sourced from the literature in moral philosophy, DARCA incorporates considerations of relevant substantive factors identified in the Arts Council England guidance, including:

- a. The significance of the item to the claimant;
- b. How the object was removed;
- c. How the museum has engaged with the object;
- d. Who is raising the claim.

The Applicability of DARCA

DARCA is not intended for use when considering the return of human remains or property lost or stolen during the Nazi period in Europe; these issues are already covered by existing laws, guidance, and mechanisms. It is also not intended for use with digital artefacts, which raise several further ethical and legal issues.



The Reasonable Basis Standard of Proof

One of the difficulties that those facing restitution claims can encounter is that the available information about a claim can sometimes be incomplete, and it may not always be possible to verify every aspect of a claim. In accordance with the Arts Council England guidance, in such circumstances, it is suggested that users of DARCA should seek to establish where there is a *reasonable basis* to decide a particular matter. To have a reasonable basis to decide a matter can be understood to mean that all the information one has, taken together, provides *a reason to believe that it is more likely than not that a certain fact or state of affairs obtains or obtained*.

The Scope of DARCA

The aim of DARCA is to help users to come to a decision about a cultural institution's overall moral obligation in a case of cultural restitution. To do so, it prompts users to reflect on a series of questions pertaining to moral considerations that are common to a range of restitution and repatriation cases, and that have been widely discussed in the academic literature. DARCA is designed to deliver a general outcome, based on the common morally relevant features it investigates.

In some cases, there could potentially be other case-specific factors that could ground a moral obligation to return a cultural artefact, and that are not adequately captured by the more general DARCA questions. Users are invited to raise these sorts of considerations at the end of using the decision aid, and the outcomes DARCA generates should be assessed in conjunction with these case-specific considerations. Case-specific considerations that users raise will also be included in their outcome document.

Extended Guidance to DARCA Questions 1-4

Q1. What basis is there for believing that the artefact was removed in a morally illegitimate manner?

Why the manner of the artefact's removal matters

Understanding whether there is a moral obligation to return a cultural artefact often depends on the circumstances of its removal. If an object was taken in a morally illegitimate way, there may plausibly be a strong case for its return—either because it still belongs, in a moral sense, to its original custodians, or because returning it would be a fitting form of reparation for a past wrong.



There are two broad factors that should be taken into account when considering this issue: The first is the issue of *how* the artefact was removed. The second is the *strength of the evidence* of how the artefact was removed.

The importance of historical evidence

The strength of available evidence is critical in evaluating the legitimacy of an artefact's removal. In some cases, the history of an artefact's possession is well documented. In others, significant gaps or uncertainties may exist, making it harder to determine whether the removal was morally problematic. Here it is important to stress the 'reasonable basis' standard of proof that should be employed in DARCA (see paragraph on interpreting this 'reasonable basis' standard above).

What counts as a morally illegitimate removal?

Arguments in the philosophical literature suggest that not all changes in ownership are morally legitimate, even if they were legal at the time. Two key examples of morally problematic removals include:

- **Looting or spoils of war:** These may have been legally sanctioned in the past but are widely seen today as clear moral violations.
- **Improper agreements:** If artefacts were transferred under duress, deception, or other forms of pressure that undermined consent, the resulting agreement to transfer the ownership of an artefact may lack moral legitimacy. Similarly, if the agreement was exploitative—for instance, if one party took unfair advantage of another's vulnerability—this too can indicate a serious moral wrong.

Some theorists have suggested that colonial contexts may also raise specific concerns. According to this view, even seemingly voluntary agreements made during periods of colonial rule may be morally questionable due to deep power imbalances. In such cases, consent may have been compromised, and core terms like 'ownership', 'rights', or 'sovereignty' might have been interpreted very differently by each party, which could potentially undermine the fairness and mutual understanding necessary for a legitimate agreement.

Another moral issue in this context concerns which individuals or institutions (if any) have the legitimate authority to make decisions to transfer the ownership of important cultural items. This raises questions about cultural inalienability—the idea that some cultural items are so central to a group's identity that *no-one*, not even a community leader, has the right to give them away. While this idea has been criticized for potentially undermining the autonomy of cultural groups, it reflects genuine concerns about the symbolic significance of such transfers.

The strength of the basis for believing that an artefact was removed in a manner that constituted an illegitimate removal depends on both of the two factors outlined above. The strongest basis would involve clear, documented evidence of an artefact's being removed in a way that involved clear moral transgressions of the sort highlighted above. The basis becomes weaker the less



serious the moral transgression, and/or the weaker the evidence in favour of the alleged transgression.

In some cases, these factors might fail to provide a sufficient basis for believing that the artefact was removed in a morally illegitimate manner. For instance, this may occur when there is strong evidence that the transfer of property was legitimate. The most complex cases will arise when there is limited evidence of serious moral transgressions, or strong evidence of lesser moral transgressions. In such cases, it may be more plausible to say that there is a weaker basis for believing that the artefact was taken in a manner that constituted a historical injustice.

Applying today's moral standards to the past

When considering the possibility of a historical example of a potentially morally illegitimate removal of a cultural artefact, one may reasonably question whether we should judge past actions by today's moral standards. However, while it may not always be appropriate to blame historical actors who acted according to the norms of their time, this is separate from the question of how we should respond to, and seek to rectify, those actions now. Restitution is, in part, about acknowledging that certain acts—though perhaps considered acceptable at the time—are now seen as moral wrongs whose consequences still matter. Taking action today does not require moral condemnation of individuals from the past, but it may require recognising and remedying ongoing harms.

Q.2 Has the artefact played an important role or did it otherwise hold significant value for the claimant or the community from which it was removed?

Why the cultural importance of the artefact to the claimant and the community matters

The cultural significance of an artefact to the community it was taken from is widely accepted to be an important factor when considering the strength of a moral case for its return, although philosophers explain this in different ways. Broadly, the morally illegitimate removal of an artefact will provide stronger grounds for a moral obligation to return the more significant its value to the claimant or the community from which it was removed

Of course, other moral reasons might be invoked to justify the return of cultural artefacts, even if they have lesser cultural significance. For example, returning less significant items may help build goodwill, support reconciliation, or recognize symbolic harms—even when property-based claims are limited.

DARCA acknowledges that an artefact's cultural significance generally strengthens the moral grounds for its return. Conversely, a lack of clear cultural importance weakens—but does not automatically negate—the obligation, particularly where broader considerations of justice and relationship-building are at play.



Assessing cultural significance

There are several factors that might reasonably be taken into account when evaluating the cultural importance of an artefact. Relevant factors may include whether the item served as:

- A religious, spiritual, or ceremonial object
- A symbol of group identity or shared ideals
- A link to ancestors or founders of the community
- An expression of collective history or cultural achievement

Q.3 What basis is there for believing that the claimant shares a close relationship to the morally illegitimate removal of the cultural artefact?

Why the relationship of the claimant to the morally illegitimate removal matters

In cases where a moral obligation to return a cultural artefact is under consideration on the basis that the artefact was removed in a morally illegitimate manner, a central issue is how closely the claimant is connected to this morally illegitimate removal.

Philosophers have provided several arguments for the idea that moral claims over property that was illegitimately removed depend on retaining some kind of salient connection with the community from which it was removed - that is, whether the claimant can reasonably be seen as part of the original community that possessed the artefact, or as having an important cultural connection to that community.

Direct victims of illegitimate removals and cultural continuity

One way a claimant can have a clear claim to property that was illegitimately removed is by being a direct victim of the morally illegitimate removal. Here there is a strong relationship between the claimants and the victims of the morally illegitimate removal of the artefact.

Of course, the question of who can be understood as a 'direct victim' of a morally illegitimate removal of a cultural artefact is complex. In some cases, close descendants might be understood as members of the *same* community (bound by close chains of family relationships or other associations) as the contemporaneous victim(s) of a morally illegitimate removal of an artefact, in a manner that could also render them to be victims of that injustice in an important sense. Various shared characteristics, such as common social norms, a shared community of origin, religions, language and customs might plausibly ground a group's claim to be the legitimate descendants of a historical community.

Broadly, claimants may still have a strong claim if they can reasonably be construed as members of a community that still clearly identifies with the group from whom the artefact was taken,



sharing in the historical traditions and practices of their forebears. Cultural property often spans generations and may remain meaningful to a community over time—so philosophers have suggested that the right to its return might, in some cases, plausibly be understood to persist across generations.

More complex cases: distant descendants and indirect claims

In more complicated cases, distant descendants of those affected by historical injustices may seek the return of cultural artefacts. These might include, for example, non-lineal descendants of a historical community who do not share many of the historical traditions and practices of their forebears. Two main arguments have been identified in the philosophical literature to support the claim that even such distant descendants may have a close enough relationship to the morally illegitimate removal to ground a moral claim to the artefact.

- **The Harm-Based Argument:** This argument holds that descendants may continue to experience downstream harms resulting from the original wrongdoing involved in the illegitimate removal of the artefact. However, this is difficult to prove, especially when it comes to showing a direct link between historical events and present-day harm. There are also philosophical challenges that have been raised in the academic literature, such as the non-identity problem.

Despite these difficulties, some suggest that the focus should instead be on the psychological and symbolic harm of unaddressed injustices, or that we might rely on broader, less specific claims about harm to ground an argument for restitution.

- **The Inheritance-Based Argument:** This argument proposes that the original victims of the morally illegitimate removal had a right to reparations for this injustice, and that these unfulfilled rights are passed down to their descendants. Alternatively, a moral claim to the artefact might arise if the artefact would have been legitimately inherited by distant descendants had the injustice not taken place.

These versions of the inheritance argument avoid some of the difficulties of the harm-based view, but introduce others—especially around defining possession, inheritance rights, and time limits. If these rights don't diminish with time, they could justify a wide range of historical claims—for example, claims of descendants could be undermined if their forebears themselves possessed an item on the basis of an injustice that violated some other group's rights of inheritance. But if these rights of inheritance do fade, the moral force behind these claims also weakens over time.

Another practical difficulty affecting both of these arguments arises in identifying who qualifies as a legitimate heir or distant cultural descendant. Communities evolve, merge, and change, making it hard to draw clear lines of descent and/or inheritance. Whilst some philosophers have suggested that cultural identity can be defined by shared language, religion, or traditions (even if it is no longer straightforward to trace other conventional genealogical associations), this is subject to on-going debate.



How to respond to the on-going philosophical debate on this question

While these arguments provide important ethical context, they remain philosophically contested. As such, DARCA does not endorse one approach over another. Instead, it is recommended that each claim is assessed on a case-by-case basis, taking into account the empirical factors that are relevant across these different lines of argument. These factors may include:

1. the specific history of the cultural community,
2. the nature of the cultural ties connecting the claimant to that community,
3. any evidence supportive of the claimant having been harmed by the morally illegitimate removal, or of enjoying rights of inheritance to the artefact.

Q4. Does the artefact have genuine and enduring value for the claimant's culture?

Why the genuine and enduring value of the artefact for the claimant's culture matters

This question addresses the moral basis for returning a cultural artefact in cases where standard justifications—such as moral reasons to rectify historical injustice or to acknowledge rightful past moral claims to property ownership—are not available. This question is specifically concerned with whether there can yet be a moral obligation to return an artefact in such circumstances.

Some philosophers have argued that if an object has genuine, substantial, and enduring value to a cultural group—whether artistic, historical, or symbolic—then that group may have a legitimate moral claim to the object as their cultural property, even if they never legally owned or possessed it. On such views, a community might also be understood to have some moral claim to an artefact that it has not inherited, made, purchased or been given, if the artefact has sufficient aesthetic, historical or other value to the members of that community's culture.

This approach differs from conventional models of cultural property, which typically depend on some form of historical entitlement. While appealing in some cases, this position is not without controversy – critics in the academic literature have argued that it can lead to problematic implications.

That said, philosophers widely agree that we can often have moral reasons to benefit others. On this view, if returning the artefact would bring meaningful benefit to the community that values it—such as by restoring cultural identity or healing historical wounds—then there is at least some moral reason to do so, based on the principle of beneficence (i.e., helping others where possible). However, many ethical frameworks treat such beneficence as admirable but optional. That is, returning the object in this case might be a commendable act, but not one that is morally required.



In summary, where there is no historical injustice and no prior ownership, a strong cultural interest in an artefact can support only a weaker case for return. The moral basis in such cases relies on either:

- A contested and less conventional understanding of cultural property that does not depend on ownership, or
- A general moral duty to benefit others, which many theorists view as limited in its ability to generate obligations.

Moving From Questions 1-4 to Questions 5-12

Once the moral case for return has been evaluated, it is important to consider the strength of an important competing obligation: namely, whether the holding institution has a moral duty to retain the artefact. Question 5 is the beginning of the second stage of the DARCA framework, which supports decision-makers in identifying and weighing the grounds on which such a duty might rest. This allows DARCA to encourage a structured comparison between the moral case for return and the case for continued retention, facilitating clear and ethically grounded judgments.

Q5. Does the artefact have an important cultural value that has been adequately served by the cultural institution that currently possesses it?

Why does the cultural value of the artefact, and this value's being served by the holding institution, matter?

The most common broad moral justification for institutions to retain an item within their collection is that the artefact holds significant cultural value for all of humanity, and the institution serves an important social function by preserving and enabling access to culturally important artefacts for various valuable purposes, including education, the advancement of knowledge, and aesthetic worth. In this sense, cultural institutions may have a duty to retain artefacts because they are uniquely positioned to serve an important societal function in promoting this sort of value — through education, knowledge-sharing, aesthetic enrichment, and research.

How should this be assessed?

It is of course difficult to provide substantive generalised guidance about when and whether artefacts can plausibly be said to bear such important cultural value; such judgments naturally require a case-by-case analysis grounded by significant aesthetic, historical, and scientific expertise and insight.



However, users should evaluate whether the artefact meaningfully contributes to educational goals and/or historical understanding, or whether it manifests significant aesthetic value. Users should also consider whether the institution holding the artefact is actively enabling the public to benefit from these values—for example, by making the artefact accessible to the public, maintaining its condition, engaging in knowledge sharing, research or educational initiatives.

This is important because institutional retention is most clearly justified when the institution is actively fulfilling its broader societal role with respect to the artefact. For instance, if an artefact is not on easily accessible public display, nor currently the subject of academic research, nor currently undergoing restoration, nor being used in community outreach projects, then it is more challenging to establish that the institution has a strong moral reason to retain the artefact in the interests of serving the values of education, the advancement of knowledge, and aesthetic worth.

The implications of the answer to this question for the remainder of DARCA

If the answer to this question is no, the framework directs the assessor to a secondary line of reasoning (Question 11) that may still offer a weaker form of justification for an institution having a moral reason to retain the item. If yes, the user will be directed to further questions that will help them establish whether there are any circumstances that might enhance this stronger form of justification.

Q6. Is there a credible concern that returning the cultural artefact to the claimant would undermine the continued existence or safety of the artefact?

Why the implications of the artefact's return for its continued existence or safety matter

This question explores whether the institution is better positioned to ensure the long-term preservation of the artefact. This is important because significant risks to the safety or existence of a cultural artefact are often taken to significantly undermine the case in favour of restitution. The reason for this is that in such cases, the return would require the cultural institution to fail to fulfil its obligation to safeguard items of significant cultural value for humanity. If substantiated, such risks could add further support to a cultural institution's moral reason to retain an item in their collection, particularly for artefacts of exceptional historical or cultural importance.

However, in some cases, it might be that the return of the artefact to the claimant raises credible concerns about the safety or existence of the artefact because the claimant's community has communicated that the respectful treatment of the artefact requires, for example, its burial or ritualistic destruction.



In such cases, the cultural institution's moral reasons to preserve and safeguard a culturally significant artefact may come into stark conflict with the reasons to treat the artefact in a culturally appropriate manner, and with non-Western ideals of what constitutes the true preservation and purpose of the object.

Therefore, the precise nature of any credible concern about the safety or existence of the artefact following its potential return can have important implications for the moral assessment of the case. The aim of this question is to first establish whether there are any credible concerns about the safety or existence of the artefact; if so, the precise nature of these concerns will be assessed in subsequent questions.

How might the safety or existence of the artefact be undermined?

Some relevant risks to the safety or existence of a cultural artefact might include unstable environmental conditions, inadequate conservation infrastructure, or exposure to political conflict.

However, as detailed above, the safety or existence of a cultural artefact might be undermined by various practices that the claimant community believes are required for the respectful treatment of the artefact. These might include, for example, the burial or ritualistic destruction of the artefact.

How should the risk be assessed?

Any contention that restitution could credibly undermine the continued existence or safety of the artefact must be evidence-based. Institutions should take care to avoid paternalistic or outdated assumptions about the capacity of other parties to care for cultural property. The obligation to return cannot be dismissed lightly on the basis of speculative or historicised claims about preservation standards elsewhere. Moreover, assessors should also consider any shortcomings of the holding institution's capacity to adequately preserve the item.

Q7. Does the credible concern about the safety or existence of the artefact following its return arise due to conduct that the claimant believes is required for the respectful treatment of the artefact?

Users will only encounter this question if they have indicated that there is a credible concern about the safety or existence of the artefact following its return. For the reasons detailed in the previous section, if there is such a concern, it is important to establish its precise nature – does the concern arise from worries about extraneous factors (such as environmental pollution, warfare and theft), or do they arise from the community's own views about the culturally appropriate treatment of a given object, which may reflect non-Western ideals of what constitutes the true preservation and purpose of the object? The importance of this difference is outlined in the notes for question 6 above.



In some cases, the claimant may intend to use the artefact upon its return in ways that reflect cultural or spiritual values — for instance, through ceremonial use, burial, or other practices — but that might also compromise the artefact’s preservation. While such practices conflict with the holding institution’s duties of care, they may nonetheless express a coherent and legitimate understanding of what it means to appropriately honour or respect the artefact.

As such, decision-makers must weigh their responsibility to preserve the artefact in perpetuity against the moral importance of enabling communities to reclaim control over their cultural expressions. There may be no easy resolution in such cases, but acknowledging the cultural logic behind these practices is vital for a fair and respectful evaluation.

Q8. Is the public display of the item in its current location incompatible with what is required for the item’s respectful treatment according to the claimant?

Why does compatibility of the public display of the item with what is required for the item’s respectful treatment matter?

If there is no credible basis for a concern that returning the cultural artefact would risk its safety or existence, then the cultural institution’s obligation to *safeguard* items of significant cultural value cannot be invoked to justify retaining the item rather than returning it to the claimant. However, in some cases, the cultural institution’s obligation to further the values of education, the advancement of knowledge, and aesthetic worth might yet be invoked to justify retaining the item, due to a concern that returning the item would frustrate these goals in other important ways.

Yet, the practice of publicly displaying an artefact might conflict with the claimant’s views about the culturally appropriate treatment of the artefact. Display practices that are standard in one context may be viewed as disrespectful or inappropriate in another. Respectful treatment may require, for example, that only individuals of a certain standing within the claimant’s community are able to access and engage with the item.

In such cases, the cultural institution’s moral reasons to promote education, the advancement of knowledge, and aesthetic worth by displaying the artefact come into stark conflict with moral reasons to respect a community’s own views about the cultural meaning of a given object. If so, the institution’s overall moral obligation to retain the item is plausibly weakened by this countervailing moral reason. However, this conflict does not similarly arise where the public display and use of the artefact is not incompatible with what the community believes is required for the respectful treatment of the artefact.

Case-specific complexities that this question may raise

This line of argument can raise an additional moral complexity in specific cases, if there are credible grounds for believing that the claimant will restrict access to the artefact in a manner



that strongly conflicts with the moral values of the cultural institution currently holding the item, and the society it serves.

For example, such circumstances might arise if there are grounds for believing that future access to the artefact might be denied to certain groups on discriminatory grounds following restitution. In such circumstances, there might be plausible grounds for concern about the potential for the current possessor to be deemed morally complicit in a practice that they understand to be morally problematic.

These particular sorts of case are not explicitly addressed by DARCA because it aims to provide generalised guidance about morally relevant factors that arise across different restitution cases. In the absence of specific details about the case, it is difficult to provide any sort of directive guidance about the potential implications that this might have for the cultural institution's moral obligations, without substantively committing DARCA to a particular (and likely contentious) position about the strength of moral reasons to avoid certain kinds of complicity.

With this in mind, if there are reasonable grounds for believing that this conflict arises in the case under consideration, users should raise this at the end of the decision aid, when they are given the opportunity to add details about particular features of the case under consideration.

Q9. Would the return of the artefact serve to enhance its cultural value or enable more widespread access?

Cultural institutions can be particularly well-placed to safeguard and promote the values of education, the advancement of knowledge, and aesthetic worth, given the various resources available to them. Moreover, it is often claimed that holding certain artefacts in particular cultural institutions can enable the most widespread, global public access to these items.

However, in some cases these values might be better served by returning the artefact in question. For instance, the cultural value of the artefact might be better served by returning an artefact to its original intended context, if doing so will enable an enhanced appreciation for its aesthetic and/or historical value. Of course, it should be noted that artefacts cannot always be returned to their original context in this way.

Return of the artefact might in some cases also facilitate better access for a wider range of communities. These considerations may count in favour of restitution, even when the holding institution has made efforts to care for and exhibit the artefact responsibly – the point is that if the institution's moral reason to retain the artefact is grounded by ensuring widespread public access, that argument is undermined if restitution is also compatible with sufficiently widespread access.

If a strong case can be made that the return of the artefact would facilitate more widespread access to the artefact, or the cultural value of the artefact, then the claim that these values can ground the cultural institution's obligation to retain the artefact is significantly weakened. If



successful, this argument would suggest that the very values justifying the institution's moral claim to retain the artefact are better served by returning it to the claimant.

Q10. Will the claimant face difficulties in readily accessing the item in its current location over the long-term future?

If the public display of the item is compatible with its respectful treatment, and such display is the best way to realise its cultural value for a widespread global audience, the moral reasons in favour of retaining the object may yet be weakened if the claimant in particular is unable to readily access an artefact to which they have a moral claim, even a weak one.

If the claimant community cannot afford to travel or faces other systemic barriers to accessing the artefact where it is currently held, this may count against the holding institution's duty to retain. Institutions might consider addressing this concern through loans, co-curation, or digital access initiatives. However, if no such efforts have been made, the moral justification for retention is likely to be weaker. If the institution has already taken some such steps, or has a demonstrable commitment to doing so, it is suggested that this be detailed in the explanatory notes.

Q11. Has the institution's possession of the artefact created a 'legitimate expectation of retention'?

Why it matters whether the institution has a legitimate expectation of retention

In some cases, museums or cultural institutions may have a legitimate expectation to keep an artefact they've had for a long time — this expectation can offer separate grounds for the institution having a moral claim to retain the artefact, besides its more general moral reasons to retain items of significant cultural value so that it may perform its morally valuable social function (see notes on question 5).

What is a legitimate expectation?

Legitimate expectations of retaining an artefact are more than just hopes — such expectations have three key features:

1. **They are about the future** — what someone thinks will happen.
2. **They are prescriptive** — they reflect how people think others *should* behave.
3. **They must be reasonable** — based on a justifiable expectation grounded by good reasons or past actions.

As detailed in the academic rationale, philosophers have suggested the strength of a claim to an item grounded in legitimate expectation can be influenced by a number of factors, in



addition to the duration of the institution’s possession. If the artefact has been held in good faith, widely exhibited, and invested in — both materially and symbolically — the institution may have a legitimate interest in retaining it. This interest may be particularly strong if the artefact has come to form part of a shared public identity or collective memory.

This type of justification is generally less robust than one grounded in the cultural institution’s obligations to fulfil an important social role in preserving and enabling widespread access to culturally significant items, but it may still be relevant, especially when other factors for the institution retaining an artefact are less compelling.

Q12. Are there additional relevant considerations that have not been captured in the above questions?

This open-ended question provides space for case-specific factors that may influence the moral assessment, including legal, diplomatic, or community-based considerations not otherwise accounted for in the DARCA framework.

Understanding and Applying the Results of DARCA

Upon concluding DARCA, users will be presented with an outcome document, outlining the relative strength of the general case in favour of a moral obligation to return the cultural artefact under discussion in their case. The document will summarise the user’s answers to the questions, any further written justificatory notes, and how those answers have been used to develop the assessment delivered in the outcome.

The outcome document will also include any case-specific factors that the user raised at the end of the decision-aid. These case-specific factors should be taken into consideration when interpreting the more general outcome delivered by DARCA.

DARCA does not prescribe when a moral obligation to return should become morally binding. Instead, it offers a systematic structure for reasoning about complex ethical questions, helping institutions reach judgments on a matter of practical ethics that are informed, balanced, and explainable. If a moral obligation is said to exist, this might be of use to trustees in England and Wales seeking to obtain approval of the Charity Commission under section 106 of the Charities Act 2011 mentioned above.