

The Work of the Reviewing Committee on the Export of Works of Art

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The Reviewing Committee on the Export of Works of Art (“RCEWA”) introduces the expertise of museums and the art world into export licensing decisions. Its role is purely advisory although its influence can be decisive. Whilst administered from the Department of Culture, Media and Sport (“DCMS”) it is formally a NDPB (“Non Departmental Public Body”), or what is commonly referred to as a QUANGO.

All NDPBs are subject to five yearly reviews by their departments. The Quinquennial Review of the Reviewing Committee on the Export of Works of Art (“the Review”), that is the review of the reviewers, was announced in March 2001. Whilst chaired by a senior civil servant, the Review Steering Group included art dealers and museum directors. A legal sub-committee was established under the chairmanship of Sir Matthew Farrer.

The report of the Review was published on 8th December 2003 and remains under consideration by DCMS. The report deals widely with the work of RCEWA and makes proposals for changes to the operation of the export licensing system.

The Export Licensing System

Operation and principles

There are currently two licensing regimes in place for cultural goods: one under UK legislation and the other under an EU Regulation. In both cases the same principle applies: that export of works of art will be allowed unless the item is of sufficient importance, under the Waverley criteria, and no matching purchaser has come forward to keep the object within the UK.

The two systems operate in tandem (i.e. licences are required under both regimes) and the UK system has been adapted so that exporters need obtain only one specific individual export licence (which may cover more than one object) from the DCMS, either under UK or EU law, depending on the type of object concerned and the destination of export. Licences may be required for permanent or temporary exports, including when a person is transferring their own property abroad. Both regimes cover exports from England, Scotland, Wales and Northern Ireland and have continued to do so since devolution, as export controls are a reserved (not a devolved) matter.

The old UK export legislation was the Import, Export and Customs Powers (Defence) Act 1939, emergency World War II legislation, which has been replaced by the Export Control Act 2002. The Export of Objects of Cultural Interest (Control) Order 2003 came into force on 1st May 2004. Article 2 of the Order prohibits the export of objects of cultural interest manufactured or produced more than 50 years before the date of exportation, with certain limited exceptions (for example, postage stamps, personal papers and goods manufactured by the exporter).

In order to reduce the burden on would-be exporters, the Government has issued a number of Open Licences, which permit the export of certain specified objects without the need to obtain an individual UK licence from DCMS. These are the Open General Export Licence, which apply to all exporters, setting value thresholds for particular types of item, and Open Individual Export Licences to allow particular persons to export. None of the provisions for open licences override any requirement to obtain an individual licence under the EU Regulation (for exports to destinations outside the European Union).

Council Regulation (EEC) No 3911/1992 on the export of cultural goods, which came into force on 1 April 1993, introduced a common system of licensing for the export of certain cultural goods outside the customs territory of the Community and has as one of its purposes the protection of cultural goods. The export of such goods requires a licence issued by the competent authority of the Member State where the cultural object is lawfully located and the licence is valid throughout the Community. Before issuing a licence, the competent authority is required to satisfy itself that the object was lawfully exported from another Member State, or imported from a third country, or re-imported from a third country after lawful dispatch from a Member state to that country. Although an export licence is not required for archaeological objects of limited archaeological or scientific interest, provided their presence on the market is lawful, this exception does not apply to archaeological objects that are the direct products of excavation, finds and archaeological sites within a Member State, all of which need a licence.

National controls continue to apply to intra-Union movements and to extra-Union exports which are not covered by the Regulation or which relate to 'national treasures'. Article 30 (formerly Article 36) of the Treaty of Rome permits Member States to retain their national export controls for '...the protection of national treasures possessing artistic, historic or archaeological value...'.

In all other cases, exporters need to obtain an individual licence from DCMS, either an EC licence or a UK licence. To export a cultural object to a final destination outside the EU, a licence, either UK or EC, must be obtained if it is valued at or above the relevant threshold for the type of object concerned. To export a cultural object to a destination in another EU Member State, a UK licence application must be made if the object is valued at or above the relevant threshold for the type of object concerned.

Current policy is normally to grant an export licence for any object which has been imported into the UK within the last 50 years. This policy does not apply to EU licences if an object has been illegally exported from a Member State of the European Union on or after 1 January 1993.

Human Rights and control of exports

Control over the export of works of art is in principle compatible with human rights legislation. The European Court of Human Rights considered the more extreme Italian legislation in *Beyeler v Italy* (5th January 2000). The case concerned the painting *Portrait of a Young Peasant* by Vincent van Gogh. Italian law provides that the owner or a person in possession of property considered to be of cultural or artistic interest must declare to the Ministry of Cultural Heritage any

transaction to transfer full or partial title to or possession of the work, or any intention to export it. The Ministry may then exercise a right of pre-emption over the work within relatively short timescales. Consequently the Italian legislation is strict, entitling the state to acquire, at the market value at the time of notification. Through circumstances in which no one emerges with much credit the Italian government sought to exercise in 1988 a right of pre-emption based on a transfer in 1977. One effect would have been that the Ministry would have acquired the painting at a very significantly lower price. The ECHR considered that a fair balance had not been struck in those circumstances and so the owner's rights under Article 1 of the First Protocol of the European Convention on Human Rights, the right to respect for property, were infringed. Mr Beyeler criticized the expropriation power and in particular its use to acquire the work of a foreign painter who had no connection with Italy and had never lived there. The ECHR however said:

“that the control by the State of the market in works of art is a legitimate aim for the purposes of protecting a country's cultural and artistic heritage” (para 112)

“As regards works of art by foreign artists ... in relation to works of art lawfully on its territory and belonging to the cultural heritage of all nations, it is legitimate for a State to take measures designed to facilitate in the most effective way wide public access to them, in the general interest of universal culture” (para 113)

“The Court does not put in question either the right of pre-exemption over works of art in itself or the State's interest in being informed of all the details of a contract ...” (para 117)

Beyeler does endorse in general terms restrictions on the export of art works. The UK system is less invasive than the Italian system as it does not give the state a right to acquire items compulsorily. Whilst in principle the UK export control system is compatible with human rights, such rights need to be respected in each decision.

The Waverley Criteria

The Waverley Criteria applied by the Secretary of State and the RCEWA are:

1. Is it so closely connected with our history and national life that its departure would be a misfortune?
2. Is it of outstanding aesthetic importance?
3. Is it of outstanding significance for the study of some particular branch of art, learning or history?

In its 1988-89 Annual Report, the RCEWA set out its interpretation of the Waverley criteria:

The first criterion is whether an item 'is so closely connected with our history or national life that its departure would be a misfortune'. This was originally intended to catch such objects as the Alfred Jewel or the manuscript of Gray's Elegy but we interpret it in a somewhat wider context to include items which are of major importance for local history, or which are part of collections which are

of the greatest historical significance, or which are associated with significant historical events.

The second criterion refers to ‘outstanding aesthetic importance’. There can be no definitive guidelines for judging whether an item is aesthetically outstanding, but we do not restrict this criterion to great works of painting or sculpture. We might, for instance, conclude that an exquisite snuff box met this criterion as well as a painting by Poussin. In the case of works by great artists it may be claimed that anything from the hand of Rembrandt is outstanding. We are not always swayed by such arguments and may take into account the condition or restoration to which it may have been subjected.

The third criterion is whether an item is ‘of outstanding significance for the study of some particular branch of art, learning or history’. Almost anything could be caught under this heading: the worst works of the best artists (just to show that Homer nods), a poet’s laundry list, a collection of seaside postcards. We therefore apply this criterion with rigour to objects which, in our view, are important for the study of some significant branch of art, learning or history; they have to be important for study rather than merely interesting to study. Many objects might provide attractive topics for a PhD thesis but are not of wider significance for the study of the subject as a whole.

Expert advisers are asked to make their decision as to whether or not to oppose export solely on the basis of the Waverley criteria. The presence of an institution which is interested in acquiring an item should not be allowed to influence their decision as to whether or not to object to an export. If the expert adviser were aware that their own institution was seeking to acquire the object in question, the Secretariat would allocate the case to another adviser for scrutiny under the Waverley criteria. Expert advisers are also asked to bear in mind that colleagues in other UK institutions may wish to make a case against a particular export. It is their responsibility to make sure that any such consultations are undertaken before giving advice on whether to allow export. This applies not just to other national institutions, but also to local collections, which depend on advisers for information about proposed exports. If an object is of particular interest to Scotland, Wales or Northern Ireland, the relevant institutions there are consulted before the expert adviser decides whether to raise an objection.

For a number of years, the RCEWA has expressed concern that there should be a means of ensuring that outstanding collections (particularly those in public or semi-public ownership) are kept intact. The issue was first addressed by a Working Party set up in 1986, following the RCEWA’s consideration of items from the George Brown ethnographical collection, and was considered again in 1991, and in 1992 by the Secretary of State’s Consultative Group. Both the 1986 and 1992 consideration of the problem concluded that the only certain way of defining collections would be to make a list, a policy which was rejected in 1992 by the then Secretary of State, David Mellor.

The role of the Reviewing Committee

Advisory role

The RCEWA's activities have to be considered against the basis that its role is advisory. It does not decide whether export is to be stopped – that is determined by the Secretary of State. However it is part of the system of control established by the government and ministers can be expected to attach considerable weight to its views. It is important that RCEWA operates in a fair fashion and it seeks to do so.

Terms of Reference

The Committee's terms of reference are:

- a) To advise on the principles which should govern the control of export of works of art, antiques etc;
- b) To consider all cases where refusal of an export licence for a work of art or antique is suggested on grounds of national importance;
- c) To advise in cases where a special Exchequer grant is needed towards the purchase of an object that would otherwise be exported; and
- d) To supervise the operation of the export control system generally.

The Review recommended that (d) be amended to 'advise upon the operation' as supervision is a matter for the DCMS.

Membership

The Reviewing Committee comprises eight permanent members who have expertise in one or more fields such as paintings, furniture and manuscripts. The purpose is to ensure that the Committee has a broad range of experience in art and antiques. The chairman is Lord Inglewood, a former National Heritage Minister and a barrister. He succeeded Sir John Guinness CB in December 2003. In addition to their subject expertise, the permanent members are drawn from different sectors, such as curators and dealers.

How the Committee functions

The DCMS may appoint an expert adviser to consider a particular application for an export licence. The adviser will be drawn from a museum or gallery. If an expert adviser makes an objection to an export, DCMS refers the licence application to the RCEWA. In the past decade, the Department's expert advisers have referred between 13 and 43 cases per year for the RCEWA to consider, that is fewer than 0.5% of the total number of licences dealt with by the DCMS in any year.

The RCEWA normally meets on a monthly basis to consider the cases which have been referred by expert advisers. Its task is to decide whether an object meets one or more of

the Waverley criteria. It does not take into account whether anybody wishes, or has the funds, to acquire the object. If the RCEWA decides that an object meets one or more of the criteria, it establishes a fair market price and deferral period for recommendation to the Minister.

Both the applicant to export and the expert adviser are invited to submit statements in support of, respectively, retention in the UK against the Waverley criteria, or export, and these are circulated to all parties concerned prior to the RCEWA's hearing. The applicant may also advance other arguments as to why a licence should be granted, which are put to the Minister with the overall recommendation made by the RCEWA. However, on occasion, the applicant may agree that the item is of Waverley status.

At the hearing, the RCEWA's eight appointed members (four of which constitute a quorum) are joined by three independent assessors chosen for their expertise on the object in question, and who are drawn from specialists across the UK. These independent advisers are treated as members of the RCEWA for the application under consideration and have a vote. Officials from DCMS, including a lawyer, are also present to advise the RCEWA.

Discussion is structured, but reasonably informal. The RCEWA, the expert advisers and the applicant's team sit round the same table.

The expert adviser and applicant attend the meeting to present their arguments, and the RCEWA also sees the object. Usually the object will be brought to the meeting, but where it is too large or fragile to be moved safely, the RCEWA would visit it. There is an opportunity for both parties to add to their written statements and to ask questions of the other side. The RCEWA may also put factual questions to the applicant and expert before inviting them to withdraw and voting on whether the object meets one or more of the Waverley criteria. If there is a majority vote in favour of one or more of the criteria, the RCEWA recommends to the Minister of State that a decision on the licence application be deferred for a specified period to enable an offer to purchase to be made at or above the fair market price, which will also be recommended by the RCEWA.

If the Reviewing Committee considers an item to be of Waverley Standard the Applicant will be asked at the meeting if he might accept a matching offer.

The RCEWA may 'star' an object, which is of special importance, though it is not necessary for such an object to have met all of the criteria. Unusually in 2002-2003 four items were starred, including the *Madonna of the Pinks* and the portrait of *Omai*. If the owner of the object has indicated prior to, or at, the hearing that they will not accept a matching offer for the object if it is found to be of Waverley status, the RCEWA recommends that a licence is refused. If the object does not satisfy any of the Waverley criteria, the RCEWA recommends that the export licence should be granted.

The proceedings of the RCEWA are treated as commercially confidential. Its recommendations are made known to both parties at the end of the hearing, but remain confidential until the Minister's decision is announced in a departmental press notice, which invites purchase offers to be made initially to the RCEWA Secretariat. An account of each case is published in the RCEWA's annual report, which is checked by the applicant and expert adviser.

The Secretary of State will consider the recommendation of the RCEWA and decide whether to refuse or defer the licence application. Her decision is primarily based on the

Waverley criteria, but she can take into account other matters as long as they can be justified as being relevant. If her view is that export should be restricted then practice depends on whether the applicant said he would be prepared to accept a matching offer. If the answer was 'no' then the licence would be refused. If the answer is 'yes' then a stop for a limited period (first deferral period) is put on the item and a price is determined. This will be announced in the DCMS press statement and prospective purchasers invited to contact the owner or his agents via the RCEWA Secretariat.

If no public institution (or Ridley rules purchaser) comes forward during the first deferral period, wishing to buy, then the Licence is granted.

If a purchaser does come forward during the first deferral period with a serious intent to buy, then the stop is extended for a second deferral period during which that person tries to raise the price.

If the price is raised within the second deferral period, then the public institution or Ridley rules purchaser will seek to purchase but the applicant is not bound to accept. If the applicant does not accept then an 'indefinite stop' is imposed and the licence application refused.

If the price is not raised in the second deferral period then the Licence is granted. The Secretary of State can extend the second deferral period but this only takes place in exceptional circumstances.

Issues arising in the Quinquennial Review

The Waverley criteria

The Review recommended some clarifications to the rubric accompanying the Waverley criteria. These are primarily examples of items under each category, but also an explanation that learning in Waverley 3 covers a wide range of disciplines. The significance of an item as part of a 'collection or assemblage' is also suggested as part of the Waverley 3 rubric. A general statement is proposed to be added that:

“We may take into account the condition as well as the quality of the work in question and the extent of the damage or restoration to which it may have been subjected.”

The Review also proposed that individual fossils of material value be brought under UK export control.

Private Offers ('The Ridley Rules')

The Ridley Rules (promulgated by the then Secretary of State for the Environment, Nicholas Ridley) allow private purchasers to come forward following a deferral, subject to conditions. Whilst any private purchaser could seek to acquire a deferred item, the strength of a 'Ridley' purchaser is that an export licence would be refused if their offer was rejected. The rules have been contentious in the art world since their introduction and this was reflected in representations to the Review. Some saw the Ridley Rules as providing a valuable opportunity to retain Waverley items in this country, with the possibility of future purchase by a UK institution, and that steps should be taken to

encourage their use. However, there is also the view that individuals should not be able to benefit from State control of export in this way.

In balancing these views, the Review concluded that private offers should be accompanied by a sufficient and demonstrable public benefit. Whilst regarding the current conditions regarding public access, conservation and resale as reasonable, they did not consider the public benefit (whether access or otherwise) to be sufficient. In addition, it remains difficult to ascertain what conditions have in fact been imposed, nor is it certain how binding they are. The Review therefore recommended that the system for private offers should incorporate the following conditions:

- The conditions relating to such purchases should, in each case, be made known;
- How these conditions are to be enforced should now be agreed;
- Accessibility: this must be sufficient to strike a balance between the public interest and the interest of the purchaser. If the conditions were too demanding, the Rules would be used even less frequently;
- Adequate Security;
- Acceptable Conservation;
- An undertaking not to part with ownership within a period of time, say five years without obtaining the agreement from the acquirer for the benefit of the Secretary of State to continue the provisions as to access and other undertakings.

The Review also recommended that the distinction between a public and private offeror should be more clearly set out, and that the definition of a public institution should encompass those bodies included in Schedule 3 of the Inheritance Act 1984 being national, local authority and university museums and galleries, the National Trust and various public bodies.

Composition of the Reviewing Committee and its form

A suggestion that the RCEWA should be subsumed in the Tribunals Service proposed by the government following Sir Andrew Leggatt's report was not supported by the Review. There are two real objections to treating the RCEWA as a Tribunal. Firstly decisions on export licensing are taken by the Secretary of State rather than the RCEWA. The proposal would require the Secretary of State's power to be transferred to an independent tribunal. Secondly the minister's decision does not have the judicial character of a tribunal decision. Tribunals apply the law to facts they have found and that leads, subject to occasion, limited discretion, to a particular result. Deciding whether to stop the export of a Raphael is an exercise of administrative discretion, that is, a political decision having regard to policy and expert advice. Even where independent persons report to ministers on how discretions should be exercised (for example the work of the Planning Inspectorate) they do not perform a tribunal-type role.

A consequence is that any legal challenge to an export ruling would be brought against the decision of the Secretary of State, not against RCEWA. Judicial review proceedings were brought, unsuccessfully, against the minister in the Three Graces case *R v Secretary for State for National Heritage and another ex p J Paul Getty Trust* in 1994. The scope

of judicial review is limited to legal errors and it would require an extreme case for the Court to rule that a conclusion that an object met the Waverley criteria was so unreasonable as to be unlawful. Defects in the advice of the RCEWA to the minister or its conduct of its own hearings may vitiate the Secretary of State's decision. Legal issues might also arise if deferral periods are extended. Judicial reviews are extremely fact sensitive – normally on the facts found by the decision maker – and so any potential challenge has to be considered with great care.

The Review considered that the RCEWA should remain an advisory NDPB.

The style of meetings was to be retained. Having 11 decision-makers at the meeting does reduce the opportunity for a sustained line of questioning – except by prolonging the meeting there is not the opportunity for all members to ask many questions. Meetings do not resemble court or inquiry hearings, at their most rigorous they are like informal hearings in planning matters and are most like committee meetings. However this format was not considered insufficiently intensive for the issues before the committee.

Valuation and Deferral Period

In arriving at a recommendation to Ministers, the criteria on which the RCEWA arrives at a proposed length of deferral normally include:

- the value of the object;
- the time that any fund raising might reasonably be expected to take;
- the likelihood of a fund-raising attempt being launched;
- the proximity of the beginning of the deferral period to a new financial year;
- the proximity of the beginning of the deferral period to the summer - and, to a lesser extent, the Christmas and New Year holiday periods;
- whether the owner of an object, which has been conditionally exempted from capital taxation, has given the requested three months' notice of an intention to sell the object to Resource: the Council for Museums, Libraries and Archives;
- whether the owner is willing for the object to be publicly displayed (in appropriate conditions) to assist any fund raising appeal that might arise as a result of a deferral period.
 - The RCEWA seeks to recommend a valuation which is fair and reasonable to the owner and national heritage interests alike by examining carefully the elements included in the valuation. Therefore, at the meeting, the RCEWA will normally ask what the value as stated on the application form represents.

In May 1996, the Secretary of State issued a consultation paper on elements that should be included in establishing a fair market price. Following the consultation, the RCEWA's procedure was published in *Export Licensing for Cultural Goods*, 1997. In addition to the base price, the RCEWA would allow the buyer's premium; reasonable conservation costs (those incurred by a new owner as being necessary to stabilise the condition of an object); and dealer's commission on a sale to a third party (which will not normally include a commission on a sale to a connected party) to be included in the recommended fair market price. The RCEWA could also disallow certain elements in arriving at a fair market price, such as interest charges, transport and storage costs and insurance costs.

If the RCEWA accepts the applicant's valuation, the application is likely to be deferred at that value. However, where the object is not the subject of a recent sale, the RCEWA can ask the expert adviser's opinion as to whether the value claimed is a fair market price and seek the views of its own members and the independent assessors. If the expert adviser objects and a value cannot subsequently be agreed by all parties, the RCEWA may seek independent advice on valuation before making a recommendation to Ministers. Normally two or more persons will be asked to advise the RCEWA on the value of the object concerned. Those persons will normally be approved by the applicant and the expert adviser, both of whom are invited to submit names of appropriate valuers with recent market experience in the specific field of the object.

There was serious concern that the system could be exploited by putting forward an artificially high price which implied that a sale had taken place. This put deferred items out of the reach of potential purchasers and distorted the market. It was generally accepted, therefore, that the RCEWA should be able to see accurate and comprehensive documentation about sales in order to determine a recommended value and that a legal basis for valuation through a statutory declaration, though more bureaucratic, was worth considering to enable this problem to be tackled.

The issue will tend not to arise for items sold at auction as the price would have been determined by the market in an open fashion. Private sales would only tend to cause difficulties if the sale is part of a wider series of transactions or the declared sale price was not genuine. That the market in these items may have been inflated because the buyer is an avid and extremely rich collector of them, able to outbid anyone else, does not in itself mean that the price is not the market price.

Where an item is being exported without a sale taking place, valuation is inevitably a matter of evidence about the market.

The omission of interest from the recommended price and the potential financial risk to purchasers was mentioned by some consultees on the review. One trade association had previously suggested that, where an export licence was eventually refused, the overseas purchaser should be compensated for loss of interest (if actually suffered), based upon the sale price. Two other representatives of the art market suggested that, if a stop was deferred more than once and where a licence was not issued, following a UK institution buying an item before the expiry of the extended stop, the fair market price should be enhanced by interest at commercial rate from the date of the second deferral period. These suggestions were not responded to in detail by the Review but seem to give insufficient weight to the fact that someone, whether the seller or the buyer, will have had the possession and enjoyment of the item (subject to any public display) during this period.

Two legal representatives of the auctioneers proposed establishing a panel of experienced valuers drawn from the trade, selected independently from the RCEWA. If the applicant or expert adviser did not accept them, a valuer would be nominated independently. Instructions to valuers would be submitted in draft by the RCEWA for comment and all dealings between the RCEWA and valuers

would be transparent. One respondent suggested that opinions on valuation should be sought from disinterested specialists, rather than from the art market.

The RCEWA needs to have satisfactory proof of value in determining fair market price. In the case of auction sales, this can be done by the presentation of invoices. However, more information may be needed in the case of contractual agreements, both in terms of the value put forward, and the nature of the agreement. The Review recommended that in future, when the RCEWA is not satisfied that there is adequate evidence to support a price proposed by the applicant, evidence in the form of a private contract will only be accepted where the RCEWA can be satisfied a) that such contract price represents the price agreed between parties at arms' length and b) that such contract contains all the terms agreed. If evidence satisfactory to the RCEWA is not available, then the terms (including price) of such a contract will not be taken into account in reaching a fair price. In such a case, the RCEWA could offer the applicant the option of a third party determination of the value as set out below. If the applicant were not agreeable to following this route, then the RCEWA would be entitled to recommend refusal to the Secretary of State.

The Review recommended that the process for third party determination of value should be more clearly set out in the Department's guidance, using the following model:

- The applicant should propose a valuation and, as now, would be asked at the meeting to clarify the basis for it;
- The RCEWA would ask the views of the expert adviser as well as RCEWA members and independent assessors and, if these were satisfactory to the RCEWA, it would agree the valuation;
- If the RCEWA remained unsatisfied with the applicant's proposed valuation after hearing the expert adviser's views, it would ask for the evidence relied on by the applicant to justify the applicant's valuation;
- If the RCEWA remained dissatisfied, the applicant and the expert adviser would each propose a valuer acceptable to each other and to the RCEWA and the two valuers so chosen would seek to agree a value;
- Should the two valuers be unable to agree, the RCEWA would appoint a third valuer to hear the arguments of the other two and give his determination on value;
- The RCEWA, having received the value as so determined, would then make its recommendation to the Minister.

In practice there are a number of ways of resolving valuation issues and the appointment of further valuers as proposed might not always be the best course. However it is important that the RCEWA are able to advise the Secretary of State on value having considered the evidence which can be available. The RCEWA brings expertise to the valuation issue and ought to be able to make a clear recommendation to the minister.

Refusal of offers and withdrawal of applications

The Review considered the situation where an applicant has initially said he would accept a matching offer but has subsequently changed his mind and either rejected such a matching offer when made, or has withdrawn the application,

leaving the public institution which has either made the matching offer, or taken steps towards making it, both out of pocket and having wasted time and effort in a fruitless exercise. A particular concern was that this might discourage institutions from fundraising to acquire other stopped items. In the ten years to 2001, 227 items were deferred and offers made in respect of 116. Of these 116 offers made, 17 were refused or the application withdrawn. More recently, the painting of *Omai* was withdrawn from export after an offer was made for its purchase.

The Review recommended by a majority, that, at the end of the RCEWA hearing, the applicant should be asked if he would not be prepared to accept a matching offer in any circumstances. If the applicant makes it clear that he would not be prepared to accept a matching offer in any circumstances, then the RCEWA should recommend the refusal of a licence. If the applicant replies that he will consider a matching offer, then there should be a first period of deferral to allow any prospective purchaser to come forward. The Review recommended that, if at the end of the first deferral period, in the view of DCMS, an institutional or 'Ridley' purchaser has expressed a serious intention to purchase, the applicant should be asked whether he will accept the matching offer from that specific purchaser. If he will not accept such an offer, refusal of the licence should be recommended.

The Review considered a further proposal that, in outline, if a public institution came forward during the first deferral period with serious intent to make a matching offer, then the applicant would be asked to make a binding offer to sell to that institution and that such offer could not be withdrawn during the period of the second stop. The offer document would aim to be standard, simple and acceptable to applicants. If an item was found to be of Waverley status at the end of the hearing, the form of the offer document would be given to the applicant to enable him to consider it during the initial stop to be prepared to state whether or not he would enter into it should a public institution come forward.

Whilst the majority of the Review's members thought that the proposed measure was both justified and required because of the expense and effort which even one case per year caused a public institution, concern was expressed at whether the incidence of refusals warranted the introduction of an additional measure. The Review recommended that such undertaking should be required for the second deferral period, when an applicant has already indicated to the RCEWA at its hearing that such an offer would be acceptable.

This proposal has sparked perhaps the most debate in a review which has ranged widely over the export licensing system. Ministers are presently considering their response to its recommendations.

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