



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# **BURRELL COLLECTION (LENDING AND BORROWING) (SCOTLAND) BILL COMMITTEE**

Thursday 19 September 2013

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**BURRELL COLLECTION (LENDING AND BORROWING) (SCOTLAND) BILL  
COMMITTEE  
3<sup>rd</sup> Meeting 2013, Session 4**

**CONVENER**

\*Joan McAlpine (South Scotland) (SNP)

**DEPUTY CONVENER**

\*Jackson Carlaw (West Scotland) (Con)

**COMMITTEE MEMBERS**

\*Mark Griffin (Central Scotland) (Lab)

Gordon MacDonald (Edinburgh Pentlands) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Michael Daley (ArtWatch UK)

Professor George Gretton (University of Edinburgh)

Sir Peter Hutchison (Burrell Trustees)

Frances Lennard (Centre for Textile Conservation and Technical Art History)

Robert Taylor (Bannatyne Kirkwood France & Co)

Peter Wilkinson (Constantine)

**CLERK TO THE COMMITTEE**

Joanna Hardy

**LOCATION**

Committee Room 3



## Scottish Parliament

### Burrell Collection (Lending and Borrowing) (Scotland) Bill Committee

*Thursday 19 September 2013*

[The Convener opened the meeting at 09:32]

#### Decision on Taking Business in Private

**The Convener (Joan McAlpine):** Good morning and welcome to the third meeting of the Burrell Collection (Lending and Borrowing) (Scotland) Bill Committee. I remind all who are present to turn off their mobile phones and BlackBerry-type devices, as they can interfere with the sound system. We have received apologies from Gordon MacDonald MSP, who is unable to attend, although he has submitted some written questions through his colleagues. As far as I can see, no additional MSPs are present.

I welcome Sir Peter Hutchison, who is chair of the Burrell trustees, and Mr Robert Taylor, who is the law agent of the testamentary trustees of the Burrell collection.

Our first item is to decide whether to take in private item 3, which is consideration of evidence and the committee's next steps in its scrutiny of the bill at the preliminary stage. Do members agree to that?

**Members** *indicated agreement.*

### Burrell Collection (Lending and Borrowing) (Scotland) Bill: Preliminary Stage

09:33

**The Convener:** Time is very tight, so I request that questions and answers remain succinct.

I invite short opening statements from the members of the panel.

**Sir Peter Hutchison (Burrell Trustees):** Thank you for giving me the opportunity to present to you this information. I am sure that the committee will, from its earlier hearings, be familiar with much of the territory that underlies the bill. With the convener's permission, I will make a short statement on some of the key issues from the trustees' viewpoint.

I start by saying that the trustees give the strongest possible welcome to the refurbishment of the Burrell building. Quite frankly, we have been agitating about the roof for some years now, and it is not just a matter of drips and buckets. The refurbishment will refresh the design, make better use of space, enable more of the collection to be displayed and allow more of it to revolve on display.

In spite of the problems of overseas lending, we recognise that the tour has tremendous potential. I believe that it represents the first major display of the Burrell collection outside the Burrell building since the Hayward gallery exhibition in 1975, which produced acclaim and astonishment at the richness and spread of the collection, and was quite instrumental in Government finance being made available to build the present Burrell building. We hope that the tour will produce a similar appreciation, and that it will also encourage sponsorship funding.

The two core issues that I want to raise are the setting aside of a donor's wishes and the ability to exhibit overseas—with safety—articles from the Burrell collection. The connecting thread between those issues is the assumption that Sir William Burrell considered that lending overseas was essentially riskier than lending within the United Kingdom, and that his experience of the shipping world led him to distrust the travel element. I am sure that the first assumption must be true; the second may be true, but I think that the situation is more complicated.

The committee will be aware that the trustees will, we hope, assume a new role of monitoring lending in general, but with a long-stop—as opposed to wicketkeeper—position on overseas loans. We will obviously continue to work in close consultation with Glasgow Life. This is new

territory for us, but it is not for Glasgow Life, which already has in place a lending policy for its museums as a whole. We believe that the new lending code for the Burrell collection that is attached to the bill will provide a rigorous and effective process for evaluating loans overseas and within the UK.

All proposed loans that survive the earlier filtering processes will be seen by us. Naturally, some will be more straightforward than others, but we will be watchful and will not hesitate to get external advice, if it is needed. Having spent some 25 years in the insurance industry in Glasgow, I am not conditioned to underestimate risk or, indeed, to make easy assumptions about it. I believe that the trustees have a duty to Sir William to ensure that the risks are assessed and mitigated as far as possible.

I will comment briefly on the issue of a donor's wishes. In the case of closed institutions such as the Wallace Collection and the Frick Collection, which neither lend nor borrow, life is made fairly simple, but the Burrell collection has never been like that. Sir William lent extensively during his lifetime, and since the collection found a home in Pollok park, lending from it within the UK has continued—uneventfully, on the whole.

After the 1997 parliamentary inquiry, the ground shifted. The panel of commissioners drawn from the House of Lords recommended that the non-fragile items, which form the bulk of the collection, should be allowed to go abroad, but that the fragile media such as pastels and tapestries should not be allowed to be exhibited outside the Burrell building. Although the proposed legislation was never enacted, in effect, the Parliament of the day had spoken. The commissioners' finding has partly freed the trustees and enabled them to consider limited overseas lending, subject to rigorous safeguards. We believe that the lending code provides the safeguards that are necessary to protect the integrity of the collection.

It is always speculative to try to imagine what the reactions of the donor to a new situation might have been, had he been alive. Nevertheless, trustees sometimes have to have a go at doing that. I presume that the Barnes Foundation trustees went through the same exercise. Unfortunately, there had not been overmuch consultation of the trustees at the time, and the trustees opposed the draft provisional order on the basis that Sir William Burrell's clearly stated intentions regarding lending should be upheld.

I like to think that 55 years after Sir William's death, if I was to hold an imaginary conversation between my conscience and his, he would react favourably if I asked him to trust his trustees.

The ability to make the final decision on overseas lending matters is critical. I expect it to be seldom, perhaps never, used. In a sense, we still hold Sir William's pen in our hands. In 1997, the commissioners whom I talked about enjoined us and Glasgow City Council to engage in constructive discussion; that has been our recent experience with Glasgow Life, and we intend that that will continue.

**The Convener:** Thank you, Sir Peter. Mr Taylor, do you wish to make an opening statement?

**Robert Taylor (Bannatyne Kirkwood France & Co):** I will, if I may, madam convener.

I have acted as the legal adviser for the trust since 1984, and before that, my firm has acted for the trust for as long as it has been in existence, since Sir William Burrell died. We also acted for Sir William Burrell and my firm prepared his will.

Do cut me short if I digress and cover ground that other speakers will be covering. I will comment briefly on some of the legal issues as they relate to the Burrell collection that affect the trustees and the council, and also on why, having been persuaded by Glasgow Life that wider lending powers for the collection could be of benefit, the trustees have decided to support the bill that is before the committee.

In the terms of the memorandum that was signed by Sir William and Lady Burrell and Glasgow Corporation in 1944, Sir William donated his art collection to the city subject to various stipulations. Those included an undertaking to keep the collection intact in the building that was eventually to be built. There was an express provision that allowed the city to make temporary loans of items from the collection to responsible institutions within Great Britain.

In that agreement, Sir William further undertook that his will would provide a fund to be administered by trustees to allow additions to be made to the Burrell collection. He further stipulated that plans of the future Burrell gallery were to be approved either by him, or by his testamentary trustees if the building had not been built by the time he died. The deed did not, however, provide any clear legal role for his testamentary trustees in relation to the Burrell collection.

In William Burrell's will of 1953, the residue of his estate was left in trust with trustees being directed to apply the income for the purchase of additions for the Burrell collection. Many of the terms in the 1944 agreement were repeated in the will, which ensured that any items that were purchased by the trustees for the Burrell collection—which, you will remember, had already been donated—were covered by the same restrictions on lending and so on. In the will, however, Sir William imposed an additional

restriction on future lending that prevented articles such as tapestries, pastels, carpets, rugs, lace and needlework from being loaned at all. That restriction is fully effective to cover items that are purchased by the trustees for the Burrell collection, but there is considerable legal doubt about whether Sir William's will could unilaterally amend restrictions that he had previously imposed in an agreement that was made in 1944. Two deeds therefore govern lending from the Burrell collection, and they are not entirely symmetrical in their terms.

As the committee is aware, in 1997 Glasgow City Council promoted private legislation in the United Kingdom Parliament to amend the terms of the will and of the 1944 agreement to allow the Burrell collection to be loaned outwith Great Britain. Unfortunately, there was not much consultation with the trustees at the time and they opposed the draft provisional order on the basis that Sir William Burrell's clearly stated intentions regarding lending should be upheld.

09:45

The inquiry took place in October and November 1997 and lasted about five weeks. A vast quantity of evidence was led before the inquiry regarding the donor's wishes, modern transportation techniques, the benefits of reciprocal lending between institutions to promote research, and the perceived financial benefits to Glasgow's museums through being able to lend the Burrell collection freely. The committee will have heard much evidence on those matters and will probably hear much about them after we have departed.

The parliamentary commissioners confirmed that the trustees had an interest in the Burrell collection and, indeed, a right and a duty to enforce the conditions that applied to the collection, but they found in favour of widening lending beyond Great Britain, subject to the proviso that certain categories of items that they considered to be fragile—they are the items that are mentioned in Sir William's will—should not be loaned at all. In other words, they had to stay within the Burrell collection. Previously, that had not been thought to be the case.

That outcome was not quite what either party envisaged at the time, and although the commissioners' findings are persuasive, they are not law, because the city did not proceed further with the provisional order. The commissioners did not address the question of how future lending to and from the Burrell collection was to take place and, indeed, they did not specify what role the trustees would have in relation to future administration of, and lending from, the Burrell

collection. However, they urged both parties to cooperate for the future benefit of the collection.

As Sir Peter Hutchison stated in his submission, one consequence of the commissioners' findings was to release the trustees from the absolute requirement to uphold strictly Sir William Burrell's lending restrictions. Since 1997, the city and the trustees have worked towards a satisfactory and workable arrangement to regulate all lending to and from the Burrell collection.

The trustees' central role in relation to lending is firmly established under the lending code. Their agreement must be obtained for all lending both to and from the Burrell collection. On the strength of that, the trustees feel able to support the bill that the committee is considering. By providing a mechanism for future amendment—which is not the case with the 1944 agreement or Sir William Burrell's will—the lending code enables the parties, if they mutually agree, to make changes to lending procedures if subsequent experience shows that to be necessary and desirable. As the committee heard previously from Mr Eccles, legislation by the Scottish Parliament is the only effective way of allowing the conditions that are imposed by both the will and the agreement to be amended.

I hope that this résumé has been of some interest and benefit to the committee. Thank you for allowing me to speak.

**The Convener:** Thank you very much, Mr Taylor.

I begin by addressing Sir Peter Hutchison about the fact that the trustees were opposed to changing the will in 1997, as Mr Taylor said. In your statement, Sir Peter, you suggested that the trustees changed their minds because the decision had been made by the Parliament of the day. Was evidence led that persuaded you to change your mind?

**Sir Peter Hutchison:** My understanding is not that the law changed as a result of the 1997 finding by the four House of Lords representatives, but that they came out with a recommendation that would have been the basis of a law, if a law had been enacted. We took that as evidence that that was the mind, rather than the will, of Parliament at that time. That is why we started to look again at loosening the lending overseas situation.

To go back to the earlier part of your question, on the wish to preserve Sir William's will exactly as it was, we always felt that there would be problems, but things had rolled along in an unsatisfactory and unclear way. As Robert Taylor said, there were two documents that said slightly different things. One of the reasons why we are here now is, I hope, to try to get a settled situation in which everybody knows what is happening.

**The Convener:** Have the trustees changed their minds about lending because they are persuaded by evidence about improved methods of transportation, for example?

**Sir Peter Hutchison:** Yes, that is one of a number of factors. It is clear that, on the whole, transportation is now safer. I would not put too much emphasis on that, because quite a lot of accidents happen when items are being taken off the wall and packed away or, at the destination, are lifted out and put up on another wall. Such accidents can happen. The change that has taken place is that we are looking at the issue across the world, so we would consider not just the safety of, shall we say, an aeroplane versus a ship, but the destination that an item will go to, the political situation in that country and the chances of extreme weather events or something like that. Much wider issues than just travel come into play once we start transporting overseas.

**The Convener:** I see.

My colleague Mark Griffin will ask some more detailed questions about the discrepancy between the agreement and the will that Mr Taylor has outlined, but I have a question about that, too. You outlined that, in 1997, the commissioners did not give lending a complete *carte blanche*, as delicate items were of concern to them—they did not think that such items should be lent. Last week, we had the great pleasure of looking round the Burrell and speaking to some of the conservators. Certainly, the view was that the Degas pastels should never be lent, because pastels cannot be transported. However, the proposed changes would give *carte blanche* to lending those delicate pastels abroad, which seems to be a considerable departure from previous thinking.

**Sir Peter Hutchison:** I absolutely take your point and agree with it. Technically, the pastels could be lent abroad. However, perhaps it might help if I gave an example of how, in that particular case, the system is already beginning to work in a discursive way and through agreement, although there is no legal enactment yet.

A little while ago, I said to one of the senior people, Dr Ellen McAdam, “You know, if this thing happens, I think the trustees would take an awful lot of persuading ever to lend a pastel abroad.” She did not reply at that time, but I notice that the list of items that are proposed for loans—incidentally, I saw it only this morning—has no pastels on it. I do not suggest that, if I had not mentioned that, the pastels might have been on the list, but that is the commonsense, article-by-article approach that I hope will be of benefit in future. That is a much more pragmatic approach than one of using categories. Pastels are a fairly discrete category, but textiles cover a huge variety of robustness—we might hear more about that

later. There is a lot to be said for taking each case on its merits.

**The Convener:** It has been pointed out to us that, although the Burrell collection has many jewels, its heart and soul are the medieval tapestries. A blockbuster touring exhibition of the world without the tapestries would therefore not have the same commercial potential. Is that perhaps why that aspect of the will is being changed?

**Sir Peter Hutchison:** As you say, the tapestries are one of the biggest jewels in the crown, if you like. There is huge variety in the robustness of the tapestries. Quite a lot of very fine bits of tapestry have been taken from larger original tapestries and perhaps mounted 1m by 1m—they are often mounted on some sort of firm base. It is obviously much easier and less risky to transport those than the full-blown, magnificent great tapestries that have to be rolled, unrolled and hoisted, which places considerable strain on all the fabric.

Such considerations must be taken into account. I am speaking as if I know the whole story, but we obviously rely on conservators to explain it to us. There is a wide variety, ranging from tapestries that are already carefully mounted to some very large tapestries that measure several metres by several metres and cover a whole wall.

**The Convener:** My final question concerns the need to refurbish the gallery—you made clear in your opening statement how important that is to you. During our tour of the collection, we were made very aware of the difficulties that the gallery was experiencing with water ingress. Dr McConnell and Councillor Graham were clear in their evidence last week that sponsorship from a touring exhibition would help to fund refurbishment of the gallery, but they have come up with quite a significant cost for refurbishment—£45 million.

Given that the changes that are being proposed in the bill mean that lending would take place indefinitely, how would you feel if funding did not raise enough money to refurbish the gallery? In other words, you might agree to the lending but not get the gallery refurbished. How important is the refurbishment of the gallery in the calculation to change the will?

**Sir Peter Hutchison:** I will answer your last question first. The refurbishment of the gallery is closest to our hearts and we welcome it enormously. As to the money, I suppose that there is no guarantee, and it is not particularly our function to do any major fundraising. It is difficult to assess what will happen. I think that the circulation of the Barnes collection, which was done in a similar way, before refurbishment, raised £7 million. There are some precedents, but I do not know whether £15 million can be raised.

**The Convener:** It seems that without the £15 million the sums do not add up.

**Sir Peter Hutchison:** You are quite right. I am a little hesitant on the figures, because £45 million sounds like a nice, tidy round sum and these things tend to vary over the years—it is a four-year exercise. One has to go and look for other sources of funding if it is the case that the sums do not add up. I know that the Heritage Lottery Fund will be tapped, and Glasgow itself will put up some of the money. Of course, Glasgow City Council faced a similar situation when it was making a substitute for the museum of transport—in other words, the Riverside museum. I think that I am right to say that there was a shortfall, as the expected amount was not raised.

**The Convener:** Jackson Carlaw has a quick supplementary.

**Jackson Carlaw (West Scotland) (Con):** You have mentioned the Barnes collection a couple of times. Obviously, you will have to make similar decisions to those of the Barnes trustees.

When that collection was lent abroad, the Matisse mural was badly damaged in Washington and a Picasso suffered damage and restoration in Tokyo. I imagine that Washington and Tokyo gave guarantees about how those items would be treated, but they were ultimately not necessarily upheld. As somebody who is in the insurance industry, what weight do you give to guarantees that are offered about such important loans? In the case that I described, the countries involved were not unreliable in principle, but priceless items were damaged in practice.

10:00

**Sir Peter Hutchison:** You are right that there has been damage; nobody would deny that, although people sometimes make it sound rather less than it is. There is no guarantee that no damage will occur; there is no such thing as being risk free, even in the existing gallery. The issue is how much the risk increases if items go abroad or to a particular destination.

One task for a trustee is to look carefully at how incidents have arisen. I have written to Dr Penny, who has raised such concerns, to ask him for as much detail as he can give—in confidence, of course. The trustees are anxious to learn in what circumstances the incidents arose.

Risk cannot be eliminated, but it can be mitigated. For example, we have discussed the suggestion that, if a fairly large number of items are travelling in or to a foreign country, they should never all travel in one aeroplane—they should be split between several aeroplanes—because nobody can guarantee that an aeroplane will not

crash. If a crash occurred, the result for any collection could be severe. As I said, nothing is risk free, other than keeping items in their own building and never letting them move.

**Mark Griffin (Central Scotland) (Lab):** Why do you think that Sir William stipulated in his will and in the agreement that the building where the collection is housed should contain only the collection and items that are subsequently added to it?

**Sir Peter Hutchison:** What you say is right. For quite a long time, the practice has been to include temporary loans of subjects that are related to a Burrell exhibition. For example, his collection of Crawhall watercolours is marvellous and well known, and the addition of one or two such paintings from outside has been allowed, provided that it is made perfectly clear that they are not Burrell items and are there just for comparison. It would diminish some exhibitions and make some hardly worth having if external comparative material could not be pulled in; that is an almost essential part of museum practice.

**Mark Griffin:** So the trustees and Glasgow Life are already operating against Sir William's will and agreement by displaying items from outside the collection.

**Sir Peter Hutchison:** I do not think that the provision was absolute.

**Robert Taylor:** One distinction to draw is between permanently exhibiting at the Burrell collection items that were not donated by Sir William or Lady Burrell or acquired by the trustees and bringing in temporary exhibits that are clearly marked as such and which do not form part of the permanent collection. Temporary exhibits would be in a separate exhibition room and would be separately labelled so that visitors who came to the Burrell would be under no illusion about what was part of the Burrell collection and what was an external exhibit that had been brought in to make the Burrell a more attractive venue to attend by creating a major exhibition of Degas, French impressionists or whatever. Such items would complement what the Burrell has. There is no question of the trustees sanctioning a departure from Sir William's wishes.

**Mark Griffin:** Okay. You expect that to continue with the new borrowing power, so that no item would be permanently displayed with the collection.

**Robert Taylor:** Absolutely. It is in the lending code. I can assure you of that.

**Sir Peter Hutchison:** The integrity of the collection, which I think is really what Sir William was getting at, is of great importance to us. We would never wish to sanction an exhibition that, as

it were, swamped the Burrell items or failed to make it clear what was a strong part of the Burrell collection and what was added in for comparative or interest purposes. Those things need to be quite distinct.

**Mark Griffin:** Thank you. We have spoken already about the difference between the will and the agreement. The will specified certain items that Sir William did not want to be lent outside the collection. What are the reasons for the differences between the will and the agreement in relation to the pastels, tapestries, carpets, rugs, lace and needlework and other textiles?

**Sir Peter Hutchison:** I am honestly not sure why Sir William came to a different conclusion when the two documents were drawn up. I think there was quite a time difference between them. When he came to make his will—we know that a certain firm drew it up—I would guess that he was trying to firm up the safety and integrity issues. By then he was in his 90s, I think. He drew up this not-very-well-defined category, which ends with fabrics generally—tapestries, carpets and rugs—which would of course cover things like suzannis, which are quite modern and of which we have an interesting collection; they are a sort of decorative bedcover. He bought one or two, and one was bought recently. There is a lack of definition. At one end there is extremely fragile stuff and at the other end there are really quite robust fabrics that are unlikely to be damaged.

**Mark Griffin:** Do you think that in lending some of the delicate items that were not specified in the agreement but which were specified in the will, Glasgow Life is perhaps operating within the letter of the law but not within the spirit of Sir William's intentions, given that he perhaps had a change of heart when drawing up his will?

**Sir Peter Hutchison:** I realise that there is a legal point here about articles that fall under that, and others that the trustees have acquired more recently. I think that there was a good deal of argument in 1997 about that particular point. That is one of the areas of uncertainty that the bill would clarify now. There will be a similar regime across the board and we will be looking at things much more on a case-by-case basis rather than looking at categories that should not be lent, which in some cases are rather ill defined.

**Robert Taylor:** I have a point to make partly in response to Mr Griffin's remarks about the discrepancy between the will and the agreement. The committee is obviously aware that the agreement of 1944 was amended by Sir William Burrell during his lifetime, with the agreement of the city. That was to do with the siting of the future building. In fact, it was amended on many occasions.

It is interesting that when Sir William Burrell raised those issues to do with the siting of the Burrell collection, he did not introduce into the agreement the restrictions that he put in his will. One cannot guess the reasons why Sir William did not raise the issue while he lived. Who can say why the restrictions were put in the will? What we know is that during his lifetime he did not attempt to vary the 1944 agreement and impose the restrictions that apply to the fragile items on the whole collection.

The legal issue that we have tried to make clear is that if the restrictions were not in the 1944 agreement, they could not govern the collection that Sir William had already donated to the city. The bulk of the Burrell collection, including pastels and tapestries, can currently be loaned—within Great Britain, admittedly—from the Burrell. That is the practice that the city has hitherto adopted.

There are then the restrictions in the will that are attached to a much narrower group of items—the fragile items that the trustees have purchased. That makes for a difficult situation for a gallery to manage, with conditions attaching to the bulk of the collection and slightly different conditions attaching to the rest of the collection, that is, the items that the trustees have purchased. One of the aims of the lending code and the bill is to harmonise the approach to the collection and treat it as a single entity.

**The Convener:** Given the constraints of time, I must move on and bring in Jackson Carlaw.

**Jackson Carlaw:** Mr Taylor, other cities were interested in the bequest. If they had anticipated that they would be able freely to set aside the terms of the agreement, would Glasgow have got the collection at all?

**Robert Taylor:** That is a question that one cannot answer, because one has no idea.

The conditions are certainly being modified, but I hope that you will concede that they are being modified in such a way as to facilitate the administration of the collection. The collection can at present be loaned within Great Britain, and the risk that is attached to a loan in Great Britain is probably no less than the risk that is attached to a loan to, say, the Louvre.

That is a personal view, which I perhaps should not put forward. However, legally there is perhaps little to distinguish lending within Great Britain from lending elsewhere. If the principle of lending is possible, and Sir William Burrell made it possible—

**Jackson Carlaw:** The presumption is that he did not understand that.

**Robert Taylor:** I do not think that there can be any presumption at all. He made, for whatever reason—

**Jackson Carlaw:** Well, that is my view. You said that there is no distinction—legally or in any other sense—between a loan in the UK and a loan abroad. Surely Sir William appreciated that point but still made the stipulation that he made.

**Robert Taylor:** I accept that. However, had he altogether prohibited lending, that would have been more logical than a decision to allow lending within Great Britain—which excludes Northern Ireland—but not to France, Germany or wherever.

**Jackson Carlaw:** I have a couple of technical questions. The draft lending code gives a clear role to the trustees in approving decisions to lend from or borrow into the Burrell collection. However, the trustees will have the final say only in relation to items to be loaned abroad. If the trustees refuse permission for loans to institutions in Great Britain or for items to be borrowed into the collection, the matter is to be referred to an expert for a final decision.

Are the arrangements appropriate? Given that the power to borrow into the collection is new and contrary to Sir William's wishes, would it be appropriate for the trustees to have the final say in all the decisions, rather than defer to an expert? We are allergic to experts in this Parliament.

**Sir Peter Hutchison:** Yes, there is a difference there that did not pass unnoticed in our discussions. The reason for Glasgow Life retaining the final say—or, rather, allocating it to an expert—is that it already performed that function. Lending of non-fragile items had been going on for quite a long time.

The new category was the overseas lending. That had been so specifically refused by Sir William that we felt that the trustees should maintain a final long-stop ability to say no. After all, the city was already in a position in which it was regularly sanctioning lending within the UK.

10:15

**Jackson Carlaw:** I understand from Glasgow Life that, on occasion, items being borrowed into the collection are items that Sir William himself had bid for and not obtained and had hoped one day would be displayed with the collection. I saw a logic to that. However, you, as trustees, will have no power of discretion over what can be borrowed into the collection. Surely it is perfectly conceivable that you might think that some items being borrowed in are not appropriate but will have no say in that.

**Sir Peter Hutchison:** I do not think that we have no powers in that regard. We can

recommend very strongly against. If we felt that an article that Glasgow Life was proposing to borrow was not appropriate, we would make our views quite clear. It may not be the same as the overseas lending, where we have a final veto—if you like the word—but we hope that there will be a fairly co-operative understanding or way of working between us and Glasgow Life, unlike before 1997.

**Jackson Carlaw:** You draw a distinction between, say, me making my views perfectly clear in this Parliament, where they are comprehensively ignored, and you as a trustee making your views expressly known and having an influence over the final result, even if the power is not there.

**Sir Peter Hutchison:** Yes. We will be making representations to Glasgow Life. We have already done so on certain occasions.

**Jackson Carlaw:** Under the lending code, you will have to obtain advice—you will have the power to do that. I take it that the funding for that would come from the income existing within the trust. You do not anticipate that in any way being a burden.

**Sir Peter Hutchison:** No. I think that it has been understood by the trustees that if they want external advice, they will probably have to pay for it.

**Jackson Carlaw:** I am happy to accept that.

Finally, I refer to the evidence that we heard last week. What would Sir William have made of the whole business of generating revenue in order to fund the future display and refurbishment? He made a bequest into the care of the city for aesthetic reasons and for the collection to be displayed—he hoped that the city would undertake that function. Would he have welcomed the pecuniary interest and exploitation of the collection as a fundraising source?

**Sir Peter Hutchison:** Sir William was a fairly shrewd money man. He was probably not averse to deriving the odd penny from a variety of sources. He certainly always drove extremely hard bargains. It is speculation, but I think that he would not have been too upset at the idea.

**The Convener:** Thanks very much to our witnesses.

10:19

*Meeting suspended.*

10:20

*On resuming—*

**The Convener:** I welcome our second panel of witnesses, who are Mr Peter Wilkinson, general manager in Scotland of Constantine; Ms Frances Lennard, senior lecturer in textile conservation at the centre for textile conservation and technical art history; and Mr Michael Daley, director of ArtWatch UK.

I understand that Mr Daley would like to make an opening statement. Mr Wilkinson, do you also wish to make an opening statement?

**Peter Wilkinson (Constantine):** Not at this time.

**The Convener:** I invite a brief opening statement from Mr Daley and then we will proceed with questions.

**Michael Daley (ArtWatch UK):** Like the director of the National Gallery in London, and the members of Donor Watch and Barnes Watch, who have submitted evidence to the committee, we are greatly disturbed by the present attempt to overturn Burrell's prohibition on foreign loans. It is said to have been made necessary by structural problems in the collection building, but it is also said to be necessary to help to fund the repairs to the museum. There is clearly a serious problem with the roof, but it is not clear why it should cost £45 million and require that the entire collection be closed to the public for four years.

To help to justify that draconian solution, we are being assured that today's means of international travel are perfectly—or acceptably—safe and that today's art handlers never make mistakes; neither is the case. Just last month, a Canova sculpture was dropped and smashed beyond repair when being moved a short distance professionally in Italy.

A few years ago, Canova's Scottish-owned marble, "The Three Graces", was cracked when loaned to Spain. Recently, when three gilded bronze panels from Ghiberti's doors in Florence were sent on a travelling show to the United States, they were sent in three separate planes to reduce the known risks.

In 2007, a spokesman for the art handlers Constantine said that museums are under pressure to loan works to as many as five, 10 or even 15 venues when on tour. Many curators, such as Nicholas Penny, and conservators, such as those in Poland who recently appealed to ArtWatch for assistance, are resisting such pressures—pressures that can be awesome.

The present director of the Metropolitan Museum of Art in New York, Thomas Campbell, boasted recently that

"no one but the Met could have pulled off the exhibition of Renaissance tapestry we had a few years ago ... We bribed and cajoled and twisted the arms of institutions around the world—well we didn't bribe of course—but politically it was very complicated".

Just this Tuesday, artdaily.org reported that 48 incomparable and irreplaceable mediaeval treasures from the UNESCO-listed cathedral in Hildesheim have gone on show at the Met. Imagine the catastrophe if one of the planes had gone down over the Atlantic, as did a Swissair jet a few years ago when carrying diamonds and paintings, including a Picasso. The Burrell collection is not presently at such risk and that will remain the case if, as we most strongly urge, the Parliament rejects the request to overturn Burrell's still perfectly well-founded prohibition on foreign travels for works in his collection.

**The Convener:** I want to come back to a couple of points that you made, Mr Daley. In her evidence last week, Dr McConnell of Glasgow Life was asked about Dr Penny's criticisms, which were reported in *The Herald* and which you have just mentioned. She responded that she was

"surprised to hear that view from Dr Penny, not least of all because we loan items from our museums collection to him. Indeed, he has asked for a Rembrandt from Kelvingrove museum—probably our most valuable item—for a major exhibition in London next year"

and Sir Angus Grossart made the point that Dr Penny's comments were

"inconsistent with his own practice."—[*Official Report, Burrell Collection (Lending and Borrowing) (Scotland) Bill Committee*, 9 September 2013; c 21, 22.]

Would you care to comment on that?

**Michael Daley:** That is perfectly true. As director of the National Gallery, Dr Penny is clearly in a very awkward position—after all, the National Gallery has loans policies—but from the beginning he has made clear his general disapproval of loans. He thinks that far too many loans are made at far too much risk and has sought to introduce new types of exhibitions at the National Gallery in which the need to draw in works from abroad is greatly reduced. Moreover, he thinks that many blockbuster exhibitions are, in fact, quite naked revenue-raisers that serve little or no academic scholarly purpose and he personally is very keen and committed to developing exhibitions that are more thoughtful and more helpful to the public and in which the borrowings, in so far as they are made, are of less famous and well-known artworks.

**The Convener:** Of course, another way of looking at the principle of loans is that they allow more people to see these precious artworks. As Dr McConnell said last week, allowing the maximum number of people to see these artworks is

“for the benefit of humanity”.—[*Official Report, Burrell Collection (Lending and Borrowing) (Scotland) Bill Committee*, 9 September 2013; c 17.]

Not only would people from New York be able to see items from the Burrell if they were lent, but reciprocal agreements would allow people in Glasgow who cannot afford to go to New York to see precious items that had been lent from that city. What is your comment on that argument?

**Michael Daley:** That, too, is perfectly true but the problem is that not everyone in the world can see all or indeed many of the works of art in the world at the same time. When, as has happened increasingly in recent years, these great exhibitions are put together, drawing on many works from important artists such as Leonardo and Raphael at the National Gallery and Vermeer at the Hague, the national galleries in Washington and London and the Metropolitan Museum of Art, the accompanying propaganda, promotion and brouhaha create conditions that make it impossible for people to view the works. Unless you are a privileged member of the press, are shown in early in the morning over breakfast and can see the paintings in peace and tranquillity, it is hardly worth going to these exhibitions. To be standing behind nine people looking at a small Vermeer is not really any kind of privilege.

**The Convener:** Mr Wilkinson, Mr Daley mentioned your company in his opening statement. Do you have any comments about his examples of damage to artworks and the risks associated with transportation?

**Peter Wilkinson:** My colleague is correct that there is always going to be a risk with transportation. Much of the damage that has been described is more to do with handling either at point of origin or point of destination; indeed, it could happen for a variety of reasons but it is not specifically related to the direct transportation of the object.

**The Convener:** But things can go wrong.

**Peter Wilkinson:** It is a human business. Things can go wrong.

**The Convener:** A specific issue that has emerged in our evidence gathering is the collection of pastels in the Burrell collection, particularly the Degas pastels. The conservators have suggested that it is always dangerous to move pastels because the pastel itself does not stick to the paper and no way has been found of making that happen. What is your view on the transportation of pastels?

**Peter Wilkinson:** A pastel requires a very complex packing process but it is correct to say that it is one of the most difficult objects to move.

10:30

**The Convener:** Ms Lennard, I know that you are an expert in textile conservation. When we spoke to the textile conservator at the Burrell last week, she talked at some length about some of the challenges around textiles, such as the fact that global warming has increased the life cycle of the moth, and moth infestation is now a real problem that conservators have to contend with. Does that challenge have a bearing on the lending of tapestries?

**Frances Lennard (Centre for Textile Conservation and Technical Art History):** I do not think that it does. Tapestries and other textiles are vulnerable, but the particular risks that they face involve issues such as moths, high light levels, high relative humidity levels, fluctuating relative humidity levels and poor handling. Those can occur wherever the textiles happen to be. I do not think that there is an intrinsic risk in moving a tapestry, for example.

**The Convener:** Has the transportation of textiles improved since Burrell wrote his will?

**Frances Lennard:** Undoubtedly, yes. The packing and the care of all classes of museum objects has changed hugely since then. There is now a class of professional museum conservator who cares for objects through preventive conservation and makes sure that the environmental conditions that objects are subject to are appropriate and controlled and who also intervene to carry out treatments on objects. That is very different from when Burrell wrote his will.

**The Convener:** We have an accreditation scheme within the UK, which I understand is administered by the Arts Council in England, but there does not seem to be a systematic way of assessing overseas galleries to see whether they meet the standards of our accreditation scheme. Do you have concerns about how some galleries around the world handle textiles?

**Frances Lennard:** Yes. You would not want to lend to just any gallery around the world. You would certainly want to ensure that the gallery conducted itself in a professional manner, and the Arts Council accreditation scheme lays down a baseline of professional standards that museums should meet. I would certainly want to be assured that any receiving museum or gallery met those standards.

**The Convener:** Would other panel members care to comment on the discrepancy that arises due to the fact that the accreditation scheme does not apply to museums abroad? How can lenders satisfy themselves that a museum that they are lending to meets those standards?

**Peter Wilkinson:** In reality, it may well depend on the lending agreement. It may be that the borrowing institution is visited by Glasgow Life, which would determine how well the institution met the criteria of the accreditation scheme, suggest improvements to ensure that it complied with the scheme or, if it could not be improved, take a view on lending in the first place.

**Michael Daley:** In his submission to the committee, Nick Tinari, of Barnes Watch, points out that, when permission was given to loan works from the Barnes collection on an exceptional basis, against the wishes of the bequestor, the courts were assured that the entire enterprise would be conducted to the highest levels of expertise and professionalism, and that the conservators in the National Gallery of Art in Washington would prepare the condition reports and would supervise the treatment of the works and so on. However, when he followed the works around the world, he was able to produce a catalogue of injuries and errors, many of which resulted from the advice of conservators, using their expertise and judgment. I am sorry to say that we should take with a great pinch of salt people's assurances, aspirations, codes, best-practice statements, vetting procedures and so on. Even if those are clearly laid out, which I do not get the impression that they have been, by any means, in the case of the Burrell collection, the idea that the trustees of the collection should have somehow slipped away their control and authority to a quango that would then give itself the right to defer to unnamed experts sounds like a recipe for terrible mischief and absence of accountability.

**The Convener:** Yes. That is an interesting point. As Jackson Carlaw said, the definition of experts can be rather wide.

You have spoken about conservators perhaps giving the wrong advice. Does that happen because conservation is an inexact science or because some conservators are better than others?

**Michael Daley:** It is certainly not an exact science. Some conservators are better than others, but there are also differences of philosophy. Many conservators are very concerned about loans and travels. Some conservators take the view that it is part of their professional responsibility to do the best that can be done and to make the best possible provision. The chair of the trustees, Sir Peter, talked this morning about mitigating rather than eliminating risks. As an insurance man, he is probably aware that companies such as AXA Insurance, which pay out large amounts on claims of damage every year, put the risk on loans that are made abroad at six times greater than the risks on loans made to England or within the UK.

Conservation is certainly not a science. Conservators of every generation claim that they have eliminated past mistakes, but there are always new mistakes being made. When Sir Peter speaks of a range of vulnerability in the artefacts of the Burrell collection, I do not recognise that. Textiles and pastels are fragile. Ceramics are extremely hard and resilient if they have been fired at high temperatures, but they are extremely vulnerable if they are dropped. Bronzes can be injured—everything can be injured in different ways. Paintings on panels can be stronger than paintings on canvas, which is a fabric that becomes fragile with age, but panels are more immediately vulnerable to splitting and cracking due to changes in humidity. When panel paintings go on aeroplanes, we are putting them in the lap of the gods because aeroplanes change altitude and pressure, and temperatures can drop or increase dramatically. Recently, a high-powered conservator in The Hague advised an important collection in Britain to make sure that its panel painting travelled on what was described as a combi-plane—a plane that carries both cargo and passengers—because cargo planes are subject to much greater variations of temperature and humidity than passenger planes. Even with today's aircraft and today's technology there are varying levels of risk. Nowhere is there no level of risk.

**Jackson Carlaw:** We saw the unseen collection at the Burrell, in which there is an extensive collection of Tudor beds that all look very robust to me—more robust than many people would hope.

I am slightly worried that your evidence is straying on to the principle of lending rather than focusing on the matters with which we are concerned—the variation to Sir William's bequest. I do not think that any committee member has been impressed by the argument that there should be no lending between collections.

You are rather sniffy about some of the international pull, but I saw the exhibition on Catherine the Great that was held by the National Museums of Scotland in Edinburgh last year and thought that it was quite magnificent. I am afraid that it would not have been possible for me simply to take myself off to the Hermitage and other places, as you suggest, to see the items and I felt enormously privileged to have seen such a wonderful collection.

The issue is not the principle of doing it. We must acknowledge that Sir William accepted that, because he was quite happy for items to be lent within Great Britain. On the business of taking the item down and putting it up, with all due respect to them, I do not imagine that the porters in Glasgow are any more or less clumsy than those in any other museum.

Accidents can occur and Sir William must have appreciated that that was the case. The argument really comes down to the stipulation that he made about the international lending of his collection. I think that you said that a Canova was dropped and that there was a crack in "The Three Graces". That was done by handlers at either end; it could just as easily have happened here.

I will focus on the international aspect of lending, which comes down to movement by air, I imagine, as I assume that shipping is now not the preferred method for many items or items generally. I want to understand how air travel has changed. As a passenger, I used to be taken up in a Comet to go to Majorca in the early 1960s and suffered horribly for the entire experience. However, passenger transport has changed dramatically and, I assume, freight transport has been transformed dramatically.

I understand that planes can come out of the sky so I understand that it would be possible to split the collection, but I am interested to know in point of fact from Mr Daley and Mr Wilkinson how much more improved the experience of a product being transported by air is today than air travel in Sir William's lifetime when he made the stipulation.

**Michael Daley:** It is not easy to speak with certainty or confidence on that because, although we have examined many dossiers on restoration treatments over the years, we have tended not to have access to the documents concerning travel arrangements. Recently, we had access in a particular case, and the documents that we saw were not reassuring, even though it is the case that, as you say, air travel is relatively—compared with all other forms of travel—astonishingly safe in terms of passenger risks.

We must consider that all works of art are fragile and that all important works of art are irreplaceable. When they travel, they are not beamed up on to an aeroplane; they are taken there on a lorry or in a van with or without a courier.

**Jackson Carlaw:** As they could be to any other destination.

**Michael Daley:** Yes.

**Jackson Carlaw:** The journey to the airport is no different from that to anywhere else.

**Michael Daley:** No.

**Jackson Carlaw:** The bit that I am trying to understand is the bit when it is on the plane.

**Michael Daley:** We had a member of our organisation who was a former transatlantic pilot and owned some important paintings. He was adamant that paintings should not travel on aeroplanes as he knew them. He described in

graphic detail the struggle that pilots have to balance the needs of passenger comfort and supply of oxygen with fuel consumption on modern planes. It is a juggling act. The extent to which pressures are maintained and temperatures can be maintained varies enormously. It is not a given, predictably safe and unproblematic area in the view of that transatlantic pilot.

**Peter Wilkinson:** In essence, I disagree. A modern freighter is similar to a passenger flight. It is twin decked. A combination aircraft is only a twin-decked aircraft. A freighter is the same. It has a lower and an upper deck, which are very heavily insulated and heated in most cases.

Modern freight is palletised, which means that it is secured. It is secured on to the aircraft itself and locked in place so that, in most cases, any form of movement is prevented.

**Jackson Carlaw:** Your argument is that if he were alive and flying today, Sir William's experience as a plane passenger would be totally different and that the experience of a work of art in exactly the same scenario will be totally different from anything that Sir William could have imagined.

10:45

**Peter Wilkinson:** Yes. In the limited air freight that they had in Sir William's day, you would have been loading into the belly of an aircraft either manually or by conveyor belt and stowing and stacking things as best you could. Nowadays, that does not happen. You form and build an aircraft pallet to balance the weight before it goes on to the aircraft and the pallet's position will be worked out in relation to the aircraft's payload.

**Mark Griffin:** Starting with a quick supplementary to Mr Carlaw's question, I wonder whether Mr Daley has any examples of damage that has been inflicted on a piece of art not by handling before or after air travel but purely by a change in temperature, pressure or humidity during air travel.

**Michael Daley:** It is difficult to attribute damage that is known to occur in paintings to the various parts of a journey. When the Matisse mural was removed from the building of the Barnes collection to be taken around the world, it travelled against promises and assurances on an open flatbed truck, wrapped in polythene and carried at a 45° angle. It subsequently went on by aeroplane to many other centres, but it had been damaged.

Paintings, even modern ones, that move around this country clearly seem to suffer from their experience. I recently examined the dossiers on a painting by Laura Knight that belongs to the National Portrait Gallery. When the painting was

bought in 1970, it had just been restored and lined by the dealer. It stayed in the National Portrait Gallery for 20 years or so without any problems. However, because of increasing interest in the artist, it began to go on regional tours in Britain to places such as Southampton and Hull. Coincidentally, as a result of those tours, what had been a safely lined modern painting that had been brought into tip-top condition and was not yet a century old started to show signs of raised paint—in other words, cleavage of the paint. A succession of restorers has attempted to fix the detaching paint with methods that alarm me as an artist, including bringing out the hairdryer and blowing hot air on to the paint until it becomes soft enough to press down with fingertips or stick down with glue. That does not seem terribly or reassuringly scientific.

After examining each successive attempt to fix this recurrent problem, the last restorer who treated it said that it needed not only a stronger adhesive but more radical treatment because the last lining of the canvas, which had put a reinforcing new canvas on the back, was the source of the problem. Actually, it was more of a relining than a lining, because another relining had been taken off in the interests of conservation and on that occasion all the glue had probably not been removed. Glue reacts hygroscopically—in other words, it reacts to water and atmosphere. Research just published by conservators in Denmark shows that, in paintings that have been lined with new canvases not using old water-based glues but using more recent wax resin adhesives, the canvases can, if subjected to relative changes in humidity to 60 per cent, react violently and shrink, with the result that all the paint cracks.

I know of one conservator who experienced that—a conservator who once criticised our views on restoration. She had a canvas suddenly erupt into masses of broken paint, so it certainly happens, but it is not always easy to say what the precise cause is. What we should do is look at what happens—at what is known to happen. Convener, I know that you are not keen on general principles on audiovisual aids but this is a silent aid: a picture of a panel painting by Beccafumi, "Marcia", as shown in our submission. The painting was dropped at the National Gallery just before Nicholas Penny took over as director. The panel, which was the gallery's own, was repaired immediately in secret and then it was placed in the reserve collection.

The panel had a sister painting and, until that accident, the two paintings were in the main renaissance galleries. After the accident and the repair, both of the paintings—the damaged and then repaired one and the undamaged one—were removed from the public view and placed in the

reserve collection. That collection can be seen by the public only under flickering neon lights—under bad conditions—for five hours a week. That was an absolute loss. It happened with the gallery's own painting and the gallery's own handlers and I am sure that the National Gallery would meet many of the criteria of professional competence and expertise.

**Mark Griffin:** Ms Lennard, did you want to make a point?

**Frances Lennard:** I feel that that is rather anecdotal evidence, probably, and that of course accidents happen—they happen wherever you are—but it would be interesting to find out whether there are any figures available on just how many works of art are damaged as they travel around the world. I am sure that it must be a very tiny percentage.

Mr Daley asserted that conservation is not a scientific profession. On the contrary, conservation is a profession—certainly in this country. There is training of conservators, there is a huge published body of work by conservators and they keep in touch with each other through conferences and so on. There is a very vigorous and robust accreditation system for professional conservators in this country.

There is also a body of conservation scientists. They work closely together, collaborate and publish—for example, a lot is published about transporting works of art. There have been huge developments in that area and artwork will be packed carefully and safely by conservators and art handlers. The case that the artwork travels in will be specially designed to mitigate the risks of travel as far as possible—to mitigate vibration, for example, or changes in temperature or humidity. Data loggers will be incorporated into the case so that it is very obvious at what point something happened to that case.

**Mark Griffin:** Thank you for that.

Mr Daley, you raised the issue of humidity and the risk that that poses to works of art. On our recent visit to the Burrell collection, the staff there pointed out that the roof has been leaking consistently over a number of years and that the layer of insulation that sits beneath the roof is, in effect, a soaked sponge.

Do you think that a precious art collection being housed in a building that has, in effect, a soaked sponge on the top, makes for ideal conditions for that collection?

**Michael Daley:** No, of course not. I certainly expect and hope that that problem will be dealt with as soon as possible. It should be dealt with and the necessary funds should be found as a matter of extreme urgency.

What puzzles and concerns us as an organisation is how, moving on from that specific, very serious technical problem, the idea of a tour has been arrived at. Earlier, the chairman of the trustees, Sir Peter Hutchison, referred to “the tour”. I do not know what the tour will be, where it is intended to go or what it is intended to be composed of. However, such a change—the claim that somehow things have got safer than they were, to the extent that we can reasonably and not dishonourably overturn the wishes of a very honourable man—needs to be questioned.

Burrell may have made his fortune, but he gave up shipping and devoted his life to the collection of art. For much of his life, he was not concerned with money—although he was, of course, concerned with getting good bargains. He was a principled man of taste and judgment, who displayed enormous generosity to the city in which he had grown up.

Far from it being the case that restorers have reached great heights of expertise, there is recognition in the conservation world not only that mistakes are happening but that they are inevitable. At a conference of conservators in Lisbon in 2011, a paper was delivered in which it was contended that it was time for the conservation profession to admit its mistakes and to learn from them. By doing so, it would profit in the way that the aviation and medical industries have profited from an open acknowledgement of their mistakes.

When people ask how many travel-related instances of damage there have been, it is impossible to give an answer because of the amount of secrecy that exists. Many people prefer to conceal injuries. If a collector lends a painting to a museum such as the Metropolitan Museum of Art and it gets damaged, the Met will offer to restore it free of charge and the fact that it has been damaged will not enter the public domain. Even when we learn about such incidents, we cannot get the owners to admit that they have happened. We know from hearsay—and Dr Penny would claim this, too—that many more incidents of damage occur than are ever acknowledged.

**Mark Griffin:** I might be mistaken, but I think that that is the first time that I have heard you mention the trustees going against the wishes of Sir William. In much of your evidence, you seem to be opposed to lending rather than to going against the wishes of Sir William. An extension of that position would be that we would not lend or borrow at all within the UK, because to do so would be to go against Sir William’s wishes.

I would like to ask a simple question. What is your principal concern? Is it about lending and borrowing, or is it about upholding Sir William’s wishes?

**Michael Daley:** The concern about the upholding of bequests is a specific concern. It is less of a professional interest and more of a civic interest; it is about doing the right thing. There have to be very good grounds for overturning a benefactor’s terms and wishes, and those grounds must stand up. I have tried to make a connection between the wider problems, which have not gone away and which have a direct bearing on the attempts that are being made to overturn the prohibition, and what is proposed.

**The Convener:** Thank you very much.

I have a final question for Ms Lennard, which relates to the points that Mr Griffin made about the state of the Burrell gallery. When we were there, some textiles had to be taken down to save them from the water ingress; that was done in the nick of time. If you had to make a calculation, do you think that leaving the textiles in the Burrell in its current state would present more of a risk than touring them?

**Frances Lennard:** It would certainly be more of a risk leaving them on display in the Burrell in its current state but, of course, they have been removed from display because there was a risk and have been put safely in storage.

The key point is that the decision should be made by professional curators and conservators. They are best placed to make it on a case-by-case basis. I do not think that we can make blanket judgments about whether objects should be loaned. Each object has to be looked at and a decision has to be made on a case-by-case basis. Conservation is about balancing the preservation of the object with access to that object. That is the purpose of the collection.

**The Convener:** I thank all our witnesses very much.

11:00

*Meeting suspended.*

11:03

*On resuming—*

**The Convener:** I welcome Professor George Gretton, who is Lord President Reid chair of law at the University of Edinburgh, as our third panel. Professor Gretton is the whole panel. Do you wish to make an opening statement or will we proceed straight to questions?

**Professor George Gretton (University of Edinburgh):** I will say a few words, if I may.

**The Convener:** Of course.

**Professor Gretton:** First, I would not describe myself as an expert in Scots law, Mr Carlaw, but I

know a little about Scots law. Obviously, I have no views on the policy of the bill.

It was suggested that I say briefly whether, if the objective is to be pursued by Glasgow City Council, a bill is the only means to do so, or could it have gone down another route, such as obtaining the consent of the Office of the Scottish Charity Regulator or the Court of Session. There is a short and a long answer. The long answer would take about an hour and have 100 footnotes. The short answer is that the council had no option. The bill is the only way to do it, if it wanted to do it. Had I been advising Glasgow City Council, I would have advised it to go down the same route.

A couple of things occurred to me this morning. First, I will comment on the question about GB or UK. I am a great admirer of Scottish Parliament information centre briefings, but today's briefing says "UK" and, as Mr Taylor said, the terms of the deeds say not "UK" but "GB". The restriction is not a UK restriction, it is a narrower restriction to GB, so Northern Ireland is not included.

On inward loans, my reading of the agreement and the will is that temporary inward loans are probably competent, so if such loans have been happening—I have heard that they have—that is probably okay. The documentation is not 100 per cent clear on that point, but on balance that is my reading. The bill makes it clear that such loans would be competent. It makes perfect sense to put the matter beyond doubt.

My only other comment is on an issue that did not crop up during the previous evidence sessions. I mentioned the issue to Mr Taylor when we arrived at Parliament this morning and he said that it had been considered, but I will suggest it anyway.

If I were drafting the bill, I would include the agreement and the will as a schedule to the bill as a matter of convenience for future users. I know that the promoter's memorandum has quotations from the documents, and when I was asked to look at the matter I saw all that, but it is not enough. One really needs to see all the documentation to form a view. I hope that the Burrell collection will be with us for ever; people who in the future want to look at the legal position really need the whole picture. I think that it would be very easy to put the agreement and the will in as a schedule to the bill. However, I understand that that was considered and not taken forward, so there will be reasons for that decision.

**The Convener:** Thank you very much. My colleague Jackson Carlaw has some questions.

**Jackson Carlaw:** I commend you for answering all my questions before I had the opportunity to ask them. That is a remarkable talent, which I suppose I should have anticipated. Having

clarified that the bill is the appropriate course to take, there is only one other legal question, before others ask about the moral aspects of overturning the deeds.

Glasgow City Council currently lends delicate items such as tapestries and pastels to other institutions, despite an expressed prohibition from Sir William. The council argues that the terms of the bill cannot affect items that were gifted to the council before Sir William died, even though in some cases the possession of those items did not transfer until after his death. Do you agree with that interpretation of the law? In interpreting it that way, is the council respecting the letter rather than the spirit of Sir William's intentions?

**Professor Gretton:** I will not comment on your last question about the spirit against the letter; I will be purely legalistic.

On the purely legal question, I think that the point is arguable both ways. The most natural reading is that the restriction about fabrics and so on applies only to items that were bought by the trustees subsequently, and not to the original collection. However, there is an alternative argument—which if you were to pay an advocate enough, they would certainly put—that by implication that restriction was extended even to the original collection. The basis of that argument is the wording of the will. The way I read it, the will indicates that Sir William wished the restriction about fabrics to apply to the whole collection. You could say that he could not impose that condition, because the 1944 agreement had already put the original collection beyond his control, but that is not how he saw it.

I think that the terms of the will tell us a little bit about what Sir William was like as a person, because he seemed to take the view that he controlled the entire collection even after he had given it away. In the will, he seemed to think that he had continuing power over certain other properties that he had transferred that have nothing to do with the Burrell collection. I am sure that, in reality, he did.

You could argue that, because of the wording of the will, if the city council accepted the future donations, by implication it must accept the terms of the will, which would apply even to the existing collection. My view is that it is arguable both ways.

**Jackson Carlaw:** From texts that I found to be as dry as dust you have managed to breathe life into the spirit and intention of Sir William, which had been quite lost to me. I thank you for that.

**Professor Gretton:** Thank you.

**Mark Griffin:** It is perhaps not another legal question, but do you have a view on the moral

issue of overturning restrictions that are stipulated by donors?

**Professor Gretton:** I did just say that I would answer only legal questions, although there is a legal dimension to that question in that the extent to which legal restrictions relating to property should be able to last forever frequently arises. To take an entirely different issue, should title conditions that affect land and houses be enforceable forever if they were imposed in 1820? That issue has been around for a long time; it was an issue in Roman law. Testators in Roman law used to like to impose on property that they were giving to their heirs conditions that were to last forever. Romans would have had to tackle that very difficult issue, so they imposed restrictions on how long a testator could control property after their death.

It has been the general tendency in the European legal tradition that there should be some sort of limit and that people should not be able to control property forever. How it is handled varies very much from country to country and according to the type of property. With something like the Burrell collection, in principle it is not unacceptable that after a substantial period conditions could be opened up. That is rather a broad answer.

**Mark Griffin:** Would you say what would be an appropriate limit?

**Professor Gretton:** I will not because I am not an expert in the world of museums, galleries, art and antiquity. I am an enthusiastic visitor to the Burrell collection—I was one of the first people through the doors when it opened—but I am not an expert so I could not offer you a time limit. Of course, the Museums and Galleries Act 1992, which applied only to the Tate and certain other galleries in London, specifies a period of 50 years. However, I do not have any particular view on what the period should be because I do not feel qualified to form one. I was a member of the Scottish Law Commission for many years; if this were a commission project, we would be getting in expert views on the appropriate period for such property.

**Mark Griffin:** If we decide, as a committee and a Parliament, to allow changes to be made, how might it affect future donations if donors think that restrictions and conditions that they set down could be changed after their death?

**Professor Gretton:** I am not qualified to answer that one. I am sorry.

**The Convener:** Perhaps I could assist on the question of the time limit. Written evidence arrived this morning from Neil MacGregor, the director of the British Museum, who also has an interest in this matter as he is advising the Burrell renaissance group, and the British Museum may

well have a very active part in any touring exhibition that goes ahead.

Mr MacGregor points out that

“the legislation governing the National Gallery in London recognises the need to respect donors’ wishes, but imposes a time limit (50 years) on the power of the dead to constrain the freedom of the living. The similar 1985 legislation governing the Scottish National Collections allows donors’ considerations to be set aside after 25 years. That seems to me an entirely reasonable position: the living are more likely than the dead to be able to take changing circumstances into account. We cannot know how the dead might have changed their mind.”

Do you wish to reflect on that from a legal point of view?

**Professor Gretton:** That goes back to what I said earlier. There is a general issue in the law about people tying and controlling property long after their death; I think that the law has to put limits on that. The longer the period, the less justifiable are non-variable conditions. The way in which that is dealt with has, however, to be sector specific.

**The Convener:** There is quite a difference between the National Gallery limit, which is 50 years, and the Scottish national collections’ limit, which is 25 years. Do you have any idea why that might be?

11:15

**Professor Gretton:** I do not.

**The Convener:** No. Okay.

**Professor Gretton:** From a personal point of view, I say that 25 years does seem to be a bit short. All right. I will come out with it: 25 years seems a bit short and 50 years seems more reasonable.

**The Convener:** You think that 50 years seems more reasonable. Okay.

**Professor Gretton:** I did not want to say that, but I said it. [*Laughter.*]

**The Convener:** The bill gives Sir William Burrell’s trustees power to spend trust income in fulfilling their new responsibilities—for example, in commissioning expert reports or paying the expenses that are associated with referring a decision to an expert under the draft lending code. Do you think that it is appropriate for expenses to fall on the trust in that manner?

**Professor Gretton:** I have not thought about that. I will not answer; I would have to take time to consider that.

**The Convener:** That is fair enough.

It seems that there is—certainly from the evidence that we have received so far—a question

about some of the delicate items and what Sir William's intentions were. We obviously had the interpretation by the commissioners who looked at the matter in 1997, and wanted some restrictions on the lending of such items. Would it be appropriate for the committee to consider restrictions in order to fulfil Sir William's wishes?

**Professor Gretton:** The buck stops with you. I lack the technical knowledge to speak about fabrics, pastels and so on. It is the committee's job to decide whether there should be any relaxation at all and, if so, how far that relaxation should go. That is all I can say.

**The Convener:** It has been suggested that the bill is very relaxed, so to speak. It moves from the position of 1997, when the terms of the will were changed but there were still restrictions. This bill does not seem to include any restrictions and, as my colleague Gordon MacDonald mentioned in his written questions, it will allow lending to take place indefinitely. Is the bill too relaxed in that regard?

**Professor Gretton:** Again, I do not think that I am qualified to answer that question. When I read the bill, nothing in it particularly surprised me, and I am a great reader of legislation—both Scottish legislation and legislation from around the world. As a non-expert on museums—I stress that—there was nothing in the bill that made me go, "Gosh! I'm surprised." However, I am speaking as a lawyer, not as an expert.

**The Convener:** Do you have any other comments at all on the structure or effect of the bill before we conclude?

**Professor Gretton:** My point about the addition of a schedule is not a substantive one. The bill would work equally well with that schedule or without it. However, it would be a matter of future convenience because the Burrell collection is going to be in existence—one hopes—forever. It would be perfectly straightforward to add the schedule, although there might be a reason of which I am not aware why that should not be done.

I will mention one other thing. It does not really matter but the wording of the bill just says, "power to lend" and does not specify lending outside Great Britain as well as within Great Britain. Given the wording of the agreement and the will, had I been drafting the bill, I would have spelled that out. It is not necessary to add it—I think that that lending power is unlimited and can be taken to include lending outwith Great Britain—but I would have spelled it out.

**The Convener:** You mentioned earlier the difference in definition between GB and UK. How would you define Great Britain? Politically, at the moment, it would include the Shetland Isles or the

Isle of Wight, for example. That is my understanding—

**Professor Gretton:** Yes.

**The Convener:** But they are, strictly speaking, over the water.

**Professor Gretton:** You are right. Burrell collection items can be lent—apart from fabrics and so on—to Lerwick, for example, which is over the water. Great Britain means England, Scotland and Wales, including detached parts thereof, but it does not include Northern Ireland. Northern Ireland is included in the United Kingdom but not in Great Britain. You are right—it would be competent for the collection to cross the water.

**The Convener:** I suppose that when Sir William Burrell was alive, the idea of touring his collection to Shetland would have appeared to be quite unlikely.

**Professor Gretton:** It would indeed.

**The Convener:** Yes. Thank you very much for coming to speak to us today.

11:20

*Meeting continued in private until 11:32.*

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