

Treasure Trove Review – consultation questionnaire.

ClfA Response

Public benefit

The Treasure Trove system aims to deliver public benefit by preserving significant archaeological finds in accredited museums, where they are then available for public engagement and research. In addition, the Treasure Trove Unit now operates, and is further developing, an online database of finds and finds distribution patterns available to the public for reference and research.

1a. Does the preservation and recording of heritage delivered by the Treasure Trove system represent meaningful public benefit?

Yes. In principle, the Treasure Trove system should operate with a primary goal of ensuring public benefit. This benefit may be in the form of knowledge gain, and culturally significant objects retained for research and public enjoyment for the people of Scotland, as well as through contributions to the wider management of the historic environment.

Broadly speaking, the Treasure Trove system is effectively structured to ensure that the heritage resource is not depleted by metal detecting increasing the amount of cultural material and data that is 'lost' to the general public through sale, and the amount of information about the past that is lost as a result of finds not being reported.

ClfA also strongly supports the maintenance and improvement of a Treasure Trove system that encourages good ethics among metal detecting communities, effective and proportionate inducements, and strong outcomes for public knowledge and enjoyment of our shared past.

1b. What more can the Treasure Trove system do to deliver public benefit (for example: training and research)?

We would like to see Treasure Trove better integrated into the wider management of the historic environment, for example, with a better procedure for the routine uploading of data from TTU work to the relevant HER, including chance finds and disclaimed finds.

It is also important the TT system does not enable splitting up of archaeological assemblages, with some finds being claimed and others not. HERs can ensure that sensitive data is not made public and archaeological contractors can ensure that assemblages are subject to appropriate retention and discarding policies.

We would welcome enhancements to TTU enforcement powers, to help combat deliberate non-reporting of finds and control the impact of metal detecting rallies (especially to control the removal of material from Scotland by participants at such events).

We recognise that the TTU has limited resources. We therefore encourage any review recommendations to reflect on the ways in which responsibility for outcomes can be shared with archaeological stakeholders, particularly in managing development-led archaeological work, in order to minimise unnecessary oversight of (particularly accredited) archaeologists and therefore reduce bureaucratic burden of assessing and processing archives.

We would also welcome better signposting of sector guidance by the TTU.

Significance criteria

The Treasure Trove system in Scotland uses comprehensive criteria for assessing the archaeological and historical significance of finds (see Treasure Trove Code of Practice Appendix pages 45-48). These criteria allow a wide range of finds to be recorded and give opportunities for museums in Scotland to preserve all significant material in their collections.

2a. Given the high levels of archaeological activity across Scotland in recent years, do these comprehensive criteria remain fit for purpose?

Yes, it is vital that the system retains broad significance criteria. The Treasure Trove criteria for assessment of significance by TTU are the exemplar for current UK good practice. This is because they are determined first and foremost by the potential of the object to contribute to the cultural record of Scotland, and not restricted by material composition. It is also important that objects are treated appropriately as cultural artefacts and not by financial value or explicitly because it is of a specific age.

We strongly support the application of professional judgement and experience by members of the TTU and expert panel in determining national importance, and we consider the criteria to guide assessment to be helpful. Particularly useful are criteria relating to material (including 'common' materials), the significance of the archaeological context, and the significance of groups of finds or association with previous finds.

We recognise that there are potential challenges with the volume of material meeting the threshold for consideration by TTU, and with the challenges of ensuring that the system is suitably resourced to process high levels of finds, manage collecting institutions' storage space, and pay ex-gratia payments to finders.

However, it must not be the answer to these problems to weaken the principle of significance-led reporting, even if practical challenges cannot be fully mitigated by operational means of seeking proportionate processes for managing records and claims.

2b. If not, what change would you suggest?

Where TTU decides that certain finds/assemblages are to be disclaimed, this needs to be appropriately explained.

Human and animal remains and environmental samples

The Crown only has a legal claim to object finds. During some archaeological excavations, unmodified human and animal skeletal remains are found together with objects, and environmental samples are taken. To ensure all the material from these excavations is preserved together, the Treasure Trove system currently allocates the entire excavation assemblage to museums, including the non-object items for which the Crown does not have a

legal claim. However, where human and animal remains and environmental samples have been excavated or found without any associated objects, there is currently no clear system to process and allocate such material.

3a. Should the Treasure Trove system take on the role of allocating archaeological human and animal remains and environmental samples that have been excavated or found without any associated objects?

Yes. For excavation assemblages, it is important to minimise the chance of physical (and digital) archives being split up. This includes unmodified remains such as bone and processed soil samples.

At present, it is our understanding that most development-led excavation assemblages are dealt with pragmatically, with museums understanding that human and animal remains, as well as processed environmental samples will be required to be stored alongside objects. It is important that museums understand that much of the potential research value of the assemblage is contained within environmental samples and human/animal remains. However, we are not aware that the lack of clarity surrounding the procedure for accessioning these kinds of finds currently creates regular instances of confusion.

It is helpful that the Crown's legal claim on objects makes it easier to ensure positive deposition of archaeological assemblages and avoid ownership concerns, thus minimising the chance of physical archives being split up. We would welcome any changes to TT that made it clearer that museums bidding for assemblages are expected to take the entire assemblage, including environmental samples and human/animal remains. However, we recognise that this presents a significant burden on museums and their limited storage capacity. This is therefore an issue that needs to be addressed by sustainable funding for museum storage, and proportionately applied selection/discard policies. It is notable that the use of discard policies in Scotland appears rare. Accredited archaeological contractors are able to apply appropriate policies, taking on partial responsibility for balancing the future research potential of the archive with the need to put a minimal proportionate strain on museum storage space.

As archaeological techniques develop, it will be important that Treasure Trove keeps pace and that the TTU and collecting institutions appreciate the archaeological value of potentially new types of material may form part of the physical archive. It may be useful to seek updates to regulations that seek to future proof the system in this way. This may mean that museums need specific training for how to handle a variety of types of samples.

It may also be useful to draw a distinction between processed and unprocessed samples. While it is ultimately true that unprocessed bulk material samples may have future research value, with disposal potentially resulting in the loss of ecofacts that future study may have revealed, a sensible balance needs to be struck between preservation of huge quantities of samples of possibly esoteric research value, and proportionate selection of material estimated to be of the highest potential value. Consideration may also need to be given to the stability of unprocessed samples. There may be a need for clear guidance to inform stakeholders of how to apply selection/discard policies and where responsibility for applying proportionate decision-making to the composition of finds archives lies.

We also note that it may not be legally possible or ethical for the Treasure Trove system to make a legal claim to this material, particularly human remains. We expect that this is not the intention of KTLR or TTU, but we wished to make that clear.

3b. If not, where do you consider the responsibility for this material lies?

N/A

Working with museums and finders

Over the last 20 years, levels of archaeological activity across Scotland, including metal detecting, have grown significantly overall. This means more finds are being assessed and preserved through the Treasure Trove system than ever before, but also that the operation and funding of the system has increasingly come under pressure. The workload is considerable, and it can take time for finds to be processed through the system. For museums and heritage organisations who work with and preserve archaeological finds, the financial climate is challenging. The Treasure Trove process is operated by the Treasure Trove Unit, a small team of finds specialists based in Edinburgh. For the system to work well, the Unit has to connect with finders, museums and archaeologists across the whole of Scotland. The system is not voluntary, but it depends on the support and cooperation of finders, and on collaboration among all the organisations who support the system.

The questions in the following section are about identifying ways to make the system more effective and efficient, to ensure that heritage is preserved and that the law is followed.

Treasure Trove Partner Museums

In parts of the country, museums work with the Treasure Trove Unit to liaise with finders, share advice about finds, and temporarily store finds for further assessment. We are considering whether a more robust and formal network of 'Treasure Trove Partner Museums' would strengthen relationships between museums and finders, archaeologists, and the Treasure Trove system across the country.

4a. Would such a network encourage reporting and communication? If not, why?

Yes. We would welcome additional opportunities to make sure that there was support and training available to museum staff, especially where they may not have an archaeological curator on staff. Such a network of local bases for reporting would also likely raise awareness of the scheme with avocational finders.

4b. What benefits would 'Treasure Trove Partner Museum' status bring for museums?

Some of our members also report that there is sometimes a perception that finds will 'go off to Edinburgh' and that this affects the reputation of the system. Local TT Partner Museums may help to offset concern that regional finds will be automatically siphoned off to the capital.

We would also welcome additional staffing resources at a regional level for partner museums. The network of locally based Finds Liaison Officers is one of the most important parts of the Portable Antiquities Scheme in England, and it would be valuable to have something similar in Scotland.

Formal association with TTU may also help museums to justify additional staff and protect core funding streams, especially if this meant increasing the numbers of specialist archaeological curators covering regional areas of Scotland.

4c. What kind of support would museums need to act as partners?

Obstacles to museums bidding

Feedback suggests that museums sometimes face financial and other challenges in bidding for allocation of archaeological finds through the Treasure Trove system. In recent years, a growing number of assemblages and finds have been allocated to “last resort” museums to ensure preservation of significant material which has not attracted allocation bids.

5a. What are the main obstacles that museums face in the bidding and allocation process?

We wish to highlight a general concern around the lack of space in museum storage facilities. It is possible that in recent years, museums have begun to reconsider the extent to which collecting extensive assemblages, in particular, is a burden, as well as an opportunity. This is likely a result of the failure of the system to secure sustainable funding for collecting institutions (see our answer to question 13). Even though museum space is increasing, it is not keeping pace with the rise in development and the legacy of archaeology’s role in the planning system.

5b. What measures could be taken to adapt the system to support museums in their bids for allocation of Treasure Trove finds?

Museums need to have appropriate financial support for the service that they provide to the planning system of storing excavation assemblages. The reality is that most excavation assemblages may only contain a small number of objects that will ever be appropriate for display. And while other uses, such as outreach collections, may have a net-positive value to museums, in reality they are providing a largely financially unrewarded, but valuable service to research by storing these assets. Not having proper funding may even undermine this service, if staff resources are so restricted that researchers wishing to access and use collections are unable to do so.

Reporting levels

The law requires archaeological finds in Scotland to be reported to the Treasure Trove Unit. Feedback suggests significant levels of under-reporting. Possible reasons for failure to report

include the effort involved for finders in reporting and submitting finds, and the time it can take for reported finds to be processed.

6. What are the main obstacles to the reporting of finds?

We recognise that the under-reporting of finds is a limiting factor for the Treasure Trove system. The system must attempt to create the conditions where finders will want to report finds. This requires a long term commitment to communication of the archaeological and heritage benefits of reporting, and the development of a greater buy-in among finder communities. Educational resources and greater outreach and coordination with metal detecting groups, community heritage groups, and the general public would likely be a positive way to further develop understandings of legal responsibilities, benefits of reporting, as well as a sense of ethical responsibility and engagement with TTU and wider cultural institutions.

We also recognise that perceptions of processes being bureaucratic or slow may be indicative of poor communication and a lack of cut-through on ethical messages.

We would also welcome enhancements to TTU enforcement powers, to help combat deliberate non-reporting of finds and control the impact of metal detecting rallies (especially to control the removal of material from Scotland by participants at such events). Ensuring that the deterrent effect of legal challenge is clear is also important in encouraging compliance.

Reporting app

To make reporting of finds as easy as possible, we are considering the usefulness of a mobile app which would enable finders to record their finds easily and accurately in the field, linked directly to the recently introduced case management system. The app could help the Treasure Trove Unit conduct an initial assessment of finds, speeding up the claiming and disclaiming process. The app would run alongside existing means of reporting finds to the Treasure Trove Unit.

7a. Would an app of this kind be widely used by finders? If not, why not, and what would encourage its use?

We do not have any direct evidence to judge whether an app would be widely used by finders, but we support the principle of reducing barriers and making reporting easier. Increasingly more accessible digital systems, which reduce the need for in-person visits and especially the need to hand in objects for long periods of time while they are initially assessed would potentially be a positive development for many finders.

We are intrigued by the possibility to easily and rapidly report geolocations of finds via an app. Making it harder for finders to be opaque over location data is to be encouraged, however, this would need to balance and recognise that digital barriers are real for some sections of the audience, so there will be no single solution that leads to benefits for all audiences.

7b. What additional measures could be taken to make reporting easier?

Offline app functionality and GPS connectivity (for use on site/immediate recording). Clear and straightforward guidance for use. Alternative online portal and in-person options for reporting.

Awards and market value

Chance finds that are allocated to a museum through the Treasure Trove system are usually acknowledged by an ex gratia (“by favour”) award paid to the finder. To secure allocation of chance finds, museums pay sums into the system equal to the ex gratia award given to finders. The ex gratia award is linked to market value, which is researched by the Treasure Trove Unit and recommended to the KLTR by an independent panel (the Scottish Archaeological Finds Allocation Panel).

8a. Is the principle of ex gratia awards linked to market value fair for finders and museums, and does it work well in practice?

ClfA supports the provision of an ‘ex gratia’ award, as opposed to a reward or payment, as a way of incentivising finders who may otherwise not come forward to report finds, to do so. We consider that the current language and presentation around the award appropriately centres the cultural value of the object, rather than the financial value. We also recognise that a system which is influenced by the ‘market value’ may be a necessary element of finding an appropriate level for such an incentive. We currently believe that the TTU system is a balanced and effective compromise, making clear that the award is not a ‘buy out’ of the market value of the find, but is given in recognition of the finder cooperating with the system. The system could be even clearer in ensuring that language and communication around awards eradicates any insinuation that the item is being ‘purchased’ and generally minimises the extent to which ‘market value’ is emphasised or that ‘financial gain’ may be a significant motivator for potential finders.

For instance, we note that there remains a strong element of the practice and promotion of hobbyist metal detecting which relates to the financial value of finds, along with principles like ‘treasure hunting’ which are anathema to archaeological ethics. In contrast, accredited members of the Chartered Institute for Archaeologists have agreed (by signing up to ClfA’s Code of Conduct) to voluntarily ‘forego payment of reward based on the market value of any material they find or assess’ and must ‘discourage focus on the potential sale value of archaeologically significant objects’.

We are generally of the belief that a sign of long term success for the Treasure Trove system would be that a further reduction in the emphasis on market value awards could be achieved without a subsequent decrease in the proportion of finds being reported.

8b. Are there any measures concerning the method of setting of ex gratia awards that could increase confidence in the system?

We would encourage further emphasis in the award calculation being associated with good practice of the finder in reporting and behaviour. For example, evidence that a finder has completed training on good practice reporting and archaeological ethics, is a member of an appropriate body that supports good ethics, such as the Detectorist Institute & Foundation (DIF), or is generally considered to be ‘in good standing’ with their reporting history.

Waiving of rewards

Feedback suggests there is an interest among finders in helping museums acquire finds by waiving (choosing not to accept) ex gratia awards or agreeing to reduce them. In practice, this option is rarely taken up.

9. What measures might encourage finders to waive ex gratia awards to help museums acquire finds?

We strongly support measures to encourage finders to waive awards to help museums acquire finds and consider that this is a sign of success that education and outreach on the cultural value of objects and the effective contribution to Scottish heritage being made by finders is being recognised. We suspect that such additional 'recognition' might a way to replace the sense of 'reward' felt by some finders and indicated by a financial sum.

This may be targeted as an inducement personal to the finder (such as publicly crediting finders in displays or publications), or part of wider messaging about the contributions made by finders to Scottish heritage and archaeology. Alternative approaches, such as increased opportunity to become engaged with ongoing research of objects to increase a greater sense of involvement should also be encouraged.

Some of our members note that better integration of local museums or communities into this process may increase the likelihood that finders would be happy to waive rewards, seeing the benefit as going directly to their local area. If there was an incentive for greater speed with which an item might go on display, that may also be a useful factor.

As stated above accredited members of the Chartered Institute for Archaeologists have agreed (by signing up to ClfA's Code of Conduct) to voluntarily 'forego payment of reward based on the market value of any material they find or assess' and must 'discourage focus on the potential sale value of archaeologically significant objects'.

Observing the law

Feedback suggests a commitment to best practice from the vast majority of finders, but there are exceptions. The Treasure Trove system requires finders to observe the law by reporting all archaeological finds. Under Scottish common law, non-reporting of archaeological finds, including attempts to sell them, is considered theft. Removal of finds from Scotland without permission may also be considered theft. We are exploring ways to raise awareness about non-reporting and the illegal trade in Scottish archaeological finds, in the context of heritage crime.

10. What more could be done to address deliberate non-reporting of finds and tackle dishonesty?

A positive approach to relationship building is likely to be an effective approach for many. An overzealous emphasis on bad actors may inhibit the development of wider good relations with the majority of finders. However, we also support enhancements to enforcement capability and

the promotion of high-profile convictions for the worst offenses. The wider association of non-reporting and other dishonest behaviours as form of heritage crime may provide a helpful deterrent.

We would also welcome enhanced approaches to regulating commercial metal detecting rallies. Particularly to ensure that objects are not removed from Scotland and that organisers are aware of their responsibilities. Enhanced TTU presence at rallies would be beneficial.

Governance and resourcing

The Scots common law principles of bona vacantia have been used to protect heritage in Scotland for more than 200 years. During that time, the Treasure Trove system has adapted in response to the beginnings and growth of archaeology, the development of museums and, more recently, the emergence of metal detecting and development-led archaeology (work required as part of the planning system for housing, roads and infrastructure).

Several heritage organisations now work together to operate and support the Treasure Trove system. The system has evolved, and previous reviews have helped it adapt to change. The Treasure Trove system is funded by the Scottish Government, the KLTR Department and in-kind contributions from National Museums Scotland and other heritage organisations. Museums across Scotland put funds into the system to secure allocation of chance and metal detected finds, paying sums equal to the ex gratia award given to finders. Finders are not charged for the processing of finds through the system.

The questions in the following section are about how the Treasure Trove system is run and funded.

Leadership and communication

The Treasure Trove system relies on multiple organisations working in partnership. Feedback suggests a need for increased communication and clearer understanding of roles and responsibilities among the organisations involved. To support more proactive KLTR leadership of the system, we are considering the creation of an advisory group which would meet regularly with the KLTR Department and Treasure Trove Unit to discuss operations, planning and issues arising.

11a. Would the creation of an advisory group, led by the KLTR Department, bring benefits to the system?

We suspect that an advisory group could be a useful tool, particularly if it was able to generate some profile across stakeholder groups and was presented as a genuine space for co-production with metal detectorists, archaeologists, and museums. A focus on heritage crime, with engagement with the Police, may also be beneficial.

11b. What other practical measures could improve communication and definition of roles?

Clarification in crossover between the TTU and the Receiver of Wreck.

Clarification on the autonomy of TTU and its presence embedded within a receiving institution (National Museum Scotland) that ultimately bids on assemblages.

Funding

In recent years, continuing growth in the numbers of finds reported has placed increasing strain on the Treasure Trove system. In the last three years, additional Scottish Government and KLTR Department funding has been used to increase the permanent and temporary staff establishment of the Treasure Trove Unit, and to develop a case management system linked to an online public database for reported finds.

12. What impact have these investments made on the operation of the system?

We do not engage with TTU staff or casework on a regular basis so cannot comment on the specific effects of recent investment, but we strongly support the need for proportionate funding for TTU to maintain appropriate levels of staffing and skills to manage an increasing workload. That said, we also welcome sensible discussions of where the archaeological contractors working in development-led archaeology or other land use management systems, may be able to take more responsibility for ensuring that physical and digital archives are managed and accessioned properly - or do already, especially if they are professionally accredited and can therefore be relied upon to work to archaeological standards and guidance, and ethics.

Financial reserves and cost recovery measures

We are assessing how to support the future financial sustainability of the system in relation to the likelihood of continuing growth in the number of finds being reported. In addition to the need for sustainable resources from core funders for staff and operating budgets, we are assessing whether other measures could make the system more financially resilient.

13. We are considering the feasibility of introducing a small administrative fee, or a box fee, for the allocation of assemblages excavated by professional organisations. The fees would be paid by excavators. The funds raised would be retained within the Treasure Trove system to help build financial reserves and fund improvements to the system.

Would the charging of excavation allocation fees on this basis be fair in principle?

ClfA would support the institution of a proportionate fee to be paid for the allocation of assemblages excavated by professional organisations. Such a system is already in place in England, where commercial archaeological contractors pass the cost of accessioning archives on to their clients. This approach is in accordance with the 'polluter pays' principle which is the

basis for developer-funded archaeological works undertaken in the planning system in Scotland.

There may be various appropriate options for how to levy a charge and calculate fees, and possible implementation challenges for each (such as how to calculate the number of boxes / volume of the archive, and standard approaches to the method of predicting/calculating and quoting for this cost to clients). What will be crucial is that archaeological organisations will be able to confidently and consistently estimate costs in order that they will be able to quote those costs to clients. It will also be necessary to ensure that there is an appropriate rollout period and information available to contractors to help them to build in the new charges to their client costings.

We are unclear, however, how this proposal interacts with the processing fee recommended by the *Before the Museums* project, which we understood to be being developed to be implemented in 2025. If the proposed TTU box fee was intended to be an additional fee, it will be important to make sure that the reasoning for this is clear, and ideally, that these two charges are seamlessly integrated.

14. From time to time, extraordinary chance and metal detecting finds require emergency fieldwork and further work to ensure that objects and important archaeological information from the findspot are properly preserved. This work can create significant costs for heritage organisations supporting the system which cannot be covered by the operating budget of the Treasure Trove Unit (for example: emergency excavation, pre-allocation conservation, scientific analysis, and commercial valuation of complex archaeological hoards). We are considering the feasibility of introducing an element of cost recovery for extraordinary finds where, for example, pre-allocation costs could be deducted up to a reasonable limit from high value ex gratia awards paid to finders.

Would cost recovery on this basis be fair in principle?

Finds liable to require such emergency interventions are likely to be the most significant, and also perhaps the most valuable based on possible 'market rate'. In theory these cases may be more likely to provide considerable latitude for the setting of the cost of ex gratia payments. We do not, however, consider that the messaging around 'cost recovery' should be one that is presented as reducing ex gratia payments in order to fund archaeological works. This seems to set up an unnecessary point of conflict.

Rather, we would recommend a more nuanced communication around the calculation of ex gratia payments in such cases. For example, for finds of exceptional significance, it may be difficult or impossible to arrive at a market value for an object, and finders may be told to expect that ex gratia payments will be proportionately lower than market value, perhaps capped, but that other opportunities – such as involvement in subsequent archaeological works – may be facilitated as a result on ongoing archaeological works.

We also recommend that TTU considers whether the establishment of a call-off contract with archaeological companies/contractors would be able to offer better value for money and speed of service for emergency work than utilising the curatorial staff at NMS (which is what we gather happens currently).

However, ultimately, we expect that in most cases, it will only be a relatively small amount of emergency costs that would be able to be recovered from any decrease in the finders' fee.

Looking ahead

Since the last full review of the Treasure Trove system in 2003, the emergence of development led and community archaeology, the growing popularity of metal detecting, developments in archaeological science and other technology have all changed the operating context for the system. Museum standards for public engagement, collecting and conservation have evolved, while funding challenges for museums and heritage organisations have grown. The number of finds reported is increasing year on year, and spectacular discoveries such as the Galloway Hoard, found by metal detecting in 2014, have prompted major fundraising, conservation and research projects. There has been strong public and media interest in archaeological discoveries which has raised the profile of the Treasure Trove system.

The questions in the following section are about future developments might impact on the Treasure Trove system.

Futureproofing

One of the aims of the Treasure Trove Review is to make recommendations to ensure the system is fit for purpose for the next decade and beyond.

15. What opportunities and risks should the Treasure Trove system anticipate in relation to developments over the coming decade (for example: future technologies, the growing popularity of commercial metal detecting events, the emergence of magnet fishing, the potential impact of climate change)?

An increase in metal detecting overall, especially larger metal detecting rallies is occurring at a time of thinner resources for heritage organisations, and for external partners such as Police Scotland. The TT system needs to be able to react to these pressure points. We would support regulation to control or charge organisers of commercial metal detecting rallies to help cover the costs (and potentially expand) TTU support of the events.

Code of Practice

The Treasure Trove system requires that everyone involved in the process follows the published Code of Practice. A revision of the Code of Practice will follow on from the Treasure Trove Review to ensure that the Code remains comprehensive and is easier to use.

16a. Are there areas of the Code of Practice that need to be changed or clarified?

We would welcome an examination of the Code of Practices' advice on the integrity of assemblages and splitting of assemblages. This should include good practice for paper and digital archives.

16b. Are there risks to archaeology, the environment, and/or to wider public benefit delivered by the system that are not covered in the existing Code of Practice?

Better signposting to sector Standards and guidance, and good practice advice for management of material while it awaits allocation would be helpful.

17. Other comments

Do you have any other comments about the Treasure Trove system in Scotland that you wish to bring to the attention of the Review?

[No Comment, unless ideas received.]