Museum accountability in Britain and America: ethical standards and fiscal transparency in the twenty-first century

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-Samuel Taylor Coleridge, *Biographia Literaria* (1817)

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Abstract

This thesis examines the current state of nonprofit museum accountability in the United Kingdom and United States, assessing methods of achieving fiscal and ethical accountability, as well as the factors that have influenced museum codes and policies to that end. The recent development of museum accountability is couched in corporate culture, government influence, and public expectations, making it an interdisciplinary concern. Yet museum professionalisation, including codes of ethics, conflict of interest management, and agreed-upon standards, has received little attention from researchers. This study engages in empirical research to assess museums' responses to recent regulations, their execution of governance accountability, and the application of internal controls and fiscal transparency measures. These subjects appraise ethical governance and board member duties, in addition to audit practices and best practice policies. Research reveals inadequacies in the museum accountability systems in both Britain and America. As case studies serve to demonstrate, opportunities remain for financial and ethical misconduct, which can damage the public trust in museums.

This thesis is the first broad empirical study to explain museum accountability in Britain or America, collating data across the entire museum sector, creating an industry-wide national framework from the quantitative and qualitative findings. No research has reported on the implementation of best practice measures according to the private, public and third sectors, stakeholders, and the museum industry itself. Ultimately, this thesis provides unique evidence previously lacking in both the UK and US museum sectors, making it possible to posit and assess specific museums against an accurate national accountability framework.

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Abbreviations and acronyms

AAM	American Association of Museums
ACE	Arts Council England
ACEVO	Association of Chief Executives of Voluntary Organisations
ACFE	Association of Certified Fraud Examiners
AICPA	American Institute of Certified Public Accountants
AMA	Associateship of the Museums Association
ARNOVA	Association for Research on Nonprofit Organizations and Voluntary Action
ASB	Accounting Standards Board
AUP	Agreed upon procedures
BCCI	Bank of Credit and Commerce International
bn	billion
CAN	California Association of Nonprofits
CC	*Combined Code*
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CIO	Charitable incorporated organisation
COO	Chief Operating Officer
COSO	Committee of Sponsoring Organizations of the Treadway Commission
CPA	Certified Public Accountant
CSPL	Committee on Standards in Public Life
D&O	Directors' and Officers' Liability insurance
DCAL	Department of Culture, Arts and Leisure (Northern Ireland)
DCMS	Department for Culture, Media and Sport (England and Wales)
DTI	Department of Trade and Industry
ED	Executive Director
EU	European Union
FASB	Financial Accounting Standards Board
FOIA	Freedom of Information Act
FRC	Financial Reporting Council
FRS	Financial Reporting Standard
FTSE	Financial Times Stock Exchange
GAAP	Generally Accepted Accounting Principles
GAO	General Accounting Office (now Government Accountability Office)
HLF	Heritage Lottery Fund
ICAEW	Institute of Chartered Accountants in England and Wales
ICOM	International Council of Museums
IIA	Institute of Internal Auditors
IRC	Smithsonian Institution Independent Review Committee
IRS	Internal Revenue Service
IT	Information technology
LSE	London Stock Exchange
m	million

MA	Museums Association
MAP	Museum Assessment Program
MCC	Maxwell Communications Corporation
MGS	Museums Galleries Scotland
MLA	Museums, Libraries and Archives Council
MOD	Ministry of Defence
MP	Member of Parliament
MPM	Milwaukee Public Museum
NACF	National Art Collections Fund
NAO	National Audit Office
NCVO	National Council for Voluntary Orgnisations
NDPB	Non-departmental public body
NHS	National Health Service
NIAO	Northern Ireland Audit Office
NICVA	Northern Ireland Council for Voluntary Action
NIMC	Northern Ireland Museums Council
NMGNI	National Museums and Galleries of Northern Ireland
NML	National Museums Liverpool
NMW	National Museum of Wales
NYSE	New York Stock Exchange
OIG	Smithsonian Institution Office of the Inspector General
OSCR	Office of the Scottish Charities Regulator
PCAW	Public Concern at Work
PEC	Preserve Educational Choice
PIDA	Public Interest Disclosure Act
QUANGO	Quasi-autonomous non-governmental organisation
RMNCA	Revised Model Nonprofit Corporation Act (1987)
R-MWC	Randolph-Macon Women's College
SAS 99	Statement on Auditing Standards No. 99
SCVO	Scottish Council for Voluntary Organisations
SEC	United States Securities and Exchange Commission
SFO	Serious Fraud Office
SORP	Statement of recommended practice
SOX	Sarbanes-Oxley Act (2002)
UFTM	Ulster Folk and Transport Museum
UK	United Kingdom
UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States of America
USD	United States Dollars
WCVA	Welsh Council for Voluntary Action

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Introduction

Museums are complex organisations maintained on behalf of the public trust. Reliant on funding and community support to thrive, museums must be accountable for financial and ethical decisions to help secure that public trust. To demonstrate compliance with expected standards, institutions are compelled to report and explain their actions. Museum accountability requires institutions to establish an internal structure whereby decisions are made, while being held externally to account for those decisions. Continuous internal and external assessment links a museum's values to its conduct. Achieving accountability requires inculcating ethical codes and establishing controls throughout the museum. This thesis examines the current state of nonprofit museum accountability in the United Kingdom and United States. Methods of achieving fiscal and ethical accountability and the factors that have influenced museum codes and policies to that end are assessed. The focus of sound museum governance practice now includes negotiating conflicts of interest, financial mismanagement, and ethical breaches of accountability. These concerns have developed as museums have steadily emerged as a professionalised industry.

Two broad, complex sectors dominate the social and economic landscape in the UK and US: the corporate (private) and government (public) sectors. The *third sector* consists of organisations working outside the market and the state, yet drawing methods and ideas from both sectors. US third sector organisations are delineated by law, while Britain's framework is more flexible, not based in tax law or common law. Encompassing US nonprofit and UK charity organisations, the third sector is less conceptually understood when compared with the private and public sectors (Salamon and Anheier 1997). Notably, even the terminology associated with the third sector can be misleading. The words *charitable*, *voluntary*, *tax exempt*, and *nonprofit* are misnomers since volunteers are professionalised, taxes are dependent upon national or regional tax systems, and nonprofits must earn income or generate monetary donations to stay solvent. Museums operate in the public domain and are not directly subject to the market or the state. They do not act for the benefit of private individuals, but for communities at large. They also differ from private trusts that exist for specific beneficiaries. Museums, then, conduct their operations *on behalf of* the public, and maintain their collections *in legacy for* the public to provide a public benefit. To do so, museums rely upon knowledgeable individuals to resolve the complex tasks associated with executing museum functions.

An institution's *governing body* holds ultimate responsibility for all ethical, financial, and policy decisions guiding the institution, regardless of the governing body's legal status or official title. Governing bodies take the form of management councils, committees, boards of directors, local councils, boards of trustees, and university trustees, among other governance models including Parliament in the case of National museums in the United Kingdom. The terms *board of directors* and *board members* are utilised most frequently throughout this study for consistency, yet can represent any of the governing bodies listed above. *Governance,* then, refers to board oversight of museum efficacy through policy, strategic goals, ethical directives, and organisational transparency that comply with legal and discretionary regulations (Stone and Ostrower 2007). *Transparency* is a formalised process that balances the public's right to detailed information about an organisation with the organisation's right to privacy concerning its dealings. Transparency involves periodically disclosing accurate financial, structural, and ethical information that follows strict, complex guidelines and adheres to approved accounting and auditing standards. Filing accurate financial reports, disclosing governance and policy decisions, demonstrating museum-specific accountability through "best practice" procedures, and other internal controls are factors of museum communication that demonstrate professionalism and affect the public trust in British and American museums.[1]

The *public trust* has a "narrow, legal definition" stating that organistaions are held in trust for the public good, and a "broader concept[ual]" definition that encompasses the notion of trust as one of "stewardship and public confidence" in an organisation. (MacDonald 1992, 63). The tax benefits, the grants, and the right to solicit tax exempt gifts that the government extends to nonprofits and charities oblige these institutions to answer to the public for the funds received. These are monies that would have benefited the public in other ways, so the use of public funds must be accounted for in a public manner. The law represents the public, yet public expectations and the public trust are vague concepts for the law to regulate. Specific breaches in the public trust like fraud and embezzlement are outlawed, but the public trust encompasses "extralegal" duties that individuals and organisations must fulfill in "an implicit obligation to the public one serves." (Jos 1993, 364) UK charities were traditionally little regulated, but are now closely linked with government goals. This shift occurred as charities

1 In this thesis, *Britain* is used interchangeably with United Kingdom, and *America* refers only to United States of America.

began providing services to meet social needs. In the United States, public and private sector reporting developed during the 1920s-1930s and is entwined with events surrounding the 1929 stock market crash (Lee 2004).

Organisations can "succeed or fail on the notion of trust." (Sheppey and McGill 2007, 245) Trustworthiness is predicated on complying with expectations, regulations, and codes of ethics. The public expectation of accountability affects the public perception of an organisation. This perception is based in part on the public disclosure of accurate documentation including financial statements. Donors presume the accuracy of financial statements and the adherence to basic policies. Financial statements and policies "are the most public indicators of the state of a company" and the most transparent method for establishing the public trust. (Sheppey and McGill 2007, 79) Institutions that do not comply with established standards can face the perception of distrust and mismanagement, which will deflate an organisation's reputation. As the public trust in an organisation increases, the public support of the organisation will rise. If a museum's reputation falters, individual, corporate, institutional, and government donations will evaporate. If standard ethical policies and financial procedures are not in place, it will be challenging for museums to convince grant-making bodies to provide financial support.[2]

For the purposes of this study, museum governance is conceptualised as a preventative risk management tool. Museums have been affected by misconduct that occurred in the private, public, and third sectors, and as a result must comply with legislation, government-led recommendations, and expanded stakeholder expectations. Applying principles to museum governance developed from accountability concerns in the private, public, and third sectors, this thesis takes a reactive approach to accountability that posits museums as hybrid organisations with elements common to both corporate and state entities.

Governance accountability and transparency are molded by historical factors, driven by social and economic environments. From an institutional perspective (Bielefeld 1992), museums are a product of national cultures, events, legislation, and internal museum

2 The public trust in museums can refer to more than the governance and financial aspects discussed in this thesis. "To serve in a museum is to serve an ethos of responsible action toward both its collected objects and gathered human beings." (Carr 2001, 29) To engender the public trust, museums must engage in "active principles of fairness, multiple approaches to knowledge, and attention to the reflective trust of learners." (Carr 2001, 79)

dynamics (Billis and Harris 1996). Scrutinising museums from historical, legal, economic, and museum-based points of view demonstrates how those external forces have affected museum accountability. Both internal and external factors are examined to acquire the most comprehensive perspective of organisational change (Leavy and Wilson 1994). Deakin (2001) finds analyses of nonprofit organisations are incomplete if the researcher only focuses on third sector attitudes and activities. Both the public and private sectors have helped define third sector expectations (Deakin 2001), and the third sector should heed "the lessons of other sectors, if they are to manage … emerging [governance] complexities creatively." (Sandell and Janes 2007b, 3) Because the third sector is less well understood than the private and public sectors, it is vulnerable to impractical management solutions imposed by corporate and government entities (Malaro, 1994). It is essential for museums, functioning as trusted institutions in ever more competitive environments, to continue to form a credible industry within the third sector.

Examining museums through the lens of recent sociopolitical influences enables museums to position themselves within broader interdisciplinary contexts. The accountability standards of other industries can be used to ascertain the relative accountability of museums. Methods to achieve accountability in the private and public sectors can be adapted and implemented in museums of all types and sizes. The museum sector can learn from private and public sector experiences to utilise best practices that benefit the museum. Best practice policies exist to maintain an organisation's standards and to propel the organisation forward securely. There is value in best practice methods because stakeholders outside the museum industry understand and respond positively to their implementation, as best practices have been demonstrated to protect institutions from financial malfeasance and ethical breaches.

This analysis reveals inadequacies in the museum accountability systems in both Britain and America. As case studies will demonstrate, opportunities for financial and ethical misconduct remain that directly damage the public trust in museums. Recent controversies exemplify that organisations with accountability fissures can face challenging scenarios. Transparency failings in museums have harmed museum reputations and the capacity to fundraise. Accountability is an urgent need that can minimise financial strife, aiding a museum's viability and solvency. Assessing how and why the museum sector is currently governed can point to the locus of museum accountability failings, the first step to improving museum governance, ethics, and accountability.

One of the research findings herein is the degree to which UK and US museums are diverse organisations with disparate governance policies. Despite oversight regulations, recommended ethics and accountability policies, and museum standards, neither country has a unified sector based upon internal administrative policies or ethical patterns relating to public accountability. In many cases, British and American museums do not conform to sector-wide standards. This inquiry demonstrates specific gaps prevalent in museum governance, including internal control implementation and conflict of interest management. These gaps highlight the range of accountability concerns that affect the museum sector, including the low percentage of UK museums with codes of ethics, and the few US museums with whistleblower protection policies. This analysis evaluates data by museum size (based on annual budget) and museum classification (based either on governance structure in the UK, or collection type in the US). By raising awareness of liability zones based on museum size and type, this study itself serves as a risk management tool for museums.

This thesis is the first broad empirical study to explain museum accountability in Britain or America, collating data across the entire museum sector, creating an industry-wide national framework from the quantitative and qualitative findings. No research has reported on the implementation of best practice measures according to the private, public and third sectors, stakeholders, and by the museum industry itself. Ultimately, this thesis provides unique evidence previously lacking in both the UK and US museum sectors, making it possible to posit and assess specific museums against an accurate national accountability framework.

Data concerning the actual implementation of accountability measures, and information about museum professionals' points of view on their accountability responsibilities can enable museum regulators, advocates, and professional development groups to better assist museums. Most empirical data about UK charities describes large organisations (Connolly and Hyndman 2004). This inquiry collects data from museums of all sizes as determined by annual budget. This information permits museums to judge whether their systems are best positioned to ensure accountability when compared with similarly sized museums. The statistics generated in this study also enable museums to view themselves within the broader national museum industry. Understanding how their colleagues govern museum operations can create discussion, illuminate ethical or accountability concerns, and encourage the implementation of administrative, governance, or accountability methods.

This type of study has required cooperation from hundreds of diverse museums and museum stakeholders, particularly individuals managing and governing museums. Many museum professionals have expressed interest in the resultant data, while their participation, in part, reflects their concerns about governance accountability, financial transparency, and museum ethics.

Scope

The scope of this analysis is limited to UK and US organisations, assessing museums from roughly the 1970s to the present. Britain and America were selected due to their similarities, yet their differences have led museums on alternate courses towards accountability. Britain and America have elected governments and comparable levels of social and economic development, but contrast in corporate, legal, and governmental traditions. Corporate governance, public oversight, and fiscal management are implemented differently in the UK and US, though the concepts are similar in each country. Viewing each nation in light of this asymmetry better illuminates the distinct museum cultures and sectors in order to articulate disparate methods to meet museum needs.

Centeno (1994) determined that cross-national quantitative comparisons inadequately apply consistent definitions to national traditions to warrant valuable data. This thesis does not undertake a direct comparison, and does not offer conclusions that are comparative in nature. UK and US conclusions are independent from one another, yet can productively illuminate museum accountability on both continents, encouraging analysis of shared challenges and successful problem-solving strategies with broad applications on an international level.

This argument utilises the International Council of Museums' (ICOM) definition of a museum:

> a non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment. (International Council of Museums 2006, 14)[3]

For the purposes of limiting this research study to an appropriate scale and length, I have elected to exclude specific types of organisations that fall within the definition of a "museum".

3 This definition of *museum* concurs with definitions offered by the American Association of Museums and UK Museums Association.

While international definitions of museums include zoos, botanical gardens, arboretums, and aquariums, this study focuses solely on museums with non-living collections, except for Living History museums or national trusts in which living flora and fauna represent only a portion of the collection. These excluded organisations address similar governance issues to the Art museums, History museums, etc., that are addressed in this work, so the principles herein should be assumed to apply to all museums. These excluded organisations, however, face additional unique ethical concerns since their collections primarily contain living specimens. Some exceptions exist: England's National Trust maintains heritage properties, monuments, gardens, and diverse tracts of land. The National Trust was analysed, but questioned only about buildings maintained as visitor sites.

ICOM is the international body that defines professional museum standards globally, offering a code of ethics that addresses conflicts of interest, volunteer conduct, and professionalism, among other considerations. This inquiry does not address the effects of ICOM on museums, but ICOM standards align directly with the tenets of accountability discussed in this research.

Methodological theory and limitations

Collecting research data for this thesis required steps to best meet the objective of most public administration research: "to provide the information needed to improve the quality of the decisions that must be made by managers and administrators." (McNabb 2002, 99) This study also examines decisions by individuals responsible for third sector governance. I elected to conduct quantitative and qualitative surveys to provide both numeric and verbal descriptions of the opinions, behaviours, and policies found in museums. Quantitative studies are "used to develop a snapshot of a particular phenomenon of interest … observed or measured at a given time in a [sic] environment." (McNabb 2002, 86) The resulting statistics can be readily generalised across a sector (McNabb 2002). Qualitative data pinpoints specific yet subjective interpretations of events and opinions. The quantitative study addresses objective questions, while the qualitative interviews and surveys compel multiple subjective points of view. Doing axiological research, the quantitative studies offer "value-free" results, while qualitative sources have "value-laden" opinions. When utilised in conjunction, these data collection methods offer a more complete view of the research subject.

This argument engages a phenomenological approach to acquire qualitative data through interviews and written surveys. Presenting the data from the museum professionals' points of view, this method illuminates specific perceptions by professionals about their organisations and the sector (Lester 1999). The approach was selected as a means to identify individuals' varied experiences and observations in order to challenge normative assumptions and determine whether patterns in thought exist across the museum industry. Specifically, semi-structured interviews were utilised to prevent leading questions, maintain researcher impartiality, and permit discussion on broad topics resulting in exploratory information, while also eliciting factual answers within the scope of museum accountability (Bryman and Bell 2007). This qualitative data does not represent statistical accuracy across the industry, however. Instead, the phenomenological approach aims to describe situations rather than explain them (Lester 1999).

The case study method demonstrates the quantitative and qualitative findings in real museum settings. Multiple (collective) case studies logically permit more expansive observations than a single (instrumental) case study. Archival material, including published documents and newspaper reports, is also incorporated to establish historical circumstances and determine publicly published organisational strategies (McNabb 2002).

This thesis also examines museum ethics. Wood and Rentschler (2003) identify three themes in museum ethics publications: ethical codes, organisational ethics, and legal significance. This text incorporates aspects of all three themes, assessing the presence and use of ethical codes in museums, the codes' effects on organisational ethics, and the relationship between ethics and the law. Velasquez (1998) asserts that in studying ethical behaviour falling outside legislation, researchers must apply ethical tenets equally to each individual. Different moral standards do not apply to particular members of a community.

This study approaches governance from the stakeholder theory, positing museums in an economic framework that champions museums as organisations with multiple relationships and agreements with internal and external stakeholders who are equally important (Blair 2004). Stakeholder theory is more applicable to nonprofit museums than agency theory that asserts shareholders (investors) are the primary agent the governing body works to satisfy (Hyndman and McDonnell 2009). Rather, stakeholder theory approaches funders as one of many stakeholder groups equally important to consider during the governance process. These stakeholders include museum personnel, the local community, local government, etc.[4]

This thesis aligns with the social origins theory that Solomon and Anheier (1998) apply to the third sector. That framework requires analysing recent history to trace factors leading to third sector policy implementation. Kendall (2003) indicates that researchers must also account for the corporate sector's strong influence on nonprofit policy choices, stating that "beliefs and actions are shaped by the specific policy legacies that exist in particular fields…subject to revision over time as circumstances and evidence evolve within those fields." (Kendall 2003, 9) This is interpretive research, meaning this work attempts to establish the reasons for circumstances or events (McNabb 2002). Multi-layered interpretations of museum accountability require a historical context across a broad spectrum of social interactions. Assuming Mead's symbolic interactionism (Annells 1996), individuals' behaviour depends upon the "meaning" found in social interactions, which undergoes continual interpretation.

Two biases existed while conducting this work. The researcher has a vested interest in the agenda of the alumnae of Randolph-Macon Women's College due to a personal association and familiarity with the College's Art museum and local community the museum serves. Protection against that bias was sought by utilising both quantitative and anecdotal evidence from financial reports, newspapers, and court documents. The College art museum's expectations and codes are also differentiated from the College trustees' priorities and economic concerns, recognising that the university's apparent financial distress undermined the College art collection's security. Priorities within university asset management, as seen in this case, are necessarily fraught with contradiction. A bias towards Art museums also exists, which was mitigated by expanding the thesis research to include museums of various types (History museums, Children's museums, Science museums, etc.) that revealed existing patterns across the museum sector. Only statistical findings are utilised in assessing Art museum-specific data.

Limitations to this research and its methodology include restricted access to confidential museum data, in addition to museum professionals' reluctance to discuss sensitive scenarios

4 Throughout this examination, the term *museum personnel* represents individuals who work for, govern, or volunteer in museums.

that potentially portray individual museums negatively. Thus, most individuals approached for information, opinions, and data responded as anonymous sources. Challenges to collecting data arose directly from the topic of research: numerous museum professionals did not understand terminology like governance, best practice, or conflict of interest. Many individuals who were queried, particularly those in volunteer-run or small museums based on budget, did not understand or recognise the applicability of codes, policies, and ethics to the museum sector or to the museum with which they were associated. These challenges, however, offer a significant insight: many individuals working as museum administrators or board members know little about their accountability duties.

A geographical limitation also existed since each museum that participated in the research could not be visited and evaluated on a case-by-case basis. Much of the data collected is reliant upon museum employees or volunteers (including trustees) with unique agendas, mindsets, individual priorities and proclivities to answering questions about their institutions. These limitations, however, do not invalidate the data because these individuals, like other industry professionals and associations, typically share the same priority: the museum's wellbeing. That priority unifies the perspectives in the data collection process. If individual interviews and site visits had been feasible for each museum that participated in the study, it would have been possible to better verify the current state of governance accountability. The investigation, however, would have been too large to accomplish within a suitable timeframe. As such, the methodology used, despite limitations, was the most reasonable approach.

Research programme

The project is set in two parts based on geography. Part 1 discusses American museum accountability, and Part 2 considers UK museum accountability. The two parts mirror one another in structure, beginning with overarching themes and relevant details from the private and public sectors. This material informs museum accountability by facilitating specific discussions of third sector and nonprofit museum governance. While the differences between the US and UK museums are delineated in each section, some topics, such as conflict of interest, are universally applicable. In these instances, a thorough explanation of terminology is provided in the first (US) section, whereas only nuanced differences are explained in the latter (UK) section. Prior to the explication of survey result data, a defining case study for each country is used strategically to ground contemporary problems in unambiguous terms, as represented by two large, respected and influential museums: The Smithsonian Institution (US) and Tate (UK). Shorter case studies complement the empirical data, demonstrating practical concerns that fall within economic and ethical theories discussed in earlier sections of the thesis.

The approach to explicate American museum accountability begins by investigating relevant definitions, theories, and concepts. The range of concepts affecting accountability in the museum setting requires analysis of corporate governance, professional ethics, a comparison between ethics and the law, corruption, fraud, and accountability itself. To understand museum accountability fully, it is necessary to know the decisive background events that have influenced accountability across all three major sectors. As such, the third section of the study continues the inquiry into accountability by assessing the massive fraud committed by Enron Corporation that damaged the American corporate sector. The Enron collapse resulted in a critical piece of legislation entitled the Sarbanes-Oxley Act (SOX) that significantly affected the American nonprofit sector, including the museum industry. It is only within the context of both private sector influences and public sector requirements, namely the Enron collapse and the Sarbanes-Oxley Act, that the third sector can be assessed. Thus, the following section considers American nonprofit organisations, the similarities between nonprofits and corporate entities, and nonprofit transitions towards corporate governance. This material highlights the importance of nonprofit stakeholders and the public trust, the association between public trust and financial donations to the nonprofit sector, and recent nonprofit accountability legislation. With this information, it is possible to specifically assess American nonprofit museums.

Museums do not exist in a vacuum and the recent development of museum accountability is complex. Couched in corporate culture, government influence, and public expectations, museum governance is an interdisciplinary concern. Yet museum professionalisation, including codes of ethics, conflict of interest management, and agreed-upon standards within the museum industry, has received little attention from researchers. This thesis engages in empirical research to assess American museums' responses to recent regulations, their execution of governance accountability, and the application of internal controls and fiscal transparency measures. These subjects appraise ethical governance and board member duties, in addition to auditing practices, ethical codes, and best practice policies. While not exhaustive, these policies and internal controls protect against fraud or ethical misconduct, and indicate administrative processes that numerous donors expect museums to have in place. The museum response to corporate malfeasance has not resulted in momentous change. However, progress towards transparency and accountability has taken place across the sector, advancing museum practice towards greater implementation of best practice controls. In this light, it is possible to reevaluate museum accountability based upon the actual implementation of recommended codes and practices.

Research methods utilised to assess UK museum accountability in Part 2 begin similarly to Part 1, scrutinising accountability measures recommended for the UK private sector. Due to research results discussed in Part 1 that identified the corporate sector as the genesis for twenty-first century American museum accountability, Part 2 identifies similar influences emerging from Britain's corporate sector. Distinct differences appear, however, from America's recent strict legislative amendments. While corporate corruption occurred in the UK, the British government permitted the corporate sector to recommend its own best practice standards to protect against future malfeasances. Few of these recommended standard practices have filtered into museum governance. The next section then explores principles that emerged from Britain's tradition of public accountability, which prompted the Committee on Standards in Public Life to establish accountability standards directly applicable to UK museum governance. This demonstrates that current UK museum trends do have precedents based in the private and public sectors, and museums do not sit unaffected within the third sector. As with American museums, UK museums exercise their duties in a hybrid manner, taking on public and private sector qualities to appease assorted stakeholders. With this information it is then possible to focus directly on the UK museum sector and profession, its accountability, and its volunteers, who are a central concern as demonstrated by data herein. This section also demonstrates museums' ethical and financial considerations, including conflicts of interest, which appear in the case study reviewing the recent Tate board controversy.

As the previous section of the thesis considers theoretical museum concerns, the following section offers empirical data regarding museums' application of economic and ethics initiatives that originated in the private and public sectors. Museum governance accountability obligations, which include ethics management, museum-specific policies, and conflict of interest, are considered. Data indicates that UK museums have taken little notice of corporate recommendations, but have been more heavily influenced by government-based initiatives. The study then turns to UK museum internal controls and fiscal transparency. Survey respondents offer critical discourse about their individual museums and the industry in general. Individuals critical of museum change or unaware of accountability measures are as vocal as museum professionals eager to implement contemporary governance ideas. Ethical codes and standard practices threaten many museum employees and volunteers who find little relevance in museum accountability. Data also suggest that though numerous accountability policy recommendations exist for UK museums, there has been little direction to guide the actual implementation of accountability practices.

Research demonstrates that museums have not uniformly taken on strategies, policies, procedures, or expectations from the public or private sectors. While varied oversight bodies and the museum sector itself have established rules for governance consistency across the disparate museum types, this research draws the distinction between having standard policies in place and the act of actually fulfilling those standards. Survey results point to areas of accountability that are lacking in museums. Accountability concerns in the UK reveal themselves to fall primarily within the realm of professional ethics, while US accountability wrongdoing stems from monetary concerns like fraud and embezzlement. By ascertaining where museum accountability gaps remain, it is now possible to determine how best to meet those needs. This study sets a precedent for further research within museum studies that can address the practical implications of meeting and fulfilling good governance standard practices.

This thesis advocates that museums fulfill their responsibility to demonstrate accountability and transparency. Continuity has yet to exist, however, across the diverse sector in either Britain or America. The range of accountability policies, codes and standards that *have* been implemented have not destroyed museum traditions. Rather, these policies fit unobtrusively within the bounds of daily museum management, serving the public trust and liberating museums from numerous risk management concerns. Museums not only look to the past, they also seek to improve their futures. To do so, museums must become increasingly accountable, fulfilling the public trust.

1. American museum accountability: objectives and methodology

1.1 Research objectives

At Congressional Hearings on Charity Oversight in 2004, Diana Aviv, the CEO of Independent Sector[1] commented:

> The greatest measure of the value of nonprofits is the public trust in our work, our message and our purpose. Today, that trust is being jeopardized by the actions of a very small number of individuals who have used charities and foundations for personal gain or who have been engaged in practices that compromise their missions. (Aviv 2004, Hearing)

Nonprofit accountability and oversight are being questioned in the United States. Nonprofits, including museums, risk being perceived as self-serving entities rather than public-oriented institutions. The first half of this study examines how recent history has affected American museum accountability practices, including fiscal and ethical transparency. The current state of American museum accountability and the benefits, costs, and challenges that accountability policies and procedures impose on American museums will be examined. In the wake of corporate and nonprofit scandals, and the legislation that has ensued, what have museums done to bolster their governance accountability and what internal controls have been implemented to ensure business best practices? What are museums planning to do and where do the weaknesses remain?

By positioning museums in both the business sphere and the public sector, it is possible to answer these questions. It is necessary to define private sector terms, including accountability, corporate governance, business ethics, and corruption, since each relates to museum governance and to financial activities. In so doing, the widespread effects of corporate corruption and its subsequent regulation, specifically the Sarbanes-Oxley Act (SOX), on American museums become evident.[2]

Nonprofits are regulated at both the state and federal levels, and have a unique relationship with the American public. Public trust is vital to nonprofit success, and in the past decade

1 Independent Sector is an American nonprofit coalition with 550 organisational members.

2 Specific private sector terminology adheres to definitions stated in Section 2 of SOX (Sarbanes-Oxley 2002). These definitions will be utilised for the purpose of consistency throughout this study. Section 2 is located after the SOX Table of Contents.

the public has exercised increasing control over the nonprofit sector. The development of nonprofit law has, in part, dictated the current state of museum governance. The nonprofit sector has not been free from ethical or financial scandal and recent nonprofit accountability laws reflect upon museums' professionalism and fiduciary duties. Public trust has been breached at a number of American museums including the Smithsonian Institution, the largest museum complex in the world. (Smithsonian, The Museums website)

American museums have developed into a professional sector that maintains complex organisations on behalf of the public trust. Managing public expectations indicates the need for proactive strategies and reactive tactics that shift museums from passive compliance to active participation in their own oversight (Kearns 1994, Romzek and Dubnick 1987). To protect museums of all types and sizes from the inherent risks involved in running an organisation, it is necessary to understand current nonprofit legislation, the expectations of museum stakeholders, and best practice policies and ethical decisions applicable to the museum setting.

1.2 Research methods

1.2.1 Literature

The first stage of this study examined journal articles, reports, policy statements, and newspaper articles to ascertain trends and issues in museum accountability, business ethics, and American law. Resources about business ethics were utilised to gain a broad knowledge of the field. Specialised texts were accessed when researching corporate and nonprofit law. Literature about the Sarbanes-Oxley Act was reviewed in conjunction with nonprofit accountability legislation. The final step in reviewing relevant literature investigated the specific fields of museum ethics and governance policy.

1.2.2 Quantitative survey

The second stage of the study encompassed a targeted computer-based survey for museum directors, board members, and key employees. The survey sought to determine the degree to which museums adhere to common and recommended ethical governance practices and business best practices. The goal was to examine diverse types of museums with a range of annual budgets across the United States. The survey questionnaire is located online at http://www.st-andrews.ac.uk/~mlw2/sarbanes-oxley (Appendix A).

i. Survey recipients

A random sample of American museums was contacted to participate in the survey. Museum names and contact information were collected from the 2007 *Official Museum Directory*, the authoritative guide and most comprehensive list of American museums. The *Directory* includes approximately 11,500 museums, zoos, aquariums, arboreta, and botanical gardens. Because the survey was conducted online, only museums with email addresses were contacted. The American Association of Museum's online Museum Directory provided additional contact information.

The survey was piloted from November - December 2007. The questionnaire was distributed via email to fifty-one museums, one in each state and the District of Columbia. Eight diverse organisations participated, including a historic house, a presidential museum and library, a museum and art center, and a railway museum, for a 15.7% response rate. The survey received positive responses from all participants.

The 15.7% response rate to the pilot survey was used to calculate the number of surveys required to generate a statistically valid sample. Excluding zoos and other museums with living organisms, the *Official Museum Directory* lists 7,000 museums with email addresses.[3] Based on this figure, 256 survey responses were required to produce a 95% confidence level with a 6% error rate. Estimating a 15.7% response rate based upon the pilot response rate, it was necessary to distribute the final survey to 1,631 American museums.

In December 2007, an introductory email was sent to thirty-two museums in each of the fifty states and the District of Columbia, totaling 1,632 diverse museums. In January 2008, the survey was emailed to the same 1,632 American museums.

ii. Survey results

The online survey produced 145 valid responses. This figure represents a lower response rate (8.9%) than predicted, yet 145 responses produces accurate data to a 95% confidence level +/- 8.05%. Numerous museum professionals emailed replies indicating the survey was not applicable to their organisations, though the survey was designed to be applicable to as wide a range of museums as possible. Other museums responded that the topics included in the

3 This number was confirmed by Sumitra Nicholson, Content Manager, *Official Museum Directory 2007.*

survey had never been discussed at their museums, but these new ideas would be raised at upcoming board meetings. Other museums replied with thanks, indicating that changes to their governance and fiscal policies would occur because the survey brought accountability issues to the museums' attention.

The online survey consisted of ninety-five questions, each of which was optional. Responses were collected from museum board and staff members from thirty-seven states and the District of Columbia. New York, Virginia, Iowa, California, and Washington state had the greatest number of respondents. Fifty-one museums did not indicate in which state they were located. These museums represent 35.9% of the sample. The museums that responded are grouped into five categories: History museums, Art museums, Science museums, University museums, and "Other". The Other category consists of Cultural museums, National museums, Transportation museums, Military museums, General museums, and museums that designated themselves as Other. The annual budgets of the 145 participating museums range from less than $25,000 USD per year, to over $25m USD per year.[4] Nearly one quarter of those surveyed (24.4%) have annual budgets over $2m. The average size of the museums' boards of directors totals eighteen, and range in size from one to forty members.

The mean age of respondents was forty-nine and a half years old, and 61.5% percent were female and 38.5% were male. They had been in their current positions for an average of 7.8 years, working in the museum sector for fifteen years, and working in nonprofit organisations for over eighteen years. Their work experience indicated that the respondents were well versed in nonprofit issues, were dedicated to the museum field, and were qualified to answer the questions posed in the survey.

Each answer was analysed and underwent cross tab analysis based on museum type and budget size. Analysis of the results will be discussed in sections 6, 7, and 8.

1.2.3 Qualitative sources

The online survey's quantitative data was followed up by qualitative research to determine the rationale behind any recent or proposed policy changes, and reasons why current governance policies and fiscal structures are in place. This data was collected by two methods: structured

4 In this study, $ refers to United States Dollars, and £ indicates Great British Pounds.

interviews and a written questionnaire that mirrored the interview structure (Appendix B). Only interview participants who gave written permission to be tape recorded will be named and quoted directly. Other museum professionals are quoted as anonymous sources. Numerous individuals preferred to discuss American museum accountability off the record, and their feedback, opinions, and ideas will not be used in the study.

The interviews and qualitative questionnaires sought to answer questions relating to anticipated changes in museum accountability due to government initiatives, and to discover the costs and benefits associated with governance changes. Discussion focused on the public perception of museums and on accountability problems that persist behind the scenes in museums. The qualitative questionnaire and interviews also assessed attitudes to museum governance and the ways in which museums have incorporated ethical and legal codes into working life. While answers to the qualitative survey added to the study, answers did not always logically correspond to the questions posed. It appears that some museum professionals do not understand the meaning of "transparency" or "accountability" with regard to museum governance or museum finances.

Qualitative data indicate that museums do little to measure public attitudes scientifically. According to museum managers, the public opinion of museums varies widely. Yet, according to Zietlow et al. (2007):

> Public perception of nonprofit ethics today requires that [institutions] seriously consider adopting policies that promote and convey an accountable, ethical organization that merits trust on the part of all stakeholders, and complies with appropriate legislation and regulation. (Zeitlow et al. 2007, 147)

This study does not attempt to assess the public perception of museums, but takes the public trust into account when analysing museum accountability.

i. Questionnaires and interviews

The introductory letter which accompanied the online survey encouraged survey participants to contact the researcher via email if they "would like to discuss museum accountability, museum governance, or the *Sarbanes-Oxley Act*." Similarly, survey questions 61 and 62 asked:

61) Would you be willing to complete a follow-up questionnaire to gather qualitative data about your opinions regarding museum accountability? [Yes/No]

62) Would you be willing to be contacted to discuss museum accountability or the Sarbanes-Oxley Act's effects on your museum? [Yes/No]

These three requests yielded fifty-five positive responses with valid email or postal addresses. The qualitative questionnaire was posted to each respondent which enclosed a letter requesting a telephone interview. Seven individuals agreed to be interviewed and sixteen completed questionnaires were returned. The seven interview participants each completed a consent form and were asked the same list of questions that appeared on the qualitative questionnaire. Six of the seven museum professionals and board members permitted their interviews to be tape recorded.

The American Association of Museums was contacted, but did not respond to requests for information regarding museum accountability. The six regional museum associations in America were asked for information relating to professional development programmes, meetings, policy recommendations, and other advice the associations provide to members about governance and accountability. The four following regional museum associations responded to this request: the New England Museum Association, the Southeastern Museums Conference, the Mountain Plains Museums Association, and the Western Museums Association.

1.3 Summary

American museum accountability refers to governance and fiscal transparency. Accountability incorporates methods that help to ensure ethical management and protect against fraud. Data collected directly from American museums of diverse types and with a range of budgets will point to solutions the American museum community can use to improve its public accountability. By understanding museums' current accountability concerns, it is possible to make recommendations for a new practice of museum governance. This approach must begin with a discussion of business concepts and theories that relate to museum ethics, governance, and financial oversight.

2. Business definitions and theories

This section provides a theoretical frame within which to set the topic of museum accountability best practice. The definitions and theories discussed are applicable across the spectrum of business, including both nonprofit and for-profit organisations. Sections 2.1 and 2.2 examine accountability and corporate governance, the bedrocks of organisational management. Then the link between law and ethics will be discussed to elucidate the challenge of regulating ethics in a professional setting. The chapter concludes by defining corruption and financial fraud. Despite professional ethics and codes of conduct, corruption and fraud continue to afflict businesses. By defining business terms relevant to this study and by exploring business theories applicable to all business types, this chapter introduces the concept that museums, as nonprofit organisations, are equally responsible for managerial conduct as their for-profit counterparts.

2.1 Accountability

Accountability arises when one party acts as an agent for another entity, or as a steward of property. (Wolnizer 1987, 35) Under American law, accountability is designed to prevent the abuse of delegated power by managing behaviour to ensure appropriate actions are taken on behalf of another party (Parker 1996). The theoretical standard for organisational accountability that was set in the 1970s still applies in the twenty-first century: "The obligation of accountability is always present. The incumbents either can fulfill the obligations voluntarily, or be forced by a higher authority to fulfill the obligation. The confidence of society depends on the credibility of representations made by public officials and professionals alike." (The Accounting Review 1977, 46) Legal regulations, many of which include punitive measures, can encourage organisations to be accountable by deterring unacceptable behaviour that works against an individual's or the public's best interest as determined by law. As such, legal accountability can be a countervailing force to corruption.

Accountability regulations, however, are limited in scope, and cannot protect against all organisational behaviour. While unethical or immoral acts may occur in nonprofit organisations, only a breach in the legal code must occur to find "legal accountability" that is punishable in the court system. Regardless of an organisation's size, it must be in formal compliance with specific legal mandates (*de jure*) and act in accordance with implicit societal norms (*de facto*). (Shafritz 1992, 10) Laws requiring organisations to build governance accountability consciousness that transcends an individual's self-interest are "meta-regulation." The challenge of meta-regulation, like the Sarbanes-Oxley Act, which will be discussed in section 3.2, is to promote responsible nonprofit or corporate behaviour instead of merely becoming another regulatory process.

Colloquially, the word "accountability" has a negative connotation. It implies oversight and mistrust, requires people to accept responsibility for their actions, and implies consequences if expectations are not met (Strathern 2000, Kearns 1994, Paul 1991). An alternative and more positive approach to accountability entails a definition encouraging a commitment to achieving results.

Accountability is not objective, but relational. Organisational relationships involve a range of stakeholders that need to be satisfied. Employees in nonprofit organisations must balance the needs of the organisation with legal regulations and stakeholder interests. This balance of accountability is reached through a process of negotiation (Power 1997). Kearns (1996) distilled accountability into four entwined definitions: legal accountability that requires legal compliance, negotiated accountability that depends on external factors, discretionary accountability that relies on individual judgment, and anticipatory accountability that responds to the public interest. The institutionalist theory of accountability asserts that organisations will engage in accountability practices if other similar institutions are doing the same (Scott 1991). Accountability may also arise from organisations that wish to avoid public blame for wrongdoing (Hood 2002). There are steps to achieving organisational accountability. Primarily, accountability is a method of decision-making in order to manage expectations from both within and outside an organisation. At the outset, an organisation sets goals for accountable governance. These goals include performance standards based on legal regulations and public perception. Operationally, these standards will be implemented in the form of specified duties, routines, and measurements, like accurate record keeping and a process enabling staff to raise concerns (Munro and Mouritsen 1996). The successes of these internal controls must themselves be assessed.

Differing from "responsibility", the term "accountability" entails giving account for one's actions. To demonstrate compliance with internal and legal performance standards, organisations are compelled to report and explain their decisions and actions. “Accountability may thus be defined as the means through which individuals and organizations are held externally to account for their actions and as the means by which they take internal responsibility for continuously shaping and scrutinizing organizational mission, goals, and performance.” (Ebrahim 2003, 194) No amount of internal or external oversight will ensure full organisational accountability. It is necessary for regulators, an organisation’s board, managers, staff members, and the public to share a mutual vision of accountability.

The debate to determine best approaches to secure organisational accountability commenced with discussions about the public sector between Carl Friedrich (1935) and Herman Finer (1941). Friedrich favored internal controls like self-control and self-regulation, while Finer argued for external controls like political oversight. Recent interest in accountability may have resulted from a new “audit culture” that places more emphasis on the process of accountability than on its results (Strathern 2000). Others argue that organisations prefer self-regulation and checks-and-balances to government oversight (Przworski et al. 1999, Schedler et al. 1999, Rosen 1989). By so doing, organisations hope to minimise legally mandated regulations by promoting internal accountability.

While nonprofit accountability is not a new topic, as demonstrated by the Commission on Private Philanthropy and Public Needs (1975), little research was done on nonprofit professionalism and accountability until the late 1980s (Hall 1987). In 1989, Estes et al. explored the emerging crisis of legitimacy within nonprofits. They asserted that “legitimacy issues surrounding the nonprofit sector cannot be understood apart from considerations of the roles and problems of government and business sectors.” (Estes et al. 1989, 22) As late as the mid-1990s, literature about nonprofit accountability was limited (Kearns 1994). “Although there [were] many specialized textbooks on financial accountability in the nonprofit sector [at that time] … most general texts on nonprofit management [did] not contain in-depth discussions on accountability from conceptual, managerial, and policy-making standpoints.” (Kearns 1994, 186)

Since the mid-1980s, the topic of accountability has gained much press and academic attention (Power 1997). Different aspects and methods measuring nonprofit accountability have been studied: ethics (Lawry 1995), internal controls (Ospina et al. 2002, McDonald

1999), programme evaluation (Hoefer 2000), legal and normative ethical standards versus administrative and technical responsibilities (Rubin 1990), the source of control versus the level of control (Romzek and Dubnick 1987), and organisational assessment (Werther and Berman 2001). In reference to nonprofit organisations, Chisolm (1995) asserted that legal oversight does not correct accountability shortcomings. Chisholm fears such regulation will work against nonprofit values and creativity, lobbying instead for incremental adjustments to nonprofit law. Accountability and ethics are now common themes in the nonprofit sector and in professional nonprofit management programmes. It is now recognised that good governance depends on organisational accountability and on sound ethical principles.

2.2 Corporate governance

Scholars define corporate governance in a manner consistent with both nonprofit and for-profit ideals (Sheppey and McGill 2007, Biegelman and Bartow 2006). Corporate governance is characterised as the methods by which a board of directors and staff manage an effective, efficient, honest, and transparent organisation that conforms to legal regulations in an effort to maintain public trust in an institution. "In this way, governance both examines the [institution's] objectives and the way they are set, and ensures that measures are in place to make relationships operate in a way that conforms to expected behavior." (Sheppey and McGill 2007, 254) Corporate governance consists of both procedural and financial accountability, as well as ethical accountability. The ethical management of organisations has developed through centuries, and been based upon ideals ranging from religious beliefs to environmental goals. The development of both procedural and ethical accountability is still underway, and the link between the two is blurring.

2.3 The link between law and ethics

Law is the codification of societal ethics and commonly held principles and American law is established on behalf of the public against potential malfeasances. Philosophically, questions about the relation of law and ethics date to Plato (Frederick 1999). More recently, Kant asserted that law is a system of externally imposed behavioural constraints, and ethics serves as self-imposed limits (Kant 1996). Law is normative, defining what individuals or organisations should or should not do. Ethics denotes whether these actions are right or wrong, as dictated by society. In practice, law and ethics are closely entwined as each draws from and shapes the other. Courts have established precedents that affect ethics, and justices have made court decisions based on personal ethical viewpoints. The public can consider illegal acts moral, or legal acts immoral. Further, knowledge of the law does not ensure the law will be followed.

Ethical problems and societal expectations that do not relate to current laws will arise and change over time; the field of ethics addresses issues not yet governed by law. An employee's personal ethics will inform new situations encountered in professional life. Those personal ethics will shape and define an organisation's response to laws and societal concerns. In this study, the law and commonly held ethical standards are integrated principles to which museum employees are expected to adhere.

2.3.1 Professional ethics

Ethics in a professional setting is as much about day-to-day integrity as it is about large-scale concerns and challenges. Corporate ethics applies basic and common values like responsibility and integrity to practical workplace situations. Ethical decision-making occurs at all levels of an organisation, providing the framework for business activity, and leadership and professionalism are not limited to an organisation's upper echelon. While the moral tone in for-profit and nonprofit corporations is typically set at the top, the conduct of all employees and volunteers affect an organisation's values. These values can be influenced by internal pressures or by public opinion, so a strong ethical code can guide employees toward acceptable workplace conduct.

Professional ethics encompass the moral nuances faced within a particular profession, namely issues that common practice or regulations are unable to reconcile. A code of ethics protects and promotes a profession, as employees can better understand their responsibilities if codified. Professionalisation, however, can lead to a "dogmatic" view of ethics (Talley 1993, Hudson 1989). Flexner (1915) identified seven criteria that define a "profession". The sixth requirement states that a profession has an "establish[ed] criteria of admission, legitimate practice and proper conduct." (Segon 2010, 14) Nonprofit organisations have grown more professionalised with the help of ethical codes. Museum theorist Weil suggests that a code of ethics in the museum industry lends the profession credibility (Weil 1988). Professional credibility, however, requires that common practice and proper conduct will be followed for the benefit of the public good, as demonstrated by medical doctors' Hippocratic Oath.

Ethics can provide more than an abstract set of principles and policies. Solomon (1993) postulated that "How we look at what we do [in the workplace] has a lot to do with how we do [it]." (Solomon 1993, 24) If business is viewed solely as the pursuit of profit or solvency, workplace ethics will be limited to "legal and contractual, merely fiduciary obligations." (DeGeorge 1995, 133) Business ethics instead consist of a framework for conduct that familiarises employees with sound business practices. If a code of ethics is instilled in a professional community, it can give members of the industry confidence in facing a variety of unique practical scenarios.

2.3.2 Regulating professional ethics

Regulations dictated by law differ from the widespread voluntary codes of behaviour that set boundaries for acceptable professional conduct. Most codes are not written in absolute terms, but are guides for behaviour based on an ethical philosophy that can be interpreted and applied to specific circumstances. Ethics cannot be codified to apply to every challenging scenario, however, but occur on a unique case basis. Ethical codes attempt to ensure "ethical action … [which means] doing the right thing even when the right thing is technically unenforceable." (Kearns 1994, 189) Paine (1999) noted stark differences between law and ethics: "Law is rigorous; ethics is a matter of intuition. Law is determinate; ethics is vague. Law is social; ethics is personal. Infringements of law result in external sanctions; ethical lapses are sanctioned only by conscience." (Paine 1999, 195) Though ethics requires rigorous attention, discussion, and clarity of thought on topics that affect society greatly. In contrast, Kaplan and Walker (1999) avow that the law must necessarily assert ethical standards in business. While determining those standards is difficult, the government is compelled to require standards for proper behaviour in the workplace. Originally based on religious ideology, American business ethics has evolved to encompass social and global ethical concerns (Frederick 1999).

2.3.3 The development of business ethics and corporate accountability codes

The US Congress responded to incidents of corporate misconduct through the twentieth century by encouraging the adoption of ethical codes (Harvard Law Review 2003, Pitt and Groskaufmanis 1990). The failure of economic regulation in the booming US economy precipitated the 1929 stock market crash. In response, Congress enacted the 1933 Truth in Securities Act and the 1934 Securities Exchange Act. These laws ensured that investors are accurately informed about financial aspects of securities offered for public sale. The laws prohibit fraud in the sale of those securities on both the primary and secondary markets. At that time, US Supreme Court Justice Harlan Fiske Stone noted, “to stand against [immoral business practices] it is necessary that we do more than defend legal rights; it is needful that we look beyond the club of the policeman as a civilizing agency to the sanctions of professional standards which condemn the doing of what the law has not yet forbidden.” (Stone 1934, 13) Almost a quarter of a century later, after criminal antitrust investigations led to jail sentences and fines of millions of dollars against electrical-equipment manufacturers in the late 1950s, codes of conduct began appearing in American business.

As business ethics evolved, corporate accounting and reporting regulations were established. McGuire’s *Business and Society* (1963) signaled the beginning of the formal study of business’ impact on America. The foreign payments crisis unearthed by the Securities and Exchange Commission (SEC) in the mid-1970s led Congress to enact the Foreign Corrupt Practices Act (1977, revised 1988) that required companies to develop internal controls to ensure that corporate assets were used properly. In many instances, these internal controls included the development of a code of ethics. As early as the 1970s, scholars recognised that “the demand for [code of conduct] adoption by all public companies [was] likely to increase.” (Harris 1978, 312)

In 1987, the National Commission on Fraudulent Financial Reporting (COSO) recommended controls to further improve public companies’ audit standards and financial reports, as well as methods to encourage the enforcement of standards (National Commission 1987). The Commission’s recommendations are similar to tenets later codified by the 2002 Sarbanes-Oxley Act. COSO found that, among other controls, an independent audit committee, managerial reports on the effectiveness of internal controls, and quarterly reporting to publicly note organisational changes were warranted in the current economic climate. The Commission argued for increased SEC external control via sanctions and regulations for aberrant institutions. These sanctions included fines and the right to suspend individual board members from board service. The 1987 COSO report explains that “cost must be viewed in two ways. The cost of implementation [of internal controls] can be quantified. The other cost - the cost of failing to implement these recommendations – is impossible to quantify, yet it may be far larger and more important. This cost is the potential loss of confidence of investors and the public." (National Commission 1987, 29) The risk involved in poor governance and in mismanagement of internal controls is applicable to all business types, including nonprofit organisations.

The insider trading scandals of the 1980s persuaded Congress to enact the Insider Trading and Securities Fraud Enforcement Act of 1988, which "ma[de] the failure to implement an effective code of conduct a potential source of liability." (Pitt and Groskaufmanis 1990, 1591) The 1991 Federal Sentencing Guidelines for Organizations, however, are generally accepted to have accelerated the growth of corporate codes of ethics. These Guidelines determined that proof of an established code of conduct within an organisation is a mitigating factor for criminal liability. If an organisation is guilty of unlawful actions by employees, but has an effective programme in place to prevent and detect fraud, the company will receive a reduced penalty. A number of important corporate accountability codes developed in the 1990s and early 2000s.[1] The Sarbanes-Oxley Act (2002) is the most recent government regulation established in the aftermath of economic scandal that encourages organisations to adopt codes of ethics.

The 1991 Sentencing Guidelines provide few recommendations for compliance. SOX itself does not precisely specify content for ethical codes, with the intention that companies can tailor their codes to generate particular results. If Congress mandated a checklist of obligations to be included in codes of ethics, the ethical exercise would diminish. The codes would have more to do with satisfying regulations than engaging in ethical discourse and action. Frank (2004) argues that individuals "who are intrinsically motivated to adhere to ethical norms often prosper in competitive environments … [and] people can often promote their own narrow ends more effectively by abandoning the direct pursuit of self-interest." (Frank 2004, vii) Unfortunately, many codes of conduct are a "hollow response" for public relations purposes that do little to curb wrongdoing. (Harvard Law Review 2003, 2127)

The enforceability of ethical codes is in question. The maximum consequences that result from infractions of specialised codes like the American Association of Museum's *Code of Ethics* (2000) or the medical profession's Hippocratic Oath, for example, are professional disgrace or expulsion from a professional association, both of which are severe penalties which

1 These accountability codes included: *Global Sullivan Principles* (1994), the *Caux Principles* (1994), the *Keidanren Charter* for corporate responsibility (1996), the *Hampel Report* on corporate governance (1998), *AccountAbility 1000* (1999), and *Social Accountability 8000* (2001).

may lead to prosecution. Scholarly work regarding codes of conduct discusses, however, whether organisations have sufficient incentives to not merely establish a code, but to enforce it (Kesan 2000, Pitt and Groskaufmanis 1990). During the 2002 Congressional debates about the proposed Sarbanes-Oxley Act, Representative Jackson Lee commented:

> [T]he insistence on corporate ethics does not diminish the importance of the ethics of individuals and institutions ... It has become common practice for corporations to prepare an ethics code for the guidance of their officers and employees. However, one corporate CEO has argued that this is simply an empty gesture since, "those corporations with a sound moral base do not need it and for the others it is just a fig leaf." (Jackson-Lee 2002, Congressional record)

The scandals of the twentieth and twenty-first centuries resulted from both ineffective laws and disreputable behaviour. Individuals pursued their self-interests at the expense of others: "doing well" financially at the expense of "doing good". If individuals responsible for implementing codes of conduct are the same people who violate the law, then the 1991 Sentencing Guideline's "outstretched carrot of leniency" may do little to restrain misconduct. (Harvard Law Review 2003, 2128)

2.4 Corruption

It is difficult to define the word "corruption" (Werner 1983, Johnston 1982, Caiden and Caiden 1977). Similar to the word "power", "corruption" is a relational term that implies a violation of standards and expectations (Jos 1993). There are many methods, however, to define these standards. Chibnall and Saunders (1977) wrote that corruption depends on the social context in which it takes place, because "actions are 'situated' within sociocultural contexts". (Chibnall and Saunders 1977, 145) As such, an action may be corrupt in one society, but considered acceptable in another. Nye (1967) and Huntington (1968) asserted that corruption should only be defined by society's formal and legal regulations. While it is easy to define corruption by legal norms, the law is subject to manipulation. There are a myriad of methods to break the law, so it is not possible to protect against all forms of corruption through the legal system.

Corruption may also be defined by non-legal criteria. It is possible to breach the public trust without violating the law. Breaking a written or implied code may have implications as serious and as long lasting as committing illegal acts like bribery, embezzlement, or extortion. As such, corruption cannot be solely defined by legal standards. Public perception, defined by the public's expectations and attitudes, is equally important in defining corruption. A change in attitude towards corruption and ethical behaviour, demonstrated by the increased number of accountability codes and regulations, took place between the 1970s and 2000s.

2.4.1 Financial fraud

The professional world defines financial fraud as intentional or reckless conduct that results in misleading financial statements by either the misappropriation of assets or by fraudulent financial reporting (American Institute of CPAs 2002). In 1999, The Committee of Sponsoring Organizations of the Treadway Commission (COSO) published its second report entitled *Fraudulent Financial Reporting: 1987-1997: An Analysis of U.S. Public Companies*. The study found that most cases of financial fraud involved senior executives. When fraud had occurred, the company's CEO was involved 72% of the time, and the CFO involved 43% of the time. This is consistent with COSO's assessment that many board Audit Committees appeared to be weak. At the time, most Audit Committees met only once a year and in many cases did not exist as a standing committee. Companies with inexperienced board members or boards that were dominated by directors who owned significant equity in the company also suffered.

The Association of Certified Fraud Examiners (ACFE) studied the prevalence of fraud across the United States in its 1996 *Report to the Nation on Occupational Fraud and Abuse*. After reviewing more than 2,500 cases of fraud that occurred over a decade, ACFE noted that fraud exists across all disciplines and annually costs American organisations more than $400bn. The 1996 study noted that most fraud occurs in small organisations with fewer than 100 employees and that members of the management team were sixteen times more likely to be involved with fraud than non-executive staff members. In all, the average organisation loses 6% of its total annual revenue to fraud, costing employers an average of $9 each day per employee.

The 2002 Statement on Auditing Standards No. 99: *Consideration of Fraud in a Financial Statement Audit* (SAS 99), published by the Auditing Standards Board (ASB) and the American Institute of Certified Public Accountants (AICPA), outlines an auditor's responsibilities for identifying fraud when conducting a financial audit. SAS 99 notes that,

> Three conditions generally are present when fraud occurs. First, management or other employees have an *incentive* or are under *pressure*, which provides a reason to commit fraud. Second, circumstances exist – for example, the absence of controls, ineffective controls, or the ability of management to override controls – that provide an *opportunity* for a fraud to be perpetrated. Third, those involved are able to *rationalize* committing a fraudulent act. (American Institute of CPAs 2002, 280)

COSO concurs that fraudulent financial reporting and embezzlement occur when "certain environmental, institutional, or individual forces and opportunities" are in place. (National Commission 1987, 23)

There are a number of reasons professionals act in an unethical manner. Individuals can be affected by behaviour of supervisors or colleagues, by the industry's ethical climate, by society's moral tone, by an organisation's policies or lack of policies, or by personal financial need (Davis and Frederick 1984). At Enron Corporation, discussed in this study, fraud occurred when executives executed unusual and complex illegal transactions. The Independence Seaport Museum in Philadelphia, discussed in section 7.5, was the victim of embezzlement due to executive autonomy. Internal fraud was at the crux of the Whitney Museum of American Art embezzlement scheme.

2.5 Summary

American businesses face fundamental vital issues including accountability, ethical conduct, and fraud prevention. These basic tenets are also critical to the success of all American museums. Understanding the business concepts that apply to American museums makes it possible to explore corporate scandals in recent history that now affect museum governance.

3. Enron Corporation and the Sarbanes-Oxley Act

This section will explain the catalyst for tightened economic accountability regulations implemented by the American government in 2002. Throughout the 1990s and early 2000s, corporate America was embroiled in cases of financial fraud. This culminated with Enron Corporation's collapse in 2001. The federal government enacted the 2002 Sarbanes-Oxley Act to combat fraud, bolster governance accountability, and restore the public trust in the financial sector. This study will demonstrate how museum governance and policy has changed as a result of the Sarbanes-Oxley Act.

3.1 American corporate scandals at the turn of the millennium

Investor confidence is crucial to the success of the American economic system. This confidence was shaken by recent corporate accounting scandals in America. Xerox improperly boosted its revenues from long-term equipment leases by $1.5bn over five years from 1998-2002. Adelphia, America's fifth largest cable company, hid $3.1bn of off-the-books loans it gave its founders and other controlling shareholders. AOL inflated its sales by counting advertising sold on others' behalf as revenue. Both AOL and Homestore.com illegally recorded barter trades as revenue.[1] Telecommunications giant WorldCom perpetrated over $11bn of accounting fraud. The company admitted failing to report over $7bn in expenses over five business quarters, as their market capitalisation fell from $200bn to only $10bn before filing for Chapter 11 bankruptcy in July 2002. Among other faults, WorldCom recorded billions of dollars of operating expenses as capital expenses, and gave founder and CEO Bernie Ebbers $400m in off-the-books loans. Ebbers was convicted of fraud and conspiracy in 2005, and is now serving twenty-five years in prison. WorldCom's accounting fraud led to the largest bankruptcy in history at the time, and over 17,000 employees lost their jobs. In 2002, Tyco International CEO Dennis Kozlowski and CFO Mark Swartz were criminally indicted for corruption for taking over $170m in company loans that were not approved by shareholders or the company's compensation committee. They were sent to prison for twenty-five years.

1 Highly publicised scandals also occurred in the following organisations. Bristol-Myers Squibb forced wholesalers to accept excess inventory, inflating their 2001 revenues. ImClone CEO Sam Waksal used company assets as collateral for a personal $44m loan. Qwest Communications International and Global Crossing manipulated revenues on fiber-optic deals by engineering network capacity "swaps" with other carriers. In 2002, Global Crossing suffered the fourth largest bankruptcy in American history at the time. Peregrine Systems, Inc, an asset management software company, inflated their revenue statements by recording revenue earned by third-party resellers. Duke Energy, Dynergy, Reliant Energy, and CMS Energy boosted their trading volumes by exercising "round up" stock trades for fake natural gas and power transactions.

3.1.2 Enron Corporation: corporate collapse

The most severe American corporate accounting scandal that had occurred to date took place at Houston energy company Enron Corporation. Enron executives engaged in multiple acts of fraudulent behaviour including hiding its debts and losses by using off-the-books partnerships to boost profits, which later diluted shareholders' equity. Enron also manipulated the California and Texas energy markets, and bribed foreign governments for international contracts. Using illegal loans and partnerships with other companies, Enron was able to cover its multi-billion dollar debt, though if Enron's stock fell and its credit rating dropped below investment grade the company would have had to cover nearly $4bn in debt. To scam the public Enron presented erroneous accounting records to investors and to Arthur Anderson, its accounting firm.

Enron's Vice President of Corporate Development, Sherron Wakins, blew the whistle on her company's fraudulent accounting practices. She emailed Chairman Kenneth Lay in August 2001 to warn him of the internal accounting scandals. Her letter outlines corporate corruption, manipulation, and subterfuge:

> I am incredibly nervous that we will implode in a wave of accounting scandals … the business world will consider the past successes as nothing but an elaborate accounting hoax ... Is there a way our accounting guru's can unwind these deals now? … it's a bit like robbing the bank in one year and trying to pay it back two years later. Nice try, but investors were hurt, they bought at $70 and $80 a share looking for $120 a share and now they're at $38 or worse. We are under too much scrutiny and there are probably one or two disgruntled "redeployed" employees who know enough about the "funny" accounting to get us in trouble. (Wakins 2001, Personal communication)

On 20 August 2001, however, Chairman Ken Lay asserted to *Business Week* correspondent Stephanie Anderson Forest that Enron was on sure footing: "There are absolutely no problems… There are no accounting issues, no trading issues, no reserve issues, no previously unknown problem issues … There is no other shoe to fall." (McNamee 2004, What Did Ken Lay Know website) Weeks before the Securities and Exchange Commission began its investigations, Enron started to shred incriminating documents.

Enron's stock soon plunged below one dollar a share, its credit rating collapsed, and creditors had the right to call in loans and seize buildings, pipelines, and other assets the company had used as collateral. Enron had reported profits when they had instead lost $586m between 1997 and 2001. In all, Enron's bankruptcy filings indicated $13.1bn of debt for the parent company and an additional $18.1bn for its affiliates. These numbers do not include at least another $20bn of debt estimated to exist off the books.

Kenneth Lay was found guilty on four counts of bank fraud and six counts of fraud and conspiracy. He died of a heart attack six weeks before he was to be sentenced to prison. Jeffrey Skilling, President and Chief Operating Officer (COO) of Enron from 1997 until he was named CEO in 2001, was found guilty on eighteen counts of fraud and conspiracy and one count of insider trading. He was sentenced to twenty-four years in prison. Andrew Fastow, Enron's CFO and Skilling's protégé, had arranged the off-the-books partnerships and offshore companies that hid Enron's debt and inflated its revenue. Facing ninety-eight counts against him, Fastow pleaded guilty and agreed to serve ten years in prison in return for helping the government build criminal cases against his former bosses, Ken Lay and Jeff Skilling. Fastow was eventually sentenced to six years in prison.

Enron's financial disaster went beyond the collapse of one company and its subsidiaries. The fraud and corruption negatively affected millions of investors and consumers around the world. Those who owned Enron shares, either directly or through funds that included Enron stock, lost money. In 2000 and 2001, Western American states, particularly California, suffered energy brownouts. By manipulating the energy market, Enron not only helped to cause the outages, but also profited from them. Innocent Enron employees suffered tremendous harm as well. Twenty thousand employees lost their jobs and medical insurance. The company's collapse erased $2.1bn in company pension plans and retirement savings. The Enron scandal even undermined the corporate sector's credibility, and the stock market itself became volatile as the American public grew wary of corporate accounting practices.

3.2 The Sarbanes-Oxley Act: restoring investor confidence in the American market

Restoring investor confidence in the system of equity capitalism was crucial to the American economy's health. Under a Republican-led government, the continued deregulation of the economy and the privatisation of services depended on the integrity of the financial reporting system. Between 1997-2002, the General Accounting Office (GAO) reported that 10%

of all publicly traded companies restated their financial reports, meaning that they were required to alter their financial reports to improve their financial statements' accuracy. (Shippey and McGill 2007, 7) Investors would only continue to support corporate America if a fair and transparent system was in place. Paul Sarbanes, Democratic Senator from Maryland, and Michael Oxley, Republican Representative from Ohio, moved to make America's corporate sector more accountable to investors worldwide in 2002. They sponsored the Public Company Accounting Reform and Investor Protection Act of 2002, also known as the Sarbanes-Oxley Act, which was signed into law by American President George W. Bush on 30 July 2002. On that day, President Bush commented that the SOX legislation included "the most far-reaching reforms of American business practices since the time of Franklin Delano Roosevelt." (Butler and Ribstein 2006, 9)

By the end of June 2002, the American stock market had fallen to 1997 levels. As corporate scandals mounted and the American war in Iraq raged, the stock market decline put pressure on the White House and Congress to restore investor confidence. The Sarbanes-Oxley Act took only three months to get through Congress. Hoping the President would sign the bill into law before Congress's August recess, the Republican-held US House of Representatives passed the final version of the Sarbanes-Oxley Act on 25 July 2002 after only one day of debate, by 423 votes to three votes, with eight Representatives abstaining. The Democratic majority in the United States Senate, however, pushed for a stronger bill, and passed the final version of the Act by ninety-nine votes to zero votes.

The Act, which applies to companies required to file financial reports to the Securities and Exchange Commission under the 1934 Securities Exchange Act, contains provisions that affect governance, financial reporting, and auditing, as well as methods to protect against accounting fraud and corruption. The 1934 Act also required internal controls, but Sarbanes-Oxley is the first regulation that specifically holds companies and their managers accountable to the law. There are costly tenets companies must now adhere to, and steep penalties for violating SOX rules. Sheppey and McGill (2007) noted that "the apparent trend, then, is towards not so much more legislation, but legislation with more bite." (Sheppey and McGill 2007, 9)

3.2.1 Sarbanes-Oxley Act overview

The Sarbanes-Oxley Act has eleven "Titles" which are subdivided into "Sections", similar to chapters and subheadings. Sections that are pertinent to this study are outlined below.

3.2.2 Whistleblower protections

Section 806 of the Sarbanes-Oxley Act protects employees who blow the whistle in good faith on their employers. Individuals who make complaints about fraud or other misconduct are protected from reprisals from company executives. Section 1107 amends the federal criminal code to punish an individual who:

> with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both. (Sarbanes-Oxley Act 2002, Section 1107. Retaliation against informants)

Though the Sarbanes-Oxley Act was intended to eradicate fraud in America's corporate sector, this change in the Federal Sentencing Guidelines renders whistleblower protection policies mandatory for all business entities, *including* nonprofit organisations.

3.2.3 Document destruction ban

Documents, now broadly defined as all records including correspondence, electronic communication, and memoranda, are the source material for conducting financial audits. The reliability and accuracy of an organisation's documentation is vital to producing an accurate audit. For museums, records are the primary means of ensuring compliance with donor requirements and federal and state laws. Section 802 § 1519 of the Sarbanes-Oxley Act takes documentation accuracy very seriously, stating:

> Whoever knowingly alters, destroys, mutilates, [or] conceals … any record, document, or tangible object with the intent to impede, obstruct or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States … shall be fined under this title, imprisoned not more than 20 years, or both. (Sarbanes-Oxley Act 2002, Section 802 § 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy)

In addition, audit firms and accountants must retain all audit records and work papers for at least five years under threat of criminal prosecution. This document destruction ban forces organisations to establish stringent, organised, and controlled document retention procedures, because it is relatively simple for documents to be changed, destroyed, or moved, even by accident.

A document retention policy requires staff education and training as well as effective information management and security systems. Having documents organised and at the ready can provide important evidence of transparent internal controls. Similar to the whistleblower protections, SOX Section 1102 changes the 1991 Federal Sentencing Guidelines, rendering a document destruction ban mandatory for all organisations *including* nonprofit groups. To enable and ensure accurate document retention for review and audit, SOX requires companies to store data off-site in non-rewritable formats. The data must be indexed and easily retrievable. This provision of the Sarbanes-Oxley Act does not apply to nonprofit organisations, but it is a logical method by which to store the documents organisations are required to maintain. This method of keeping records, however, can be very costly, both monetarily and in terms of time.

3.2.4 Additional Sarbanes-Oxley Act best practice tenets

The whistleblower protection plan and document destruction ban are the only two sections of the Sarbanes-Oxley Act that nonprofit organisations are required to adhere to because of the changes to the Federal Sentencing Guidelines. Other SOX tenets, however, represent good business policies that numerous American museums have put in place. Some of these SOX requirements are listed below.

Title 2, Section 201 prevents registered accounting firms from providing non-audit services to an organisation if the firm also serves as the organisation's financial auditor. Such services include bookkeeping, appraisals, actuarial services, investment advising, or internal audit outsourcing. These non-audit services are allowable and do not need Audit Committee pre-approval if the aggregate amount of all non-audit functions totals less than 5% of all fees paid to the auditor if the services are brought to the attention of the Audit Committee. Title 2 also requires companies to rotate the lead auditor every five years to help ensure that auditors do not become complacent or too familiar with their duties. To prevent conflicts of interest and special treatment, Section 206 prevents companies from hiring senior executives who were employed by the company's audit firm within one year of an audit.

Section 301 requires that board Audit Committees consist of independent members who are responsible for appointing, compensating, and overseeing the company's audit firm. "Independent" indicates that members do not receive consulting fees or compensation, and are not affiliated with the company other than performing regular board services. Section 407 requires public companies to disclose if at least one member of the board Audit Committee is a financial expert. Section 407(c) defines the term “financial expert”:

> A person [who] has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions – (1) an understanding of generally accepted accounting principles and financial statements; (2) experience in – (A) the preparation or auditing of financial statements of generally comparable issuers; and (B) the application of such principles in connection with the accounting for estimates, accruals, and reserves; (3) experience with internal accounting controls; and (4) an understanding of audit committee functions. (Sarbanes-Oxley Act 2002, Section 407. Disclosure of audit committee financial expert)

While SOX does not require an audit committee to have a financial expert, both the audit committee and the company appear more credible in the public eye if that is the case.[2]

Much of the Sarbanes-Oxley legislation sets requirements for organisations’ top executives. To protect against conflicts of interest, Section 402 prevents companies from offering loans or lines of credit to company executives. Section 302 requires an organisation’s CEO and CFO to certify the accuracy of all reports submitted to the Securities and Exchange Commission. By certifying the reports, the executives are publicly assuring the reports do not contain misstatements or omissions that could result in materially inaccurate financial statements. Intentionally certifying reports known to be inaccurate can lead to personal criminal liability. Further, Section 1001 states “that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.” (Sarbanes-Oxley Act 2002, Section 1001. Sense of the Senate)

Title 4, Section 404 has generated the most critical response from the corporate sector. In their filings with the SEC, company executives must report on their efforts to establish and maintain a system of internal controls, and must assess and report upon the effectiveness of those internal controls. This process is very expensive to maintain. Section 404 is intended to assure investors that a company’s process for creating financial reports is monitored and

2 The Securities and Exchange Commission does require publicly traded firms to have a financial expert as a member of the audit committee.

controlled. In addition, as part of the annual audit, each audit firm must attest to the internal control report made by company executives.

Section 406 directs the SEC to require companies to disclose whether the company has adopted a code of ethics for its senior financial officers. Section 406(c) provides a definition of the term "code of ethics":

> such standards as are reasonably necessary to promote – (1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; (2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and (3) compliance with applicable governmental rules and regulations. (Sarbanes-Oxley Act 2002, Section 406. Code of ethics for senior financial officers)

Section 406 does not require a company to establish a code of ethics. SOX does, however, require organisations that do not have a code of ethics to disclose the reason why one is not in place.

A violation of the Sarbanes-Oxley Act is treated as a violation of the 1934 Securities Exchange Act. SOX, however, established new penalties by creating felonies with severe sentences, and increased the maximum sentences for already existing illegal acts. The maximum prison sentences for individuals who breach the Sarbanes-Oxley Act are now twenty years for knowingly altering or falsifying documents under review by federal investigators, ten years for destroying audit records, and either ten or twenty years for knowing or willful failure, respectively, to certify financial reports truthfully. Studies show that the threat of stringent prison sentences is a greater deterrence for white-collar criminals than civil fines (Walker 2000, Polinsky and Shavell 1993).

3.2.5 The Sarbanes-Oxley Act and public opinion

Since Sarbanes and Oxley proposed their bill, thousands of articles, critiques, books and white papers have been written debating SOX's merits (Leech 2004). While scholars appear to support Sarbanes-Oxley's underlying principles, most do not view the Act favorably. SOX requires nonprofit and for-profit groups to conduct themselves as accountable and transparent organisations that adhere to sound governance practices, acts these groups should engage in on behalf of their investors and patrons irrespective of legislation. Scholars and business leaders, however, find that improved governance standards do not warrant the bill's taxing requirements. Instead of being bogged down with perfect compliance with overbearing costly regulations, directors and executives should be focusing on strategic decisions and reasonable business risks, as legally covered by the business judgment rule. Even Michael Oxley, the bill's sponsor in the House of Representatives, would change the Act: "If I had another crack at it I would have provided a bit more flexibility for small and medium-sized companies." (Butler and Ribstein 2006, 96) There are many hidden costs associated with SOX compliance including staff training, increased audit fees, and IT tools to manage electronic records. SOX's importance may, in fact, be more symbolic than practical.

There is no guarantee that regulations or oversight will erase fraud. Jeffrey Garten, former Dean of Yale's School of Management, guards against the presumption that companies will not merely adhere to the letter of the law, but also the spirit of the law (Seglin 2002). COSO (1987) notes "that public expectations [should] not be raised unduly because even full implementation of the Commission's recommendations will not completely eradicate fraudulent financial reporting." (National Commission 1987, 8) The Sarbanes-Oxley Act is similar in that "nothing in [SOX Section] 404 is going to protect investors from people that are really evil." (Feeney 2006, Hearing testimony) Two years after SOX was ratified, a GTNews survey questioned whether the Sarbanes-Oxley Act alone is enough to restore investor confidence in listed companies. Over half of the respondents, including 61% of consultants, 61% of banks, and 59% of corporations, did not believe that Sarbanes-Oxley would fulfill its intended purpose. (Sheppey and McGill 2007, 13)

Investor confidence relies heavily on a company's reputation. The perception of an organisation's reputation is vitally important, and "[r]egulatory compliance is a demonstration of this desire to engender trust." (Butler and Ribstein 2006, 65) Sheppy and McGill (2007) and Butler and Ribstein (2006) highlight the inherent risk in non-compliance with Sarbanes-Oxley and other legislation. Risk assessment in this circumstance will indicate that a company's reputation is at stake. Both corporate and nonprofit groups appear more credible if able to demonstrate their financial soundness and honesty. Stakeholders and shareholders will be more likely to invest if an organisation is financially responsible, and less likely to invest if organisations appear financially, ethically, or organisationally flawed.

3.3 Summary

Corruption and fraud are not common in the corporate sector, but numerous high profile cases did occur in the closing decade of the twentieth century and countless Americans suffered economic hardships as a result. The Sarbanes-Oxley Act's specific business policies attempt to severely limit the potential for financial fraud and ethical misconduct, like that of Enron Corporation, at an organisation's management level. While the Act has received mixed reviews, and despite both the costs and benefits of implementing some of these policies, the new regulations are considered business "best practice".

Currently, nonprofit organisations are required by law to adhere to only two SOX tenets: whistleblower protections and a document destruction ban. However, the policies reviewed above that SOX now requires of America's corporate sector, like auditor requirements and management's assessment of internal controls, can translate and be applied to nonprofit organisations, and specifically to museum management. The online survey conducted for this study asked if these tenets had been or will be implemented by American museums.

4. The American nonprofit organisation

The following material will align the nonprofit and corporate sectors to demonstrate that Enron-like disasters can occur in and can negatively affect the nonprofit sector. This section will define nonprofit organisations in legal terms, and will explain the historical development of nonprofit law. This will help pinpoint why the nonprofit sector acts and responds to public scrutiny and legislation as it does in the early twenty-first century. The following sections will demonstrate the close ties that exist between nonprofit and corporate businesses, and will explain features unique to America's 1.5 million registered nonprofits. (Wing et al. 2010, 1) These features include nonprofit stakeholders, charitable contributions, and financial reporting that affect nonprofit governance and accountability. Then, specific cases of financial fraud and ethical misconduct within nonprofits will be discussed to exemplify recent events that have spurred public interest in nonprofit oversight. The result of nonprofit oversight, including recent regulations and legislation intended to ensure nonprofit accountability, will then be explained.

4.1 American nonprofit law

A nonprofit designation does not automatically qualify an organisation for federal corporate income tax exemptions granted by the Internal Revenue Service (IRS). Organisations deemed 501(c)(3) nonprofits are either public charities, including health and human services, arts, and educational organisations, or private foundations and are eligible for benefits including state sales tax, property tax, and income tax exemptions. The 38,800 registered arts, humanities, and cultural institutions represent roughly 11% of all public charities. (Wing et al. 2010, 4) Section 501(c)(3) of the United States Internal Revenue Code defines tax exempt organisations as "[c]orporations … organized and operated exclusively for … charitable … or educational purposes." (Internal Revenue Service 2010, Exempt Purposes website) Nonprofits must pay federal corporate income tax on Unrelated Business Income, defined as revenue of $1,000 or more generated from activities not substantially related to the organisation's mission. Commercial business activities run by nonprofit organisations are subject to taxation, particularly if these are not executed in accordance with the nonprofit's mission. All nonprofits are allowed, however, to devote an "insubstantial part" of its efforts to non-exempt activities. (Internal Revenue Service 2010, Unrelated Business Income website)

Nonprofits are forbidden from using assets to benefit nonprofit insiders (inurement), and from acting for the benefit of private interests instead of public interests. The IRS stipulates that "[n]o part of the net earnings of a section 501(c)(3) organization may inure to the benefit of any private shareholder or individual." (Internal Revenue Service 2010, Private Benefit/ Inurement website) 501(c)(3) organisations risk losing their tax-exempt status if proven to have provided inurement or excess benefit transactions. Stripping an organisation of its tax-exempt status was the IRS's only method of nonprofit oversight until 1996 when Internal Revenue Code Section 4958 was amended to allow "intermediate sanctions" on individuals who provide "excess benefits".

> An excess benefit transaction [takes place when] … an economic benefit is provided by an applicable tax-exempt organization, directly or indirectly, to or for the use of a disqualified person [defined as a person with influence over the organisation like a board member or an employee's family member], and the value of the economic benefit provided by the organization exceeds the value of the consideration received by the organization. (Internal Revenue Service, Intermediate Sanctions website)

Temporary sanctions and revoking tax exemption are the only methods of nonprofit enforcement afforded the IRS.

Since the early 1970s the American legal system has been even more lenient in enforcing rules for nonprofits than they have been in setting them (Brody 1998, Hansmann 1981). While the IRS is the federal body that can grant or repeal an organisation's tax exempt status, the state attorney general is responsible for protecting the public interest by enforcing nonprofit law. Only a state attorney general can bring legal action against a museum. Traditionally, very few lawyers have been assigned to nonprofit work in attorneys general's offices. "In 1977, only eight states assigned attorneys full time to the enforcement of [nonprofits] ... Eleven states had no attorneys assigned, while most had one or two attorneys assigned part time. Given the thousands of nonprofit corporations, the lack of resources devoted to monitoring means charitable organizations are, for all practical purposes, self-regulated." (Fishman 1985, 669) Since nonprofit laws are federally unchecked, nonprofit boards of directors are the primary governing bodies overseeing proper nonprofit administration, yet the boards typically operate free from supervision (Lee 2003, Budig 1992).

While American nonprofit corporation law varies from state to state, if damages sustained from breaking the law do not include monetary damages, no suit can be brought. It is possible for board members to sue fellow board members or former board members for breaching fiduciary duties. Members of the public, however, are rarely allowed to bring legal action against nonprofit institutions. Statutes in California (1980) and New York (1970) permit limited persons to claim rights against a nonprofit. Boyd (1991) argues that precluding the public from filing suit prevents "undue litigation and harassment" of nonprofit organisations. (Boyd 1991, 171) While this could be the case, Brody insists "attorneys general rarely pursue their rights with the same zeal that private parties exhibit." (Brody 1998, 1431) There is little empirical evidence indicating that more attorney general oversight would expose or correct nonprofit misconduct.

In a 1928 ruling, New York Court of Appeals Judge Benjamin Cardozo set the standard definition of fiduciary duty: "Many forms of conduct permissible in a workaday world… are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior." (*Meinhard v. Salmon* 1928) Nonprofit boards are legally subject to two fiduciary duties: the duty of care and the duty of loyalty.

Duty of care requires individual directors to act and make decisions in a reasonable and informed manner. The duty of care litmus test determines whether a director has acted in good faith as an ordinary prudent person would under similar circumstances. Duty of loyalty requires board members to act in an organisation's best interest, avoiding any personal conflicts of interest. While nonprofit organisations can purchase Directors and Officers Liability insurance (D&O) or can indemnify their board members and management team against legal action, a breach in these two fiduciary duties could result in civil liability. D&O insurance policies typically cover damages that result from wrongful board decisions or actions that relate to asset management or employee management. The insurance policy may be voided, however, if directors are compensated for their board service. Despite D&O insurance, board members can be judged personally liable for breaching a charitable trust, for excess benefit transactions, for intellectual property infringement, and for discrimination claims by beneficiaries of the nonprofit. All directors are also subject to basic employment claims like wrongful termination, discrimination, or sexual harassment.

4.1.2 The development of American nonprofit law

Three main efforts to reform nonprofit corporation law in America have taken place since 1952. The Committee on Corporate Laws of the Section of Corporation, Banking and Business Law of the American Bar Association drafted and approved the Model Nonprofit Corporation Act (revised 1957, 1964 and 1987), which was adopted as standard nonprofit law in many states. It was "consciously drafted to follow as closely as possible the provisions of the Model Business Corporation Act…[deviating only as] was clearly necessary to accommodate the difference in subject matter." (Hansmann 1981, 528) The Model Nonprofit Corporation Act does not, however, consider issues specific to board conflict of interest.

The 1969 (effective 1970) New York Not-For-Profit Corporation Act brought a shift in nonprofit law by classifying four different types of nonprofits (of which cultural institutions fall under *Type B*), and hence four different types of regulation. In 1978 (effective 1980), the California Nonprofit Corporation law adopted a more comprehensive regulation while also classifying nonprofit organisations by type. In July 1987, the American Bar Association revised its 1952 Model Nonprofit Corporation Act to mirror California's classification system and to codify board of directors' duty of loyalty. At the time, scholars did not think the changes in nonprofit law went far enough:

> Unfortunately, the development of the law applicable to not for profit corporations does not reflect the level of sophistication and importance achieved by these institutions in today's society … All states have failed to legislate clear and adequate general standards for not for profit directors' conduct. (Boyd 1987, 725)

American nonprofit law through the late 1980s was unsophisticated as compared to corporate law at the time. Statutes did not address nonprofit policy, structure, or management despite the growth of many complex nonprofit organisations.

In 1973, the US Congress established the Commission on Private Philanthropy and Public Needs (the Filer Commission), which discovered that nonprofit accounting methods "were not codified, were outdated, and could result in abuses of financial disclosure". (Weinstein 1978, 1005) In response, the AICPA studied how best to standardise and codify nonprofit accounting (American Institute of CPAs 1977). They published accounting guides for hospitals, colleges and universities, and welfare groups. Weinstein's 1978 article "Forging

Nonprofit Accounting Principles" noted, "[s]ince [the nonprofit sector] has no investors, there are few laws requiring disclosure…Disclosure of the finances of these organizations is obscure." (Weinstein 1978, 1005) As early as 1978 Weinstein called for accurate and transparent accounting practices to "help insure [nonprofit] survival." (Weinstein 1978, 1016) He believed that accurate financial disclosures and good governance could boost public confidence in the nonprofit sector. Until that time, nonprofit organisations were not perceived in need of fiscal management or oversight. They rarely disclosed financial statements to the public, "and sometimes not even to their boards of trustees." (Weinstein 1978, 1006)

Nonprofit accounting instead developed in tandem with public sector accounting (Lee 2004). As the government grew to rely upon nonprofit agencies to deliver charitable services, nonprofit visibility increased in the public eye (Kearns 1994). The 1977 Committee on Accounting in the Public Sector report noted, "[i]n a short period of time, emphasis shifted to presenting fairly the financial position and results of operations … away from merely demonstrating compliance with budget, contract, and legal provisions." (The Accounting Review 1977, 51) At the time, segments of the American public were disenchanted with the federal government after the Vietnam War and Watergate scandal. Improved nonprofit management was "part of the larger movement to improve government performance." (Boonyarak and Ott 2001, 443)

4.2 Similarities between nonprofit and corporate entities

In the 1970s, economists Alchian and Demsetz (1972) characterised nonprofit organisations as inefficient firms that waste resources since they lack profitable returns for employees. Other economists solely valued nonprofits for their niche role adding to society where both private and government programmes had failed (Wolf 1988, Hansmann 1980, Weisbrod 1975). The rapid growth of the nonprofit sector since the 1970s, however, renders both of these viewpoints obsolete. In 1975, total revenues of nonprofit organisations totaled less than 6% of the US Gross National Product. In 1990, that revenue rose to over 10% (Herman 1995). From 1990-1995, the nonprofit sector boasted a 20% growth rate, growing three times as fast as the for-profit sector at that time (Salamon et al. 1999).

Former conceptualisations of the nonprofit sector are ill-suited because the growth, size, and influence of nonprofits have led to increased visibility, oversight, and scrutiny by stakeholders. The great successes generated by nonprofits have edged them from the anonymity of an economically insignificant sector towards greater accountability as they operate within a business environment. Numerous similarities now exist between the nonprofit and for-profit sector.

One complexity that consistently challenges nonprofits is competition for revenue. Nonprofit organisations are often in competition with one another (Light 2000, Weisbrod 1998, Brody 1996). In the museum sector, museums compete for volunteers, members, board members, gifts, bequests, sales in the museum shop, and donations and grants (Brody 1996). According to Tuckman (1998), "competition is not necessarily gentler or less intense because it occurs among nonprofits." (Tuckman 1998, 184)

The legal criteria that outline corporate and nonprofit directors' responsibilities are identical. The "reasonable person" standard, which was already the norm for corporate directors, was applied to nonprofit directors in the 1980s. The American Bar Association molded the Revised Model Nonprofit Corporation Act (1987) (RMNCA) after its business corporation predecessor to help modernise state laws concerning nonprofit organisations. The RMNCA requires nonprofit directors to undertake their duties 1) in good faith; 2) with the prudence of an ordinary person in similar circumstances; and 3) in the best interest of the organisation. Findings of negligence in these areas by both corporate and nonprofit board members can result in personal liability.

Similarly, the "business judgment rule" is applicable to both nonprofit corporations and for-profit entities. The rule is occasionally called the "best judgment rule" when referring to nonprofits. The business judgment rule precludes the courts from second-guessing directors' decisions if the board has followed the RMNCA requirements to make rational and informed decisions in good faith (Block 1998). Organisations benefit from the substantial leeway that courts allow directors in their management decisions thanks to this rule. Hence, companies are better able to recruit experienced, knowledgeable, and competent board members. The rule, however, encourages risk-taking that some scholars vehemently believe should not be applicable to nonprofit organisations (Lee 2003). If the rule is breached, boards can be punished for "gross negligence" (Kurtz 1988). The American legal system defines gross negligence as recklessness or willful disregard for the property of another. Similar to publicly traded and private firms, nonprofits can indemnify directors to minimise the possibility that individual directors will pay out of pocket fines.

Despite different mission statements, nonprofit organisations and corporate entities have similar accounting, audit, and financial statement requirements. An independent nongovernmental entity, the Financial Accounting Standards Board (FASB), sets the US Generally Accepted Accounting Practices (GAAP) to standardise nonprofit and for-profit financial reporting. Since the 1990s, the FASB has attempted to make nonprofit accounting practices more consistent and analogous to for-profit corporations (Christensen and Mohr 1999). For example, *Statement of Financial Standards No. 24* requires nonprofits to report the fair market value of investment securities instead of their historical value so that organisations' equity and assets will change according to their portfolios' volatility.

Not all scholars agree that the FASB's one-size-fits-all requirements, applicable to both for-profit and nonprofit organisations, represent the best practice for nonprofits (Anthony 1995). *Statement of Financial Standards No. 116* encourages, but does not require, nonprofit boards to capitalise the items in their care that are "held for public exhibition, education, or research in furtherance of public service." (FASB 1993, paragraph 11) FASB *No. 117* (1993), *Financial Statements of Not-for-Profit Organizations*, requires nonprofit financial statements to include a balance sheet, a cash flow statement, and an activity statement. Donations must be highlighted as unrestricted, temporarily restricted, or permanently restricted gifts. Additionally, capital gains and losses are to be reported as unrestricted funds. In the 1990s, FASB Standards *No. 116* and *117* were the most significant accounting principles for American nonprofits. Their influence trickled down to departments beyond the finance office, affecting nonprofit development, IT, and legal departments. Managers who run complex nonprofit organisations are now also required to possess substantial lobbying and financial acumen.

Expanded nonprofit management skills and specialisation occurred when nonprofits rapidly professionalised. Degree-granting programmes and professional development colloquia have aided the emergence of a highly qualified and specialised nonprofit workforce. The number of graduate management courses in America with a nonprofit concentration grew from seventeen in 1990 to seventy-six in 1997 (Wish and Mirabella 1997). Mirabella's follow-up studies found over 292 undergraduate and 168 graduate schools that offered nonprofit management courses by 2009 (Mirabella, Nonprofit Education website).

As nonprofits professionalise and grow, nonprofit executive salaries are aligning with the for-profit sector. *The Chronicle of Philanthropy*'s 2006 annual survey of compensation and benefits indicated that "the median compensation for chief executives [of the largest nonprofit organisations] was $327,575", an increase of 4.8% over the previous year, compared to a 3.4% inflation rate. (Barton et al. 2006) *Chronicle of Philanthropy*'s survey reports "compensation for charity leaders has been growing steadily over the past five years, in part because the incomes of charities have been rising." (Barton et al. 2006) Glenn D. Lowry, director of the Museum of Modern Art (New York), earned $875,301 in 2006. Barry Munitz, former president of the J. Paul Getty Trust in Los Angeles, was the fifth highest paid executive across all nonprofit sectors in 2006 ($962,526) (Barton et al. 2006). Notably, Munitz resigned from the Getty over allegations of monetary impropriety, including a $72,000 Porsche gifted from the organisation. Despite the incident at the Getty, some nonprofit executives' substantial salaries are warranted because their organisations' size and complexity are equal to their corporate counterparts.

4.3 Nonprofit transitions towards corporate governance

Nonprofit success is now measured in part by output quality and efficiency (Weisbrod 1997, Ben-Ner 1986, Hansmann 1980). Beginning in the 1980s, nonprofits have been encouraged to adopt specific corporate governance practices (Fine 1990, Steckel et al. 1987, Unterman and Davis 1984). Of more immediate significance, Light (2000) notes that nonprofit groups are under pressure from stakeholders, including funding bodies, community members, and donors, to act in a more business-like fashion. A third influence has encouraged nonprofits to implement governance reforms: governance regulations. An overwhelming 97% of surveyed nonprofits believe that recent corporate governance regulations, including the Sarbanes-Oxley Act, have impacted their organisations (Zietlow et al. 2007). In response, "many of these organisations are already implementing such reforms in advance of possible federal or state extensions of such reforms to the nonprofit sector." (Zeitlow et al. 2007, 504)

Instituting successful governance reforms is challenging for nonprofits. Alexander and Weiner (1998) outline how hypothetically shifting a nonprofit organisation towards corporate governance is a complex venture. At the core of their argument is the observation that the structure of nonprofit governance reflects nonprofit values, just as corporate governance policies demonstrate corporate values. As such, altering one or two nonprofit governance practices is not going to significantly affect an organisation. "In light of this holistic view of governance, adopting the corporate governance model is not as simple as adding a new board member or making minor adjustments to the organization's bylaws." (Alexander and Weiner 1998, 225) Alexander and Weiner quote three relevant studies: Greenwood and Hinings (1988) discuss the significant institutional and financial support that strategic change requires; Starkweather (1988) notes that boards of directors are traditionally conservative; and Hannan and Freeman (1984) explain institutional inertia for long-lasting institutional conventions. These studies point to the difficulty nonprofits face in transitioning to a corporate structure. It would then appear that nonprofits with significant resources and strong leadership would be better able to shift towards corporate practices.

4.4 American nonprofit financial reporting

4.4.1 Federal reporting

The Department of the Treasury's IRS is the only federal body that requires American nonprofits to file a financial report. IRS Form 990, the Return of Organization Exempt From Income Tax, is an annual return intended to reflect an organisation's financial health. But the IRS does not have the personnel or budget to monitor the nonprofit sector further (Brothwell 2002). Despite being the sole source of federal nonprofit oversight, the 990 reports have been riddled with problems. Nonprofit organisations have provided unverified, incomplete, and inaccurate data on their 990 returns (Froelich et al. 2000). While the IRS "sporadically examined the forms, [it] focused more on making the forms publicly available." (Keating 2003, 10) Over time, the Form 990 has not fulfilled its nonprofit reporting goals, and accounting scandals have occurred in diverse nonprofit institutions. As a result, in June 2004 the Senate Finance Committee, led by Republican Senator Charles Grassley, held Congressional Hearings on Charity Oversight and Reform.

In a 2004 *New York Times* interview, Grassley asserted: "In Congress, we legislate so much and delegate, but we need to do more oversight to make sure checks and balances work and supervise the tax credits we're giving … We give tax deductions for charitable giving, so there's a public policy interest in how the money gets used." (Strom 2004, 23) This sentiment was echoed in IRS Commissioner Mark Everson's 2004 Congressional testimony. He explained the role nonprofit oversight played in the IRS's strategic plan:

> Non-compliance involving tax exempt entities is especially disturbing because it involves organizations that are supposed to be carrying out some special or beneficial public purpose. While the vast majority of tax-exempt entities follow the law, there are increasing indications of failures in governance and outright abuse within the sector. We have seen lavish compensation packages for executives [and] inappropriate related-party transactions … If we don't act to guarantee the integrity of our charities, there is a risk Americans will lose faith in and broadly reduce their support of charitable organizations, which are vital to our social fabric. (Everson 2004, Charity Oversight hearing)

The IRS did not publish any recommendations on nonprofit governance until its 2007 *Good Governance Practices for 501(c)(3) Organizations*. This guide makes recommendations about board composition, codes of ethics, whistleblower protections, conflicts of interest, promoting transparency, financial audits, document retention, and executive compensation. While not required by law, these policies, according to the IRS, help determine which nonprofits are granted exempt status. These questions are mirrored in the newly redesigned Form 990, published in December 2007. By emphasising governance accountability and fiscal transparency, the IRS has recognised the importance of reliable 990 reports. With accurate 990s, policy makers and nonprofit leaders can gauge and develop more effective governance methods. The new Form 990 is a type of litmus test for sound nonprofit governance. Many questions on the redesigned 990 align with questions asked in the online survey conducted for this study (Figure 1).

Figure 1. IRS Form 990 questions for nonprofit organisations

• Part 4, Question 28c: During the tax year, did any person who is a current or former director, trustee, or key employee: Serve as an officer, director, trustee, key employee, partner, or member of an entity … doing business with the organization?

• Part 6, Question 12a: Does the organization have a written conflict of interest policy?

• Part 6, Question 12b: Are officers, directors or trustees, and key employees required to disclose annually interests that could give rise to conflicts?

• Part 6, Question 12c: Does the organization regularly and consistently monitor and enforce compliance with the [conflict of interest] policy?

• Part 6, Question 13: Does the organization have a written whistleblower policy?

• Part 6, Question 14: Does the organization have a written document retention and destruction policy?

• Part 6, Question 15: Did the process for determining compensation … include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision[?]

• Part 6, Question 19: Describe … whether (and if so, how), the organization makes its governing documents, conflict of interest policy, and financial statements available to the public.

• Part 11, Question 2b: Were the organization's financial statements audited by an independent accountant?

• Part 11, Question 2c: [D]oes the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant?

The Form 990 also includes direct questions that reflect concerns raised by some of the recent nonprofit and museum controversies in America. Schedule J, Question 1 asks if nonprofit officers, directors, key or highly paid employees had flown by charter plane or with a first-class ticket. It asks if these individuals had taken companions on trips, received a housing allowance/residence for personal use, or were reimbursed for club dues or personal services like a chef, driver, or housecleaning staff. The new Form 990 also asks for a detailed compensation breakdown for trustees, key employees, and others: base salary, bonus and incentive pay, other compensation, deferred compensation, and nontaxable benefits. The form goes into still greater depth, requesting details regarding severance pay, nontaxable expense reimbursements, supplemental nonqualified retirement plans, and equity-based compensation. Nonprofits have the opportunity to explain the methods and reasoning behind different forms and amounts of compensation. There are legitimate reasons for providing nonprofit employees with housing or discretionary spending accounts. To prevent or avoid negative publicity or perception, American nonprofits can now explain their decision making directly on the new Form 990.

4.4.2 Other financial reporting

Individual state agencies also issue financial reporting requirements for nonprofits. Each state, however, requires nonprofit organisations to submit different materials, ranging from annual financial audits to the IRS Form 990. While the law requires nonprofits to publish an annual report, the content of that report is not regulated.

Critics argue whether unregulated financial reporting for nonprofit organisations benefits the public. Revsine (1991) does not believe so, holding that nonprofit managers can misrepresent an organisation's financial statements more easily than if regulations were in place. This presupposes that nonprofit managers have reason to alter financial statements, a pessimistic view of the industry. More recently, the variety of nonprofit accounting techniques has been attributed to the inconsistent oversight that allows nonprofits to submit different types of financial information to states each year (Keating 2003). But nonprofit scholars do not place all blame on the federal and state oversight systems:

> Potential users of nonprofit financial reports are often unsure what information is available and how to get it. Moreover, many users do not know how to read or interpret financial statements. The end result is predictable: Few users can conduct performance assessments of nonprofits and make informed decisions about future support or participation … the nonprofit community's future economic success depends not only on the quality of its social and economic activities, but also on improving its internal accounting decisions and external financial-reporting systems. (Keating 2003, 4)

Public misunderstanding about nonprofit finances due to confusing financial reporting can damage the nonprofit sector. It is equally important, however, for nonprofits to recognise their financial responsibility to their stakeholders.

4.5 Nonprofit stakeholders and the public trust

Stakeholders, as defined by Freeman (1984), are individuals or groups who can affect or be affected by an organisation's business dealings. Stakeholders are an organisation's "relevant public", meaning the groups or individuals that require attention from the organisation (Mitchell 1997, Gray et al. 1995, Freeman 1984). The stakeholder approach to business ethics contrasts with virtue ethics originated by Plato and Aristotle, in which businesses are managed fairly and honestly as an end to itself (Solomon 1993). In the nonprofit sector, stakeholders include staff members, clients who utilise an organisation's services, individual, corporate and institutional donors who give resources to support the organisation's mission, and the community at large who may benefit indirectly from an organisation's programming (Keating and Frumkin 2003). As taxpayers, the community as a whole is the largest nonprofit stakeholder group. By soliciting tax-deductible gifts and through the receipt of state and federal tax exemptions, nonprofits are obligated to answer to the general public for funds that have been taken out of the public coffers, increasing the public's tax burden.

Shareholders are the stakeholders in public companies. Corporate stakeholders are protected by regulations for fiduciary duty, including the Sarbanes-Oxley Act, and by their voting power for corporate directors. Nonprofit stakeholders have much less protection than corporate shareholders. Many nonprofit boards do not have term limits for board members, there are fewer regulations for nonprofit financial disclosure, and the state attorney general has sole discretion in filing lawsuits against nonprofits. These conditions do not indicate that nonprofit fiduciary duties are any less important than corporate fiduciary duties and accountability. Rather, corporate shareholders are similar to nonprofit stakeholders, and to nonprofit donors in particular. When an organisation "raises funds from the public, … that company assumes an obligation of public trust and a commensurate level of accountability to the public … [the company] must accept and fulfill certain obligations necessary to protect the public interest." (National Commission on Fraudulent Financial Reporting 1987, 5) Both legal and perceived accountability are equally as important in the nonprofit sector as in the corporate world.

Salamon (2005) asserts that the nonprofit sector's "desire to retain the public trust" rather than an abstract commitment to regulation is "essential to operate successfully." (Salamon 2005, 8) Different types of nonprofit stakeholders have varied reasons for being aligned with nonprofit organisations. As such, nonprofit governors must demonstrate accountability and good stewardship to groups with disparate agendas. It is difficult, however, for nonprofits to give equal attention to each stakeholder group. "[I]t is the firm's managers who determine which stakeholders are salient and will therefore receive management's attention." (Mitchell 1997, 971) Arrow contends that it is impossible to make collective decisions that will satisfy all parties (Arrow 1970). Instead, researchers report evidence of satisfying the interests of more important relevant public groups, like government regulators or those with a financial interest in the organisation, at the expense of more marginal groups (Neu et al. 1988). As nonprofits increasingly make decisions based around courting donors, nonprofit accountability strategies are focused towards them as stakeholders (Eikenberry and Kluver 2004, Lee 2004).

The nonprofit sector's recent financial and moral scandals including those with the United Way, American Red Cross, Roman Catholic Church, and Smithsonian Institution, and the well-publicised corporate scandals with Enron, Tyco, and WorldCom have heightened the public's calls for accountability. Five years before the Sarbanes-Oxley Act was ratified, a 1997 Michigan survey found that 75% of people agree with the statement "Most charitable organizations are honest and ethical in their use of funds." (Wilson and Hegarty 1998) Public confidence in nonprofits, however, dropped in the wake of the September 11, 2001 terrorist attacks in America. Some nonprofit organisations at that time spent the money donated to help terror victims on other efforts. By 2004, public confidence in nonprofits had not recovered (Strom 2004b).

Organisations and individuals are attempting to monitor the nonprofit sector on behalf of the public good. The largest nonprofit watchdog is GuideStar that hosts an online database of over 1.8 million organisations' IRS Form 990s. Various watchdog organisations like the National Charities Information Bureau and the Philanthropic Advisory Service of the Council of Better Business Bureaus provide nongovernmental oversight. Rating service groups like the Better Business Bureau Wise Giving Alliance, the American Institute on Philanthropy, and Charity Navigator make financial evaluations of nonprofit organisations to help donors make informed giving decisions. Over 300 museums have registered with Charity Navigator. Individuals can utilise these rating groups to verify organisations, analyse executive compensation packages, and research the percentage of funding spent for programming versus administration.

In 1994, Kearns predicted that nonprofit accountability and professional standards would take hold if nonprofits were required to "respon[d] simultaneously to two standards of accountability – one that is defined by emerging societal expectations, and another defined by professional norms, procedures, and generally accepted standards of professional ethics." (Kearns 1994, 189) Academic circles have begun to focus on the public trust in nonprofit organisations as well. The theme for the 31st Annual Conference of the Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA) in 2002 was "Accountability and the Public Trust".

4.6 Financial donations to American nonprofit organisations

Research indicates that nonprofit donors give to causes that reflect their personal interests and histories, like religious groups, cultural organisations, hospitals, and school alma maters (Odendahl 1990). Over one third of all charitable gifts are donated to religion-related groups and 13.2% of gifts go to educational organisations, while only 4.1% of all charitable donations in America are given to arts, humanities, and cultural institutions. (Wing et al. 2010, 6) Many Americans make tax deductible gifts to 501(c)(3) organisations preferring to control the expenditure of their tax dollars rather than allowing the US government to allocate taxable funds. Americans can claim a federal income tax return deduction for all charitable contributions. All deductible donations are limited to the cash or fair market value of property that remains above the value of goods and services the donor receives for the gift from the organisation. Because of personal connections with a nonprofit, however, people do not traditionally review nonprofit financial statements before donating personal funds to an organisation (Gordon and Khumawala 1999).

Through the first half of the twentieth century in America, museum managers relied upon individual donors and endowment income to fund museums. Since the 1960s, the US government, corporations, and institutional donors have made significant donations to museums across the country. These groups typically fund specific aspects of a museum, like exhibitions, acquisitions, or educational programming. It is more difficult for nonprofits to fundraise for core operating costs like salaries or overheads. Despite a growing number of donors, American museums continue to struggle financially, facing "perpetual deficits". (Temin 1991, 179)

4.7 American nonprofit scandal

The American nonprofit sector has suffered from ethical misconduct and financial scandals. Accounting scandals appeared in both nationally recognised and local American nonprofit organisations in the 1990s and early 2000s including the American Red Cross, Adelphi University, and the Nature Conservancy. The United Way, one of America's largest and most widely recognised nonprofits, is a network of local organisations that serve as clearing houses for charity donations. It has faced repeated scandals, the most egregious of which occurred in 1992 when William Aramony, President of the United Way of America for twenty-two years, was convicted of fraud, conspiracy, tax evasion, and money laundering and sentenced to seven years in federal prison for stealing over $600,000 from the organisation. As a result, the United Way of America was forced to freeze salaries and reduce its staff by 260 people.

Just as corporate scandals shook the public's faith in corporate America, nonprofit management and accounting scandals across different fields hurt the public's faith in the nonprofit sector (Arenson 1995, Gaul and Borowski 1993). In 2003, Keating and Frumkin stated that "Over the past decade, concerns ha[d] been raised about the accountability of nonprofit organizations, particularly the adequacy of current reporting and oversight mechanisms." (Keating and Frumkin 2003, 3) Yet "the majority of nonprofit organizations operate in a business-like manner and are excellent stewards of their contributions and trust." (Salamon 2005, 2) Continued legal and ethical breaches within nonprofits, including museums, however, have put the industry at risk of losing the public trust. State legislatures have been quick to try to resolve this problem.

4.7.1 Recent nonprofit accountability laws

As scandals have occured in nonprofits across America, state legislatures have imposed stricter oversight regulations. New and proposed legislation found in each of the fifty states feature tactics and goals similar to SOX: enhanced board responsibilities, limited executive compensation, and increased audit and accounting oversight. New York state was the first to propose Sarbanes-Oxley-type legislation for nonprofits. The Nonprofit Accountability Bill was put forward by Governor Eliot Spitzer in 2003 in the New York state legislature. As would later occur in California, New York's nonprofits lobbied against the proposed SOX-like guidelines, fearing the law would be too onerous and costly for nonprofits already short of funds. It could be difficult, for example, for nonprofits to recruit qualified board members to direct independent Audit Committees. Qualified individuals would be unlikely to volunteer for board seats given the severe penalties for misconduct that legislation like the Sarbanes-Oxley Act might bestow.

Spitzer proposed that organisations with annual revenues exceeding $500,000 would be required to conduct an annual independent audit. The first version of the California Nonprofit Integrity Act (2004) proposed lowering that threshold to $250,000. New York's nonprofit community argued that too many small organisations would be overwhelmed by such a demand. Chicago nonprofit lawyer Michael W. Pregrine with McDermott, Will & Emery, LLP, noted, "When [Spitzer's] efforts didn't go anywhere, I think some charities decided it was just a fad, but the confluence of high-profile, notorious developments among charities is giving these attorneys general and congressmen the ammunition they need to push these measures through." (Strom 2004) Though New York's nonprofit law remains unchanged and stalled, a number of nonprofit accountability bills have been successfully enacted across America, including in New Hampshire, Maine, Kansas, Connecticut, Massachusetts, and California.

California imposed the most significant changes to its nonprofit regulations as compared to other states. California SB 1262, the Nonprofit Integrity Act, was signed into law on 29 September 2004. The Act has five sections: Charity Registration, Audit Requirement, Audit Committee, Compensation Review, and Fundraising Accountability. The primary provisions call for an annual independent audit overseen by an independent Audit Committee for organisations with gross annual revenues in excess of $2m, the results of which must be made public. The Audit Committee cannot include the organisation's executive director, CFO, board treasurer, staff members, or 50% of the organisation's Finance Committee's membership. Only 4.76% of California's nonprofits at that time earned over $2m in revenue (Strom 2004b).

Regardless of an organisation's size, all California nonprofit boards must review and approve executive compensation packages and must make audit results available to the public, as similar to the IRS Form 990 availability rules. Just as the Sarbanes-Oxley Act requires audit firms to register with the newly formed Public Corporation Accounting Oversight Board, California now requires commercial fundraisers who work with nonprofit organisations to register with the state attorney general. This portion of the Nonprofit Integrity Act requires nonprofit due diligence before contracting with a fundraising vendor. These fundraisers must have written contracts with the charitable organisation for whom they work, and all solicitation campaigns undertaken by commercial fundraisers on behalf on nonprofits must be filed with the attorney general's office ten days prior to the campaign or event.

The California Association of Nonprofits (CAN) opposed the new law. CAN believed nonprofit integrity should be based on a comprehensive examination by all stakeholders in the nonprofit industry, and that self-regulation was preferable to statewide legislation.

Upon signing the bill into law, Governor Arnold Schwarzenegger wrote this message to the members of the California State Senate:

> I am signing Senate Bill 1262 with the understanding that while I support transparency, accountability and curbing unscrupulous activities, I encourage the Legislature to ensure the non-profit community is not subjected to needless bureaucracy thereby potentially hampering the work and contribution made by non-profits who are serving California communities in need … Therefore, if this bill results in unnecessary expense to the non-profit community I encourage the Legislature to revisit this issue. (Williams 2004, Schwarzenegger Signs website)

The California legislature has yet to do so, and the California Nonprofit Integrity Act is firmly in place.

4.8 Summary

As with the corporate sector, corruption and fraud are uncommon in nonprofit organisations. Scandals that have been publicised have drawn attention to the sector by nonprofit stakeholders, including both federal and state governments. Nonprofit regulatory legislation has been slower to develop than has corporate oversight, but the Sarbanes-Oxley Act has influenced the type and scope of recent nonprofit regulations. SOX "spearheaded a renewed realization that nonprofit organizations rely on – and must protect – the indispensable and unequivocal confidence and trust of our constituents." (Board Source and Independent Sector 2003, 10) McCullough (2003) notes, "a nonprofit that institutes provisions of Sarbanes-Oxley that are deemed appropriate by the board of directors could appear in the future to be more responsible than nonprofits without such controls." (McCullough 2003, Corporate Governance website) The expectations and regulations that nonprofit organisations face directly influence and inform American museum governance policy.

5. American museum governance

This section discusses accountability, professionalisation, external oversight and internal conflicts of interest that occur in American museums. Museum management is now a specialised field which has become increasingly professional since the early twentieth century, but recent scandals demonstrate that the museum sector is susceptible to breaches in good governance. The Smithsonian scandal is the most egregious and most widely publicised case of museum governance mismanagement since the American museum sector has professionalised. It will demonstrate specific accountability issues that will be addressed in later sections.[1]

5.1 Nonprofit museum accountability

Discourse regarding nonprofit museum accountability has developed over the last quarter-century (Throsby and Withers 1995, Boyd 1991, Stam 1989, Greene 1982, Danilov 1978). Some theorists question whether museum accountability should be defined by public expectations or by successful cultural output (Parker 1996, Carnegie and Wolnizer 1995). Results-based accountability may cause nonprofit leaders to focus on quantifiable outcomes that ignore public values. Giving account does not ensure that museum goals and standard practices align with society's values. Outcome assessments could affect nonprofits negatively if used as a punitive tool based on unrealistic expectations. For example, a municipal body may set unattainable visitor number goals for a museum it oversees. If that museum does not reach the prescribed goal by the municipality, the municipality may cut museum funding for under-performance.

Some researchers have examined financial responsibility and mission statements as two means to fix museum accountability concerns (Carnegie and Wolnizer 1995, Pallot 1990, Clark 1982, Mautz 1981). Full and accurate public disclosure of financial information is now a fundamental obligation for nonprofit organisations. Providing current and accurate financial data is appropriate for fulfilling certain types of accountability. While analysing the use of

1 Until recent nonprofit and corporate scandals, federal, state, or local governments did not consider legislating nonprofit governance ethics. This contrasts greatly with a more-often discussed type of museum ethics: acquisition policy and ethics. Breaches in acquisitions law are more concrete than breaches of fiduciary duty. There is no set procedure that requires a state's attorney general to file a lawsuit with regard to museum governance, as opposed to filing suit with regard to UNESCO's conventions.

technology in solving museum accountability problems, Rentschler and Potter (1996) make the vital assertion that accountants now overshadow the notion of nonprofit accountability, causing some organisations to focus too narrowly on their economic successes rather than on fulfilling their mission statements. Similarly, too much regulatory oversight aiming to better nonprofit accountability may stifle creativity and innovation (Pring and Canan 1996). Boyd (1991) stated that the "museum itself is said to be accountable, yet museums are people and, therefore, individuals are accountable for the actions they take in the museum's name." (Boyd 1991, 166) A balance between regulating to prevent organisational and individual malfeasance and regulating to encourage nonprofit success is essential.

5.2 Museum codes of ethics

Professionalism in museums presumes accountability. Regulating that accountability in the form of a code of ethics occurs in museums, but enforcing that code is more difficult. Malaro (1991) insists that ethical codes can only be effective through personal commitment and "informed peer pressure". (Malaro 1991, 274) To compensate for a lack of central authority, like a state's attorney general, the American museum community took regulating professionalism upon itself. The American Association of Museums (AAM) *Code of Ethics* (1991) asks each member organisation to adopt its own ethical code relating to AAM standards. In this way, AAM encourages self-awareness and self-regulation.

Germany's national museum organisation was the first to publish a code of ethics in 1918, which was soon followed by the American Association of Museums' 1925 *Code of ethics for museum workers*. In 1974, AAM began reviewing the relevance of the 1925 code in the wake of deaccessioning concerns. Four years later, AAM published a revised and restated document that discusses the "museum profession" and responsibility. MacDonald's 1992 *Museum News* article entitled "Ethics: Constructing a Code for All of America's Museums", discusses the process AAM undertook to establish a new code of ethics in 1986:

> The concept of "public trust" became the focus of early debate, with the task force's legal advisors preferring the narrow, legal definition of the term and the nonlawyers favoring the broader concept of stewardship and public confidence. The discussion over the notion of "trust" led the task force to understand that a code of ethics for museums was not a legal document written for attorneys or the courts, although the final document would have an effect on

> the interpretation of the law. The code would instead be directed to the museum community and, because it dealt with ethics, would be more than a guide for avoiding legal liability. It would set a standard higher than the law and be based on fundamental values held by the majority of the museum community. (MacDonald 1992, 63)

This initial AAM discussion relating the museum code of ethics and the public trust to legal liability is still prescient over a quarter of a century later. In the same era, museum ethics codes were established in New Zealand and the United Kingdom (1977), in Israel and Canada (1979), and in Australia (1982). The International Council of Museums unanimously adopted its *Code of Professional Ethics* in 1986 at its 15th General Conference in Buenos Aires, Argentina. AAM also established ethical codes for specific museum professions including conservation (originally the 1963 Murray Pease Report), curatorial (1983), registration (1984), public relations (1984), and education (1989). The first University museum to establish a code of ethics policy was the University of Pennsylvania's Museum of Archaeology and Anthropology. (Boylan 1976, 169)

Many of these codes built upon one another's tenets. The content of ethical codes is now relatively consistent across the international museum sector, setting professional standards across diverse areas of museum operations. Van Mensch (1992) identified seven commonalities amongst museum codes of ethics around the world with regard to responsibility and accountability. The commonalities include responsibility to the museum with which an individual is associated and responsibility to those who financially support the museum. Tenets regarding conflict of interest, social responsibility, and procedures for self-evaluation are also in place.

5.3 American museum associations

The two primary American museum oversight bodies are the American Association of Museums and the six regional museums associations. The following sections will explore the associations' methods to ensure American museum accountability.

5.3.1 American Association of Museums best practices

The American Association of Museums, headquartered in Washington DC, is the "only organization representing the entire scope of [American] museums and professionals" with 3,000 member museums and 18,000 individual members. (American Association of Museums, About AAM website) AAM manages the museum Accreditation scheme, hosts conferences and professional development workshops, and provides resources about museum ethics, standards, and best practices. Among other initiatives, AAM runs the confidential Museum Assessment Program (MAP) that, in part, demonstrates "how your museum compares to standards and best practices." (American Association of Museums, Museum Assessment website) Nearly half of museums that participate in MAP have annual budgets under $250,000. (American Association of Museums, MAP Help website) Notably, nearly half of all Accredited museums in the United States have fewer than fifteen staff members. (AAM AVISO, Things website)

Basic information about museum standards and best practices is available on AAM's website. On its Standards and Best Practices *Information Center Fact Sheet*, AAM defines best practices as "commendable actions and philosophies that demonstrate an awareness of standards, solve problems and can be replicated. Museums may choose to emulate them if appropriate to their circumstances." (American Association of Museums 2008, Standards website) This definition is simplistic and fails to encourage museums to institute best practices. The organisation only provides text of ethical codes related to diverse areas of museum practice, and links to websites of organisations like Independent Sector and FASB that offer strategies for implementing best practices. AAM does not offer any specific best practice recommendations applicable to the museum sector, including museum governance and financial oversight.

The AAM Accreditation scheme promotes standards that originated within the museum sector. Other than broad position statements, it is difficult to find what these standards entail. AAM's *Code of Ethics for Museums* states:

> Thus, the governing authority ensures that: … professional standards and practices inform and guide museum operations… policies are articulated and prudent oversight is practiced… governance promotes the public good rather than individual financial gain. (American Association of Museums 2000, Code website)

The Characteristics of an Accreditable Museum, published by AAM, reiterates these ideals:

> The museum is committed to public accountability and is transparent in its mission and its operations. The museum complies with local, state, and federal laws, codes, and regulations applicable to its facilities, operations, and administration … The governing authority, staff, and volunteers legally, ethically, and effectively carry out their responsibilities … The museum legally, ethically, and responsibly acquires, manages, and allocates its financial resources in a way that advances its mission. The museum operates in a fiscally responsible manner that promotes its long-term sustainability. (American Association of Museums 2004b, 1-2)

The Accreditation Commission's Expectations Regarding an Institutional Code of Ethics goes into further detail:

> What ethical issues should a museum address? … Conflict of interest (for example: disclosure, gifts and favors, loans, outside employment, personal collecting, purchases of museum property, use of assets, and confidentiality) … Museum management practices (for example: legal compliance, ownership of intellectual property/scholarly research, personnel management) [and] responsibility to the public. (American Association of Museums 2004, 3)

AAM, however, provides no indication of how museums can specifically accomplish these goals. On its website, AAM has collected generic articles, information, and sample documents from varied nonprofit professionals and legal bodies that offer an overview of conflict of interest, developing a code of ethics, transparency, document retention, financial management, and whistleblower protections. The resources are not comprehensive, and do not offer museum-specific information. There is little guidance on how to implement best practice policies. The resources do, however, provide a cursory overview and broad introduction to these detailed areas of museum management. It is important to note that AAM is not a regulatory body but a membership organisation, though each Accredited museum must undergo an Accreditation review every ten years. AAM requests that museums submit an annual report as part of the museum Accreditation review, but does not specify what information is to be reported (American Association of Museums 2000b).

The AAM does not provide regulatory oversight, permitting museums to self-regulate and to disclose information voluntarily (Christensen 2003). Former AAM Executive Director Edward H. Able, Jr. believed that "financial reporting by museums should be to provide sound information for internal and external decision makers; the choice of how this information will be presented is ultimately the museum's to make." (Jaenicke and Glazer 1991, vi) As a result, American museums traditionally have had diverse accounting and reporting methods.

5.3.2 Regional museum association accountability training

Four of the six regional museum associations responded to research queries about their role in promoting museum accountability: the New England Museum Association, the Southeastern Museum Conference, the Western Museum Association, and the Mountain Plains Museum Association, responded to requests for information.[2]

The associations distribute current information on maintaining fiscal and ethical accountability in several ways: regular newsletter columns and feature articles, electronic newsletter articles, workshops, and annual conference sessions. This data is typically transmitted on a peer-to-peer basis. Yet annual conferences are "*at the mercy of what is proposed from the field [in a particular] year, unless [the] program committee finds a topic crucial enough to facilitate themselves*." An association "*may be a clearing house for questions about these kinds of issues, but there is not a formal program to provide resources regarding them.*" In addition to its annual conference, the Southeastern Museum Conference hosts the Jekyll Island Management Institute at which accountability issues are discussed. While the regional associations maintain reference files and sample policies on accountability topics, none has a formal program to distribute the information. While statewide museum associations were not contacted for this study, it appears they are even less likely or able to disseminate information about museum governance best practices. For example, "*Oregon's state museum association is interested in such issues but is very small and does not have the tools to reach out on these sorts of topics*."

Three of the regional museum associations indicate, however, that their "*council is very interested in*" and their "*members are definitely concerned with these topics; most museums are eager to fulfill their responsibilities and function in a transparent and publicly*

2 Individuals interviewed at regional museum associations did not grant permission to use their names, so all responses are anonymised.

accountable manner." Yet this may not be the case in small museums: "*Issues of governance, policies, ethics, and so on are a serious topic of conversation in larger and medium sized institutions*." Smaller museums have "*limited resources. Often they don't have paid staff or trained staff… larger issues [like accountability] tend to be set aside in the face of just trying to survive for them*."

Case studies in this thesis disprove one regional museum association's Executive Director's opinion about museum accountability: "*Museums tend to have the most honest staffers of any field I know. Yet when things go awry, it is usually because there were too few people on staff to carry out required and voluntary procedures. In other words, it is not usually intentional… Even the IRS understands this is part of life in small museums or those with few staff*." The IRS and Congressional oversight bodies indicate that is not the case. Recent changes to the IRS Form 990 and Senator Grassley's Congressional hearings demonstrate that the federal government is taking nonprofit governance quite seriously.

One association states that their member museums do not focus on specific best practices: "*There is not much discussion on the following issues: whistleblower protection policies, document destruction policies, or the Sarbanes-Oxley Act. That may be because folks see these things as black and white or don't come into contact with them*." Ethical and fiscal accountability, however, fall under the purview of the regional museums associations. It is part of the regional associations' responsibility to bring accountability issues to light within their member organisations.

There is no consensus of opinion amongst the regional associations about the necessity of required regulations to ensure sound museum administration. Opinions range from "*Absolutely – [expanded government regulations are necessary because] I am not sure AAM could handle monitoring [accountability]"* to *"Government regulations … [already] keep us all accountable*." Additional regulations, however, could be too costly for museums to implement: "*There is some concern that government regulations that have been designed for for-profit businesses place an undue burden on small nonprofit organizations, which do not have the funds to pay for extensive accounting and auditing services*." One association's Executive Director asserts, *"[the] passion for doing the right thing is what characterises the museum community overall, making it different from other disciplines.*" This idealised view does not take recent history into account as case studies will demonstrate.

5.4 Conflict of interest in museums

A conflict of interest arises when an individual's professional obligations, even as a volunteer, conflict or compete with his or her personal interests. These personal interests may compromise a person's commitment to fulfill official duties objectively. Influences or situations outside of professional commitments with even the potential to benefit private interests, particularly those economic or political in nature, illustrate conflicts between an "interest and a duty". (Shamoo and Resnik 2003, 139) Legally, a conflict of interest is narrowly defined, "usually set out in state laws governing nonprofit corporations … and covers relatively few situations. Most conflicts fall into a gray area where ethics and public perception are more relevant than statutes or precedents." (BoardSource 2007, What is Conflict of Interest website) Fama and Jensen (1983) define conflict of interest more broadly than will be applied in this study. Their definition is not limited to individual actors and single acts of conflict of interest, but note a larger network of players, including institutions, interacting concurrently with varied conflicts and influences.

The determining motivations that affect a person's judgment and decisions vary widely. Often, a personal interest is financial, but many motivations can come into conflict with an official duty or responsibility to an employer, a client, or the public. Kernaghan and Langford (1990) cite several types of conflict of interest. Accepting or soliciting benefits or gifts in exchange for influencing or advancing a particular party's cause or using confidential information for personal gain is a conflict of interest. It is also unacceptable for an employee to use an employer's property for private advantage. A conflict can arise if outside employment or hobbies compete with one's current job, or take away from one's ability to complete that job. Self-dealing, like procuring a contract that will provide either personal or financial benefits, for example, is prohibited.

A museum board member's fiduciary common law "duty of loyalty" to avoid conflict of interest can also take the form of self-dealing from the museum to secure a contract or work of art, or to use privileged information garnered through museum contacts for personal gain (Boyd 1991). An individual with conflicting duties of loyalty or who has a conflicting self-interest cannot be completely loyal to a museum, since his or her judgment may be compromised. Well-meaning individuals may get caught in conflicts of interest. A conflict arises, for example, if a museum director sits on the board of a comparable type of museum or a collector joins the board of a museum that collects objects similar to those in his or her private collection.

An individual's professionalism presumes objectivity. As such, it is difficult to determine the difference between an actual conflict of interest and the erroneous perception of a conflict. The two must be treated with equal importance since both can damage a museum by causing the public to question the organisation's motives. A potential conflict of interest could develop into an actual conflict. A conflict is "neither void nor voidable" if the conflict is disclosed and approved by a majority of independent board members, approved in the court of public opinion, or if the "transaction is 'fair' to the corporation". (Hansmann 1981, 567) Whether there is a real, perceived, or potential conflict of interest, any nonprofit organisation can establish safeguards to monitor, manage, and mitigate those conflicts. "Conflicts of interest are unavoidable … the issue is how well these conflicts are managed." (Demski 2003, 56) Carefully screening prospective museum board and staff members for conflicts of interest is the first step. Well-managed oversight requires both staff members and board members to disclose conflicts annually. These disclosures should be assessed by the organisation internally, and subsequently be made available to the public.

5.5 American museum scandal

The museum field, itself, has faced numerous examples of governance and fiscal malfeasances. Nationally and internationally-recognised museums, regional museums, and University museums have been subject to poor oversight, misplaced loyalty, and greed. The most striking recent example of museum mismanagement occurred within the Smithsonian Institution. A case study of the Smithsonian incidences follows, and additional examples of failed museum governance policies will illustrate the online survey results in sections 7 and 8.

5.5.1 Case study: The Smithsonian Institution

This case study of the Smithsonian Institution is not representative of all American museums that have suffered from governance or policy failures, a lack of knowledge relevant to nonprofit museum management, or illegal activities perpetrated by museum staff or board members. The Smithsonian itself is unique amongst American museums for two primary reasons: it receives significant income from the federal government, and it is governed by the most politically influential board of directors in the US. An in-depth investigation into the Smithsonian is utilised instead to highlight the pervasive need for strong governance, demonstrating the relative ease of committing misdeeds despite significant government oversight, a billion dollar annual budget, and an in-house counsel and Inspector General.

i. Institutional background

The Smithsonian Institution, headquartered in Washington DC, is the world's largest museum and research organisation. It comprises nineteen diverse museums, twenty-two library branches, nine research centers, eight scholarly programmes, a vast archive, and America's National Zoo. (Smithsonian Institution, About Us website) Overall, the Smithsonian's permanent collection consists of more than 137 million objects, artworks, and specimens viewed by twenty-eight million visitors and 150 million online visitors annually. The US Congress established the Smithsonian in 1846, holding James Smithson's property in trust for the American public to be governed by a Board of Regents. "Unlike the vast majority of nonprofit organizations whose governance is informed by applicable state statutes and common law of fiduciary duties, there is no developed body of federal common law setting forth the duties and obligations of the [Smithsonian Institution] Board." (Independent Review Committee 2007, 29) Smithsonian Directive 150 defines the Board's role: "The Board of Regents bears the responsibility of the United States as trustee for carrying out the Smithsonian bequest and the public trust for which it provided. The primary obligation of the Board of Regents is to manage the resources of the Institution for the benefit of all mankind." (Smithsonian Institution 1996, Directive 150) This Board consists of some of the most important people in American civic life.

In 2007 when scandals came to light at the Smithsonian, the Chief Justice of the US Supreme Court, the Vice President of the United States, three members of each of the US Senate and House of Representatives, and nine independent American citizens were vested with responsibility for overseeing the entire Smithsonian Institution. The Smithsonian is not a government agency, but is an independent organisation receiving federal funding that provides over 70% of its budget, including salaries. Most Smithsonian staff are US government employees, and other staff members are employed by the Smithsonian Trust. The Smithsonian is large enough to have its own Office of the Inspector General (OIG) on site. The OIG seeks to ensure museum accountability, serving as an independent auditor that reports directly to the Board of Regents and the US Congress on a semi-annual basis. The 1978 Inspector General Act gave the Smithsonian's Inspector General independence to perform any review appropriate, unlimited access to organisational information, and the authority to publish its findings.

ii. Investigations into Secretary Small

The Inspector General's most visible recent investigation reviewed Executive Compensation for the Smithsonian's Secretary (Director). In February 2007, the *Washington Post* reported on Smithsonian Secretary Lawrence Small's large compensation package and lavish spending habits which had been detailed in a report by the OIG that was requested by Senator Charles Grassley, who was the ranking member of the Senate Finance Committee. At the time, many of the Smithsonian's buildings had fallen into disrepair and fundraising income was down. The Board of Regents dismissed the Inspector General's findings and defended Small. Roger Sant, Chairman of the Executive Committee of the Smithsonian board asserted, "He doesn't do this job for the money", creating a controversy within the organisation and in Congress. (Grimaldi 2007, Smithsonian Documents website) In response, the board established an Independent Review Committee (IRC) to review Secretary Small's compensation package and spending habits. The Committee received full access to Smithsonian information, reviewed over 15,000 pages of paperwork, and conducted forty-six interviews with Smithsonian Regents and staff. Secretary Small and his assistant declined to be interviewed by the IRC.

Similar to the Smithsonian Inspector General's earlier findings, the IRC's final report on the Smithsonian's governance, management, internal controls, and policies under Secretary Small was damning. The IRC's primary complaint was the compensation package that Small had originally negotiated for himself with a small number of Regents, a group that did not include the Smithsonian's General Counsel. The full Board was unaware of Secretary Small's total annual compensation package in his first four years as director. His starting cash salary in 2000 totaled $536,100, over 60% more than his predecessor earned in his final year as director. The IRC insists "there was a clear intent of the small group involved with hiring" to mask this great difference. (Independent Review Committee 2007, 36) Seven years later in his last year at the Smithsonian, Small made $915,658. He was paid in three ways, salary, pension, and housing benefits.

Small's first salary contract in 2000 included "a payment 'in lieu of pension' equal to seventeen percent of his annual base pay. Mr. Small was also granted a 'housing allowance' of up to $150,000 per year." (Independent Review Committee 2007, 35) While a housing allowance is common museum compensation practice, Small already owned his $3.5m Washington DC house outright. He received the allowance under the guise of hosting Smithsonian events at his home. Michael Heyman, the preceding Smithsonian Secretary, did not receive a housing allowing for his rented home, nor was he reimbursed for entertaining at his property. In his first year of Smithsonian employment, Small's base salary was $330,000, and he was paid additional income totaling $206,100 for housing fees and cash in lieu of later pension payments. The Regents approved a 46% base salary increase in Small's second year, thus increasing his pension payout from $56,000 to $81,000. The compensation package was now worth twice as much as Michael Heyman's income in his final year as Secretary. Additionally, Small's contract stipulated first class airline tickets and travel reimbursement for his spouse when "her presence is appropriate", two perks not afforded his predecessor. (Independent Review Committee 2007, 36)

Small's housing allowance stipulated he would receive up to $150,000 for up to half of the actual housing costs if he provided receipts for reimbursement. Small manipulated the standard procedure of providing receipts, and instead established a monthly housing payout that did not require documentation. He was reimbursed $12,500 a month for a hypothetical mortgage for his home. During his seven years as Secretary, Small entertained only forty-seven donors at his house. He received a $1,198,715 housing allowance for that service. (Independent Review Committee 2007, 46) Small stretched his "first class flying" rights to include a $14,000 private chartered jet that delivered him to and from Texas to receive an award from the American Academy of Achievement. As a later internal audit demonstrated, however, this expenditure was allowable under the Smithsonian's agreed-upon procedures (AUP) in accordance with internal policies. While Federal Travel Regulations do not permit government employees to fly first class, Small was permitted to do so as an employee of the Smithsonian Trust, not of the federal government.

The Smithsonian's Inspector General hired Cotton & Co. to assess the expenses Small incurred while in office. The firm discovered Small's "recordkeeping [was] incomplete, and there [was] insufficient detail to analyze the business purpose of many of the Secretary's expenditures." (Independent Review Committee 2007, 64) What did become clear, however, was the lack of financial oversight regarding Small's expenses by the Smithsonian's accounting department and the Board's Audit and Review Committee. Small did not seek approval prior to traveling, nor did he allow accountants to review his reimbursements. Cotton & Co. did uncover some receipts: $15,000 for French doors in his home; a total of $152,000 in home utility bills, $273,000 for home housekeeping, and $203,000 of home maintenance; $2,535 for chandelier cleaning; $8,000 for swimming pool upkeep and $4,000 to replace the pool heating unit. Small's Smithsonian office expenses included $4,000 for two chairs, a $13,000 custom-made conference table, and $31,000 of re-upholstery. Small's immediate predecessor did not spend any money on office upgrades during his 1994-1999 tenure. (Grimaldi 2007, Smithsonian Documents website) Secretary Small got away with these expenses by actively preventing Board oversight.

iii. Ineffective policies and procedures

Small sat on the Chubb Corporation and the Marriott International Inc. boards of directors, earning nearly $6m in board fees while Secretary of the Smithsonian. He did not receive approval from the Board's Executive Committee nor the General Counsel to do as his contract required, and he missed sixty-four days of work from 2000-2007 to execute his Chubb and Marriott board duties. There was not a leave of absence policy in place at the Smithsonian at the time, and thus unlimited leave was permitted for senior staff members. The IRC discovered that Secretary Small took full use of unlimited vacation time, taking more than ten weeks off each year, except for one, when he was Secretary. A conflict of interest existed because Chubb is one of the Smithsonian's insurance carriers.

The Smithsonian's conflict of interest policy required the General Counsel, acting as Chief Ethics Officer, to collect conflict statements from employees across the organisations who had the authority to make and sign contracts. From 2000-2007, General Counsel John Huerta reviewed over 1,000 forms each year, but did not receive any from either the Secretary or members of his senior staff. Jim Hobbins, Executive Assistant to the Secretary, reviewed these particular forms instead. "Mr. Huerta was not allowed to see the disclosure forms or to know their contents … the conflict forms were not provided to the Board, and none of the Regents recalls being informed that such forms were available for review" until 2004 when the General Counsel's

Office took over management of the entire process. (Independent Review Committee 2007, 76)

The full Board of Regents did not learn of Small's full compensation package and excessive leave until 2007. Until 2004, only the Regent's Executive Committee approved his income. In 2007 the full Board attempted to redefine details of Small's contract. Smithsonian General Counsel Huerta proposed that housing allowance increases be at the Board's discretion and that Mrs Small's travel expenses be reimbursed for "bona fide and official business of the Institution" rather than "where her presence is appropriate". (Independent Review Committee 2007, 40) Small responded vigorously: "I'm not willing to discuss giving up one iota of what the Institution agreed to provide me before I came to work … It would represent the highest form of naiveté to think I would entertain some form of 'give-up'." (Independent Review Committee 2007, 41) Small stated further that if any first-class travel arrangement, including his wife's, was changed, the Smithsonian would have to increase his housing allowance.

Small took blanket control at the Smithsonian, and even waived organisation-wide policies for his Office of the Secretary that "eliminated accountability and critically undermined the internal controls of the Smithsonian." (Independent Review Committee 2007, 82) While the negotiation for his compensation package can be blamed on the lack of Board oversight, the expenses he claimed under his contract were never under scrutiny or review. The Office of the Secretary itself failed to keep account of funds he did spend. As is atypical for large nonprofit organisations, the Smithsonian's CFO could not monitor Small's expenses because the Office of the Secretary oversaw and maintained all of Small's financial records.

The Smithsonian's primary watchdog, the Office of the Inspector General, did not conduct any expense reviews, including those of Secretary Small, from 2000-2006. Additionally, Small did not permit the Inspector General to contact the board directly, though the OIG remit made it answerable only to the Board of Regents and to Congress. Small also cut the size of the General Counsel's staff, eliminating, among other things, ethics training for staff members. The IRC noted that in Small's first week of work, he told the Office of the General Counsel he "did not think that lawyers served a constructive purpose and that the lawyers at the Smithsonian should … keep out of his way." (Independent Review Committee 2007, 86) Small's actions embarrassed the Smithsonian and its Board of Regents, and led to his resignation in March 2007 amidst public criticism.

iv. Missed opportunities

The many accounting and ethical upheavals demonstrate ineffective internal and financial controls at the Smithsonian from 2000-2007. Better board oversight could have protected the Institution and American taxpayers from procedures that took advantage of the Smithsonian. "In 2002, the Audit and Review Committee considered whether any parts of the Sarbanes-Oxley legislation should be adopted by the Smithsonian. It appears that the Board took no action to implement any aspects of this legislation." (Independent Review Committee 2007, 83) This is remarkable for the Washington DC-based Board of Regents. At least six members of the Regents had voted on this particular legislation in the House and Senate, and had heard testimony about SOX's potential effects on nonprofit organisations. The board's hiring of a former corporate executive to run the largest cultural and heritage organisation in the world only two years earlier indicates their desire to run the Smithsonian in a "business-like" fashion. Yet the Regents failed to implement any business best practices while many of their smaller nonprofit museum colleagues across the country made efforts to implement various SOX recommendations. This demonstrates the board's lack of nonprofit governance knowledge, and perhaps a lack of *gravitas* towards its fiduciary duties.

KPMG served as the Smithsonian's independent auditor since 1994 yet failed to review the Secretary's expenses from 2000-2006. Notably, KPMG recommended implementing better internal financial controls in 2002:

> We believe the Smithsonian would benefit from a more formal approach to the documentation of its accounting policies and procedures. Accordingly, we recommend that the Smithsonian consider assigning a team to assume responsibility for developing a comprehensive accounting policies and procedures manual in 2002 ... including requirements for documentation of the review/approval procedures performed. It could be made available on the [internal Smithsonian computer] network and would provide a valuable reference source for accounting and management personnel and a useful training tool for new employees or employees who change responsibility. (KPMG 2002, Unpublished letter)

Five years later in 2007, KPMG again recommended that "the Smithsonian develop a plan and timetable for compiling and maintaining an accounting policies and procedures manual." (KPMG 2007, Unpublished letter) The Smithsonian had yet to codify accounting procedures.

In the same February 2007 letter to the board's Audit and Review Committee, KPMG noted that the Smithsonian accounting office was "deficient", a reportable condition. (Independent Review Committee 2007, 21) The AICPA, responsible for standardising accounting policies in the US, requires audit firms to report significant deficiencies, "reportable conditions", identified during an audit. These are deficiencies that adversely affect an organisation's ability to reliably report financial data in accordance with GAAP, causing inaccurate qualitative or quantitative financial statements. (American Institute of CPAs 2006) The board had let financial offices flounder despite varied warnings over the years. The IRC believed the audit company should have been more firm with its nonprofit client, and that the Smithsonian and KPMG "relationship" had grown "complacent" after thirteen years. (Independent Review Committee 2007, 89)

v. Governance reform

Governance reform at the Smithsonian will only be successful if both the Regents and Smithsonian senior executives are actively engaged with and committed to bettering the organisation. In her 11 April 2007 testimony before the Senate Committee on Rules and Administration, Smithsonian Inspector General A. Sprightley Ryan noted resistance from Smithsonian staff members that believed "it would be better if our [OIG] findings were kept within the Institution." She notes that "transparency is regarded as an intrusion into the Institution's internal affairs … Having our findings go to Congress and the public … is what promotes accountability and transparency and, ultimately, will inspire more trust and confidence in the Smithsonian and on the part of Congress, donors, and the public." (Ryan 2007, Statement) In the wake of scandals, the Senate Finance Committee froze a proposed $17m increase in the Smithsonian's federal appropriations until the Institution made governance reforms.

In response to the Smithsonian's scandals, the IRC made specific recommendations to improve the museum's administration, policies, and oversight, and to quickly restore the public trust in the Smithsonian. The recommendations to the Board of Regents included the following: 1) Conduct a full and independent audit of expenses incurred by senior staff members, including Secretary Small's spouse, and conduct such an audit annually. 2) Develop a compensation policy that represents a transparent, reasonable, and competitive median-range salary without a housing allowance for Smithsonian senior executives. 3) Implement an independent Compensation Committee, of which the Secretary is not a member. 4) Require the full Board of Regents to approve the Secretary's complete compensation package. 5) Provide effective governance and oversight of the organisation, as is the board's fiduciary duty. 6) Establish a Governing Board that will meet a minimum of six times annually that is tasked with formalising the Board's governance structure. 7) Expand the Board of Regents to include varied nonprofit management experts. 8) Strengthen internal controls, adopt agreed-upon best practices, and hire personnel with financial and audit experience (Independent Review Committee 2007). In 2007, the Board of Regents "commit[ted] to operating in a culture marked by openness, accessibility, and robust communication." (Governance Committee 2007, 6)

5.6 Summary

American museums have developed into a professional sector that maintains complex organisations on behalf of the public trust. Museums are not only responsible for being accountable, they must also demonstrate their accountability to their constituents and to regulators. Combating conflicts of interest, financial mismanagement, and other ethical breaches of accountability are the focus of sound museum governance practice. The Smithsonian lost the public trust as a result of governance failings and poor internal controls. The Institution continues its work to rebuild the public trust. To begin the study of accountability, it is necessary to know the current state of best practice policies and ethical procedures in American museums. The following interviews and data collected for this study work to that end.

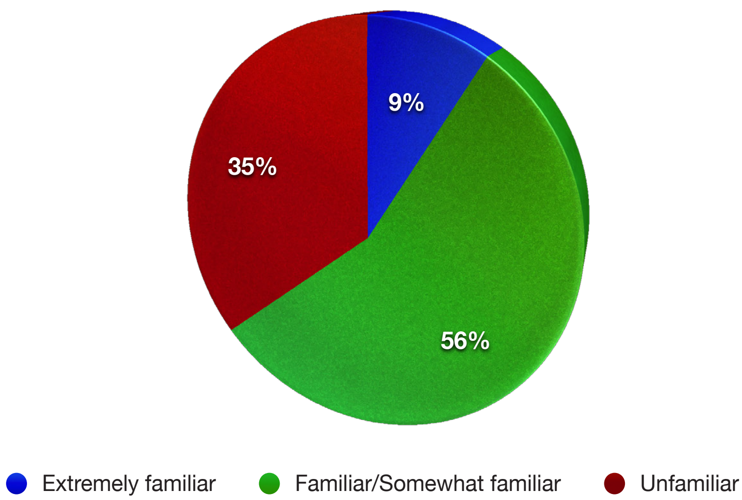
6. American museum response to regulation

This section of the thesis explores the American museum community's awareness of and response to the Sarbanes-Oxley Act and other legal regulations. Adhering to legal regulations is the most basic way in which a museum fulfills its public responsibilities. Ethical codes of conduct typically have higher standards than the law, but are essentially voluntary. The unenforcability of codes can give rise to regulatory legislation, indicating legal routes to ethical conduct may be required. Museums can only fulfill mandated standards if employees are familiar with legal requirements, recognise their responsibility to respond to the law, and then act upon that knowledge. This study demonstrates that recent changes in American law have affected museum administration and governance attitudes. The Sarbanes-Oxley Act has been discussed and evaluated at the museum board level, and SOX has informed the conduct and delivery of museum services. Numbers indicate, however, that more work is required to familiarise museum employees and board members with their legal responsibilities.

6.1 Survey results

The bulk of survey respondents were familiar with the SOX requirements for nonprofits (Figure 2), though over one third were unfamiliar with their legal duties to implement whistleblower and document destruction policies. Even greater numbers of museum

Figure 2. How familiar are you with the Sarbanes-Oxley Act's requirements for nonprofit organizations?

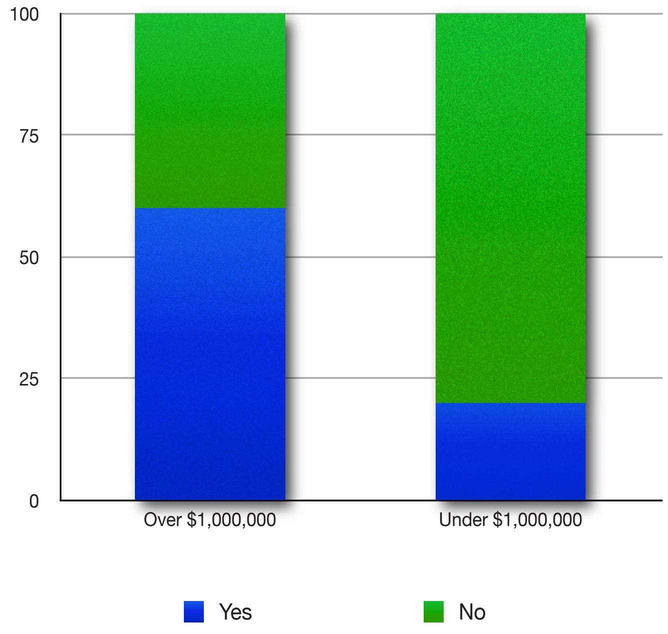


professionals were *Unfamiliar* with SOX requirements for corporate organisations, but those that were *Extremely Familiar* (6.3%) were affiliated with museums that have numerous best policy practices in place. Two individuals interviewed for this thesis had corporate backgrounds, and are now successfully leading the implementation of accountability measures at their museums, crediting their corporate experiences with "*proving how important controls and transparency are for successful organizations*".[1]

Notably, over 80% of survey respondents were *Unfamiliar* with California's Nonprofit Integrity Act (2004), the most widely publicised state legislation intended to increase nonprofit organisations' financial transparency. Remarkably, only eleven of the 145 museum administrators who responded to this survey (7.6%) knew of any nonprofit accountability legislation in their states. This is a troubling statistic for museums, given nonprofit accountability legislation has been proposed in nearly every state since 2002.

The Sarbanes-Oxley Act has been discussed at 37.9% of surveyed museums' board meetings. There is a clear break between museums that have discussed SOX and those that have not based upon the size of the museum's annual budget (Figure 3). The museums that have discussed

Figure 3. Has the Sarbanes-Oxley Act been discussed at museum board meetings?

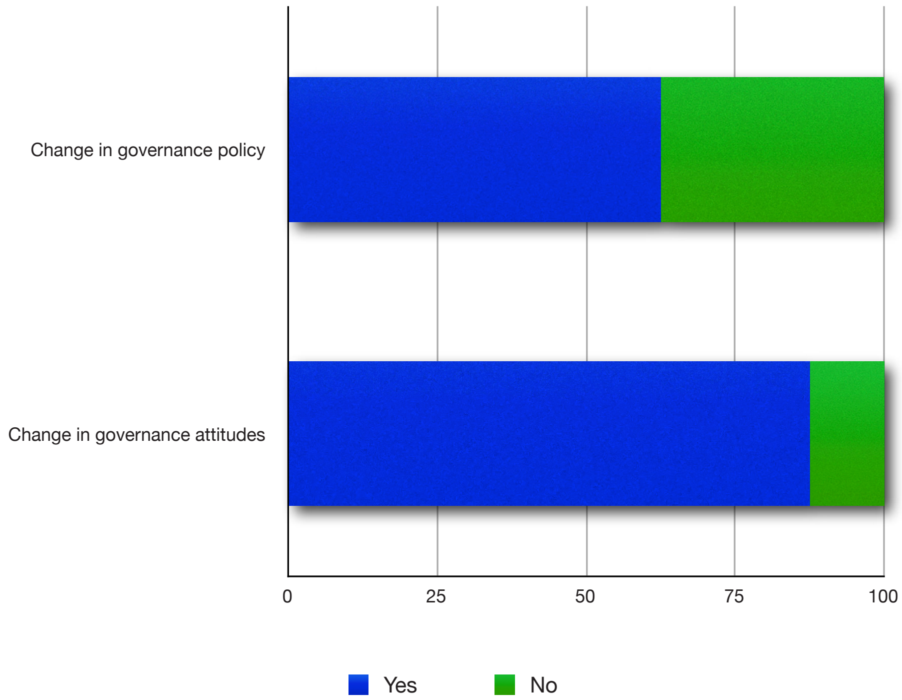


SOX have also identified their compliance responsibilities with regard to the Act. Only 20% of museums, however, have done an initial risk assessment of the legislation. Responses to the qualitative study demonstrate that museum boards appear to be "*open to discussion*" to authorise an initial SOX risk assessment, but most museums interviewed had yet to do so.

1 I have corrected minor spelling and grammatical mistakes in the data quoted from qualitative survey respondents.

In the opinion of those surveyed, 31.5% believe that the Sarbanes-Oxley Act has affected governance attitudes at their museums. In some cases, there has been a greater shift in governance attitudes than in governance policy: governance attitudes have been more readily amended than specific changes in governance policy amongst large museums since 2002 (Figure 4). Overall, more than one third of all museums surveyed have altered their governance policies since SOX was established. In 45.5% of these cases, the museum director and board leadership worked jointly to change their museums' governance. Changes have been less likely to occur if instigated by the museum director (24.8%) or by board leadership (12.4%) alone. This suggests that progress accomplishing governance change may rely upon the support of multiple key players at the museum's executive level.

Figure 4. Changes since 2002 in museum governance ($5m- $10m museums)



Interviews indicated that no one impetus encouraged American museums to implement governance or fiscal accountability policies. The Sarbanes-Oxley Act, IRS reporting requirements, AAM Accreditation and MAP schemes appear as influential as staff knowledge of performance standards and best practices, and interest in earning the public trust. One museum implemented governance changes because it recognised that it was "*behind the times*". Another museum learned of accountability policies from its auditor's letter. While the AAM has served as inspiration, one museum reported "*As part of the AAM accreditation process, an ethics policy was written [for our museum] and then stuck in a* *filing cabinet*." There is a distinct difference between having codes and procedures in place and the actual implementation of or adherence to those policies.

In the majority of museums that implemented governance and fiscal internal controls, these changes led to a clearer definition of accountability. In some cases the museum boards have reportedly grown more accountable and in other cases the staff has done so. Overall, these museums appear more "*on [their] toes*" with regard to accountability and their "*future decisions will reflect the current emphasis*" on accountability.

Similarly, the effects of SOX are apparent in museum documents including board meeting minutes, the 990, and audit reports. Without explanation, one respondent indicated, however, that the Patriot Act had more ramifications for museums than did the Sarbanes-Oxley Act. Only one individual surveyed noted that SOX is not apparent in museum documentation because any recent management or fiscal changes occurred because they "*came from sound business practices*" and not from SOX.

More survey respondents *Do Not Know* whether SOX benefits the museum sector, than believe the law is beneficial for museums (Figure 5). Figure 6 demonstrates similar numbers of respondents who either believe SOX's benefits for the public good outweigh its financial costs for the museum, or *Do Not Know* if that is the case. These striking numbers reflect the earlier demonstration that 55.6% of museum workers and board members are either *Somewhat Familiar* or *Familiar* with the legislation. Those who are *Unfamiliar* with SOX are unable to answer questions about the suitability of the legislation for museums. Yet nearly all those respondents who *are* familiar with SOX find it a positive influence on America's museums. It is notable that very few respondents (11.9%) believe that Sarbanes-Oxley has had a negative effect on museums. These numbers indicate that a vast number of museum staff and board members are not fully aware of the pros and cons of accountability regulations for their museums. This may also result from a lack of understanding about the public perception of museums.

This trend continues in response to the question: "Should regulations similar to the Sarbanes-Oxley Act be required for all museums" (Figure 7). More survey respondents believe that requisite regulations are appropriate for museums with annual operating budgets over $2m than for museums of all sizes. Two thirds of those museums with budgets over $2m

Figure 5. Do you believe the Sarbanes-Oxley Act benefits the museum sector?

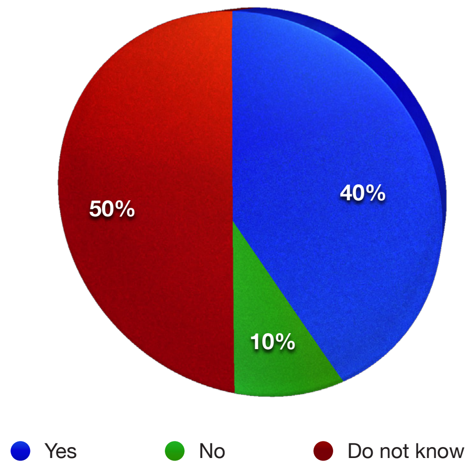


Figure 6. Do you believe the Sarbanes-Oxley Act's benefits for the public good outwiegh its financial costs for the museum community?

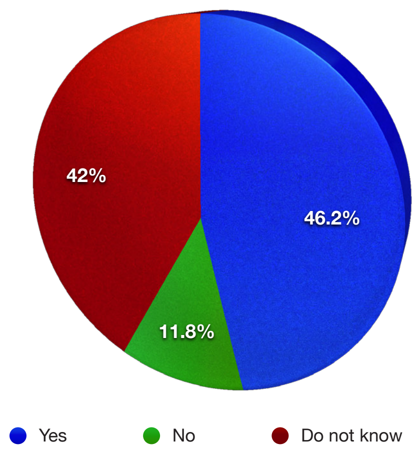
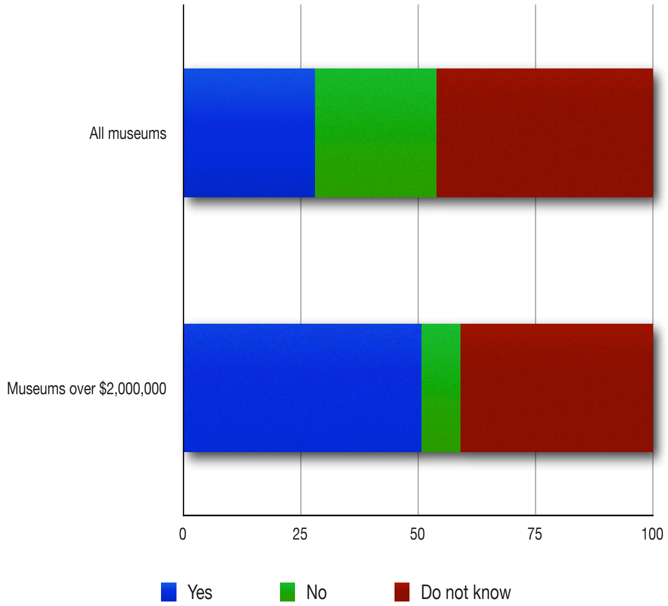


Figure 7. Should regulations similar to the Sarbanes-Oxley Act be required for all museums or for museums over $2m?



agreed that they should be subject to SOX-like legal regulations. This indicates that museum profesionals believe implementing accountability measures will incur financial costs, that larger museums are better able to field those costs, have the personnel to make changes, and have more complex accountability concerns with which to contend. This data may also indicate that larger museums recognise what is at stake for their organisations with regard to the public trust and the perception of trustworthiness. Some survey participants presume, however, that larger museums already have ethics and transparency measures in place, and this study will demonstrate that many of them do.

There are conflicting opinions from museum professionals about mandatory regulations intended to bolster museum accountability. While many professionals think regulations are necessary, particularly because many museums accept public funds, there is an underlying fear that museum boards may ignore additional oversight. One museum director from the Southeast laments, "*My board does not hold themselves accountable to any authority except themselves*." This mirrors the idea that "*unethical people will continue to be unethical regardless of the rules*." As the museum director of a Midwestern museum points out, "*I think most regulations serve to bolster the <u>perception</u> of accountability, but I suspect unethical and illegal behavior can and will occur even with regulations*." This perception of unethical behaviour worries many museum professionals. A representative of a Northeastern museum sums up the general opinion museum directors and board members have towards additional regulations:

> *On the one hand, since our reputation is affected by the poor behavior of others, it would be good to have regulation. On the other, the government tends to screw things up more than it helps. I guess I would err toward some outside pressure to force nonprofits to be more transparent.*

Concurring with that statement, one museum professional notes that "*Regulations will not hurt those already [ethically and financially] responsible, and it will help the sector and those [museums] that are not [responsible]*", finding no issue with requiring accountability measures for museums of all types and sizes.

Individuals interviewed for this study had a range of opinions as to whether their museums' current policies protect the public trust. While most respondents answered "*yes*" to this question, others were not as convinced, answering "*partly*", "*no*", or "*don't know*". In one instance, the policies "*protect the artifacts*", but not the museum's other assets like its reputation. According to qualitative survey responses, museums use varied methods to measure their perception in the public eye. Numerous museums make no effort to monitor public perception, and others rely on external sources, like newspaper popularity polls, to generate that information. Some museums measure attendance numbers at temporary exhibitions and special programmes, while other museums expressly do *not* measure visitor attendance. Such institutions do not want to measure success based upon popularity, or on numbers that may rely upon external factors like the weather. Some museums measure public perception through the success of fundraising drives and membership growth. In addition to assessing letters received from members, museums also monitor visitor comments posted on their website and anecdotal conversations with attendees. Few museums in this study conduct exit surveys, membership surveys, or host periodic research groups or focus groups with members of the public. Some museums have successfully measured public perception by executing a self-study and by assessing their public image as part of the AAM MAP scheme. Only one museum professional noted monitoring reports from the museum sector about public perception.

6.2 Summary

Survey responses demonstrate that SOX has been discussed and evaluated by at least one third of American museums. Museums with greater financial resources discussed legal standards more frequently than smaller museums, and a change in governance policy resulted in a higher rate when the museum director and board jointly instigated change despite an organisation's size. The Sarbanes-Oxley Act has affected both museum governance structure and governance attitudes, though multiple influences have motivated recent changes in American museum governance.

Overall, governance attitudes have changed since Sarbanes-Oxley because boards of directors are more aware of their responsibilities and of the damage the perception of impropriety can have on their organisations. Questions remain in the museum community whether SOX-like legislation benefits the museum sector or the public good. It appears that more effort is needed to educate key museum employees and board members about current and proposed nonprofit legislation affecting museum management. As will be demonstrated in the following sections, SOX has indeed informed the conduct of museum governance and has affected the delivery of museum services.

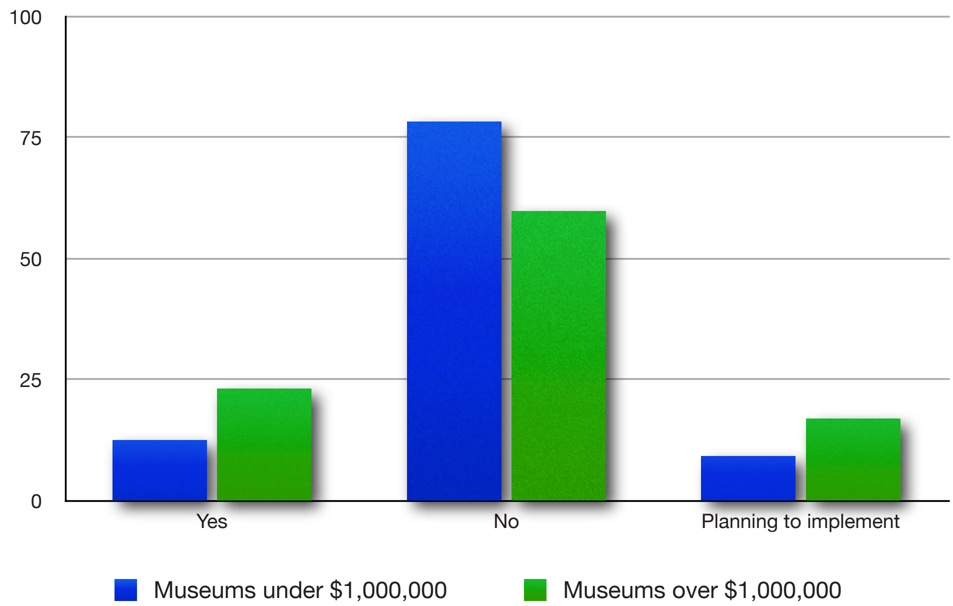
7. American museum governance accountability

A board of directors must uphold two primary fiduciary duties: the duty of care and the duty of loyalty. Managing conflicts of interest, monitoring executive compensation, and adhering to federal law, like implementing a document destruction policy and whistleblower protections, indicate that an accountable governance system is in place. Saidel's 2002 *Guide to the Literature on Governance: An Annotated Bibliography* states "there is a disconnect between what the prescriptive literature on board roles and responsibilities says boards *should be* doing and what boards *are actually* doing." (Saidel 2002, 7) This section of the thesis will illuminate current museum governance practice. It will provide empirical evidence about the policies and ethical guidelines boards of directors have implemented and plan to implement. These practices demonstrate areas in which museum management is successful or is struggling to fulfill its fiduciary duties. Governance accountability failures that occurred at the Milwaukee Public Museum and at Philadelphia's Independence Seaport Museum will be highlighted. These examples will demonstrate the practical need for an accountable board of directors, and the ease with which problems can arise from a lack of prudent oversight.

7.1 Survey results: Sarbanes-Oxley Act requirements

Fewer than 30% of museums surveyed have a written document destruction policy, despite being required to do so by law since 2002. Predictably, museums with smaller budgets are less likely than larger museums to have such a policy in place (Figure 8). One could reasonably

Figure 8. Percentage of museums with a document destruction ban

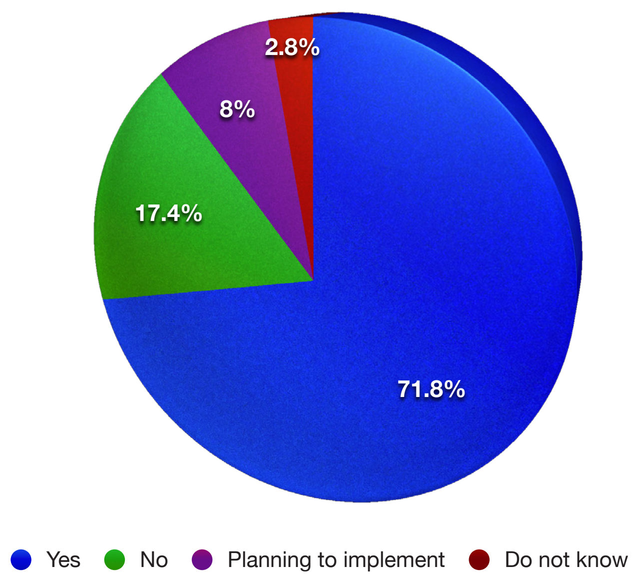


assert that museums with smaller budgets would have access to fewer resources and be less likely to implement best practice policies like a document destruction plan. While such a small percentage of museums adhere to SOX's requirement, more Art museums and Science museums have document destruction plans in place than other museum types. Furthermore, 40.9% of Art museums that do not have a document destruction policy expect to implement one. Roughly 16% of museum professionals were able to confirm that their museums had implemented document destruction plans as a direct result of the Sarbanes-Oxley Act.

It is more common for museums to have a written whistleblower protection policy (35.7%) than a written document destruction policy (29.2%), though both are required by law. A further 14.5% of museums lacking whistleblower protections planned to implement a policy that ensures employees who make complaints in good faith about their organisation's governance will not face retribution from their supervisors. Again, Art museums and Science museums lead the sector, as over 45% of each type already has whistleblower protections. A high percentage (72%) of museums over $2m established whistleblower policies as a result of the Sarbanes-Oxley Act, demonstrating large museums' awareness of national issues that affect the museum sector. A total of 37.3% of museums surveyed that have a whistleblower policy in place implemented it due to SOX.

While similar to whistleblower protections, grievance policies are common in museums today (Figure 9). Grievance policies are routine practice in American museums, though

Figure 9. Is a written procedure in place for confidentially receiving and treating complaints from employees?



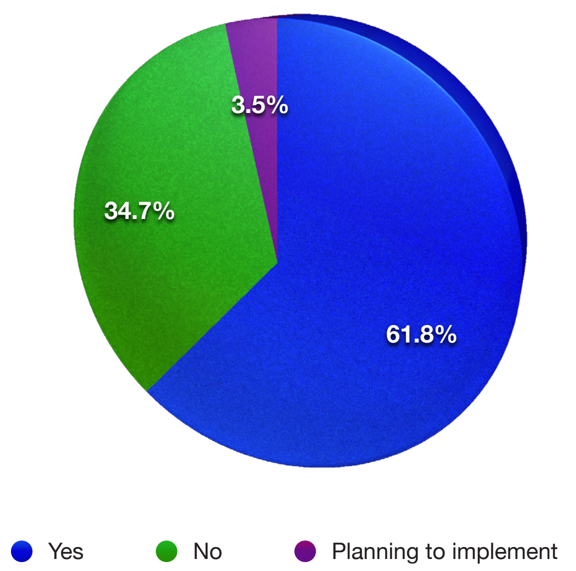
museums with annual budgets exceeding $500,000 are more prone to have one (84%) than museums with smaller budgets (56.7%). History museums are the least likely museum type to have a grievance policy (64.6%), though an additional 29.4% of History museums planned to implement one. It is possible for museums to transform their grievance policies into whistleblower protection policies to bring museums in line with legal regulations.

While most museums interviewed for this study have procedures in place if an employee is accused of misconduct, fewer museums have procedures to manage cases where a board member is suspected of misconduct. Such procedures are typically published in an employee handbook, ethics policy, municipal manual, or are subsumed within whistleblower protection policies. One museum with a method to handle board misconduct noted that the procedure "*lacks teeth*". Again, an institution has a policy in place, but fails to utilise it, missing potential benefits. When discussing board member misconduct policies, one museum professional lamented that "*Maybe now that we've had another problem, the next revision [of the ethics code] will be easier.*" Some board members balk at implementing stricter self-regulatory codes despite the board's accountability responsibilities.

7.2 Survey results: executive compensation

The dangers of failing to inform all board members about executive compensation was illustrated in the Smithsonian case study, yet fewer than two thirds of American museums do so (Figure 10). Nearly 10% of respondents, the majority of whom represent museums with

Figure 10. Are all board members informed about executive compensation?



budgets smaller than $500,000, indicated this question is not applicable to their institution. Some of these museums do not have a full time paid director, or are run by university trustees.

Similarly, the museum community recognises that art or artefacts should not be loaned to individuals. Only a small percentage of museums (7.6%) have loaned money or artefacts to either board members or staff members. Science museums and History museums have done so more than other museum types. Museums that have loaned money or artifacts are not limited to those with small budgets; loans have occurred in museums ranging in budget size from $25,000 to $10m.

Though SOX did not directly address executive compensation for either the nonprofit or for-profit sectors, the topic is often at the forefront of governance accountability issues. SOX Section 402 does ban loans to directors and key employees. Setting executive compensation and granting loans, however, fall under the board's responsibility to uphold its duty of care. In 2005, Jackson and Fogarty explained, "The entire board could now be held directly accountable for the executive director's (ED) compensation package … [but] many nonprofit boards do not have access to the compensation package of the ED, as this has come under the exclusive purview of the board's executive committee." (Jackson and Fogarty 2005, 23) With regard to nonprofit organisations, in 2004 the IRS reported that 15% of public charities improperly recorded executive compensation and excess benefit transactions on their 990s. (Internal Revenue Service 2007, 7)

Executive compensation can be difficult to assess and reconcile. Experts define reasonable employee compensation as the monetary value similar organisations would pay for equitable work under like circumstances. To determine how "reasonable" a compensation package is, all forms of income and payment must be taken into account including salary, bonus, fees, deferred and non-cash compensation, liability and health insurance, and taxable and nontaxable benefits like a housing allowance. A potential compensation package must be comparable to those offered by commercial and nonprofit organisations of similar size and scope, and must take into account recent independent compensation surveys and any documented employment offers from competing organisations (Siegel 2007, Jackson and Fogarty 2005). Any compensation package far surpassing figures from those three sources is deemed "excessive" and, thus, inappropriate. As Secretary Small's compensation package at the Smithsonian demonstrates, compensation packages are also presumed to be reasonable if an authorised committee approves the contract and documents its basis for payments.

Some corporate procedures for setting executive compensation are applicable to nonprofit organisations, while others pertaining to stock options, for example, are not. It is possible for larger museums to employ a compensation consultant to develop and recommend justifiable income packages for executive staff. It is important that the museum's board, not staff members, hire, oversee, and maintain contact with the compensation consultants. This will help ensure that an independent firm is retained, and will help to prevent staff conflicts of interest. The compensation firm will not be beholden to any museum staff members responsible for hiring, for example. In these cases, board members ought to conduct "an independent review of the consultants, [and] not just [rely] on a list of names provided to the board by the executive director." (Siegel 2007, Setting Nonprofit website) Attorneys or financial specialists can also develop staff compensation plans.

Cash compensation, deferred compensation, and perquisites are three methods of payment by nonprofits that are comparable to corporate compensation. Lublin's April 2007 *Wall Street Journal* article "Ten Ways to Restore Investor Confidence in Compensation" identifies methods boards can employ to set compensation. For example, the board or the board's compensation committee will set annual cost of living adjustments to compensation. This rate of adjustment should be applicable to all museum staff members, including the executive director and senior staff. Equitable cost of living rates eliminate the potential for providing some employees a hidden raise. Similarly, additional perquisites for executives, like newspaper subscriptions or housing allowances, can hide compensation from the public. Aggregate compensation, including the value of fringe benefits, insurance plans, and deferred compensation ought to be discussed and justified before being agreed upon at the board level.

Monitoring executive compensation is not the only duty of care a board is required to uphold. Evaluating executive compensation, however, is one of the few concrete procedures that can be researched in a study like this thesis. The Milwaukee Public Museum's poor board oversight (described below), will demonstrate breaches in duty of care that cannot be measured or calculated.

7.3 Survey results: duty of loyalty

The duty of loyalty requires board members to act in the organisation's best interest, preventing any personal conflicts of interest. Most museums surveyed have a written conflict of interest policy for all personnel and board members (Figures 11 and 12). University museums are the least likely museum type to have a conflict of interest policy, and none surveyed that lacked a written policy planned to implement one. This merits further investigation into the particular parameters of a University museum's affiliation with its academic institution, though University museums adhere to the policies and procedures set by their parent institutions.

Figure 11. Does your museum have a written conflict of interest policy in place for all personnel and board members?

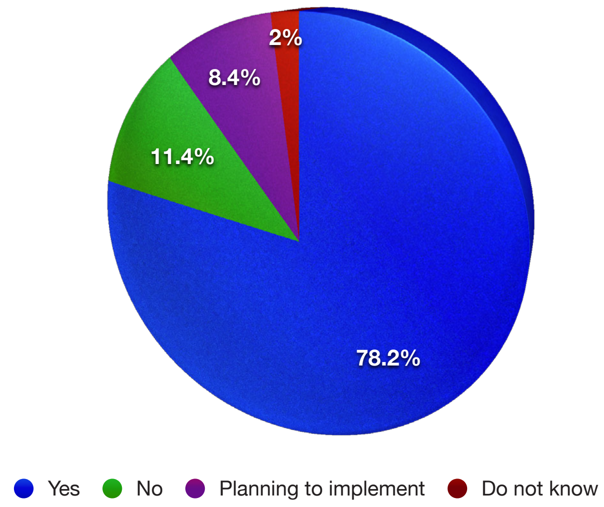
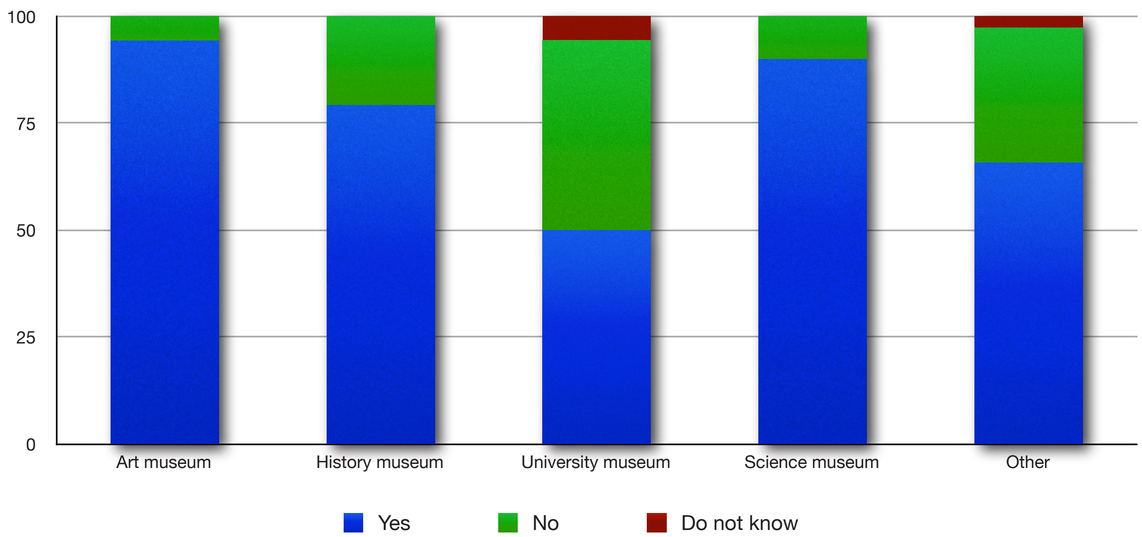


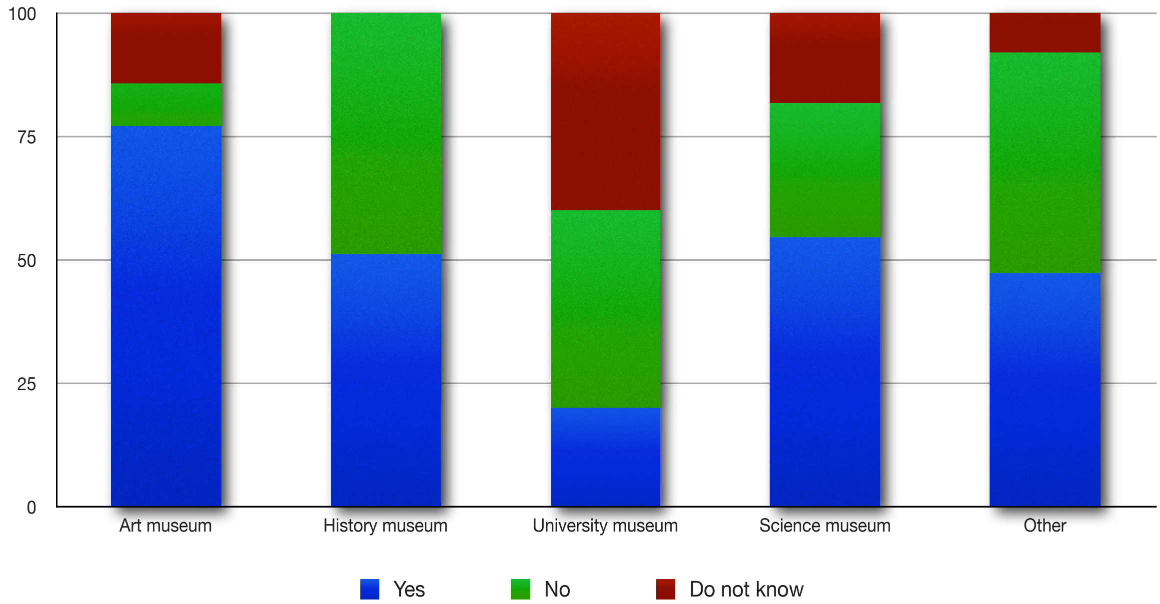
Figure 12. Does your museum have a written conflict of interest policy in place for all personnel and board members?



All museums with budgets over $5m either have a conflict of interest policy for board and staff members or plan to develop one. It is evident that smaller museums are also aware of their conflict of interest responsibilities. Half of the museums surveyed with an annual budget under $25,000, and half the museums with $25,001-$100,000 budgets already have conflict of interest policies in place. Another 25% of museums in those two budget brackets without such a policy intend to implement one.

As expected, fewer museums *record* board members' conflicts of interest (54.6%) than have a conflict of interest policy (78.3%). Of those that do not record board conflicts of interest, 20.4% of museums plan to do so. It is no surprise that the frequency with which museums keep track of their board members' conflicts increases as the annual budget increases. Again, University museums are the least likely to record board conflicts (Figure 13). At least one museum in each budget category over $100,000 reported that a conflict of interest register was established as a result of SOX. Overall, 15.4% of museums surveyed that have implemented a conflict of interest register for board members after 2002 did so due to SOX. Art museums responded to Sarbanes-Oxley more than other museum types at a 25% rate.

Figure 13. Does your museum record board members' conflicts of interest?



Of those museums that take note of board or staff conflicts of interest, only 56.6% evaluate the conflicts internally (Figure 14). The effort to collect conflicts lacks value if those conflicts are not assessed in conjunction with the museum's interests. Art museums lead amongst museums that evaluate board conflicts (77.1%), as compared to 50% of all other museum types together. Few museums publish board members' conflict of interest disclosures (Figure 15), yet one quarter of those are municipally run museums with annual budgets between $1m-$2m. Another 25% of museums in that budget range currently plan to publicise conflicts of interest. These percentages are much higher than for any other budget size.

Figure 14. Does your museum evaluate board or staff members' conflicts of interest internally [if conflicts are recorded]?

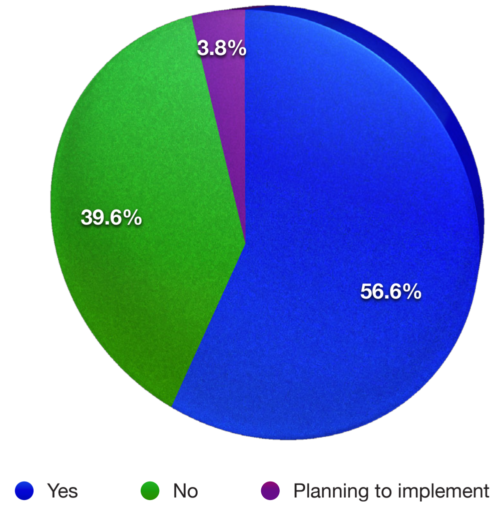
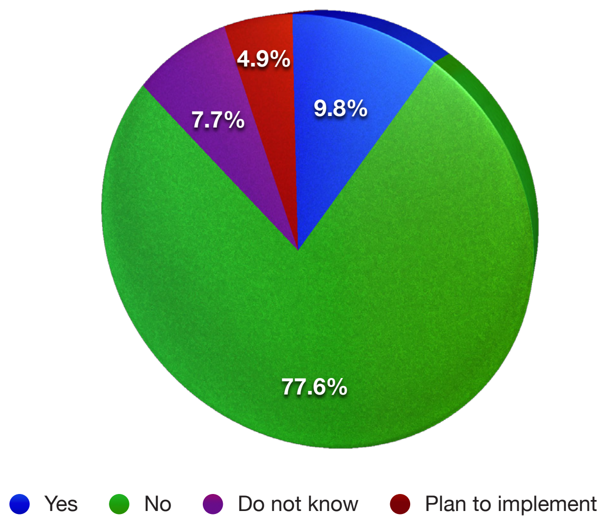


Figure 15. Does your museum publish board members' conflicts of interest?

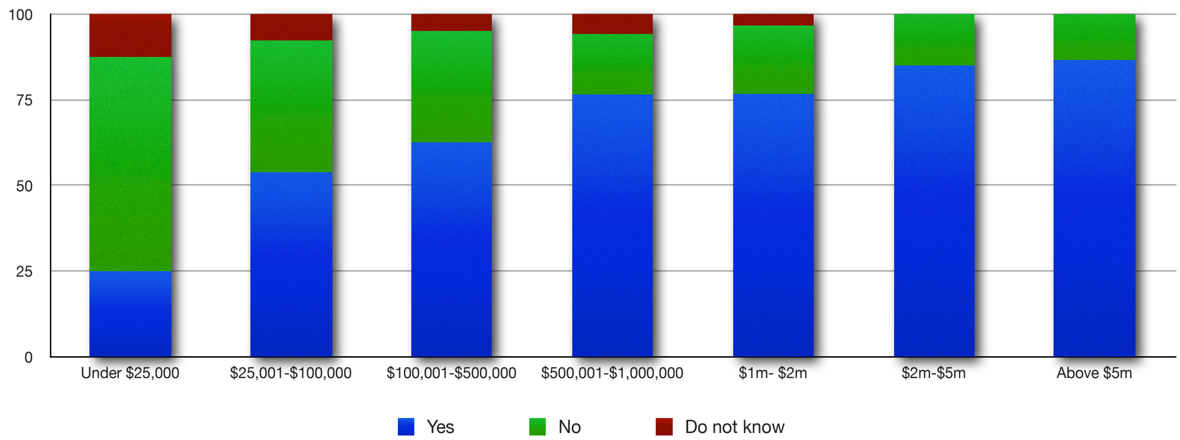


For the six museums interviewed in which incidences of ethical or financial misconduct had taken place in the past, four had fewer occurrences since implementing accountability codes and policies. One respondent noted that when a museum's standards, professional expectations, and accountability awareness are raised, the collective ethical conduct improves. Yet another museum professional was adamant that "*policies don't matter – people* *do*." Regarding museum accountability, both are correct. Policies will be meaningless unless individuals subscribe to their value and purpose. Merely having accountability policies will not prevent malfeasances from taking place. Conflicts of interest are more likely to be prevented if these conflicts are evaluated, discussed, and made public. Problems may still arise, however, if board leadership does not recognise the value in preventing conflicts of interest.

7.4 Survey results: ethical and transparent governance

Only 67.4% of American museums surveyed have a written code of ethics that applies to the board of directors. The trend towards having an ethics code rises steadily as museum budgets increase (Figure 16). The smallest American museums, which are typically volunteer-run,

Figure 16. Museums by budget size with a Code of Ethics applicable to the board of directors



are the least likely to have ethics codes and are unlikely to be members of AAM or regional museum associations, which are the most common sources for ethics training. University museums have the lowest instance of codes of ethics, which may result from requirements to adhere to the host university's ethical codes. Most ethics codes were established prior to SOX in 2002 (Figure 17). SOX does not require corporate institutions to have a code of ethics for senior financial officials, merely to disclose and explain why one is not in place.

It is very rare (2.1%) for a museum to publish its ethics code online. Nearly 20% of respondents replied that this question is *Not Applicable* to their museums, indicating their museums do not have a code of ethics, do not have a website, or both. On a related topic, very few museums surveyed have a standing Ethics Committee on the board of directors (Figure 18). No History museums surveyed have an Ethics Committee at the board level. Notably, of those surveyed,

Figure 17. In what year did your museum adopt a Code of Ethics?

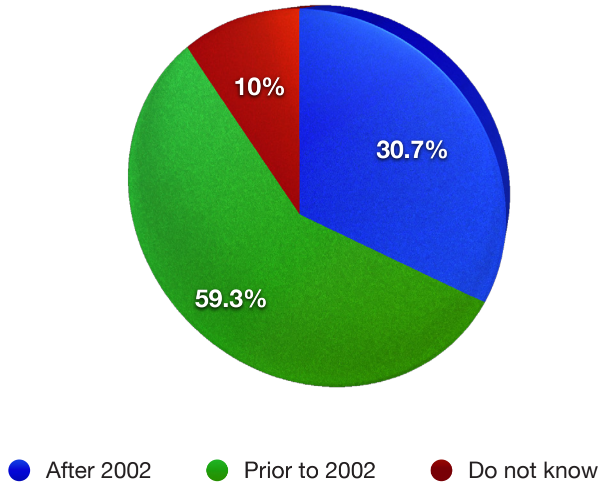


Figure 18. Does your board of directors have an Ethics Committee?

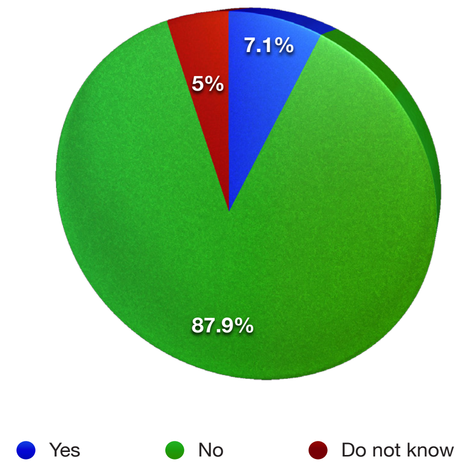
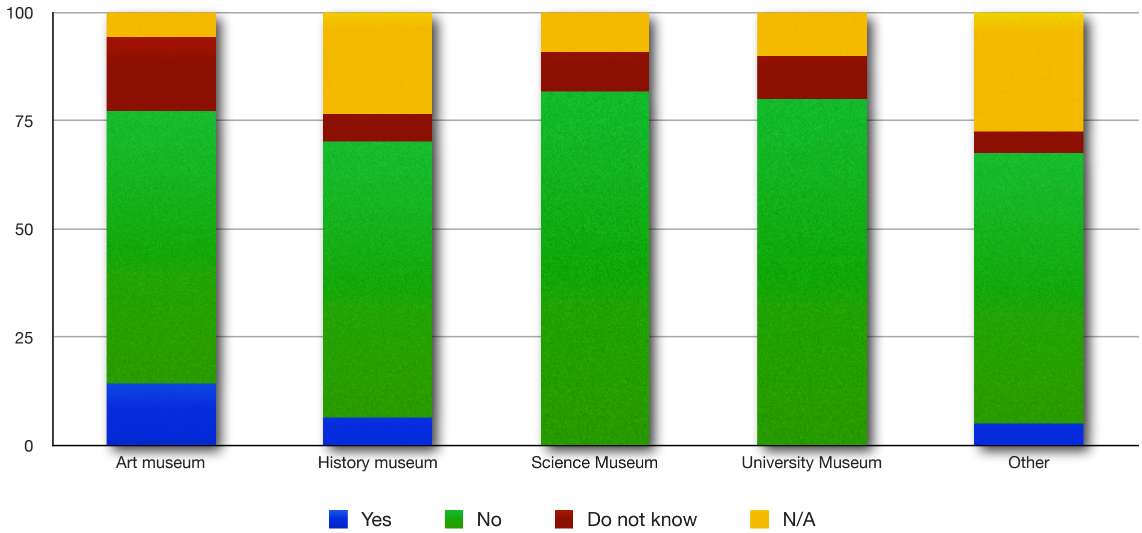


Figure 19. Does the museum report annually on its compliance with its Code of Ethics?



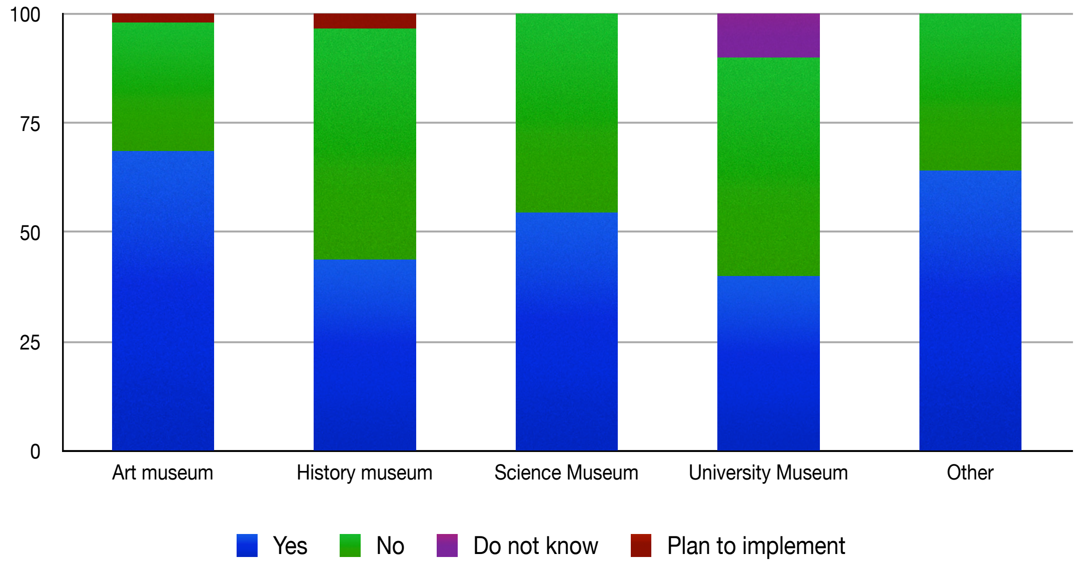
as many museums with budgets under $100,000 have Ethics Committees as museums over $10m. Only 3.5% of those museums that do not have a board Ethics Committee plan to implement one.

Only 7% of museums report annually on their compliance with their code of ethics in their annual report or their IRS filings. Museums that fall in the $1m-$2m budget range report on their organisation's compliance with its code of ethics at a rate of 17%. These are the same municipally run museums that publicise their board members conflicts of interest at a higher rate than other museum types. Figure 19 demonstrates the rate at which different museum types report annually on their ethics code compliance. Roughly one quarter of both History museums and Other types of museums indicate ethics reporting is *Not Applicable* to their institutions, reflecting either the lack of an ethics code or the lack of reporting requirements given the small size of the organisation. Interviews demonstrated that museums are more likely to report on new policies implemented in the past year than report on the successful or unsuccessful compliance with policies already in place.

There is not a uniform method for museums to report fraud. While most museums interviewed disclose all incidences of fraud to the public, board, and staff, some professionals were adamant that would not be the case. "*It depends*" was a common response, even by municipally run museums that are required to disclose fraud to their government managers. One individual was certain that "*The [museum] is totally transparent, as it has to report to the state*." This sentiment was repeated by multiple government-run museums. Unfortunately, state, local, or federal reporting does not automatically ensure transparent governance, since it is possible to doctor reports without sufficient internal controls or oversight.

Over half of museums (55.8%) routinely publish board meeting minutes (Figure 20). History and University museums are the least likely types to publish meeting minutes. Very few University museums have traditional "boards" that govern the museum's direction, and the material that is published may be included in the museum's Annual Report, if an Annual Report is published. Mirroring the high rate at which $1m-$2m museums publicise board member conflict of interest disclosures, these museums also have the highest rate at which board minutes are published (80%). Discounting museums with budgets smaller than $25,000, of which 26.8% publish their board minutes, and many of which are History museums, all other museum sizes publish their board minutes at a rate of 51.4%.

Figure 20. Does your museum publish board meeting minutes?



Survey responses indicate that University and government-run museums take little responsibility for their own ethical or fiscal transparency. Typically, these museums have not discussed establishing controls that help transparency or accountability, relying instead upon the parent organisation or the municipal or state government to do so. Similarly, these museums report that governance attitudes have not changed at their museums since SOX or since major corporate scandals like Enron. Yet in many cases, University museums and locally- run museums manage their own spending and finances. The annual budget may have been set by the host organisation, but the museum decides how to utilise those resources. University and government-run museums can also establish their own ethics policies that can work in concordance with requirements and codes set by the parent institution.

A list of commonly utilised methods to ensure ethical behaviour and ethical transparency was elicited from interviews and from the qualitative questionnaire (Figure 21).

Figure 21. Methods to ensure ethical behaviour and transparency

- *Annually reviewing the ethics policy*
- *Staff training and evaluations*
- *Vigilance and self-policing*
- *Having a personnel policy*
- *Updating museum bylaws*
- *Implementing audit recommendations*
- *Requiring staff and board members to sign the museum's code of ethics annually*
- *Requiring staff and board members to disclose conflicts of interest annually*
- *Quarterly ethics discussions at board and staff meetings*

Museums have been able to instill fiscal and ethical accountability in employees using direct and indirect methods. On-the-job training and a staff handbook are near-universal steps to achieving staff accountability. Other organisations require background checks on all employees or have video surveillance on site. Identification cards allow different levels of access to the collection, and password protections limit access to IT programs and software. Some museums involve as many staff members as possible in the annual budget and budget reporting meetings, in addition to monthly budget reconciliations in each museum department.

Professionals also describe less direct methods that attempt to instill ethical and fiscal accountability in staff members (Figure 22).

Figure 22. Methods to instill accountability in staff

- *Staff meeting discussions about reputation and the definition of success.*
- *Live the museum mission.*
- *Lead through example.*
- *Reinforce ethics through the culture of the museum.*
- *Take the conservative approach to solving problems.*
- *Do not take the easy route, but do things the right way.*

Museums that have implemented internal controls report experiencing valuable benefits and minimal costs. The benefits include understandable procedures and clearer accounting that have led to fewer incidences of fraud and more disciplined management. Museums have been able to update their bylaws and ethics codes, and have been able to eliminate board members who did not abide by museum regulations. The costs associated with implementing best practice policies include staff time and effort, staff training, and "*minor*" increases in audit fees.

7.5 Case studies

i. The Milwaukee Public Museum: governance failures

The Milwaukee Public Museum (MPM) in Wisconsin serves as a cautionary tale for museums that breach their fiduciary duty of care. The museum opened in 1882 and was run by Milwaukee County for over a century until 1992 when oversight transferred to the Milwaukee Public Museum, Inc. The county retains ownership of the collection and continues to subsidise the museum highly. In 2004, MPM reported a $6.4m deficit. At the time, museum officials had been negotiating a lease renewal with Milwaukee County that would have provided $70m in subsidies over twenty years. At those negotiations, the museum disclosed only a $450,000 deficit for 2004. Only after the new lease was approved did the museum disclose its multi-million dollar losses.

Museum board chairman Dan Finley blamed the jump in deficit "to overly ambitious budgeting, fund-raising shortfalls and the county's refusal to administer pension benefits for some ex-county employees" and Museum Director Michael Stafford agreed, noting the museum "grew too fast, too quickly … beyond its means of support." (Lank and Umhoefer 2005) Warnings about MPM's financial condition from the MPM CFO did not spur the MPM board to action. (Committee on Finance 2005, 33) The following year MPM froze spending and cut 42% of staff positions. (Umhoefer 2005) Not until May 2005 did the board cut the museum's $20m budget by $7m and hire external auditors to review past finances. (Umhoefer 2005b) To aid the museum, Milwaukee County agreed to subsidise the museum's operating budget by $3.5m between 2008 and 2017. Their lenders, M&I and Chase banks agreed to lower their interest rates from 6% to 2%, and to extend the maturity of the long-term debt. (Schultze 2007) Additionally, the museum launched a $30m capital campaign.

The museum's financial woes came as a surprise to the museum's board members who had failed to question the museum's massive losses, and who could have prevented the financial catastrophe with appropriate oversight. Over the previous five years, the organisation's net surpluses had been growing smaller. Operating cash fell from $5.4m in 1999 to $500,000 in 2004. Long-term debt rose from $14.1m to $24.3m between 1999 and 2005. (Committee on Finance 2005, 11) According to the Public Museum's bylaws, the board must approve all items of indebtedness, a provision that had been ignored. (Committee on Finance 2005, 52) At the same time expenses rose, public contributions dropped from $9.4m in 1999 to $5.8m in 2003 and $3.2m in 2004. (Committee on Finance 2005, 11) In only three years, the museum's endowment plummeted from $8.5m in April 2002 to $387,000 in August 2005. (Committee on Finance 2005, 23) Moreover, the MPM 2005 final audit states that the Executive Committee recommended the use of restricted endowment funds to cover the museum's 2004 operating losses. (Committee on Finance 2005, 29)

MPM policy stated that no more than 5% of the endowment could be spent annually. This figure would not significantly draw down the endowment's principle, enabling it to grow in perpetuity. Cary and Bright's *The Law and The Lore of Endowment Funds* (1969) first examined the legal restrictions over nonprofit endowments. They argued for the judicious use of funds: "too often the desperate need of some institutions for funds to meet current operating expenses has led their managers, contrary to their best long-term judgment, to forego investments with favorable growth prospects if they have a low current yield." (Cary and Bright 1969, 5-6) In 1972, the Uniform Management of Institutional Funds Act (updated 2005) set the standards for "prudent use of appreciation in invested funds." (Uniform Management 1972, 2) The state of Wisconsin subscribes to these standards, though statutory law regarding endowment spending differs amongst the fifty states.

Taking responsibility for the museum's financial losses, COO Terry Gaouette resigned in April 2004, and later pleaded guilty to one count of falsifying a financial record. In return, the court ordered him to pay $45,000 in restitution to MPM and a $500 fine. In his plea, Gaouette admitted to overstating the museum's endowment by $500,000 and indicating that a half-million dollar bond payment had been made. According to the testimony at his trial, Gaouette did not personally gain from any financial transactions.

Gaouette had sent emails to both board members and museum executives warning of the financial losses the museum continued to sustain. Museum Director Michael Safford claimed to have no knowledge of the endowment transfers, blaming complex financial spreadsheets for his misunderstanding. At Gaouette's trial, Kenneth Kerznar, the former chairman of the museum's Endowment Committee, noted how Gaouette "repeatedly mentioned [the museum's] shortfalls in 'working capital'." (Umhoefer 2007) According to museum board meeting minutes, Gaouette reported these weaknesses at both the museum's February 2003 and September 2004 full board meetings. Nether the board nor the museum director were fiscally diligent and failed to investigate Gaouette's claims, breaching their fiduciary duty.

MPM did not suffer from individual greed, fraud, or theft, but from a lack of board oversight. When the 2004 MPMbudget was voted upon in June 2003, only eight of the twenty-five board members were present, and another seven participated by telephone. The board approved the $26m budget within an hour, without making any changes. (Lank and Umhoefer 2005b) Milwaukee County itself had appointed some board members, yet there was a lack of municipal oversight. The President of M&I Bank, one of the museum's two largest lenders, also sat on the board, representing a potential conflict of interest. (Lank and Umhoefer 2005c) This conflict was not discussed in the Milwaukee County's final audit of the MPM financial crisis. Neither the MPM board nor Milwaukee County officials accepted responsibility for MPM's losses. It was their duty to be stewards of the organisation, ensuring the museum fulfilled its mission within an appropriate budget. It was the board's inadequate attention to financial statements, however, that led to growing deficits year after year. Their failures to govern and to institute suitable internal controls represent a breach of public trust.

ii. The Independence Seaport Museum: conflicts of interest

A scandal involving board oversight failures and conflicts of interest struck Philadelphia's Independence Seaport Museum. In 2007, the museum claimed that its director, John S. Carter, stole $2.4m from the organisation over his seventeen-year tenure. This is a large figure given the annual total revenue for the Independence Seaport Museum was $2,752,344 according to its 2006 Form 990. At the same time, the museum cut its staff by half due to budget constraints. The charges against Carter claimed that he purchased over $500,000 in boats for the museum that instead went for his personal use, that he spent $594,000 on museum credit cards between 2003-2006 for which he did not provide receipts, that he charged over $20,000 to the Philadelphia museum for furniture that went to his Massachusetts home, and that he was reimbursed for nearly $10,000 of expenses to attend a European conference that did not take place. Further, Carter fraudulently obtained ownership of a split dollar life insurance policy by forging the signatures of two Seaport Museum board members. He also failed to report more than $1.5m on his tax returns for the fraudulent income he received (US Department of Justice 2007).

Notably, Carter was not a disgruntled underpaid staff member. His total compensation according to the museum's 2005 Form 990 was $353,870. This exceeded the late Anne d'Harnoncourt's compensation ($300,566) that same year as Director and CEO of the Philadelphia Museum of Art, one of America's most significant Art museums. Carter pleaded guilty to two counts of mail fraud and one count of tax evasion. He was sentenced in November 2007 to fifteen years in prison, the restitution of $1.3m, a $30,000 fine, and criminal forfeiture of $1.56m that is equal to the proceeds of his fraud.

The museum's 990 returns indicate the endowment dropped 41% in seven years during Carter's tenure as director. At the time, the endowment's investment manager sat on the board of the museum chairman's private company. Museum board chair Peter McCausland explained to the *Philadelphia Inquirer* that the museum had given board members insurance, legal, and investment management service contracts because they are "good people who have given of their time and a considerable amount of money to help the museum grow and prosper – on a volunteer basis." (McCoy and Gelbert 2007) McCausland did not believe there was a conflict of interest in doing so. This is a breach in the board's duty of loyalty. The Independence Seaport Museum has since appointed Lori Dillard Rech to set the museum back on course. New internal controls over finance and administration have been established to prevent misdeeds (Salisbury 2008). Nine board members have been added to the organisation, and the museum's endowment has grown to $14m. McCausland, however, remains board chairman, raising continued questions about the Seaport Museum's accountable governance.

iii. Maier Museum of Art: university museum art sales

Randolph-Macon Women's College (R-MWC) in Lynchburg, Virginia and its on-site Maier Museum of Art faced governance battles in 2006. After completing its 2006 $100m capital campaign, the College's administration announced R-MWC was "poised for the future." (Stern 2007, 1) Yet less than a year later the board suddenly claimed that remaining a single-sex undergraduate institution would soon render the College financially bankrupt, and voted to shift the school to co-education (Worden 2007). Randolph-Macon Women's College changed its name to Randolph College, and became a co-educational institution. Additional funding was needed, however, to update school facilities to accommodate male students. Unfortunately, the College's Maier Museum of Art uniquely suffered as a result.

The College's board of directors decided to sell four works from the Maier's permanent collection at auction to raise $32m for the college's general operations and endowment funds. A legal battle followed in the Virginia court system as student and alumnae protesters attempted to save the art for the community. The Maier Museum's permanent collection is valued at $100m and consists of 3,700 works, roughly 600 of which are paintings. Very few schools of R-MWC's size have either their own museums or such a strong collection of American Art. The Maier also serves as the city of Lynchburg's only Art museum.

The College's President, John Klein, insisted the trustees wanted to "realize the maximum amount of profit while doing the least amount of damage [to the collection]". (Vogel 2007) The works they voted to sell, however, formed the cornerstone of the Maier Museum and were the face of its collection. The College's trustees decided to sell four paintings: Rufino Tamayo's *Troubador* (1945), Ernest Martin Hennings's *Through the Arroyo* (c1920s), Edward Hicks's *A Peaceable Kingdom* (c1840s), and George Bellows's *Men of the Docks* (1912), with a combined value of $45.5m estimated by Christie's. In 1920, the College's first art professor Louise Jordan Smith purchased the Bellows for the permanent collection for $2,500 with funds raised by R-MWC students and local residents. A Randolph College press release noted that "all four [works] are significant paintings of exceptional cultural and historical value." (Randolph College 2007) Lucy Hooper, President of the Randolph College board asserted that the outcome of the proposed November 2007 Christie's sale would determine whether the college would sell more works of art. (The Chronicle of Philanthropy 2007, Museum Director website)

In response, Anne Yastremski of Preserve Educational Choice (PEC), the nonprofit alumnae and friends' organisation formed to protest the art sale, asserted that:

> This [art] collection was not assembled as a financial investment for future 'hard times,' but rather from public donations and funds allocated to benefit the college's educational mission and to create a cultural resource for the community. Two of the four paintings in question were donations from private individuals to the permanent collection, one was purchased with fees paid by students (at their request) specifically for the purpose of buying art and supporting artistic events on campus, and the most valuable one, *Men of the Docks*, was purchased by a Lynchburg-based community group with the express purpose of forming a permanent collection for the benefit of the students and citizens of Lynchburg. (Brennan 2007, Press Release)

The Maier Museum of Art, with a $200,000 annual budget, will not be able to replace such unique works of art. By selling these pieces, Randolph College's board broke the heritage established by generations of R-MWC students and breached the public trust. This occurance represents a sizable loss for the school and for the regional rural community.

AAM, the College Art Association, the American Association of Museum Directors, the Association of College and University Museums and Galleries, the Virginia Association of Museums, and other museum associations publicly condemned the proposed art sale. In September 2005, Virginia Association of Museums President Margo Carlock made a presentation on museum ethics and deaccessioning standards to the Randolph College board. The board ignored her advice and Virginia Worden, Past President of the R-MWC board, continued to lobby for the sale stating, “I think it’s a smart and prudent move … I think it’s a great idea to sell some of the things that are very valuable that deserve and can have a much wider audience while keeping the core of the collection.” (Desrets 2007, Maier Museum website) The four paintings, however, were likely to be sold into private collections.

Museum Director Karol Lawson was not only opposed to the sale, but neither she nor her professionally-trained staff had any input into the works the board elected to sell. The College also ignored basic nonprofit regulations with regard to restricted gifts given in perpetuity. Descendants of Louise Jordan Smith were party to PEC’s ultimately unsuccessful lawsuits. In response to the College’s bid to sell the works, Laura Katzman, Director of the College’s Museum Studies program, resigned in protest, as did Maier Museum Associate Director Ellen Agnew four months later.

The afternoon the board voted for the sale, College President John Klein and support staff including security guards, campus police, art handlers and movers, and even a lawyer, went to Maier Museum Director Karol Lawson’s office demanding her to package and ship the art. She refused and was held by security guards in her office until the art had left the museum. Lawson’s email and telephone access were disconnected during the move. The College requested local Lynchburg police to secure the area so College officials could remove the art from the museum without protests from students or staff. Students and staff, however, had not been told of the vote to sell the art. Instead, the trustees announced the move via email to students, faculty, and alumnae only after the paintings had been removed from the museum and sent to Christie’s. To divert attention from the paintings’ removal and to rope off the area around the Maier Museum, the Lynchburg police claimed to have received a bomb threat, a decision for which the local police later apologised. By the end of the afternoon, Maier Museum of Art Director Karol Lawson resigned her position.

7.6 Summary

As a University museum, the Maier Museum of Art suffered from its governance structure.

The Milwaukee Public Museum and the Independence Seaport Museum demonstrate the need for vigilant governance oversight by museums themselves. The fiduciary duty of care and duty of loyalty can be breached in many ways, so the oversight and implementation of governance best practices can be complex and challenging. Transparent procedures, like publishing board meeting minutes or reporting on ethics compliance are also important steps to achieve ethical museum accountability. Survey results and recent museum scandals demonstrate that there is much work to be done to ensure accountable and transparent museum oversight. Museums, however, are continuing to put best practice measures in place such as recording and evaluating conflicts of interest. While an accountable board is the first step toward sound museum governance, internal controls are of equal importance.

8. American museum fiscal accountability and internal controls

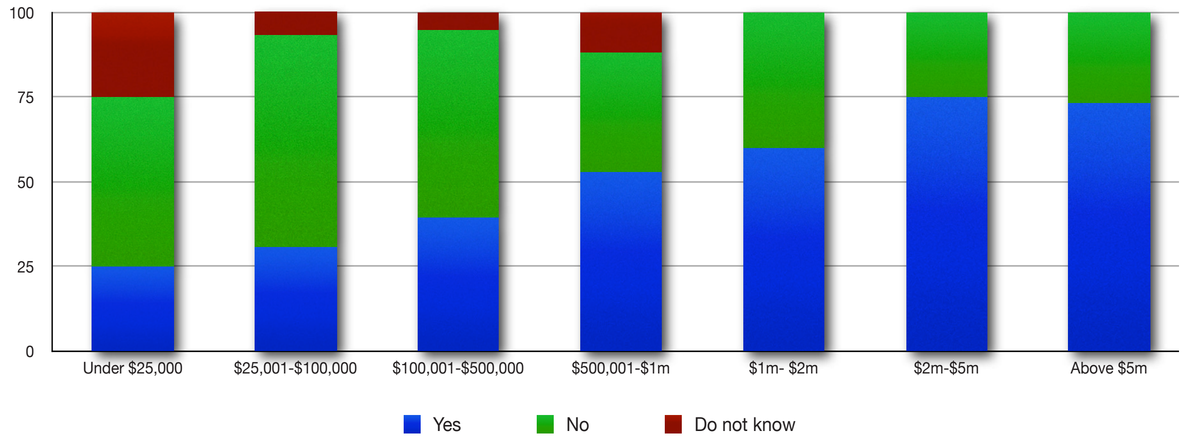
It is necessary to protect a museum's resources through accounting and administrative procedures known as internal controls. Internal processes can aid accountability by combating fraud and waste, and by establishing a system to ensure accurate financial reporting. An accounting system that safely and accurately maintains financial records and other databases, and control procedures that oversee financial processes can minimise risks inherent in running an organisation. Misappropriating assets for personal gain is the most common form of financial fraud in America. The Association of Certified Fraud Examiners determined that financial fraud primarily occurs through three accounts-payable processes: expense reimbursement, billing, and cheque writing (Association of Certified Fraud Examiners 1996). Transparent processes for approving and reviewing financial transactions in museums are needed. Well-executed audits, organised recordkeeping, separation of duties, and reviews of internal functions are steps to build internal accountability.

The Sarbanes-Oxley Act does not require internal controls other than whistleblower protection and document destruction policies for American nonprofits, but other controls required for corporate firms are relevant to the American museum community. This section will report on the current range of internal controls and best practice measures that museums have implemented. It will note whether further changes are planned to help ensure fiscal accountability. It is not possible to consider every internal control, so some, like payroll procedures or competitive bidding, will not be discussed. The section will conclude with an overview of two museums that have suffered financial fraud because of insufficient or manipulated internal controls.

8.1 Survey results: auditing

Over 52% of museums surveyed have a board of directors with an Audit Committee that is responsible for soliciting bids, interviewing, hiring, and overseeing auditors for the museum. The Audit Committee also reviews and acts upon audit report recommendations for improvements to the organisation's financial operations and reporting processes. Monitoring internal auditing performance, overseeing the internal control structure, and complying with regulations are vital tasks the board Audit Committee manages. As discussed, the Smithsonian's Audit and Review Committee failed to implement KPMG's recommendations in 2002 and 2007 with negative consequences. As only half of American museums have Audit Committees, there is cause for concern that many museums lack independent internal financial oversight. Responsibility for financial accuracy and transparency then falls to museum directors, board treasurers, and the employees who execute financial processes. The progressive trend indicates that it is more likely for larger institutions to have an Audit Committee than smaller museums (Figure 23). Museum professionals who were interviewed indicated an Investment Committee and a Finance Committee are similarly important to the Audit Committee.

Figure 23. Does your museum's board of directors have an Audit Committee?



Of museums with an Audit Committee, 80.9% have "independent" committees, meaning committee members are not compensated and no staff members, including the museum director, sit on the committee. All museums larger than $5m, and even 61.5% of museums smaller than $100,000 have independent Audit Committees. Yet only 60.3% of Audit Committees have at least one member who is a financial expert, meaning someone with experience applying GAAP to financial statements or who has familiarity developing internal financial controls. So nearly 40% of museum Audit Committees lack an individual qualified to oversee museum finances. While SOX requires Audit Committee independence, it does not require a financial expert, but corporate firms must publicly disclose this fact.

A high percentage of museums surveyed use a certified auditor (82.8%) to conduct financial audits. It can be considered a conflict of interest for a museum's auditor, however, to sit on its board of directors. This only occurs in 0.7% of museums. Similarly, only 1.4% of museums responded that a current employee had worked for the museum's audit firm in the past year.

SOX explicitly prevents companies from hiring senior executives that were employed by the company's audit firm within one year of an audit.

It is most common for audited museums to utilise the same auditor or audit firm for three to five years (Figure 24). Similarly, museums are most likely to change their lead auditor every three to five years (Figure 25). SOX requires companies to rotate the lead auditors every five years. This helps to ensure that auditors do not become complacent in their duties or grow too familiar with the personnel or finances they oversee to catch any material misstatements over time.

Figure 24. How many years has your museum used the same auditor or audit firm?

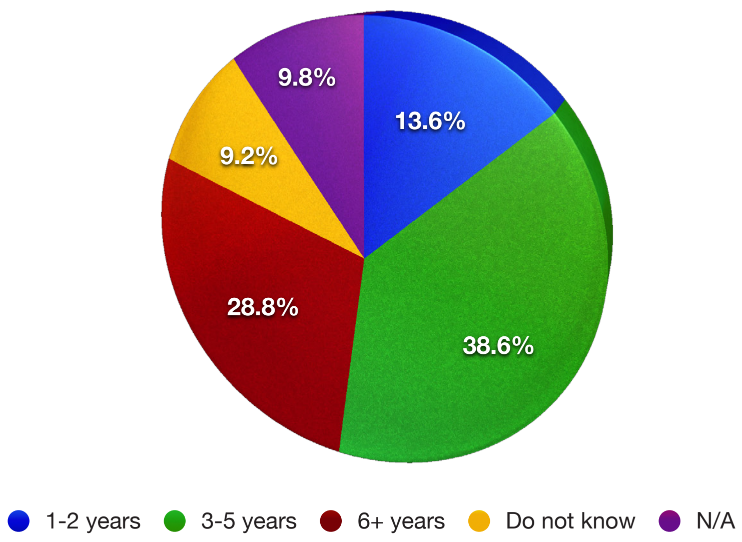
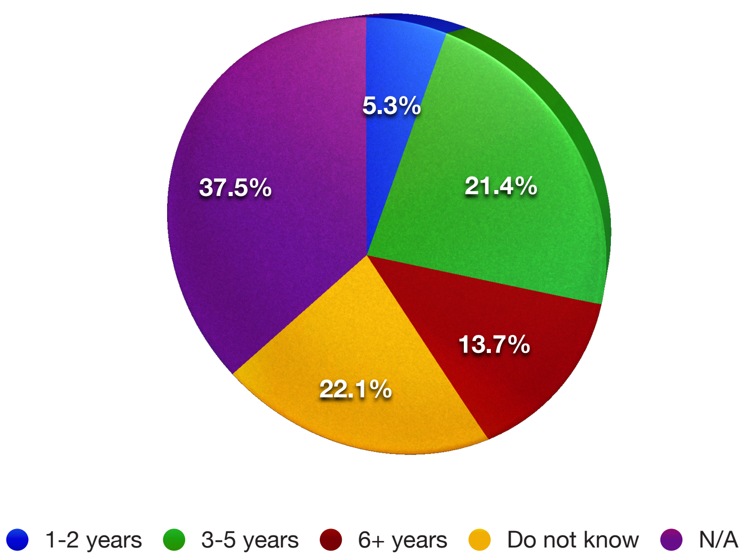
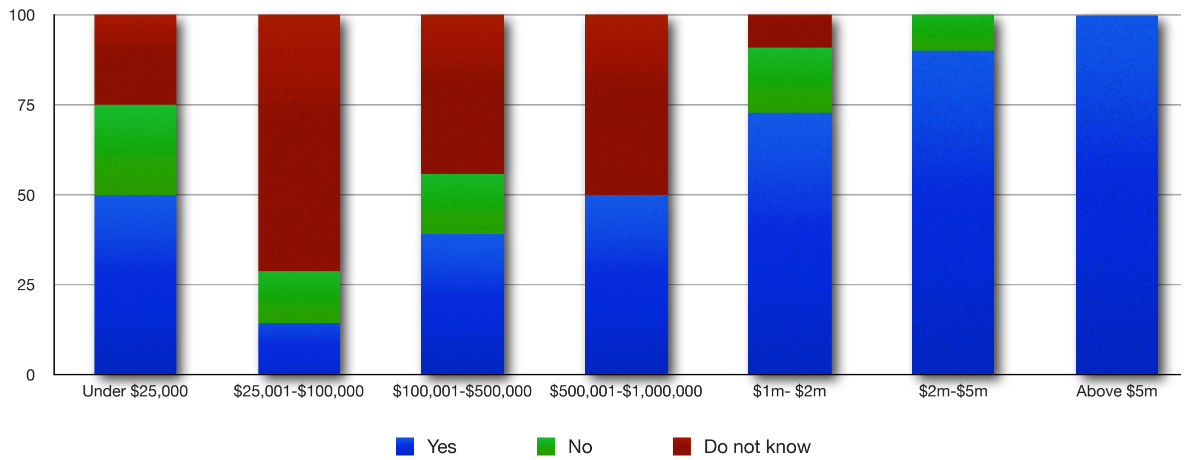


Figure 25. How often does your museum change its lead auditor?



Over one quarter of museums that utilise an auditor also retain that auditor for services beyond the annual audit. For 53.2% of those museums, the added services represent less than 5% of the total fee paid to the audit company, the maximum amount SOX allows. Figure 26 demonstrates that the smallest museums primarily use audit firms to conduct the annual audit, with few other large financial tasks required to complete. Larger museums either outsource other needs (like consulting, or legal advice) to other specialised firms, or have capable in-house staff able to complete tasks otherwise managed by auditors. History museums use auditors for additional services at a much higher rate than other museum types surveyed. For 26.1% of museums, audit fees have increased substantially since 2002, yet one fifth of respondents, primarily those from smaller institutions, did not know if audit fees had risen substantially or not. It appears that higher audit fees have affected Art museums (40%) more than all other museum types (21.5%).

Figure 26. Do additional auditor services represent less than 5% the total fee paid to the audit company?



8.2 Survey results: internal controls

Internal controls work to establish efficient and effective financial operations that produce accurate financial reports compliant with accepted best practices and legal regulations. Internal controls can range from IT policies to procedures managing the handling of cash. This study investigates museums' use of some of the most common internal controls that can prevent and detect fraud.

i. Documentation

Most museums retain copies of their financial paperwork for more than seven years (Figure 27). The few museums that keep financial records for one to three years are smaller museums with annual budgets between $25,000 and $500,000. Most museums surveyed (72.2%) keep backup files of financial records offsite, a basic security procedure in case museum offices are compromised. Museums with large annual budgets are more likely to do so than smaller museums (Figure 28).

Figure 27. How long does your museum retain financial paperwork?

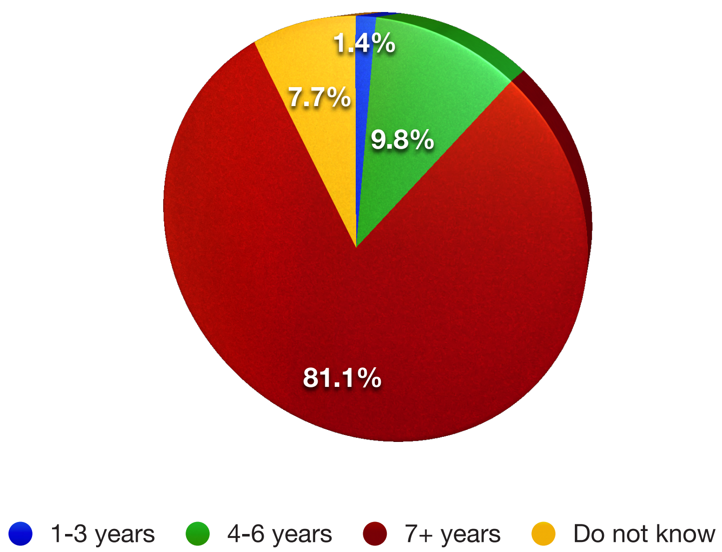
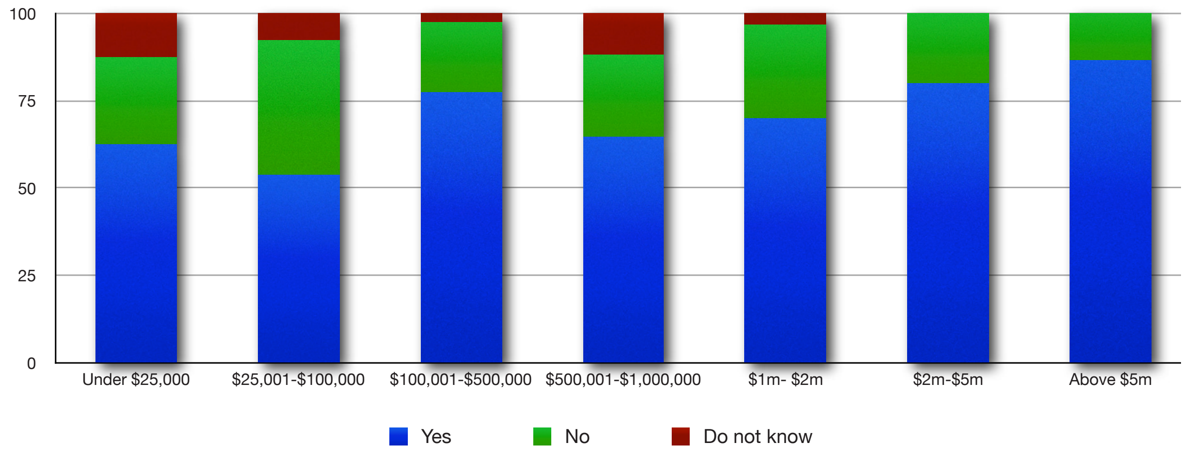


Figure 28. Does your museum keep backup files of its financial records off-site?



ii. Authorisation

Segregation of duties is the term for an oversight system that spreads tasks among disinterested staff or board members. For example, no one individual should be responsible for collecting invoices, authorising payments, printing cheques, signing the cheques, and mailing the cheques. In this case, an individual can both execute and conceal financial mismanagement. Segregation of duties only occurs in 64.8% of American museums. The director of one small museum noted that his museum used a system of financial checks and balances because they are too small to implement a true segregation of duties.

Most American museums (86.2%) use cheque-signing procedures to manage their finances. This high number, however, does not indicate museums have successfully engineered segregation of duties, merely that there is some oversight. All types of accounts, including payroll, chequing, and investments, are susceptible to fraud. Managing the cheque writing process, from securing the stock of blank cheques to requiring dual-signatures in certain instances, is a segregation of duties exercise. Among other controls, signatories must be provided with proper paperwork, signed cheques should be copied, and dual signors should be independent of one another. Further controls should be used for wire transfers, and online or recurring payments.

It is common museum management practice to require reimbursement authorisation, given over 80% of American museums control the process. Authorisation typically involves either pre-authorising expenditures, or approving reimbursements if original receipts are provided. Under segregation of duties standards, only specific staff or board members can grant reimbursement authorisation.

iii. Other controls

Information Technology oversight is fairly uncommon in museum management despite the important role it can play in accountability. Only 39.3% of surveyed museums report having IT oversight policies. These policies typically include securing and authorising access to financial data and programs, including payroll. All infrastructure, databases, and computer software must be backed up and securely stored. IT oversight is a critical method by which to prevent, detect, and eliminate varied types of financial fraud.

Monthly bank statement reconciliation is a standard business procedure that only occurs in 73.8% of American museums. As a segregation of duties process, bank statements should not be reconciled by anyone with spending authorisation, or by an individual under that chain of command.

Under one third of museums (32.4%) conduct background checks on volunteers. This can be a costly procedure, particularly if the museum is run entirely by a volunteer workforce.

Three quarters (74.5%) of museums have staff termination procedures in place. This procedure typically includes canceling computer or database passwords, canceling bank signature or accounts payable authority, and requires employees to return credit cards and access keys.

iv. Other ideas

Museum leaders have a variety of additional ideas and methods to solve museum accountability concerns (Figure 29).

Figure 29. Methods to aid museum accountability

- *Partnering large and small museums to exchange expertise*
- *Asking politicians to help regulate museums*
- *Requesting press coverage about accountability concerns*
- *Self-reliance and setting individual museum standards because AAM does not do so*
- *Requiring all board members to sign the Annual Report*
- *Implementing checks and balances if segregation of duties is not possible*
- *Requiring AAM Accreditation for organisations "calling themselves" museums*
- *Improving AAM Accreditation benefits and implementing harsher consequences*
- *Increasing restricted fund management*
- *Requiring annual audits of all museums regardless of size*
- *Raising funding sources' demands upon museums*
- *Relying on business experience, and not on AAM's general guidelines*
- *Increasing professional development budgets to send more staff to relevant conferences.*
- *Increasing the oversight roles of AAM, the Institute of Museum and Library Services, and regional and state museum associations*

8.3 Survey results: AAM oversight

Museum professionals have mixed opinions about the AAM's usefulness with regard to museum governance and best practices. Professionals agree the museum sector needs an oversight body, but AAM does not fill this role: "*Accountability does not happen at a national level; the AAM ethics policy is only a general guideline and this organization is not an enforcement agency.*" In only offering guidelines, AAM does little to require policy recommendations beyond its Accreditation scheme. Purely voluntary compliance with AAM regulations cannot provide effective self-regulation for museums, though AAM is not a regulatory organisation.

While there are numerous benefits for museums Accredited by AAM, most American museums do not participate in the scheme, and there "*are no real consequences*" for those that do not participate or fail to uphold Accreditation standards. Interviews suggest that some museums, particularly smaller museums, do not accept the AAM's authority. Participants in the qualitative survey and interviews repeatedly stated that the primary reason their museums made the effort to gain AAM Accreditation was for the benefits associated with institutional and corporate funding bodies. One museum professional at a well-respected institution insists, however, that:

> *The AAM is worthless when it comes to financial mismanagement. For example, when I look back at our past re-accreditation files, I see that the AAM reviewers completely missed the boat on the governance and financial issues, and instead focused on … things such as diversity … [Those] who get involved with AAM are [typically] curators-cum-managers who are really out of their league when it comes to finance and governance … AAM is an enabler of financial mismanagement.*

AAM's inner-workings or effectiveness are not the subject of this study, but it is evident that AAM could provide the American museum sector with more effective leadership with regard to ethical and fiscal accountability.

8.4 Case studies

i. The Bellevue Arts Museum: audit failures and embezzlement scandal

The Bellevue Arts Museum in Seattle closed in 2003 as a result of financial insolvency and poor attendance. The museum reopened two years later with a different name, but immediately faced financial mismanagement questions. From 2003-2007 Bellevue did not conduct financial audits. The first audit in four years, however, uncovered that Bellevue Chief Financial Officer Janet Ellinger had embezzled nearly $300,000 from the museum between 2005-2007. She was charged with thirty-eight counts of theft, was sentenced to twenty-two months in prison, and ordered to pay $334,949 in restitution. Using her position to avoid the museum's internal accounting controls, Ellinger charged items on the museum credit card, wrote museum cheques to herself, and had payroll cheques issued in her son's name. A suspicious colleague turned her in. Ellinger explained in court that, "There were a lot of reasons for taking the money, but absolutely no excuse." (Whitely 2008, Bellevue website)

Bellevue Arts Museum board president Keith Baldwin explained that the board's Executive Committee had decided not to conduct audits between 2003-2007 because the Museum could not afford to do so: "In the start-up phase [when reopening], we felt that it was very important to husband every resource that we had and to use our resources to build an excellent museum." (Bach 2007, No Audit website) Baldwin did not recognise that conducting an audit would help to do just that. In 2005 the Executive Committee conducted a financial review instead of a full audit for the $2.7m organisation. The state of Washington did not require nonprofits to undergo audits at that time, but audits are now required in that state for nonprofits with revenues over $3m. In passing the 2007 House Bill 1777 *Regulating charitable organizations that solicit contributions from the public*, the Washington legislature intended to "improve the transparency and accountability of nonprofit organizations" and "to prevent … improper use of contributions intended for charitable purposes." (Regulating Charitable Organizations 2007, section 1) HB 1777 requires nonprofits to "ensure that their boards, or a committee thereof, have reviewed and accepted any financial report that the organization may be required to file", making boards of directors more liable for action and inaction. (Regulating Charitable Organizations 2007, section 11) Similar to California's Nonprofit Integrity Act, Washington's HB 1777 requires commercial fundraisers to register with the state attorney general before conducting business, and to delineate the value of contributions received in comparison with dollars disbursed to the nonprofit.

Before the theft was discovered, the Bellevue City Council pledged $2m to the museum, but delayed payment until the museum could demonstrate sound financial controls, accounting, and board oversight. The Bellevue Arts Museum now conducts annual audits and two individuals review all financial transactions. The board's Finance Committee has expanded from one member, the board treasurer, to four members. Monthly financial statements now link directly with the museum's computer accounting program, and financial reports are more detailed. (Bach 2007, No Audit website) Former Bellevue Arts Museum Director Michael Monroe attempted to spin the theft as "a fundraising opportunity", but he had the difficult task of first restoring the public trust in his museum before he could rally donors. (Graves 2007, $200,000 Embezzled website)

ii. The Whitney Museum of American Art: embezzlement scandal

Two employees scammed the Whitney Museum of American Art in New York between 2002 and June 2004. Naseem Wahlah, Manager of Visitor Services, and her assistant Rowan Foley embezzled over $880,000. Acting independently of one another, Wahlah and Foley sold admission tickets to visitors, allowed the visitors to pass through the entry checkpoint, then voided the tickets electronically at their computer registers. Since they had already collected the money for these now-cancelled tickets, Wahlah and Foley pocketed the value of the tickets in cash. Over two and a half years, Wahlah embezzled $850,000 and Foley stole $30,000. The Whitney did not learn of the scam through internal controls or oversight, but from Foley who, while stealing money from the museum himself, turned in his boss to the Whitney's head of Human Resources and Comptroller. Both employees pleaded guilty to grand larceny. Foley, who had spent most of the cash he had stolen, was sentenced to five years of probation. Police discovered that Wahlah had kept the majority of $850,000 she embezzled in a safe at her home as retirement savings. She returned the money to the museum, and was sentenced to 200 hours of community service and five years of probation. The repercussions of this scandal appeared to be minimal for the Whitney. Few press reports were written in association with the embezzlement, and according to the *New York Times*, the Whitney dealt with the fraud sufficiently, reporting, "the museum said that the two had been fired, and that methods for handling money had been strengthened." (Pogrebin 2004, 2 Whitney Museum Employees Arrested website)

The Whitney Museum's 2002 and 2003 Form 990 IRS returns detail their admission income. Ticket receipts over those two tax years totaled $5,183,078. If the $880,000 Wahlah and Foley stole is added to that amount, the numbers indicate the employees stole roughly 15% of all Whitney Museum ticket sales over two years. It is notable that such a glaring discrepancy was not flagged by the museum's financial or accounting oversight. Internal controls should have prohibited this theft from taking place, like requiring all voided tickets to be collected and submitted with cash receipts for the close of the day accounting. If an effective system of internal controls had been in place, it would have been much more difficult for these embezzlers to steal large amounts of money over a long period of time.

8.5 Summary

Many American museums engage in a variety of important internal controls. As case studies demonstrate, breaches in fiscal accountability can occur in any size or type of museum. Large museums are not immune to scandal because they have the personnel or finances to implement certain measures. Smaller museums are not free from risk because they have fewer resources to manipulate. The Milwaukee Public Museum board eliminated the best practice internal control that required board authorisation to spend museum endowment funds. The Whitney Museum and Bellevue Arts Museum did not have sufficient internal controls to prevent theft. Except for the Maier Museum, the specific museum cases investigated thus far, including the Independence Seaport Museum and the Smithsonian Institution, suffered at the hands of staff members who manipulated the control system already in place. These recent accountability failings demonstrate that insufficient internal controls, eliminating controls, and individuals who manipulate controls engender risk for the museum sector.

9. American research summary

Recent corporate failings have directly affected American museum governance. Enron and other cases of financial fraud have heightened awareness about accountability throughout the nonprofit sector. The policies and procedures which corporate entities are legally required to have in place are now filtering into the nonprofit museum sector. Policies, including conflict of interest management, can be adapted from the corporate setting to suit museum needs. Internal controls, like auditing standards and financial management, are directly applicable to museum administration and demonstrate sound ethical governance. Scandals within the nonprofit community have also precipitated more rigorous accountability oversight. Accountability legislation for American nonprofits has developed slowly, though the Sarbanes-Oxley Act has influenced the scope of proposed nonprofit regulations.

Museums in the United States have begun to take important steps to achieve accountability. Internal controls, including segregation of duties and cheque signing procedures, are routine amongst museums. Less likely, however, is the productive use of board policies. Only 57% of all American museums that record conflicts of interest actually evaluate these conflicts. Only two thirds of all museums have a code of ethics applicable to the board of directors. Few museums comply with legal expectations from the Sarbanes-Oxley Act. For example, three out of ten museums have a document destruction policy. Similarly, very few museums are aware of proposed nonprofit accountability legislation from state to state.

US museum professionals are disappointed in the American Association of Museums. The museum industry in America is a self-directed sector, and it is not the AAM's stated mission to regulate or evaluate US museums. AAM advises and lobbies for museums, but does not take responsibility for museum accountability. The Accreditation process for participating museums requires museums to have a code of ethics, but upon having a policy in place, the implementation of ethical norms relies upon trustees' active leadership. Yet it is possible to manipulate internal controls and ethical standards that are in place.

Fulfilling duty of care and duty of loyalty as a means to accountability require transparency and board leadership. Art museums, Science museums, and large-sized museums have been most successful in achieving transparency in the United States. The majority of American museum accountability measures currently in place originated from individuals actively working in the best interest of their communities to create ethically sound institutions. Though fraud and embezzlement are not common in American museums, numerous museum scandals in the United States have been financially motivated. These illegal acts demonstrate that fissures in accountability continue to exist in the museum industry.

1. UK museum accountability: objectives and methodology

1.1 Research objectives

The second half of this research study examines the influences modern British economic and government ethics initiatives have had upon UK museum transparency and accountability practices in Scotland, England, Wales, and Northern Ireland. UK museum management and governance differ significantly from American museum oversight. Funding sources, government supervision, and historical events account for some of the discrepancies. The following material will highlight UK museums' unique features, including their current implementation of financial policies, internal controls, and ethical principles. Research will identify accountability concerns that persist in the UK museum industry.

The rise in charitable organisations providing public services precipitated "growing public expectations for transparency and accountability [similar to] the trend in the public sector (and elsewhere) towards strategic regulation." (Hyndman 2009, 5) Aware of the public's diminishing trust in both the corporate and private sectors in the 1980s and 1990s, charities adapted to improve accountability and transparency over the following two decades (Aldridge 2005). Little academic research was conducted through the 1990s as to "how voluntary organisations define[d] accountability, what priority they attach[ed] to it and what systems and procedures they [had] in place." (Leat 1996, 62) This study attempts to do that research for the UK museum sector.

UK museums face public accountability expectations established by central government bodies, local authority councils, grant-making philanthropic groups, and the museum community itself. By the 1990s, public accountability was a concern amongst UK museums: "Museums have become public property, arousing the interest of the public at large. The question of who should run museums, and how, has moved 'from the professional domain to the public stage' (Cossons 1991: 186)." (McLean 1997, 31) Twenty years later public accountability continues to be at the forefront of museum governance and administrative concerns.

What effects have the private and public sectors had upon museum governance? What role do professional museum associations play in accountability training? What are museums planning to do, and where do the primary accountability weaknesses remain? To discover gaps in accountability through which the public trust can be compromised, it is necessary to examine the origin of museum accountability to understand the current complexities of the museum sector.

1.1 Research methods

The following sections discuss the methodology adopted to answer research questions about the current state of UK museum accountability. This methodology mirrors procedures used in the first stage of this research programme.

1.2.1 Literature

While the history of British business, charities, and museums extends further than comparable institutions in the United States, the review of literature has been limited to recent history and modern developments in corporate governance, charity law, charity oversight, and government initiatives which influence business and political ethics. Literature from journal articles and edited academic volumes to newspaper and government reports was reviewed. Texts about the *Combined Code* and the Committee on Standards in Public Life were utilised in conjunction with Charity Commission, Department for Culture, Media and Sport (DCMS), and Museums Association (MA) policy statements to place UK museums in a contemporary context.

1.2.2 Quantitative survey

The second step toward answering research questions was an internet-based survey. The British survey targeted museum directors, board members, managers of museum services, and other key employees knowledgeable about their respective museums' governance and management policies. The survey gathered data about UK museums' implementation of common and recommended internal controls, audit processes, and governance ethics practices. As with the American research, the goal was to investigate diverse museums with varied budget sizes and governance structures across the United Kingdom. Institutions that maintain collections consisting primarily of living organisms were not included in the survey.

The breadth of museums this study sought to assess posed a challenge in writing survey questions and in providing answer options applicable to diverse museum types. As such, the survey offered answer options applicable to the broadest number of museums. The survey is located online at http://www.st-andrews.ac.uk/~mlw2/ukmuseums/. (Appendix C)

i. Survey recipients

It was possible to conduct this study programme without attempting to collect a statistically viable sample. Conducting narrowly focused research could have added valuable information to current museum literature about accountability and transparency. This thesis, however, attempted to be statistically viable in order to be a more complete assessment of UK museum governance.

The American museum survey yielded an 8.9% response rate. This rate served as the estimated response rate for the UK museum survey. To generate a statistical sample on par with this study's findings about American museums it was necessary to ask *all* UK museums recorded in the Museum Association's *Museums & Galleries Yearbook 2009*, the authoritative guide and most comprehensive list of UK museums, to participate in the study. The *Yearbook* includes over 3,000 museums. Because the survey was conducted online, only museums with email addresses were approached. Individual museums and museum services' websites provided additional museum contact information.

The survey was piloted in January 2010. None of the ten diverse museums that participated in the pilot survey provided feedback necessitating changes to survey questions. In February 2010, an introductory email with a web link to the online survey was sent to the remaining 2,046 UK museums in the *2009 Museum Yearbook* that fit the study's parameters. The University of St Andrews museum service was not contacted to participate in the study in order to prevent any conflicts in research objectivity.

ii. Survey results

The online survey resulted in 133 valid responses. This figure represents a 6.5% response rate. Forty survey recipients sent personal emails indicating the survey was not applicable to their organisations. The majority of these replies originated from volunteer-run museums. Twelve museums responded via email that while interested in the survey and its findings, no museum representatives had enough spare time to complete the questionnaire. One museum explained via email that it would not participate in the survey because it is located on one of the Channel Islands, and is thus not subject to British rules and regulations. Eight museums that did complete the survey emailed their thanks for raising issues and for providing ideas about improving their museums' management and governance policies via the survey. The 133 responses produce accurate data with a 95% confidence level +/- 8.2%.

The online survey had 112 distinct questions. Each question was optional and any answer could be left blank. Eighteen museums remained anonymous, representing 13.5% of all surveyed. Each museum has been grouped into one of five categories based on governance type: Independent museum, Local Authority museum, National museum, University museum, or "Other". Those that self-designated as Other included regimental museums sponsored by the Ministry of Defense, hospital-based museums monitored by the NHS, and cathedral-based museums overseen by individual religious institutions. This breakdown differed from the American survey which was segregated into groups by museum collection type (Art museum, History museum, Science museum, etc.). Survey question #2 provided each British museum the option to "select all that apply" when disclosing its museum type. The museums did not consistently select their type by theme (Art, Science, History) but did self-select their type by governance oversight (Local Authority, Independent, University). The survey will thus be analysed in the format unwittingly selected by the collective museum respondents.

The annual budgets of the surveyed museums ranged from less than £25,000 per year to over £25m per year. The average number of directors for museums governed by boards was ten. Over three quarters of the participating museums (76.7%) were Accredited by the MLA. The mean age of survey respondents was 50.5 years old. Half of those who indicated their gender were female and half were male. Respondents had worked as museum professionals an average of 15.4 years, and had been in their current jobs an average of nine years (Figure 30).

Figure 30. UK survey respondents' museum jobs

- Director
- Trustee
- Finance Director
- Curator
- Museum Services Manager
- Board Chairman
- Head of Cultural Services
- Operations Manager
- Museums and Heritage Officer
- Head of Museums
- Museum Keeper

- Board Secretary
- Founder
- Head of Operations and Development
- CEO
- COO
- Part-time Administrator
- Management Committee Chairman

As with the American museum survey responses, these many years of museum service indicate the survey participants were dedicated to the museum sector. Their job titles demonstrate they were qualified to answer the survey's questions.

One quarter of the 133 respondents worked for a museum service that manages more than one museum. These museum services were responsible for 329 museums throughout the United Kingdom. These additional museums cannot be added to the 133 collected responses because they would violate the statistical assumption of independence. It is not possible to guarantee that all survey answers (such as museum type or budget size) supplied by museum service representatives are applicable to *all* museums under their management without receiving specific independent survey information for each additional museum.

Mirroring the American museum survey, the frequency of each answer was analysed and underwent cross tab analysis by museum governance type and budget size. Data analysis results will be discussed in sections 6, 7, and 8.

1.2.3 Qualitative questionnaires

To collect more complete information about current UK museum governance practices, to gather opinions of individuals managing diverse UK museums, and to support the data from the quantitative study, it was essential to gather first person qualitative information. Qualitative data was collected from a written questionnaire that mirrored those completed for the American portion of this study. Questions were composed for working museum professionals and board members to elicit data about the subtleties of ethics and financial management in Britain's museums. The survey sought to assess how organisations measure the public perception of museums and how museums instill ethical codes. What are the costs and benefits of such codes, the impetus for their adoption, and how have they affected governance attitudes in museums? Responses included the concerns museums currently have about accountability and the public trust, and whether accountability regulations should be made statutory or remain voluntary. This study does not attempt to establish the public perception of museums, but the qualitative data demonstrates that a diversity of perceptions and opinions exist about the public trust and about museums.

The survey questions queried both broad and specific topics encompassing ethics, fiscal management, the public trust, and museum accountability. Twelve organisations declined to complete the survey after viewing its contents indicating the questions were not applicable to their museums, some of which were small, local, or volunteer-run. Museums that did respond provided diverse answers, due in part to their management structure (University-run, Local Authority, National). Few respondents could answer, however, if their policies protected the public interest.

To gather participants for the qualitative survey, the online questionnaire's introductory letter encouraged survey recipients to contact the researcher via email if they "would like to discuss museum accountability, museum governance, the *Combined Code* or the *Nolan Principles*." In addition, online survey questions 73 and 74 asked:

> 73) Would you be willing to complete a follow-up questionnaire to gather qualitative data about your opinions regarding museum accountability? [Yes/No]
>
> 74) Would you be willing to be contacted to discuss museum accountability or the Combined Code and the Nolan Principles' effects on your museum? [Yes/No]

These three statements resulted in 60 positive responses from museum professionals offering to participate further in the study. Each then received an emailed and posted copy of the qualitative questionnaire to complete. (Appendix D) Twenty individuals completed the survey.

Individuals who supplied written permission to be directly quoted are addressed by name in this study. Other survey respondents and interviewed sources are quoted, but remain anonymous per agreement. These museum professionals were more willing to discuss delicate ethical quandaries and their museums' internal workings knowing that the information and personal opinions would not jeopardise their careers and would only be used for research purposes. No off-the-record comments or ideas about UK museum accountability have been included in this study.

1.3 Summary

To develop the most complete picture of UK museum accountability, it is necessary to deconstruct the factors that have influenced the current state of museum accountability in Britain. Taking recent corporate and public histories into consideration, examining third sector development over time, and gauging museum industry opinions and actions will help to explain contemporary museum values and decisions. Data collected from interviews, written questionnaires, and an online survey will enable the analysis of ethical governance and financial transparency in twenty-first century Britain. This analysis must commence with an investigation into corporate Britain, where the government has permitted a self-regulatory approach to accountability.

2. British corporate accountability

This section details Britain's principal corporate corruption scandals in the 1980s and 1990s, and the accountability recommendations they precipitated over the following decades. These recommendations, a voluntary set of internal control processes culminating in the 1998 (revised 2008) *Combined Code*, define institutional accountability in Britain. These internal recommendations, the process of implementing controls, and the response to the *Combined Code* will be discussed. Explicating corporate accountability in the UK will demonstrate the origin of the self-regulatory process used by museums. Results of survey data will demonstrate whether museums in the UK follow those recommended processes to secure the public trust or if accountability is achieved through other means.

2.1 Corporate corruption

Three scandals in corporate Britain galvanised calls for public accountability in the early 1990s. Fraudulent business practices executed by publisher Peter Maxwell, by Asil Nadir's diversified company Polly Peck, and by Agha Hasan Abedi's global Bank of Credit and Commerce International (BCCI) significantly influenced Britain's approach to corporate governance management.

2.1.1 Peter Maxwell

Elected to Parliament in 1964, Peter Maxwell appeared to be a successful publisher as the owner of Pergamon Press. Price Waterhouse audited Pergamon's financial statements during a 1968 takeover bid and discovered Pergamon had overstated its 1968 profits by nearly £2m. While Pergamon's regular audit firm Chalmers Impey resigned, the discrepancy between audit results persuaded the auditing profession to establish consistent standards, forming the Accounting Standards Board (ASB). This mitigated the need for government intervention and quelled public questions about auditing standards.

Maxwell took over the British Printing Company[1] in 1981, the Mirror Group Newspapers[2] in 1984, and Macmillan in 1987. Maxwell united these firms in a complex organisational

1 The British Printing Company became the British Printing and Communications Corporation, and was renamed Maxwell Communications Corporation (MCC).

2 The Mirror Group Newspapers printed the *Daily Mirror* and the *Sunday Mirror*.

structure comprising dozens of companies. To overcome cash shortfalls and acquire additional loans, he offered MCC shares as collateral. Department of Trade and Industry (DTI) investigators later learned that Maxwell also offered pension fund shares totaling £400m as collateral by replacing trade unionists with his own sons as pension fund trustees, usurping pension fund management. The share price of Mirror Group Newspapers and MCC fell in 1991, requiring further loans. Goldman Sachs and Citibank started selling their shares because loans were not being repaid, further depressing MCC's share price. In November 1991, Maxwell disappeared from his yacht under mysterious circumstances, and the London Stock Exchange (LSE) agreed to suspend trading MCC and Mirror Group Newspapers stock.

While speculations of suicide or murder have not been settled, Maxwell's death spurred investigation into his business practices. His estimated debts totaled £1bn and roughly 30,000 pensioners lost money from his schemes. Goldman Sachs and Coopers and Lybrand Deloitte both faced disciplinary action. Maxwell himself was further blamed for exercising excessive control over his corporate holdings, ignoring the function of non-executive directors on his boards of directors.

2.1.2 Polly Peck International

In 1980, Asil Nadir, a Turkish Cypriot, purchased Polly Peck, a small clothing company listed on the London Stock Exchange. In the following decade, Nadir achieved great success acquiring firms in diverse fields including fruit packaging, water-bottling, electronics, shipping, and clothing. He expanded internationally, investing in the United States, Turkey, Cyprus, and elsewhere. Polly Peck International was listed on the New York Stock Exchange in 1986 where its stock value increased substantially over the coming year. "As a result of organic growth combined with company takeovers, the group virtually doubled in size between 1987 and 1988. There was a danger that Polly Peck was over-reaching itself and would not be able to properly control so many diverse operations." (Wearing 2005, 43) By 1990, with the purchase of Del Monte fruit, Polly Peck entered the FTSE 100. Assessing Polly Peck's financial statements, however, posed a difficulty.

The London Stock Exchange permitted Nadir to combine his British-based profit and loss statements with his international earnings (Hindle 1993). Additionally, Polly Peck's UK audit firm Stoy Hayward did not audit Polly Peck's Cypriot accounts, which were instead assessed in Cyprus. The Turkish lira was unstable due to political unrest at the time, creating further difficulty in assessing Polly Peck's financial position (Wearing 2005). In 1990, Polly Peck's debt exceeded £1.3bn, and the company lost 75% of its share value in two months. Speculation about insider trading and undisclosed trading, among other fraudulent activities, sent the failed firm into administration. Some analysts inferred Nadir controlled all decision making as Chairman and Chief Executive (Hindle 1993). Following a Serious Fraud Office (SFO) investigation, Nadir was arrested for false accounting. After awaiting trial for two years, Nadir fled the UK in 1993 for Cyprus, but returned to the UK in August 2010 to face £378m civil proceedings. Creditors never collected £80m in outstanding debts.

2.1.3 Bank of Credit and Commerce International

Agha Hasan Abedi founded the Bank of Credit and Commerce International (BCCI) in 1972, registering the firm and its primary subsidiary in Luxembourg and the Cayman Islands. Initially opening offices in Abu Dhabi and Pakistan, BCCI expanded to seventy countries, garnering over one million customers and 14,000 employees by the early 1990s (Wearing 2005). Abedi initially built BCCI into a major international bank with significant help from Middle Eastern leaders, but successfully attracted political sway from both US President Jimmy Carter and UK Prime Minister James Callaghan. As forensic audits later discovered, however, BCCI was deeply involved with money laundering, drug money, and government spy funding as it operated a Ponzi scheme, falsified accounts and loans, and conducted other fraudulent activities.

BCCI's auditors Price Waterhouse warned the Bank of England in 1990 after a BCCI whistleblowing employee came forward alerting the auditors of fraud. After investigations, Price Waterhouse discovered BCCI lacked appropriate internal controls and needed a £1.8bn refinancing. The Bank of England was widely criticised for failing to supervise and contain BCCI given its knowledge of corrupt business practices. In 1991, international bank regulators coordinated the closing of BCCI in nearly twenty countries on the same day. Since then, BCCI's liquidators Deloitte sued the Bank of England for £850m in losses.

The Maxwell, Polly Peck, and BCCI collapses generated escalating public concern about corporate governance responsibility in the United Kingdom in the late 1980s and early 1990s. Corporate misconduct in other UK-based organisations including Barings Bank, Ramor Investments, Eurotunnel, Guinness, London and Capital, Shell, Atlantic Computers, London United Investments PLC, Eden Corp Leisure, and with the Piper Alpha disaster demonstrated the need for corporate governance oversight and internal controls in the UK.

2.2 The *Cadbury Report* (1992): improving UK corporate accountability

The unexpected and well-publicised corporate failures were perceived to result from poor internal controls, inadequate audit and accounting oversight, inaccurate financial reporting, and dysfunctional boards of directors. Fear spread across the broadly unregulated UK corporate sector that "legislation was a real alternative" if the business profession did not address these issues. (Jones and Pollitt 2004, 167) As a result, the London Stock Exchange, the Financial Reporting Council and UK accounting bodies, all part of the private sector, commissioned an investigative committee in May 1991 entitled the Committee on the Financial Aspects of Corporate Governance to bring "greater clarity to the respective responsibilities of directors, shareholders and auditors [and to] also strengthen trust in the corporate system." (Committee on the Financial Aspects of Corporate Governance 1992, paragraph 1.6) Sir Adrian Cadbury, a former Bank of England Director and the former Cadbury Schweppes Chairman, led the Committee. Regulators seized BCCI operations two months after the Cadbury Committee was established. Five months later, in December 1991, the £400m Maxwell Group Pension fund scandal was uncovered.

2.2.1 *Cadbury Report* Overview

The Cadbury Committee released its report, *The Financial Aspects of Corporate Governance*, commonly known as the *Cadbury Report*, on 1 December 1992. It directed its recommendations to three areas: boards, auditing, and shareholders. Boyd (1996) explains that UK corporate governance "faults [in the early 1990s] appeared to call for radical remedies, and the prognostications of the [Cadbury] Committee were eagerly anticipated." (Boyd 1996, 170) The *Cadbury Report*, however, did not require or precipitate radical change in the UK corporate sector. Instead, finding "the basic system of corporate governance in Britain [was] sound" the Committee encouraged compliance to a new set of *voluntary* procedures and disclosures. (Committee on the Financial Aspects of Corporate Governance 1992, paragraph 1.7) These would "help to raise the standards of corporate governance and the level of confidence in financial reporting and auditing." (Committee on the Financial Aspects of Corporate Governance 1992, paragraph 2.8)

The *Report* includes a nineteen-paragraph Code of Best Practice that outlines board responsibilities. The *Report*'s appendices demonstrate how to implement aspects of that Code and how to establish board audit committees (Figures 31 and 32).

Figure 31. Cadbury Report recommendations to boards in order to balance the strength of executive directors

• Establish a Remuneration Committee for board compensation and an Audit Committee which should consist mostly or wholly of non-executive directors.

• Formalise the process of nominating outside directors via a Nominating Committee with "a majority of non-executive directors on [the committee which is] chaired either by the [board] chairman or a non-executive director." (paragraph 4.3)

• Have a minimum of three non-executive directors on the board.

• Ensure most of the non-executive directors are "independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgment." (paragraph 2.2)

Figure 32. Cadbury Report recommendations to strengthen the auditing process

• Disclose fees paid to auditors for non-audit work.

• Report on the effectiveness of [the business's] system of internal control, and … auditors should report on [the board's] statement. (paragraph 4.32)

To enhance the corporate sector's self-regulation, the *Cadbury Report* calls upon individual and institutional shareholders as owners, rather than the British government, to hold the corporate sector accountable for its actions (Figure 33).

Figure 33. Cadbury Report recommendations to shareholders

• "It is for the shareholders to call the directors to book if they appear to be failing in their stewardship and they should use this power. While [shareholders] cannot be involved in the direction and management of their company, they can insist on a high standard of corporate governance". (paragraph 6.6)

• Institutional shareholders should "use their influence as owners to ensure that the companies in which they have invested comply with the Code." (paragraph 6.16)

• "Draw up codes of ethics or statements of business practice and to publish them both internally and externally" so "all employees [and others] should know what standards of conduct are expected of them." (paragraph 4.29)

The *Cadbury Report* recommendations are open to interpretation, allowing boards the flexibility to enact governance practices that suit firms' existing structure, size, and type. As a result, differences in board, auditor, and shareholder interpretations of corporate best practice in the United Kingdom can arise.

2.2.2 Voluntary compliance: comply or explain

The *Cadbury* recommendations, however, are not legally mandated. Notably, *Cadbury* did not ask the British government to implement any corporate governance legislation. Instead, *Cadbury* encourages all boards of listed companies registered in the UK and boards of smaller organisations that are able to comply with the *Report* to do so voluntarily. This "voluntary compliance is widely regarded as an attempt to maintain a system of self-regulation in the face of the threat of legislated control." (Boyd 1996, 172) *Cadbury* purposefully avoided the legal system, fearing that:

> statutory measures would impose a minimum standard and there would be a greater risk of boards complying with the letter, rather than the spirit, of their requirements … We believe that our approach, based on compliance with a voluntary code coupled with disclosure, will prove more effective than a statutory code. (Committee on the Financial Aspects of Corporate Governance 1992, paragraph 1.10)

This disclosure refers to a new approach to self-regulation: comply or explain. *Cadbury* Note 3.7 recommends that all companies make an annual disclosure statement about their compliance with the *Cadbury Report* and, if all recommendations have not been complied with, the statement must explain why the recommendations were not fulfilled. It is hence the shareholders' responsibility to determine if reasons for non-compliance are justified (Barker 2008, Anand 2005). If non-compliance is unjustified, share price will theoretically drop as investors pull out (Easterbrook and Fischel 1996), or shareholders will publicly question non-compliance at a company's Annual Meeting. The former is more likely to happen because selling stock is much simpler that effecting company change from outside the organisation.

"Comply or explain" is now the best practice method for corporate governance disclosure in the UK. It is the role of the marketplace, not the UK government, to assess corporate governance feasibility and suitability (MacNeil 2006). In effect, the 1992 *Cadbury Report* shifted the responsibility of corporate governance from corporate managers and executive directors to non-executive directors and shareholders. Since that time, Boyd (1996) noted that academics and journalists bemoan *Cadbury*'s disregard for corporate stakeholders beyond shareholders. (Boyd 1996, 177)

While the *Cadbury* recommendations are not legally mandated, the London Stock Exchange requires listed companies to publish a *Cadbury Report* comply or explain statement, essentially rendering the *Cadbury Report* mandatory. Firms must now make two statements disclosing their adherence to the code. Current LSE listing rules require firms to 1) report on their application of corporate governance best practice and 2) to report on their compliance with the Code of Best Practice or to explain their non-compliance according to the comply or explain principle. The *Cadbury Report*'s terminology and wording has resulted in a flexible interpretation of how to implement the comply or explain rule. "Companies could (and did) produce anything from a single sentence hidden in the directors' or chairman's report to a stand alone corporate governance statement extending over several pages. The overall impression gained from reading compliance statements was of variety." (Belcher 1995, 87) The LSE, however, neither passes judgment on the firms' reports, nor enforces UK governance codes.

In 1992, LSE Chairman Sir Andrew Hugh Smith further weakened the *Cadbury Report* upon announcing that the Exchange would not de-list firms for noncompliance. (*The Economist* 1992) Sir Adrian Cadbury insisted public censure would arise because the LSE listing obligation provides "shareholders the information which they need if they are to use their influence with boards to encourage them to comply." (Cadbury 1993, 47) This argument presupposes, however, that financial reports will be complete and accurate. Shareholders must also know the origin of financial reports, including a company's internal controls, to be able to fully comprehend a firm's corporate governance system (Brown 1993).

2.2.3 Effect on the UK corporate sector

In the *Cadbury Report*'s opening paragraph, the Committee noted the economic need for corporate boards to operate flexibly in a "framework of effective accountability". (Committee on the Financial Aspects of Corporate Governance 1992, paragraph 1.1) The *Report* states that smaller firms would have greater difficulty implementing its tenets, but it did not imply that different expectations should apply to different sized organisations. This implies *Cadbury* recognised that a one-size-fits-all solution is not practical given the diversity of the corporate sector (MacNeil 2006). Hillier and McColgan (2006) discovered that larger firms were more likely to have implemented *Cadbury* recommendations more broadly than smaller firms. This would account for the "90 per cent of the top 100 companies" studied by Short (1999) that had "issued compliance statements claiming full compliance with the [*Cadbury*] Code, [while] only 26 per cent of the smallest companies could claim full compliance" in 1999. (Short 1999, 60)

A range of academic opinions debate whether the *Cadbury Report* was too lenient, or whether it exceeded the oversight required to stem corporate governance malfeasance. Were the *Cadbury* standards set too low, or did they inhibit commercial success by forcing companies to focus on audits, internal controls, and risk management (Chambers 2005, Short 1999)? Detailed mandates could have negatively affected investors (Scanlan 2008) and disrupted the flow of business. Short (1999) pinpoints a problem: "commentators appear to be suggesting that there is a trade-off between accountability and enterprise, in that too much accountability stifles enterprise activity." (Short 1999, 61) Yet Belcher (1995) was not surprised *Cadbury* did not fully succeed in curbing corporate governance scandals. The *Cadbury Report* presented a Code of Best Practice, not a Code of Conduct; good behaviour and good governance are linked (Belcher 1995). The Cadbury Committee was only commissioned to investigate the "Financial Aspects of Corporate Governance", not the ethical aspects of corporate governance (Boyd 1996).

The *Cadbury Report* did not overhaul the UK's corporate governance structure significantly enough. Further corporate scandals and failures indicated that additional governance recommendations were required to effect change. The UK government purposefully continued to refrain from inserting itself into the process as new committee investigations and recommendations occurred over the next decade. These committee recommendations, which will be explored in the following section, kept the comply or explain voluntary model as their central tenet.

2.3 Additional corporate accountability recommendations

While *Cadbury* had a very specific remit that addressed one small area of UK corporate governance, further accountability investigations and recommendations ensued in the coming years. Following *Cadbury*, public concern arose over UK board directors' remuneration. Many firms did not publicly disclose directors' salaries, stock options, pension payments, or bonuses, and it appeared that increases in directors' pay were not related to corporate performance. The 1995 *Greenbury Report* addressed these concerns, ascertaining best practice with regard to director remuneration. Similar to *Cadbury*, the *Greenbury Report* is not legally binding. The LSE Listing Rules now oblige firms to send annual reports to shareholders disclosing directors' complete compensation packages and explaining the firm's approach to remuneration.

Both *Cadbury* and *Greenbury* recommended that follow-up committees review and monitor their implementation. The Hampel Committee on Corporate Governance did so, conducting over 200 group discussions and receiving over 250 written comments from interested parties about Cadbury, Greenbury, auditing, and the role of shareholders (Committee on Corporate Governance 1998). The Hampel Committee issued its final report in January 1998, criticising the "emphasis on accountability [which] has tended to obscure a board's first responsibility– to enhance the prosperity of the business over time … Accountability by contrast does not require appropriate rules and regulations". (Committee on Corporate Governance 1998, paragraphs 1.1-1.2) Hampel's remit noted "the need to restrict the regulatory burden on companies, and to substitute principles for detail wherever possible". (Committee on Corporate Governance 1998, paragraph 1.6) So the *Hampel Report* was not published in response to specific corporate abuses or to enhance accountability, but to ensure that accountability did not limit or inhibit corporate prosperity (Bhimani 2008).

In September 1990, the Institute of Chartered Accountants in England and Wales (ICAEW) published the *Turnbull Guidance*, entitled *Internal Control: Guidance for Directors on the Combined Code*. Overall, *Turnbull* encouraged corporate boards to adopt unified company-wide risk management strategies making internal controls an integral aspect of governance accountability. Identifying risk does not eliminate risk. *Turnbull* did not attempt to remove risk from the corporate sector because risk is integral to the market system. Instead, the *Turnbull Guidance* expected companies to manage risk responsibly by having a process in place to identify potential problem areas. Notably, however, the *Turnbull Guidance* does not recommend that directors discuss the actual risks in their annual reports, but that they merely analyse the internal control system itself. A reliable risk assessment and management plan that is reviewed annually at the board level enables firms to be more adept at responding to problems that arise, appears dependable to shareholders considering investment, and better prepares directors for the inherent and diverse risks in running a business. The *Turnbull Guidance*, however, did not require specific internal controls, but followed *Cadbury*'s precedent in recommending flexible general guidelines. No oversight group or body exists to rebuke companies if internal controls are not satisfactory.

Though the British government did not participate in the *Cadbury*, *Greenbury* or *Turnbull Reports*, it was involved in the *Higgs Review* (2003) (Jones 2004). In response to American corporate scandals in the early 2000s, the *Higgs Review* issued best practice governance recommendations. *Higgs* was the first UK investigation to closely evaluate board selection, training, and performance. It recommended an induction checklist and sample introductory letter for newly appointed non-executive directors. In January 2003, Sir Robert Smith issued his Financial Reporting Council-sponsored report *Audit Committees Combined Code Guidance* on the same day the *Higgs Review* was published. Smith's report clarified that the Audit Committee's role is to appraise a company's internal controls, particularly its financial controls and financial disclosures. Smith asserted that Audit Committees should consist entirely of independent non-executive board members, at least one of whom "has recent and relevant financial experience." (FRC-appointed Group Chaired by Sir Robert Smith 2003, paragraph 2.3) The guidance, however, did not define "recent" or "relevant", which invites a broad interpretation.

The *Smith Guidance* also addressed whistleblowing, but contains only one paragraph about whistleblowing policy. Paragraph 4.2 states:

> The audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action. (FRC-appointed Group Chaired by Sir Robert Smith 2003)

This statement neglects to protect individual whistleblowers. While Paragraph 4.2 focuses on the steps to address whistleblowing claims, it does not note the fear of retribution that typically prevents potential whistleblowers from stepping forward. Hesitating to promote whistleblower rights, the *Smith Guidance* failed to consider that a strong whistleblower policy would allay shareholder concerns about potential internal wrongdoing. Such a broad statement instead shields firms' boards and management teams. As late as 2009, Lawyers in Commerce and Industry reported this to be an issue: "We suggest that the Code should contain a more positive and prominent statement that companies should adopt and implement an effective Whistle-blowing/Serious Concerns policy, encourage whistle-blowing which is done in good faith, and give assurances to their staff that they will not be victimized." (Financial Reporting Council 2009, 36) Some government and watchdog sources do address whistleblowing more fully than the *Smith Guidance*.

In response to varied auditing directives, the Institute of Internal Auditors – UK and Ireland (IIA) published its *Professional Briefing Note* in 1994 that controversially defined whistleblowing as "The unauthorised disclosure by internal auditors of audit results, findings, opinions, or information acquired in the course of performing their duties and relating to questionable practices." (Institute of Internal Auditors 1994, 3) The *Briefing* was only amended after the Public Interest Disclosure Act legislation (PIDA) in 1998. PIDA, (updated 1999, 2003, 2004, and 2005) is nicknamed the whistleblowing law, protecting whistleblowers from being victimised if a claim is made "in good faith, and [the whistleblower] reasonably believes that the information disclosed and any allegations contained in it, are substantially true, and [the whistleblower] does not make the disclosure for purposes of personal gain." (UK Parliament, *Public Interest Disclosure Act* website) Years later, the 2002 *RBG Resources v Rastogi* case balked at the earlier IIA *Professional Briefing Note* logic, ruling that employees have a greater responsibility to report fraud than to respect confidential information. If such whistleblowing measures had been in place at the time, the BCCI collapse, Maxwell's Mirror Group pension fraud, or the 1988 Piper Alpha oil rig explosion may have been avoided. The corporate culture at these institutions prevented employees from blowing the whistle on corporate wrongdoing (Sarker 1995).

2.4 The *Combined Code*

In June 1998, the *Hampel Report* (1998) united with the *Cadbury Report* (1992) and the *Greenbury Report* (1995) to merge the three British corporate governance recommendations into one code of best practice called the *Combined Code*. In 2003, in the wake of US corporate scandals, the *Combined Code* (CC) was amended to include the *Higgs Review*'s recommendations on non-executive directors, the *Smith Guidance*'s recommendations on audit committees and the *Turnbull Guidance* (1999) recommendations on internal controls and risk management. That year, the Financial Reporting Council (FRC) took over CC management. Like its component codes, the *Combined Code* is not a legal document with mandated requirements, but is a voluntary code of corporate governance best practice that exists within the comply or explain method. While the *Combined Code* is published and regularly updated by the FRC, the *Code* does not demand government oversight. As such, the *Combined Code* is "based on a form of 'soft law', i.e. a non-binding code of conduct to be monitored and enforced by shareholders." (Barker 2008, 4) The *Code* directly applies to companies incorporated in the UK and listed on the London Stock Exchange, as well as international companies trading on the LSE's Main Market. The *Combined Code* has been institutionalised as corporate governance best practice despite being voluntary. However as late as 2008, Barker indicated only 10% of all FTSE 350 companies fully complied with the Code (Barker 2008). Non-compliance is not a sign of poor corporate governance, but not justifying non-compliance points to malfeasance.

Yet some scholars disagree as to whether the *Combined Code* is successful. Benefits received from the flexible self-regulatory system are overstated, and the *Combined Code* merits inclusion into British company law as default rules of which boards can opt out with shareholder approval (MacNeil and Li 2006). This would further tilt the balance of influence over corporate governance from the board towards the shareholders. The current system relies heavily on company-investor dialogue, which can be manipulated and is currently inadequate (Owen 2008). Yet a push towards rules-based governance legislation would be met with significant resistance from the UK corporate sector. As Chambers (2005) observed, "Turkeys don't vote for Christmas." (Chambers 2005, 92)

The Financial Reporting Council is the *Code*'s independent regulator. In explaining its remit, the FRC states: "We promote high standards of corporate governance through the Combined Code, but do not monitor or enforce its implementation by individual boards." (Financial Reporting Council 2009, About the FRC website) The FRC does not monitor the content of, but merely the existence of, governance disclosures. It does not inspect whether firms have accurately applied *Code* provisions or offered acceptable non-compliance justifications. As Chambers (2005) states, "It is an ingenious interpretation of words which has resulted in Code principles not being enforced by the regulator." (Chambers 2005, 95) Just as the London Stock Exchange does not de-list firms that do not fulfill its non-compliance disclosure Listing Rules, the FRC does not discipline British companies that fail to follow *Combined Code* recommendations. A similar approach to UK museum regulation will be discussed in following sections.

2.5 International economic failures

In light of the 2008-09 international financial crisis and banking collapse, Sir David Walker was commissioned to review UK banking and financial institution governance. The final *Walker Report* (2010) amended the *Combined Code* and recommended the FRC encourage CC implementation amongst institutional investors in UK companies. While the general public may perceive that the 2009 US and UK economic recessions pertain to corporate governance failures, the underlying governance system does not appear to be responsible for the breakdown. Risk management is the responsibility of corporate boards of directors, and some firms did fail to adequately assess risks related to certain types of credit-default swaps, in particular, and other economic signs in general. "The credit crunch – and the resulting crisis amongst leading financial institutions – is increasingly presented as a crisis of corporate governance. However, although current problems are indicative of shortcomings in the global financial architecture, they should not be interpreted as reflecting dysfunction in the broader UK corporate governance model." (Barker 2008, 9) Yet a positive public perception is vital to the overall health of the corporate sector, and stricter corporate governance regulations may be required.

2.6 Summary

Corporate governance in Britain's private sector emerged from financial wrongdoing and the misappropriation of funds in the 1980s and 1990s. The British government, however, proceeded on a more conservative path towards corporate accountability than did the American government in the wake of US corporate scandals a decade later. Businesses must "comply or explain" their adherence to accountability recommendations rather than face strict sanctions if accountability standards are not met. This system works for British business because the *Combined Code* is an economic, not an ethics based code of conduct that ultimately favours accountability as a business tool rather than as an ethical means to ensuring the public trust. The public confidence in the private sector is no less important than the public trust in museums. Later sections of this thesis will demonstrate whether corporate accountability measures have been implemented in museums across Britain.

3. The Committee on Standards in Public Life

The tradition of public service in Britain is not unblemished, and examples of wrongdoing over the past centuries have affected current public sector protocols. Comparable to the *Combined Code*'s recommendations on corporate governance, the Committee on Standards in Public Life (CSPL) makes recommendations for ethical accountability in the public sector. CSPL published its Seven Principles of Public Life (1995) in a parallel timeframe as the development of the *Combined Code*. This section of the thesis offers an overview of the Seven Principles and discusses the specific recommendations to achieve public sector accountability. These Seven Principles, called the Nolan Principles, have had far reaching effects and relate both directly and indirectly to museum governance and codes of ethics.

3.1 The tradition of public accountability in Britain

Accountability and transparency are fundamental public sector principles, and Britain's overall standard of accountable ethical conduct is high. Doig (1996) asserts that the current approach to public accountability arose from Victorian values of decorum and respectability despite "extensive opportunities for conflict of interest. Efforts were periodically made, most noticeably during the nineteenth century … that sought to disengage private interests from public responsibilities, but almost total reliance was placed on the sense of honour and perceptions of propriety that were supposed to be the mark of a gentleman." (Doig 1996, 37-38) Yet the 1912-13 Marconi Wireless and Telegraph Company scandal involving insider trading was based on knowledge of unannounced government contracts by Chancellor of the Exchequer David Lloyd George and Liberal Chief Whip Alexander Murray, among others. This alerted the British public to the possibility of public misconduct, "[giving] way to independent committees or tribunals of investigation." (Select Committee on Public Administration 2005, First Report website)

Public wrongdoing occurred intermittently until 1972 when Yorkshire architect John Poulson's local authority corruption scandal erupted. Poulson bribed his political contacts in order to win building contracts in the UK and abroad in an extensive scheme that included over twenty local authorities and 300 people (BBC News 2009). Convicted of corruption and conspiracy in 1974, Poulson was sentenced to seven years in prison, and represented "the bankruptcy of the century until the death of Robert Maxwell, but [Poulson's scheme] was far more reaching." (Calder 2009, Obituary website) In response to the Poulson affair, the government launched inquiries into local authority reform, namely the Prime Minister's Committee on Local Government Rules of Conduct and the Royal Commission on Standards of Conduct in Public Life, which recommended new conflict of interest standards and other general reforms in local government. Few of the standards were actually implemented.

Despite cases of wrongdoing in public life, Parliament was "reluctant" to solidify accountability and ethical reforms through the 1970s and 1980s:

> [T]here was an official reluctance to accept that the misconduct may reveal generic rather than specific lessons for reform; that the opportunity and incentive for fraud and corruption, the capacity to conceal actions, the risk of being caught, and the effect of dealings with the private sector, were not specific to certain organisations or activities; that an over-reliance on personal standards of conduct made incorrect assumptions about their applicability, uniformity, and relevance; that such an over-reliance often meant a failure to ensure the effectiveness of other parts of an ethical environment; and that the weaknesses of a poorly-implemented and policed internal ethical environment could be compounded by failings or external scrutiny and monitoring. (Doig 1996, 46)

As a result, a wave of public sector scandals through the 1980s and 1990s highlighted the need for ethics and standards reform. These episodes included quango mismanagement, questionable public appointments, and conflicts of interest disclosures.

Notably, the *Guardian* newspaper uncovered the 1994 "cash for questions" scandal in which two MPs received payment and other benefits from Mohamed Al-Fayed and lobbyists to table questions regarding Mr Al-Fayed's application for British citizenship. Both MPs, Neil Hamilton, the Corporate Affairs Minister, and Tim Smith, a Northern Ireland Minister, resigned for accepting money. That same year, the Committee of Public Accounts published its Eighth Report entitled *The Proper Conduct of Public Business*. It described the public sector as lacking "proper systems and procedures; clear responsibility; robust reporting arrangements; trained staff; availability of information; … accountability of decisions; … clear disciplinary policies; effective risk assessment … [and] avoidance of conflict of interest." (Doig 1996, 47) While it is not possible to determine whether an increase in personal and professional misconduct due to poor public sector management occurred at the end of the twentieth century, the general public's criticism of perceived "sleaze" grew more pronounced (Doig 1996, Doig 1995, Committee on Standards in Public Life 1995).

3.2 The Nolan Committee

In response to mounting public scrutiny and concern, Prime Minister John Major established the Committee on Standards in Public Life in 1994, commissioning the ten-person non-departmental advisory standing committee with the following task:

> To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life. (House of Commons Debates 1994, column 758)

Major tapped Lord Michael Nolan, an admired judge and a Lord of Appeal in Ordinary from 1994-1998, to chair the CSPL. Lord Nolan remained Committee Chairman until November 1997 when Sir Patrick Neill QC succeeded him. Nolan oversaw the first four CSPL reports that reviewed conduct in local public spending bodies (1996), local government (1997), and quasi-autonomous non-governmental organisations (quangos) (1997). *Standards in Public Life* (May 1995), the Nolan Committee's First Report, was a landmark document that directly addressed the public sector's growing "accountability gap." (Weir 1995, 320)

3.2.1 *Standards in Public Life* overview

The First Report in 1995 concluded that the standard of ethical conduct in the British public sector was high, but "there [were] weaknesses in the procedures for maintaining and enforcing those standards. As a result people in public life [were] not always as clear as they should be about where the boundaries of acceptable conduct lie." (Committee on Standards in Public Life 1995, 3) The Nolan Committee feared that malfeasance could grow more common if standards remained unchecked, so pre-emptive efforts were appropriate to address the circumstances. While fraud is uncommon in the public sector, incomplete knowledge of public sector expectations by new employees transferring from other work environments can damage the public trust. "[I]t cannot be assumed that everyone in the public service will assimilate a public service culture unless they are told what is expected of them and the message is systematically reinforced." (Committee on Standards in Public Life 1995, 17) Nolan makes clear that the private sector does not lack ethical practices, merely that those practices and expectations traditionally differ from those required in the public sector.

To fulfill its remit, the First Report contained seven underlying ethical principles intended to affect all areas of public life, and fifty-five general non-statutory recommendations applicable to MPs, civil servants, quangos, and NHS bodies. The Seven Principles of Public Life are referred to as the Nolan Principles (Figure 34).

Figure 34. The Seven Principles of Public Life

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership (Appendix E)

These seven traits embody fundamental values deemed essential for the success of public accountability in a democratic society. The UK Museums Association endorses the Nolan Principles, including them as an integral element in its *Code of Ethics for Museums: Ethical principles for all who work for or govern museums in the UK* (2008).

3.2.2 First Report recommendations

The Seven Principles of Public Life were not intended to exist in a vacuum, but are meant to be supported by organisations' internal controls and training, external monitoring procedures, and codes of conduct. To improve the public trust, the Nolan Committee recommended specific steps to achieve accountability and transparency (Figure 35).

Figure 35. Nolan Committee recommendations

- All public bodies should draw up Codes of Conduct incorporating these [seven] principles.

- Internal systems for maintaining standards should be supported by independent scrutiny.

- More needs to be done to promote and reinforce standards of conduct in public bodies, in particular through guidance and training, including induction training.

- The rules on declaring interests, and on avoiding conflicts of interest, should be set out in more detail.

• [P]olitical interference in the pay and promotion of individuals must be avoided.

• More needs to be done to ensure that all civil servants remain aware of the standards of conduct required in the public sector.

• [B]etter confidential avenues are needed for investigation of staff concerns about propriety.

• [A]n independent body is needed to undertake the continued standard-setting and monitoring that will enhance and sustain public confidence in the [quango] appointments process.

• Regular audit is an important way of uncovering irregularities in financial matters – whether they are due to outright fraud and corruption or result from laxity in following proper procedures – and of establishing public confidence that public money is being properly spent.

3.2.3 Effects of the First Report

Varied direct and indirect effects on museums have resulted from the Nolan Committee's First Report on *Standards in Public Life*. The complicated National Code of Local Government Conduct (1975, most recently updated 2007) that required local authorities in England, Scotland, and Wales to adopt codes of conduct was redrafted in 2000 in response to the Nolan Report. Similarly, the Local Government Act (2000) formally established England's ethical Standards Board, and standards boards now exist in each local authority to investigate misconduct. Local councillors and their family members now publicly disclose conflicts of interest. The Welsh Assembly's Code of Conduct is also based on the Nolan Principles, and a Standards of Conduct Committee manages conflicts of interest.

The CSPL has affected government practices in the devolved Northern Ireland and Scotland governments as well. Northern Ireland's *Code of Conduct for Local Government Employees* (revised 2004) specifically incorporates the Nolan Principles, but it is not a statutory document. The Northern Ireland Assembly also established a Committee on Standards and Privileges in 2007. After devolution, Scotland moved to regulate public ethics via The Ethical Standards in Public Life (Scotland) Act (2000), the Scottish Parliamentary Standards Commissioner Act (2002), and a *Councillors' Code of Conduct* (2003). Scotland's Standards Commission reviews conduct and conflicts of interest in local authorities.

The Nolan Principles are regarded internationally as a breakthrough in ethical government conduct, particularly in the EU (Bossaert and Demmke 2005, Cabinet Office 2001). Since 2004, the CSPL has conducted a biennial *Survey of public attitudes towards conduct in public life* to gauge, in part, the public's view of public accountability. The 2008 survey learned that roughly 60% of respondents believe government ministers use their power for personal gain, and only 52% believe public servants "are committed to upholding standards of conduct." (Committee on Standards in Public Life and BMRB Social Research 2008, 7) Notably, when analysing public perceptions of standards in public life, the CSPL discovered that survey participants in Scotland, Wales, and Northern Ireland were each more confident in the standards in their respective countries than across the UK. (Committee on Standards in Public Life and BMRB Social Research 2008, 12) The Nolan Principles have not prevented all public sector wrongdoing in Britain, as demonstrated by the MP's expenses scandal, but it is not possible to regulate against or specify every manner of transgression in a code or statute. The Seven Principles of Public Life instead attempt to stem both deliberate and inadvertent personal behaviours that injure the public trust.

3.3 Summary

The CSPL made strides to establish an underlying foundation of sound ethical practice in the public sector by outlining expectations with regard to both the internal and external oversight of an accountable government to combat the public perception of wrongdoing. CSPL concluded that a successful shift in accountability is achievable by implementing policies and procedures throughout the public sector's ranks, and not solely through a top-down approach. The Nolan recommendations also overlap with some of the *Combined Code*'s goals for corporate accountability. These range from managing conflicts of interest, audits, and remuneration decisions, to implementing internal controls, training programmes, and oversight. The effects of the Nolan Principles are not only visible in the public sector, but also in museum governance.

4. The British charity

The following section will highlight the distinct features of Britain's third sector charities.[1] Section 4.1 will demonstrate the development of charity accountability, accounting, and the link between charities and the government. Charity regulation, in the form of the Charity Commission (in England and Wales), and charity reporting are the primary routes to government-led oversight and government-endorsed accountability in museums. This section will then explain unique features of the charity sector as it professionalised over time, the relationship between charity professionals and volunteers, and the importance of specialised charity training. The closing paragraphs will then align the charity and corporate sectors to demonstrate the increasing commercialisation of charities, and demonstrate the manner in which charity scandal can negatively impact the broader third sector.[2]

4.1 Development of UK charity accountability

The third sector plays a unique cultural and economic role. It comprises organisations outside both the public and private sectors and includes diverse charities, voluntary groups, community associations, and public service providers that are not wholly staffed or funded by the government. The different legal systems and regulatory bodies in England and Wales, Scotland, and Northern Ireland preclude any single legal definition or designation for the UK's third sector.

In the 1980s, however, commentators outlined overlapping definitions and unofficial criteria for charities, a significant third sector subset. Hatch (1980) stated that charities must be independent from government, be formal legal entities, and cannot distribute profits, but reinvest income in themselves. Johnson (1981) added self-governance and the receipt of voluntary (non-governmental) donations to the definition. Brenton (1985) noted a further delineation: public benefit affecting those beyond the organisation's membership. Years earlier, the Beveridge report on *Voluntary Action* (1948) highlighted public service as the central component of charitable work. The Charities Act 2006 (England and Wales) stipulates charities must act "for the public benefit" and "for the advancement of the arts, culture, heritage or science", amongst other purposes. (UK Parliament 2006, paragraphs 2.1(b) and 2.2(f)) This "public benefit" clause has been controversial, particularly in relation to private schools which

1 Many UK museums, particularly Independent museums, have charitable status.

2 In this thesis, the terms *voluntary* and *charity* are used interchangeably.

now must demonstrate offering a public benefit despite being private fee-based institutions. This type of charity regulation appears to be a method for governments to pursue social policy. There are roughly 200,000 registered charities in the UK (Charity Commission 2010, Office of the Scottish Charities Regulator 2008b). With income over £52bn, the charity sector is an economic force, yet in 2005, only 2,400 charities (1.2%) earned two thirds of that income. (Aldridge 2005, 97)

Traditionally, government and the public overlooked charities. Prompted by questions about charity law, three reports about charities from the 1970s raised interest in the sector: the House of Commons Expenditure Committee's *Tenth Report* (1975), the *Goodman Report* (1976), and the Wolfenden Committee's report on *The Future of Voluntary Oranizations* (1978). Until that time, the third sector was not defined as a unique sector separate from entities that support government programmes (Leat 1997). Through the 1970s, charity accounting practices were inconsistent (Austin and Posnett 1979), but in 1979 charity trustee codes of conduct were circulated, including the National Council of Social Service[3] *Charity Trustees' Guide* that decried conflicts of interest and poor accounting.

Charity accounting has since been much researched, originating with Bird and Morgan-Jones' 1981 report published by the ICAEW that recognised the sector's accounting standards failings. In response, the Accounting Standards Committee published its statement of recommended practice (SORP) (1988, revised 1993, 1995) recommending standard procedures and methods. At the time, the number of charities that received funding grew as Prime Minister Margaret Thatcher's agenda reduced the government's involvement in social welfare programmes (Palmer and Vinton 1998). With increased funding came additional accountability expectations and requirements. The government and other stakeholders needed verifiable and consistent charity accounts that could be compared sector-wide.

Critics determined in the 1980s that regulating charities' accounting data not only could improve the sector's administration, but also that regulated charity accounts were a basic public expectation given charities' tax breaks and government funding (Cullis et al. 1984). Yet the Chartered Institute of Internal Auditors' 1985 survey found charity employees resistant to implement internal audits, ascertaining that only 10% of charities conducted an internal audit. At that time, however, "[t]he absence of sufficiently dramatic [charity] crises…

3 Later the National Council for Voluntary Organisations

played an important part in ensuring that the self-defined voluntary sector policy stream was operating with low visibility for 15 years after Wolfenden. No major policy documents were developed during the 1980s." (Kendall 2003, 51) By the end of the decade, the 1989 House of Commons Committee on Public Accounts was dismayed by charities' poor public accountability, which Leat described as "at best patchy". (Leat 1996, 62)

The Home Office's 1990 *Efficiency Scrutiny of Government Funding of the Voluntary Sector* under John Major first called for "improved partnership between the sectors, and for better accountability and enhanced efficiency." (Salamon and Anheier 1997, 267) Tony Blair's government later initiated a *Compact* between the public and voluntary sectors, creating a unified approach to voluntary sector policies for the first time in British history. The *Compact: Getting Right Together* (1998) called on charities to improve accountability, transparency, and adherence to legal requirements to bring the sector into the "mainstream" (Kendall 2000). At the same time in Scotland, the Scottish Council for Voluntary Organisations published the *Kemp Commission Report* (1997) addressing governance and the interaction between the corporate, public, and third sectors, among other topics. These documents broadened the debate about professionalising the charity sector.

Wrongdoing in UK charities has taken multiple forms in recent years. Two Scottish charities were under scrutiny in 2003 for financial malfeasance. Edinburgh-based children's cancer charity Moonbeams generated roughly £2.9m of income in four years, yet only £185,000 reached the charity. Scottish courts suspended the charity's board and froze its bank accounts pending investigation, and the charity was liquidated in 2004. The Moonbeams trading company, the charity's fundraising arm, incurred exceptionally high expenses and failed to transfer income to Moonbeams. Additionally, Moonbeams paid board member Gary Easton £93,000 for serving as the charity's auditor. Easton returned over half of his fee under threat of indictment (The Scotsman 2007). A similar scandal occurred at Breast Cancer Research (Scotland), where only £1.5m of roughly £13m raised by the charity went to support cancer research. Fundraising consultant Tony Freeman was sentenced to eighteen months in prison for fraudulent fundraising practices (Swanson 2004). These scandals increased calls for stricter charity oversight in Scotland, and the Scottish Parliament responded, forming the Office of the Scottish Charity Regulator (OSCR). OSCR took over charity regulatory duties in 2006. At that time, "half of UK financial directors believe[d] charity finances [were] at risk from poor controls." (Crawford 2009, 1)

4.2 Charity regulation

The UK government has worked to raise accountability expectations, to increase oversight, and to provide more charity governance guidance. The Charities Act 2006 (England and Wales) attempted to bolster public confidence in charities by establishing specific directives for the Charity Commission, the charity regulator for England and Wales. The Commission is charged with:

> increase[ing] public trust and confidence in charities … promot[ing] compliance by charity trustees with their legal obligations in exercising control and management of the administration of the charities … [and] enhanc[ing] the accountability of charities to donors, beneficiaries and the general public. (UK Parliament 2006, paragraph 7(3))

Scotland's Charities and Trustee Investment (Scotland) Act 2005 tasked OSCR with similar oversight duties for Scotland's charity sector. The Charities Act (Northern Ireland) 2008 created the Charity Commission for Northern Ireland to register and regulate charities there, a process that is still under development, though the Commission is required to fulfill its duties with "such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it." (Northern Ireland Assembly 2008, paragraph 9(2)6)

Charity policy and regulations are now centrally mandated, while "[i]n North America… a more balanced relationship between the levels of the state has been the constitutional backdrop against which voluntary sector … responsibilities have evolved … free of central regulation." (Batsleer 1995, 233) The UK format reflects the Parliamentary system of central control. The Charity Commission, OSCR, and the Charity Commission for Northern Ireland are independent non-ministerial departments with broad remits: responsibility for registering, supervising, disciplining, advising, and guiding charities to facilitate charity governance and administration.

The Charity Commission, established 1853, was charged in 1960 with registering and monitoring charities' administration on behalf of Parliament, and with admonishing charity failings and abuses on behalf of the courts to protect public assets and the public trust. Since the 1960 Charities Act, the charities register has been open to public scrutiny (Marshall 1961). Originally, the Charity Commission did not espouse intervening in charity matters:

> [I]t is not our function to police the work and activities of all charities … There is a misconception abroad that because charities have in total a large income, and enjoy tax and rating concessions, they should be controlled as if they were government bodies, or quangos, they are not. They emanate from the voluntary world. (Lock 1998, 409)

The 1992 and 1993 Charities Acts (revised 2006) clarified and expanded Charity Commission responsibilities, and amended this point of view. Emphasising charity accountability, it increased the Commission's power to review charities' management and financial information, and delineated charity trustee responsibilities. Similar to American nonprofit organisations, these responsibilities include duty of care and duty of prudence, and trustees may secure indemnity insurance against liability in the UK. Trustees may not be paid for their board service, borrow funds from the organisation, engage in business transactions with the charity, and must avoid other types of conflict of interest.

Despite the Accounting Standards Board SORP, the Charity Commission did not assess charity returns in the early 1990s. Charities, too, overlooked the SORP: "the SORP was being ignored or had not even been heard of", in part because charities were not required to fulfill its recommendations. (Hines and Jones 1992, 54) To streamline charity accounting practices, the revised SORP (1993) split from the earlier standard, recognising differences between the corporate and third sectors, replacing the income and expense report with a *Statement of financial activities*, among other changes. Recognising the unique nature of charity accounting and charity work helped the third sector to professionalise (Palmer and Vinten 1998).

Since devolution, charity regulations are now broadly similar throughout the UK, and the three charity commissions have parallel powers. For example, charity regulators in England and Wales, and Scotland may appoint or remove trustees, stop financial transactions, and rescind an organisation's charity designation. Arguments vary, however, over the type and level of government oversight charities require. Because the sector is so diverse, is one single oversight mechanism appropriate? Will regulation that requires charity accountability and transparency through annual financial reports and written documentation alienate charity employees, particularly volunteers? "[M]any voluntary organisations are heavily dependent upon externally provided resources, especially those from the state. But at the same time it is part of the ideology of many voluntary organisations that they are 'independent', especially from the state." (Leat 1996, 75) Does regulation, instead, bolster public trust and improve internal charity management? Securing a charity's reputation via good governance, accounting transparency, and ethical accountability is a vital aspect of risk management. Charity regulators actualise public accountability.

Specific charity reporting does differ based on locale (Figures 36 and 37).

Figure 36. Trustee duties in England and Wales

- Update charity data including income and expenditures in the charity register.

- File an Annual Return or Annual Update.

- Prepare a Trustees' Annual Report and chart of financial accounts.

- Report serious material incidents if charity income exceeds £25,000. The Reporting Serious Incidents form requires trustees to report if fraud, theft, or significant loss of funds have taken place, among other questions.

- Complete the Summary Information Return if income exceeds £1m, answering in 750 characters (among other questions), "How does your charity ensure that its governance arrangements are appropriate and effective?"

Figure 37. Trustee duties in Scotland

- Ensure accurate charity data is registered with OSCR.

- File an Annual Return.

- Supply a signed copy of annual financial accounts.

- If a Scottish charity's bylaws require financial audits, the charity must retain a registered auditor to do so.

- File a Supplementary Monitoring Return if gross income exceeds £25,000, answering:

- C3. How many of the charity trustees were paid a fee or a salary by the charity or by a related body whether this was for work undertaken as a charity trustee or not?

- D5. Does the governing document give authority for the payments made to charity trustees [for professional services, other work done, or for any other reason excluding reimbursement]?

The Charity Commission and OSCR both stipulate that auditors must report all issues of material significance, including the suspicion of fraud, internal control or governance failures resulting in financial mismanagement, and other breaches (Office of the Scottish Charities Regulator 2008). Whistleblowing protections exist for those who come forward.

Most notable is the regulators' right to intervene in a charity's governance and administration. Regulators can initiate an inquiry, obtain documentation, require trustees to take specific action, and even sanction charities in cases of misconduct. Legal breaches in the charity code will only reach the court system in England with consent from the Charity Commission who notify the attorney general if a legal case is appropriate. This is a rare occurrence given that the Commission manages most charity malfeasance. However, in instances of legal challenges to a Charity Commission ruling, suits are brought to the Charity Tribunal. The Tribunal will make an Independent Complaints Reviewer available to individuals or organisations with complaints regarding the Charity Commission's execution of duties.

The Charity Commission and OSCR have significant leeway in fulfilling their responsibilities. Yet critics complain that the Charity Commission did not use its diverse punitive resources enough through the 1990s (Lock 1998, Cornwell 1997). Commissioners instead worked directly with trustees to solve governance accountability problems rather than commence official investigations. "[This] allow[ed] the Commission to control the activities of charities without causing public concern." (Lock 1998, 409) To aid accountability, the Charity Commission also hired certified accountants to assist charity governance teams and to audit their returns. Through the 1990s, few charity trustees were dismissed, and no charities were prosecuted for failing to file financial reports. (Lock 1998, 408) Lock (1998) also suggests that in filling both the regulator and advisor roles, the Charity Commission could do neither properly, hence defaulting to its function as charity mentor.

The charity regulators publish numerous downloadable guidelines, advice, and reports that relate to accountability.[4] Guidance about charity beneficiaries who become trustees, trustee expenses and payments, insurance, and managing conflicts of interest are readily available.

4 These guidelines include: *The Essential Trustee: What you need to know*, *Good Governance: a Code for the Voluntary and Community Sector*, *Transparency and Accountability*, *Trustee Recruitment and Induction*, *Charity Reporting and Accounting*, *Anti Fraud Strategy*, *Charity Regulation in Scotland*, and *The Audit of Charities in the United Kingdom*.

In October 2010, the Charity Commission published a revised version of *Good Governance: a Code for the Voluntary and Community Sector* in conjunction with the National Council for Voluntary Organsations (NCVO) and the Association of Chief Executives of Voluntary Organsations (ACEVO). The general guidance from these and other publications is useful to a broad swathe of charities. It is not possible to gauge the effectiveness of these guides, but internet users visited the Charity Commission guidance webpages over ten million times in 2009. (Charity Commission, Providing information website) Hyndman and McDonnell believe "The widespread adoption of appropriate guidance would provide for greater confidence in the control processes within charities and may lead to better reporting by charities, which may be a desirable (or indeed necessary) condition for the continuing growth of the sector." (Hyndman and McDonnell 2009, 28) This guidance, in addition to work with specific charities in need and remedial work with charities in distress, constitutes the bulk of the Charity Commission training. Balancing charity needs and public rights, offering guidance to charities of all types and sizes, and monitoring governance ethics are demanding tasks for charity regulators.

Third sector organisations are not financially self-sufficient, so their operations must be accountable to individuals, groups, or government bodies from whom they receive funding (Vinten 1997). Poor charity governance can undermine the public trust, and hence public giving, while solid governance can help ensure an effectively and ethically managed charity that fulfills stakeholders' requirements. Stakeholders will be more likely to support charities by financial and other means "if people believe the government is supervising the charity sector effectively, [and] they will view the potential for opportunism on the part of the charity workers to be reduced." (Hyndman and McDonnell 2009, 14) Both internal and external controls work to that end. Charities that receive income from individuals, corporations, or funding bodies are more likely to be monitored by donors than those that do not, like small, volunteer-run organisations. In that case, government regulation (the Charity Commission) may be the sole oversight to which small charities with possibly few internal controls are subjected. As such, the Commission sets standards for the public benefit.

4.3 Charity professionalisation

In 1995, the voluntary sector employed 1.5 million Britons, and was further supported by sixteen million volunteers. (Kendall 2003, 20) From 1996-2005, the charity sector expanded 26% in England, yet 39% of charity employees worked part time and 32% worked in organisations with fewer than ten employees. (Clark and Jochum 2008, 7) This workforce demonstrated "amateur" attributes (Patel et al. 1999), but an upswing of interest in charity management occurred during that time. The International Society for Third Sector Research was founded in 1992, and the sector launched two scholarly journals: *Nonprofit Management and Leadership* and *Voluntas*. UK colleges and universities have also developed charity management courses. In 2006 Parliament created a charities minister post in the Office of the Third Sector. In 2009, the Minister for the Third Sector was elevated from a parliamentary under-secretary to a ministerial position, demonstrating the government's growing recognition of the sector (Eyre 2009, Benjamin 2009). Yet the 2008 *Third Sector Skills Research* report revealed that professional skills in the charity sector are lagging. Training programmes for trustees, employees, and volunteers are available, but challenges remain to professionalise the sector.

NCVO's *Third Sector Skills Research* publication reports proficiency gaps and skills gaps in a variety of employment areas: 22-28% of charities lack an employee with legal expertise, 23-25% lack staff with strategic planning abilities, 18-27% lack leadership personnel, 17-23% are unable to manage charity monitoring and evaluation, and 13-20% lack employees with financial knowledge. (Clark and Jochum 2008, 9) These skills gaps result, in part, from the sector's small and mid-sized organisations' dependence upon a part-time workforce and upon short-term grants that prevent long-term skills development (Batsleer 1995). Smaller organisations rely heavily on board guidance and skills because the charity may lack funding to pay employees specialised in all administrative areas (Clark and Jochum 2008).

Charity governance is a specific skill and responsibility. Building a board of directors with individuals who possess diverse knowledge about finance, fundraising, charity law, human resources, management, accountability, etc. is a challenge. The Charity Commission asserts that "Good governance is essential for the success of any charity and is now more important than ever. Members of boards play a vital role in serving their causes and communities by ensuring the proper procedures and policies are in place to manage their charity's resources effectively." (Charity Commission, Charity governance website) Though the 1992 Charities Act clarified trustee duties, issues persisted with charity boards. Many individuals were ignorant about their legal duties as trustees (Siciliano and Spiro 1992, Ford 1992), or believed that they filled a "ceremonial" role rather than one with considerable implications (Meyer and Rowan 1991). Trustees traditionally did not engage in charity governance because they were unaware of their responsibilities until an organisational crisis arose (Collins 1993, Humphrey 1991). Moreover, some charity trustees were generally unqualified to govern a charity and "have rarely been competent to handle quite complex roles and responsibilities as employers or supervisors." (Batsleer 1995, 234) Board members also broadly lack knowledge about potential risks from employees who may engage in financial or administrative fraud (Hyndman and McDonnell 2009). Charity regulators and other groups supporting the third sector offer numerous guidance reports and training in governance-related areas. Unfortunately, board attendance at training courses is rare for varied reasons (Clark and Jochum 2008), and persuading trustees to attend or insisting upon board participation in training sessions could work against the purposes of training, discouraging individuals from taking on board service (Harris 1993).

Tension can arise between part-time unpaid trustees who are not charity specialists, and professional charity employees. Charity staff members continue to professionalise through degree-based or professional development training courses, potentially outpacing their board supervisors. The third sector now hires trained professionals for managerial posts (Bruce and Leat 1993, Kramer 1990), and these managers may know more about charity governance than their board supervisors (Leat 1996). Volunteers, however, run much of the charity sector.

The volunteer community, defined by Davis Smith and Lynn (1991) as individuals working without pay for the benefit of those outside one's family, is vitally important to the charity sector. Davis Smith's 1996 article questioning *Should Volunteers Be Managed?* explores how concepts of volunteer management have evolved since the NCVO's 1983 *Should the salt of the earth be managed?* article, to questioning what type of management is most appropriate. Training and professionalising volunteers challenges the traditional divide between volunteers and employees, yet it is "an indication that volunteering [is] at last being taken seriously and that volunteers [are] finally receiving the recognition and support that they deserv[e]." (Davis Smith 1996, 188) Academics have argued that volunteers ought to be considered equal to paid staff members, and treated as such (Drucker 1989). Davis Smith notes this outcome may be unavoidable as the requirements that funding bodies place on the sector are becoming more complex and technical. Similarly, additional legal requirements, regulations, codes of conduct, expectations from the charity community, and expectations associated with specific professional associations, for example the Museums Association, are changing expectations for volunteer conduct. Drucker (1989) found these changing expectations to be the most significant advance in the charity sector in the 1980s. As this study will demonstrate, many volunteer-run UK museums have pushed back against implementing best practice policies.

Volunteer culture and ideology remain strong in the UK, and movement to professionalise via training, management, or oversight has caused concern within volunteer-run organisations (Davis Smith 1996). In the 1970s and 1980s, "management [was] an ugly word with ugly connotations, particularly in the voluntary world. It smack[ed] of hierarchy, of commanding and controlling, even of manipulation." (Handy 1983, 8) Individuals may balk or grow disinterested in volunteer work if required to fulfill formal expectations similar to paid employees. Their "values [may] sit uneasily with formal management tools such as job descriptions, appraisals and disciplinary and grievance procedures." (Davis Smith 1996, 194) Since the mid-1990s, demand for charity management training increased (Osborne 1996). Third sector volunteers and individuals working for entirely volunteer-run organisations are beginning to meet new expectations since it is possible to unite governance best practices with voluntary sector values. Quoting a fellow volunteer specialist, Davis Smith notes that "professionalism is not automatically the kiss of death for the voluntary ethos … unmanaged and undirected volunteering usually is." (Davis Smith 1996, 196) Recent studies demonstrate the public trust in charities is indeed stronger than trust in either the public or private sectors (Kendall 2003, Saxton 2002). This trust, however, may result from the public's understanding of charity sector characteristics, which could be undermined by a changing policy and regulatory environment (Tonkiss and Passey 1999). "There is a specific tension between the voluntary tradition of charitable governance, historically one of the hallmarks of the sector, and the increasing risks and scrutiny to which trustees are subject." (Aldridge 2005, 100) Volunteer-run museums in the UK may face challenges in the future because many do not engage in best practice management policies and are unaware of reasons to do so, as this study will demonstrate.

4.4 Charity training

Osborne (1996) made the vital distinction that while training is important to improve voluntary sector skills, charities have "distinctive features" that may not meld with best practices from other sectors, yet "[t]here is [little] consensus … about what these 'distinctive' features actually are." (Osborne 1996, 208) In the past decade, charity experts and academics attempted to improve voluntary sector skills, consolidating tenets from the corporate and public sectors. As of 2011, numerous UK support bodies offer training in best practice. The National Council for Voluntary Organisations provides governance and leadership support to charity boards via private consultations, training courses, and events.[5] Recently the NCVO has written a model constitution for small charities under £5,000. The Northern Ireland Council for Voluntary Action (NICVA) has a similar remit, offering sector-wide conferences and training sessions on leadership, networking, fundraising, governance, charity law, and policy. NICVA also lobbies on behalf of Northern Ireland's charity sector. The Scottish Council for Voluntary Organisations (SCVO) and Welsh Council for Voluntary Action (WCVA) perform similar duties.

In 2005, the charity sector spent only 0.8% - 1.3% of turnover on professional development, in contrast to the 2.7% spent by the public sector and 3% spent by the private sector. (Aldridge 2005, 98) In times of financial hardship, organisations are likely to cut training expenses from their budgets (Clark and Jochum 2008). Unlike the American nonprofit sector:

> the 'professionalization' of the [UK] voluntary sector has not really been a process of infiltrating a single-minded cohort of highly paid, career-oriented staff. It has been a conscientious attempt to create flexible, responsive and entrepreneurial patterns of work in circumstances which have often born the hallmarks of casual labour rather than classic professionalism. (Batsleer 2005, 234)

A sector with such a large number of volunteers and with consistent turnover may require different training standards for volunteers than for employees (Leat 1996, Young 1987). Making training accessible to charity workers and board members, however, is a significant obstacle to expanding charity sector skills. Time constraints and financial hardship for travel to training sites are particularly difficult for volunteers and part time workers. It is difficult for small organisations to replace absent employees, and skills training courses may not be applicable to charities of diverse types and sizes.

5 Publicly available NCVO publications include: *Accountability and Transparency*, *Good Trustee Guide*, *The A-Z of Good Governance*, *Better Communication = Better Governance*, *The Board Answer Book*, *Code of Governance Toolkit*, and *Reducing the Risks.*

While significant voluntary sector-specific training is available, "the challenge is to ensure that training relates to the needs of the sector and that ways are found to deal with the constraints to training." (Osborne 1996, 212) Smaller organisations appear to have greater difficulty accomplishing skills training: "Learning 'on the job' on a 'need to know basis' by working with others was often the only solution they could envisage … Smaller organisations were also more inclined than larger organisations to use trustees and volunteers in response to a skills gap." (Clark and Jochum 2008, 17) As discussed above, many organisations do not have trustees or volunteers qualified to assist charity administration. Solutions to practical training problems include increasing in-house training sessions, mentoring between organisations, forming good-practice networks, sharing specialised personnel, engaging in distance and online learning, and incorporating training into the daily fabric of charity management (Clark and Jochum 2008, Osborne 1996). Yet according to the *Third Sector Skills Research* 2008 report, employee and board attitudes are the greatest barrier to charity training. Training is not prioritised.

4.5 Corporate characteristics

Billis and Harris (1996) and DiMaggio and Powell (1983) espouse the organisational theory that groups take on their successful peers' behavioural characteristics. This is applicable to all organisational types, including the third sector. While private sector and third sector principles differ, charities have embraced a demeanor that betrays their origin and the traditional conception of charity work. As of 1990, the term "voluntary sector" was "muddled, outdated, misleading and much else besides." (Paton 1990, 2) The *Combined Code* (formerly the *Cadbury Report*) is not only applicable to, but is important for the third sector. "The differences between the commercial and the voluntary sectors tend to be overstated, but even where the differences apply, Hind[6] asserted, the problems that Cadbury aimed to tackle occurred more in the voluntary sector … the Cadbury code could help trustees keep a tighter grip on the strategic reigns of a charity." (Vinten 1997, 24) Charities can implement *Combined Code* corporate governance standards to better protect organisations, employees, trustees, stakeholders, and charities' missions.

UK charities have traditionally been unincorporated associations or charitable corporations.[7]

6 Hind is the former chairman of the Charity Finance Directors Group.

7 The Charities Act 2006 permits charities to register as charitable incorporated organisations (CIOs), a more corporate structure. This option should become available in 2011.

Citing Hardy (1988), Deakin (2001) agrees that corporate governance, structure, concerns, and priorities "have permeated the debate about the future of voluntary action. In so doing, [business concepts] have … become generally accepted as legitimate criteria to apply in devising the governance and assessing the performance of third sector organizations." (Deakin 2001, 39) Billis and Harris' introduction to *Voluntary Agencies: Challenges of Organisation and Management* (1996) indicates that the third sector's transition towards a corporate model is actually a common occurrence: "we have grown familiar with the increasing adoption of the norm and methods of the market by both the public and third sectors … third sector staff – in common with their colleagues in the public sector – became increasingly subjected to the virtues of concepts originally developed for the private sector." (Billis and Harris 1996, 6-7) While a shift towards corporate governance and accountability has occurred in charities, its implementation is "embryonic" compared with the corporate sector. (Dunn 2008, 266) Disputing Batsleer et al.'s 1992 claim that the charity sector professionalised through training programmes and not from the influx of corporate hires, Bruce and Raymer (1992) noted that large charities recruit one third of senior managers from the corporate sector. Staff members are hired in part to fill roles requiring specialised knowledge that volunteers or board members lack (Billis 2010). Inculcating internal control policies and procedures traditionally associated with corporate governance, and establishing ethical corporate governance standards can positively impact a charity's effectiveness.

4.6 Summary

The traditional concept of a charity and of charity regulation may be obsolete. The sector has not only professionalsed, but also taken on corporate characteristics like commercialisation and accountability. Strict charity regulation does not exist in the UK, but *Combined Code* recommendations boosting accountability are beginning to become more important to charity stakeholders. Charity regulation is developing similarly in the different UK countries, but charity governance accountability lags behind the private sector. There is no lack of accountability recommendations for charities, but these proposals do not necessarily translate to practice in the third sector. The expectations and regulations charities must fulfill inform UK museum governance policy. As demonstrated in the following section, UK museums fit squarely within charity sector traditions.

5. UK museum governance

Section 5 examines relevant information about museum history, finance, and oversight that affect UK museum accountability. The development of the museum profession is reviewed, clarifying the vital importance of employee and volunteer training in museum-specific ethics and accountability. The ethical lapses by the Tate's board of directors demonstrate that all museums are susceptible to poor governance decisions despite trustee awareness of accountability standards. The Tate case study points to specific accountability concerns that will be analysed in later sections.

5.1 The UK museum sector

Britain's first museum, Oxford's Ashmolean Museum, was founded in 1683. Seventy years later, Parliament passed the British Museum Act (1753) founding the British Museum, which opened to the public in 1759. In 1845, Parliament permitted local councils to levy taxes for the purpose of raising funds to build local public museums. These original UK museums differ in "both form and function … from what a visitor today would expect." (Siegel 2008, vii) By the First World War, the 400 UK museums' "place in culture was recognizably close and often identical to the modern one." (Siegel 2008, vii) The number of UK museums has exploded in recent decades, nearly doubling since the early 1970s. (Johnson and Thomas 1991, 13) The UK Museums Association's *2011 Museums & Galleries Yearbook* contains the most comprehensive catalogue of UK museums, galleries, and historic properties, listing roughly 3,000 organisations.

UK museums receive over 100 million visits each year. Nearly half the adult population in England (45.8%), two thirds of five to ten year olds, and 59% of eleven to fifteen year olds visited a UK museum in 2009. (Museums Association, About website) The 350+ museums in Scotland receive twenty-five million annual visits, and contribute over £800m to Scotland's economy. (Museums Galleries Scotland, MGS Launches Campaign website) However, museums now compete for visitors with diverse attractions, resulting in decreased museum visits in England and Scotland (Burton and Scott 2007).

The Welsh Assembly's 2007 *Spotlight on Museums* reports 143 museums in Wales, roughly ninety of which are Accredited. (Welsh Assembly Government 2007, 7) There are seven National Museum Wales sites, eighty-two independent museums, fifty-five local authority museums, and nine National Trust properties. (Welsh Assembly Government 2007, 7) Over 2,640 people work in Welsh museums, 58% of whom are full-time employees. "Volunteers play a significant role in sustaining the museum sector, with 1,150 working in the independent sector, 184 in the local authority sector and 27 working in … National Museum Wales." (Welsh Assembly Government 2007, 28) Northern Ireland has the fewest number of museums in the UK: roughly fifty, forty-two of which are Accredited including four National museums, twenty Local Authority museums, ten Independent museums, seven National Trust properties, and one University museum. These museums employ over 650 individuals and 300 volunteers, and receive over one million visits per year. (Northern Ireland Museums Council, Facts and Figures website)

Rhetoric defining UK museums categorises them by governance type, delineating differences in funding, management, and oversight. The fifty-four *National museums*, established within a national policy agenda and funded by the four countries' central government departments, are exempted charities with boards of trustees, and are accountable not merely to stakeholders, but also report to the National Audit Offices (NAO). The Museums and Galleries Act 1992, replacing the National Gallery and Tate Act (1954), is the latest Act reforming National museum board functions and powers at four institutions: the National Gallery, the National Portrait Gallery, the Wallace Collection, and the Tate, specifically "regulating the duties, responsibilities, power and proceedings of the Trustees." (Forder 1994, 132) Prior to 1986, Parliament voted annually for continued National museums' funding. The 1992 Act changed that procedure, making museums more independent through an agreed-upon Financial Memorandum, assigning museum directors to be Financial Accounting Officers, and having museum accounts audited by the NAO's Comptroller and Auditor General, who presents a final report to Parliament. (Forder 1994, 148) The Accounting Officer's role is to ensure that the museum board acts in accordance with its Financial Memorandum, which outlines the conditions of the government's grant money. The Act codifies previously non-statutory items, permitting charging for admission, allowing reasonable remuneration for board expenses, outlining the number of museum board members, and making trustees accountable to the Prime Minister.

Prior to the 1992 Act, these museums' trustees were personally liable for contractual agreements, including employment contracts. The Act incorporates the boards, removing that liability, though National museum boards were essentially indemnified by the government due to their non-executive function. The museums were funded directly by government departments, and employees had the same terms and conditions of employment as civil servants. The 1992 Act also stipulates that "[m]oney accruing to a Board as a result of a disposal … shall be applied by the Board to acquire relevant objects to be added to the collection. In particular it is not to be used to repair crumbling buildings." (Forder 1994, 144) Specifically, the Tate is required to appoint two practicing artist-board members. Its board is permitted to acquire works on the museum's behalf, but has limited powers of disposal. These trustee responsibilities will be discussed further with regard to the scandal associated with the Tate's 2002 acquisition.

Local Authority museums, the most common kind of UK museums, are diverse in size and type, yet all are public service departments primarily funded, administered, and governed directly by local council museum services. "Inconsistencies in [Local Authority museum] accounting systems and the fact that many museum services are part of much larger local authority departments make it difficult to disaggregate the whole … Expenditure on museums by local authorities ranges from over £20 to less than £1 per inhabitant." (Lawley 2003, 76) In addition, local councils might not prioritise their museums, might not have a cultural department, and are not required to provide museum staff access to museum governors (Ryder 2002). With political and economic changes, some local authorities have shifted museums outside their control and into a Trust structure.

Independent museums include diverse types of organisations like charities and volunteer-run museums. These museums can apply for government-sponsored grants, but receive most income through admission fees, commercial ventures like a museum café, or from individual, corporate, or foundation giving. As early as the 1980s, Independent museums generated over 40% of income from public grants. (Jackson 1991, 42) British *University museums* are the oldest type of museum in the UK. They represent 4% of all UK museums, yet hold 30% of all museum collections. (University Museums Group UK, About UMG website) These museums are owned and administered by the museums' parent universities, and museum employees are typically university employees. Museum types classified as Other in this study include regimental museums, hospital-based museums, and cathedral-based museums. English Heritage, a non-departmental public body, and the National Trust and the National Trust for Scotland, both charities, protect UK properties, heritage sites, and monuments. Not all English Heritage or National Trust sites maintain collections. Some are land and nature preserves, including gardens and battlefields. This study's survey results, discussed below in sections 6-8, utilise the same museum "type" breakdowns as outlined above and as designated by the UK Museums Association.

Through the 1980s, little research was done on UK museums as "organisations" (Griffin 1987) in contrast to research on professional museum standards, training, public value, or employee numbers (Kavanagh 1991). By the twenty-first century, "every aspect of museum operations ha[d] at one point or another been placed under the microscope and examined for its clarity of focus and function relative to furthering the role of the museum as a cultural and educational institution within the greater fabric of society." (Anderson 2004, 1) This study attempts to complement these examinations, situating museums in the interconnected framework of public, private, and third sector institutions. Public scrutiny has been inherent across these sectors. The public has taken a greater interest in museum administration (Anderson 2004, Weil 2002), evaluating and challenging museums' operations, spending, programming, and professional accountability. Museums have "moved in from the hazy outer penumbra of the nation's culture; quite suddenly they are exposed for all to see, to comment on and to criticize." (Cossons 1991, 15) Stakeholders, public oversight bodies, and the general public itself assess museum practice, finance, and governance.

Museum finance has faced challenges from government budget fluctuations since the mid-1970s (Alexander 2007, Jackson 1991). Finding alternate sources of income is arduous, as UK tax policies have not traditionally encouraged individual philanthropy, and taxpayers generally believe their taxes should already cover admission fees, for example (Alexander 2007). As such, "private demand may not fully reflect social demand" for UK museums. (Johnson and Thomas 1991, 29) Over time museums have responded to this social demand by increasing their focus on visitor experience and have added visitor-based decisions to the many other museum concerns like scholarship, conservation, and collection management, rather than completely shifting focus onto visitors (Sandell and Janes 2007). Such change need not sacrifice traditional mission-based museum values (Janes 2007). Utilising private models and internal controls to manage operations, and strategically governing museums to fulfill those mission-based goals, however, will better aid museums to acheive sustained long-term success.

5.2 Museum accountability

The definition of third sector accountability has been under debate since the 1980s, though public accountability is based upon stakeholder expectations (Rentschler and Potter 1996). Managing the perception of accountability and transparency is equally important to the considerations associated with actually executing organisational accountability. Traditionally, accountability indicated that financial statements demonstrated no unusual, inaccurate, or inappropriate transactions, accounting fully for museum finances (Weil, 2007). As the third sector and museums morph due to external expectations, accountability is coming to encompass an organisation's ethics, efficiency, and effectiveness (Swords 1997). In her 2002 keynote address to the INTERCOM Leadership in Museums conference, former director of the Scottish Museums Council Jane Ryder recommended "remov[ing] the legal distinction between profit and not for profit organisations, accepting that they are both operating to produce a return on capital and to account to stakeholders." (Ryder 2002, Lecture) While the missions of museums form the core of strategic decision making, museums are no less accountable for their decisions and actions than are corporate bodies.

As noted above, UK museums face public accountability expectations established by central government bodies, local authority councils, grant-making philanthropic groups, the museum community itself, and by individual museums' internal requirements and expectations. By the 1990s, public accountability was a concern amongst UK museums: "Museums have become public property, arousing the interest of the public at large. The question of who should run museums, and how, has moved 'from the professional domain to the public stage' (Cossons 1991b: 186)." (McLean 1997, 31) Twenty years later, public accountability continues to be at the forefront of museum governance and administrative concerns. Governance is no longer only a museum concern, "but is a social and cultural concept." (Ryder 2002, lecture) Now, accountability addresses more than fiscal transparency. Museum operations, museum-specific policy ethics and internal controls, and concerns like conflict of interest and whistleblower protections are under scrutiny. UK funding bodies, including central and local government, also assess programming or operational performance indicators. This study does not address that type of museum accountability. Value for donated funds, however, is relevant to this study in as much as those funds are properly administered through financial controls that attempt to thwart fraudulent practices.

Comprised entirely of volunteer non-executive board members, UK museum boards differ from their for-profit counterparts that include both non-executive and executive directors. As the board is responsible for governance and plays a large role in the organisation's management via executive directors, the corporate structure could be applicable to the museum sector, which has demonstrated trouble balancing executive and non-executive duties. Museum board members occasionally disregard the Museums Association *Code of Ethics* in their decision-making, a practice with which museum professionals find fault. With board representation, museum professionals and managers could better guide and help non-executive board members who are not trained in specific nuances or requirements associated with running a museum. Similarly, the private sector has considered limiting the number of non-executive board members permitted to serve due to the position's demands and responsibilities. "It may well be time to apply this same principle to [museum board] public appointments on the basis that the risks and the obligations are equally demanding and arguably carry even greater responsibility in the accountability for public expenditure." (Ryder 2002, lecture) While the board's duty is to shape museum policy within legal and ethical frameworks, board members may lack the professional training or knowledge of sector-wide standards required to do so appropriately. This may be problematic given that "the range of issues and pressures confronting museums in the twenty-first century is equal to that of any sector of organized life." (Sandell and Janes 2007, 1)

As museum finances face pressures, museum boards are challenged to demonstrate their fiscal accountability and to verify that resources are utilised for the public good. Yet meeting these objectives can betray standard museum practices and ethics. In some instances, local authorities have sold objects from museum collections to cover costs not approved by the Museums Association. Yet even museum sector professionals "who think their institutions might not bear comparisons [with other museums] or meet standards easily, or do not care if they do, might be even less [interested to meet standards]". (Ames 1991, 59) This finding could have important implications for museum oversight bodies that aspire to raise standards in all museums.

Financial controls are now generally accepted norms across the museum sector, as "the fiduciary duty of trustees and the outward accountability of museums require the demonstration of sound business practice … and 'cocoa-tin accounting' [is] no longer acceptable because museums, whether they like it or not, are 'in business'." (Defries 1991, 76) Accountability standards, however, are imposed on UK museums by numerous sources, including diverse funding bodies. These funders have varied requirements and many request proof of internal control standards before donating grant monies. In so doing, "[t]hese bodies dictate policy, and individual museums react accordingly to obtain grants and to obtain status as a museum." (McLean 1997, 31) Due to funders' varied policy requirements, the challenge for acquiring one-time government grants, and the differences in accountability each funder demands, Janes (2009) recommends forming a centralised museum consortium fund to distribute grants for which "[a]ccountability would be essential, but so would a wide tolerance for mistakes and failures [for meeting grant goals]" in the way that Area Museum Councils did formerly. (Janes 2009, 69) Assessing the value of this type of program would require public and government scrutiny.

5.3 UK Museum-related organisations
i. The Museums Association

The London-based Museums Association (MA) is an independent charity established in 1889 as the professional body responsible for setting professional standards within the UK museum community. It is not a statutory body, but a membership organisation that advocates on museums' behalf, sets ethical standards for museum employees, board members and volunteers, and offers professional development training programmes to members. In 2009/2010, the Museums Association had 5,200 individual members and 590 institutional members, representing less than a quarter of all UK museums (Museums Association 2010). As such, the vast majority of UK museums do not participate in, have access to, or may not be aware of MA standards like the *Code of Ethics for Museums* (2008). Cossons (1991) lamented that the MA did not unite UK museums more strongly, stating "national museums and their staff have generally stood aside from the Museums Association", and claimed that a stronger centralised professional body would benefit the sector. (Cossons 1991, 71)[1]

The Museums Association offers a breadth of professional development opportunities. Their Associateship of the Museums Association (AMA) is a two to three year professional

1 Attempts to contact the Museums Association for comment about UK museum governance accountability and financial transparency, as well as information about the MA's role in professional development and oversight were unsuccessful.

development program and designation for museum employees and committed volunteers, and includes an ethical problem-solving element. Conferences, training workshops, and courses, including *Forward Future: achieving accreditation* and *Volunteer management and the law*, are available to all Museums Association members. Additionally, the MA publishes a monthly *Museums Journal* concerning UK museum current events, and a quarterly *Museum Practice* magazine online that discusses new developments and best practices across a spectrum of museum-related issues.

The Code of Ethics for Museums: Ethical principles for all who work for or govern museums in the UK (2008) is the Museums Association's ethical recommendations handbook representing commonly held views within the museum profession about ethical best practice. It pinpoints the most important ethical issues discussed within the museum community including governance, public service, and performance review. It encapsulates a museum's idealised reputation in the public eye. Initially adopted in 1977 as the *Code of Practice for Museum Authorities*, the *Code* is consistently revised. A new *Code* amending wording about object deaccessioning was most recently ratified at the 2007 MA Annual General Meeting. Tenets of the *Code* include recommendations that bolster museum accountability (Figure 38).

Figure 38. Museum Association Code of Ethics accountability tenets

• 1.1 Uphold public trust responsibilities.

• 1.3 Avoid behaviour that could be construed as asserting personal ownership or control of collections or any part of them.

• 1.4 Treat collections as non-negotiable assets in financial affairs.

• 2.1 Recognise the public purpose of museums. Put the public interest before other interests.

• 2.2 Uphold the highest standards of personal conduct and corporate integrity expected in public service.

• 2.3 Account for actions and decisions, be willing to justify them and take responsibility for the consequences that flow from them.

• 2.6 Avoid any private activity or pursuit of a personal interest that may conflict or be perceived to conflict with the public interest.

• 2.7 Declare to the governing body and have recorded by it any activity or pursuit of any interest that may conflict or be perceived to conflict with the public interest.

• 2.8 Understand legal responsibilities … and make all policy and practice at the museum comply with the law.

• 6.10 Give priority to transferring items, preferably by gift to ... accredited museums.

• 6.13 Refuse to undertake disposal principally for financial reasons … Financially-motivated disposal risks damaging public confidence in museums and the principle that collections should not normally be regarded as financially-negotiable assets.

• 10.2 Keep up to date with developments in the law, museum practice, social policy and public expectations.

• 10.9 Recruit, train and develop individuals so that the skills and knowledge of members of museum staff, the governing body and support groups are appropriate to the needs of the individual and the museum.

Most notably, the Museums Association has printed the Nolan Principles on the *Code of Ethics'* inside back cover, stating, "The principles apply to all who work in or for museums and to all who serve on museum governing bodies." (Museums Association 2008, 23) These principles remind museum employees, volunteers, and board members that they are managing and governing institutions, many of which are publicly funded, on behalf and for the benefit of the general populace.

This *Code*, however, is unenforceable, unless a whistleblower comes forward, misconduct occurs in the public eye to attract Museums Association attention, or museum professionals hold employees accountable to the *Code's* standards. Theoretically, the *Code* is instead a guide aiming to establish professionalism across a diverse sector, permitting museum self-regulation of that professionalism, and permitting the sector to be held publicly accountable (Kavanagh 1991b). Specifically, "[a]n ethical code sets forth conduct that a professional considers essential in order to uphold the integrity of the profession." (Malaro 1994, 17) As such, the *Code* can be used for training purposes for museum professionals, and as an official resource for members of the public who question museum ethics. In so doing, the *Code* is also a risk management tool, particularly legally, as ethical codes typically have higher standards than those required by law.

ii. Other museum oversight bodies

The Department of Culture, Media and Sport (DCMS), established 1997, is the successor to various government bodies including the Ministry of Arts and the Department of National Heritage, responsible for all arts, creative industries, sport (including the 2012 Olympics), and museums and galleries. It has directly funded the museum regulatory body the Museums, Libraries and Archives Council (MLA), sponsored the National museums and a selection of non-national museums, funded various museum education programs, and supported the noteworthy "Renaissance in the Regions" program that improves Britain's regional museums' standards, wielding influence over virtually all museums including University museums and Independent museums qualifying for government-sponsored grants. Due in part to the poor international economic climate in the late-2000s, the coalition government elected in 2010 pledged massive reductions in government spending. The DCMS budget is scheduled to lose £300m over four years. In turn, DCMS cut both National museum and Renaissance in the Regions program funding by 15%. (Steel 2010b, DCMS Funding website) Central government cut local authority funding by 7%. As such, 80% of Museum Association members participating in a 2010 survey fear local councils will resort to deaccessioning objects or selling museum real estate to raise funds needed to support local services. (Kendall 2010, MA Poll website) Two MA survey participants reported:

> *The Council Executive has already approved plans to sell off as much of the art collection as possible in a vain effort to both fill gaping budget holes … and also maximise impact of current cuts for local political reasons. We are prevented from carrying out any kind of advocacy, lobbying or even inform anyone of what is happening.*
>
> *I work for a small local authority museum in the North-west of England. The building is going to be sold off to raise funds leaving us with a very uncertain future. This will be the third time in as many years we have been reorganised or restructured [by the council]. (Kendall 2010, MA Poll website)*

Local councils have previously sold museum assets to bolster their budgets. In 2006 Bury Council sold works without Museums Association approval. In response the MLA revoked Bury's Accreditation and the MA barred them from membership.[2] Legally, local councils are permitted to sell museum objects, yet this can contradict museum standards and best practices. In response, some museums have considered forming a Trust, or becoming a completely volunteer-run museum service (Steele 2009).

2 This incident will be discussed later in this thesis.

Cuts to Northern Ireland's Department of Culture, Arts and Leisure (DCAL) similarly affect National museums in that country. DCAL funds the Northern Ireland Museums Council (NIMC). Established 1993, NIMC offers training courses, publishes research reports, and lobbies on behalf of the sector. None of NIMC's 2010-2011 training programs, however, address governance or accountability. Scottish museums rely on Museums Galleries Scotland (MGS) for government grants and other services. "Museums Galleries Scotland is the main conduit for Scottish Government funding to the sector." (Museums Galleries Scotland, Working website) MGS also provides professional development training for museum professionals, though no conferences or courses offered between June 2010 - June 2011 directly addressed museum governance or accountability. Museums working toward Accreditation do receive advice if needed. In addition, MGS publishes Scottish museums data and research, and lobbies the Scottish government on museum-related issues.

DCMS funds the MLA, the regulatory body responsible for promoting best practice across the museum sector and for running the UK Accreditation scheme. Started in 1988 as "Museum Registration", Accreditation sets the basic bar for UK museum standards across all museum disciplines, from collections management and visitor services to facilities and governance. It encourages museums to continually assess and improve services and to demonstrate accountability through transparency. This in turn engenders internal professional confidence and external assurance to stakeholders and funders making qualitative judgments. The Accreditation program does not standardise museums, but standardises their basic professional tenets of conduct. Nearly 1,800 museums are either Accredited or Provisionally Accredited in the UK. (Museums Libraries and Archives, Accreditation website) No sanction exists for museums that are not Accredited, though many funding bodies require this standard in their grant making cycle. Ironically, the MLA does not make Accreditation records publicly available though the Accreditation process is intended to ensure public accountability (Boyd 2004). While MLA Accreditation is respected in the museum community, the public knows little about Accreditation standards or reputation. (Kendall 2010b, MLA Unveils website)

DCMS announced its intention to cease funding and oversight for non-national museums as of April 2011, giving the responsibility to do so to local and regional organisations and communities. In lieu of sponsorship, DCMS is formulating an £80m scheme to encourage individual philanthropy. This plan coincides with DCMS's July 2010 proposal to eliminate the MLA altogether. In response, MA Director Mark Taylor lobbied for museums, stating "It is important that we have a strategic body with museums as one of its principal functions, rather than a minor department in another quango." (Steele 2010, MA Responds website) Instead, MLA duties will be transferred to the Arts Council England (ACE) by March 2012, and ACE will received £46m of increased funding annually to do so. (Heal 2010, ACE Takes Over website) Museum representatives from Wales, Scotland, and the Museums Association worried any new scheme could "strand" their disparate countries' museums, "fragmenting" the UK museum sector. (Steele 2010, Wales website) Critics fear ACE is not suitably equipped to manage the grant-making decisions and functions MLA previously administered, and "has been handed too much responsibility." (Atkinson 2010, Vaizey website) The evolution of museum oversight is underway in the UK, but conclusions cannot yet be drawn about the success of proposed measures in relation to museum sustainability.

5.4 The museum profession

i. Professionalism, training, and management

A profession and professionalism develop when like-minded individuals and groups are motivated to adhere to agreed-upon performance standards, skills, and values (Boyd 2004, Kavanagh 1991). Barber (1963) established four tenets of professionalism: subject knowledge, community-based interest rather than self-interest, a reward system like a salary, and a self-imposed code of ethics developed by the profession itself. This code represents "a system of principles and rules … peculiar to [the profession]", an ideal system that typically exhibits a higher standard of duty than legal regulations require. (Alexander and Alexander 2008, 309) Specifically, the museum profession "must [have] a generally acceptable standard of conduct for all museums since the actions of a few can affect all." (Boyd 2004, 352) While Boyd was speaking specifically of museums themselves, late museum director Joseph Veach Noble broadens museum professionalism's importance stating, "Ours is one of the few professions which is charged with being relevant both for today's people and for those who will come after us. We stand as a link between the past and the future, and it is our duty to be a strong link." (Alexander and Alexander 2008, 305) Despite this responsibility, the museum profession was little researched until the early-1990s, as the profession developed intermittently in the UK (Kavanagh 1991b).

When the Museums Association was established in the nineteenth century, UK museum staff consisted of academics, interested amateurs, and curators working in the spirit of public service (Kavanagh 1991b). The profession developed in the 1930s, and the United Nations Educational, Scientific and Cultural Organization (UNESCO) and its subsidiary body the International Council of Museums set international standards when founded in 1946. Over time, the UK museum sector professionalised in response to ICOM and Museums Association standards, adopting codes of ethics, publishing journals reporting on best practice, establishing training courses and seminars, promoting museum Accreditation and internships, and forming additional guidance and support bodies like the Association of Independent Museums and the National Museum Directors Conference.

By the 1970s, the number of museums and museum employees in the UK had increased significantly, and the museum profession was a central question at the 1977 UK Museums Association annual conference in Bradford, UK. Basil Greenhill, Director of the National Maritime Museum, presented a paper entitled "New Patterns in Museum Management" that encouraged the museum community to apply "general management practices":

> There are fewer and fewer parallels with the traditional, academic field and more and more with the executive functions of industrial management, though the educational objectives are very different… Of course, it is already obvious that we are not really talking about a new concept per se, but about the application of general management practices in a museum context … If specialized management is taken as a museum function at least as important as curatorial expertise, what then is the role of the trustee, the governor, the committee member of the governing body, if there is one? (Greenhill 1977, 123 and 125)

Museums are also not isolated from the public or private sectors, complicating the profession. The museum sector requires diverse professional skills and specialties, ranging from security to conservation, each of which has disparate objectives. Public expectations and accountability requirements have also affected and increased demands upon museum professionalism. The sector has done well to establish accepted standards for most of these areas, and offers museum employees opportunities to gain knowledge and tools in diverse fields. However, museum professionals have been slow to adopt all recommended norms, particularly with regard to governance and management.

As museums professionalise, more is required from museum volunteers, which will be discussed below. Due to the sector's high standards, specific ethical requirements, and extensive training, museum staff members can have greater expertise than the non-professional board members who are responsible for museum governance and oversight. "With the growing professionalism of museum staff do volunteer boards of directors provide the best oversight for 'the public good' for museums?" (Alexander and Alexander 2008, 319) Board level training will be discussed below. Museum professionalism does not only refer to accountability and ethical codes, but also to the execution of professional duties as Greenhill stated in 1977. This concept presupposes that museums are complex institutions with common goals, unique concerns, and challenges that require generally accepted industrial management.

Prior to the 1970s, museum managers did not receive management training, and were not necessarily management specialists. The 1987 *Hale Report* on museum training identified necessary training improvements across museum departments, including financial accountability (Museums and Galleries Commission 1987). It noted the slow changeover from curator-managed museums to the introduction of standards like those of the Museums Training Institute, that enabled non-managerial museum staff members to take on management roles, in addition to the hiring of management staff from outside the museum sector. Yet through the 1990s, and in numerous small or volunteer-run museums in the twentieth century, "management training and the resulting techniques [were deemed] inappropriate to museums and, as such, are irrelevant to the museum profession." (Fopp 1997, 1) As has been demonstrated, museums fit squarely in the third sector, which requires no less management or governance care than the private sector. Museums differ from other organisations in mission and have different stakeholders, but to fulfill those missions and satisfy stakeholders sound management and governance practices are required. As this study will demonstrate, museum training geared toward volunteers, in-house training, induction training, and continuous professional development are still absent in many UK museums.

Museum training is primarily two-fold: specialty-based and ethics-based. The Museums Association and other oversight groups provide training in both areas, yet do not offer much specific management, governance, or ethics training. An ethics requirement does exist for museum professionals acquiring the MA Associateship qualification. Two primary critiques have arisen. Malaro (1994) noted that most board training is "generic" and widely-applicable, yet not necessarily museum-related. While boards may be well-versed in running a charity, they may lack the nuanced point of view required to govern a museum with diverse stakeholders, unique needs, and specific ethical norms. Board member expertise typically lies outside of museums, and "many of the governing authorities responsible for these museums are also beginning to resemble corporate entities, with board members being chosen for their business experience." (Sandell and Janes 2007, 2) Yet, oftentimes these board members do not implement or expect the same professional standards from museums they govern as from businesses with which they are associated (Chait and Taylor 1989). This may be particularly salient for volunteer-run museums.

> Ultimately, how the sector is perceived depends on the quality of governance demonstrated by individual boards as they guide their respective organizations. But board members usually … [have] little training … Accordingly, it is unrealistic to assume that these board members are prepared to govern well, and, when in fact they fail, the tendency is to look the other way because of their volunteer status … the sensible solution is to focus on board education and then require more thoughtful governance. (Malaro 1994, 35)

While this does sound like a sensible solution, Wood and Rentschler (2003) noted the disparity in individuals' ethics despite common goals: "To assume that written statements and museum pronouncements from directors will suffice is underestimating the complexity of the [ethics] issue … if ethics are not part of the strategic planning and the strategic fit of the organisation, then ethics statements can become hollow rhetoric." (Wood and Rentschler 2003, 533) They assert museum-wide training as a means to implement ethical consistency geared towards institutional stability.

Professional development requires institutional investment: time away from regular duties, time away from the museum, and financial costs to attend training courses. Continual training, however, will help the museum reach its full potential and fulfill its goals. Balking at training programs, best practice schemes, or standards of practice prevents opportunities for improvement. The indifference of museums to changing public expectations, an aversion to update working practices (Moore 1994, Middleton 1990), and hesitation to source knowledge outside the museum sector (Janes 2009) in the face of shifting requirements is shortsighted. As of 2004, "[a]cceptance of the need to change may well [have been] the biggest barrier [for museums] to overcome. Without acceptance of the need to change, individuals or groups can become obstacles to advancing a new agenda and will dramatically slow progress." (Anderson

2004, 3) Critics have noted UK museums' hesitation at implementing management objectives over the last two decades (Sandell and Janes 2007, Kavanagh 1991b). In the early 1990s, "many attitudes to museum management [were] deeply set and some of them [were] staggeringly out of date." (Kavanagh 1991, 6) Museum management was spurned in comparison to collection management, scholarship, and exhibitions (Sandell and Janes 2007).

Due to increased calls for accountability, increasingly limited government financing, and expanding stakeholder demands, this attitude has changed, and management is now integral to museum effectiveness. Griffin and Abraham's 1999 study (Griffin and Abraham 2007) is notable for determining that Local Authority museums are typically less effective due to government oversight and finance concerns, which require processes that do not comprise best business practices. "Broadly there is agreement between the characteristics of effectiveness in museums and the features of effective commercial or forprofit organisations." (Griffin and Abraham 2007, 105) Yet Sandell and Janes (2007) fear some museum managers now expect corporate practices to be a panacea for museum financial concerns:

> It is … not useful [for museum professionals] to bemoan the abandonment of traditional museum practices in the face of very real economic and social imperatives. To do this is as naïve as insisting that museums must become profit-driven enterprises if they are to survive in the contemporary world. In short, neither the business nor the non-profit sector holds the exclusive keys to a secure future. (Sandell and Janes 2007, 9)

UK museums must now adapt to assume increased responsibilities, meet opportunities, and re-assess managing internal controls as a means to an end to remain sustainable. Rather than ignoring interconnected multi-sector concepts, museums can embrace change to improve governance and accountability. Identifying selected best practice techniques to do so is a task UK museums are currently undertaking, as revealed by this study's survey data results.

Assessing museum goals and results with consistent internal and external evaluation is both a qualitative and quantitative best practice device. Ethics-based standards are also now considered amongst best practice mechanisms. Standing board Ethics Committees, whistleblower protections, and conflict of interest assessments, for example can focus attention towards museum standards exhibited in the Museums Association *Code of Ethics*. Wood and Rentschler (2003) advocate implementing ethics audits for individuals and processes. Such procedures can affirm the museum sector's integrity and reputation. "The next step is to link the values in the traditional museum approach to a vision that includes corporate reputation." (Wood and Rentschler 2003, 529)

The organisational ethics of UK museums have been little studied (Wood and Rentschler 2003), while topics like object repatriation and deaccessioning have been heavily researched and discussed. Overall, academics find the success of corporate ethics relies upon executives backing ethical measures (Sims 1991, Gellerman 1989, Stoner 1989, Serpa 1985). This holds for the museum sector. The museum director and governing body establish a museum's ethical nature through codes, training, and expectations applicable to all museum employees and volunteers. Ethics implemented as a statement of values integral to a museum's strategic plan, as stated above, can improve governance. These values representing integrity and quality can solidify a museum's reputation. "The effectiveness of a [museum] is directly related to the public's perception of the integrity of the organization." (Malaro 1994, 19) Reputation based on integrity is a vital asset. Museum size or income do not determine a museum's reputation (Sandell and Janes 2007), but museums of all types and sizes can impact stakeholders' public perception, and hence museums' reputations, through ethical channels. In so doing, museums will be prepared to manage varied conflicts and questions within established, agreed upon standards.

ii. Museum volunteers

The expansion of UK museums through the 1980s "at the rate of one a fortnight … is due mainly to the huge growth in voluntary trusts and 'all volunteer' museums." (Millar 1991, 1) Two decades later, nearly all UK museums (92%) utilise volunteers, and many museums continue to be entirely volunteer-run (Resource 2002). In 2001, there were twice as many full- and part-time volunteers (25,000) in UK museums as paid employees (12,500) (Creigh-Tyte and Thomas 2001). The field of volunteering has also professionalised in the UK since the 1980s and early 1990s (Holmes 2007, British Association of Friends of Museums 1999, Institute of Volunteering Research 1998, Mattingly 1984), and mirrors volunteering models in Canada and the United States (Holmes 2007). "The move to a more professional approach to volunteer management mirrors moves towards professionalisation within the UK museums profession." (Holmes 2007, 224) Typically, museum volunteers are well-educated professionals pursuing careers in other disciplines (Mattingly 1984) who currently fill assorted roles in the museum: trustees, administrators, fundraisers, money handlers, in visitor services, documentation, collections, and finance.

Museums are expected to have volunteer policies and guidelines, staff members should learn how to manage volunteers, and museum insurance policies should cover volunteer activities (Goodland and McIvor 1998). These expectations were not yet in place in UK museums by the mid-1980s (Mattingly 1984). “Lack of management of volunteers in the past has often been based on the false assumption that volunteer time is unlimited and free. In fact, it is neither, and therefore needs to be carefully managed.” (Goodland and McIvor 1998, 85) If museums can better harness volunteer time, the volunteering experience can be mutually beneficial for the museum and for the volunteer.

Holmes’ article “Volunteers in the Heritage Sector: A neglected audience?” (2007) outlines the current state of museum volunteering in the United Kingdom. Museum volunteers are academically assessed either for their economic benefits as an unpaid and potentially unreliable and unprofessional workforce (Hooper-Greenhill and Chadwick 1985), or to determine their motivations in order for organisations to better manage volunteering hours. While various internal and external factors have affected volunteer professionalism as unpaid staff members, Holmes looks to the root of volunteers’ interests to best assess how museums can utilise their work hours. Mirroring Goodland and McIvor (1998), Holmes questions whether most volunteers participate in museums as a “leisure activity”, or as active visitors: “[volunteers] were trained and deployed as staff, but their motivations to work and perceived benefits were found to be more akin to those of visitors.” (Holmes 2007, 225) Volunteers are a specific type of committed client, making the volunteer program, then, part of a museum’s educational and outreach mission (Goodland and McIvor 1998). These volunteers, however, are museum “insiders” who view themselves as part of the museum team.

Individuals volunteer in museums for diverse reasons like social interaction or interest in the subject matter. Holmes notes that, while representing a small number of museum volunteers, numerous museum employees themselves began as museum volunteers or interns attempting to gain work experience. These employees presumably approached their volunteer duties differently than volunteers engaged for other purposes. This may lead those employees to expect a professional demeanor from the volunteers they manage, but overlooking volunteer motivations can affect volunteer "recruitment and retention". (Holmes 2007, 233) As such, re-casting volunteers as active visitors as opposed to unpaid staff will enable museum administrators to better manage and better align the museum's needs with the volunteers' desires (Goodland and McIvor 1998). A challenge arises, then, to motivate volunteers to perform at professional levels and to understand the need for implementing basic standards. A divide continues to exist between professional museum practitioners and volunteer trustees whose work experience has not prepared them for museum work, a specialised discipline (Sandell and Janes 2007). This divide is evident in the following case study.

5.5 UK museum governance failings

The Tate ethics scandal was the most visible breach in museum accountability in the UK. Museum governance failings at other UK museums will be outlined in later sections.

5.5.1 Case study: Tate Modern

Similar to the Smithsonian Institution case study, the Tate Modern does not represent all UK museums that have suffered from breaches in accountability, poor museum-specific training, fraud, or other illegal activities perpetrated by trustees or staff. The Tate, however, is a National museum, and accountability expectations are high. This case study, then, demonstrates that misconduct can occur in any UK museum, even those with board members trained in accountability in other sectors, highlighting the need for museum-specific ethics and accountability training.

i. Institutional background

Comprising four museums, Tate Britain, Tate Modern, Tate Liverpool and Tate St Ives, the Tate is responsible for the UK's 66,000-object collection of international modern and contemporary art, and British art since 1500. The Tate owns the largest collection of Turner artworks and houses the National Archive of British Art from 1900. Established in 1955 as a separate legal entity from the National Gallery, the Tate now has over 700 employees and receives annual government funding totaling roughly 40% of its budget. (Tate, Governance and Funding website) The Tate's annual finances are examined by the National Audit Office, and the museum is an exempt charity regulated by the DCMS rather than the Charity Commission. All National museums fall into this category, meaning the Charity Commission cannot initiate inquiries or request documents from the museums, but can provide advice or recommendations about ethics and best practice.

The Tate is an NDPB governed by a twelve-person Board of Directors appointed officially by the Prime Minister under the *Code of Practice for Ministerial Appointments to Public Bodies* (2005). As such, their duties fall under the requirements set out by the Nolan Committee, including the Seven Principles of Public Life. The board is responsible for museum governance and for hiring the museum's director who is appointed for a seven-year term subject to the Prime Minister's approval. Board members are appointed to a four-year term and do not receive remuneration for their board service beyond reasonable expense reimbursements incurred during their tenure. The museum's bylaws require two artist members to hold trustee positions, which, while unusual, is not unique in Art museums.

Amongst other duties, the board chairman signs the museum's financial accounts, its Statement of Internal Control, Funding Agreement, Management Statement and Financial Memorandum, and is responsible for ensuring new trustees "are fully briefed on the terms of their appointment and on their duties and responsibilities." (Tate, Role of the Trustees website) The Management Statement and Financial Memorandum requires the board chair to "ensure that a Code of Practice for Board members is in place, based on the model Code of Practice for Board Members of Public Bodies produced by the Cabinet Office. The Code will commit the Chairman and other Board members to the Nolan seven principles of public life, and will include a requirement for a comprehensive ... and publicly available register of interests." (Tate Management Statement, paragraph 7) The Management Statement further requires board members to act in accordance with charity law, avoid conflicts of interest, and act in the best interest of the Tate. As a public organisation receiving public funds, the "board is expected to ensure high standards of corporate governance at all times." (Tate, Role of the Trustees website) To help meet this requirement the board has a standing Finance and Operations Committee, Audit Committee, Ethics Committee, Remuneration Committee, and Nominations Committee.

The 1992 Museums and Galleries Act endows the board with legal liability for the organisation, meaning it can "potentially incur both civil liability (e.g. for breach of contract or negligence) and criminal liability (e.g. under the Health and Safety at Work Act 1974)."

(Tate, Governance Structure website) The board has not faced legal liability in recent years, though conflicts of interest brought the Tate to the forefront of charity scandal and museum embarrassment in the past decade. Documents published since the 2005 Freedom of Information Act (FOIA) reveal some Tate management failures and governance mistakes.

ii. Tate purchases artist-trustee works of art

The Tate board appointed Sir Nicholas Serota to be Director of the Tate group of museums in 1988. Internationally recognised mixed media artist Chris Ofili joined the Tate board in 2000, and his term expired in 2005. Under Serota's directorship, the Tate purchased its first Ofili work in 1997, and a second in 1999. A conflict of interest for Ofili arose when the Tate began negotiations to purchase Ofili's group of works entitled *The Upper Room* (1999-2002) in 2002 during his trusteeship. *The Upper Room* is an installation consisting of thirteen paintings depicting monkeys in a Last Supper-type arrangement. The canvases rest on piles of elephant dung in a wood-lined room specifically designed for the works. Victoria Miro, Ofili's representative, exhibited *The Upper Room* in her London gallery during summer 2002, pricing the complete piece at £750,000.

In late 2002 and early 2003, Ofili, Miro, and Tate curators negotiated prices for the museum's purchase of *The Upper Room*. Ofili participated in the process outside of the Tate boardroom, and recused himself from portions of Tate board meetings while the purchase was under discussion. According to Tate board meeting minutes in January 2003, July 2003, and November 2003, extensive discussions ensued about Ofili and the prospective *The Upper Room* purchase. Serota explained to the full board the Tate's policy "not to purchase works by current artist Trustees except under special circumstances" though the museum had done so many times in previous years. (Tate, Minutes of a Meeting January 2003 website) Board member John Studzinski "questioned the appropriateness of the underlying policy [preventing] the acquisition of Trustees' work." (Tate, Minutes of a Meeting November 2003 website) Studzinski failed to recognise the glaring conflict of interest. Meeting minutes indicate the board was aware of the "potential criticism for purchasing the work of a current artist Trustee. Sir Nicholas Serota hoped that the case for acquiring any work was sufficiently robust, whether or not the artist was a Trustee at the time; the Trustees agreed, but emphasized that it was essential that the special circumstances be clearly minuted." (Tate, Minutes of a

Meeting January 2003 website) Board minutes state "Sir Nicholas Serota suggested that there was general agreement that this [work *The Upper Room*] probably constituted the artist's most important work to date", though the piece received mixed reviews. (Tate, Minutes of a Meeting January 2003 website)

The National Art Collections Fund (NACF, now the Art Fund) aids purchasing artworks that might otherwise leave the UK or be sold to private interests, and hence kept from public view. Funding is only granted in cases where public organisations have been unable to or have not made a firm commitment to purchase a work. Serota applied for NACF funding, stating the Tate had not committed to buy *The Upper Room*. This statement was inaccurate. The Tate had already paid Miro a £250,000 down payment for the work. According to the November 2003 Tate board meeting minutes, the board appeared committed to fulfilling the transaction. Trustee Victoria Barnsley "argued that Trustees having already decided that the group was of such importance ... should acquire the works come what may." (Tate, Minutes of a Meeting November 2003 website) The *Daily Telegraph* discovered the mistruth, and reported the NACF's disbelief after granting the Tate £75,000 towards the purchase in December 2004: "The [NACF] trustees were at a loss to understand how such an oversight could have occurred." (Hastings 2005, Tate website) The Tate apologised and offered to repay the funds, though *The Upper Room* had already been paid for in full. David Verey was a Tate board member when the NACF application was originally filed. Between that time and the granting of the NACF gift, he was subsequently appointed Chair of NACF, though recused himself from ruling on the Tate's application

The Upper Room's final agreed price (including VAT) was £705,000, paid by four funding sources: £75,000 from the NACF, £75,000 from each of five anonymous donors Victoria Miro arranged, £100,000 from Tate members, and £120,000 from the Tate's general fund. The 19 July 2005 Tate press release announcing the Ofili purchase failed to mention the artist was currently serving as a Tate trustee. A quarter of a million Tate visitors viewed *The Upper Room* in its first year at the museum, and the Tate purchase boosted Ofili's auction valuations. As later discovered, the Tate has purchased or accepted as donations at least seventy artist-trustee works of art since the 1960s including works by Bill Woodrow, Peter Doig, and Gillian Wearing, all of whom sold works to the Tate during their trustee tenures.

iii. Tate conflicts of interest

The most obvious abuse in the Ofili case emerges from the sale itself. The Charity Commission asserts that: "The law states that trustees cannot receive any benefit from their charity in return for any service they provide to the charity unless they have express legal authority to do so. 'Benefit' includes ... money. This legal authority will come either from a clause in the charity's governing document or, where there is no adequate clause in the governing document, from us [the Charity Commission] or the Court." (Charity Commission, A Guide website) The DCMS's *Public Appointments: Probity and Conflicts of Interest, a Guide for Candidates* reiterates this concern: "no-one should use, or give the appearance of using, their public position to further their private interests. This is an area of particular importance, as it is of considerable concern to the public and receives a lot of media attention." (DCMS, Public Appointments website) According to Tate board meeting minutes, the board itself actively decided to breach its own rules when purchasing the work of an artist-trustee. Spending public money for the benefit of a trustee and failing to manage the conflict of interest without receiving court or Charity Commission approval was a breach of both governance ethics and the law.

Controversially, the Tate was conducting negotiations with Ofili and his art dealer whilst claiming to have a limited acquisitions budget, launching the *Building the Tate* initiative asking professional artists to donate gifts of art to the museum. Notably, Ofili wrote an opinion piece in the *Guardian* in October 2004 encouraging his fellow artists to do just that:

> I work very slowly and don't have work lying around in the studio to toss their way, but I am very happy to offer something for future consideration. Naturally, the trustees have the right to refuse any donations ... The Tate isn't a private institution, it belongs to the nation. So if artists give work to the Tate, they are giving work to the nation. There is a very long tradition of such artistic philanthropy in this country ... As soon as I heard about this request from the Tate, I felt as a trustee and an artist it would be an altogether positive thing to do. The Tate is not a begging bowl ... the Tate is clearly slipping behind because of a lack of funds… (Ofili, Donations website)

This request was hypocritical. As a board member, Ofili himself was subject to the Nolan Principles. The principle of Selflessness asks board members to "act solely in terms of the public interest ... not do so in order to gain financial or other material benefits for themselves".

(Committee on Standards in Public Life 1995, 14) By financially benefiting from his art sale to the Tate, he contradicted his trustee duties to the museum and the public. While Ofili could have sold *The Upper Room* to a private collector for a higher price, the Tate purchased a work of art for an extraordinary sum that compromised its public trust.

Tate director Serota also breached the Nolan Principles in promoting the Ofili work and sale. As Ofili financially benefited from the sale, a conflict of interest was created when Serota was under review by the board to be re-appointed museum director. Nolan's Integrity principle asks individuals to "not place themselves under any financial or other obligation to ... influence [board members] in the performance of their official duties." (Committee on Standards in Public Life 1995, 14) Serota did just that in his role as negotiator brokering the lucrative deal. The perception arose that neither Ofili nor Serota could have been objective in their decision-making thereafter with regard to one another.

At the time of the sale, the Tate board of trustees consisted of diverse business-minded individuals knowledgeable about the *Combined Code*, business best practice, accountability, and transparency, yet they failed in their duty of care as stewards of the public trust. These trustees included: Helen Alexander, former CEO of The Economist Group; Victoria Barnsley, CEO of HarperCollins UK; Howard Davies, Director of the London School of Economics; and John Studzinski, Chief Executive of Investment Banking and Markets for HSBC, amongst others.

Paul Myners, elected board chairman in November 2003, was the Chairman of Marks & Spencer, Chairman of the Guardian Media Group, Chairman of the Aspen Reinsurance and Low Pay Commission, and a non-executive director of the Bank of New York, among other roles. His professional awareness, however, did not extend as far as governing a charity, and he did not apply the same principles to the Tate as he did to the corporate organisations he ran. The *Guardian* reported that Myners "warned that business could lose its legitimacy if it did not ... stop hiding behind a wall of non-disclosure." (Armstrong, Naming website) Myners stated that "a lack of openness ... is a form of soft corruption which encourages an outcry against [business]." (Armstrong, Naming website) The Ofili purchase had that very effect on the Tate, as every major UK newspaper filed reports condemning the practice and followed the Charity Commission's 2005 Tate rebuke closely.

iv. Charity Commission findings

In 2005, the Stuckists, a controversial group of painters led by Charles Thomson, first brought the Ofili purchase to light. Upon filing FOIA requests for source documents about the sale, and upon conversing with the Charity Commission about the Tate's perceived conflicts of interest, the Stuckists claimed success when the Charity Commission initiated a nine-month investigation into the Ofili sale, Tate acquisition practices, and trustee conflicts of interest. The Charity Commission concluded that a range of charity policies and NDPB expectations were broken when the Tate purchased *The Upper Room*, but that the overall purchase benefited the public interest.

The Charity Commission found the Tate's acquisitions policy unclear, particularly with regard to artist-trustee works of art. Kenneth Dibble, a Charity Commission senior executive, stated it was a "major concern ... [the board] was not aware that it did not have the power to purchase paintings from trustees." (The Independent, South Bank Show website) Additionally, the Charity Commission complained that board minutes were not transparent enough. When considering the Ofili conflict of interest, the Charity Commission's director Andrew Hind explained the Tate's "serious shortcomings in the processes for managing conflicts of interest and inadequate recording of decision-making ... In any charity we would be concerned that such basic matters were neglected, but in a charity of the size and stature of the Tate, we are very disappointed." (The Independent, South Bank Show website) Similar to Thomas Hoving, Christopher McCall, the Stuckists, and others' opinions, Hind condemned the Tate for failing to handle "basic matters" of ethics and governance accountability. While conflict of interest matters are unavoidable, successful management of perceived and real issues can prevent both actual wrongdoing and the appearance of wrongdoing.

In a press statement designed to restore the Tate's public image, the museum "accepted" the Charity Commission's negative report about the museum's handling of artist-trustee acquisitions and board conflicts of interests (Tate Press Office 2006). Serota, however, appeared irked by the Charity Commission's intrusion into his museum's procedures, stating, "Deals that we achieve in the public interest will perhaps be less good than hitherto, but there is great public interest in transparency." (Higgins, How the Tate Broke the Law website) Despite Serota's discontent, the Tate made governance changes in response to Charity Commission criticisms:

1. The museum's Annual Report now includes acquisition costs, and the value of donated gifts to the Tate.
2. Any future artist-trustee acquisition, gift or pledge will be reviewed by the Charity Commission before entering the collection.
3. A clear artist-trustee acquisition policy was established, amending the then-current guidelines.
4. An independent member was added to the board Ethics Committee.

A review of the Tate's policies in 2010 reveal a museum that responded to external criticisms and that, according to its policy statements, represents a model for transparent and ethical governance.

v. Tate ethical accountability and transparency

As an NDPB, the Tate is required to fulfill the following requirements according to its 2008-2011 funding agreement with DCMS:

- maintain integrity in the quality of its collecting
- comply with all relevant legislation
- observe the requirements of *Managing Public Money*
- provide DCMS with assurance that the management of potential conflicts of interest and trustee benefits aligns with charity law (DCMS, Tate: Funding website)

These four requirements, among others, speak to the Tate's poor handling of the Ofili purchase. To now fulfill these requirements, the Tate has been diligent managing its ethics, accountability, and transparency.

Ethical issues at the Tate are monitored by a four-pronged system: the board Ethics Committee, a staff code of conduct, fraud and whistleblowing policies, and a general ethics policy. The *Tate Ethics Policy* (approved May 2008, next review 2013) introduces itself by noting its alignment with both ICOM's and the Museums Association's codes of ethics and the Nolan Principles. Central to the ethics policy, however, is the issue of conflict of interest. The board has recognised its "duty to the public to be transparent and accountable, and always to act in the public interest." (Tate 2008, 1) Noting not all circumstances can be predicted or prepared for, the board affirmed that its duty of loyalty preempting any personal gain is vital to the Tate's reputation and integrity. In so doing, all board members and senior staff must declare real, potential, or perceived conflicts of interest they or any family members may have with regard to the Tate. All museum staff must alert their supervisors if conflicts arise over time.

The *Tate Employee Handbook* (2004) notes that any employee failing to comply with the Tate code of ethics could be disciplined or fired. (Tate 2004, 40) All compliance and oversight responsibilities fall to the Tate's Chief Operating Officer.

Three 2007 policy statements, published on the Tate's website, outline steps the museum has taken to protect against real or perceived board conflicts of interest. The *Tate Policy on Sponsorship of Tate Activity by Individual Trustees or by Corporate Bodies with which Trustees are Involved* (approved 2007, next review 2013) notes the board will take all real or potential conflicts of interest into account when approving sponsorship deals, and if need be will present the sponsorship to the Charity Commission for approval if a personal benefit could be perceived. Equally important is the Tate's new *Policy on Transactions Involving Benefit with Artist Trustees* (approved 2007, next review 2013). Given the inherent conflict of interest in purchasing artist-trustee works of art, the Tate realised "the test for deciding to collaborate must be high ... in relation to: acquisitions, exhibitions, display of a work of art and commercial collaboration." (Tate 2007, 1) Independent valuations of works by artists already owned by the Tate will only be considered if the work is particularly significant. Artist-trustees will not, however, be granted a solo show, but may be included in group exhibitions and in the permanent collection. These policies aid in quelling the public's discontent and the Charity Commission's public complaints about the Tate's poor governance and opaque mishandling of public resources. Adhering to Charity Commission rules and deferring to its opinions on a case-by-case basis was a fruitful step towards redeeming the Tate's public accountability image.

5.6 Summary

Museums in the United Kingdom are at a crossroads. A disparity exists between museum professionals who have received museum-specific training, and those that have not. Challenges associated with museum training impact the state of museum-specific ethics in the workplace. Volunteers, including board members, work for the best interest of their organisations, but may not be aware of how best to achieve accountability and preserve the public trust. The Tate scandal was a lapse in ethical oversight. Though a policy preventing the purchase of trustee artwork was in place, the board acted in what it felt was the best interest of the museum in making the 2002 Ofili acquisition. This purchase, however, financially benefited a fellow trustee, clearly breaching conflict of interest standards. Circumstances similar to those faced by the Tate board are now the focus of museum governance practice in the United Kingdom. To determine the widespread nature of accountability across the UK museum sector it is necessary to examine the implementation of conflict of interest policies and other specific best practices. The following three sections will analyse survey findings to construct an accurate picture of current UK museum accountability.

6. UK museum response to economic and ethics initiatives

This section of the study addresses the UK museum sector's awareness of and response to the *Combined Code* (CC) and the Nolan Principles. This thesis presumes that museums in Britain closely adhere to legal regulations; the lack of news reports or Charity Commission investigations into suspected illegal museum activity support this presumption. As previously examined, neither the *Combined Code* nor the Seven Principles of Public Life are legal mandates to which museums are required to adhere. They instead represent accepted economic best practice and expected ethical practice in Britain's corporate and public sectors, representing basic standards to engender the public trust in the market and the state. The Nolan Principles do apply directly to museums associated with the UK Museums Association given its prominence in the *Code of Ethics for Museums: Ethical principles for all who work for or govern museums in the UK*. Maintaining the public trust is vital for all types of institutions, yet the means to do so are predominantly voluntary in British business and politics. In adhering to ethical codes of conduct and voluntary codes of practice, like the *Combined Code*, British business has thus far prevented significant transparency or accountability legislation from being enacted. The Committee on Standards in Public Life continues to clarify ethics policies for the British public sector. Bolstering the public trust is equally vital to the third sector. How are these two critical components of accountability in British professional life translated to the third sector - how have museums responded?

Museums can only be influenced by ethics or economic initiatives if professionals are familiar with the standards and are knowledgeable about museums' responsibilities to be publicly transparent and accountable. Based upon data collected in the UK museum survey, this study demonstrates that neither the *Combined Code* nor the Nolan Principles have directly affected UK museum administration or governance attitudes to a significant degree. Corporate and governmental ethics standards have done little to inform the conduct and delivery of museum services across the sector. This does not indicate that museums are not currently managed in a responsible manner. This section of the study instead demonstrates that UK museum professionals lack awareness of recognised business best practices (the *Combined Code*) and expected ethical modes of conduct for public servants (the Nolan Principles) in Britain. The application of those specific internal controls and ethical ideals will be discussed in section 7.

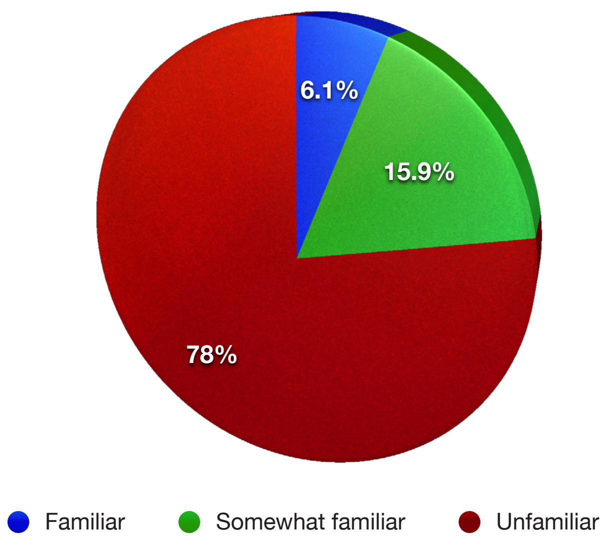
6.1 Survey results

Unless otherwise noted, all quotations below are cited from responses to this study's UK surveys or interviews. References to "the board level" refer to all types of top-level governance, including university trustees, local authority committees, or boards of directors.

i. The *Combined Code*

Very few museum professionals are familiar with the manner in which Britain's corporate entities maintain their basic accounting, auditing, and internal control systems, namely the *Combined Code* (Figure 39). Little overlap seems to appear between the corporate

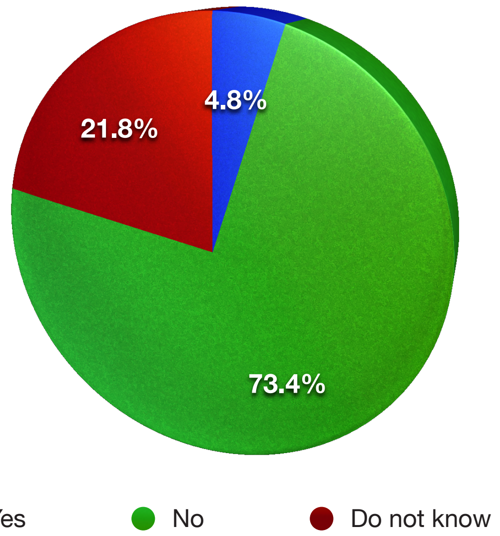
Figure 39. How familiar are you with the Combined Code's recommendations for corporate organisations?



and museum sectors. No museum professionals reported having previously worked in the corporate sector, or been trained in business principles that relate to accountability. One third of museums with budgets over £1m are *Familiar* or *Somewhat Familiar* with the CC, yet they are significantly more aware than smaller museums.

It is unsurprising, then, that the *Combined Code* is not frequently discussed at UK museums' board meetings (Figure 40). In the few museums where the CC was discussed, however, respondents believe it has affected governance attitudes at their museums, evidenced by governing documents that *"reflect the principles of the Combined Code"*, through *"clearer and more transparent"* practices, and through *"improved"* governance attitudes. Every museum that has discussed the *Combined Code* at board meetings has also discussed the Nolan Principles at the board level.

Figure 40. Has the Combined Code been discussed at museum board meetings?

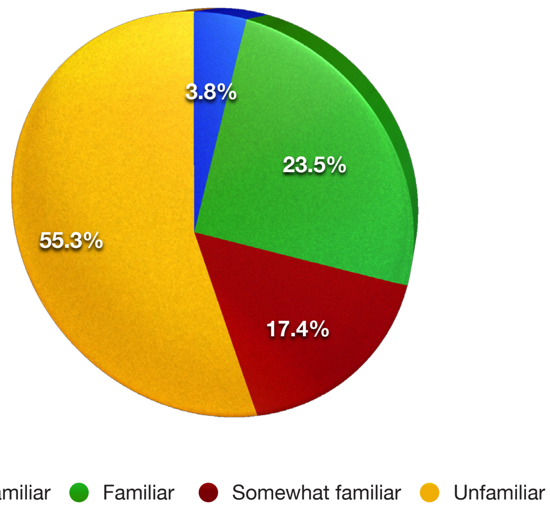


Limited knowledge about the *Combined Code* translates directly into the 84.7% who do not know whether CC principles should be applied to the museum sector. As will be discussed in the following sections, several UK museums have implemented CC principles, *"through Council policy mainly"*, for example. One of the seven respondents who believed the *Combined Code* benefits the museum sector found that *"It is a useful document especially when situations arise that we have little experience of ... Curatorial staff advise the [board of our independent museum] on the Combined Code and this has informed the [board] about their ethical duties."* One respondent noted the importance of the CC for monetary purposes: *"For large professionally run museums, it is important that there be such an agreed code as these organisations can be handling large sums of public money."* The *Code* has also been heralded for its long-term strategic benefits: *"It ensures that if the Trustees are abiding by the [CC] principles that they [will] appoint successors who will ensure the Trust continues to run efficiently and effectively."* The *Combined Code* was recognised most notably for establishing and improving quality standards. One inquisitive respondent decided that while she *"Need[s] to investigate",* the *Combined Code "sounds as if it would"* benefit the UK museum sector.

ii. The Nolan Principles

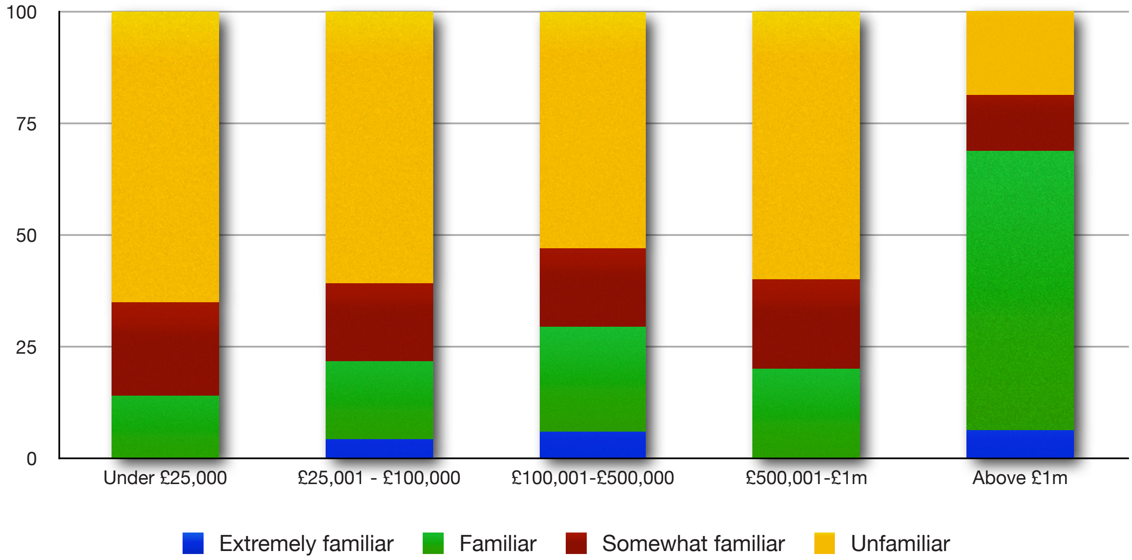
Despite the Museums Association's endorsement and inclusion of the Nolan Principles on the last page of the MA *Code of Ethics for Museums*, intended to be applicable to all UK museums, 55.3% of museum professionals are *Unfamiliar* with the Principles (Figure 41). It is unknown how many surveyed museums were MA members, yet 76.6% of the museums represented in the quantitative study were Accredited by the MLA. As such, three quarters of the museums surveyed should have been familiar with the MA *Code of Ethics* and the Nolan Principles.

Figure 41. How familiar are you with the Nolan Principles?



There is a progressive trend towards familiarity with the Nolan Principles as museum budget increases (Figure 42).[1] A sizeable jump in familiarity with the Principles occurs in museums over £1m, reflecting greater emphasis (through attending training courses or due to internal

Figure 42. How familiar are you with the Nolan Principles (by budget)?

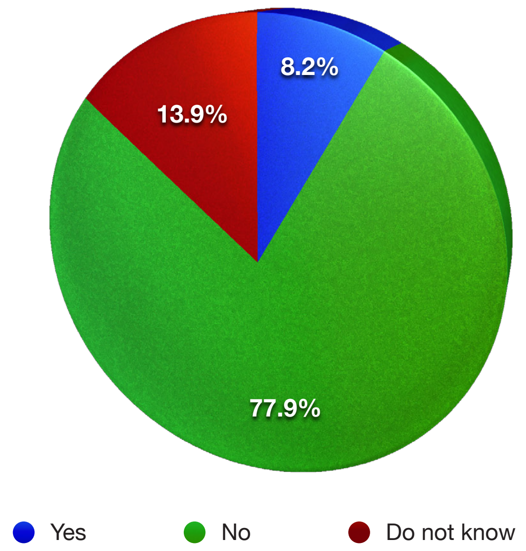


1 In Figure 42, a dip appears in £500,001-£1m museums where a higher percentage is expected to fit within the rising frequency rates as museum budgets increase. This dip occurs consistently in £500,001-£1m museums in this study. This is due to the few museums within that budget range that participated in the museum survey. A larger sample size would have provided a more accurate image of £500,001-£1m museums. The data collected, however, reflects a statistically viable sample.

training) on ethics awareness. As will be demonstrated, museums with larger budgets take part in more museum training than smaller museums.

While the Nolan Principles are integral to the MA's goals for ethical museum management, the Principles have been discussed at board meetings in only 8.2% of British museums (Figure 43). Over 90% of museums in all budget categories have not discussed Nolan. It is not possible to analyse this issue further statistically by museum budget or type because so few museums have engaged with the Principles.

Figure 43. Have the Nolan Principles been discussed at museum board meetings?



While the Nolan Principles have not been discussed at the board level of many museums, 13.7% of respondents believe the Principles have affected governance attitudes at their museums. *"The Nolan Principles have underpinned ethical thinking and expected standards"* at one Local Authority museum where the Museums and Heritage Officer recognised that the *"Nolan principles form a cornerstone of the Museum Association code of ethics."* Responding to a question about the Principles, however, one survey participant bemoaned, *"There are far too many rules and regulations for voluntary run museums without introducing any more. We are being strangled by red tape and have no time for proper museum work."* While this opinion is shared by other paid and unpaid museum workers, the statement was made in direct response to a question about an ethical code, not a rule or regulation that encompasses "red tape".

More survey participants responded that they *"are not aware of the Nolan Principles"* or *"never heard of them"*, for example, than those who are familiar with them. For one museum volunteer, the Principles do *"not apply as we have no paid staff."* One Independent local history museum queried, *"Are the Combined Code and Nolan Principles local government initiatives? They have not come our way, so we are unable to discuss their relevance."* These comments, in addition to the numerous emails received from volunteer-run museums indicating the survey was not applicable to their organisations, demonstrate a knowledge deficit in both volunteer-run and professionally-run museums that may represent a training shortage in museum ethics and accountability. Three survey respondents recommended that the Museums Association offer more ethics training courses. *"Any increased awareness of good codes of conduct must be a benefit whether or not they are formally adopted."* The Principal Museums Officer in East Lothian noted how the Nolan Principles *"provide a useful counterpart to the MA code of ethics."* As 85.9% of survey respondents do not know whether the Nolan Principles have had a negative effect on museums, additional ethics awareness training in museums appears appropriate.

The Nolan Principles do inform or affect 23.6% of respondents' museum work (Figure 44). An equally large percentage of the key museum employees, board members, and directors who answered the survey are unable to identify whether Nolan informs their own museum's work or not. It is not surprising, then, that nearly two thirds of survey respondents do not know if the Principles benefit the museum sector (Figure 45). A quarter of the survey population, however, do see benefits arising from the Nolan Principles as *"they offer a basic ethical framework"*, a *"benchmark"*, and *"general aspirational goals across the Museum sector"*.

Figure 44. Do the Nolan Principles inform or affect your museum work?

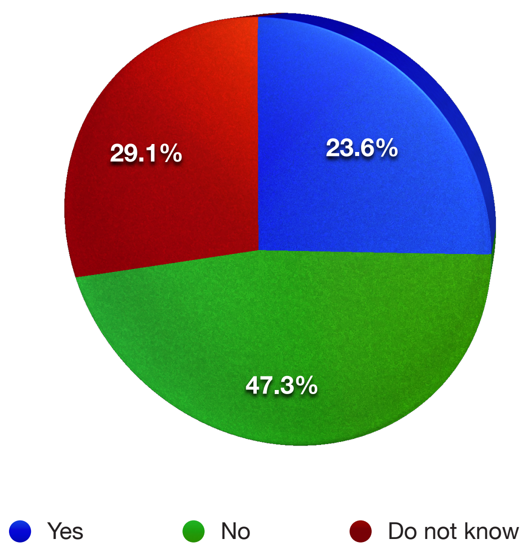
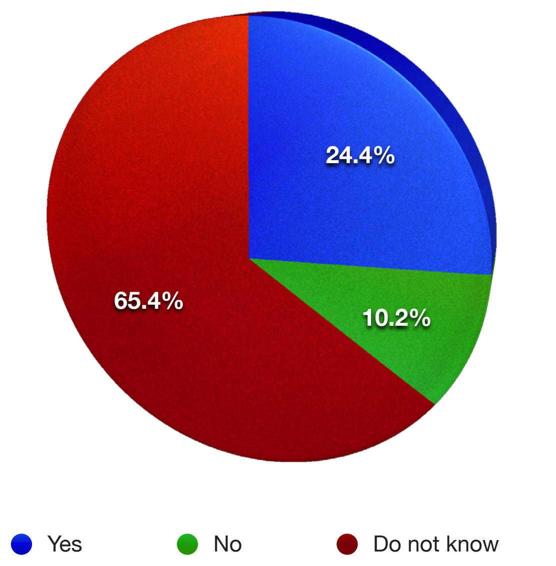


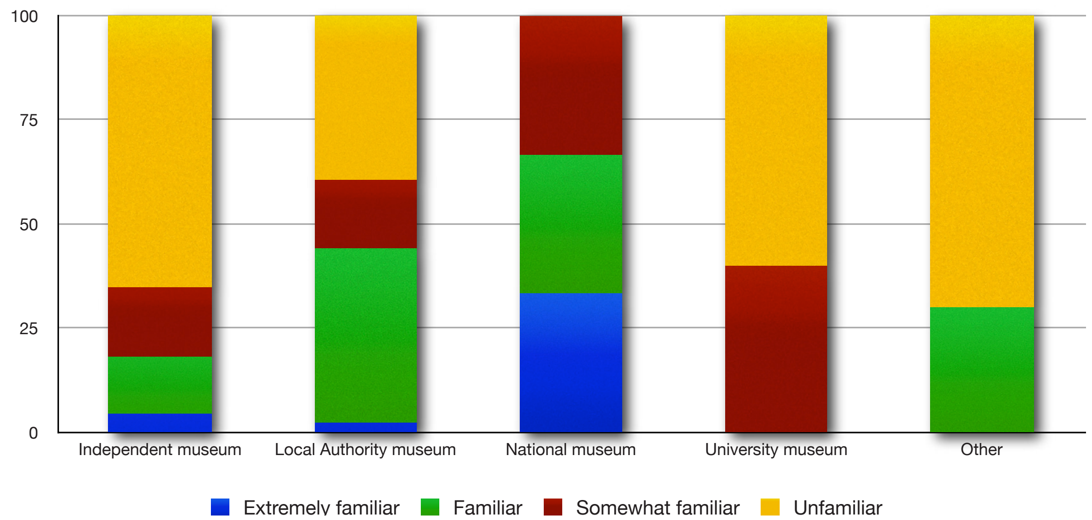
Figure 45. Do you believe the Nolan Principles benefit the museum sector?



The Principles benefit the museum sector *"by highlighting the importance of transparency and by stressing the importance of good governance."* They are *"a succinct way of framing some key principles, that should underpin the work"*, which *"should help ensure we meet the expectations of the public."* The Nolan Principles demonstrate *"well reasoned common sense based principles that draw attention to expected standards of behaviour and activity."* For the museum professionals who are aware of the Seven Principles of Public Life, none expressed negativity about its ideals or confusion about its role in museum accountability.

Fifteen years after the Nolan Principles were established, National museums (100%) and Local Authority museums (60.5%) demonstrate greater awareness of the Principles than other museum types (Figure 46). University museums rely more heavily on ethics codes

Figure 46. How familiar are you with the Nolan Principles (by museum type)?



required by the host institution, though most museums deemed Other are also publicly-run groups that should subscribe to the Nolan Principles as a matter of duty. *"Nolan codifies the principles on which local authorities have always worked, and that is the culture in which many museums have always worked."* While Nolan represents ethical ideals, *"it informs our processes in an implicit way."* Yet two survey respondents note Nolan's importance for Independent museums: *"In local authority museums, the ethical framework is well understood, but I think the Nolan Principles are possibly particularly pertinent in the independent and voluntary sector, where there can be a rather different mindset."* Similarly, *"[Nolan] prevents a small, independent museum from becoming a vehicle to promote/bolster a single person's ego. It prevents that museum from being nothing more than a vanity project for one person."* Taken one step further, *"as with any business, or organisation, abiding by the Nolan Principles should ensure that those working within those organisations are doing so conscientiously and for the benefit of the organisation, its staff and its clientele."* Museum professionals knowledgeable about the Nolan Principles indicate they understand the Principles' value and purpose.

iii. Museum response to national factors

Just as specific corporate requirements have had little bearing on UK museum governance, recent corporate scandals or the ministerial expenses scandal have not affected UK museum governance attitudes either. Qualitative survey responses from museum professionals indicate:

In that respect, museum governance ethics and standards are far superior to those in public office nationally or corporate behaviour...The two worlds are inverse.

Nothing has changed. We have always been strict about conditions and regulations.

No, the Local Authority has a long tradition of policies, procedures and guidance.

University museums have not been directly affected by national scandals unless the parent university has changed conduct or procedures. Other types of museums now document donations more closely. Some museum employees, however, do not find a connection between those national issues and their museums' governance:

Not at all – they would not be considered to have any relevance to our local matters.

We operate totally with a voluntary management structure. We are not a large publicly funded organisation.

We are too small and have no public funding, so there is nothing to complain about and no one to be accountable to.

While specific government or corporate scandals do not appear to have affected UK museum governance, other external factors have done so:

The Council has not changed procedure specifically in response to the ministerial expenses scandal as far as I am aware. Internal audit is always looking at ways of tightening up procedure and enhancing transparency. Procurement procedures have been tightened but I think this is in response to new European regulations.

Not at all. We are audited rigorously and are subject to Charity Commission and other regulations. If only government had followed its own rules.

These “rules”, the *Combined Code* and the Nolan Principles, however, are only recommendations without statutory backing.

Museum professionals hold conflicting opinions about the necessity of regulations to bolster UK museum accountability. Some respondents presume that all museums are accountable by virtue of being a museum; museums do not attract staff, volunteers, or board members who would knowingly deceive the public or the organisation. This unrealistic assessment mirrors the presumption others articulated that Registered or Accredited museums are beyond reproach without question or review, yet, *“Non-registered collections/attractions should be accountable to the same level.”* The Charity Commission requirements, the MLA Accreditation scheme, and other museum oversight groups with diverse reporting requirements have affected the museum sector to a great degree.

iv. Museum regulation

Surveys indicate there was no one impetus that encouraged UK museums to implement governance or fiscal accountability policies, though Accreditation, Charity Commission requirements, and the Museums Association *Code of Ethics* appear more influential than the *Combined Code* or Nolan Principles in establishing accountability practices. The motivations for implementing ethical codes or fiscal policies are varied (Figure 47).

Figure 47: Motivation for implementing ethical codes or fiscal policies

- *Museums Association encouragement*
- *Charity Commission guidance*
- *transparency and trust*
- *purely to be seen as being open and fair*
- *common sense*
- *none other than perceived to be good practice*
- *standardisation*
- *a natural part of local authority policy*
- *external audit*
- *government/European regulations*
- *government pressure*
- *self preservation*

Meeting Accreditation standards (formerly Registration) was the most common impetus for implementing accountability measures, survey participants explained, because it *"ensures that policies are kept up to date and that they reflect current ethical thinking."* While attaining Accreditation was challenging, museum managers and board members *"felt [it] was extremely important in ensuring the museum was safeguarded for the future."*

Museum professionals disagree about the necessity for legal oversight regulation for museums in addition to the current Museums Association standards, Charity Commission requirements, and other best practice schemes like Accreditation. The value of non-statutory recommendations is dependent upon *"the willingness of everyone involved to follow the regulations and their own interpretation of them."* While the Museums Association serves as the sector's professional body asserting museum best practice, it *"has no teeth and can only make suggestions about procedure. The MLA has more clout, mainly because they control Accreditation, without which museums cannot function."* The future strength of MLA responsibilities remains to be seen as of 2011. Many in the sector recognise the importance of regulation for Independent museums, believing that the government closely monitors National museums and Local Authority museums. Some museum professionals find MA accountability standards to be more important for small museums than larger institutions, though small museums lament the overwhelming administrative duties such standards may require.

Funding is a consistent concern amongst small museums. One disgruntled museum representative complained, *"If ever there was a cause [for frustration] it has to be this.*

We don't need or want more policies and rules. The ones we have are fine. We just need more money. Why is that concept not understood?" With additional funding from private, corporate, foundation, or government sources, however, additional oversight, policies, and rules will ensue. Museum professionals highlighted that the correct use of public funds and constant vigilance with regard to the economy's impact on museums, like sales of assets, are accountability issues that remain in UK museums. Additional accountability concerns as voiced by survey respondents are varied (Figure 48). There is a consensus amongst survey

Figure 48. Other accountability concerns for UK museums

- *museum entrance fees*
- *building restoration*
- *best value for money*
- *the future of Accreditation*
- *small museum financial support*
- *preventative conservation*
- *the blur between registered and non-registered collections/attractions*

respondents that museums are generally *"working harder to achieve a greater degree of transparency in terms of how they operate."* This accountability is variable across the museum sector.

Numerous museum professionals who believe current regulations sufficiently ensure accountability fear that additional requirements will increase their administrative responsibilities. *"Good God no! No more rules please. We have quite enough. Better to punish transgressors of current rules and bad behaviour properly rather than dream up yet more obstacles to daily functioning and for criminals to circumnavigate again, surely."* Additional regulation would not necessarily solve any accountability problems, either:

> *Additional regulations would be subject to interpretation and could be manipulated accordingly, and there are intrinsic conflicts between different areas of accountability that makes regulations – rather than guidelines – impractical. It would also add another layer of bureaucracy that no-one has time for, and would obscure the clear and useful principles set out in the Code of Ethics for Museums.*

In that vein, one museum director is so encumbered that he has threatened withdrawing from the Accreditation programme: *"I have further advised the Trust that any future hike in museum standards that burden this museum further for no obvious purpose should result in it dropping out of the Accreditation scheme."* It is highly unlikely trustees would permit a museum to voluntarily lose its Accreditation, but the sentiment suggests strong discontent with regulations that appear unnecessary. The director of an Independent museum weighs Accreditation in a cost-benefit analysis: *"The advantages to Accreditation are now outweighed by the costs. Central Government is very quick to issue regulation without matching it with the resources to manage the workload. That is not to say the museum disapproves of improving standards, but the tradeoff between cost and benefit has to match."* A clear sentiment emanates from the museum sector in general: following Charity Commission rules, Museums Association recommendations, and Accreditation guidance *"are enough"*.

Responses to the qualitative study demonstrate that museum professionals appear to be confident that purely voluntary compliance with MA ethics provides effective museum self-regulation. *"There is no benefit to not following MA guidelines. We occasionally ask for clarification just to enable us to proceed correctly rather than risk doing something wrong in ignorance. MA guidelines are helpful, not a hindrance. Acting outside the guidelines compromises our Accreditation status."* The Accreditation scheme is also highly valued in the museum sector as an effective means of voluntary self-regulation to promote best practice for museums. One survey respondent believes the public trust is protected if museums fully comply with the MA's recommended codes and policies *in combination with* Accreditation requirements.

Voluntary compliance to MA recommendations, however, is not enough, according to one survey participant, because the vast majority of UK museums are unaware of such standards, do not participate in the Accreditation process, and are never checked on by regulators. "*No, [voluntary compliance is not enough,] there has to be some oversight, as long as it is not a one-size-fits-all over-bureaucratic system*." A museum's size and management type (i.e. Independent, volunteer-run) affect a museum's compliance with best practice codes. Museums are not required to follow Museums Association codes, most museums are not MA members and do not participate in Accreditation.

Only two qualitative survey participants believe regulations are required to bolster accountability: *"a minimum standard is essential especially in an industry where untrained and inexperienced volunteers can often be found running a museum."* This minority view may, in fact, be accurate. Notably, the majority of museums that participated in this study's quantitative and qualitative surveys work for Accredited museums, very few of which follow all recommended accountability practices. Numerous volunteer-run museums declined to participate in the surveys, explaining accountability and transparency are not applicable to their organisations. Volunteer-run museums, in particular, may need additional regulations to bolster their accountability and transparency.

Financial costs for museums that have implemented ethical codes and fiscal policies have been minimal, or have been spread out over years of incremental policy adoption. Staff and trustee time were the primary costs to ensure Accreditation requirements were in place, governing documents were appropriate, and internal controls adequate to aid in museum accountability. Some survey respondents found the benefits of implementing ethical codes or fiscal policies difficult to quantify, but other *"benefits are that we are transparent which increases trust in the establishment."* Implementing ethical codes and fiscal policies has afforded one museum:

> *Incalculable benefits. Having saved hours in unraveling the museum from even the most well intentioned mistake by following ethical guidelines the museum is able to direct its resources more effectively and morale remains as high as ever. Volunteers, I and the public have the confidence that the museum is correctly run and the codes and policies are not onerous. They have undoubtedly saved the museum from serious legal or moral consequences from enthusiastic and hasty action. Follow the policies and codes and nearly all the mistakes are avoided though I suppose it is difficult to measure things that have not happened as a result of this advice. Suffice to say that without them there is enough enthusiasm among volunteers and Trustees to keep me employed for life. Following the policies and guides focuses the enthusiasm towards outcomes that work without penalty. Costs? … the cost in risk is too high a price to pay. Few, if any of the volunteers or Trustees are gamblers and I certainly am not.*

Across the museum sector, survey respondents replied that implementing changes has consistently led to a clearer definition of museum accountability for museum board members and employees. After policy changes, *"we all know where we stand and how to proceed."* One University museum has not implemented codes and policies, relying instead on university-wide rules that *"we just accept … as part of our way of working."* The University museum, however, could implement additional museum-specific ethical codes and fiscal policies.

Interestingly, museum professionals recognised they know little about the administration, governance, or accountability of museum types different from their own. Local Authority museums feel confident in their oversight and accountability, but cannot comment on Independent museums. Similarly, small museums "*don't know enough about large museums; from what I know of small museums, they are careful to be as transparent as possible in accountability ... as they are so embedded in their local community that the governors/ museum staff feel their responsibilities to their public keenly ... maybe I'm just too trusting!!*" The term "accountability" itself, however, was unclear to one survey respondent who only related accountability to financial oversight: "*I do not think this question is a valid one. Museums that are charities have to account to the Charity Commission for all spending, and government-funded museums have to account to the government. Is there anything else?*"

6.2 Public perception

Qualitative surveys indicate a broad swathe of museum employees think the public perception of museums tends toward negativity or boredom. These employees generalised that the public believes: *"[museums are m]ildly interesting places to visit sometimes. Especially if on holiday and it's wet"*; *"In general that museums are boring but a good place to go when it is raining"*; *"...that they are not fun and that they are only for well-educated people"*; or *"the word [museum] can sometimes be taken to suggest a building full of dead objects where people have to be quiet."* A handful of museum employees believe the public perception of museums is more nuanced that these previous opinions:

Generally the public perception of Museums is high. An issue arises with the term 'Museum' as some unregistered collections/attractions use the term 'Museum' in their title. Registered Museums have to meet certain criteria in governance, collections management, displays and visitor experience whereas non-registered collections do not.

It depends on which sector of the public you ask! Some regard us as 'not for them' because they 'don't do' museums. Some are angered by admission charges whilst at the same time, seeing us as a drain on local government resources. However, most do see us as safe places for irreplaceable national and local items.

In recent decades, UK museums have actively moved to improve visitor services, have successfully built new audiences, and have worked *"to dispel the myth [they are inhospitable to visitors] and suggest that there is 'something for everyone'."*

Museums researched in this study used varied methods to measure their perception in the public eye. Strategies included assessing visitor numbers, reviewing visitor comment books and comment forms, relying upon anecdotal commentary, and reviewing museum Facebook and Twitter accounts to monitor public opinions. Some museums admit they do very little, or *"not very much at all"* to measure public perception. It appears that focus groups are rare, and only one museum group indicated that they *"talk to a large cross-section of our visitors and [conduct] formal, regular paper surveys [to] monitor customer satisfaction levels in response to the services [the museum] offer[s]."* One museum noted it has a Consultation Strategy for receiving feedback through both museum-led and corporate-led research surveys. In comparison, American museums appear to make a greater effort to monitor their perception in the public eye.

This limited attention to public feedback may result from the notion many museums hold: that UK museums do not currently risk losing the public's trust. Museums may, according to employees' impressions, be *"one of the few public institutions which are still trusted"* and *"that society invests increasing levels of intellectual value in the sector."* One respondent felt that museums are more likely to be seen as irrelevant rather than untrustworthy. Some museums, however found the public may instead be generally unaware of museum sector standards with regard to ethics and finance. It was commonly stated that being designated an Accredited museum could help maintain the public trust, if the public is made aware of the Accreditation process' high standards.

6.3 Summary

Survey responses demonstrate that the *Combined Code* and the Nolan Principles have not been discussed, evaluated, or implemented to a great extent in UK museums of different types and budget sizes. Individuals who are familiar with the *Combined Code* and the Nolan Principles recognise their value. Direct and practical applications of each initiative have proven useful in UK museums. Further, none of those surveyed found Nolan to negatively affect museums. Instead, respondents clearly articulated that Nolan is critical to solidifying the public trust in British museums. Evidence suggests that additional ethics awareness training could benefit the museum sector. Similarly, while numerous museums have already implemented *Combined Code* recommendations, the percentage of respondents who do believe the *Combined Code* should be applied to the museum sector (8.9%) would presumably increase if museum managers possessed a basic knowledge of *Combined Code* principles. As will be demonstrated in subsequent sections, elements of the *Combined Code* and the Nolan Principles do exist in museum management practice. The public perception of UK museums as understood by museum professionals relates more to the services museums offer than to the proper governance or administration of the museums themselves. If breaches in the public trust continue in UK museums, however, the public perception of museums could change, resulting in reduced sponsorship or increased oversight.

7. UK museum governance accountability

Ethics forms the basis of museum accountability, and manifests in numerous museum-specific standards and general accountability best practices. This section of the thesis will provide empirical evidence about the implementation of ethics-based policies and standards. These accountability practices include conflict of interest management, induction training, and responsibility for internal controls. Data about acquisitions policies, codes of ethics, and the management of ethical issues will also be presented. Unauthorised art sales that occurred at Bury Art Gallery and questionable conflict of interest management in National museums will be discussed. These examples highlight widespread deaccessioning concerns, questions the Museums Association's influence, and notes the importance of transparency.

7.1 Survey results: ethics management

Museums approach staff member ethical misconduct from different perspectives. Some museums outline ethics in the museum's code of conduct, have official human resources disciplinary procedures, or include rules and responsibilities directly in the employment contract. The MA *Code of Ethics* can be used in all museums and applies to all museum employees and volunteers, including trustees. Despite museum Accreditation requirements and the MA's efforts encouraging museums to implement ethics codes, less than one third of all UK museums have a code of ethics that applies to the board of directors (Figure 49). While all National museums have an ethics code, very few other museum types report the same (Figure 50). Notably, only 42.9% of museums over £1m have an ethics code.

Figure 49. Does your museum have a written Code of Ethics that applies to the Board of Directors?

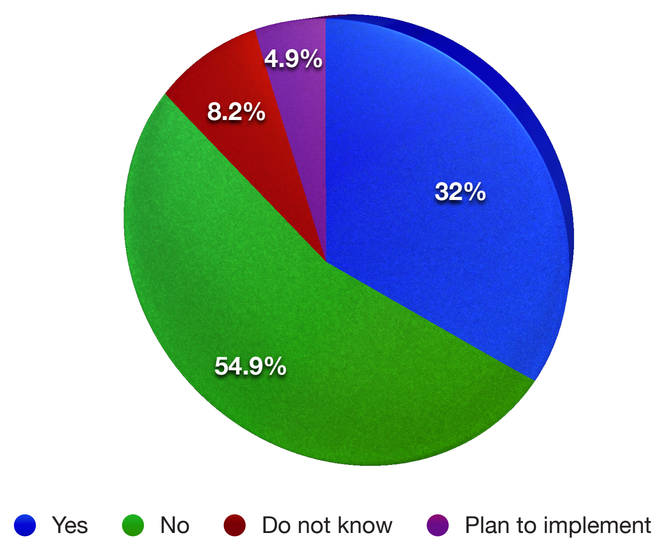
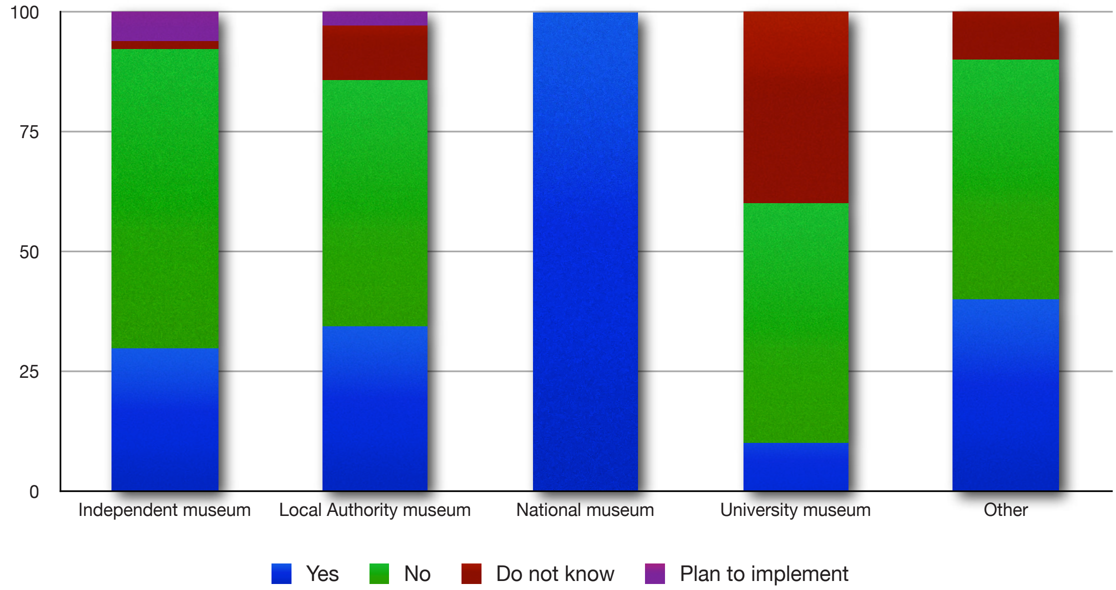


Figure 50. Does your museum have a written Code of Ethics that applies to the Board of Directors (by museum type)?



A small percentage (3.4%) of UK museums publish their code of ethics on their museum websites. For museums that do have a code, 13% report annually on the museum's compliance with that ethics code. In lieu of publicly sharing ethics compliance, some museums discuss breaches in ethical accountability in their strategic plan or in internal departmental reports to the museum's board or local council, but do not report ethics compliance publicly. Local councils play a part in ethics reporting, as 18.4% of Local Authority museums report on their compliance with their ethics code to the council, but do not appear to report their ethics compliance to the public. *"Compliance is assumed absolute for all involved"* in one Local Authority museum service. Even fewer Independent museums annually report on their ethics compliance (9.4%). Two Local Authority volunteer-run museums in England noted that reporting on the organisation's compliance with its own code of ethics is *"not applicable"*, given they do not have such codes and have no ethics concerns.

According to the majority of qualitative survey responses, governance ethics is not regularly discussed in UK museums. These responses define such discussions as *"oblique"*, *"occasional"*, *"not formal"*, *"coffee-room discussions"*. Volunteer-run museums can fall at extremes: *"No, as there is no forum for such discussions, and no real governance system"* to *"Yes. We are supported by an excellent team of volunteers and we often discuss whether we are acting within our governance role and/or whether the governing document is current."* It is more likely for collection-based ethics to be discussed than governance ethics. Nearly

10% of survey participants explained that ethical issues or dilemmas do not arise at their museums. Seven survey respondents reiterated the sentiment that *"We don't have any [ethical concerns] as we're all volunteers."* Two respondents were adamant that their museums were highly ethical and transparent organisations, yet museum staff or board members do not discuss ethical matters. Similarly, one volunteer-run museum trustee reported: "*[governance ethics is discussed] not very clearly or regularly. We seem to be very pragmatic.*" Failing to discuss governance ethics, however, is itself *not* pragmatic. A volunteer-run museum reported having no formal ethics controls in place, though individuals can *"query things"* at the museum's annual general meeting if desired. Other volunteer museums demonstrated interest in developing a code of conduct or code of ethics though *"changing the status quo is challenging to say the least!"* Because ethical dilemmas have yet to arise in some museums (or museum professionals are unaware they have already arisen), an ethics policy or strategy to manage ethical quandaries has not been deemed necessary. One museum employee presupposed that wrongdoing will happen only if codes are in place. If there are no regulations to break, no ethical misconduct can occur.

It is extremely uncommon for UK museum governing boards to have a standing Ethics Committee. Only 4.3% of museums report this phenomenon, all of which in this study are found in Local Authority or National museums of varied budget sizes. Only one survey participant reported planning to implement an Ethics Committee in her small Independent museum:

> *It is easier to follow tried and tested procedures in the knowledge these have been evolved over years of bitter experience. The need is obvious. It is to provide accurate and instant evidence of good and ethical practice when it is asked for by anybody (within the confines of superior legislation like the data protection acts etc). A bit like the (largely) unwritten British Constitution. It may have evolved organically but it should be obvious to everybody why it works.*

In the absence of an Ethics Committee, diverse personnel are responsible for managing ethical issues in museums. Ethical dilemmas at Local Authority museums have been managed by the *"museum services manager"*, *"head of museums services"*, *"council"*, or the *"curator advises elected [council] members and full council would make a final decision [about ethics]"*. Depending on the nature of the ethical concern, other museums commonly rely on varied individuals to manage ethical dilemmas (Figure 51).

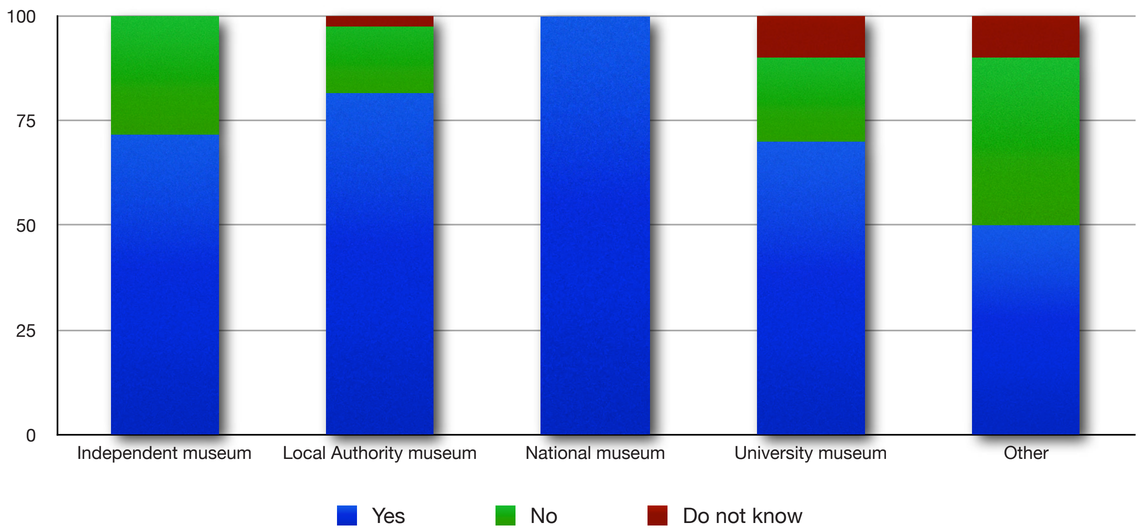
Figure 51. Museum professionals responsible for museum ethics decisions

- CEO
- Museum management team
- Deputy CEO
- Museum administrator
- Board of trustees
- Curator
- Administrator
- Curator who advises trustees
- A joint committee of curators and museum professionals

7.2 Survey results: museum-specific policies
i. Museum training

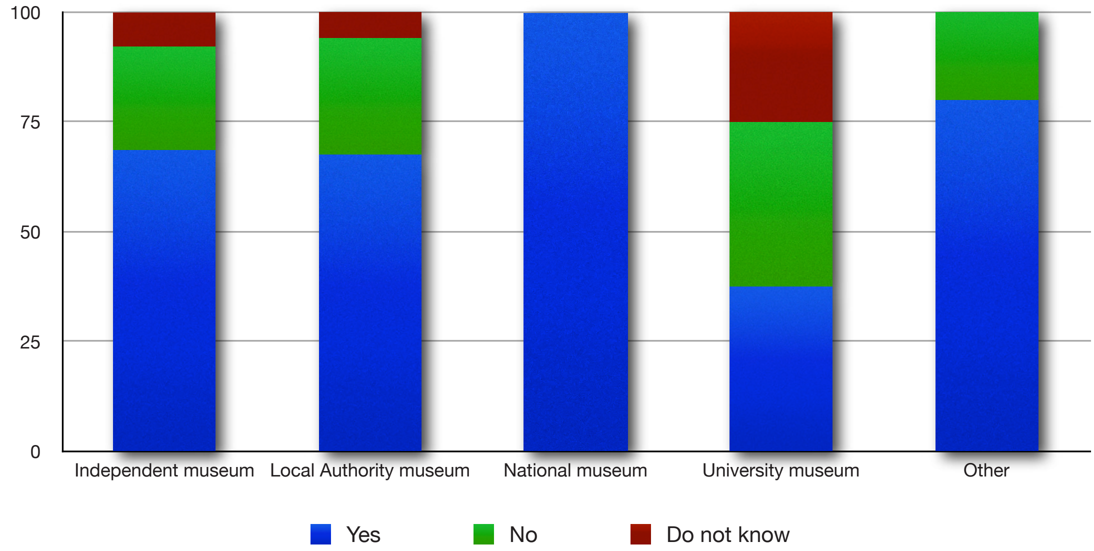
UK museums commonly have an established system of induction training for all board and staff members (Figure 52). Local Authority museums consistently conduct their own induction training separate from general council training. University museums may instead rely on university-run induction programmes, and provide less formal training for new museum employees. One Art museum reported that "*board induction is more informal, however staff induction is a formal process.*" While the board and staff inductions would cover different material, the board training should be no less rigorous than staff introductions to the museum. Over 60% of the smallest museums under £25,000, and 88.9% of museums over £500,000 conduct induction training.

FIgure 52. Does your museum have an established system of induction training for all board and staff members?



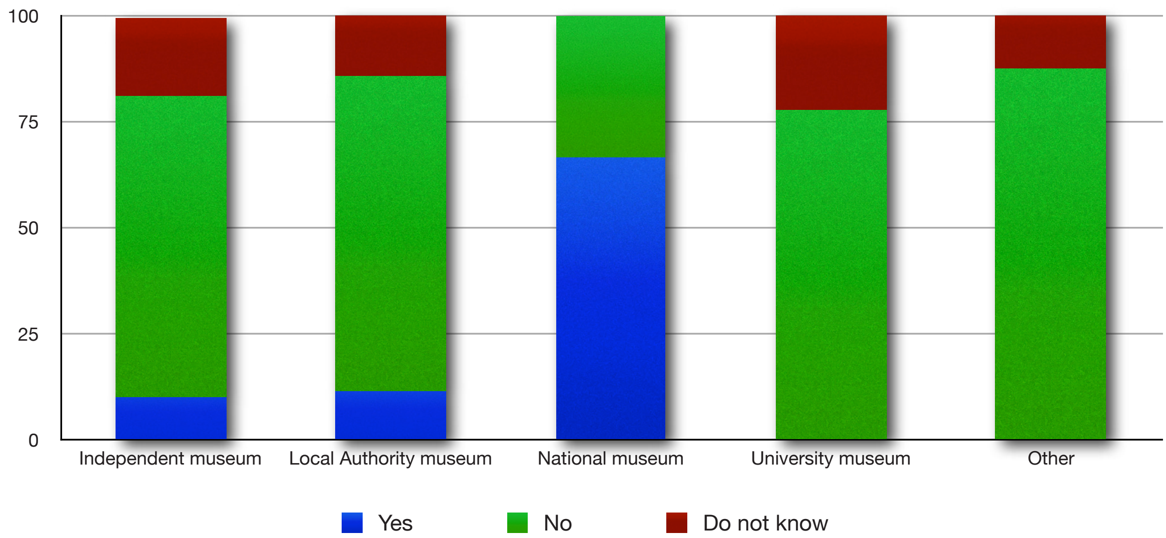
In museums that do have an established system of induction training for all board and staff, 67.3% report that conduct expectations and/or the code of ethics is discussed at that time. University museums that participated in this study stand out as being significantly less likely than any other museum type to discuss ethics or conduct during induction training if a training program is in place (Figure 53).

Figure 53. Are museum expectations and/or Code of Ethics discussed during induction training sessions?



In the 67.3% of museums with induction sessions and that discuss ethics or conduct, only 9.6% specifically discuss the Nolan Committee's Seven Principles of Public Life. Nolan is equally unlikely to be discussed in Local Authority museums as in Independent museums (Figure 54). One Local Authority museum manager noted "*I have never heard of the Nolan*

Figure 54. Are the Nolan Principles discussed during induction training sessions?



Principles but am very familiar with and follow the Museums Association Code of Ethics." Only in National museums are the Seven Principles in Public Life commonly (66.7%) discussed during induction training sessions, accounting for the 22.1% of museums over £1m that do so. All other museum sizes report discussing Nolan much less frequently. It is evident, then, that most museums do not use the MA *Code of Ethics* as their primary code, as the Nolan Principles are part of the *Code*'s provisions.

Throughout their tenure, trustees receive ongoing ethics training in only 14.2% of museums, as opposed to ongoing museum policy training in 45.9% of museums (Figure 55). These figures are mimicked with regard to ongoing ethics and policy training for museum staff members (Figure 56). Ongoing ethics and policy training for staff depend in part on museum budget (Figures 57 and 58). Data demonstrate that Independent museums offer more ongoing ethics and policy training for trustees than for staff, while the opposite is true for Local Authority museums, which provide more ongoing training for staff than trustees. University museums also do not appear to conduct any specific ethics training, relying instead on university-wide ethical controls and staff conduct policies. Similarly, Military museums and Local Authority museums look accordingly to Ministry of Defence (MOD) and local council policies for codes of conduct and disciplinary processes.

One Military museum lamented volunteers' presumptions *"that there is a bottomless pit of money due to [the museum's] linkage with the MOD"*, implying these volunteers are ignorant of museum financial operations. This instance suggests additional volunteer training is needed,

Figure 55. Ongoing ethics and museum policy training throughout board member tenures

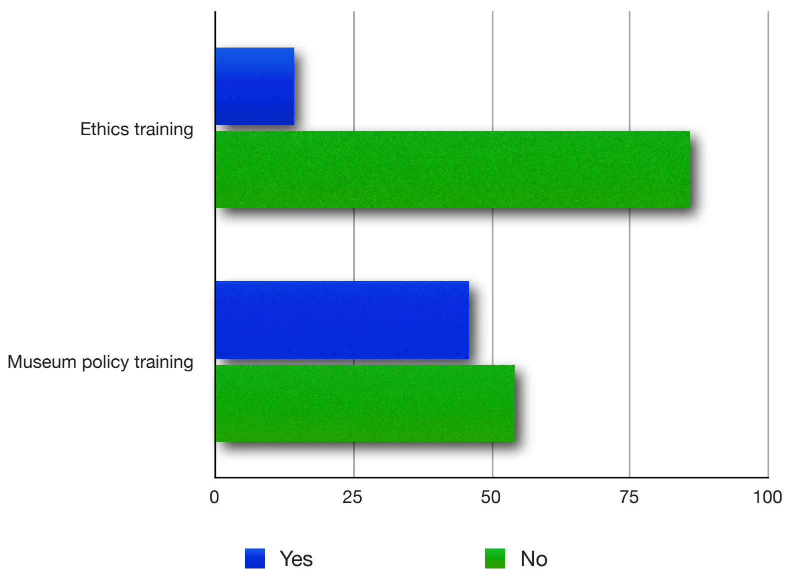


Figure 56. Ongoing ethics and museum policy training for museum staff members

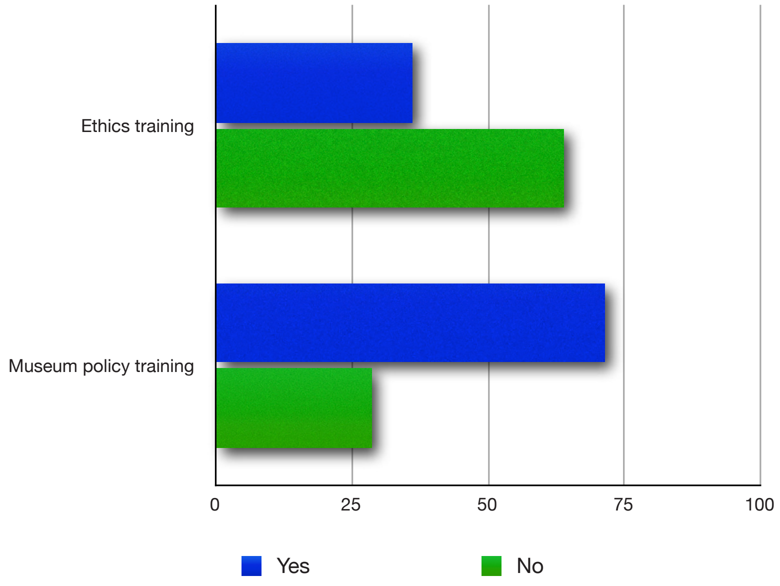


Figure 57. Ongoing ethics training for museum staff members

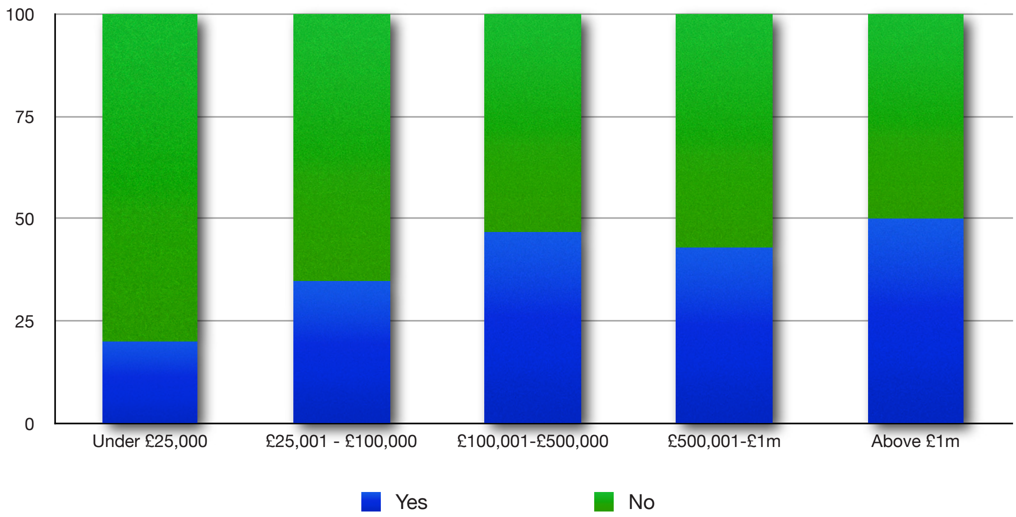
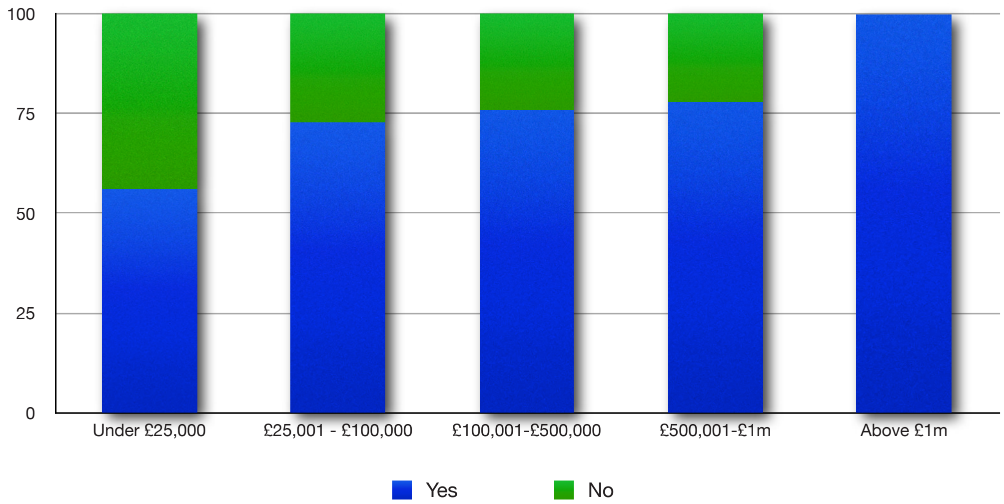


Figure 58. Ongoing museum policy training for museum staff members



but those working in entirely volunteer-run organisations may not be aware training, ethics, or accountability are important. The manager of a volunteer-run museum stated, *"All responsible for work [in my museum] are volunteers, hence are motivated by local interest, not self-interest. No need to be accountable."* This ignorance is verbalised repeatedly in small and volunteer-run museums. For example, one small-museum manager was adamant that:

> *[Fiscal and ethical accountability are] not really relevant to staff as they are all volunteers except me. I take the view that people are accountable for their own ethics and the museum only employs/accepts staff who can demonstrate fiscal and ethical qualities themselves. It is not for the museum to instill such qualities in those who do not already possess them. Staff, volunteers and Trustees have a clear idea of what is expected of them from the outset and all know where to find reference documents to bolster or support any doubts. Usually through me as I have instant access to all documents and accounts. It is not foolproof, obviously. The occasional maverick slips through this unspoken veil but they do not stay long. The environment does not support their ambitions and they move on.*

While responses to this study's surveys indicate that most UK museums take accountability seriously, that many have implemented best practice internal controls, and are aware of ethical standards for museums, statements like the above quotation indicate much training and oversight is still required.

Volunteer-run museums supply a range of training schemes to personnel, and vary in beliefs and expectations with regard to the need for ethics training. It is common that induction training or ongoing ethics or policy training do not take place in volunteer-managed museums. Some volunteers believe training is not required for the sole reason that they are volunteers and not paid professional staff: *"All workers at the Museum are volunteers so we don't need or do training"* and *"we are all volunteers, so these [survey] questions about training do not apply."* One volunteer museum manager believes *"All this is rather irrelevant to a small, all-volunteer museum. There are no paid staff and almost all volunteer stewards and other officers are retired from other professions and jobs. 'Ethics' is not in question. All Trustees and officers are good friends and difficult matters are discussed openly."* This point of view is not shared by all volunteer-run museums. Other museums offer informal training, are *"trained on a 'common sense' basis"*, or *"incorporate many of the policies [the survey] asked about in a small way in our general museum operation, but not as specific policies."*

One small organisation with *"no paid staff ... does have induction training and follow-up training that is taken very seriously for the very reason that we are not paid professionals."* Survey results indicate, however, that this commitment to induction and ongoing museum training is uncommon amongst volunteer-run museums.

ii. Acquisitions policy

UK museums consistently have acquisitions policies (Figure 59), 94.1% of which address object disposal or deaccessioning. A resounding 88.6% of museums with annual budgets below £25,000 have an acquisition policy in place. The least likely museum types to have the policy are Other museums and University museums. University museums are similarly the least likely type of organisation to have an acquisitions policy that also addresses object disposal or deaccessioning (Figure 60). Thirty percent of University museums that participated in the study report that the university trustees, not anyone directly employed in the University

Figure 59. Does your museum have an acquisitions policy?

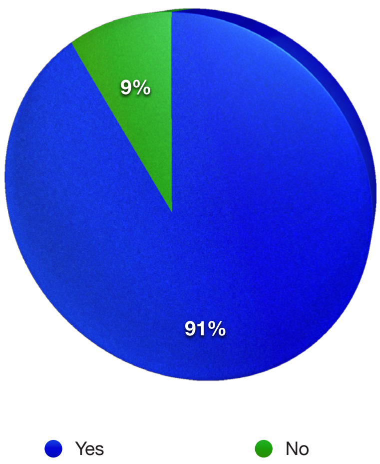
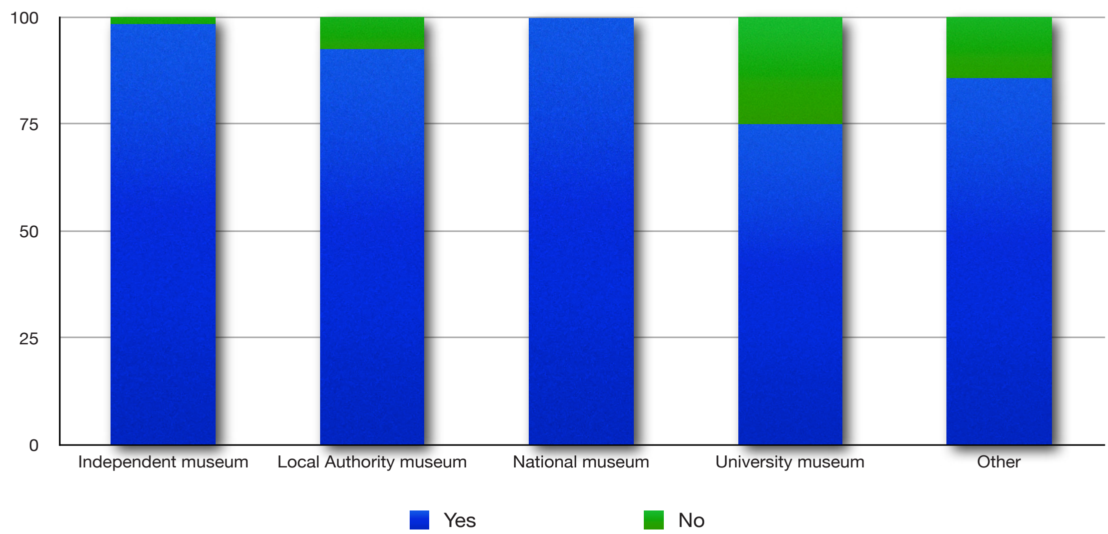


Figure 60. Does the acquisitions policy address object disposal or deaccessioning?



museum, are responsible for deaccessioning. A large university collection in London did have a policy in place, in which the university's Museums and Heritage Committee decides upon deaccessioning objects with input from curatorial staff members. Another university relies upon the Keeper of the Collection to determine all deaccessions.

In half of Local Authority museums, the local council is responsible for determining which objects are deaccessioned. The "*town clerk*", "*higher management councillors*", "*the council on the advice of the curators*", and "*council as recommended by museum manager or curator"* participate in the deaccession process in Local Authority museums. In other museum types, it is more typical for the museum director or board members to manage the process. Nearly 80% of museums report that more than one source is responsible for deaccessioning. These sources include internal management teams or individuals like the management committee, executive committee, senior management team, or museum administrator. Curators tend to provide input, and will either decide deaccessions on their own, will advise trustees, or liaise with museum managers. In one museum, the "*curator reports his intention to the Board"* indicating the power to act resides with the curator, not the governing body. In other cases, museum management officers recommend works to deaccession to the board. In only 8.3% of UK museums does an Acquisitions Committee oversee deaccessioning, most of which are in museums larger than £100,000. Three museums, however, reported they have no need for a committee or deaccession policy because their collections are "*closed*" and they do not deaccession objects. Notably, some museums reported that deaccessioning "*has never arisen*" so no policy or plan or standard practice is in place or been discussed within the museum.

One manager of museum services from an institution with an annual budget between £100,001-£500,000 that is governed by a board and is not Accredited, was unable to answer questions about his museum's collections policy, acquisitions, or deaccessions procedures. In response to the survey question asking "*Who at your museum is responsible for determining which objects are deaccessioned?*", he replied: "*I don't understand the jargon*." The word "deaccession" is language specific to museums, libraries, and archives, so this response demonstrates the museum manager's lack of general training or familiarity with current trends or issues within the UK museum community. This survey participant, however, was able to answer questions about his museum's internal controls and ethics policy.

Numerous survey respondents report that their acquisitions policies were *"devised as a part of the process of applying for museum Accreditation"*, *"been in place since the museum opened"*, or *"established upon registration"*. In some cases acquisition policies were established *"several decades ago"*, *"many years ago"*, *"too long ago to say [when implemented]"*, and in the *"1980s or earlier"*. For many museums, the acquisitions policy *"gets revised regularly"*, *"reviewed every 5 years"*, *"updated every 3 years"*, *"amended as needed"*, or has been updated since first written. The acquisitions policy is *"a work in progress"* for one museum, while another reports that there is *"no official policy, but we would all know what it should cover unofficially."* This last sentiment is not a typical point of view held by UK museums, but mirrors statements made by museum personnel on a variety of related issues from conflicts of interest to internal controls.

7.3 Survey results: governance transparency

i. Conflict of interest

Over half of UK museums do not have a conflict of interest policy applicable to either museum board members or to employees (Figure 61). Budget size makes little difference in the frequency of conflict of interest policies for board members in institutions larger than £25,000 (Figure 62). While all National museums have a conflict of interest policy for board members, only 60% of Local Authority museums report a policy despite active conflict of interest measures in local councils (Figure 63). This number drops even lower to 52.5% of Local Authority museums that have a conflict of interest policy applicable to museum staff members. One Local Authority museum director does not understand conflict of interest concerns:

> *Councillor Trustees are acutely (unnecessarily) aware of their potential for conflict of interest. Generally the interest of the museum is that of the Council and town in general. There is no possibility of financial bad practice. Governors are benefactors to the museum, not the reverse.*

Such misunderstanding over the need for conflict of interest management in Local Authority museums by an executive staff member is cause for concern.

All museums that record board conflicts also evaluate those conflicts internally. It is fairly common for Local Authority museums to have their conflicts reviewed by the council (60%)

Figure 61. Written conflict of interest policy for all board members and all staff members

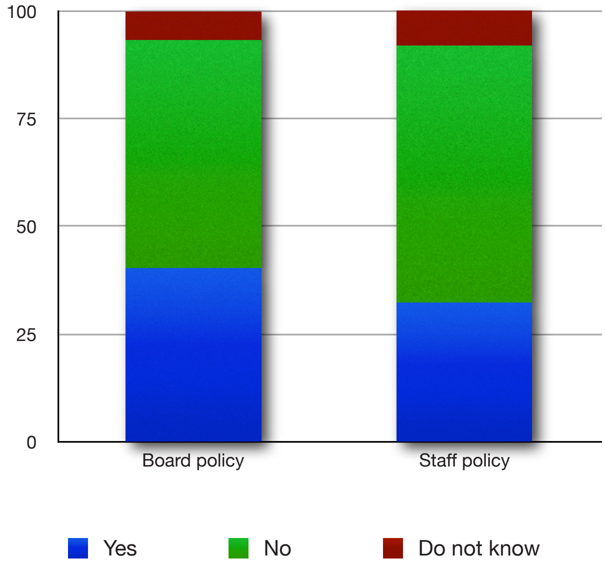


Figure 62. Does your museum have a written conflict of interest policy for all board members (by budget)?

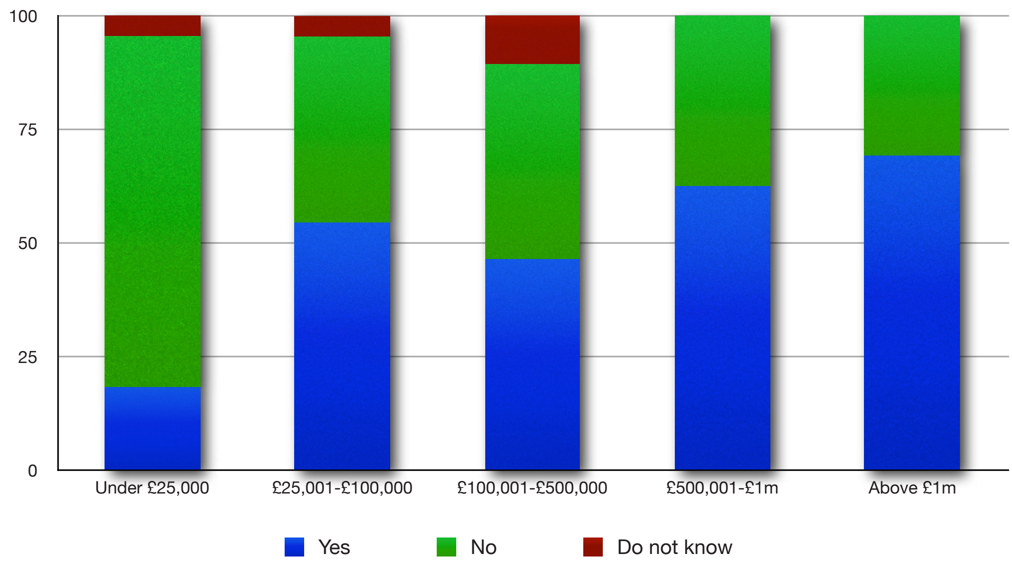
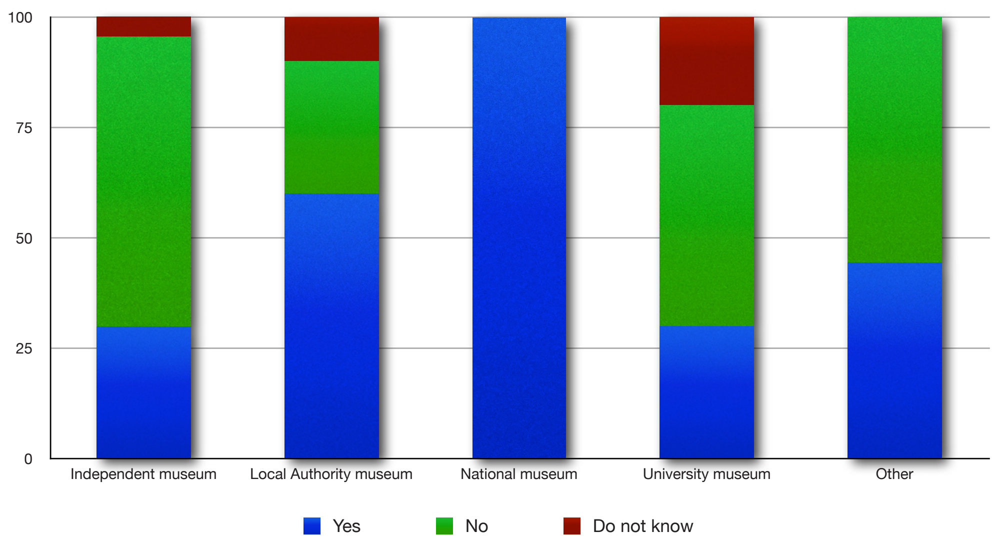


Figure 63. Does your museum have a written conflict of interest policy for all board members (by museum type)?

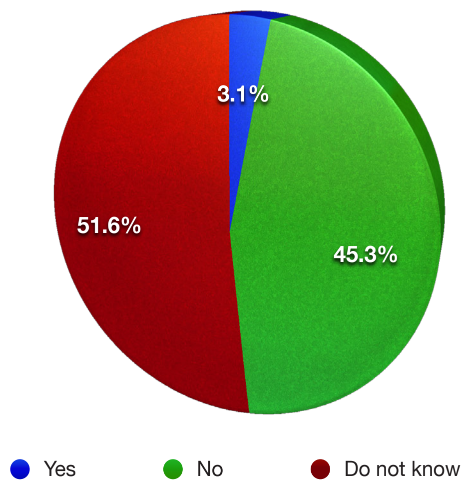


instead of by the museum service or by museum employees themselves. Local Authority museums adhere to standard council procedures in which the council assesses museum board and staff conflicts externally. The museums "*follow local government regulations*" so conflicts of interest are *"recorded and checked at regular intervals by the audit department of the Council."* One museum noted adopting *"standard public-sector control systems on things like conflict of interest."* Board members and key employees *are "asked to declare any areas of potential conflict to the Council within the Council's Code of Conduct procedures."* In one instance, evaluating the conflicts of interest is also *"undertaken by the Council's Democratic Services Unit using advice from the Museum's Director."* According to one Local Authority museum, managing conflicts of interest is *"done centrally in the Council by others".* While local councils take ownership of managing museum conflicts of interest due to the Nolan Principles, the previous statement indicates a disconnect between the museum employees and "others" who govern the museums from afar via the council.

Other UK museum types use diverse processes for evaluating board or staff conflicts of interest. For example, declared conflicts are reviewed by the museum's Financial Director, board chair, and museum director together, *"via an internal committee at [the museum service] HQ and via a full external Audit"*; *"evaluated by two members of the board"*; or *"professional advice taken where needed/wanted."* The processes of collecting and discussing real and potential conflicts of interests are equally varied. Some museums approach the process more leniently than others: *"it is asked at each meeting, and left to honesty"*; *"informal discussion at Trustees meeting".* Awareness of the need for conflict of interest management varies, as well. Some museums do not have policies and do not see the need for establishing procedures: *"In our 20 years of operation such issues have never arisen"*; *"It has never happened. Yet…".* Other museum managers, however, are more attuned to standard best practice procedures: *"Awareness in the department of, say, members' or staff's or volunteers' private collections or interests, then may require, say, careful monitoring of any work on the museum collections"*; *"Such things are published in the annual report and accounts".*

It is not common for UK museums to publish their board members' conflict of interest disclosures. Just under one quarter of organisations surveyed (24.4%) either self-publish or rely on their local council or affiliated university to publish trustee conflicts. Data indicates that 55.3% of local councils publish board conflict of interest disclosures for museums under their service. Conversely, Independent museums very rarely publish conflicts of interest (6.1%). Conflict of interest registration is important in the public sector, though only 3.1% of museum professionals (all of whom work for Local Authority museums) report that the Nolan Principles have affected their museum board or staff's approach to conflict of interest issues (Figure 64). Most respondents *do not know* whether Nolan affected their museum's approach to ethical

Figure 64. Have the Nolan Principles affected your museum board or staff's approach to conflict of interest issues?



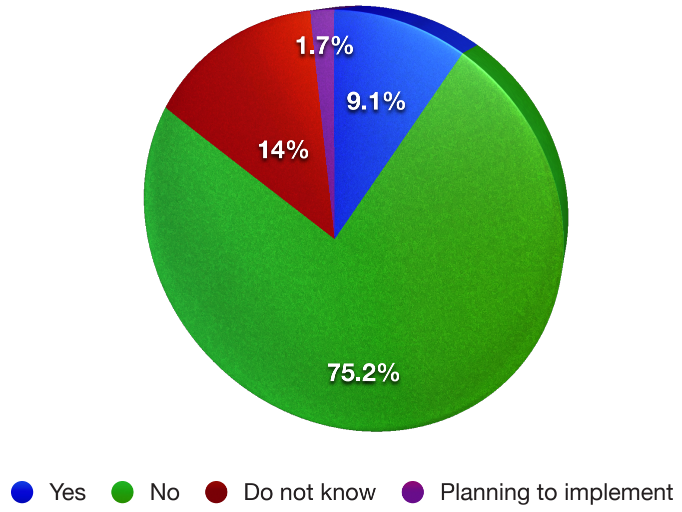
conflicts or not, and nearly as many reported Nolan had not had any influence at all. Two museum professionals who participated in this study reported: *"I am not aware of the Nolan Principles"*; *"never heard of them."* A Local Authority museum employee stated: *"We have made all councillors and in particular our museum's working party members aware of the Code of Ethics and how they impact the development of policy and procedure."* Two survey respondents stated that their museums' conflict of interest policies *were "reviewed following the Nolan Principles"* and *"more formal procedures for declaring interests [are] now in force."* A University museum professional who was not generally aware of Nolan stated, *"but I see they are mentioned in the University's Standards of Personal Conduct policy/code/ guidelines."* University museums are influenced by the Seven Principles of Public Life, albeit as a result of university codes and processes.

ii. Internal oversight responsibility

Nearly two thirds of all UK museums (64.5%) have Executive Committees that can be defined as "independent", meaning committee members are not compensated, and the committee does not consist of any museum employees including the museum director.

While all National museums report having a Remuneration Committee, overall it is rare for museums to have a standing board committee dedicated to the museum director and other executives' remuneration (Figure 65). This is notable as only 16% of all museums in the survey reported that the complete board or governance team is informed about the museum director's complete compensation package.

Figure 65. Does your museum's board of directors have a Remuneration Committee?



The *Combined Code* recommends that corporate standing board committees review and assess their own effectiveness annually. Forty percent of museum board committees do monitor their own effectiveness. This frequency rises as budget size increases (Figure 66). More than twice as many Local Authority museum committees review their effectiveness as Independent museums (Figure 67), since these reviews are not conducted by the museums themselves, but by the local councils.

A range of personnel is responsible for certifying museums' Charity Commission (or other national oversight body) annual returns. Employees including curators, finance department staff, and accounting officers have signed off on the return internally. Board members including the chairman, secretary, and treasurer have also done so. Some museums have used an independent examiner, external auditor, or independent accountant to sign the returns, and numerous local council finance departments oversee Local Authority museum annual returns.

Figure 66. Do your museum's board Committees annually review and assess their effectiveness (by budget)?

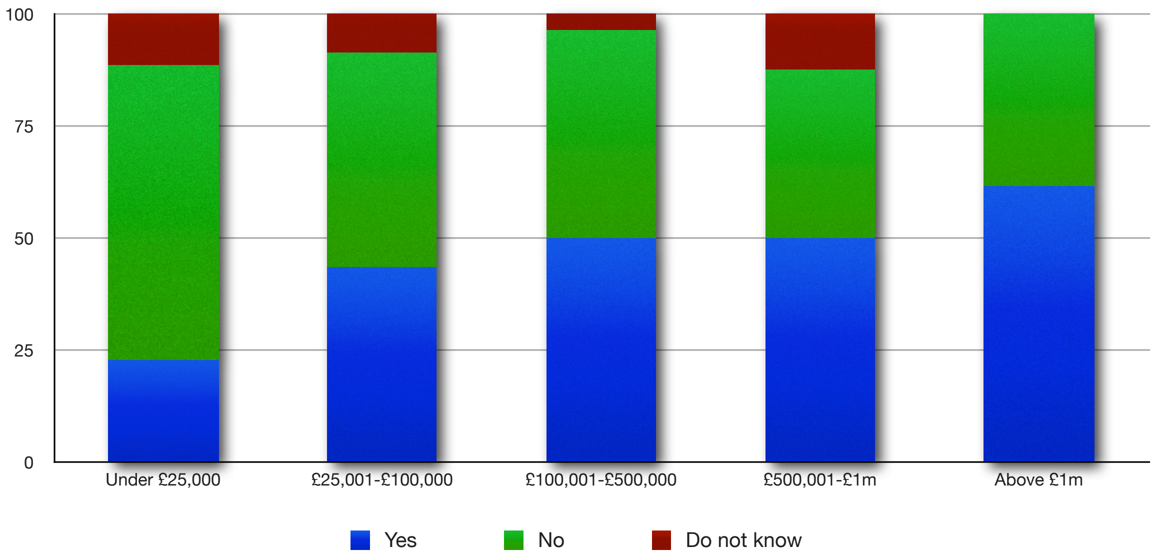


Figure 67. Does your museum's board Committees annually review and assess their effectiveness (by museum type)?

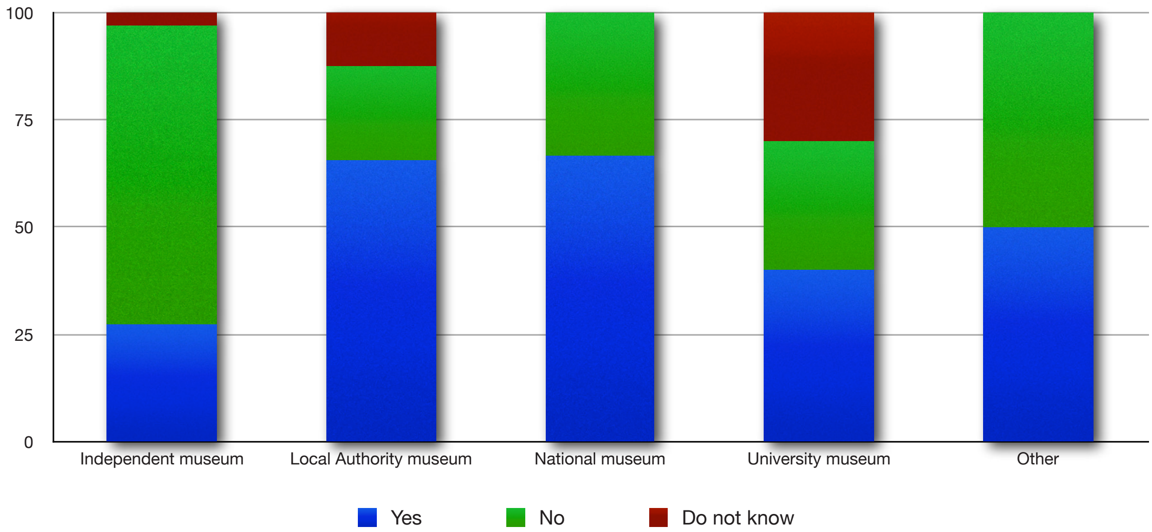


Figure 68. Does your museum have Directors and Officers Liability insurance?

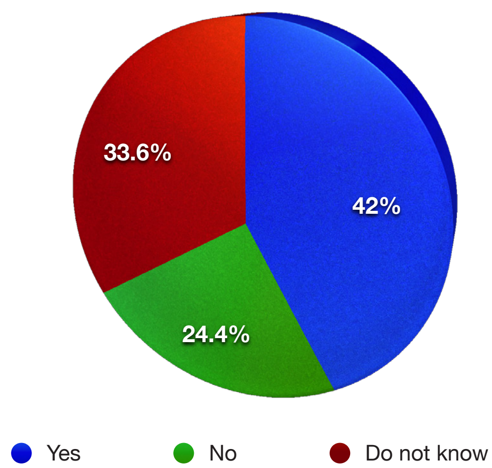
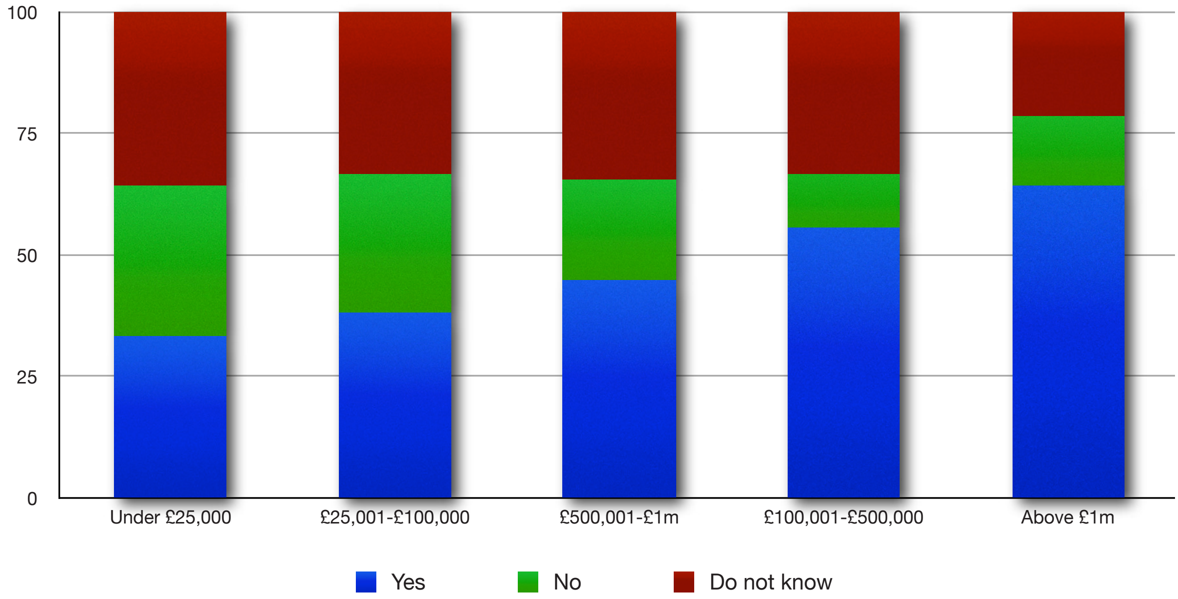


Figure 69. Does your museum have Directors and Officers Liability insurance (by budget)?



iii. Other accountability measures

A very small percentage of UK museums with trustees have paid an individual board member a consulting fee or salary for their work associated with the organisation (5.4%). Nearly 12% of museums permit payments to museum trustees in their institutions' governing documents, the greatest percentage of which are independently run museums. All instances of trustee remuneration took place in museums with annual operating budgets under £1m. This may be related to the liability directors incur when joining a board. Fewer than half of all UK museums have Directors' and Officers' Liability insurance (Figure 68), though the frequency of insurance policies rises as museum budget size increases (Figure 69).

7.4 Case studies

i. Bury Council: unauthorised art sale

In November 2006, Bury Council sold L.S. Lowry's *A Riverbank* (1947) painting at Christie's for £1.4m, earning twice its pre-sale estimate. In 1951, Bury Council purchased the work for £175 to join a diverse collection of nineteenth and twentieth century works and archives at the Bury Art Gallery, which owned the painting. The Gallery has expanded to include contemporary works of art since that time. The Council deaccessioned Lowry's work to help cover a £10m budget shortfall resulting from UK central government cuts and from Bury Council building overspends. A reserve price was set at Christie's for £500,000. The painting was sold, entering private hands, removed from the public domain.

Prior to the sale, the MA and MLA made efforts to dissuade Bury Council from this step, meeting with the Council and offering alternate recommendations. Bury went ahead with the sale, commenting:

> Although the council regret having to realize funds from its art collection, the alternatives such as even more redundancies and closure of valued services were more disturbing. We are committed where possible to reinvesting money from the sale into cultural projects such as the completion of the Ramsbottom Library and Adult Education centre. (Spicer, Trouble Ahead website)

Nearly half the funds raised, £421,099, paid for the Council's library building overspend. (Doherty, Sold website) It was a short-term solution with long term impacts for the Bury community.

The Lowry sale breached the MA *Code of Ethics* Article 6.13 asking museums to "Refuse to undertake disposal principally for financial reasons (either to raise income or decrease expenditure). [If disposal occurs, the museum should] [a]pply any money raised as a result of disposal, if this exceptional circumstance arises, solely and directly for the benefit of the museum's collection." (Museums Association 2008, 17) In addition, MLA Chief Executive Chris Batt noted:

> Bury Council should have taken all possible steps to ensure that the painting was kept within the public domain … We have consistently advised the council that they could first have offered the painting for sale to other museums rather than offering it on the open market. This still would have been a loss to Bury but would have been a preferred option and kept a publicly owned asset within the public domain. (Doherty, Sold website)

Not only did Bury sell the work at public auction, resulting in its disappearance from public view, but the council failed to reinvest the £1.2m (after seller's commission) in Bury's art collection. The MA threatened disciplinary action for Bury's ethics infringement, prompting Bury to resign its MA membership. Council leader Mark Sanders explained, "We've resigned from the Museums Association because their president, Charles Saumarez Smith, called us cultural vandals and said we are deeply irresponsible … We've got back our £125 registration fee, which I've given to our cultural services director to buy a local piece of art with." This amount represents less than the Council paid for the Lowry painting in 1951.

The MA also took an active role in preventing Bury Council from being rewarded for this action. It wrote all major funding and registration bodies including the Heritage Lottery Fund (HLF), the Art Fund, and the MLA, asking them to rescind Bury's funding and recognition. In response, the HLF noted its policy to only fund organisations complying with a professional body's regulations, and the Art Fund reiterated that it does not accept funding applications from museums that have lost Accreditation. On 15 December 2006, the MLA Accreditation Committee met and unanimously decided to revoke Bury's Accreditation for breach of standards. As the MLA's Clare McDade stated, "It is very unfair for a museum to be in this situation, but the governing body has to subscribe to accreditation standards." (Museums Association, MA Concerned website)

Bury lost credibility with the public and with collectors who will hesitate to donate money or art to the Gallery. Collector Frank Cohen responded to the sale with incredulity, "I realize that they are under-funded, but people won't want to give things away to museums if they think they might be sold in future. If I give something away, I make it a condition that it is never sold." The Museums Association has barred Bury from membership, only the second time the MA had done so in its history. Regaining membership will require MA review and confirmation that Bury will fulfill the MA *Code of Ethics*. Reapplying for Accreditation will also take years of dedicated work. Derbyshire Council experienced a similar backlash in the mid-1990s when it sold nineteen works at auction. Derbyshire lost its MLA Registration, regaining it after eight years. In 2010, the Southampton City Council proposed an estimated £5m art sale to fund building a new Titanic museum. Protests abounded locally and across the UK, and the Council scrapped the plan, opting to finance the new museum through other funding sources. The MA has approved two museum art sales, at the Royal Cornwall Museum and the Watts Gallery, since amending its deaccessions policy in 2007, to permit financially motivated disposal to occur in rare cases of enhanced public benefit.

ii. National Museums: board appointment conflict of interest registration

The Department for Culture, Media and Sport's Freedom of Information Act (FOIA) Team has responded to multiple requests for information relating to conflicts of interest in National museums. The 2000 FOIA assists public sector transparency, permitting individuals to query public bodies about potentially sensitive subjects. For example, individuals requested information into Phil Redmond's appointment as National Museums Liverpool (NML) Board Chairman. A possible conflict of interest existed because Redmond's spouse, Alexis Redmond, was already a member of the NML board of directors. As an exempt National museum, NML publicly advertises for board applicants.

The DCMS FOIA Team provided a terse four-point statement about the appointment process, which DCMS concluded occurred "in accordance with the requirements of the Code of Practice for Ministerial Appointments to Public Bodies". (DCMS 2008, 1) The selection committee that short-listed candidates included an Independent Public Appointments Assessor from the Commissioner for Public Appointments' office. The selection committee asked each short-listed candidate the same interview questions, though Redmond received additional probing by "the Independent Public Appointments Assessor [who] questioned him at length on the possibility of any perceived conflicts of interest arising from the fact that Alexis Redmond is a Trustee of the NML." (DCMS 2008, 1) The FOIA report noted that this "process was fully documented." (DCMS 2008, 2) The interview committee ensured a conflict of interest did not occur in the appointment process, and did due diligence attempting to ensure that conflicts of interest would be limited going forward. That potential for future conflicts remains because both husband and wife on the board could influence the other's decisions or points of view. The Secretary of State who selected Redmond as board chairman saw greater benefits in appointing Redmond than risks in doing so given the possible perception of a conflict of interest and possible conflicts of interest going forward.

Board of director appointments have also been questioned at London's Natural History Museum and Victoria and Albert Museum. A board member at each museum was also a director at Stanhope PLC, a development company that has managed projects for London's National Gallery and Tate Modern, among other arts organisations. In 1999, Oliver Stocken was appointed to the Natural History Museum, and joined the Stanhope board a year later. Stocken failed to alert DCMS of his Stanhope connection and did not register his interest with the museum. He was reappointed to the museum's board in 2004, though, according to the DCMS FOIA Team, "before August 2004 it was not standard practice for the interests of a trustee being re-appointed to be reviewed." DCMS found no issue in Stocken's conflict of interest given the government did not institute this best practice policy until six months after his reappointment. As such, Stocken broke no rules other than standard disclosure best practice, which existed at the time in the corporate community. In contrast, Victoria and Albert Museum board member Peter Rogers did register his Stanhope PLC board seat when originally appointed and when reappointed to the V&A board in 1999 and 2004. In its FOIA report on these matters, DCMS notes that it is the responsibility of individual museums to maintain these public conflict of interest registers, and not DCMS's role (DCMS 2005).

7.5 Summary

As a Local Authority museum, Bury Art Gallery's collection suffered from its governance structure. In many cases, the power over an acquisitions policy resides not with museum personnel, but with the host council or other overarching governing body like university trustees. Cases questioning National museum board conflicts of interest have arisen, but little information to assess the potential conflicts is available to members of the public, and no information has been disclosed about methods the museums have employed to protect against those conflicts in the boardroom. These museums exemplify the complexities of ethical accountability. Survey results and recent questionable museum governance demonstrate that more effort is required to develop UK museums' ethical accountability. The low percentage of museums with a code of ethics that applies to the board should raise concern amongst museum associations and throughout the museum sector. This statistic may result from the limited ongoing training that museum trustees receive. Museum-specific training that encompasses ethical considerations is needed for museum volunteers including board members. While a well-trained ethical board is one step to achieve museum accountability, the implementation of specific internal controls is equally vital.

8. UK museum fiscal accountability and internal controls

UK museums' audit and internal control processes are equally important to accountability and to protecting the public trust as is ethical governance. Fiscal accountability guards against fraud and generates accurate financial reports, and procedures relating to documentation and auditing help create transparency. While museums are not required to implement internal controls like bank reconciliation, background checks, cash management, and whistleblower protections, these are standard best practice methods that benefit private sector accountability. The following section analyses empirical data that considers the rate internal controls and other fiscal accountability measures are implemented in diverse UK museums. This section concludes with an overview of three museums that have suffered from accountability miscues. Financial mistakes at the Imperial War Museum, lack of transparency at the Ulster Folk and Transport Museum, and internal control failings at the National Museum of Wales were preventable if trustees had pursued fiscal accountability and heeded internal control procedures.

8.1 Survey results: internal controls

Financial codes and policies appear to be more prevalent in museum administration than ethical codes and policies. According to survey results, financial oversight comes in a variety of forms (Figure 70).

Figure 70. Methods of financial oversight in UK museums

- *council audit*
- *internal audit*
- *annual external audit*
- *regular reporting to the museum board*
- *board treasurer oversight*
- *employ a bookkeeper to maintain accounts*
- *informal segregation of duties*
- *trustee to counter-sign all cheques*
- *standing board finance committee*
- *two signatures on all cheques*
- *annual audit approved by full board of trustees*
- *staff spending limits without board approval*
- *professional independent accountant employed to conduct audits*
- *senior managers who specialise in financial reporting systems and documents*
- *adherence to grant funding financial restrictions and accountability*

In some cases, a museum's Audit Committee manages internal controls in addition to the annual audit. This occurs in 22.2% of all museums. UK museums approach and instill financial accountability in various ways (Figure 71).

Figure 71. Methods to instill financial accountability in employees

- *through induction training and policies*
- *training on a one-to-one basis*
- *written policies in all contracts*
- *ethics only discussed at the curatorial level*
- *training conducted by the Financial Management team*
- *training as a group*
- *training and initial induction*
- *all spending must be justified by appropriate receipts or invoices*
- *policies widely disseminated and available via the Council's intranet*

The following explanation summarises the approach most UK museums take towards fiscal accountability training: *"A basic understanding of financial standing orders is included in the employee induction process. Many staff have received additional financial standing orders training. The importance of an understanding of ethics is fundamental to working in Museum*s." While numerous UK museums value financial accountability and transparency, not all subscribe to that ideal. Organisations lacking financial codes and policies discount the need to implement any. Internal controls, codes, and policies, however, can not only prevent misconduct, but also reveal whether wrongdoing has previously occurred or is currently taking place. Yet one survey respondent offers her commonly held view: *"The application of codes or practices would not make any difference to someone determined to do something wrong. Murder is against the law. People still get murdered."*

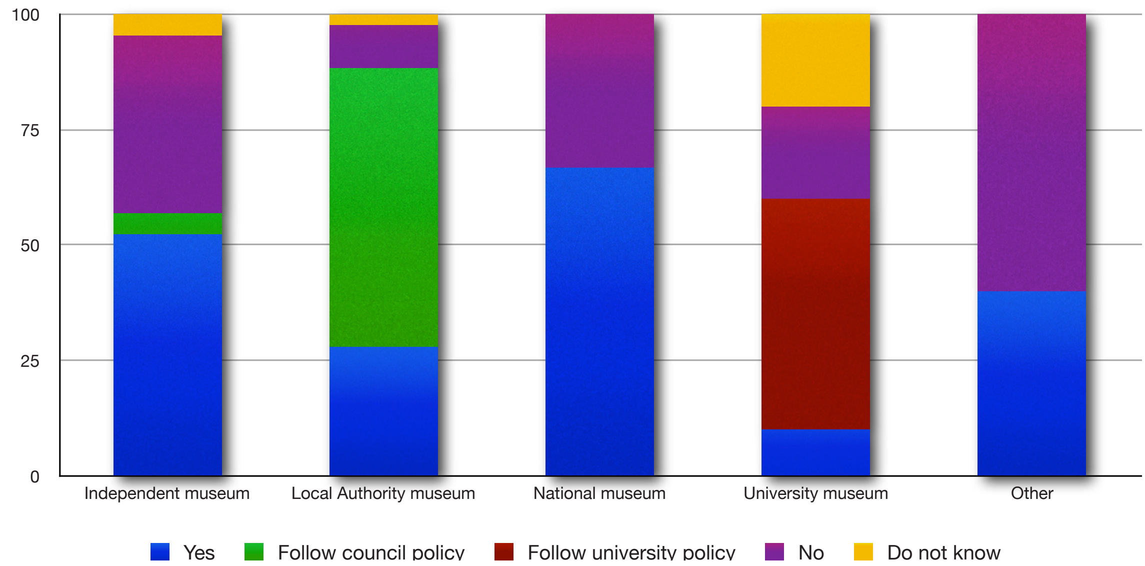
Museum professionals recognise that accountability concerns persist for volunteer-run museums. Little oversight or recourse exists if volunteer-run museums are not transparent or accountable. Similarly, *"military museums are perhaps a little sheltered from the mainstream museum world, possibly because of [their] linkage with the MOD and partly due to the fact that we have the Army Museum Ogilby Trust that acts as [military museums'] interface with the MLA, and other governing bodies."* University museum employees face unique circumstances as their terms of employment fall within university codes and policies. As such, the general university *"induction processes, training and line management practices* *help instill acceptable ways of behaviour for new [museum] staff."* The nature of Local Authority museum oversight and guidance is generally credited with establishing both financial and ethical transparency: *"The Museum operates under strict local government financial standing orders. The Council has also approved the Museums Association's code of ethics. The Local Authority has a code of conduct and Nolan principles underpin this code."* The MLA Accreditation scheme and the annual Charity Commission returns have also precipitated the introduction of controls.

Museum board and staff members typically believe their museum policies protect the public interest, particularly *"if properly implemented, understood by all staff and volunteers and regulated. Regular monitoring is essential."* A National Trust employee pinpointed the overabundance of National Trust policies, and the steps the organisation is taking to manage the problem: *"I haven't read all our policies as there are hundreds of them; but in essence, I believe [they protect the public interest]. The organization is aware that there are too many policies to be feasibly absorbed by employees, and is working to streamline them."* Curiously, some volunteer-run museums that lack policies or internal controls also believe that their organisations protect the public trust.

i. Documentation

Two thirds of Britain's museums have a written document destruction/retention policy. A high percentage of these are Local Authority museums, 60.4% of which follow their local council's policy (Figure 72). University museums tend to follow their host institution's policy

Figure 72. Does your museum have a written Document Destruction/Retention Policy (by museum type)?



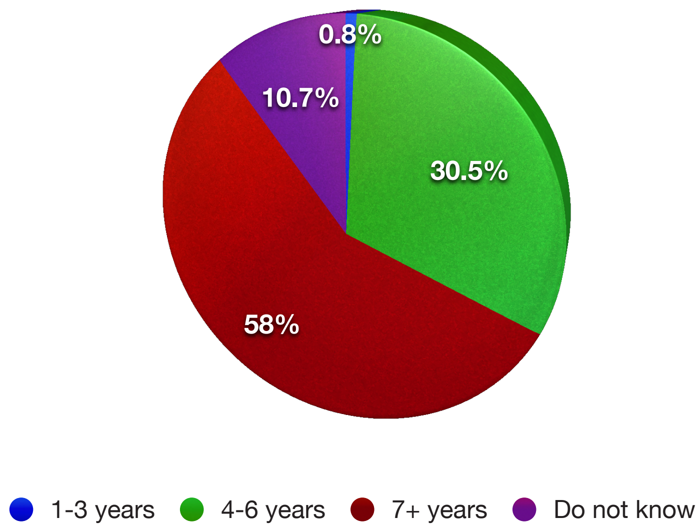
for managing documents. Larger museums reported having document destruction policies more frequently than smaller museums. Of those museums that do not have a written policy in place, 17.5% across all museum types and sizes plan to implement one.

Most UK museums keep backup files of their financial records off-site (88.6%), either by their own arrangements or organised by their affiliated local council or university. Local councils keep 60.5% of Local Authority museum backup financial files. In trying to implement new documentation management procedures, one museum director met with resistance:

> *Possibly the worst thing I hear when I ask why we do things a certain way is, "because we have always done it this way...". When I dig a little under the surface, often the original purpose of doing "it" that way has long expired and the old method is left redundant but active by sheer habit. However in the case of museum policy, ethics and accountability, the original purpose, has not disappeared, it is just dormant.*

It is most common for museums that retain financial paperwork to keep the files for more than seven years (Figure 73). Survey respondents from University museums were the least

Figure 73. How long does your museum retain financial paperwork?



likely to know how long their organisations' financial statements were retained (22%), predictably because their affiliated universities maintain those records. Local Authority and Independent museums retained paperwork for comparable lengths of time, and over 80% of £1m+ museums keep financial information for seven+ years.

ii. Standard internal controls

Bank reconciliation is a common monthly procedure that organisations conduct to reconcile their accounts with their regular bank statements. Surprisingly, bank reconciliation only takes place in 56.4% of UK museums (Figure 74). University museums rely on their parent organisations to manage this procedure. Reconciliations take place with greater frequency as museum size increases. A basic and common internal control across all sectors, cheque-signing procedures, takes place in 70% of British museums, which does leave an opening for fraud or embezzlement to occur. Only one quarter of UK museums have IT oversight procedures (Figure 75). This is very unlikely in Independent museums (9%). Museum size appears to have less of an impact than museum type on the occurrence of IT oversight procedures.

Figure 74. Does your museum utilise a bank reconciliation process?

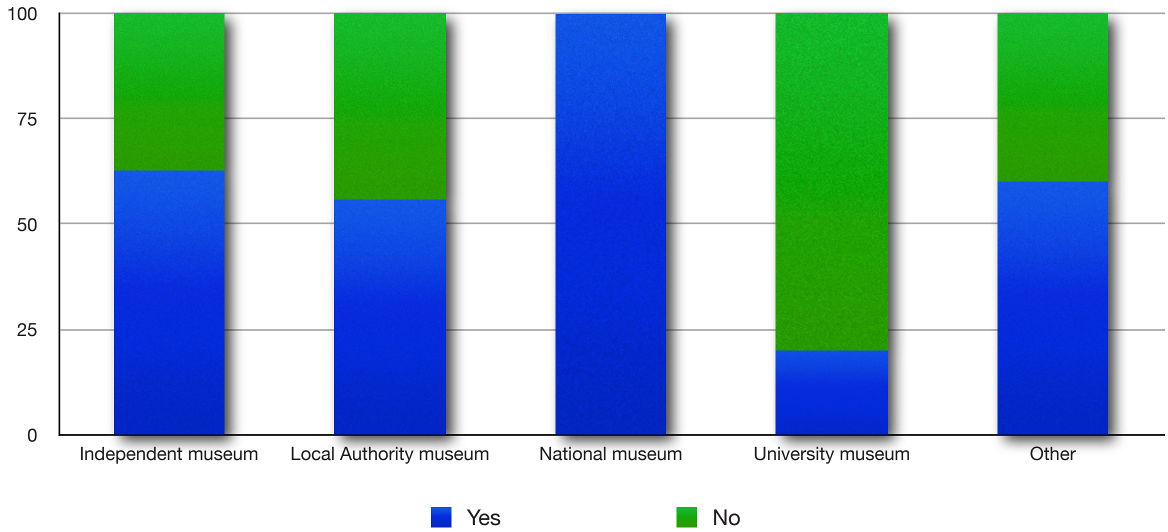
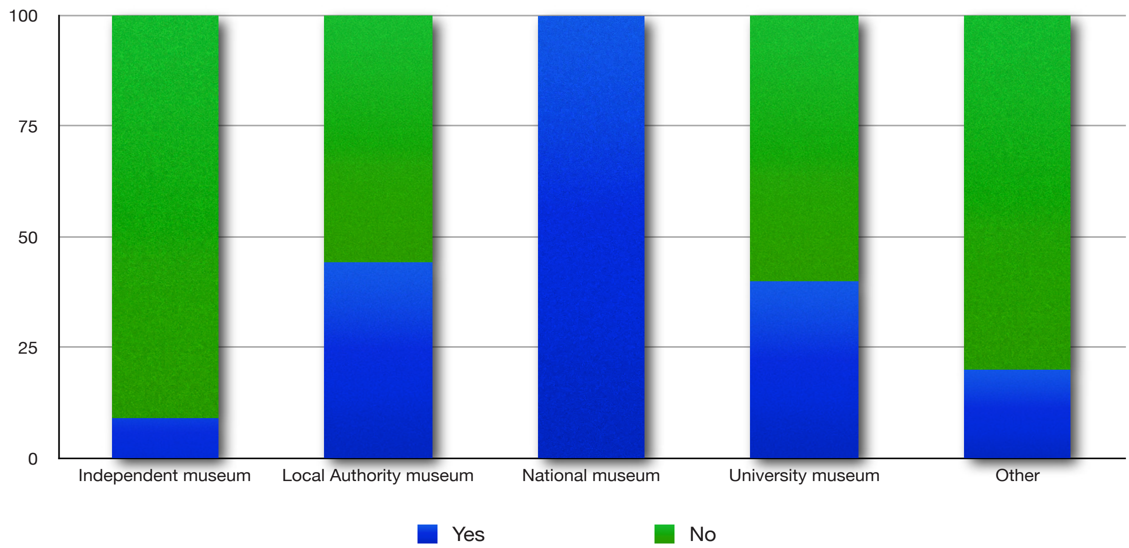


Figure 75. Does your museum utilise IT oversight policies?



Volunteer background check procedures are used in roughly half of UK museums (Figure 76). University museums employ background checks for 30% of volunteers, most of whom, the museums report, are university students, yet 70% of Universities conduct employee background checks before hiring through the university human resources department. It is more common for museums to conduct background checks on potential employees than on volunteers, doing so at a rate of 60.9% (Figure 77). The smallest museums utilise employee background checks in one third of museums, a rate that steadily climbs as museum size increases. Larger museums may be better able to pay the background check fee.

Figure 76. Does your museum conduct volunteer background checks?

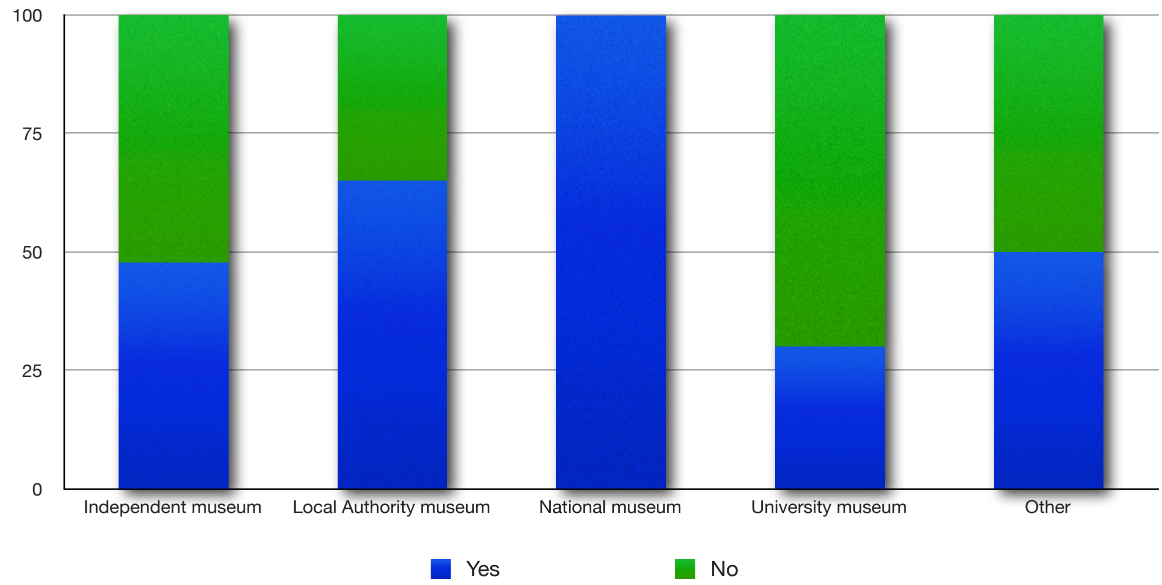
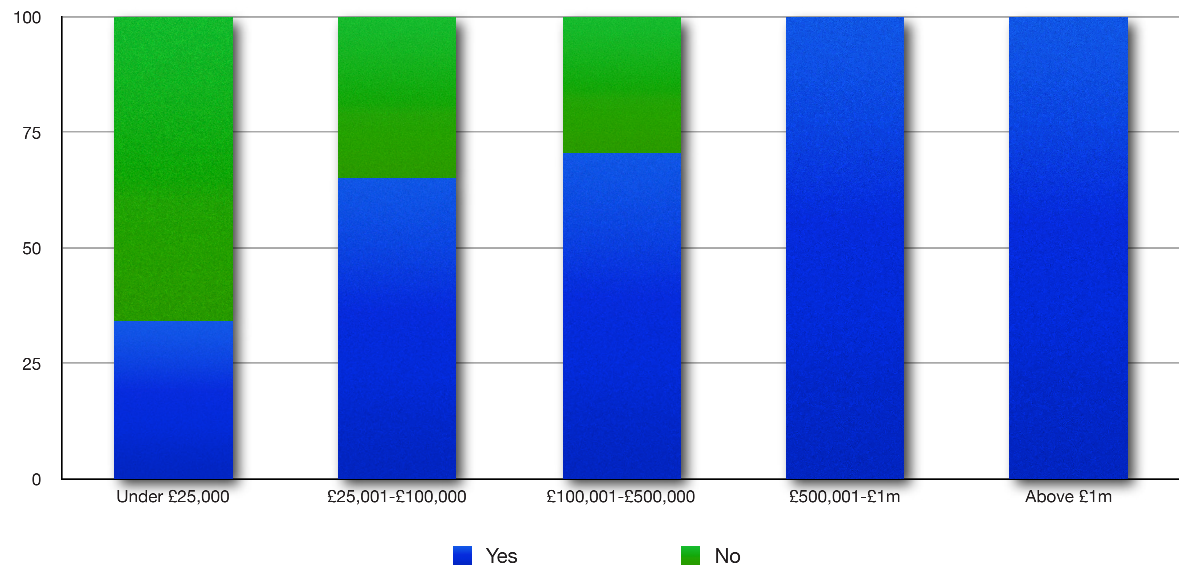


Figure 77. Does your museum conduct employee background checks?



When employees are terminated from their job posts, it is recommended to have specific procedures in place to manage the process, including the return of office keys or company credit cards. Termination procedures are set in only 55.6% of museums. University museums rely upon university-wide termination policies, but not all Local Authority museums rely upon local council regulations on termination. Thirty percent of Local Authority museums do not have termination procedures in place. Predictably, the likelihood of staff termination procedures increases as museum size grows. Many small museums rely solely upon volunteers, which can partially account for this phenomenon.

Less than half of UK museums have a reimbursement authorisation procedure (Figure 78) or cash disbursement procedure for petty cash or paying for goods and services for which invoicing is not possible (Figure 79). Only 30% of the smallest museums as opposed to 70% of the largest museums in this survey reported reimbursement procedures (Figure 80). Nearly identical percentages exist based on museum size for cash disbursements. Unfortunately, fraud is equally likely to take place in small museums as in large ones if basic financial protections, particularly with regard to cash, are absent. Fewer Independent museums have cash disbursement or reimbursement oversight (35%) than Local Authority museums (51%). It is notable that so few Local Authority organisations use such protections since they typically follow local authority financial procedures.

Only 25% of museums ensure segregation of duties so that a single individual cannot control all aspects of a financial transaction so as to execute and conceal wrongdoing, including mistakes (Figure 81). Some museums may not be capable of segregation of duties given small staff or board size. The Board Treasurer at a small museum Trust with numerous volunteers offered insight into the seemingly haphazard budget and financial management at his organisation:

> *We only have a very small turnover so we use the services of an Independent examiner within the rules of the Charity Commission. Otherwise segregation of duties is impossible. It is, however, almost impossible to act corruptly with so many volunteers eager to spend meager financial resources, those resources are very well aired in Trust meetings and informally when volunteers are competing for money to spend on exhibitions and displays, shop stock and other projects. As museum treasurer I am the most likely to be the meanest when it comes to spending museum Trust money.*

Figure 78. Does you museum utilise a reimbursement authorisation process?

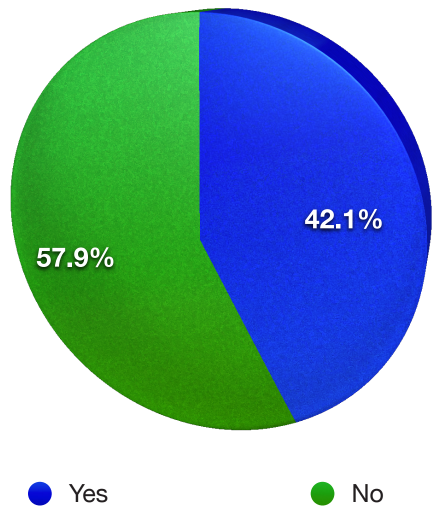


Figure 79. Does your museum utilise a cash disbursement authorisation process?

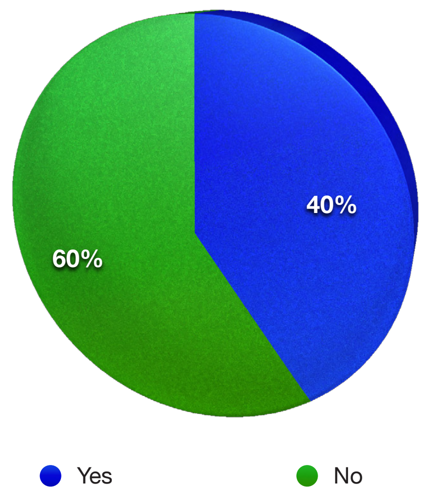


Figure 80. Does you museum utilise reimbursement authorisation procedures?

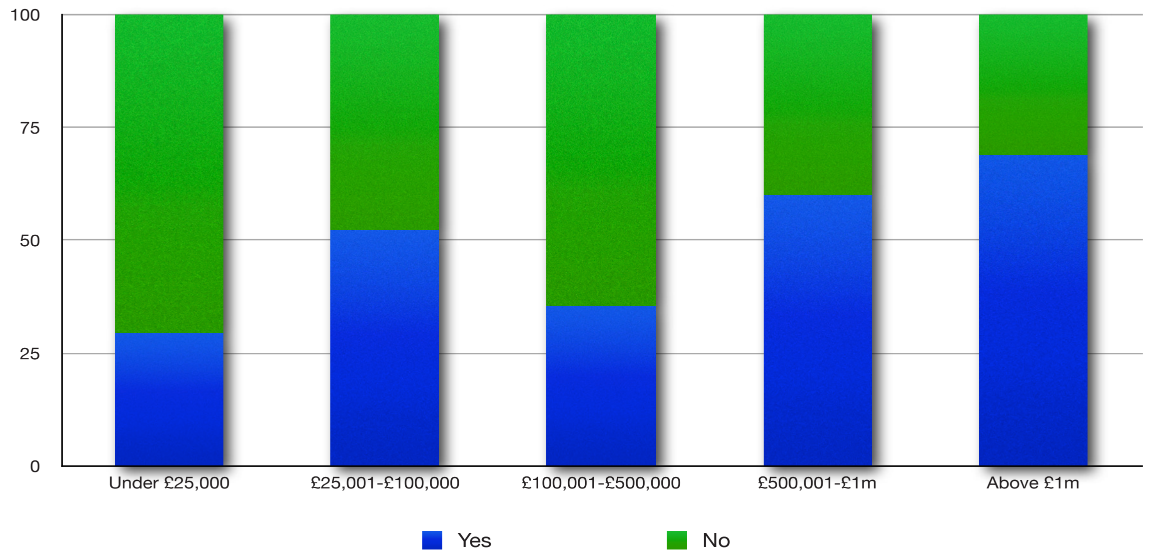
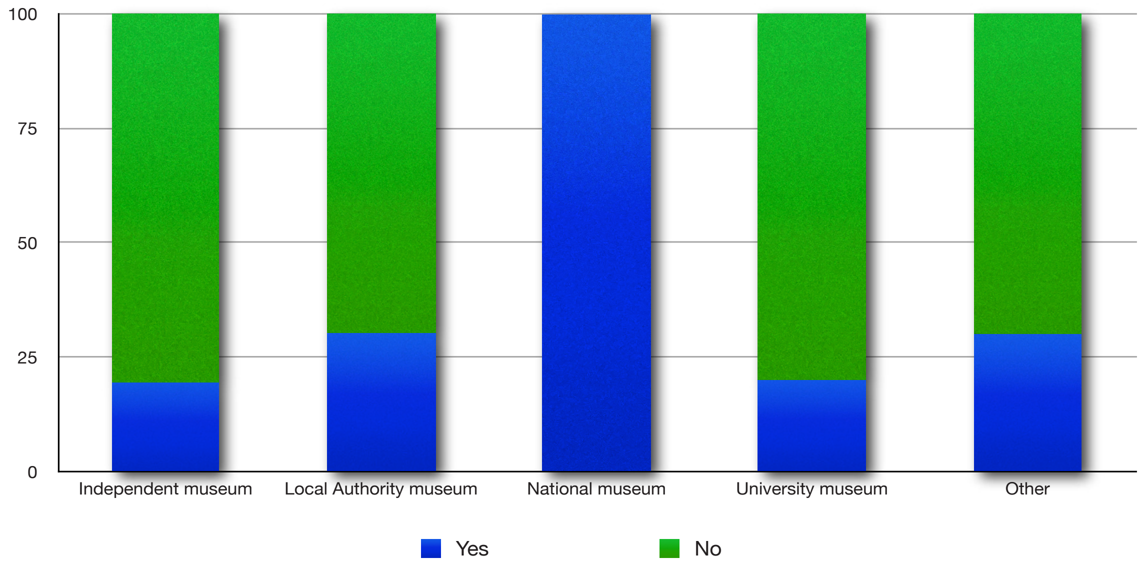


Figure 81. Does you museum utilise segregation of duties procedures?



> *A reputation I guard jealously. The Independent Examiner is even worse and still finds occasional mistakes I have made. The system works well.*

While there is likely little room for financial fraud to take place in this scenario, this statement indicates the "system" could be improved significantly to manage and safeguard the trust's finances better, as it appears no spending policies or budget restrictions are in place.

Data indicate that museums of varied types and sizes would not disclose incidences of fraud to the public. *"Should they occur, I doubt we would disclose them to the public unless a criminal prosecution was necessary."* Instead, wrongdoing would be internally disclosed to the board, executive committee, or reported to the local council. Two survey respondents noted their museums' Governing Documents require fraud to be disclosed.

Less than half of all UK museums have a written whistleblower protection policy (Figure 82). Nearly all Local Authority museums follow their local council's whistleblower policy and 60% of University museums follow their university's policy (Figure 83). Only 11.4% of remaining museums, however, have a written whistleblower policy in place. Independent museums, in particular, lag behind their fellow museums, though according to survey results, the 3% of museums that plan to implement a whistleblower policy are all Independent museums. The vital aspect of whistleblower or grievance policies is their provision to specifically protect the individual making the complaint from professional reproach. This occurs in only 63% of museums with a policy in place (Figure 84).

Figure 82. Does your museum have a written Whistleblower policy?

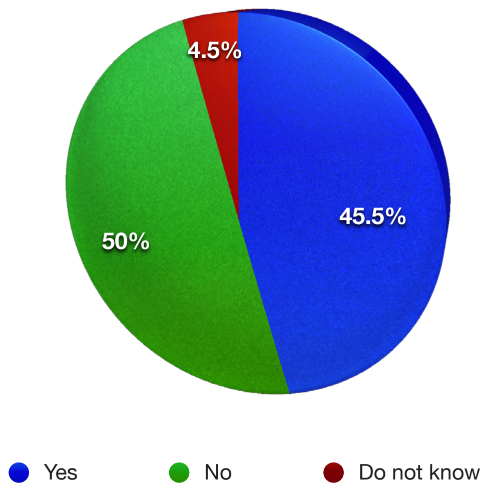


Figure 83. Does your museum have a written Whistleblower policy (by museum type)?

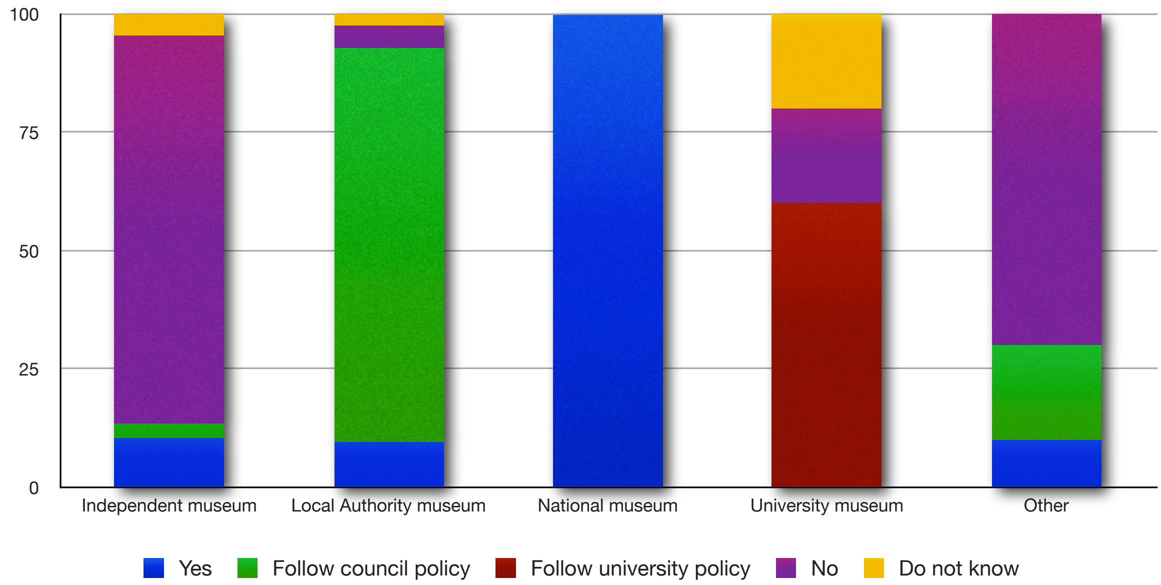
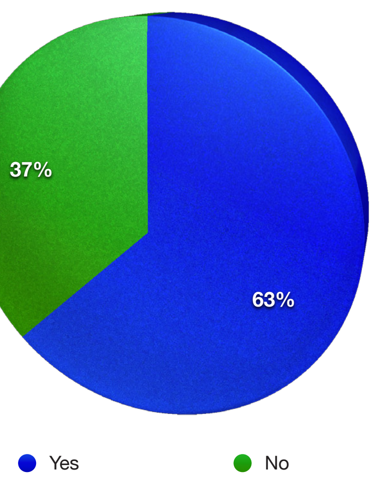
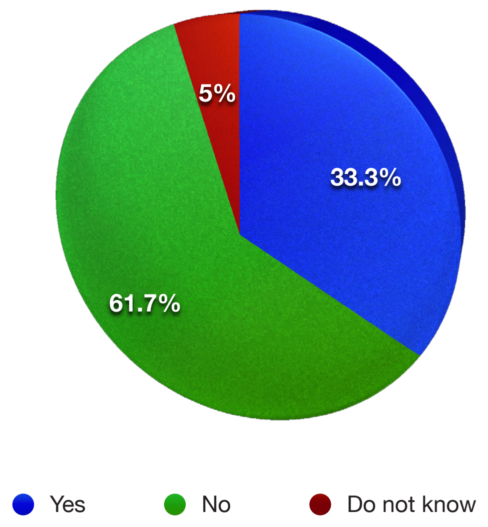


Figure 84. Does your museum's Whistleblower Policy or grievance policy specifically protect the individual making the complaint?



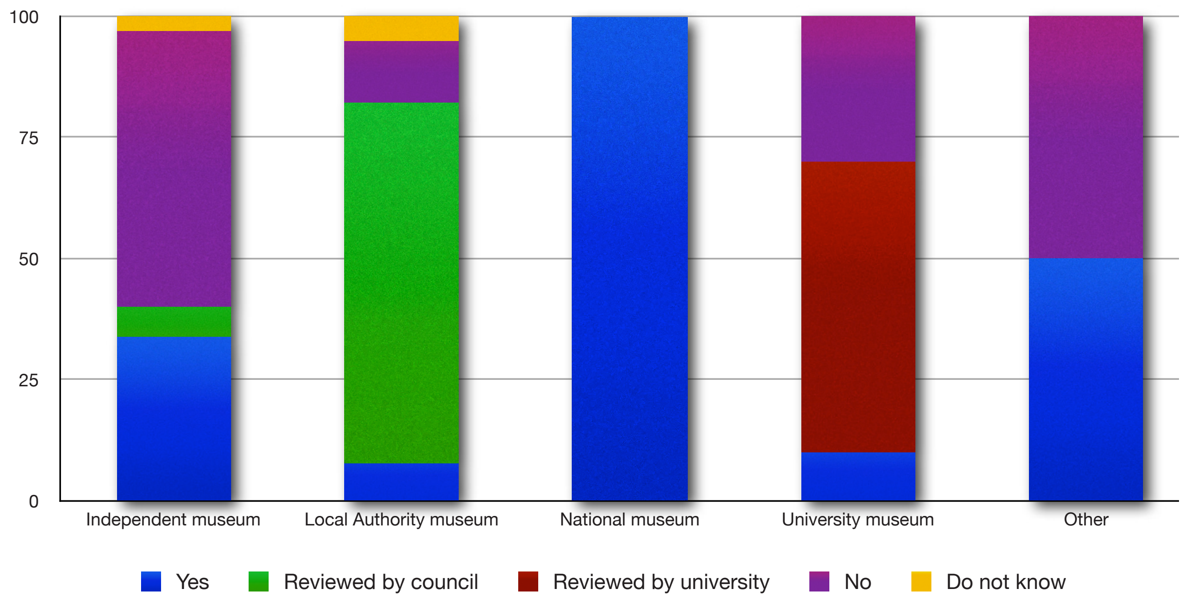
One third of UK museums report annually on their system of internal controls as recommended by the *Combined Code* (Figure 85), a good start to transparent governance with regard to museum finances. Equally promising are the 57.5% of museums that annually review the effectiveness of those internal controls. Museum size does not affect the assessment,

Figure 85. Does your museum report annually on its system of internal controls?



though museum type does have implications for internal control assessment (Figure 86). Local Authority museums and University museums annually assess the effectiveness of their internal controls with help from the local council and university. National museums consistently demonstrate sound accountability practices, including internal control procedures.

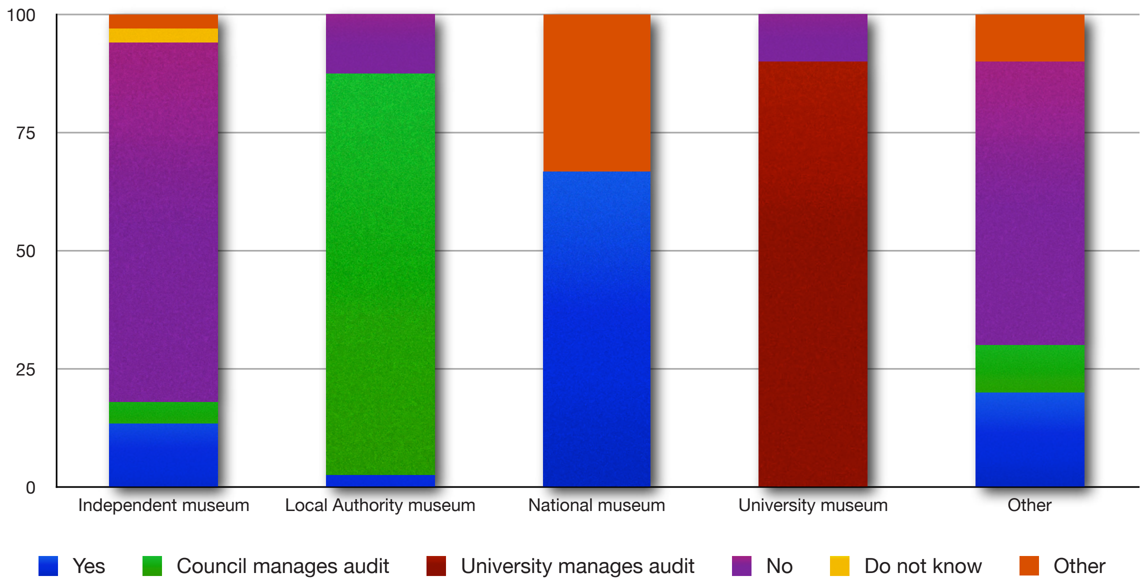
Figure 86. Does your museum annually review the effectiveness of its internal controls?



8.2 Survey results: auditing

Half of UK museums surveyed have an Audit Committee or an official body that manages the museum's audit. Independent museums and Local Authority museums again fall at disparate ends of the spectrum (Figure 87), though Local Authority museums overwhelmingly (85%) rely on their local councils to perform auditing and oversight duties. Similarly, 90% of University museums are audited by their parent institutions.

Figure 87. Does your museum's board of directors have an Audit Committee?



Notably, over one third (36%) of museum Audit Committees do *not* have at least one member who is a financial expert, defined in part as having had experience applying GAAP to financial statements or familiarity developing internal controls. It can be a challenge for small organisations to recruit board members with this specific skill set. Many small museums do not perform an annual audit or have an individual with knowledge of internal control management given the size of the organisation and its budget. However, a high percentage of those museums that do conduct an annual audit (90%) either utilise a certified auditor or rely on the local council or an affiliated university to conduct audits (Figure 88). Charity Commission rules stipulate that museums with gross annual income over £25,000 must have museum accounts audited or verified by an independent party. Yet none of the museums surveyed with annual budgets under £500,000 per year employed a certified auditor.

As discussed in prior sections, it is best practice to change lead auditors or audit firms periodically to prevent auditor familiarity with finances and personnel. UK museums most

Figure 88. Does your museum use a certified auditor?

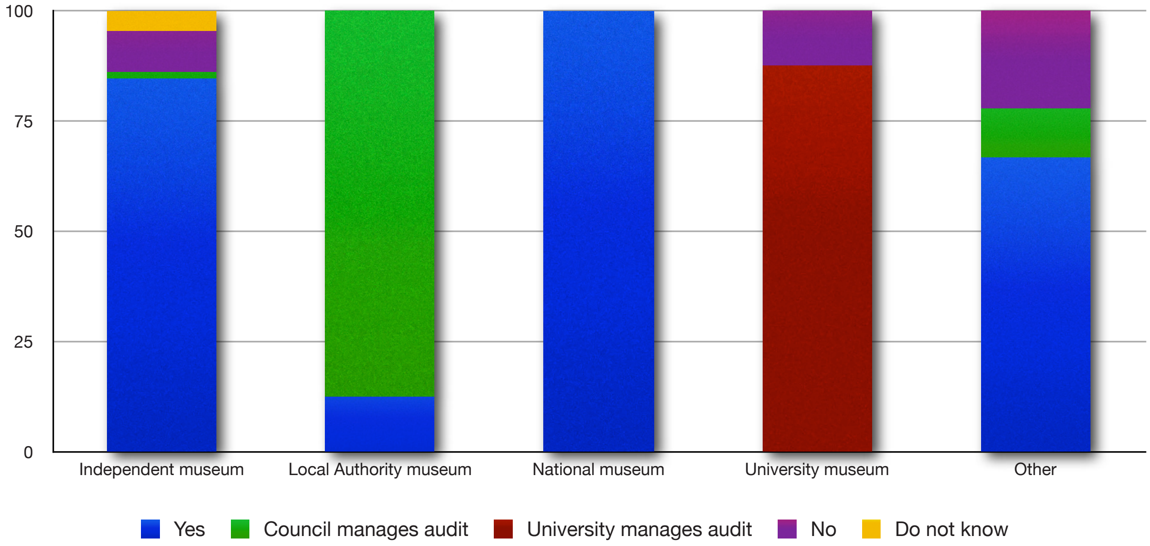


Figure 89. How many years has your museum used the same auditor or audit firm?

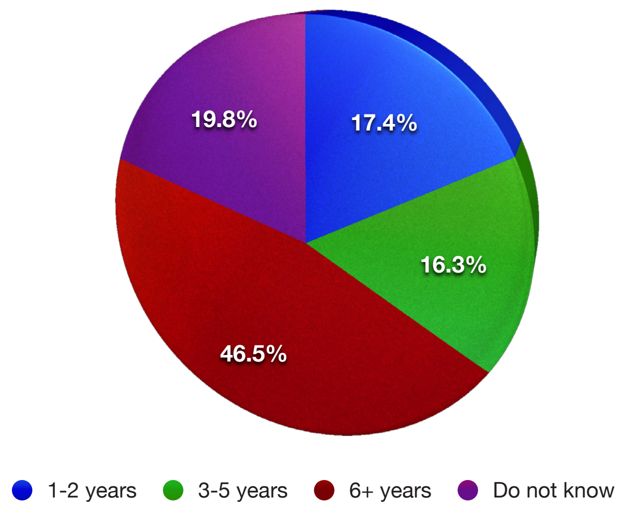
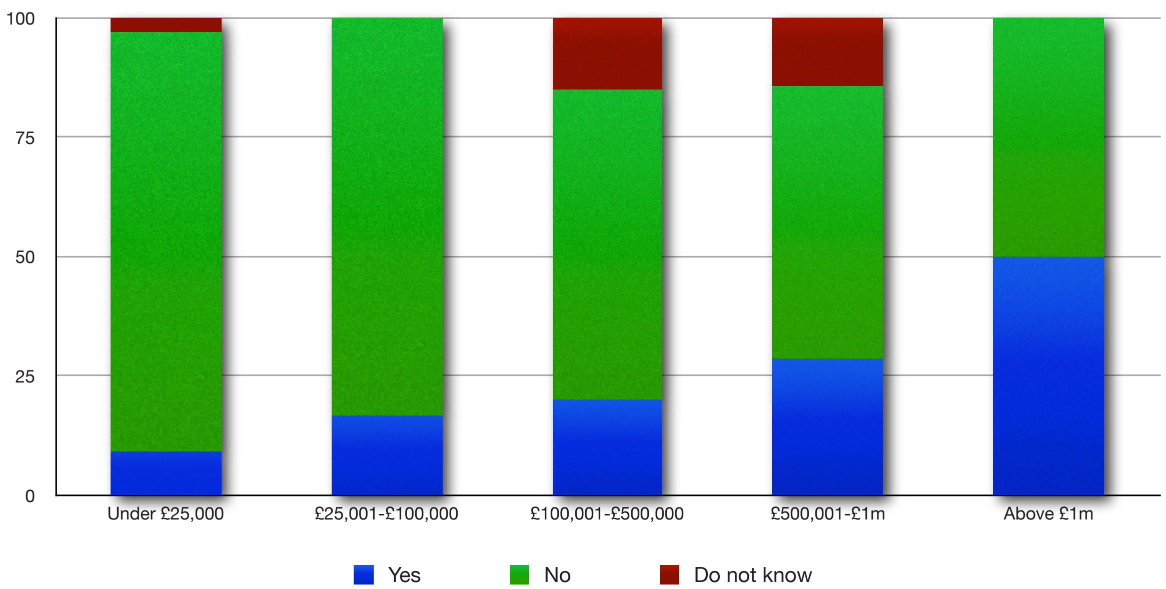


Figure 90. Does your museum's auditor provide services to the museum in addition to the annual audit?

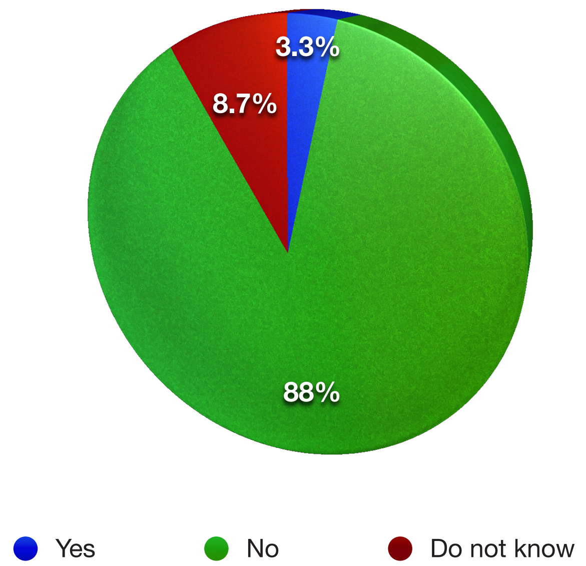


frequently use the same auditor for six or more years (Figure 89). Representatives of Local Authority and University museums account for the many museum managers who do not know how many years their museum has used the same auditor given most are not responsible for their own audits. Over half of Independent museums (55%), and over half the museums larger than £1m (55.6%) have used the same lead auditor for more than six years. Smaller museums are more likely to change auditors more frequently than larger museums.

It is uncommon for museum auditors to provide additional services to the museum beyond the annual audit (18.5%). In the case of Independent museums, this occurs 20% of the time. In museums over £1m it occurs 50% of the time, though in 83.3% of these cases, those additional services to the museum represent less than 5% of the total fee paid to the audit firm (Figure 90).

Only 3.3% of museums indicate their auditor sits as a member of the museum's board of directors, which would indicate a conflict of interest (Figure 91). This appears to be the case only in museums with annual budgets under £100,000. Yet no museums report that

Figure 91. Is your museum's auditor a member of your board of directors?



any members of their management team have been employed by the museum's audit firm in the past year. These are signs that museum Audit Committees are "independent", meaning committee members are not compensated for their committee service and that the committee is not comprised of any museum staff members, including the director. Overall, 58.8% of UK museums can define their Audit Committees as "independent". One museum ensures Audit Committee independence because it "*consists of board members who are only board* *members, and have no other role within the museum*." Another "*meets with external auditors*" to ensure their audit processes are accurate. Local Authority museums responding to this survey reported relying on the council to ensure the audit process is conducted in accordance with best practices (Figure 92).

Figure 92. Local Authority museums' audit management

- *externally assessed by council*
- *organised by audit section of city council*
- *established process conducted by audit team at Council*
- *we have an external audit by the Council, as well as the internal audit by staff*
- *council's audit department is set up as an independent arm*
- *the Council's audit section has to be independent, as it is externally checked*

Yet a small museum with one employee noted its audit process "*can never be independent because as the sole full time employee ... the manager is an integral part of the Audit team. To reduce the risk of false procedures, our team of volunteers carries out the [audit] work as directed by the manager, who has to follow the guidelines provided by the Trust in their Standing Instructions."* In this case, the museum manager appears to have engaged in good practice by segregating audit duties as much as possible.

Some survey participants did not understand audit terminology or requirements. One respondent stated, *"[I] don't understand what is meant by audit committee?*" While an Audit Committee is a more advanced piece of governance structure, conducting an audit is a common necessity. One museum stated not needing to conduct an audit because it did not receive any outside grant money, and another reported not needing to conduct an audit because the museum is "*100% volunteers, so no personal financial interests*." Similarly, two volunteer-run museums indicated an independent audit or an Audit Committee were "*not applicable*" to their museums. Unfortunately these volunteers do not recognise that keeping accurate account of museum finances is integral to managing any organisation, even if the organisation does not employ paid staff members.

8.3 Case studies

i. Imperial War Museum: breach in financial controls

London's Imperial War Museum, the National museum focusing on British military history since World War One, received nearly £24m in its 2008-2009 fiscal year from its primary sponsor DCMS. The National Audit Office assesses both the use of these funds and the Museum's compliance with its Funding Agreement and Financial Memorandum. The Museum also complies with the Treasury's *Managing Public Money* requirements. Providing oversight for the exempt National museum, the NAO must "satisfy [it]self that in all material respects the incoming and outgoing resources in the financial statements of the Museum have been applied to the purposes intended by Parliament and that the financial transactions conform to the authorities which govern them." (Comptroller and Auditor General 2010, 1) Regulators determined the Imperial War Museum failed to abide by government funding guidelines in 2008-2009.

The Audit Office discovered an "irregular" financial transaction, a lease agreement for an updated fire and security system, approval for which was not obtained by DCMS as required by the museum's funding agreement. The museum spent over £626,000 on the new system in March 2009. A budget shortfall occurred that year, prompting the museum to sell the new system to a finance company for the same price, and lease it back with interest over eight years. In securing funding for this capital investment, the board did not properly review funding options or identify alternative plans, failing to conduct a risk assessment. Amyas Morse, NAO Auditor General, found that "The Museum should have sought approval from [DCMS] before entering into the arrangement and this lack of authority has led me to conclude that the transaction does not accord with the intention of Parliament and so is irregular." (National Audit Office, Press Release website) The Imperial War Museum has subsequently implemented financial policies and internal controls to ensure proper approval processes in the future to fulfill DCMS accountability requirements, and to make capital spending projects more transparent. The museum disclosed these changes in its Statement of Internal Control.

ii. Ulster Folk and Transport Museum: governance deficiencies

The Ulster Folk and Transport Museum (UFTM), a living history museum founded in 1963, is one of four museums the 1998 Museums and Galleries (Northern Ireland) Order merged to form Northern Ireland's National museums. Prior to the merger, UFTM received roughly 90% of its annual income from the Department of Education, attracting over 200,000 annual visitors and earning the 1997 travel award "Best Northern Ireland Visitor Attraction". (Northern Ireland Audit Office, Press Release website)

At the time of the National museums' merger, the Northern Ireland Audit Office (NIAO) reported on the Ulster Folk and Transport Museum's readiness to be a Department of Culture, Arts and Leisure-funded museum based on its corporate plan, annual business plan, and performance measurement system. In 1998, NIAO found several governance and administrative deficiencies:

> • *NIAO found that the status of the [UFTM]'s Corporate Plan was unclear.*
>
> • *The Museum did not have in place a management statement defining precisely the relationships and responsibilities of the Minister, the Department and the Museum.*
>
> • *While the Museum had taken steps to rationalize its strategic objectives, NIAO consider[ed] that they should be reviewed further.*
>
> • *The Museum's Corporate and Business Plans were not published. NIAO consider[ed] that the accountability, transparency and marketing of the New Museum would be improved by publication of its Corporate and Business Plans.*
>
> • *NIAO found that the Audit Committee, formed in 1995 to promote the highest standards of financial propriety and accountability, had not been carrying out its duties properly.* (Northern Ireland Audit Office 1998)

This last point demonstrates the need for board training or expertise in specific areas of financial management. Though an Audit Committee may be in place, its effectiveness is not assured.

Funded primarily by the Department of Culture, Arts and Leisure (DCAL) the National Museums and Galleries of Northern Ireland (NMGNI) is now committed to accountable and transparent governance, publicly sharing corporate documents including publishing board meeting minutes from 2003-2011 and Annual Reports from 2002-2011 online. NMGNI actively engages its board's Audit Committee, reports on its internal controls, has a staff code of conduct, and a code of best practice for board members. Yet a decade since the National museums merger, the UFTM has continued to contend with insufficient internal controls. The 2002-2003 NMGNI Annual Report highlighted the Ulster Folk and Transport Museum for lacking appropriate documentation on fixed assets. (National Museums and Galleries of Northern Ireland 2007, 24) Five years later, in his role as Accounting Officer, NMGNI Chief Executive Tim Cooke reported material losses at the Ulster Folk and Transport Museum. "A full fraud investigation was undertaken [after money was stolen,] followed by a comprehensive review of cash handling procedures. As a consequence of the investigation and the review a range of measures were put in place throughout the organisation to improve security over the safe keeping and movement of cash." (National Museums Northern Ireland 2010, 27) The museum also implemented improved security measures after discovering exhibition material and grounds equipment stolen. Despite rigorous attention to risk as demonstrated by its many policy statements, thorough reporting, and commitment to accountability, establishing working internal controls is an evolving process.

iii. National Museum Wales: staff termination procedure mistakes

The National Museum of Wales (NMW) was investigated in 1999 for inappropriately managing former Assistant Director Tim Arnold's dismissal from the museum, breaching its Management Statement's Financial Memorandum. Arnold was responsible for museum finances, but was removed from his job due to "various aspects of [his] management style over a protracted period." (Comptroller and Auditor General 1999, R2) Arnold worked for NMW for fourteen years. His specific misconduct has not been revealed. Though Arnold was suspended with pay from his museum duties immediately, Museum Director Colin Ford decided with museum lawyers to settle the employment case rather than pursue a potentially costly investigation. Lawyers representing Arnold and the museum agreed to terminate Arnold's contract in return for a job reference and £31,730.

NMW's Financial Memorandum details specific circumstances upon which the museum must consult the Welsh Office, its primary sponsor, including "unusual or contentious expenditure." (Comptroller and Auditor General 1999, R1) When requesting the funds payable to Arnold, Museum Director Ford stated "I have informed the Welsh Office of this payment" in his 8 October 1998 memorandum to NMW's Financial Controller. Yet Ford had not done so. The Financial Controller released the funds to Ford with a message stating, "I note you have informed the Welsh Office and assume you have their approval confirmed in writing (this must certainly be required by the NAO)." (Comptroller and Auditor General 1999, R3) Ford had also assured the museum board's President, Vice President, Treasurer, and Chairman of the Personnel Committee that the NAO had authorised the payment. Instead, the National Audit Office first noticed this "irregular payment" during the museum's 1998-99 annual audit. By that time, both Arnold and Ford had departed the museum's employment.

While Ford failed to get approval for this "unusual or contentious expenditure", the former museum director noted that it would have been under Arnold's job remit to make Ford aware of this requirement. While this may have been the case, NMW's Financial Controller did do so, as quoted above. Similarly, approval from the Welsh Treasury was required for "payments made … on termination of employment, sometimes in circumstances where disciplinary action might have been more appropriate." (Comptroller and Auditor General 1999, R6) Ford's failure to get payment approval resulted in a false Statement of Internal Financial Controls, specifically intended "to prevent irregular expenditure occurring", that was signed by the new Museum Director Anna Southall. (Comptroller and Auditor General 1999, R6)

Director Southall lobbied for retroactive approval for the Arnold payment. The Principal Finance Officer of the National Assembly for Wales, David Richards, declined the request in October 1999. Richards noted the NMW failed to follow "normal disciplinary arrangements" that resulted in a breach of clearly delineated public standards for financial expenditures. The Welsh Office does not support non-disclosure agreements, so the "concern to protect the Museum from publicity – and especially from adverse public criticism … cannot provide grounds … for making a special payment to any individual from public funds." (Comptroller and Auditor General 1999, R7) Richards also argued that making a financial settlement which "saved further expenditure is not a generally accepted principle in the public sector where the adoption of proper standards and procedures has a higher priority." (Comptroller and Auditor General 1999, R7) In his report to Parliament, NAO Comptroller and Auditor General Sir John Bourn stated "Public bodies should not use taxpayers' money to avoid dealing with alleged poor performance." (National Audit Office, Press Release website) Adhering to standardised staff termination procedures would have prevented this public dilemma.

8.4 Summary

Museums in the United Kingdom engage in a variety of internal controls and typically follow standard fiscal accountability procedures. Local Authority museums and University museums are not responsible for many of these processes, which are managed by local councils and university bodies. Across the museum sector, National museums lead the industry in accountability practices and internal control processes. The case studies documenting controversies in National museums reflect that procedures to monitor accountability are in place. The accountability of volunteer-run and Independent museums is less clear. These institutions broadly lack government regulation, professional association oversight, and, as demonstrated in the previous section, adequate museum training. Yet financial fraud appears less widespread in the UK as compared with the United States. Government or media sources have not reported any major stories of illegal financial activity in UK museums. The Imperial War Museum and the National Museum of Wales are National museums in which wrongdoing occurred despite having rigorous accountability practices in place. As it is not possible to protect against all forms of wrongdoing, accountability transgressions could take place in any museum, calling for diligence on the part of museum professionals who strive for accountability.

9. British research summary

While many recent American museum scandals have been financially motivated, limited reporting transparency has made it difficult to assess whether the same has occurred in the UK. It is certainly possible that very few UK museums have suffered financial malfeasance. Financial controls associated with Local Authority museums and National museums are strict. Yet because little reporting exists for Independent and volunteer-run museums, it is difficult to assess financial management in these organisations. As case studies demonstrate, it is more likely for UK museums to face breaches in ethical accountability or to have employees who fail to adhere to established policies than to engage in financial fraud.

Survey responses demonstrate that neither the *Combined Code* nor the Nolan Principles have been discussed, evaluated, or implemented to a great extent in UK museums. Financial transparency exists in Local Authority museums and National museums, but remains murky in Independent and volunteer-run museums. Most volunteer-run museums included in this study do not subscribe to accountability standards, and operate outside the boundaries of accepted museum management policies. Well-meaning volunteers are frequently untrained and unfamiliar with museum sector standards, lacking the information or financial means to educate themselves about museum administration or ethics. Despite having numerous policy recommendations about accountability, the Museums Association does little to facilitate the implementation of accountability measures. Relatively few volunteer-run and Independent museums are MA members and consequently they do not benefit from valuable schemes or training courses.

Case studies and survey data point to continuing accountability failings that affect the public trust, providing evidence which confirms the need for internal controls, financial transparency, and ethics initiatives. Methods to combat malfeasance include increasing local involvement in running the museum, encouraging museums to pursue Accreditation, insisting on a more standardised management structure and system, and increasing the MA's power to arbitrate individual museum problems, much like the Charity Commission does for English and Welsh charities. Although Accreditation is a minimum standard, that standard can be raised, or a tiered system can be implemented so museums can constantly be working to improve. The most feasible method to aid accountability would be the requirement of more frequent and thorough checks or audits of Accredited museums. Other methods to build accountability include peer guidance, museums mentoring one another, or networks of professional museum personnel consulting with museums across the country. Funding bodies and other stakeholders can also demand greater transparency.

Staff members from diverse types of museums, stating that their institutions were fully accountable, believed the topic of this thesis was not applicable to their museums. Yet, since fewer than one third of UK museums have an ethics code, less than half have conflict of interest policies, and few internal controls are standard practice, that accountability is questionable. The implementation of standard best practice accountability methods and the active use of those methods in daily museum activities would help eliminate the potential for wrongdoing across the UK museum sector.

Conclusion

This study addresses the sources of museum accountability in corporate governance, public policy, museum history, and other sociopolitical factors, and demonstrates the multiple influences these intersecting domains have upon museum governance and administration. This research also determines the current state of museum accountability in the UK and US, providing benchmarks against which to compare museums. Stakeholders can gauge the general museum sector or assess specific museums within a national structure of ethical governance and fiscal transparency. Museums are now able to strategically position themselves relative to their peers. This thesis is a platform highlighting the significance of museum accountability to industry professionals and other stakeholders, noting the importance of rigorous museum-specific training, particularly for volunteers. Research data herein can guide regulatory bodies, professional museum associations, and museums to evaluate accountability gaps in hopes of stimulating efforts to protect the public trust in museums.

As the case studies demonstrate, an accountability problem currently exists both in the UK and US museum sectors. Museums are not immune to breaches in ethical codes or financial misconduct due to minimal internal oversight and limited professional training. Ethical failures precipitated both the recent Smithsonian Institution and Tate accountability scandals where individuals' priorities failed to align with museum goals. External pressures, weak controls, and self-interest cause museums to suffer from poor accountability oversight, hindering museums from making optimal strategic decisions regarding the public trust.

In return for tax concessions, the UK and US governments expect museums that provide a public benefit to regulate themselves, yet museum self-regulation has not resulted in consistent accountability. Museum boards are society's primary oversight mechanism, but who is guarding those guardians? Stakeholders are ultimately responsible for museum accountability, yet the general population has not been holding museums to account for their actions. Research results may alter the current opinion about museums, undermining assumptions stakeholders have about museum accountability. Individuals' perceptions of museums are contextual, serving as performance indicators, and ethical failings in museums alter those perceptions. The history of museums demonstrates that stakeholders expect more from museums over time. Stakeholders, particularly funding bodies, will hold museums more accountable in the future, expecting the application of private and public sector processes in the museum setting. Data indicate this trend is in progress as new accountability measures become familiar practice in more museums.

The impetuses for increased accountability differ between the United Kingdom and United States. No one motivation encouraged UK museums to implement accountability measures. Accreditation and Charity Commission requirements are more influential than the *Combined Code* or Nolan Principles in establishing accountability practices. Similarly, no one impetus encouraged American museums to implement governance accountability policies. The Sarbanes-Oxley Act, IRS reporting requirements, and AAM Accreditation and MAP schemes appear to be as influential in museum accountability as staff knowledge of performance standards and best practices. In the twenty-first century, stakeholders' calls for accountability are mounting, so it now falls to professional bodies and museum professionals, from volunteers to senior executives, to demand better museum accountability from their own organisations.

Reshaping museum accountability to secure the public trust is possible through five steps:

1. Increasing professional organisations' interest in accountability.
2. Developing applicable training programmes.
3. Revising the mindsets of museum professionals through consistent training.
4. Adapting straightforward policies from both the private and public sectors.
5. Adjusting basic internal processes in museums.

These steps to help change the current patterns in museum accountability are vital as malfeasance continues and as museums grow more complex. The accountability wrongdoing discussed in this thesis could have been prevented by these five recommendations.

1. Increasing professional organisations' commitment to accountability.

Most museums, particularly volunteer-run and Independent museums, are not members of the primary professional group in each country, the Museums Association and the American Association of Museums. As such, the majority of museums are unable to benefit from available training programmes. Further, few MA or AAM members subscribe to the voluntary recommended standards and ethics codes. In some cases this is due to lack of training. Survey respondents specifically requested that the MA and AAM offer more ethics training courses. Through schemes and sector-wide approved standards the MA and

AAM attempt to ensure basic accountability thresholds, yet no oversight body verifies that accountability occurs in practice over time. Though the MA and AAM are membership organisations and not regulatory bodies, their efforts to establish or improve accountability fall short for the museum sector. Improving professional bodies' commitment to museum accountability would benefit the sector. Neither the AAM nor MA responded to research queries relating to this thesis.

2. Developing applicable training programmes.

Accountability is a priority for the many UK and US museums that have employed best practice strategies, but data confirms that accountability processes have not been uniformly adopted and are not pervasive in either the UK or US. Qualitative survey results from paid museum employees and the numerous emails from volunteer-run museums stated that museum accountability was not applicable to their organisations. These responses demonstrate a knowledge deficit in both professionally-run and volunteer-run museums that represents inadequate training in museum ethics and financial accountability. In particular, additional targeted outreach and training is needed to further professionalise museum volunteers, including board members. Similarly, museum-specific courses discussing governance, legal expectations, and practical museum accountability solutions can serve to teach museum professionals the difference between assuming responsibility for a museum and being accountable to the public for decisions made on the museum's behalf. Laudable accountability programmes do exist in museums, and these organisations can be tapped to aid in training others.

3. Revising the mindsets of museum professionals through consistent training.

Museum professionals, including board members, do not consistently agree upon a basic definition of "museum accountability", and their opinions vary regarding the implementation of ethical and fiscal controls. Museums, however, rely upon knowledgeable individuals trained in museum ethics and financial policy. While professionals work in the best interest of their institutions, some lack relevant accountability knowledge or ethics training. Though presumed trustworthy due to the altruistic nature of board service, museum trustees are often unaware of their governance duties. Just as conservators or curators have specialised skills, museum board members must professionalise through particular training to adjust to organisational and legal expectations. All significant accountability tasks involve the board, including compliance with legal standards, overall responsibility for financial matters, and ethical oversight of the museum with the expectation that boards themselves act in an ethical manner. Individuals report being wary of organisational change, or of the time and financial costs associated with implementing best practice measures. The primary challenge to enacting best practices stems from individuals' misunderstanding of internal controls or distaste for institutional change.

4. Adapting straightforward policies from other sectors.

Nonprofit museums can better fulfill their public accountability responsibilities with knowledge and tools grounded in the private and public sectors. Responses to accountability concerns in museums include utilising lessons from the market and the state, and employing effective established organisational methods to prevent corruption and to protect against poor ethical decisions. All museums can subscribe to basic accountability standards including fiscal controls and an ethics code. A distinct line exists between ethical standards and legal regulations, yet both are vital. Ethics recommendations are not enforceable, though ethical breaches hold consequences. Yet ethical considerations can cross national boundaries whilst most legal controls are limited. Continuing to interact with local public, private, and third sector institutions, museums also function as international institutions that cooperate with organisations on a global scale. In conjunction with financial controls, well-developed and recognised ethical codes will permit museums to address diverse matters consistently with an international scope, to manage day-to-day operations transparently for stakeholders, and to recruit and retain accomplished museum professionals.

5. Adjusting basic internal processes in museums.

Though museum objectives differ from corporate goals, common circumstances affect both private and third sector work. Significant aspects of organisational success lie in the modest decisions, strategies, and actions for which governing bodies, staff, and volunteers are responsible. Efforts to establish small changes, such as enacting a whistleblower protection policy or monitoring conflict of interest disclosures, are disproportionate to the potential positive results. The value in these controls comes not merely from annual assessments reporting on board committee successes, for example, but also from the process of institutional evaluation in real time. Progress will occur in museum accountability if many current governance and administrative norms are rejected in favor of solutions verified to work in other sectors. Numerous UK and US museums have successfully done so. These specific internal controls are common in the private sector, and do not turn nonprofit museums into corporate institutions or alter museum traditions. Priorities implicit in internal control programmes are consistent with museums' missions, and reflect museum ideals associated with retaining the public trust. Actualising financial and ethical controls costs a museum less money, time, or frustration than the accompanying risk associated with accountability scandals.

Despite differences between the UK and US, the case studies demonstrate that malfeasance occurs regardless of museum type. However, University museums fall outside the characteristic bounds of museum accountability in many cases. University museums oversee little of their own accountability management since governance and many budget-related decisions instead fall within their host institutions' purview. Museum-specific ethics, however, are applicable to University museums. University trustees at some institutions continue to consider university museum objects as saleable assets, prizing a collection's monetary value above respecting widely accepted museum best practice standards and ethical codes. The sale of objects appears to be the primary accountability concern for University museums.

Research results indicate the current accountability areas in which UK and US museums lack proficiency. Upon ascertaining where accountability gaps remain, it is now possible to determine how best to meet accountability needs. In light of this thesis, further museological research can appraise specific accountability measures (training, internal controls, etc.) to assess relevant ideas and associated practical applications in museum settings. For example, how would additional museum-specific training affect volunteer-run museums in Britain? Would legislation in America be the best method to prevent sales of artworks as assets to fund budget shortfalls? The approach this thesis takes towards museum accountability is applicable to related institutions including zoos and botanical gardens, and to other nonprofit organisations. The study topic can also be expanded to museum systems in additional countries, suggesting a global governance accountability structure.

This project was inevitably constrained by limitations to collecting sensitive data. Challenges stemmed primarily from the reluctance of museum professionals to disclose information that could jeopardise their employment or their museums' reputations. Due to these limitations, case study evidence was only collected from media sources or government documents.

Numerous museum professionals indicated that "scandals" in their museums did not appear in newspaper reports nor did government oversight bodies publicly review all accountability malfeasances. The lack of disclosure perhaps veils an even larger museum accountability concern of which the general public, regulators, and other museum stakeholders remain unaware. Museums that obscure issues from the public do a disservice to the museum sector and to stakeholders. Transparency in admitting mistakes would not eliminate stakeholders' support of the museum, but would urge museum professionals and stakeholders to improve internal systems to prevent further malfeasance.

UK and US museum accountability is no longer an abstract concept or quixotic ideal. It is actualised as a risk management tool using specialised procedures and ethical decision-making. Accountability will occur through simplified, straightforward methods like financial internal controls, clearly defined policies, and ethical priorities to help museums face forthcoming governance concerns. Once in place, accountability measures provide cumulative benefits to bolster the public trust, helping assure the stability of museums in society.

Appendices

Appendix A. US museum online survey

Appendix B. US museum qualitative survey

Appendix C. UK museum online survey

Appendix D. UK museum qualitative survey

Appendix E. The Seven Principles of Public Life

Appendix F. Ethical research approval form

Appendix A. US museum online survey

Questionnaire:
American Museum Accountability

Katherine R. Groninger, University of St Andrews

This questionnaire accompanies my doctoral research in Museum & Gallery Studies at the University of St Andrews, Scotland. It will assess how the 2002 *Sarbanes-Oxley Act* has affected American museum accountability, including fiscal and ethical transparency. Please be as detailed as possible, as your time permits.

The *Sarbanes-Oxley Act* (SOX) was signed into law on July 30, 2002 to help rebuild trust in America's corporate sector. The Act requires publicly traded companies to adhere to governance standards that broaden board members' roles in overseeing financial transactions and auditing procedures. Two *Sarbanes-Oxley* precepts apply to all entities, including museums: whistleblower protection and a document destruction ban. In response to *Sarbanes-Oxley*, many nonprofit organizations have adopted new policies and altered governance practices. The *Sarbanes-Oxley Act* has bred new accountability laws fashioned exclusively for nonprofit organizations, including California's *Nonprofit Integrity Act* and New York's proposed *Nonprofit Accountability Bill*. At least nine state legislatures have introduced bills intended to increase nonprofit organizations' financial transparency.

This is a confidential survey that will remain in my sole possession. It will not be used for purposes other than doctoral research. Your name or museum will not be used in the Ph.D. thesis text unless you are contacted separately from this questionnaire and give permission for that to take place. The results of this questionnaire will be erased in 2010, the year this study concludes.

All questions, including your name and contact information, are optional. If you do not want to proceed with the survey, please cancel at any time. If you would like to discuss museum accountability, museum governance, or the *Sarbanes-Oxley Act*, do please contact me. Thank you for your help and participation.

Katherine R. Groninger
B.A., Princeton University
Ph.D. Candidate, University of St Andrews
krg7@st-andrews.ac.uk

The questionnaire has five sections:

1. General Information
2. Museum Policies Relating to *Sarbanes-Oxley*
3. Museum Audit Process
4. Museum Ethics
5. The *Sarbanes-Oxley Act*

The total questionnaire should take under 20 minutes.

Section 1 - General Information

1) If you wish to remain anonymous, these first six fields are optional:

Name:

Museum Job Title:

Telephone:

Email:

Museum Name:

Address:

2) Type of museum:

- National Museum
- University Museum
- Natural History Museum
- Art Museum
- Science Museum
- Other - Please specify:

3) Annual museum budget

Please select...

4) Number of museum board members

Please select...

5) Years in your current position:

Please select...

6) Years in the museum field:

Please select...

7) Years in nonprofit organizations:

Please select...

8) Your age:

Please select...

9) Your gender

- Female
- Male

10) How familiar are you with the *Sarbanes-Oxley Act*'s requirements for nonprofit organizations?

Unfamiliar	Somewhat Familiar	Familiar	Extremely Familiar
○	○	○	○

11) How familiar are you with the *Sarbanes-Oxley Act*'s requirements for corporate organizations?

Unfamiliar	Somewhat Familiar	Familiar	Extremely Familiar
○	○	○	○

12) How familiar are you with California's *Nonprofit Integrity Act*?
[This Act is intended to increase nonprofit organizations' financial transparency.]

Unfamiliar	Somewhat Familiar	Familiar	Extremely Familiar
○	○	○	○

13) Do you know of any similar legislation in your state?

○ Yes ○ No ○ Don't Know

13a) If yes: Please explain:

Section 2 - Museum Policies Relating to *Sarbanes-Oxley*

14) Does your museum have a written Document Destruction Policy?

○ Yes ○ No ○ Don't Know

14a) If no:

○ No Plan to Implement
○ Plan to Implement
○ Don't Know

15) When was this Document Destruction Policy established?

Please select...

16) Was the Document Destruction Policy established as a result of the *Sarbanes-Oxley Act*?

Yes	No	Don't Know	N/A
○	○	○	○

17) Does your museum keep backup files of its financial records off-site?

○ Yes ○ No ○ Don't Know

18) How long does your museum retain financial paperwork?

Please select...

19) Is your museum's IRS Form 990 certified by:
Please check all that apply

☐ Museum Director
☐ Chairman of the Board of Directors
☐ Treasurer of the Board of Directors

- ☐ Do Not Know
- ☐ N/A
- ☐ Other *(please specify)*

20) If the museum director certifies your museum's IRS Form 990, did this result from the *Sarbanes-Oxley Act*?

Yes	No	Don't Know	N/A
○	○	○	○

21) Are ALL board members informed about to the executive director's complete compensation package?

Yes	No	Don't Know	N/A
○	○	○	○

21a) If no:

- ○ No Plan to Implement
- ○ Plan to Implement
- ○ Don't Know

22) Does your museum have a written Whistleblower Protection Policy?

○ Yes ○ No ○ Don't Know

22a) If yes: Was the Whistleblower Protection Policy established as a result of the *Sarbanes-Oxley Act*?

○ Yes ○ No ○ Don't Know

22b) If no:

- ○ No Plan to Implement
- ○ Plan to Implement
- ○ Don't Know

23) Has your museum ever loaned money or artifacts to either board members or to staff members?

○ Yes ○ No ○ Don't Know

23a) If yes: Has your museum loaned money or artifacts to either board members or staff members since 2002?

○ Yes ○ No ○ Don't Know

24) Does your museum have a written procedure in place for confidentially receiving, retaining, and treating complaints or concerns from employees?

○ Yes ○ No ○ Don't Know

24a) If no:

- ○ No Plan to Implement
- ○ Plan to Implement
- ○ Don't Know

25) Does your museum publish board meeting minutes?

○ Yes ○ No ○ Don't Know

25a) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

26) Does your museum have a written conflict of interest policy for all personnel and board members?

- Yes
- No
- Don't Know

26a) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

27) Does your museum record board members' conflicts of interest?

- Yes
- No
- Don't Know

27a) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

28) If your museum's conflict of interest register was established after 2002, did it come as a result of the *Sarbanes-Oxley Act*?

Yes	No	Don't Know	N/A
○	○	○	○

29) Does your museum publish board members' conflicts of interest disclosures?

Yes	No	Don't Know	N/A
○	○	○	○

29a) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

30) Does your museum evaluate board or staff members' conflicts of interest internally?

- Yes
- No
- Don't Know

30a) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

30b) If yes: What is the process for evaluating board or staff members' conflicts of interest?
Please explain

- No Established Process
- Don't Know

31) How has the *Sarbanes-Oxley Act* affected your museum board's approach to conflict of interest issues? Please explain:

○ No change in approach
○ Don't Know

Section 3 - Museum Audit Process

32) Does your museum's board of directors have an Audit Committee?

○ Yes ○ No ○ Don't Know

32a) If no:

○ No Plan to Implement
○ Plan to Implement
○ Don't Know

32b) If yes: Can your Audit Committee be defined as "independent"?
[i.e. committee members are not compensated; committee does not consist of any staff members, including the museum director.]

○ Yes ○ No ○ Don't Know

33) How do you ensure that your Audit Committee operates independently?
Please explain:

○ No Established Process
○ Don't Know

34) Is at least one member of your museum's Audit Committee a financial expert? [i.e. one with experience applying GAAP to financial statements; familiarity developing internal financial controls.]

Yes	No	Don't Know	N/A
○	○	○	○

35) Does your museum use a certified auditor?

Yes	No	Don't Know	N/A
○	○	○	○

35a) If no:

○ No Plan to Implement
○ Plan to Implement
○ Don't Know

36) Is your museum's auditor a member of your board of directors?

Yes No Don't Know N/A

37) How many years has your museum used the same auditor or audit firm?

38) How often does your museum change its lead auditor?

39) Does your museum's auditor provide services to the museum in addition to the annual audit?

Yes No Don't Know N/A

39a) If yes: Do those services represent less than 5% of the total fee paid to the audit company?

Yes No Don't Know

40) Have audit fees increased substantially since 2002?

Yes No Don't Know N/A

41) Were any members of your museum's management team employed by your museum's audit firm in the past year?

Yes No Don't Know N/A

Section 4 - Museum Ethics

42) Does your museum have a written Code of Ethics that applies to the BOARD OF DIRECTORS?

Yes No Don't Know

42a) If yes: In what year was the Code of Ethics established?

Please select...

42b) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

43) Is the Code of Ethics published on your museum's website?

Yes No Don't Know No Website N/A

44) Does the museum report annually on its compliance with its Code of Ethics?

Yes No Don't Know N/A

44a) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

45) Does your board of directors have an Ethics Committee?

- Yes
- No
- Don't Know

45a) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

45b) If yes: In what year was the board's Ethics Committee established?

Please select...

Section 5 - The *Sarbanes-Oxley Act*

46) Has the *Sarbanes-Oxley Act* been discussed at museum board meetings?

- Yes
- No
- Don't Know

47) Has your museum identified its compliance responsibilities with regard to the *Sarbanes-Oxley Act*?

- Yes
- No
- Don't Know

48) Has your museum done an initial risk assessment of the *Sarbanes-Oxley Act*?

- Yes
- No
- Don't Know

49) What measures has your museum established to ensure the *Sarbanes-Oxley Act* is followed?
Please explain:

- No Established Measures
- Don't Know

50) Does your museum use any of the following internal controls:
Please check all that apply

- IT Oversight Policies
- Reimbursement Authorization
- Bank Reconciliation Process
- Volunteer Background Check Procedures
- Check Signing Procedures
- Staff Termination Procedures
- Bank Reconciliation Process
- Segregation of Duties
- Do Not Know

☐ Other *(please specify)*

51) In your opinion, has the *Sarbanes-Oxley Act* affected governance attitudes at your museum?

○ Yes ○ No ○ Don't Know

52) Has your museum altered its governance structure since 2002?

○ Yes ○ No ○ Don't Know

52a) If yes: How?

53) Is your museum planning to alter its governance structure in response to the *Sarbanes-Oxley Act* or to other nonprofit accountability legislation?

○ Yes ○ No ○ Don't Know

53a) If yes: How?

54) Have changes to museum governance been instigated by board leadership or at the museum director's request?

○ Board Leadership
○ Museum Director
○ Both
○ Do Not Know
○ Other - Please specify:

55) How has your role at your museum changed as a result of the *Sarbanes-Oxley Act*? Please explain

○ No Change
○ Don't Know

56) What financial costs have been sustained as a result of the *Sarbanes-Oxley Act*? [e.g. auditing firm charges]

○ No Costs
○ Don't Know

57) Do you believe the *Sarbanes-Oxley Act*'s benefits for the public good outweigh its financial costs for the museum community? [e.g., hiring an audit company]

- Yes
- No
- Don't Know

58) Do you believe regulations similar to the *Sarbanes-Oxley Act* should be required for all museums?

- Yes
- No
- Don't Know

59) Do you believe regulations similar to the *Sarbanes-Oxley Act* should be required for museums with annual operating budgets greater than $2 million.

- Yes
- No
- Don't Know

60) Do you believe the *Sarbanes-Oxley Act* benefits the museum sector?

- Yes
- No
- Don't Know

60a) If yes: What are the benefits?

60b) If no: Has the *Sarbanes-Oxley Act* had a neutral effect on museums?

- Yes
- No
- Don't Know

60c) If no: Has the *Sarbanes-Oxley Act* had a negative effect on museums?

- Yes
- No
- Don't Know

Thankyou

61) Would you be willing to complete a follow-up questionnaire to gather qualitative data about your opinions regarding museum accountability?

- Yes
- No

62) Would you be willing to be contacted to discuss museum accountability or the *Sarbanes-Oxley Act*'s effects on your museum?

- Yes
- No

63) Does your museum have material (policy statements, etc.) that you could send me that could help propel this study forward?

- Yes
- No

Please submit your answers

Appendix B. US museum qualitative survey

Katherine R. Groninger
Ph.D. Candidate, University of St Andrews
B.A., Princeton University 2001
krg7@st-andrews.ac.uk

Thesis topic: *Museum Accountability in Britain and America: Effects of the Committee on Standards in Public Life and the Sarbanes-Oxley Act.*

Please answer the following questions as fully as possible. This survey can be taken anonymously. All responses will remain confidential and in my sole possession until they are deleted or destroyed at the close of this study in 2010. Please return the completed survey to either **krg7@st-andrews.ac.uk** or to **Kate Groninger/306 E. 92nd Street, Suite 2W/New York, NY 10128**. Thank you for your time and for your help.

1. What do you think is the public perception of museums?

2. Do you think museums currently risk losing the public's trust, particularly in light of the fiscal and ethical accountability issues the Smithsonian has had in the past year?

3. How does your museum measure public perception?

4. Is the issue of governance ethics discussed at your museum?

5. Have you discussed establishing controls that help the museum's ethical or fiscal transparency?

6. How have governance attitudes changed at your museum since the Sarbanes-Oxley Act or since the major corporate scandals like Enron and Tyco?

7. Do you think regulations are required to bolster museum accountability?

8. Can purely voluntary compliance to AAM regulations, for example, provide effective self-regulation for museums?

9. What other methods could solve museum accountability concerns?

10. Would (or has) your museum's board provide(d) sufficient authorization to carry out activities like an initial risk assessment of the Sarbanes-Oxley Act?

11. What internal controls do you have over financial management, i.e. an independent audit committee/segregation of duties etc?

12. What internal controls or policies do you have to ensure ethical behavior and ethical transparency?

13. What was the impetus for putting ethical codes or fiscal policies in place?

14. What have been the costs and benefits of implementing ethical codes or fiscal policies?

15. Have these changes led to a clearer definition of museum accountability for your museum's board of directors or employees?

16. How has your museum instilled fiscal and ethical accountability in its employees?

17. If incidences of ethical or financial misconduct took place in the past, have there been fewer occurrences since putting codes and policies in place?

18. Do you have a procedure in place if an employee or a board member is suspected of ethical misconduct?

19. Does the museum disclose all incidences of fraud to the public/board/staff?

20. Does the museum report annually on the organization's compliance with its own code of ethics, or does it report new policies?

21. Do you think your policies protect the public interest?

22. Do you think the effects of the Sarbanes-Oxley Act are apparent in your museum documents: 990, audit statements, policy statements, meeting minutes?

23. What accountability concerns continue to exist for American museums?

Appendix C. UK museum online survey

Questionnaire:
UK Museum Accountability

Katherine R. Groninger, University of St Andrews

This questionnaire accompanies my doctoral research in Museum & Gallery Studies at the University of St Andrews, Scotland. It will assess how the UK's *Combined Code* and the *Nolan Principles* have affected British museum accountability, including fiscal and ethical transparency. The *Combined Code* is a voluntary code of business best practice for UK organisations, and the *Nolan Principles* are seven ethical principles of public life contained in the Museums Association's Code of Ethics. Please be as detailed as possible as your time permits.

This is a confidential survey that will remain in my sole possession. It will not be used for purposes other than doctoral research. Your name or museum will not be used in the Ph.D. thesis text unless you are contacted separately from this questionnaire and give permission for that to take place. The results of this questionnaire will be erased in 2010, the year this study concludes.

All questions, including your name and contact information, are optional. If you do not want to proceed with the survey, please cancel at any time. If you would like to discuss museum accountability, museum governance, the *Combined Code* or the *Nolan Principles*, do please contact me. Thank you for your help and participation.

Katherine R. Groninger
B.A., Princeton University
Ph.D. Candidate, University of St Andrews
krg7@st-andrews.ac.uk

The questionnaire has five sections:

1. General Information
2. Museum Policies and Internal Controls
3. Museum Audit Process
4. Museum Ethics
5. The *Combined Code* and the *Nolan Principles*

The entire questionnaire should take 15 minutes.

Thank you

Section 1 - General Information

If you wish to remain anonymous, leave questions (1a) and (1b) blank.

1a) Personal details:

Name:

Museum Job Title:

Telephone:

Email:

1b) Museum details

Museum Name:

Address:

1c) Do you work for a museum service that manages more than one museum:

○ Yes ○ No ○ Don't Know

1d) If yes, how many museums are under your service?

2) Type of museum (please select all that apply):

- ☐ Local Authority Museum
- ☐ Independant Museum
- ☐ National Museum
- ☐ University Museum
- ☐ Natural History Museum
- ☐ Art Museum
- ☐ Science Museum
- ☐ Local History Museum
- ☐ Historic House
- ☐ Other *(please specify)*:

3) What type of governing body oversees your museum?

- ○ Board of Directors or Trustees
- ○ Elected Councillors
- ○ University Court
- ○ Other *(please specify)*:

4) Annual museum budget:

Please select...

5) Is your museum accredited by the MLA?

○ Yes ○ No ○ Don't Know

6) Number of museum board members:

Please select...

7) Years in your current position:

Please select...

8) Years working as a museum professional:

Please select...

9) Years working in registered charity organisations:

Please select...

10) Your age:

Please select...

11) Your gender:

○ Female ○ Male

12) How familiar are you with the *Combined Code's* recommendations for corporate organisations?

Unfamiliar	Somewhat Familiar	Familiar	Extremely Familiar
○	○	○	○

13) How familiar are you with the *Nolan Principles* (the Seven Principles of Public Life)?

Unfamiliar	Somewhat Familiar	Familiar	Extremely Familiar
○	○	○	○

Section 2 - Museum Policies and Internal Controls

14) Does your museum have a written Document Destruction/Retention Policy?

○ Yes ○ No ○ Don't Know
○ Follow Council policy
○ Follow University policy

14a) If no:

○ No Plan to Implement
○ Plan to Implement
○ Don't Know

15) Does your museum keep backup files of its financial records off-site?

○ Yes ○ No ○ Don't Know
○ Kept by the Council
○ Kept by University

16) How long does your museum retain financial paperwork?

Please select...

17) Who certifies your museum's Charity Commission Annual Return?
Please check all that apply:

☐ Board Chairman
☐ Board Treasurer
☐ Do Not Know
☐ N/A
☐ Other *(please specify)*:

18) If your museum's gross annual income is over £1 million, who certifies the Summary Information Return?

Please check all that apply:

- ☐ Board Chairman
- ☐ Board Treasurer
- ☐ Do Not Know
- ☐ N/A
- ☐ Other *(please specify)*:

19) Does your museum's full board review the Trustee's Annual Report prior to submission?

Yes No Don't Know N/A

20) For SCOTTISH museums: does your museum's full board review the Monitoring Return prior to submission?

Yes No Don't Know N/A

21) Are ALL board members informed about the museum director's complete compensation package?

Yes No Don't Know N/A

21a) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

22) Does your museum have a written Whistleblower Policy?

- Yes No Don't Know
- Follow Council Policy
- Follow University Policy

22a) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

23) Does your museum have a written procedure in place for confidentially receiving, retaining and treating employee complaints or concerns?

- Yes No Don't Know
- Follow Council Policy
- Follow University Policy

23a) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

24) Does your museum's Whistleblower Policy or grievance policy specifically protect the individual making the complaint?

Yes No Don't Know N/A

25) Has your museum ever loaned money or artifacts to either board members or to staff members?

25a - to Board members: ◯ Yes ◯ No ◯ Don't Know
25b - to staff members: ◯ Yes ◯ No ◯ Don't Know

26) Does your museum have an acquisitions policy?

◯ Yes ◯ No ◯ Don't Know

26a) If 'Yes', when was the acquisitions policy implemented?

26b) If 'Yes', does the acquisitions policy address object disposal or deaccessioning?

◯ Yes ◯ No ◯ Don't Know

27) Who at your museum is responsible for determining which objects are deaccessioned?

- ☐ Museum Director
- ☐ Board of Directors
- ☐ Local Council
- ☐ Acquisitions Committee
- ☐ University Trustees
- ☐ Other *(please specify)*:

28) Does your museum publicly publish board meeting minutes?

◯ Yes ◯ No ◯ Don't Know
◯ Published by Council
◯ Published by University
◯ N/A
◯ Other *(please specify)*:

29) Does your museum have a written conflict of interest policy for all staff and board members?

29a - for Board members: ◯ Yes ◯ No ◯ Don't Know
29b - for staff members: ◯ Yes ◯ No ◯ Don't Know

30) Does your museum record board members' conflicts of interest?
◯ Yes ◯ No ◯ Don't Know
◯ Recorded by Council
◯ Recorded by University

30a) If no:
◯ No Plan to Implement
◯ Plan to Implement
◯ Don't Know

31) Does your museum publish board members' conflict of interest disclosures?
◯ Yes ◯ No ◯ Don't Know
◯ Published by Council
◯ Published by University

31a) If no:
◯ No Plan to Implement
◯ Plan to Implement
◯ Don't Know

32) Does your museum evaluate board or staff members' conflicts of interest internally?

- ○ Yes ○ No ○ Don't Know
- ○ Evaluated by Council
- ○ Evaluated by University

32a) If no:

- ○ No Plan to Implement
- ○ Plan to Implement
- ○ Don't Know

32b) If yes: What is the process for evaluating board or staff members' conflicts of interest?
Please explain:

- ○ No Established Process
- ○ Don't Know

33) Have the Nolan Principles affected your museum board or staff's approach to conflict of interest issues?

- ○ Yes ○ No ○ Don't Know

33a) If yes, please explain how:

34) Can your museum's Executive Committee be defined as "independent"?
[i.e. committee members are not compensated; committee does not consist of any museum employees, including the museum director]

- ○ Yes ○ No ○ Don't Know

35) Does your museum's board of directors have a Remuneration Committee?

- ○ Yes ○ No ○ Don't Know

35a) If no:

- ○ No Plan to Implement
- ○ Plan to Implement
- ○ Don't Know

36) Can your museum's Remuneration Committee be defined as "independent"?
[i.e. committee members are not compensated; committee does not consist of any museum employees, including the museum director]

- ○ Yes ○ No ○ Don't Know

37) Does your museum report annually on its system of internal controls?

- ○ Yes ○ No ○ Don't Know

38) Does your museum annually review the effectiveness of its internal controls?

- ○ Yes ○ No ○ Don't Know
- ○ Reviewed by Council
- ○ Reviewed by University

39) Do your museum's board COMMITTEES annually review and assess their effectiveness?

- ○ Yes ○ No ○ Don't Know
- ○ Reviewed by Council
- ○ Reviewed by University

Section 3 - Museum Audit Process

40) Does your museum's board of directors have an Audit Committee?

- ○ Yes ○ No ○ Don't Know
- ○ Council manages the audit
- ○ University manages the audit
- ○ Other *(please specify)*:

40a) If no:

- ○ No Plan to Implement
- ○ Plan to Implement
- ○ Don't Know

40b) If yes: Can your Audit Committee be defined as "independent"?
[i.e. committee members are not compensated; committee does not consist of any staff members, including the museum director.]

- ○ Yes ○ No ○ Don't Know

41) Does your museum's Audit Committee manage the museum's internal controls in addition to managing the annual audit?

Yes	No	Don't Know	N/A
○	○	○	○

42) How do you ensure that your Audit Committee operates independently?
Please explain:

- ○ No Established Process
- ○ Don't Know

43) Is at least one member of your museum's Audit Committee a financial expert? [i.e. one with experience applying Generally Accepted Accounting Principles to financial statements; familiarity developing internal financial controls.]

Yes	No	Don't Know	N/A
○	○	○	○

44) Does your museum use a certified auditor?

- ○ Yes ○ No ○ Don't Know
- ○ Council manages the audit
- ○ University manages the audit
- ○ N/A

44a) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

45) Is your museum's auditor a member of your board of directors?

Yes	No	Don't Know	N/A
○	○	○	○

46) How many years has your museum used the same auditor or audit firm?

47) How often does your museum change its lead auditor?

48) Does your museum's auditor provide services to the museum in addition to the annual audit?

Yes	No	Don't Know	N/A
○	○	○	○

48a) If yes: Do those services represent less than 5% of the total fee paid to the audit company?

○ Yes ○ No ○ Don't Know

49) Were any members of your museum's management team employed by your museum's audit firm in the past year?

Yes	No	Don't Know	N/A
○	○	○	○

Section 4 - Museum Ethics

50) Does your museum have a written Code of Ethics that applies to the BOARD OF DIRECTORS?

○ Yes ○ No ○ Don't Know

50a) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

51) Is the Code of Ethics published on your museum's website?

Yes	No	Don't Know	N/A
○	○	○	○

52) Does the museum report annually on its compliance with its Code of Ethics?

○ Yes ○ No ○ Don't Know
- Report to the Council
- Report to the University
- N/A

52a) If no:

- No Plan to Implement
- Plan to Implement
- Don't Know

53) Does your board of directors have an Ethics Committee?

Yes No Don't Know

53a) If no:

No Plan to Implement
Plan to Implement
Don't Know

53b) If no: Who at your museum manages ethical dilemmas?

Museum Director
Curator
Board Chairman
Board Member
Other *(please specify)*:

54) Does your museum have an established system of induction training for all board and staff members?

Yes No Don't Know

55) If your museum has induction training sessions, are your museum's conduct expectations and/or Code of Ethics discussed at that time?

Yes No Don't Know N/A

56) If your museum has induction training sessions, are the Nolan Principles discussed at that time?

Yes No Don't Know

57) Throughout their tenure, do your museum board members receive ongoing:

57a - ethics training: Yes No
57b - museum policy training: Yes No

58) Throughout their tenure, do your museum staff members receive ongoing:

58a - ethics training: Yes No
58b - museum policy training: Yes No

59) Do you have any comments about board or staff training?

60) Has the museum paid any museum trustees a consulting fee or salary for their work associated with the organisation?

Yes No Don't Know N/A

61) If yes: was the payment for professional services provided to the museum?

Yes No Don't Know N/A

62) Does your museum's governing document give authority for payments made to your museum's trustees?

Yes	No	Don't Know	N/A
○	○	○	○

Section 5 - The *Combined Code* and the *Nolan Principles*

63) Has the *Combined Code* been discussed at museum board meetings?

○ Yes ○ No ○ Don't Know

64) Have the *Nolan Principles* been discussed at museum board meetings?

○ Yes ○ No ○ Don't Know

65) Does your museum use any of the following internal controls:
Please check all that apply:

- ☐ IT Oversight Policies
- ☐ Reimbursement Authorization
- ☐ Bank Reconciliation Process
- ☐ Volunteer Background Check Procedures
- ☐ Employee Background Check Procedures
- ☐ Cheque Signing Procedures
- ☐ Staff Termination Procedures
- ☐ Cash Disbursement Authorization
- ☐ Segregation of Duties
- ☐ Do Not Know
- ☐ Other *(please specify)*:

66) In your opinion, has the *Combined Code* affected governance attitudes at your museum?

○ Yes ○ No ○ Don't Know

66a) If yes, how:

67) Do you believe the *Combined Code* benefits the museum sector?

○ Yes ○ No ○ Don't Know

67a) If yes, how:

68) Do you believe *Combined Code* principles should be applied to the museum sector?

○ Yes ○ No ○ Don't Know

69) In your opinion, have the *Nolan Principles* affected governance attitudes at your museum?

◯ Yes ◯ No ◯ Don't Know

69a) If yes, how:

70) Do the *Nolan Principles* inform or affect your museum work?

◯ Yes ◯ No ◯ Don't Know

71) Do you believe the *Nolan Principles* benefit the museum sector?

◯ Yes ◯ No ◯ Don't Know

71a) If yes, how:

71b) If no, have the *Nolan Principles* had a neutral effect on museums?

◯ Yes ◯ No ◯ Don't Know

71c) If no, have the *Nolan Principles* had a negative effect on museums?

◯ Yes ◯ No ◯ Don't Know

72) Does your museum have Directors and Officers Liability insurance?

◯ Yes ◯ No ◯ Don't Know

Thank you

73) Would you be willing to complete a follow-up questionnaire to gather qualitative data about your opinions regarding museum accountability?

◯ Yes ◯ No

74) Would you be willing to be contacted to discuss museum accountability or the *Combined Code* and the *Nolan Principles'* effects on your museum?

◯ Yes ◯ No

75) Does your museum have material (policy statements, etc.) that you could send me that could help propel this study forward?

◯ Yes ◯ No

Please submit your answers

Appendix D. UK museum qualitative survey

Katherine R. Groninger
Ph.D. Candidate, University of St Andrews
krg7@st-andrews.ac.uk

Thesis topic: *Museum Accountability in Britain and America*

Please answer the following questions as fully as possible. This survey can be taken anonymously. All responses will remain confidential and in my sole possession until they are deleted or destroyed at the close of this study in 2011. Please return the completed survey to either **krg7@st-andrews.ac.uk** or to **Kate Groninger, School of Art History**, **79 North Street, St Andrews, Fife KY16 9AL** Thank you for your time and your help.

1. What do you think is the public perception of museums?

2. Do you think museums currently risk losing the public's trust?

3. How does your museum measure public perception?

4. Is the issue of governance ethics discussed at your museum?

5. Have you discussed establishing controls that help the museum's ethical or fiscal transparency?

6. How have governance attitudes changed at your museum since major corporate scandals or since the ministerial expenses scandal?

7. Do you think regulations are required to bolster museum accountability?

8. Can purely voluntary compliance to Museums Association regulations, for example, provide effective self-regulation for museums?

9. What other methods could help or solve museum accountability concerns?

10. What internal controls do you have over financial management, i.e. an independent audit committee/segregation of duties etc?

11. What internal controls or policies do you have to ensure ethical behavior and ethical transparency?

12. What was the impetus for putting ethical codes or fiscal policies in place?

13. What have been the costs and benefits of implementing ethical codes or fiscal policies?

14. Have these changes led to a clearer definition of museum accountability for your museum's board of directors or employees?

15. How has your museum instilled fiscal and ethical accountability in its employees?

16. If incidences of ethical or financial misconduct took place in the past, have there been fewer occurrences since putting codes and policies in place?

17. Do you have a procedure in place if an employee or a board member is suspected of ethical misconduct?

18. Does the museum disclose all incidences of fraud to the public/board/staff?

19. Does the museum report annually on the organization's compliance with its own code of ethics, or does it report new policies?

20. Do you think your policies protect the public interest?

21. What accountability concerns continue to exist for Britain's museums?

Appendix E. The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

These principles apply to all aspects of public life. The Committee has set them out here for the benefit of all who serve the public in any way.

Appendix F. Ethical research approval form

School of Art History Ethics Application Form

I am familiar with the Guidelines for Ethical Research Practice and have discussed them with the other researchers involved in the project. My supervisor has inspected all paperwork submitted with this application and has endorsed my ethical framework.

Signed Kathrn Grnjr .... Print Name Katherine Greninger..... Date July 7, 2007.....
(UG or PG Researcher(s), if applicable)

Signed .... Print Name .... Date ....
(Lead Researcher or Supervisor)

STATEMENT OF ETHICAL APPROVAL

This project has been considered using agreed School procedures and is:

Approved ☒

Not approved
- More clarification required ☐
- New submission recommended ☐

Referred to UTREC ☐

Signed Annette Carruthers... Print Name A. CARRUTHERS Date 10-7-07...
(Chair, School Ethics Committee)

OFFICE USE ONLY
Approval code: ART

5

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