

The National Council for Metal Detecting

The Treasure Act 1996

A submission to the three year review of the Treasure Act 1996
by the National Council for Metal Detecting

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The Treasure Act 1996 - 3 Year Review

A submission by the National Council for Metal Detecting

Introduction

Having contributed to the content and spirit of the Treasure Act 1996, and its attendant Code of Practice, the National Council for Metal Detecting has a vested interest in the fair and equitable application of that legislation. As a national representative organisation, the National Council for Metal Detecting has a primary responsibility to its members. It also has a responsibility to all others who engage in the hobby of metal detecting within the requirements of the law, to seek and ensure equity. At this three year review, it is the perception of the National Council for Metal Detecting that there is still much to be done concerning the application of the procedural system, employed in the administration of the present law, if the reasonable interests of all participating parties are to be properly satisfied.

The Treasure Act 1996 - 3 Year Review

A submission by the National Council for Metal Detecting

1. Delays

Delays are probably the most obvious and frequent cause of criticism to be voiced during the initial years of the operation of the Treasure Act 1996. When combined with the paucity of progress information, delays have been a major source of frustration and irritation.

The Code of Practice, paragraph 82, determines that the period between the reporting of a find and the conclusion of the procedure, either by returning the find or the payment of the reward, should not normally exceed 12 months except in exceptional cases. The exceptions would probably involve large coin hoards which present particular difficulties. However, some delays which have been documented as approaching a period of as much as 36 months, do not concern large hoards.

Unfortunately, experience has shown that the target period is frequently exceeded even in the case of relatively commonplace single items. The delay appears to be occurring mainly, but certainly not exclusively, in the provision of the expert opinion which is required to enable the coroner to proceed with an inquest. However significant delays not only occur at the local museums which, in many cases, appear to act simply as a communication link in the procedure, but also later at the British Museum from where definitive opinion on the nature and composition of the potential treasure is finally made available to the coroner for evidential purposes.

Additionally, there appears to be a further and significant delay created simply by the volume of material being presented to the Independent Treasure Valuation Committee for assessment. However, once the valuation has been set and agreed by all parties, this delay can be exacerbated by the time required for an interested museum to raise the funds necessary for the purchase and public display of the treasure.

It is noted that the first annual report on the operation of the Treasure Act 1996, covering the period 24 September 1997 to 24 September 1998, and published in March 2000, listed 186 reports of primary treasure. However, the list included a number of cases of potential treasure material which, for various reasons, had not reached completion by the time the report was prepared.

Examples

To date the National Council for Metal Detecting has documented 70 reports of varying experiences from amongst those who have reported potential treasure material. Many are reports of a single object where delays in the process were well outside of the target completion time. A small but typical summary of some of the documented experience is shown below. Many other examples can be made available.

Position at Saturday 21 October 2000

<u>Item</u>	<u>Reported</u>	<u>Inquest</u>	<u>Completed</u>
(a) Saxon strap end	21.01.99	Advised on 13.10.00, sched'd for 01.11.00	Not by 21.10.00
(b) 16C Pin	04.11.97	26.07.99	24.04.00
(c) Saxon 6C Pendant	Feb 98 (to Museum)	Not reported to Coroner by Museum until May/June 2000	Not by 21.10.00
(d) Roman rings & coins	26.11.97	Set for Aug/Sep 2000 but cancelled without notice on the day Not reset by 18.10.00	?
(e) Elizabethan Bodkin	01.09.99	Little progress inform'n locally, finally disclaimed after enquiry direct to B.M.	Mid July 2000
(f) Octofoil Mount	20.02.98	Disclaimed 29.05.98	12.11.99
(g) Silver Object	09.09.98	Not Treasure 29.10.98	12.11.9
(h) Saxon Gold Button	02.11.99 Museum Receipt with disclaimer	Object untraceable between 15.07.00 and 03.10.00 but later determined as having been "disclaimed by B.M. in May 2000 "	Not by 21.10.00

It must also be acknowledged that National Council for Metal Detecting has, in addition, a few records of some items of potential treasure which have been processed to completion in a relatively short period.

(i) Gold Posy Ring	06.09.98	23.11.98	December 1998
(j) Gold ring	11.04.99	Disclaimed 22.10.00	18.01.00

The National Council for Metal detecting has also noted one example of a report made under the common law of treasure trove, and well before the commencement of the new legislation, for which an inquest had not been held by 31 August 2000

(k) Coins	04.12.94	Sched'd for 24.10.00	?
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2. Receipts and documentation

From the National Council for Metal Detecting survey, it would appear that very few coroners adopt the practice of providing finders with a formal acknowledgement of a report of potential treasure as described in paragraph 36 of the Code of Practice and recommended in the Home Office circular to Coroners No. 44/1997. The more common practice appears to rely solely upon the Treasure Act receipt which should be issued when potential treasure is deposited for expert opinion, at a museum or other designated place.

This practice can present difficulty in circumstances where a museum may be asked by a finder for an initial opinion on potential treasure before a report is made to the coroner. In a number of cases a museum has undertaken to advise the coroner of the find, if it is confirmed as potential treasure. However, the survey reveals that the report to the coroner is not necessarily made within the statutory fourteen days. In some circumstances the delay is in months and there are some reports which appear to suggest, from the information available to the finder, that no report may ever have been made to the coroner even though the find may be treasure and has been returned. The practice of a museum undertaking the statutory duty of the finder to advise the coroner of a find of potential treasure, is in conflict with the provisions of the Treasure Act 1996 and paragraph 22 of the Code of Practice.

It is unusual for a coroner to accept responsibility for potential treasure material by taking custody of it. Indeed, coroners have been recommended to refrain from doing so. Hence, there is further scope for difficulty where a finder has reported potential treasure material to a coroner but has not received a formal acknowledgement of that report. The finder may then be requested by the coroner to deliver the item to a museum or museum representative. However, as detailed in some of the reports received, a receipt may not necessarily and immediately be issued at the museum or by the museum representative receiving the material. The problems arise if the item is then mislaid in the museum system. This can occur, for example, when finds are submitted to a museum representative at a club meeting. It must be remembered that a landowner will have a direct interest in any award arising from the reported material and therefore, should have access to formal confirmation that the find has both been reported and surrendered.

The practice of issuing Treasure Act receipts has not been universally adopted by all museums, including some departments of the British Museum and other institutions. Some museums issue their own receipts which, in some cases, contain clauses repudiating liability for the safe keeping of the material deposited. This situation has arisen when potential treasure material has been deposited for examination either before or consequent to a report being made to a coroner. When challenged, two of the museums in the survey insisted that it was the museum's policy was to issue disclaimer receipts.

In other cases, it is not unusual for a Treasure Act receipt to be completed some time after a deposit of potential treasure material has been made, rather

than at the time the material is handed over. The details on the receipt are sometimes incomplete and may not carry, for example, a depositor's signature confirming the circumstances of the find are as described.

3. Communication and information

A large number of finders, landowners, a museum, and reportedly a coroner have commented on the very great difficulty in establishing the progress or current whereabouts of an item within the potential treasure administrative procedure. When the long delays currently involved are considered, it is not difficult to appreciate the frustration experienced by finders, together with a degree of embarrassment, when they attempt to keep the landowner fully informed.

At the present time there are a number of items of potential treasure material which appear to have been mislaid because enquiries as to their whereabouts have failed to elicit any satisfactory or definitive response.

At least one local museum has commented on the apparent difficulty of ensuring that the copy of the Treasure Act receipt, which appears to be used as an advice or transfer note, is returned to them with the object after its examination by the British Museum, in preparation for an inquest. It would also appear that there are occasions when objects are simply returned to the local museum unaccompanied by any paperwork.

The lack of information and documentation provided to some finders when objects are returned as apparently not required, would suggest that the correct disclaimer procedure has not been applied. Hence, in these cases there is apparently no documented and, therefore, potentially no recorded official confirmation available that the items have been properly reported and subsequently returned to the finder.

4. Expert advice

The National Council for Metal Detecting is aware of the detail of a number of cases where inaccurate expert advice concerning potential treasure material has been given to coroners. These situations appear to have arisen from the advisers' incorrect interpretation of the Treasure Act 1996 and the Code of Practice.

Not all coroners advise of the facilities that should be afforded under the provisions of Treasure Act 1996 to finders as interested persons. Indeed some coroners have advised finders that their presence at inquest is unnecessary, in contrast to others who have required finders to be present under threat of legal sanction.

5. Confidentiality of information.

Despite paragraphs 37 and 43 of the Code of Practice urging caution on the reporting of the detail of precise find spot locations, there have been a number

of occasions where these details have been made available to the general public via the inquest proceedings or other records. Hence, there are security implications for archaeology, the landowner, and the finder.

It is also of concern that precise find spot locations may be recorded on the Sites and Monuments Record. Enquiries have suggested that these records are often readily available to the general public.

6. Scrap or severely damaged and commonplace items

The National Council for Metal Detecting believes that there should be a transparent and documented local screening process at a much earlier stage of the procedures to remove scrap, and severely damaged or very common items from the treasure procedure.

7. The reporting and depositing of potential treasure

The Treasure Act 1996 makes no provision for finders to be required by a coroner to take potential treasure to any museum or specified delivery point. Most do, as a co-operative gesture out of goodwill and keen interest. However there have been cases where a finder has apparently been "instructed" to take material to a specific museum which, on one particular occasion, involved a round trip of 200 miles at the finders expense and involved a day off work. The National Council for Metal Detecting is aware of other relatively long journeys at finders' expense to deposit items.

There is one recorded case where a finder made a long journey to hand over a find, by appointment, but because he was refused a Treasure Act receipt, which was reportedly available to the museum, in preference to the museum's own receipt which carried a disclaimer clause, he returned home with the potential treasure material and reported back to the coroner.

It is also of concern that, almost three years after the commencement of the Treasure Act 1996, there still appears to be lack of appreciation of the provisions and the procedural requirements of the Act by a number of those involved at the interface with the general public.

8. Records and enquiries

There does appear to be a distinct lack of an essential central database facility for items of potential treasure, which would be readily accessible to deal with progress and location enquiries. Such a facility would require updating regularly from the time when an object is initially reported to a museum or a coroner until the treasure procedure has been completed by the award being made, or the find being returned to the finder and landowner.

In addition to the above, the National Council for Metal Detecting would suggest a "log book" to accompany the reported material at every stage of its progress. The "logbook" should have provision for reference or identification numbers, the signatures of those responsible at each stage, and

other relevant details including the dates of transfer from one location to another. An efficient database and logbook system would provide a valuable means of monitoring the efficiency of the treasure reporting process in addition to forming the basis for the report on the working of the Treasure Act 1996 that must be made to Parliament each year.

9. Valuation procedures

The National Council for Metal Detecting has no reason to believe that the Treasure Valuation Committee does not discharge its responsibilities in other than a totally independent manner. In most cases, there is no impediment to agreement with the Committee's recommendation by all of the interested parties. However, there have been a small number cases where the Treasure Valuation Committee's conclusion has been a significantly lower amount than the provisional valuation opinion received from trade sources and circulated to the finder for comment. In these circumstances, as was the case with the Hoxne Hoard, it might be considered helpful if details of the reasoning for the Committee's valuation could be released to the finder. This could then be added as an appendix to the current style of letter from the Treasure Valuation Committee secretariat to the finder and landowner. The present letter appears to merely give the Treasure Valuation Committee's decision, then simply point out that there is an appeal procedure.

Examples

	<u>Provisional Trade valuations</u>		<u>TVC Valuation</u>
(l) Saxon Sword Pyramid	Ede	£ 8,000 - £12,000	£18,000
	Sotheby's	£45,000 - £50,000	
(m) Gold ring C15	Sotheby's	£ 1,500 - £ 2,000	£ 2,000 initially but on appeal
	Fielden	£ 2,500 - £ 3,500	
	Private	£ 3,500 - £ 4,500	

The Code of Practice, paragraph 62, provides for interested parties, i.e. finders, landowners, and museums, to comment on an opinion of the treasure material's value at sale, obtained from trade sources by the Treasure Valuation Committee secretariat, before the committee meets to deliberate and provisionally recommend a potential market value to the Secretary of State.

Paragraph 65 then provides for the interested parties as, defined in paragraph 62, to comment on that provisional recommended valuation within one month.

In practice, the first opportunity to make comment on the opinion received from trade sources, before the Treasure Valuation Committee considers the material, is frequently not made available to the interested parties. This circumstance usually results from the timing of the advance notification of the Treasure Valuation Committee meeting sent to the finder. Notification of the

intended meeting has been received, by finders, only a few days before, or even on the day of, the Treasure Valuation Committee meeting concerned. Indeed, one finder has indicated that he only became aware, by chance, that his find was on the agenda of the next Treasure Valuation Committee meeting which was to meet two days later, when he made a progress enquiry by telephone. There is provision within the Code of Practice for a finder to make a submission of a valuation obtained from other sources for consideration by the Treasure Valuation Committee. This perceived departure from prescribed pre-Treasure Valuation Committee meeting procedures has been a source of criticism and comment by a number of finders.

Paragraph 62 of the Code of Practice also provides for the interested parties to comment on the reports of national museums. However it is not specified how, and by whom, this function will be achieved. There is some doubt that all " interested parties " (i.e. finders and landowners) are always, routinely, afforded the opportunity to of make such comment at an appropriate time. It is therefore suggested that the absence of timely notice to interested parties, of the Treasure Valuation Committee meetings, may not meet the requirement, contained in paragraph 82, to keep interested parties fully informed.

10. Conclusions

The facilities and resources available at present appear to have become inundated by the volume of material being reported. Much needs to be done to improve procedures, and the knowledge of those involved in the receipt of initial reports of treasure and the subsequent deposit of the treasure material concerned.

As a matter of urgency, there is a need to address the problems which have been manifest throughout the initial three years of operation of the Treasure Act 1996. The difficulties appear to be mainly, but not exclusively, procedural. It may well be determined that some additional resource and training of personnel at a local level is required. The volume of potential treasure material reported since the commencement of the Treasure Act 1996 is, without doubt, a major increase over that reported under the provisions and treasure definitions of the common law of treasure trove.

However, there is already an indication that the volume of material reported is steadily increasing, albeit slowly. It is suggested that any continuing increase in the volume of material reported, without the provision of additional resources, may only exacerbate existing difficulties. Currently, there is too much cause for frustration on the part of those making reports of potential treasure. This gives rise to the concern that the principal intentions, as originally stated for the enactment of the Treasure Act, in September 1996, may not be fully realised.

The National Council for Metal Detecting believes that the principles underlying the Treasure Act reporting and valuation procedures can and should be, universally and properly applied. However, at the present time, the Treasure Act 1996 and its Code of Practice procedures are not perceived by all participants, as functioning in the manner originally prescribed by

Parliament. Therefore, the National Council for Metal Detecting believes that, currently, there is little evidence to suggest that there is any advantage to be gained by changes in the prescribed procedures until those currently in place are working efficiently. In the circumstances, the National Council for Metal Detecting also believes that it would be premature to seek any changes which might involve modification to the requirements of the primary legislation, as it presently stands.

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