

## **The Portable Antiquities Scheme and the Treasure Act: Protecting the Archaeology of England and Wales?**

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On 20 March 2003, the day that ‘Operation Iraqi Freedom’ was launched, I attended a presentation at the National Museum and Galleries of Wales (NMGW) in Cardiff. Members of staff from the Portable Antiquities Scheme (PAS) were showing a representative sample of the range of material that had been found, recorded and preserved in Wales. The session was a ringing endorsement for PAS.

PAS was established in 1997 ‘to encourage the voluntary recording of archaeological objects found by the public in England and Wales’ (PAS website; see also Worrell 2004: 317). In other words, PAS was designed to allow members of the public to report and record chance finds. The pilot projects were expanded in 2003 to cover all of England and Wales. The scheme received full funding from the Department of Culture, Media and Sport (DCMS) from 2006.

The creation of PAS to record items not considered to be ‘treasure’ coincided with the passing of the Treasure Act in July 1996. This act replaced the earlier Treasure Trove, and is applied to England and Wales. The purpose of the new act was to abolish Treasure Trove and to make fresh provision in relation to treasure.’ Objects are identified as ‘treasure’ if they contain a certain amount of precious metal, or if they are coins and they are in a clearly defined hoard.

### **The Scale of the Scheme**

By mid October 2010 the scheme had recorded over 647,000 objects, with just under 18,000 people involved. It is not clear what these figures represent. Some individuals have reported several hundred items (e.g. Moorhead *et al.* 2010: 6), such as coin-hoards. Others have reported more modest finds including single items. And how do these figures relate to the number of active metal-detectorists, estimated to be between 9,000 and 10,000 (Roger Bland, pers. comm. 4 October 2010)? There seems to have been an increase in the number of metal-detectorists in recent years. In 2006 and 2007 the figure was estimated at 6,500 through around 170 clubs (Portable Antiquities Scheme 2006, 120; Portable Antiquities Scheme 2007: 275). It is estimated that only around 4,500 metal-detectorists report their finds to PAS. This is based on figures from 2006 (3,439 metal-detectorists reporting finds: Portable Antiquities Scheme 2006: 120, Table 7a) and 2007 (4,328: Portable Antiquities Scheme 2007: 275). Indeed the figure for 2007 would suggest that approximately two-thirds of club members (out of a total of over 6,500 in 2007) report some of their finds to PAS.

What does this mean in regional terms? Take the north-east of England (including Northumberland, Tyne and Wear, and County Durham) where 22% of the finds were made through metal-detecting in 2006 (Portable Antiquities Scheme 2006: 122). These 223 objects were reported by 130 metal-detectorists (Portable Antiquities Scheme 2006: 120). At the same time (in 2006) there were 15 metal-detecting clubs with more than 360 members. This represents approximately 15 reported finds per club, or 0.6 reported finds per person. In 2007 31% of the finds in the north-east were made by metal-detectorists. These 181 objects were recovered by metal-detecting. Finds were reported by 350 metal-detectorists, drawn from 13 clubs with 281 members (Portable Antiquities Scheme 2007: 275-76). This represents about 14 reported finds per club, with 0.6 reported finds per member. In 2008, 176 of the 233 finds were made by metal-detecting (Department of Culture Media and Sport 2010). This represents about 13.5 finds per club. These figures suggest that either there are many detectorists who find nothing, or that there is substantial under-reporting.

In Wales for 2006 there were 580 finds by metal-detecting, reported by 87 individuals; there were nine metal-detecting clubs with more than 260 members. This represents some 60 items reported per club, or 2.23 finds per member. In 2007 there were some 3,352 finds from metal-detecting, reported by 256 metal-detectorists. Wales had 10 clubs with over 555 members. This represents 335 finds per club or six finds per member. In 2008 there were 602 finds of which 569 were made via metal-detecting. That represented 56 finds per club, or approximately one find per member.

These figures urge the question, how many finds go unreported? An estimate in the *Nighthawking Survey* (2009) suggested that some 20,000 metal objects were identified every year from Norfolk alone (Oxford Archaeology 2009: 102). Formal comments from Norfolk County Council made the point:

In Norfolk we suspect that the problem is one of considerable dimensions with the (very few) prosecutions being merely the tip of an iceberg. We currently identify over 20,000 metal objects per annum in the county, which we estimate is only a proportion of the total recovered, leading to a concomitant unknown loss of knowledge. That said, we do not know how much of this additional knowledge is lost as a result of the deliberate non-reporting of finds, or how much of this information we might be able to capture if we had more resources to undertake outreach to metal-detectorists and farmers with whom we currently have no contact.

But what number of finds went unreported and unrecorded? Anecdotal evidence (from Wales) suggests that it is the more unusual finds that are reported as they require an expert eye to make the identification. The overall reporting figures for England and Wales look less impressive. In 2008, 51,776 finds were reported (Department of Culture Media and Sport 2010). Of these 44,268 finds were derived from metal-detecting, and another 1,833 from chance finds while metal-detecting. In other words, 87% of the finds

came from the actions of metal-detectorists. Yet if Bland is correct in suggesting that there are some 9,000 or so active metal-detectorists, the stated figures suggest that either very few finds are being reported to PAS, or that some people report regularly while others rarely, if at all. The 'Artefact Erosion Counter' presented by Heritage Action, a grassroots conservation group, has suggested that over four million 'recordable archaeological artefacts' have been removed from the ground by metal-detectorists in England and Wales since the start of PAS. The methodological approach of the Counter is open to debate, but how far out would this estimate need to be before it became a matter of marginal concern? It is clear that there is considerable under-reporting and the debate should revolve around the possible likely scale of artefact removal.

The PAS statistics have suggested increased reporting from areas of England and Wales where there is arable agriculture (Worrell 2004: 318). In particular there are substantial reported pieces from East Anglia and Lincolnshire. There is also a suggestion that chance finds are in a minority. In 2004 some 60% of the Roman finds were made by metal-detectorists (Worrell 2005: 447). In 2008 chance finds (excluding metal-detectorists) only accounted for 7.8% of the total records (Department of Culture Media and Sport 2010). This suggests that some undisturbed archaeological material is being removed from its archaeological context as a result of deliberate object hunting.

### **The Icklingham Bronzes**

It is clear that the fields of England and Wales have been seen as potential sources for 'museum quality' objects. The year that the Treasure Act (1996) was passed coincided with a major exhibition at the Harvard University Art Museums, *The Fire of Hephaistos: Large Classical Bronzes from North American Collections* (20 April – 11 August 1996) (Mattusch 1996; see also Chippindale and Gill 2000: 478). Among the pieces on display was the 'Portrait Head of a Youth' from the Shelby White and Leon Levy Collection (Mattusch 1996: 262-63, no. 31). The 'provenance' – or more accurately the collecting history (Gill 2010a) – is given as 'Found in Suffolk, in southeastern England; purchased in 1998.' David M. Wilson, the then director of the British Museum, described the finds (Wilson 1989: 34):

We are not always so lucky in capturing objects before they are smuggled out of the country, as witness one of the most remarkable hoards of a very high-quality Roman bronzes of the second century AD from a Romano-British temple site at Icklingham, Suffolk – a scheduled ancient monument. It appears to have been found early in 1982 through the unauthorised use of a metal-detector.

The British Museum was shown photographs of the objects and the pieces themselves surfaced on the New York market (apparently the Ariadne Galleries) in 1988 with the claim that 'they had been brought out of England in the 1940s and had then been in a Swiss private collection.'

The desire for the land owner John Browning to have the bronzes returned was overturned and the present proprietors are reported to have agreed to bequeath the items they own to the British Museum (Browning 1995).

It is significant that the Icklingham bronzes were the first examples of cultural property to be cited by James Cuno (director of the Harvard University Art Museums in 1996) in his defence of the collecting policies of universal museums (Cuno 2008: 21-22; see also Gill 2009: 3):

... in 1996, we [sc. Harvard University Art Museums] organized an exhibition of large-scale Roman bronzes, some of which were loaned from private collections. The colleague who had queried me at my interview objected to our borrowing a work from a particular private collection and claimed that it had been purchased in contravention of international law. The work in question had been part of a controversy involved the British Museum and when I sought that museum director's advice, he assured me that so far as the British government and British Museum were concerned, the controversy was resolved and he had no objection to our exhibiting – and publishing – the Roman bronzes which we did.

The New York proprietor of the private collection in question has subsequently returned items to both Italy and Greece (Gill 2010b).

Why is the case of the Icklingham bronzes relevant to a discussion about PAS and the Treasure Act? The bronzes remind us that sites in the UK, and specifically England and Wales, can be targeted to provide material for the antiquities market in just the same way as other countries. And the fields round Icklingham continue to attract looters. As recently as November 2008, farmer John Browning reported ('Thieves target historic site,' *East Anglian Daily Times* 7 November 2008; see also Oxford Archaeology 2009: 57-58):

Last night [John Browning] told how his fields had been targeted three times in the past five days by night-time thieves carrying metal detectors. It is understood they dig up the area looking for valuable Roman artefacts following the discovery there of a number of bronze heads and statuettes.

They are the latest in a string of incidents involving treasure hunters. At least 50 people have been caught and penalised over the years and Mr Browning believes more than 100 incidents have gone unpunished.

So, in spite of the Treasure Act and PAS, a scheduled site of recognised national importance can continue to be raided. And this issue raises another point: are known archaeological sites, often marked on maps such as those of the Ordnance Survey, seen as focal points for artefact hunting?

**Significant Finds**

Several items recorded under PAS have raised issues. A Romano-British bronze is reported to have been found in eastern Cambridgeshire by Duncan Pangborn (Alberge 2007). The horse was said to have been found at ‘a temple site’ that was located at Stow Cum Quy in Cambridgeshire (Department of Culture Media and Sport 2009). Yet it appears that there is no actual evidence of a sanctuary at the site. The rider itself was not handed to a museum but rather offered at auction in London (Bonhams 1 May 2008, lot 273). The piece was purchased by a third party for £10,200. The then Culture Minister, Barbara Follett, placed a temporary export bar on it until June 6 following advice from the Museums, Libraries and Archives Council (MLA). The rider was then valued at £22,066.81, twice the value set by the market at auction; the money was found and the piece saved for the nation.

It should be noted that bronzes do not count specifically (in England and Wales) as ‘Treasure’ under the terms of the 1996 Treasure Act as they do not have ‘metallic content of which at least 10 per cent by weight is precious metal.’ The export of the rider was halted as ‘the statuette is of outstanding aesthetic importance, and of outstanding significance for the study of art, religion and society in Roman Britain.’ This decision was made on the grounds of the so-called Waverley Criteria.

**The ‘Crosby Garrett’ Helmet**

In September 2010 Christie’s (London) announced that they would be auctioning a Roman cavalry parade helmet. It was claimed that the helmet had been found in May 2010 by an undisclosed metal-detectorist from Peterlee, County Durham, on fields near Crosby Garrett in Cumbria. The helmet was apparently discovered ‘in 33 fragments, with 34 smaller fragments found in association.’ The pieces were taken to Christie’s in London where they were subsequently seen by the National Finds Adviser of the PAS. Christie’s arranged for the fragments to be restored so that the helmet could be ready for the October 2010 sale; the work was completed by early September so that the helmet could be photographed for the sale catalogue. Such rapid restoration (reportedly against the advice of PAS) means that it was not possible to conduct a detailed scientific examination and it is unclear what information has been lost. The restoration report is not apparently in the public domain, and it appears that PAS officers were unable to make a scientific description of the helmet in its newly found state.

The bronze helmet was not considered to be treasure (in the terms of The Treasure Act 1996) and the reported finder was free to sell the piece. Indeed the helmet was sold at Christie’s (7 October 2010, lot 176) for £2,281,250 (\$3,631,750). Such a sum was beyond the reach of the Tullie House at Carlisle, a collection that holds major archaeological holdings from Cumbria including the western end of Hadrian’s Wall. If the helmet’s buyer had been from outside the United Kingdom, restrictions could have been placed on its export, and with it the likelihood of a hefty ransom. In any case, ‘saving’ the helmet for the nation is no substitute for the careful and scientific removal of this piece of armour from its last resting place.

There remain a number of issues. Was the helmet found in Crosby Garrett? According to Roger Bland it took until 30 August 2010 (i.e. over three months) before PAS Finds Liaison Officers were shown a hole in a field near Crosby Garrett from which the 67 helmet fragments are supposed to have been extracted. Some press reports suggest that there was more than one finder: a father and son team from Peterlee who had been scouring the fields round Crosby Garrett for some seven years ('Museum's £1.7m whip-round fails to save its Roman mask,' *Independent* 8 October 2010: 3). Why did these persistent metal-detectorists fail to make a prompt declaration of the find-spot? The owner of the field also seems to have been reluctant to make a claim on a share of the £2.28 million (Kennedy 2010; see also 'Farmer Full Of Beans After £2m Helmet Sold,' *The Journal* (Newcastle upon Tyne) 11 October 2010). Why? What kind of agreement was in place?

This significant find was removed from its archaeological context by unscientific methods in spite of the Treasure Act 1996 and the reporting procedures of PAS. The integrity of the find-spot has not been preserved and the subsequent recreation of the bronze fragments is open to question. Indeed the alleged finder was allowed to sell it without the possibility of archaeologists examining the object closely or the local archaeological collection being given the opportunity to acquire it. More significantly the heavy restoration may have damaged the helmet itself.

### **Has Looting Stopped?**

Does the Treasure Act and a recording scheme restrict the amount of looting that takes place? Pete Wilson, the Head of Research Policy (Roman Archaeology) for English Heritage, has suggested that the high profile examples of finds only encourages people to search for more material (Wilson 2009). He commented: 'It is crucial to move thinking beyond the simple monetary value of finds to the greater loss of archaeological knowledge that looting of sites represents.' What will the impact be for those who see the high value of the so-called Crosby Garrett helmet? Wilson added (in the wake of the discovery of the Staffordshire Hoard): 'This emphasis on money poses a massive threat to the buried past as it may well encourage the looting of sites, whether designated or not, by poorly-informed new detector owners and also by the just plain greedy or criminal who know all too well that what they are doing is illegal.' Indeed, with the current extended economic downturn, will people turn to undiscovered archaeological sites in England and Wales as potential sources of income? The lure of the possibility of making thousands of pounds from new finds will be too much for some to resist.

Some of this material is passing straight abroad. In 2009 it was noted that one North American coin dealer was offering coins 'straight from the ground' of Suffolk. And in October 2010 a North American collector was selling 'Dirty and Semi-Crusty Roman Bronzes from England' that had been supplied by 'someone in England who is a member of a metal detecting club' and was 'shipping ... coins that are fresh from the ground in south-eastern England.' Indeed artefacts on eBay are often cited with prices for overseas shipping including to the US. Yet there is little mention of the need for formal export licences. Icklingham in Suffolk continues to receive regular intrusions in spite of its

recognition as a scheduled site. Recent surveys of eBay have suggested that between 400 and 500 examples of 'British' objects are on offer every day (Oxford Archaeology 2009: 83). It was for such reasons that PAS was concerned enough about eBay to start monitoring its sales. Such instances are not isolated and Keith Miller, Inspector of Ancient Monuments for English Heritage, was quoted: "To say that the problem has gone is absolutely untrue" (Foster 2009).

The issues involved with the unauthorised investigations of ancient sites were explored in the *Nighthawking Survey* (2009) commissioned by English Heritage. This includes deliberate cases of searches made at scheduled archaeological sites, though there was some evidence to suggest that there had been a decrease since 1995 (Oxford Archaeology 2009: 103). Roger Bland of PAS responded to any suggestion that was a problem by commenting (Moss 2009):

I think there is still a problem, but the report shows it is less of a problem than it used to be ... The number of scheduled monuments that have been attacked and the number of archaeological units that have been reported where excavations have been attacked by nighthawking has declined, and we're keen to get that message across.

Of course, as the report states it is still a big problem in Yorkshire, Lincolnshire and East Anglia, but in a lot of areas of the country it's hardly known about.

There is still progress to be made in getting the large majority of metal-detectorists to declare and record all their finds.

### **Reporting Finds**

While there are concerns that some metal-detectorists act irresponsibly, it should be acknowledged that some behave responsibly and report their finds. This is particularly true in the case of the discovery of a deposit of some 52,000 coins near Frome in Somerset by Dave Crisp in April 2010 (Booth and Moorhead 2010; Moorhead *et al.* 2010). Crisp backfilled his hole and then reported the find, allowing the hoard to be excavated by a team from Somerset County council. As a result the team recovered the pot in which the coins had been placed. The size of the hoard is massive, weighing in at around 160 kg. Crisp himself had regularly reported finds to the PAS.

A second example would be the substantial group of Anglo-Saxon material dating to the seventh century CE and known as the Staffordshire Hoard discovered by Terry Herbert in July 2009 (Leahy and Slarke 2009; Leahy and Bland 2009; Dean *et al.* 2010). Herbert is reported to have accumulated some 244 bags of finds over a five day period before he reported it to the PAS (Leahy and Bland 2009: 6; Dean *et al.* 2010: 139). The group consists of some 1,500 items and was valued at £3.3 million. Would more prompt reporting, along the lines of the Frome Hoard, have allowed archaeologists to recover more information about the deposition of this material in Staffordshire?

And have similar finds been made by less responsible individuals, and as a result the collections of material been broken up, and the archaeological contexts lost?

At the same time there may be some who will use the reporting system to cover other activities. For example, a silver penny minted in 1042 showing Edward the Confessor was reported to PAS as having been found at Tetbury (Ware 2009). In fact the coin is reported to have been stolen from a display at Malmesbury Abbey. How many other pieces have been provided with misinformation? Are false find-spots provided to keep 'fruitful' fields away from investigations by archaeologists or other detectorists? What are the intellectual implications for distribution maps of particular categories of finds?

Yet it is clear that reported finds now make a contribution to the study of Roman Britain (e.g. Worrell 2004; Worrell 2005; Worrell 2006). The reporting of finds has allowed find-spots to be explored and the original contexts to be understood. For example, a Roman bronze cup, with a handle in the form of a leopard, was found near Abergavenny in south-east Wales (Worrell 2004: 321-323, fig. 2, no. 3). A subsequent excavation showed it had formed part of a cremation burial, and the find may point to a late first century CE cemetery and presumably settlement.

### **The Treasure Act: Time for Revision?**

The Treasure Act (1996) is a misnomer. It assumes that the key issue for artefacts relates to ownership, and that only objects made from precious metal are worth protecting. Indeed there is an assumption in some museum and archaeological circles that ownership of artefacts (Robson *et al.* 2006; Cuno 2008; see also Gill 2009) is more important than the stewardship of the archaeological record.

The Treasure Act for England and Wales is in contrast to Treasure Trove for Scotland (TTS). TTS is administered by the Treasure Trove Unit under the auspices of The Queen and Lord Treasurer's Remembrancer. Essentially in Scotland all lost items belong to the Crown. The TTS website explains: 'all objects whose original owner or rightful heir cannot be identified or traced are the property of the Crown. It does not matter whether objects were lost or intentionally hidden, or what material the objects are made of.' Finders are advised: 'If you have found a coin and/or object which is likely to be of historical or archaeological interest or importance you must report it for treasure trove assessment.' Scotland's approach is thus in marked difference to that of the rest of Great Britain.

The Treasure Act (for England and Wales) as presently framed does not 'distinguish chance finds' from those made by 'professional looters, indiscriminate digging, or the intentional wholesale destruction of archaeological context' (Fincham 2008: 352). (Should the Act also address the issue of rewards for archaeologists who discover items during the course of a scientific excavation?) Fincham has noted that one consequence of the Treasure Act has been 'incentivizing metal detecting' (Fincham 2008: 353) but this has not always led to the move of finds to local museums. The Crosby Garrett helmet is

a prime example of the weakness of the present regulations. This case prompted Lord Renfrew of Kaimsthorn to call for ‘the definition of treasure [to] be extended without further delay to ensure that the public interest is more reliably safeguarded in the future’ (Renfrew 2010). Would it be appropriate to adopt the broader approach presently in use for Scotland?

### **Conclusion**

The Portable Antiquities Scheme has attempted to bridge the gap between the archaeological community and those involved with metal-detecting. In one sense there has been a huge success in encouraging the reporting of finds and interesting people in their local history. ‘Outreach’ events have involved metal-detecting clubs as well as local archaeological societies (see Portable Antiquities Scheme 2006). Finds Liaison Officers (FLOs) from PAS have made great efforts to follow up reports of finds. However, there is also concern that there are some detectorists whose main aim is to make money from this activity. Whole sites are being robbed out and valuable information has been lost. Is a ‘softly, softly’ approach failing to protect many archaeological sites in England and Wales from deliberate destruction? Do more sophisticated metal-detectors locate finds at greater depths? Would responsible detectorists object to a tightening of the Treasure Act?

PAS sees that monitoring the online sale of ‘minor’ antiquities as one way to discourage the looting of archaeological sites in England and Wales. Yet internet sites like eBay (Chippindale and Gill 2001) continue to offer material that appears to be fresh from the fields of England and Wales. Indeed how much material on offer on such internet sites is aimed at the voracious North American market? Should PAS support the call for a Memorandum of Understanding (MoU) to be negotiated between the United Kingdom and the United States that would restrict the movement of unreported and illegally exported recently surfaced archaeological material (including coins)?

It is worth commenting on the issue of funding for PAS. At present PAS covers England and Wales, and is funded by DCMS. However in the October 2010 spending review it became clear that the devolved Welsh Assembly Government (WAG) would be expected to take responsibility for some areas of activity in Wales that had previously been funded by central (Westminster) government. It remains to be seen how the review will impact on the work of PAS in Wales. What is the long-term financial future of PAS? How will the storage of the dataset for recorded finds be funded over the coming decades?

Finally, some see the adoption of a PAS-style recording system as a possible solution in the looting of archaeological sites in other countries (see Portable Antiquities Scheme 2007: 21; Fincham 2008: 363-65). The recent Washington hearings of the US Cultural Property Advisory Committee (CPAC) to consider the Memoranda of Understanding with countries such as Cyprus, Greece and Italy, have witnessed lobbyists opposed to import restrictions on illegally exported archaeological artefacts insisting that any legislative moves by the US in this direction be dependent on the ‘source country’ first imposing

a recording scheme modelled on the United Kingdom's PAS. But is the problem more deep-rooted? Does a reporting system prevent damage to the archaeological record? Is the damage to archaeological sites in England and Wales driven by the market and a desire by some to make easy money? If history matters, then archaeologists, metal-detectorists and collectors will need to work together to ensure that the maximum amount of information can be obtained from the archaeological record before it is destroyed and lost in a haphazard fashion.

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### Websites

Heritage Action (and Artefact Erosion Counter):  
[www.heritageaction.org](http://www.heritageaction.org)

Looting Matters:  
[lootingmatters.blogspot.com](http://lootingmatters.blogspot.com)

National Council for Metal Detecting:  
[www.ncmd.co.uk](http://www.ncmd.co.uk)

Portable Antiquities Collecting and Heritage Issues:  
[paul-barford.blogspot.com](http://paul-barford.blogspot.com)

Portable Antiquities Scheme:  
[www.finds.org.uk](http://www.finds.org.uk)

Treasure Act (1996):  
[www.legislation.gov.uk/ukpga/1996/24/contents](http://www.legislation.gov.uk/ukpga/1996/24/contents)

Treasure Trove in Scotland:  
[www.treasuretrovescotland.co.uk](http://www.treasuretrovescotland.co.uk)

The Waverley Criteria:  
[www.culture.gov.uk/images/publications/waverley\\_criteria.pdf](http://www.culture.gov.uk/images/publications/waverley_criteria.pdf)