

THE ELEPHANT IN THE SALE ROOM

An Inquiry into the UK Antiques Trade's Sale of Ivory



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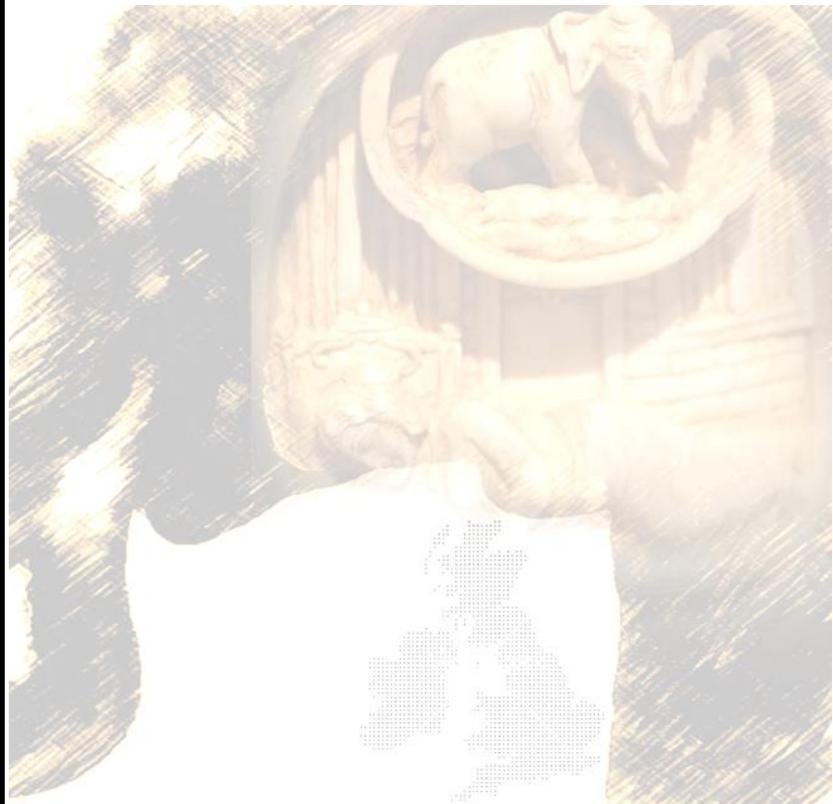


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ABBREVIATIONS

ADA	Antiques Dealers Association
BADA	British Antiques Dealers Association
CADA	Cotswold Antique Dealers' Association
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COTES	Control of Trade in Endangered Species (Enforcement) Regulations 1997
DEFRA	Department for Environment, Food and Rural Affairs
EU	European Union
LAPADA	Association of Art and Antiques Dealers
MPS	Metropolitan Police Service
NAVA	National Association of Valuers and Auctioneers
NWCU	National Wildlife Crime Unit
RICS	Royal Institution of Chartered Surveyors
SLAD	Society of London Art Dealers
SOFAA	Society of Fine Art Auctioneers
UK	United Kingdom
US	United States of America
WEADA	West of England Antique Dealers Association

EXECUTIVE SUMMARY

This report examines **the trade in ivory by antiques dealers and auctioneers** within the UK. The report is a response to calls for a tightening of the regulations regarding the sale of ivory artefacts that currently enjoy the so-called “antiques derogation” and seeks to understand the effect that additional constraints on sale would have on the British arts and antiques market.

As a trading nation, the **UK has historically had one of the largest ivory markets in the world**. Ivory was particularly popular during the 19th and early 20th centuries in the UK and so it is no surprise that the British Antique Dealers Association estimates that there are in excess of two million items made of ivory or with an ivory component (ranging from piano keys, ivory eschusions on furniture, carvings, boxes and knife handles) in British homes. When the time comes for owners to dispose of them, it is to the antiques trade they turn for appraisal, valuation and ultimately sale. However, the legislation regarding the sale of ivory is complicated and this report evaluates the antique trade’s understanding of the law and regulations that govern the sale of ivory in the UK.

Data was collected during **one to one interviews with members of the antiques trade** and via their responses to an **online questionnaire** over a period of seven months from January to July 2016. This was done to evaluate the amount and type of ivory being sold by the traders, and their risk assessment and appraisal strategies when deciding whether to accept an item for sale.

Research indicated that **traders were sourcing their stock from a wide variety of sources, including house clearance, private sales, fairs, auctions, shops and car boot sales**. With large percentages of stock being sourced from such varied sources, the need for traders to understand the law and regulations within which they must operate is vital.

Ninety five per cent of respondents relied on their knowledge and experience (colour, the quality of the carving, etc.) when assessing. None of the respondents had used any sort of scientific testing.

The data collected showed that seventy seven per cent of the **ivory items being sold by respondents had Europe as their “cultural origin”**.¹

All interviewees commented on the **effect on their businesses of the (February 2014) Obama government’s National Strategy for Combating Wildlife Trafficking** which banned the commercial trade of elephant ivory, (and saw “all commercial imports of African elephant ivory, including antiques, will be prohibited”.)

The survey results show that currently **both auctioneers and dealers employ the antiques trade press, in particular the Antiques Trade Gazette for CITES guidance** and updates. With a readership of 35,000 per week the magazine plays an important role in informing the trade. It is clear from the data however that the antiques trade are obtaining CITES information from more than one source which makes it vital that all sources of information and guidance are accurate and consistent.

Our findings are formed in the light of current legislation (see Chapter 3) regarding ivory products and the U.K. ivory trade.

The report concludes with a number of recommendations.

The Antique Trade Organisations are encouraged to:

- Compile and make easily available to their members and the wider trade a **“Best Practice Guide” regarding the law and the sale of ivory** within the UK and EU.
- Develop a **continuing professional development programme for their members** and take a lead with regards to the education of the wider trade regarding the law on the sale of ivory.

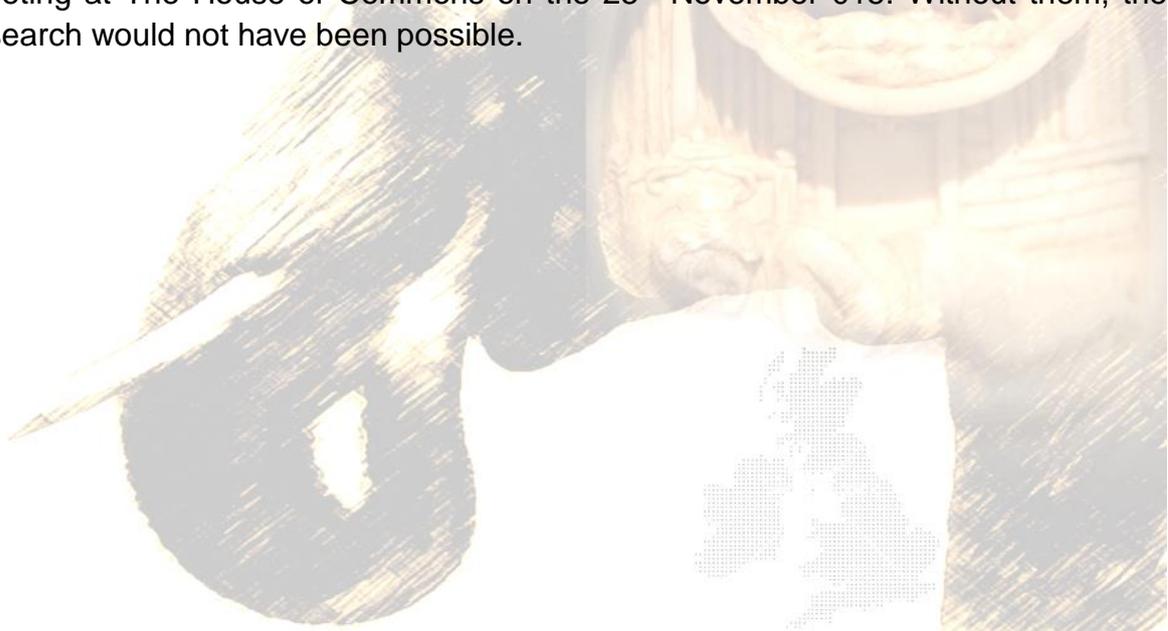
The British Government is encouraged to:

- Create clear and **unambiguous guidance as to what “documentary evidence” will be sufficient to prove the age of an item of ivory** being offered for sale following the proposed changes to the current legislation.
- Investigate the implementation of a **passport-type document for high value ivory items.**
- **Consult widely with the trade before proposing changes** to the current legislation.

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INTRODUCTION

The antiques trade in the UK today ranges from the large, international auction houses (including the likes of Christies, Bonhams and Sotheby's), with specialist departments employing expert appraisers and valuers to one-man band house clearance companies selling their stock at weekend car boot sales. Between these two extremes are hundreds of stall holders, shop keepers, online traders, gallery owners and smaller auction houses. It is not possible to say exactly how many antiques traders are working in the U.K. today although The British Antiques Dealers Association (BADA) believes the number to be around 20,000 (Team, 2002). What is not in doubt is that, as a whole, the art and antiques trade is important to the UK economy, with an estimated £1.6 billion having been paid to the Exchequer in 2013 by way of taxes and levies paid on sales, incomes and profits (BAMF, 2014). The antique trade is therefore economically important but, unlike similar trades (for instance, estate agents, who are regulated by the Estate Agents Act, 1979) it also lacks a professional regulatory framework.

With these complexities in mind, the present study had three objectives:

1. To evaluate types of ivory artefacts being sold in the U.K., the source of items being offered for sale and the buyers' demographic.
2. To understand how traders appraise an item before sale (to satisfy themselves whether or not it complies with the law).
3. To evaluate the effect a total ban on the sale of ivory would have on the British antiques trade.

Ivory has been used as an artistic and domestic material for millennia and our nation's museums and collections are the custodians of many articles of cultural importance that are carved in ivory. However, the demand for ivory saw the Greeks and Romans hunt the North African elephant to extinction with their use of the animals for warfare, ornament and as exotic entertainment to be slain by gladiators in the Roman arenas (Woolf, 2007). The Chinese elephant had met the same fate by 600BC (Brown and Jones, 2011) and today's conservationists similarly fear for the fate of the wild elephant population. Concerns were most recently evidenced by the IUCN's 2016 African Elephant Status Report (Thouless et al, 2016) showing a decline in the wild African elephant population of 111,000 over the past decade.

Wildlife crime has become a transnational organized enterprise and is estimated to be worth between \$8 to \$10 billion a year, ranking it alongside human trafficking and drugs and arms dealing in terms of illicit profits (UNDOC, 2014). Commentators attribute the continued poaching rates to a growing demand for ivory in the Asian markets (UNEP et al, 2013, Vandergrift, 2013, Cox 2016) where a growing affluent class view ivory as a demonstration of their growing wealth. The impact on wildlife has been evident, and both the African Elephant and Asian Elephant have been heavily affected. The conservation group TUSK (TUSK, 2016) report that 30,000 African

elephants are killed each year for their ivory and that 70% of the African Forest Elephant population has been lost to poaching in the past decade.

As a result, the African elephant (*Loxodonta Africana*) and Asian elephant (*Elephas Maximus*) are both afforded the highest level of protection under CITES, meaning that commercial international trade in ivory is (with few exceptions) prohibited.² The international community have responded by closing their domestic markets and, where such moves have been made, the antiques trade has been directly affected.

Key Countries taking steps to actively close their domestic ivory markets

The United Kingdom

The publication of the 2015 Conservative Party Manifesto (The Conservative Party Manifesto, 2015) included a commitment “to press for a total ban on ivory sales”, with The British government identified the combatting of the illegal wildlife trade as one of its national priorities in 2016.

On the 21 September 2016, the Department for the Environment, Food and Rural Affairs (DEFRA) announced plans for a ban on sales of modern day ivory – putting UK rules on ivory sales among the world’s most stringent. The proposed ban will cover the sale of items containing ivory dated between 1947 and the present day. The guidelines also aim to provide well defined criteria to regulate intra-EU trade in antique ivory further. DEFRA have stated that they will consult with interested parties, including members of the antiques trade, conservation groups and experts in 2017. At the time of writing full details of the consultation process is awaited.

Environment Secretary Andrea Leadsom said: “The UK has a strong record as a global leader in the fight against the illegal wildlife trade and I’m determined to do all we can to bring an end to poaching and ivory trafficking (...) This ban will send the message that the ivory trade is a thing of the past. I hope it increases pressure on other nations to implement bans and save our elephants before they disappear.”

² The species covered by CITES are listed in three Appendices, according to the degree of protection they need. Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances.

The European Union

In February 2016, the E.U. published the “EU Action Plan against Wildlife Trafficking” aimed at leading the global fight against wildlife crime. The plan sets out a framework for Member States to work together in a much more collaborative way (European Commission 2106b). It has three main strands – greater enforcement, better cooperation, and more effective prevention. The Plan also sets out a commitment by Member States to “Further limit trade in ivory within and from the EU” by stopping the issue of export and re-export permits for raw pre-convention ivory by Member States by the end of 2016.

United States of America – Executive Order 13648 & Directors Order no. 210.

In February 2014, US regulations preventing commercial imports of ivory and trade in raw ivory came into place, as a result of the Obama Administration’s National Strategy for Combating Wildlife Trafficking. The strategy states that all 'commercial imports' of African elephant ivory, including antiques, are prohibited. It was a decisive move by the administration aimed at ensuring that “US markets do not contribute to the further decline of African elephants in the wild”. The regulations differentiated between African and Asian elephants and allowed for the commercial and non-commercial imports of antiques made from Asian elephant ivory "provided the importer can prove the identification of the species."

On 2nd June 2016, US introduced a new regulation under which commercial exports and sales of ivory between US States are only allowed for proven antiques more than 100 years old (USFWS, 2016).

For antiques dealers outside the U.S. the regulations no longer allow **any** commercial importation or sale of African elephant ivory even if the items qualify as antiques.³

China

In February 2015, China introduced a one month ban on the importation of African elephant ivory, although this did not include pre-CITES items. This was followed in October 2015 by a ban on the import of hunting trophies. Imports of ivory artefacts for teaching and scientific research, cultural exchange, public display and law enforcement were not covered by the extended ban.

³ On the 20th January 2017, Donald Trump was inaugurated as the 45th President of the United States of America. In addition to his widely publicised plan to overturn all of President Obama’s executive orders he has also supported his sons Big Game hunting past times. Conservation groups fear an overturning of the Final Order is inevitable.

March 2016 saw China suspend until 31st December 2019, the import of tusks and carvings. These announcements did not outlaw China's existing domestic trade, which appeared to potentially allow imports of some raw ivory dating from after 1975. However, on the 30th December 2016 the Chinese Government announced that it would "ban all domestic ivory trade and processing by the end of 2017" (Agence France-Presse, 2016). It is estimated this ban would end the current China practice of permitting the resale of ivory bought before 1989 (from the stockpile purchased with CITES approval in 2008) which it currently releases for certified sale through licensed retailers. Antique items are, however, exempt from the proposed new ban.

Hong Kong

In January 2016 Hong Kong announced that it would impose a ban on the import of hunting trophies but did not give a time scale for introducing these new regulations. In June 2016 the government proposed to phase out their domestic ivory trade within a five-year period, as well as introduce bans on the import and re-export of pre-Convention ivory into the territory (Environment Bureau/AFCD, 2016).

However, for British antique dealers and auctioneers (as with those in other CITES signatory states) there is a derogation which permits the commercial trade in antique ivory (defined in the regulations as ivory that has been "worked" before 1947). In the UK, this derogation is enacted by Article 8 of the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES).

1.THE U.K. ANTIQUES TRADE

Despite the growing calls from Europe and beyond to ban the sale of all ivory, including antique ivory, there has been little research as to linkages between the sale of legal, genuine antique ivory artefacts and the illegal ivory trade. To the best of our knowledge to date there has been no research undertaken to and evaluate the knowledge, understanding and compliance of the antiques trade with the laws and regulations they must abide by when selling ivory.

The aim of this section is to describe the key stakeholders in the British Antiques trade. As stated in the Introduction, it is estimated that there are some 20,000 antiques dealers in the U.K., and unlike many other professions (solicitors, accountants and surveyors), there is no single regulatory trade body. Indeed, interviewees suggested that it is difficult to see how this type of regulation would be possible.

However, a minority of members of the trade belong to a number of local and national trade associations. In the UK the highest profile associations are:

BADA – The British Antique Dealers Association

BADA describes itself as “the trade association for leading antique dealers in Britain” and has approximately **three hundred and fifty members**. It was founded in 1918 and aims to “establish and maintain confidence between its members and the public, both in buying and selling.” The Association is a founder member of the International Confederation of Art Dealers’ Associations (CINOA) which expects its member associations to work within a set of ethical guidelines relating to international trade in art and antiques.

Members are elected to the association for their “high business standards and expertise” and they are required to adhere to the association’s code of membership. Once a member is elected to the association their membership is renewed and confirmed annually. BADA has its own code of practice which pre-dates the Trade Descriptions Act 1968. In the event that there should have been a mistake in the description of an item, BADA expects its members to make a full refund of the purchase price.

LAPADA – The Association of Art and Antiques Dealers

Founded in 1974, **LAPADA has over 550 members**, making it the largest association of art and antiques dealers in the U.K. Membership covers “virtually every discipline from antiquities to contemporary fine art.” LAPADA was the first antiques trade association to introduce a Code of Practice and, in the event of a dispute, the Association offers a free Conciliation Service.

LAPADA is a member of The British Art Market Federation (BAMF) and (in common with BADA) CINOA. LAPADA also fulfils a lobbying role on behalf of its membership and the “well-being” of the British antiques trade as a whole.

SOFAA - Society of Fine Art Auctioneers and Valuers

SOFAA was formed in 1973 and has a **current membership of 79 auctioneers and valuers** (SOFAA, 2016). It is the only professional body exclusively representing fine art auctioneers and valuers in the UK. It is not compulsory for auctioneers to belong to SOFAA, however many of the leading auction houses in the UK are members. The Society provides guidance to its members to “ensure the highest possible standards of practice in all regards, and encouragement and reassurance to clients that their best interests will be served at all times.”

RICS - The Royal Institution of Chartered Surveyors

The group focuses on developing and maintaining the professional standards of its members, the Institution’s Professional Statements, market insight and regulation. Within RICS there is an established Personal Property/ Arts & Antiques Professional Group providing professional advice on the valuation, purchase, sale and management of antiques and fine arts. The surveying profession covers a wide range of services, as well as the valuation of art and antiques. However, it is not possible from the information available to determine how many of the **118,000 worldwide members of RICS** (RICS, 2016) are specialist art and antiques valuers.

The National Association of Valuers and Auctioneers

The National Association of Valuers and Auctioneers (NAVA) is a professional self-regulating body. Founded in 1988, it represents over **300 valuer members**.

The association’s aim is “to bring together like-minded professionals eager to promote professionalism and best practice with a view to providing a first class service to their clients - the general public”. Members are drawn from diverse fields of valuation and auctioning and follow a code of Conduct and Membership Rules.

The Society of London Art Dealers

The Society of London Art Dealers was established in 1932 and is a member of the British Art Market Federation and CINOA. It has **134 members** who deal in art ranging from old master paintings and sculpture through to contemporary art.

To be considered for membership a dealer must have been in business for at least three years and “have a high reputation for honesty and integrity, and expert knowledge of the artists or periods in which he or she specialises.” Membership applications are vetted by its Executive Committee to “ensure that all members meet the highest standards of honesty, integrity, expertise and quality of stock.”

The Society represents the interests of its members in discussions with the government and other professional bodies, including LAPADA and BADA, on current issues concerning the art trade including Artist’s Resale Right, VAT legislation and

regulations concerning the import and export of artworks throughout the world. The Society also provides its members with advice on taxation and legal matters and it publishes a quarterly newsletter, a directory of members, and frequent circulars on topics of essential interest to the trade.

Other Associations and Societies

In addition to the above, there are many specialist, local and regional groups providing support to their members. These include Regional Antiques Associations we encountered in our research:

The Cotswolds Antiques Dealers' Association

The Association was formed in 1978 to promote its members activities, and to offer a high standard of goods and services. All dealers in The Association “have to meet strict criteria to be accepted for membership.”

The Essex Antique Dealers Association

A non-profit making association “dedicated to raising the level of professionalism and image of the Antiques trade in Essex.”

The Petworth Art & Antique Dealers Association

This association was founded in the early 1980s and promotes good business practice amongst the many antiques dealers in the West Sussex town of Petworth, which is well known as an antiques centre.

Glasgow Antiques and Fine Arts Society

An independent arts organisation based in Glasgow founded in 1972. The Society holds monthly meetings inviting figures in the world of antiques and fine arts to give lectures to the membership.

The British Violin Makers Association

The association was formed in 1995 and promotes the craft of violin and bows making including the restoration of antique instruments and bows. Many bows, made before 1975 have ivory faces.

Kensington Church Street Antique Dealers Association

There are more than 60 antiques dealers in Kensington Church Street in London and the area has its own Association.

The Portobello Road Antique Dealers Association

The Association was founded in 1985 to promote the antiques shopping area of London's Portobello Road and Westbourne Grove, to encourage fair dealing between PADA members and the public and to improve the local environment.

Strikingly, none of the organisations that we researched had any specific advice on their websites regarding the laws and regulations on the sale of ivory. For example, BADA has an advice section on its website which includes topics such as “Choosing

a reputable dealer”, “The care of antiques” and “Buying for Export” but nothing specifically regarding ivory. All of the other associations we researched also provided minimal advice in this area to their members.

The Antiques Press

For this research we also viewed the antiques press as a ‘stakeholder’ as many respondents highlighted it to be major source of information on ivory trade regulations. The key antiques press explored in this study are:

The Antiques Trade Gazette

Antiques Trade Gazette is published weekly (since 1971) and has a readership of 35,000. It provides comment and discussion relating to all aspects of the antiques trade and has taken a lead in the ivory debate. It’s Contributing Editor, Roland Arkell has 20 years of experience in writing about the antiques trade and reports for the paper on stories related to the sale of ivory. Since the beginning of the year, the Gazette has run thirty three stories pertaining to the ivory debate (Antiques Trade Gazette, 2016).

The Gazette’s website provides an Endangered Species Guide (including guidance as to the sale of ivory) which is downloadable as a PDF, together with links to DEFRA’s website and information regarding applying for CITES permits.

Antique Collecting

This magazine has been published since 1968 for “anyone interested in the world of antiques and art.” The magazine contains news stories and offers and insight into market trends. The magazine commissions articles by leading experts on a wide range of subject areas.

It is published in both print and digital formats ten times a year and provides advice via its “Guide To...” section. There are currently 13 guides, including “Guide to Art”, “Guide to collecting antiques” and “Guide to silver” but it does not yet have a specific guide to collecting ivory.

Homes and Antiques

Homes and Antiques is a glossy magazine published monthly by Immediate Media. The publishers describe the magazine as a “much-loved interiors magazine” which has been in the marketplace for over 20 years. The magazine aims to bring “its readership achievable home decorating ideas from real life homes and giving antiques fresh contexts in pages of inspirational decorating shoots”. The magazine’s website includes 33 collectors’ guides, including currently “How to collect Indian Art” and “How to collect arts and crafts” however, it does not have a specific guide to collecting ivory.

The Art Newspaper

The Art Newspaper was founded in 1990 and is an online and print publication with offices in London and New York. It provides a news service about the art world. In

addition to arts news, it publishes reviews and commentary by commentators in the art world.

Summary

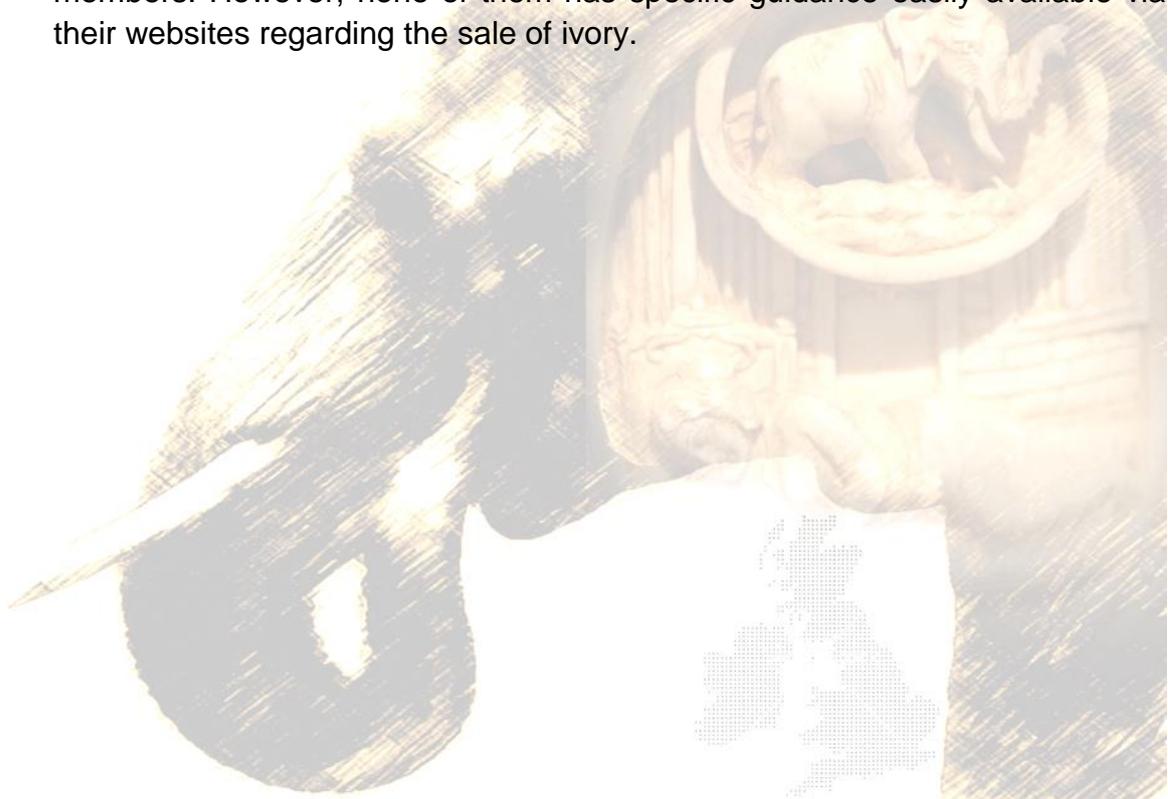
According to the National Careers Service, **no qualifications are needed** to become an antiques dealer. For this reason, the **majority of the members of the antiques trade are non-specialist, general dealers**. Some of the dealers we spoke to during the research began to deal in antiques thanks to their art or history degrees training. Others had followed the family business tradition, or had taken up dealing in later life as a semi-retired profession. Interestingly, the larger antiques trade associations have tended to represent this latter group. BADA and LAPADA's website both set out their members by specialism, and specialism is a requirement of membership. As a result **most non-specialist dealers in the antiques are largely unrepresented by any large associative bodies**.

With regards to those members of the antiques trade which we define as auctioneers the situation is very different. **Interest in the auction world has increased** over the last decade with the growth of popular television programmes such as *Celebrity Road Trip* (BBC, 2016) and *Flog It* (BBC, 2016). Indeed, such shows have made celebrities of the auctioneers who have taken part. According to NAVA, auctioneering requires keen business sense and management, confidence, considerable people skills, and knowledge of pricing items appearing on the auction block. In 2014 the auction sector contributed £2.21 billion to the Exchequer (NAVA, 2014).

Although, for the purposes of our analysis **valuers are not a representative group in their own right** it is nevertheless useful to set out their place in the antiques trade as some auctioneers and dealers are also valuers. According to the National Careers Service, valuers may specialise in fine and decorative arts where they assess the market price of antiques and collectables for clients. They appraise the condition, appearance, age and authenticity of the item before arriving at a valuation figure. Their knowledge and experience can be particularly valuable when dealing with CITES items, including ivory. A valuer must have an appreciation of an item's aesthetic, cultural and social importance, together with in-depth knowledge of current and future market trends for particular pieces, periods or categories of items. As such they are usually specialists in one or more areas. Valuations can be undertaken for a number of purposes including inheritance tax, insurance, loss adjustment, family division, probate, bankruptcy and liquidation. The work includes compiling detailed inventories of items and producing auction catalogues. They may also be called upon to act as expert witnesses in disputed cases which have gone to court. In addition to the above, valuers may also sell items for clients, although this would be very much in addition to their valuing role.

From the research above, a number of key observations can be made:

- Only a small percentage of UK dealers and auctioneers are members of any trade association.
- A dealer or auctioneer may be a member of more than one association (for instance, a member of the Cotswolds Antiques Dealers Association may also be a member of LAPADA or an auctioneer may be both a member of SOFAA and RICS).
- There seems to be no orchestrated approach between the trade associations as to the education of their members and wider community relating to the law of the sale of ivory.
- All the trade associations assert that they give guidance and advice to their members. However, none of them has specific guidance easily available via their websites regarding the sale of ivory.



2. LAWS GOVERNING THE SALE OF IVORY

In this section we explore the key legislation and regulations which relate to the sale of ivory in the U.K. and U.S.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The trade in wildlife is regulated by a regime of public international law, that is, a regime of law between nations.⁴ In those states that have ratified it, the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"), described as the "Magna Carta for wildlife" (Neme, 2009), seeks to control the import and export of certain designated species which are either at risk of extinction or could become at risk.

CITES categorizes species of wild fauna and flora accordingly to the degree of protection they require. The highest level of protection is afforded to species listed in Appendix I to the Convention. These are species that are at risk of extinction and as a result, trade in these species is only permitted in exceptional non-commercial circumstances (e.g. for scientific research).⁵ In these exceptional cases, trade may take place provided it is authorized by the granting of both an import permit and an export permit (or re-export certificate), or if the transaction falls within a permitted exemption. The African Elephant (with the exception of the populations of Botswana, Namibia, South Africa and Zimbabwe, which are included in Appendix II) is an Appendix I species. CITES regulations are embedded in the domestic law of the ratifying countries and so will be considered in the sections which follow.

European Union Regulations

CITES is implemented in the EU through a set of Regulations known as the EU Wildlife Trade Regulations.

The Regulations

Council Regulation (EC) No 338/97 deals with the protection of species of wild fauna and flora within the E.U. by regulating their trade. It sets out provisions for import, export and re-export as well as internal EU trade in specimens of species listed in its four Annexes.⁶ It sets out the procedures and documents required for trade (import

⁴ As at the 31st December 2016, 183 countries had ratified CITES. The principal non-signatories are the Democratic People's Republic of Korea and South Sudan.

⁵ At 31st December 2016 CITES state that there are about 600 animal species and 300 plant species listed in Appendix 1. The numbers are estimates because, for instance, even though an entire species family may be included in Appendix I there may not exist any complete list of all sub-species.

⁶ Which correspond in the main to the CITES three Appendices.

and export permits, re-export certificates, import notifications and internal trade certificates) and it regulates the movement of live specimens. It also sets out specific requirements for Member States to ensure compliance with the Regulation and to impose adequate sanctions for infringements.

Annex A includes:

- All CITES Appendix I species, except where EU Member States have entered a reservation
- Some CITES Appendix II and III species, for which the EU has adopted stricter domestic measures
- Some non-CITES species

Annex B includes:

- All other CITES Appendix II species, except where EU Member States have entered a reservation
- Some CITES Appendix III species
- Some non-CITES species

Annex C includes:

- All other CITES Appendix III species, except where EU Member States have entered a reservation

Annex D includes:

- Some CITES Appendix III species for which the EU holds a reservation
- Some non-CITES species in order to be consistent with other EU regulations on the protection of native species, such as the Habitats Directive and the Birds Directive

Commission Regulation (EC) No 865/2006 sets out rules for the implementation of Council Regulation (EC) No 338/97 and addresses the practical aspects of its implementation. This includes rules for the issue, validity and use of documents needed for the import, export, re-export and internal EU trade of specimens of species listed in the four Annexes. It also sets out rules of the implementation of recommendations from the CITES Conference of the Parties on the interpretation and implementation of CITES provisions.

Council Regulation (EC) No 338/97 provides the Commission with the possibility to restrict the introduction of species into the European Union. This is done after

consultation with the countries of origin concerned and the E.U.'s own Scientific Review Group.⁷

In addition, the European Commission produces an 'EU Enforcement Action Plan' which specifies the measures that should be taken for enforcement of the EU Wildlife Trade Regulations. The EU Wildlife Trade Regulations not only implement the provisions of CITES and the majority of CITES Resolutions, they also go beyond the requirements of the Convention in some respects.⁸ Although the EU Wildlife Trade Regulations are directly applicable in all EU Member States, the necessary enforcement provisions must be transferred into national legislation and supplemented with national laws, as these are matters that remain under the sovereignty of each Member State.

United Kingdom

While the UK's exit from the EU is negotiated the EU Regulations remain directly applicable to UK law. However, the E.U. Regulations require Member States to implement their own domestic legislation regarding the setting of penalties which will be applied for an offence. To this end, the UK's domestic legislation is laid down in **The Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES)** which mirrors the E.U. Regulations and sets out the penalties applicable for breaching them.

COTES

COTES deals with any trade offences which occur with regards to CITES species within the U.K., so a sale of a piece of post-convention ivory by an auction house or an antiques dealer would be dealt with under the COTES regulations (HMCS, 2002).

For any species listed in Annex A to the EU Regulation it is an offence to:

- Purchase or offer to purchase
- acquire for commercial purposes⁹
- display to the public for commercial purposes
- use for commercial gain
- sell or keep for sale
- offer for sale or
- transport for sale any specimen¹⁰

⁷ The Scientific Review Group consists of representatives from the E.U. Member States' Scientific Authorities. The role of the SRG is to examine scientific questions relating to the application of the Regulations.

⁸ Further information regarding the difference between CITES and EU regulations can be found at http://ec.europa.eu/environment/cites/pdf/differences_b_eu_and_cites.pdf

⁹ Commercial purposes does not include possessing or giving away

¹⁰ 'Specimen' is defined in Article 2(t) of Council Regulation (EC) No 338/97 and includes any 'animal or plant, whether alive or dead, of the species listed in Annexes A to D (of Council Regulation No 338/97), any part or derivative thereof...'

As a result **COTES applies to all specimens of elephant ivory.**

The Antiques Derogation (The Article 8 Derogation)

The COTES regulations state that it is not permissible to use an Annex A specimen, or anything from it, commercially. However, there are two exceptions to this:

- If an **Article 10 Certificate**¹¹ has been granted to allow the use of that specimen commercially. To obtain a Certificate, an application must be made to the Animal and Plant Health Agency. In an application the details of the specimen, the certificates it is subject to and any derogations¹² that may apply to it must all be clearly stated. Supporting documentation may also be required (such as information as to the provenance of the items) and the application may be referred to DEFRA's scientific advisors, the Joint Nature Conservation Committee, or the Royal Botanical Gardens at Kew.
- If the specimen is an '**antique**'. To be 'antique' the item must be significantly altered ('worked') from its natural state for jewellery, adornment, art, utility or musical instruments, before **1st June 1947**.¹³ It must have been obtained in this condition and require no further crafting for the purpose for which it was intended. If the specimen came into someone's possession before that date, but was substantially unaltered from its natural state it would not be exempt. A raw elephant tusk, for example, could not be considered "antique", even if it could be shown to have been acquired before 1947.

When is an item "worked"?

The definition of what constitutes 'worked' elephant ivory changed significantly in May 2015. For tusks or sections of tusks to be considered 'worked' they must now be fully carved or shaped into a new form. Even if tusks are polished and permanently mounted as part of a decorative or functional object they now no longer qualify as worked. Dealers and auctioneers should be aware that in short, if it looks like a raw tusk, it will in all likelihood not comply with the derogation. Further guidance as to what is meant by "worked" is currently being considered as part of the EU Action Plan and will in due course be implemented through the COTES regulations.

¹¹ Animal and Plant Health Agency, Endangered Species: application for commercial use, <https://www.gov.uk/government/publications/endangered-species-application-for-commercial-use>

¹² Derogations are exemptions to the law in question

¹³ It is not a breach of the Regulations to sell "worked" ivory items or items that have an ivory component, for instance furniture or musical instruments, provided the worked ivory in question pre-dates 1947.

In September 2016, DEFRA announced that they intended to strengthen the rules and that an ivory item will be confiscated or destroyed unless there is *documentary proof* as to its age. DEFRA have not been clear as to what “*documentary evidence*” will be required to meet this criteria, or whether or not it amounts to a change in the current situation (whereby a dealer or auctioneer’s declaration that the item is a pre-1947 worked piece is enough).

The United States of America

The US position is more complicated than that of the UK given the interplay of Federal and State legislation. President Obama began implementing a move towards a total ban on the importation of ivory into the US with Executive Order 13648 issued on the July 1, 2013. Three years of consultation followed before the so called “Final Rule” was published on the 6th June 2016.¹⁴ **It is now illegal to import all African Elephant ivory into the US regardless of its age.** A dealer caught doing so risks the destruction of the item. The Final Rule does, however, permit non-commercial imports of antique ivory when the item is part of a household move or an inheritance, part of a musical instrument or part of a travelling museum exhibition.

In terms of the exportation of ivory from the US, the rules are less strict. US sellers can export ivory commercially provided the items meet the worked antiques exemption. The rules are an item must be:

- at least 100 years old *and*
- can be proven to have been imported in to the US before 22nd September, 1982 *and*
- be accompanied by the appropriate CITES documentation .

¹⁴ The Final Rule was published by the U.S. Fish and Wildlife Service (Service) on June 6, 2016 and can be viewed at <https://www.fws.gov/policy/library/2016/2016-13173.html>

3. METHODOLOGY

The nature of the antiques trade in the UK is complex. Members of the trade are, as shown in Chapter 2, scattered in numerous associations, range in size and type, and there is no definitive register of the existing universe of antiques traders and auctioneers.

This exploratory research first carried out a literature review to learn about the current knowledge available regarding the antiques trades' sale of ivory. Secondly, we decided, following the advice of experts, to convene a Stakeholders Meeting with the objective of understanding the positions of the various stakeholders in the domestic ivory trade. This took place on the 25th November 2015 at the Houses of Parliament in London. The meeting was chaired by Caroline Nokes, MP and attended by representatives from BADA and LAPADA, as well as conservation groups and law enforcement agencies. This was supplemented by a meeting with MEP Catherine Bearder, founder of MEPs for Wildlife, at her offices in Brussels on the 2nd September 2015.¹⁵ These meetings were reported in the [ATG on the 21st November 2015](#)¹⁶ and on the [3 December 2016](#). Thirdly, building on the output of the Stakeholders Meeting we developed an online survey targeted at members of the antiques trade in collaboration with BADA, LAPADA and SOFAA and the ATG. Finally, we undertook one to one interviews with selected members of the antiques trade in the UK.

Online Survey

In this report and in the online survey, “ivory goods” were defined as items either containing (or made entirely from) ivory. The survey therefore not only considers items made entirely of ivory, (such as puzzle balls, okimono¹⁷ or beads) but also furniture, boxes or musical instruments with an ivory component, even where the ivory content is small. In the survey, “ivory” was defined only as elephant ivory and it did not consider for instance mammoth ivory or marine ivory.

The survey was disseminated to the antiques trade with the assistance of three of the largest trade associations in the UK; BADA and LAPADA both representing dealers of antiques and SOFAA, representing auctioneers. In addition to this, the survey was advertised to the wider trade via articles in the Antiques Trade Gazette on the [25th June 2016](#)¹⁸ and by the use of social media. The survey was available to dealers and auctioneers for completion online between 23rd June 2016 and 7th November 2016.

¹⁵ For further information as to why and how these people were selected for the purposes of this research please see table in the [Appendix](#)

¹⁶ <https://www.antiquestradegazette.com/news/2015/research-project-begins-into-effect-of-total-ivory-ban-in-the-uk/>

¹⁷ An okimono is a small Japanese carving often made of ivory but also commonly made of wood or bone.

¹⁸ <https://www.antiquestradegazette.com/news/news-topics/endangered-species/endangered-species-ivory/?page=2>

The people who participated in this survey did so voluntarily. A copy of the questionnaire is available upon request to the author.

The survey sought to obtain data as to the location of respondents (i.e. where in the U.K. they were based), the type and size of their business and the percentage of their turnover derived from sales of ivory goods. The survey also asked respondents to declare whether they were members of a trade association and the strategy they use when appraising an ivory item for sale.

Ivory Project Interviews

In addition to the online survey, researchers interviewed twelve dealers and auctioneers involved in the sale of ivory. Interviewees were self-selecting. They responded to calls for dealers willing to be interested for the Project either following their completion of the online survey, or in response to an article run by the Antiques Trade Gazette. In one case, an interviewee was recommended to the research team by a member of the trade and were contacted directly.

The interviews were conducted on a semi-structured basis and apart from one which was conducted by telephone, were all conducted face to face and recorded. They were later transcribed by an approved transcription service. Interviews lasted between 45 minutes and an hour and a half, and all but two were conducted at the interviewees' place of business.

Questions included but were not limited to:

- The length of time they had been in the antiques trade
- Their specialism
- The types of items the interviewee sold
- The economic state of their business in the current environment
- The impact a potential ban on the sale of antique ivory would have on their business

The interviews also enabled participants to give further explanations as to how they assess ivory that comes into their possession. Interviewees were candid in some cases about their fellow dealers' knowledge and some interviewees had clearly thought deeply about the sale of antique ivory and proposed some possible solutions to the (as they saw it) undoubted sale of illegal ivory by some traders.

4. RESEARCH FINDINGS

A total of eighty people responded to the online survey. The survey asked twenty one questions ranging from those aimed at understanding the size of the respondents' business to the amounts and types of ivory items sold in a year.

Response to the survey by the Antiques Trade

The response rate was low, given that it was distributed directly to the membership of BADA (350 members), LAPADA (550 members) and SOFAA (79 members) and through the ATG (with a readership of 35,000). The low response rate for the online survey is, in itself, not surprising given that the antiques trade is sometimes secretive regarding its commercial activities. In *The Hidden Economy*, Stuart Henry talks about illegality taking place in settings which (on the surface) seem completely legal and this, in turn, makes participants disinclined to be open about their activities. During one-to-one interviews some participants stated their belief that whilst they were selling ivory within the bounds of the regulations that knew of (or had witnessed) dealers who were not, suggesting that ivory is being sold illegally, and that those taking part would not wish to admit it. The reasons for the low number of responses may indicate:

- That the majority of members of the U.K. antiques trade are not selling appreciable amounts of ivory items and so decided that the survey was not applicable to them or their business.
- That those members of the British antiques trade who do sell ivory were reluctant to respond given DEFRA's announcement in September 2016 that it would be consulting the trade regarding changes to the regulations
- That the trade do not believe that there is a real or immediate threat to their current ability to sell pre-1947 worked ivory. As one interviewee said the trade "had their heads in the sand" and did not appreciate the risk to their trade. This is surprising, as the ivory debate is a current news item in the antiques trade press, so much so that in the summer of 2016 *The Antiques Trade Gazette* ran a "round table" discussion for members of the trade.

The response rate does illustrate the methodological hurdles we can find when aiming to uncover information relating to the sale of ivory from the key stakeholders themselves (even using anonymous survey tools). Admittedly, with such a small sample it is difficult to make strong assumptions about the universe of the antiques trade. However, as the aim of this research was exploratory, even with this small sample, we can use it to reflect on some of the key issues affecting the trade. This explorative investigation is key to understand which routes ought to be further explored in future research projects.

The survey results show that some respondents failed to answer all of the survey questions suggesting that some questions were maybe too sensitive, or that ivory sales accounted for only a small part of their turnover, or that they did not have access to the information required to respond. One example of this was the question asking respondents to identify the number of ivory goods they sold in a year. Fifteen respondents skipped this question. There may be several reasons for this including, records are not kept as to the categories or types of items within their stock, or because (as one interviewee reported) collating this information for the survey was too time consuming for them. However, of those who did answer most respondents stated they were selling low values per year (1-10 items), suggesting the relative unimportance of the trade may have led to non-completion.

Interestingly, the survey did illicit responses from members of the trade from across the United Kingdom. This is a notable strength for our sample and, as such, it gives insights into the ivory market outside of London, a market which has previous received little consideration.

Primary Nature of Respondents' Business & Trade Association Membership

i. Primary nature of business

The eighty survey respondents represented the three main types of trade members we were interested during our investigation: antiques dealers, auctioneers and antiques valuers. While the survey asked respondents to declare the primary nature of their business¹⁹, the majority (61%) of respondents described themselves as “dealers”, followed by auctioneers (24%). Just three respondents (4%) self-identified as mixed auctioneer-valuer or dealer-valuer, while three self-identified as “others” (4%), including a solicitor, a collector and a consultant (see summary table 1 below).

¹⁹ Whilst the survey asked respondents to give the primary nature of their business it should be noted that there can be some cross-over between roles in the antiques trade, for instance, most auction houses will offer a valuation service, as will some dealers.

Table 1: Antiques Trade Survey: Respondent's Breakdown by Job Description

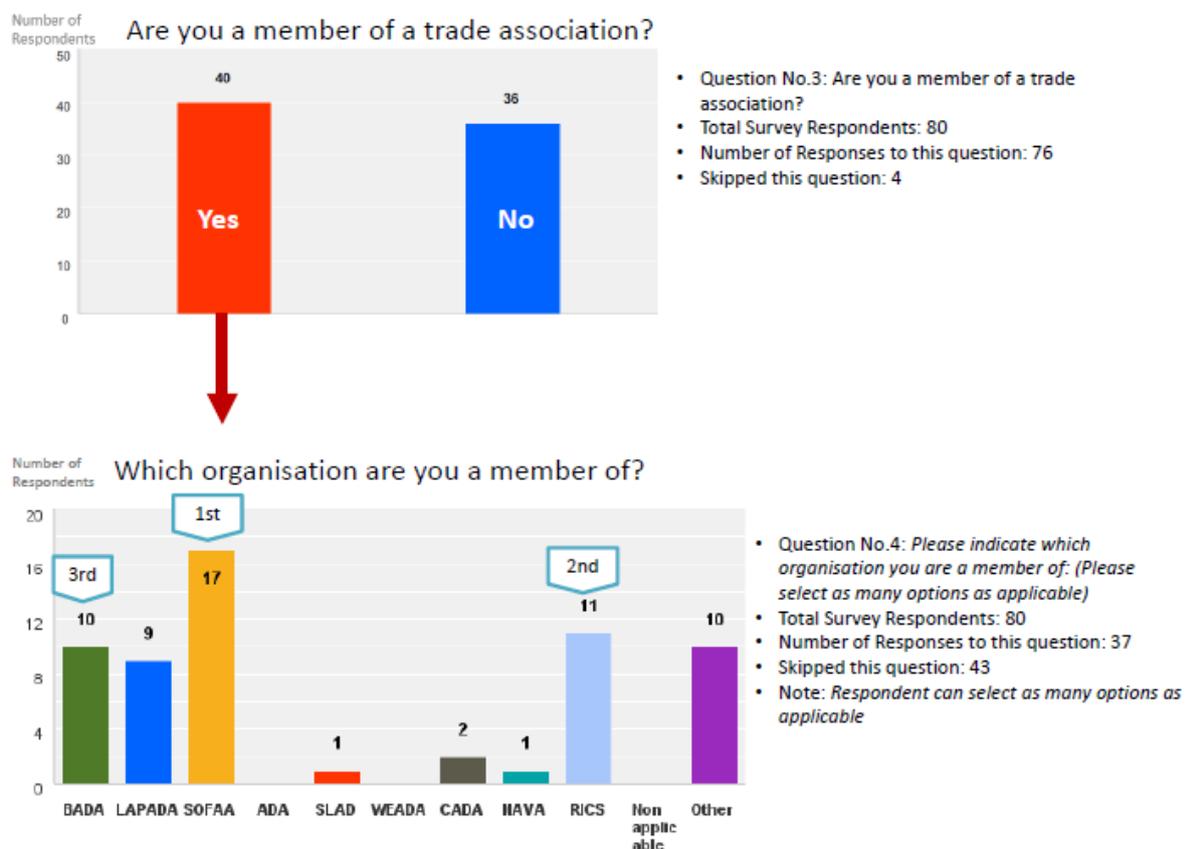
Description of Respondent	Number of Respondents	Percentage of the whole
Total Auctioneers	19	24%
Auctioneers only	17	21%
Auctioneer & Valuer	2	3%
Total Dealers	49	61%
Dealers only	48	60%
Dealer and Valuer	1	1%
Others*	3	4%
Skipped question	9	11%
Total	80	100%

*Others: respondents indicated roles such as collector, solicitor or consultant

ii. Trade Association Membership

The question on trade association membership asked respondents to state whether they were a member of a trade association.

Figure 1 Trade Association Membership



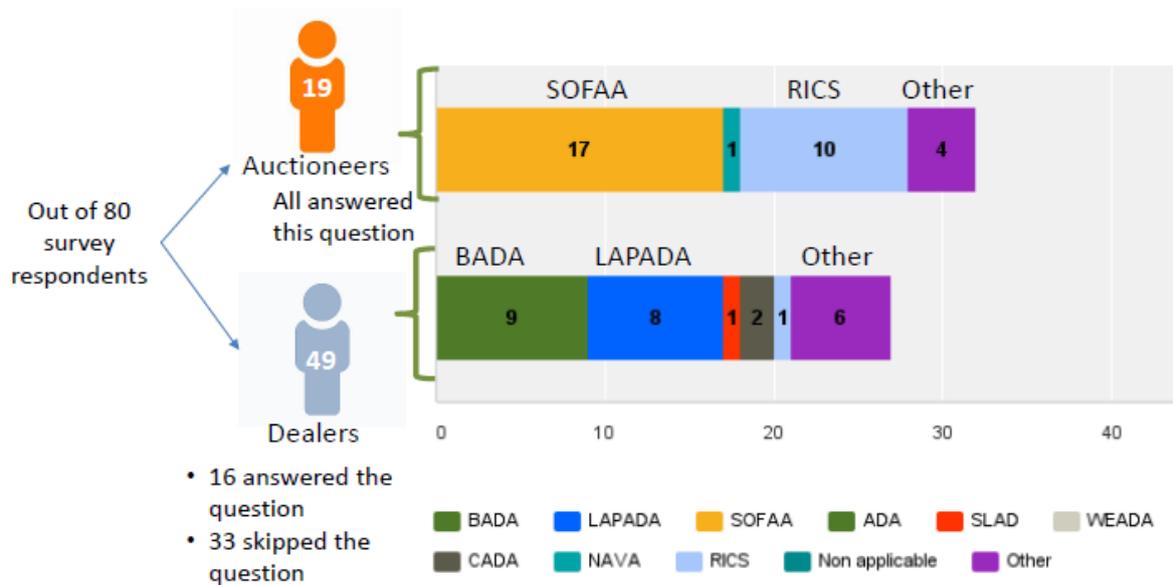
The results show that approximately half of respondents were members of a trade association (fig. 1). For instance, of the 19 auctioneers who responded, the majority (17 of the 19) revealed they were members of SOFAA, with just over half of also members of RICS. Others acknowledged they were members of NAVA. In contrast, of

the 49 dealers, only 16 answered (32%) this question (see fig.2) with broadly equal numbers (8 and 9) being members of BADA and LAPADA.

Figure 2 Trade Association Membership Types

If the respondent is an auctioneer or a dealer, which trade association organisation is he/she member of?

• Respondent can select as many options as applicable



However, the data also reveals that dealers are often members of more than one association and that they have local affiliations to which they belong.

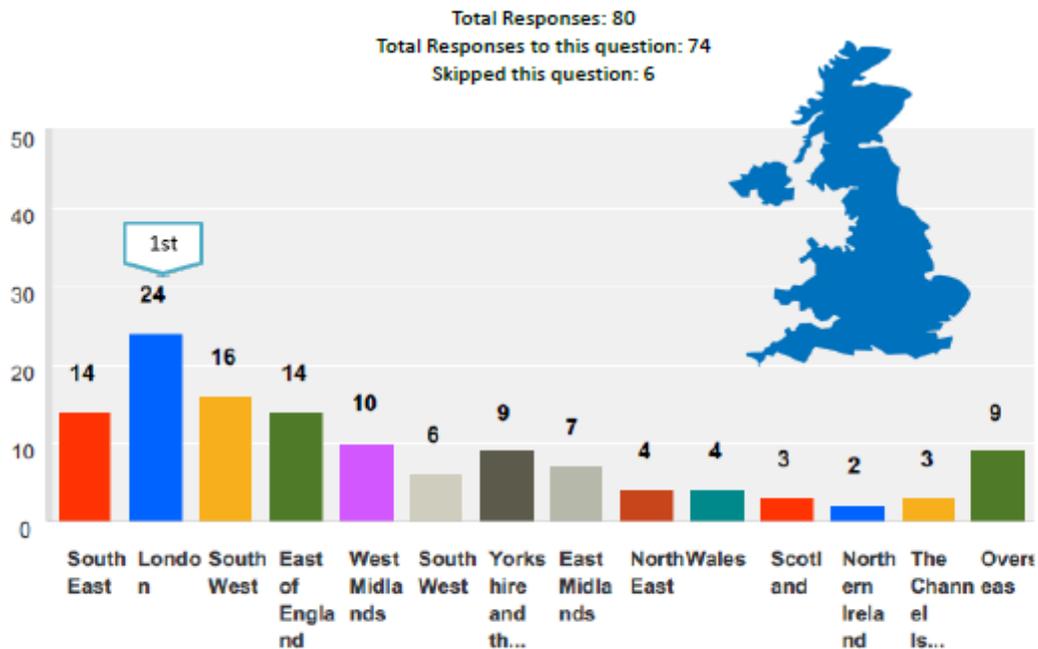
Location of business

The survey also sought to understand where antique ivory was being sold. The TRAFFIC Rapid Report of September 2016 (Lau et al, 2016) only focused on the Portobello Road Antiques Market and the surrounding areas. This report captures data from a wider geographic area (fig. 3) as many antique shops, auctions, fairs and brocantes across the UK also offer ivory items for sale. (In the event that a respondent had a business presence in more than one location they were asked to indicate all of these).

The largest geographical area of business location was, as might be expected, London, where twenty four of the respondents reported they had a base. The South West of England (sixteen respondents) accounted for the second largest area, while the South East and East of England were third (fourteen respondents). Together, these regions accounted for more than four times the level of respondents from the capital.

Figure 3 Location of businesses within the UK

Q1 In which of the following locations does your business have a presence? (Please select as many options as applicable)



iii. Business sales attributed to ivory

Respondents were asked to give information regarding the size of their business, the proportion of their annual turnover attributable to the sale of ivory items, and the type of ivory items they sold.

Auctioneers

Respondent auctioneers were asked to indicate their total annual sales turn-over by reference to the “hammer price” of the items they sold (fig. 4).²⁰ The question was framed in this way due to the fact that auctioneers will usually act as agent for the owner of the items they are selling.

Almost three quarters of the auctioneers (71%) who responded to this question answered that their annual turnover was in excess of £1,000,000. The larger auction houses see turnovers far in excess of this. Salisbury based auctioneers Woolley and

²⁰ The hammer price does not include any buyer’s or seller’s commission in respect of the item being sold (while each auction house sets their own rates charge most a buyers commission and a sellers commission amounting to approximately 20% plus VAT) (Capon, 2016).

Wallis' November 2016 Asian Art sale, for example, generated a turnover of £3.6m alone (Arkell, 2016).

Figure 4 Auctioneers' Turnover for 2015 (based on hammer prices)

Q7 Approximately what was your annual sales turnover in 2015? (e.g. hammer prices)

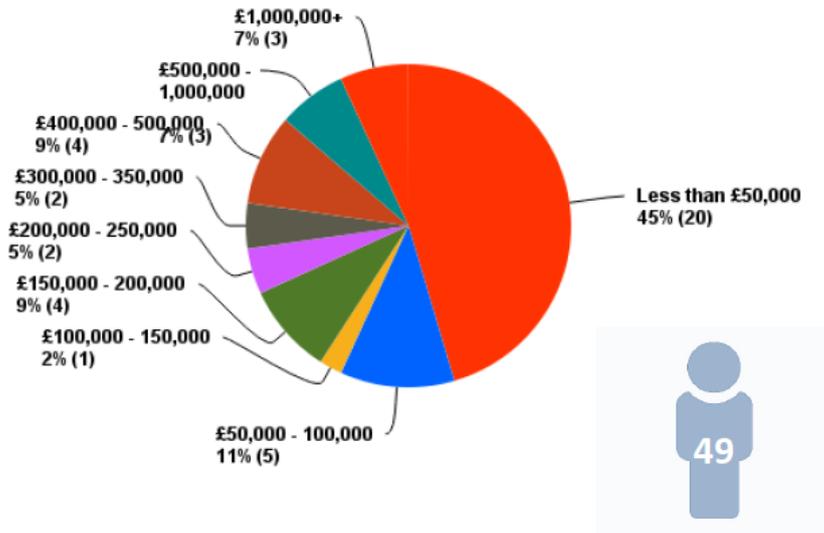
- Number of Responses to this question: 21 out of 80
- Skipped this question: 47 out of 80



Dealers

Dealers (fig. 5) show a trend towards smaller businesses, with forty six per cent of the dealers who responded stating that they had an annual turnover of less than £50,000. By contrast only seven per cent of the dealers had an annual turnover of £1 million or more. In interviews, dealers confirmed these findings. One dealer, who had been in business for more than thirty years stated that he had *“made a living from the shop”* but that it *“hasn’t made me wealthy. It is a lot of long hours looking for stock that can take months or years to sell.”* Another interviewee who had taken up dealing following his retirement said that it was not about the money he made as a dealer, but, rather his interest in the items he found and sold.

Figure 5 Dealers' turnover 2015 (based on total sales)



- 44 out of 49 dealers answered the question
- 5 out of 49 dealers skipped this question

Sales of ivory and its value to the trade

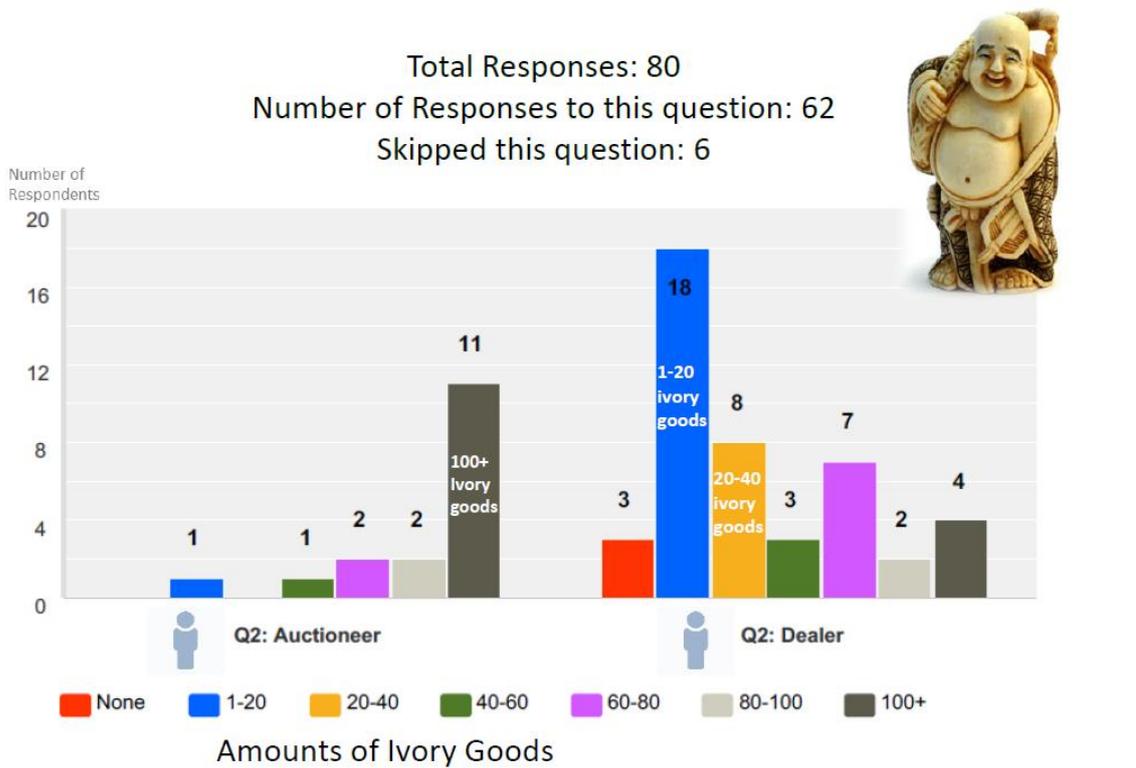
i. Quantities of ivory being sold

Respondents were asked to disclose how many ivory items they sold per year by reference to six groupings: none, 1-20 items, 20-40 items, 40-60 items, 60-80 items, 80-100 items and more than 100 items (fig. 6).

Auctioneers

Seventeen auctioneers answered this question, with all of them reporting selling ivory. Eleven auctioneers (65%) were selling in excess of one hundred pieces of ivory a year. This ranged from one hundred and twenty items per year, (from an auctioneer based in the East of England) to “thousands” (an auctioneer in Yorkshire).

Figure 6 Amount of ivory items being sold by the U.K. antiques trade per year



Antique Dealers

In contrast to the auctioneers, the forty five respondent dealers were selling lower quantities of ivory items. Indeed, only four (9%) reported selling more than one hundred ivory items a year, with eighteen (41%) selling between one and twenty pieces of ivory a year.

ii. Percentage of ivory sales to business turn-over

The respondents (both dealers and auctioneers as a single group) were then asked by way of an open-ended question to state, in percentage terms, how much of their turnover was attributable to the sale of ivory goods.

- 26 (44%) respondents answered that they could attribute less than 10% of their total sales in the preceding year to the sale of ivory items.
- 8 (14%) responded that between 10% and 20% of their total sales were attributable to ivory items.
- 14 (24%) respondents stated that 20-40% of their total sales were attributable to sales of ivory items, and nine (16%) stated that between 50% and 75% of their annual sales could be attributed to ivory items.
- Only 1 (2%) respondent stated that 75-100% of their annual turnover was directly attributable to the sale of ivory items.

Out of 59 answers coming from auctioneers and dealers



The key message learnt from this question, is that most respondents (almost half) admitted that less than 10% of their annual turnover could be attributable to the sales of ivory. This is important because it suggests that many businesses are not dependent on the ivory market.

Types of ivory being sold and sale platforms

i. Types of ivory being sold

The survey examined the types or categories of ivory items being sold by the British antiques trade. The categories were chosen following advice from the trade associations as to the most traded ivory objects, and comprised: (1) Jewellery, (2) Silver with ivory elements, (3) small items (e.g. netsuke), (4) medium sized items (e.g. okimono, puzzle balls), (5) large items (e.g. carved tusks), (6) musical instruments, (7) furniture (e.g. inlaid table) and (8) portrait miniatures. Of the total survey population of eighty respondents, thirty nine (49%) respondents gave information regarding the types of ivory items they sold (fig. 7). Respondents were asked to state all of the types of items they sold and the approximate amounts of those items.

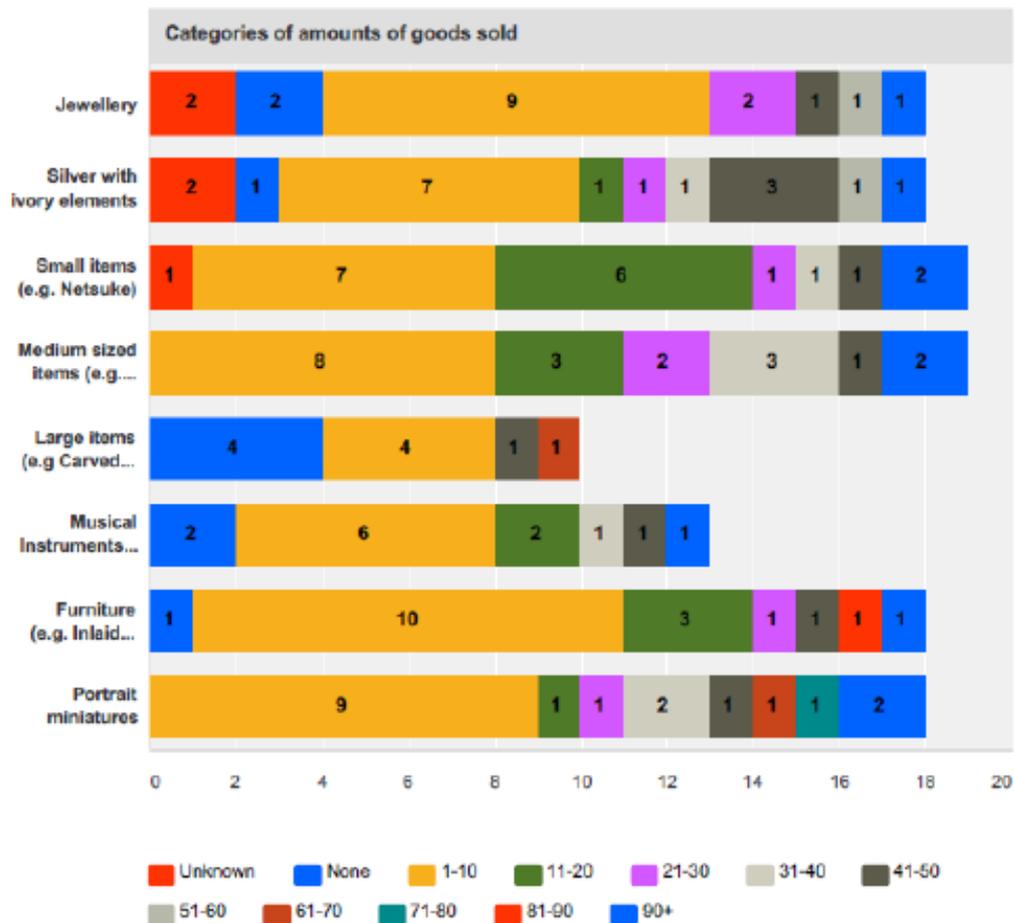
Figure 7 - Sale of ivory goods

Q13 How many of the following goods, either containing or made entirely from ivory, did you sell in 2015?

Total Responses: 80

Number of Responses to this question: 39

Skipped this question: 41



Thirty nine dealers and auctioneers responded to this question and the results show a clear pattern of antiques traders selling up to ten items in each of the categories. Very few respondents reported selling more than one hundred items in any category.

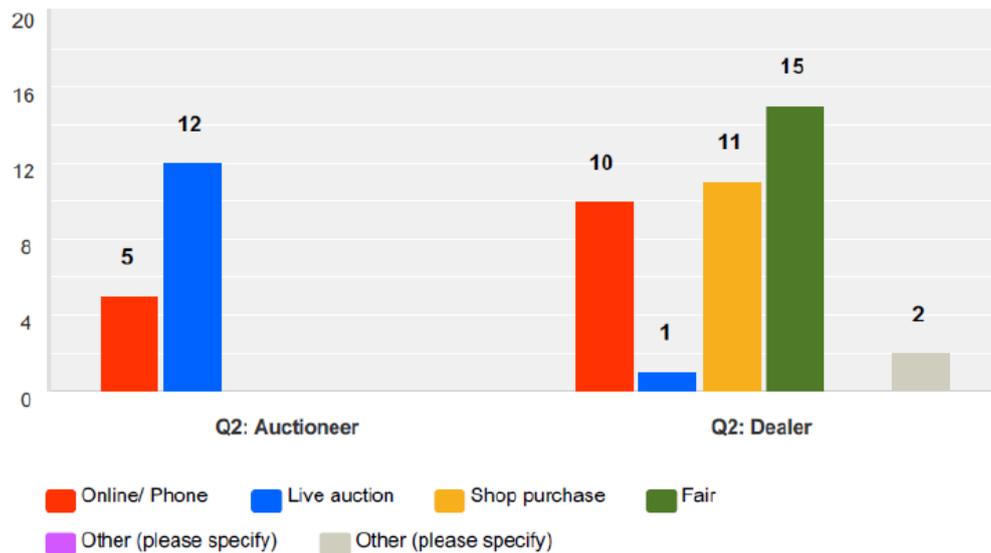
The responses to this question suggest that the British antiques trade is dealing in relatively small amounts of ivory (1-10 pieces) across the stated categories over the course of a year but that for members of the trade their stock items may be varied and not limited to one type of ivory artefact.

ii. Sale platforms

Figure 8 - Sales Platforms

Q12 Which of the methods listed below did you primarily use to sell ivory goods in 2015?(Please select only one of the following options)

Total Responses: 80
 Number of Responses to this question: 43
 Skipped this question: 25



Given the varied nature of the antiques trade it is of no surprise that sales take place across a range of platforms with most dealers and auctioneers utilising multiple sales methods. For the purposes of this survey, respondents were asked to identify their primary sales platform (fig. 8).

Sales by dealers in the antiques trade have traditionally included a number of venues and platforms (Coombs, 2005). Of the thirty seven dealers who responded to this question fifteen (52%) stated that selling at fairs was their primary platform. Eleven (38%) sold from a shop and 10 (34%) used online or telephone sales. One dealer stated they sold via live auction.

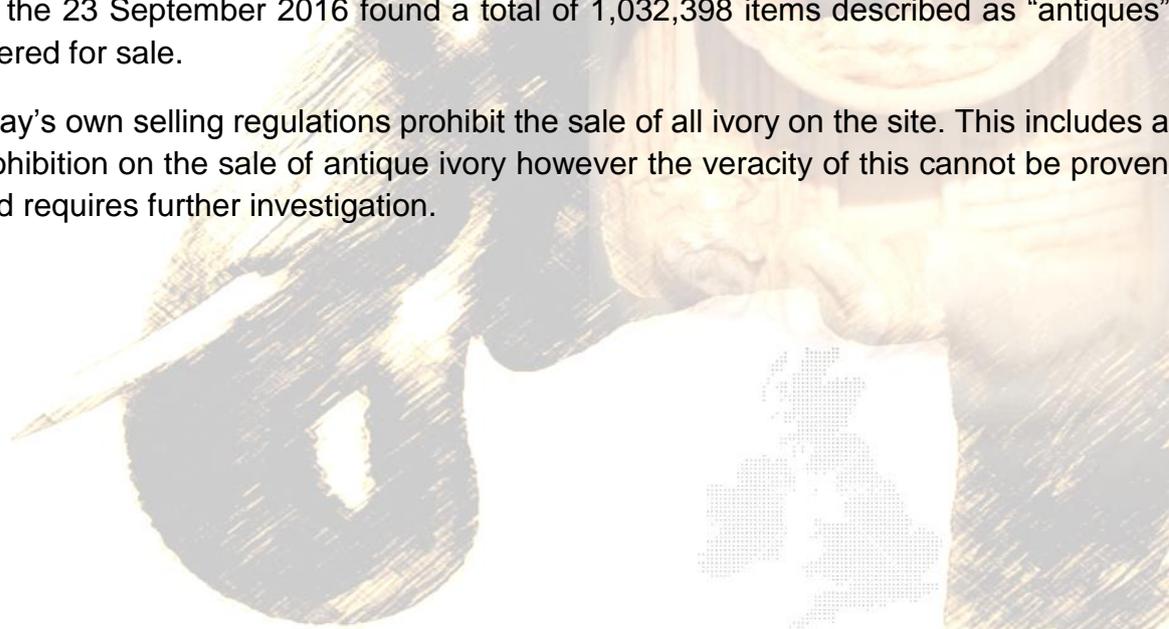
Hundreds of antiques fairs are held across the UK every year, ranging from the weekly small fairs held in church halls, to large and prestigious specialist fairs. Fairs appeal as a sales platform to both small and larger dealers, and are popular with buyers who

can find a myriad of antiques and collectables for sale in one place. This finding corroborates those of the TRAFFIC report of August 2016 which found ivory for sale in all of the London fairs its visited (TRAFFIC, 2016).

Seventeen of the auctioneers responded to this question and all used a live auction as their primary selling platform. Five auctioneers (42%) also used telephone and online sales. This corroborates with the findings of Lidington (2012) which found some auction houses (particularly the larger ones) were well set up and accustomed to conducting a physical auction in one location, while also selling via an online platform.

The question of sales platforms was investigated further in the one to one interviews. Dealer interviewees echoed the online survey responses and reported using a variety of online sale techniques including using their own business's website as a sale platform. In addition, interviewees also reported using ebay and similar online auction sites as a sale platform. The growth of such sites has had an impact on how antiques generally are sold by British dealers. Although an in depth analysis of online auction sites fell outside the remit of this report, a brief review of items sold on ebay UK made on the 23 September 2016 found a total of 1,032,398 items described as "antiques" offered for sale.

Ebay's own selling regulations prohibit the sale of all ivory on the site. This includes a prohibition on the sale of antique ivory however the veracity of this cannot be proven and requires further investigation.



iii. The cultural origin of ivory sold in the U.K.

Forty nine per cent of respondents answered this question (fig. 9). Analysis of responses found that 78% of the ivory being sold by the respondents was crafted in Europe.

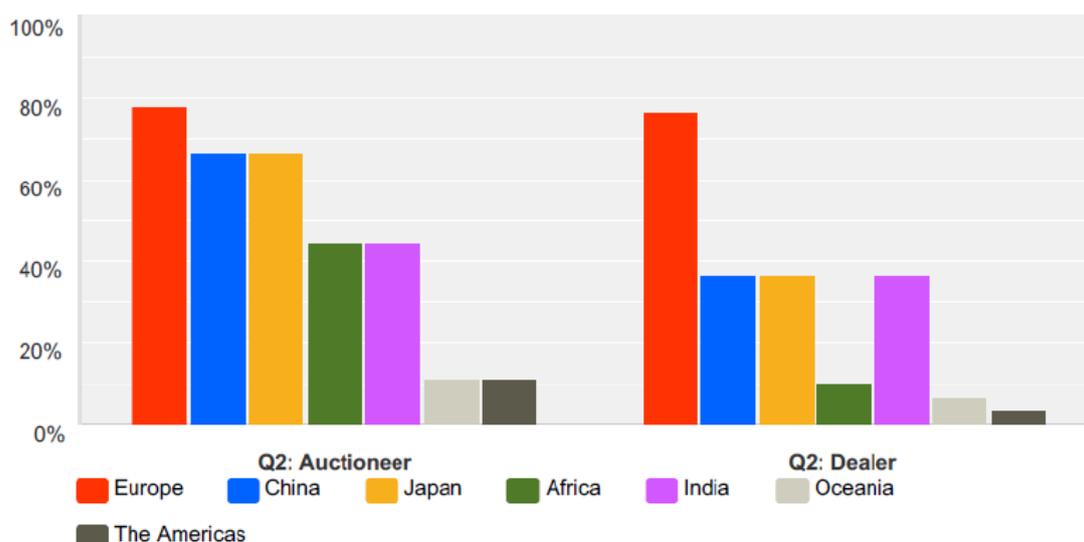
Figure 9 Cultural origin of ivory sold in the U.K.

Q14 Where were the ivory goods that you offer for sale created? (i.e. what is the cultural origin?)(Please select as many options as applicable)

Total Responses: 80

Number of Responses to this question: 39

Skipped this question: 41



The data shows that auctioneers are selling ivory items across all areas of cultural origin, but that most sales are attributable to the sale of European carved ivory. This should not be a surprise given that Europe became a centre of ivory carving excellence as long ago as the Middle Ages, and areas such as Dieppe and Erbach established themselves from the 18th century as important carving areas (Encarta, 1997).

Auctioneers also reported selling items that had been carved in China and Japan (67% of auctioneers stated they sold ivory from both of these areas), and selling smaller amounts of ivory that had been carved in India (44%), Africa (44%) and Oceania (11%).

Dealers

Analysis of the data provided by dealers showed that most of the ivory they sell had been carved in Europe (77%). The dealers also reported that they were selling a significant amount of ivory (38%) carved in India. This accords with the growing interest in Indian antiques generally which has seen the market for Indian and Anglo-Indian antiques rise (Antiques Trade Gazette, 2001).

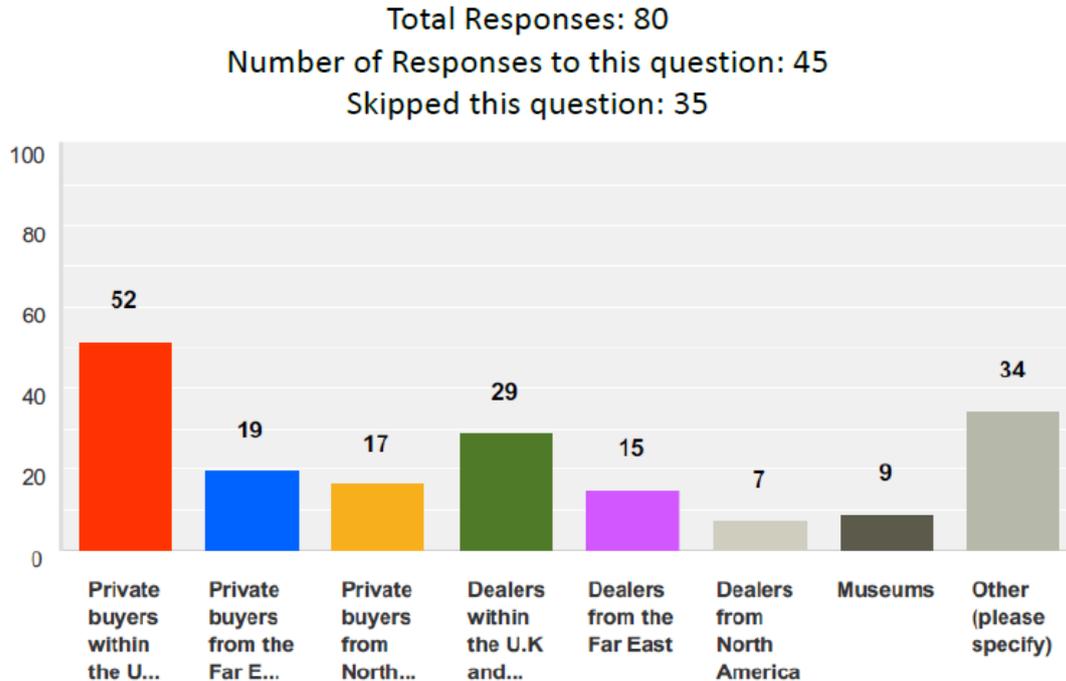
One to one interviews found that the majority of interviewees stock was antique (in the main 19th century) worked ivory which had been carved and crafted in Europe. Other historic centres of carving excellence, including China and Japan were also well represented in the interviews. One interviewee, a specialist dealer in Japanese netsuke, described how he could link an item to a province or indeed an individual carver based on his knowledge and experience of handling thousands of netsuke over the course of his career.

iv. Buyers of ivory

The survey sought to analyse and understand the markets to which the British antiques trade are selling their ivory stock (Fig. 10). There have been suggestions that ivory in British antiques shops, auction rooms and fairs is being sent to China to satiate Chinese demand for ivory. Conservation groups including the Environmental Investigation Agency, The Born Free Foundation, WildAid and the Zoological Society of London argue that legal ivory markets (including the UK) provide cover for the illegal trade, and that “most ivory is shipped to the US and China” (Vidal, 2016). However, the results show that, for the forty five respondents to this question, the largest market (52%) was private buyers within the U.K.

Figure 10 Buyers of ivory sold in the U.K.

Q11 In percentage terms, what proportion of the buyers listed below did you sell ivory goods to in 2015?



Although it is not possible for dealers and auctioneers to confirm what subsequently happens to items they have sold, interviewees reported that some ivory items are of limited or no interest to Far Eastern buyers. A good example of this would be portrait miniatures, as there is no tradition of creating or collecting these items in the Far East while the slither of ivory (so thin that it is translucent) used is too thin to be re-carved. One interviewee, a dealer specialising in portrait miniatures, stated that she had never sold one to a Far Eastern buyer and that, following the changes to the US legislation her buyers are “*primarily European now, particularly British.*” Another interviewee, a seller of antique pianos reported that prior to the US legislative changes American buyers had been a significant proportion of his market. Since the implementation of President Obama’s Executive Order he has seen his American buyers fall away and he is now selling “*almost exclusively*” to U.K. and European buyers.

However, one interviewee reported that he sold to a worldwide market and that in the ten days before the interview he had sold ivory items to buyers in Canada, Germany, Russia and Spain. He also reported that for him, as a dealer of netsuke, his American buyers who had previously purchased ivory items were now buying netsuke carved from other material (such as wood or bone).

A. Understanding where dealers and auctioneers source items for sale

A clear trend emerges (fig. 11), in that all forty two respondents to this question reported buying from auctions. It is also clear that the trade are sourcing items from house clearances and private sellers, both of whom may have considerably less knowledge both as to the legislation and also as to the provenance of the item. In such circumstances, a greater reliance on self-knowledge and understanding on the part of the appraiser will be required. This fact was evidenced in the case that came to court in October 2014 which saw Chiswick Auction Rooms charged with the sale of a post 1947 ivory train of elephants (R v Chiswick Auction Rooms (William Rouse), 2014). The auction house's senior valuer appraised it, and accepted it for sale on the basis that it was a pre-1947 worked piece. The item was sold at auction to a dealer on the Portobello Road. Officers from the Metropolitan Police Force's Arts and Antiquities Unit picked out the item during a regular sweep of the market and subsequently charged the auction house. Following forensic testing the item was proven to have come from an elephant which had died in the 1960s and the auction house was fined £3200 for breaches of the COTES regulations.

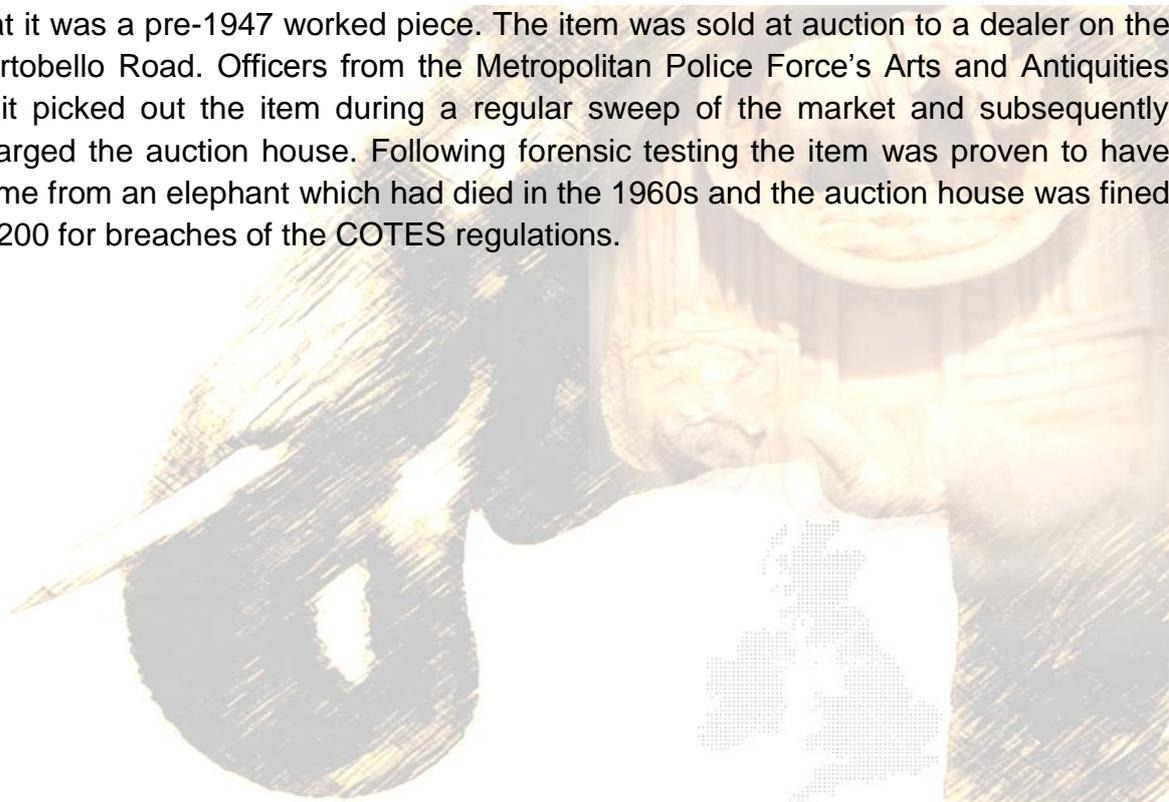
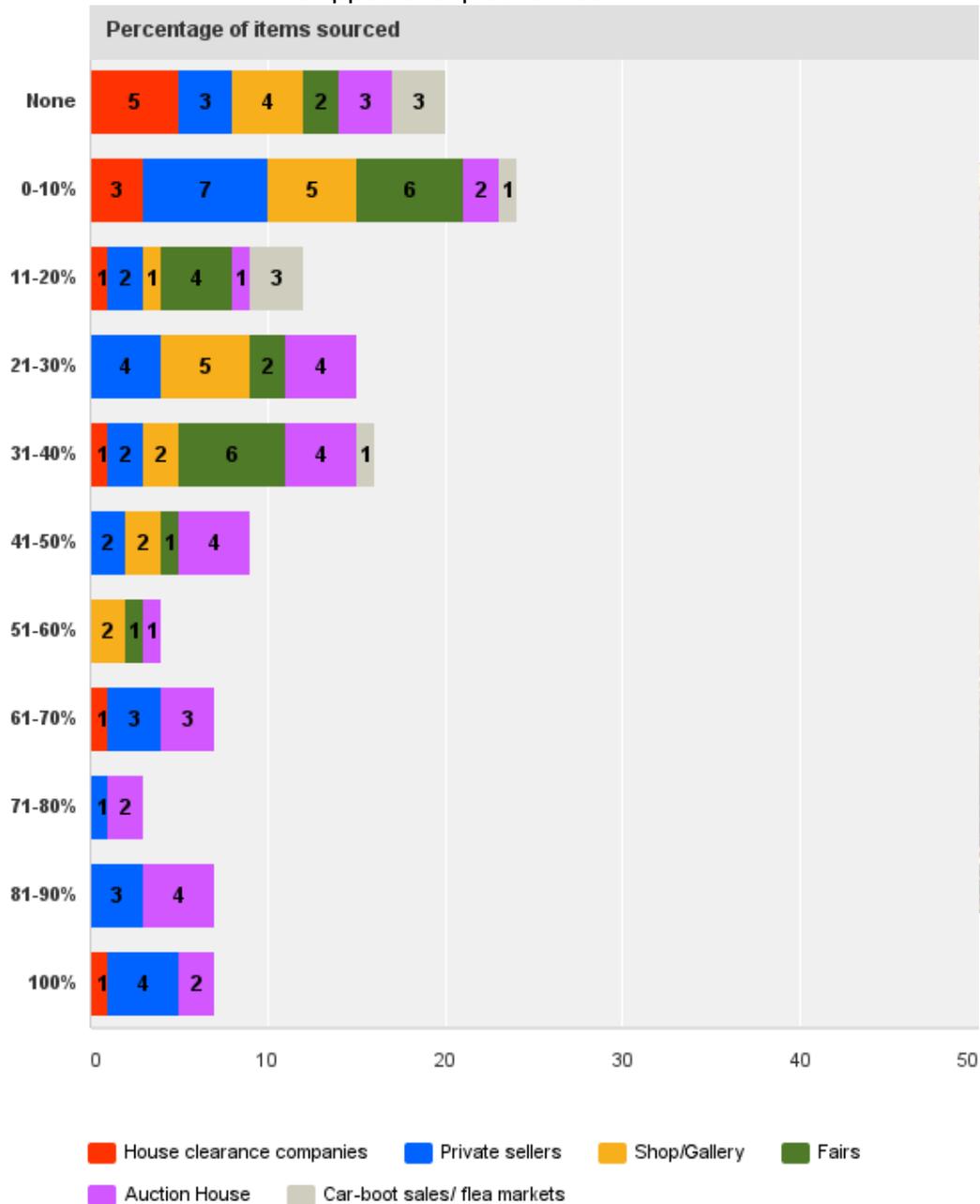


Figure 11 Sources of ivory goods in the U.K.

Q15 Of the ivory goods you sold in 2015, approximately what percentage were sourced from:

Total Responses: 80
 Number of Responses to this question: 42
 Skipped this question: 38



B. Understanding of CITES legislation

Respondents were asked to give details as to how they kept up to date with the laws and regulations relating to the sale of ivory. Respondents were offered several options and could select as many as applied to them (fig. 12).

Twenty six dealers (81%) said they relied on the trade press, in contrast to only eleven (34%) getting information from their trade association. This trend was not repeated for auctioneers however, the survey results showing that this group relied equally on the trade press, their trade association and their own research for updates (six respondents for each).

DEFRA seeks to provide guidance to the trade via their website but only eight dealers (25%) and four auctioneers (44%) said they relied on DEFRA for CITES guidance and updates. This was further explored in the one to one interviews where DEFRA's website was described as being "confusing" and "unhelpful".

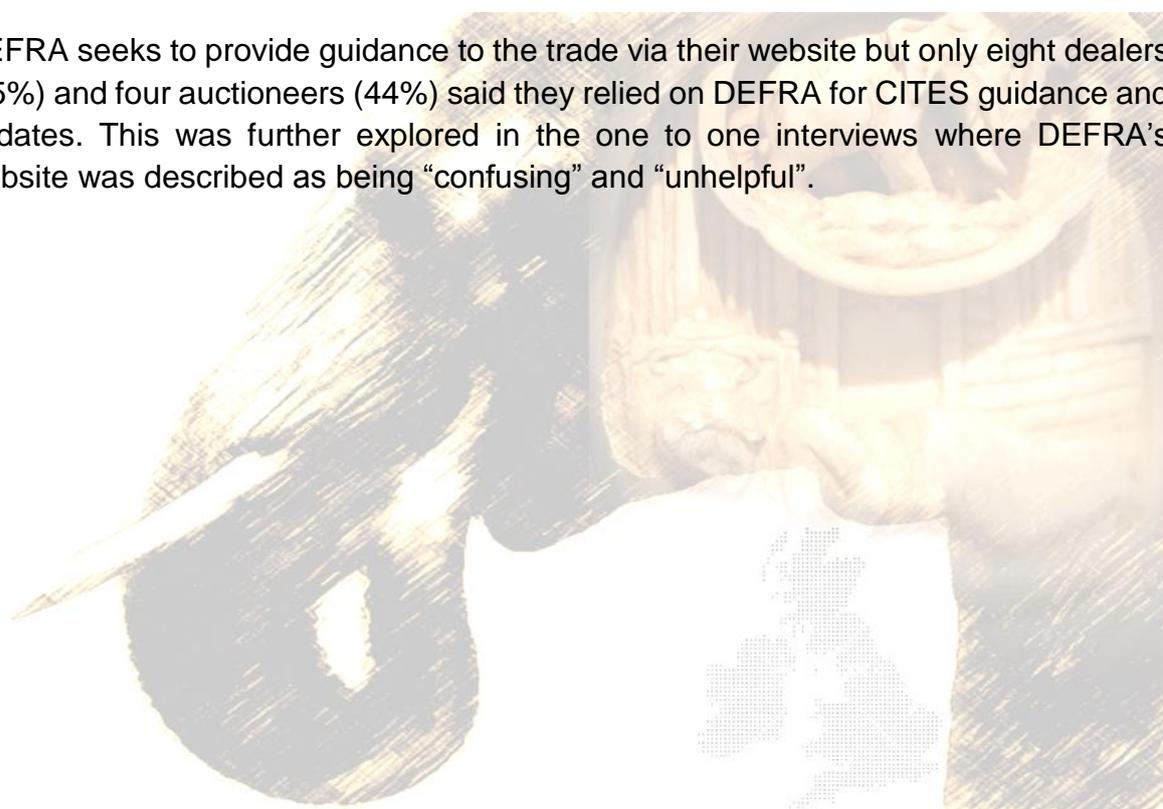
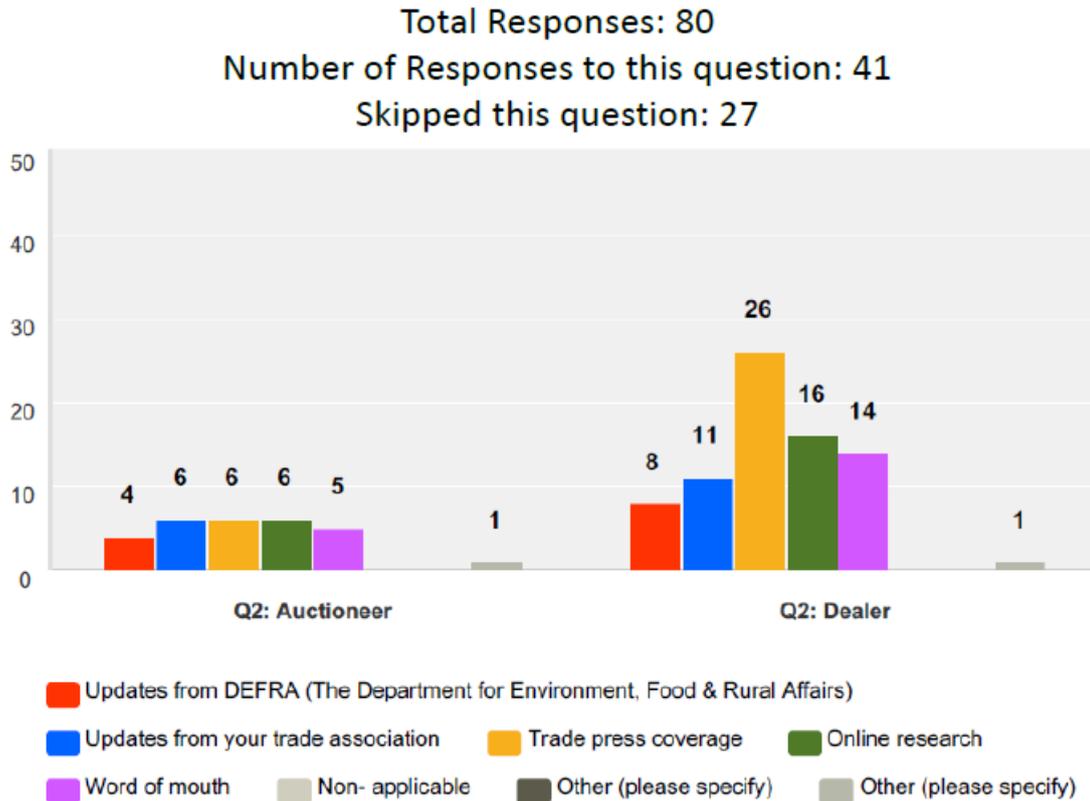


Figure 12 Dissemination of CITES regulations and information

Q16 How do you keep up to date with CITES related regulations?(Please select one or more of the options provided below)



An interesting result was that (for both dealers and auctioneers) receiving CITES news and guidance by word of mouth was significant. Five auctioneers (56%) and fourteen dealers (44%) said they received CITES information this way.

C. Assessment of ivory items

i. Assessing ivory for sale

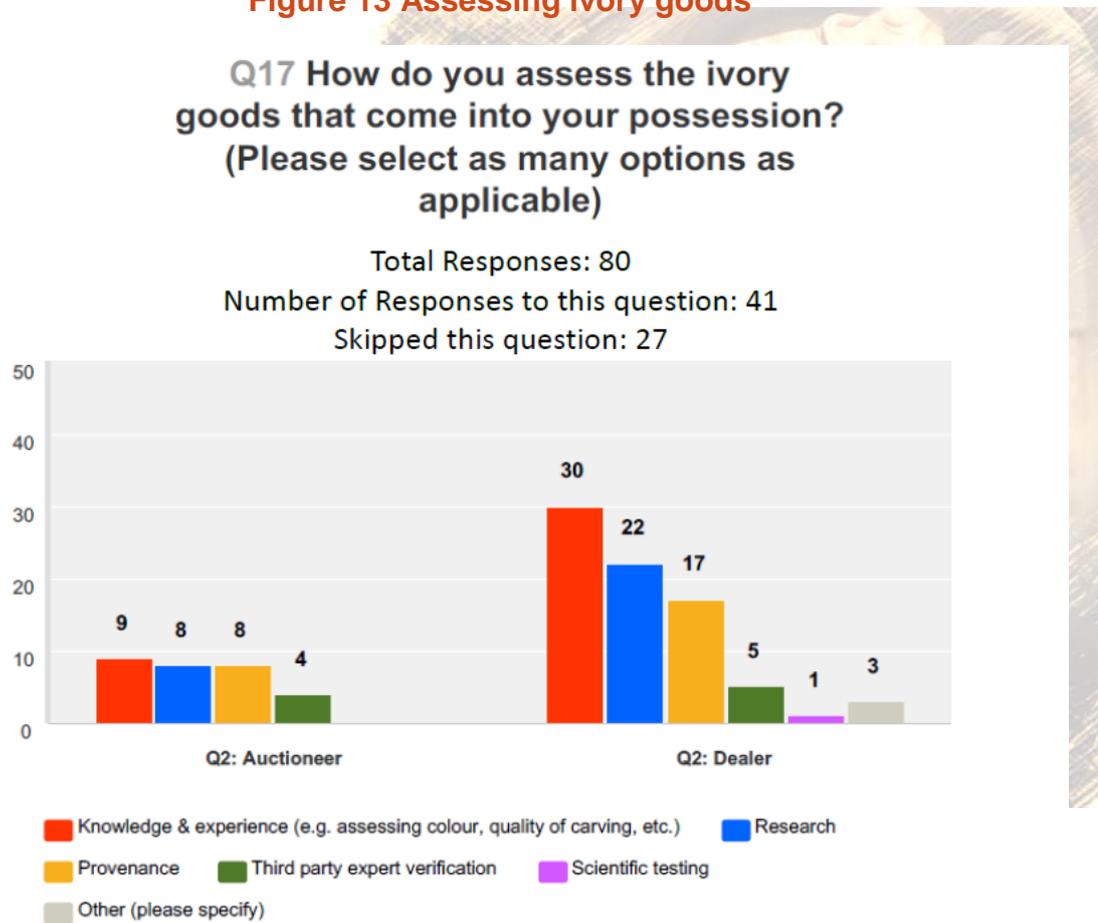
How the antiques trade assess the ivory items they offer for sale has been under increasing scrutiny. As the regulations currently stand, very little proof is required by a dealer when they assert the date of an item. However, in September 2016, DEFRA announced that it would be tightening the regulations to require that there must be documentary proof as to the age of an ivory artefact being offered for sale. As yet, it is not known when the new rule will come into effect or what “documentary proof” will

be acceptable. What is clear however is that dealers' and auctioneers' procedures prior to the sale of ivory will be further scrutinised.

The survey examined the type and extent of the current strategies undertaken by a dealer or auctioneer when assessing an ivory item for sale (fig. 13). Firstly by asking respondents to choose from a list of potential assessment techniques (the techniques were established with the assistance of BADA and LAPADA) and secondly by asking an open-ended question as to the circumstances in which they had “turned away” items brought to them for sale.

Forty one respondents answered this question. Nine of these were auctioneers and thirty two were dealers.

Figure 13 Assessing ivory goods



Auctioneers

Every auctioneer who responded to this question stated that they used their “knowledge and experience” in assessing ivory that came to them for sale. One to one interviews with auctioneers confirmed this, with interviewees stating that they relied heavily on their knowledge built up over many years of handling ivory items when determining not only age but also origin of carving. Whilst interviewees discussed assessing the quality of the carving of an item and its colour, others spoke of the procedure in an almost mythical way and used phrases like “I just know it” or “you

know it when you see it". This intuitive knowledge, developed over many years is difficult to quantify and to legislate for.

Auctioneers also reported using in equal measure independent research into an item and the provenance with which it came (eight auctioneers (89%) used both of these methods in addition to their own knowledge and experience). Auctioneers reported using, to a lesser extent (four) third party expert verification to satisfy themselves that an item was legal to sell.

Dealers

Twenty nine of the thirty two dealers (93%) who responded to this question stated that they relied on their knowledge and experience in assessing ivory for sale. In addition to this, twenty two (69%) dealers said they used independent research, seventeen (53%) relied on the provenance of an item, and five (16%) on third party expert evaluation.

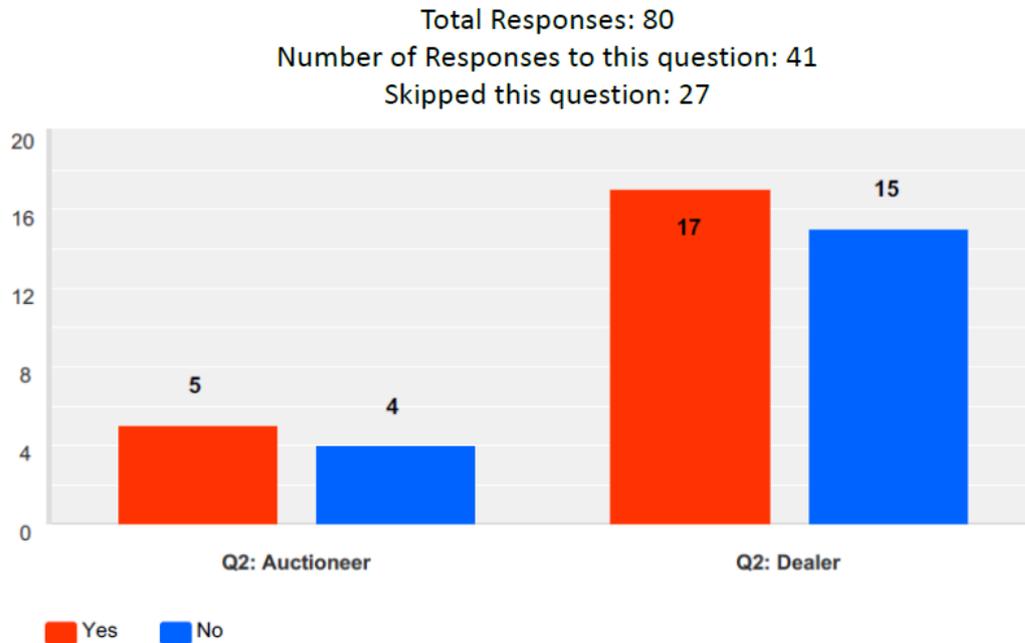
None of the respondents reported using scientific testing as a means of assessing the age of an ivory object. Whilst the age assessment of ivory using Carbon 14 testing is considered reliable (Schmied et al, 2016) it is not widely used by the antiques trade, however in the two cases that have come to court since 2014 involving members of the antiques trade being charged with offering for sale illegal pre-1947 ivory, the scientific dating of items has played a part. In R v Chiswick Auctions (William Rouse) 2014, the prosecution undertook the cost of testing which subsequently led to the successful prosecution of the auction house. In R v Sara Wilkinson 2014, the judge stated that asking the defendant to prove the age of the ivory statue in question by use of expensive scientific testing was a "bridge too far" (Antiques Trade Gazette, 2014).

ii. Items "turned away" or not purchased

The survey considered whether dealers had chosen not to purchase or take in for sale items due to concerns over age and legality. This was accomplished by inviting respondents to give a simple yes/no response to the question "Did you decide not to purchase any ivory goods in 2015 because you believed they were not worked before 1947?" This was followed by a question asking how many items a respondent had turned away and finally by an open question, which asked them to provide some brief reasons explaining why they had turned away ivory items. Forty one respondents answered this question (fig. 14).

Figure 14 Decision made to sell or turn away ivory

Q18 Did you decide not to purchase any ivory goods in 2015 because you believed that they were not worked before 1947?



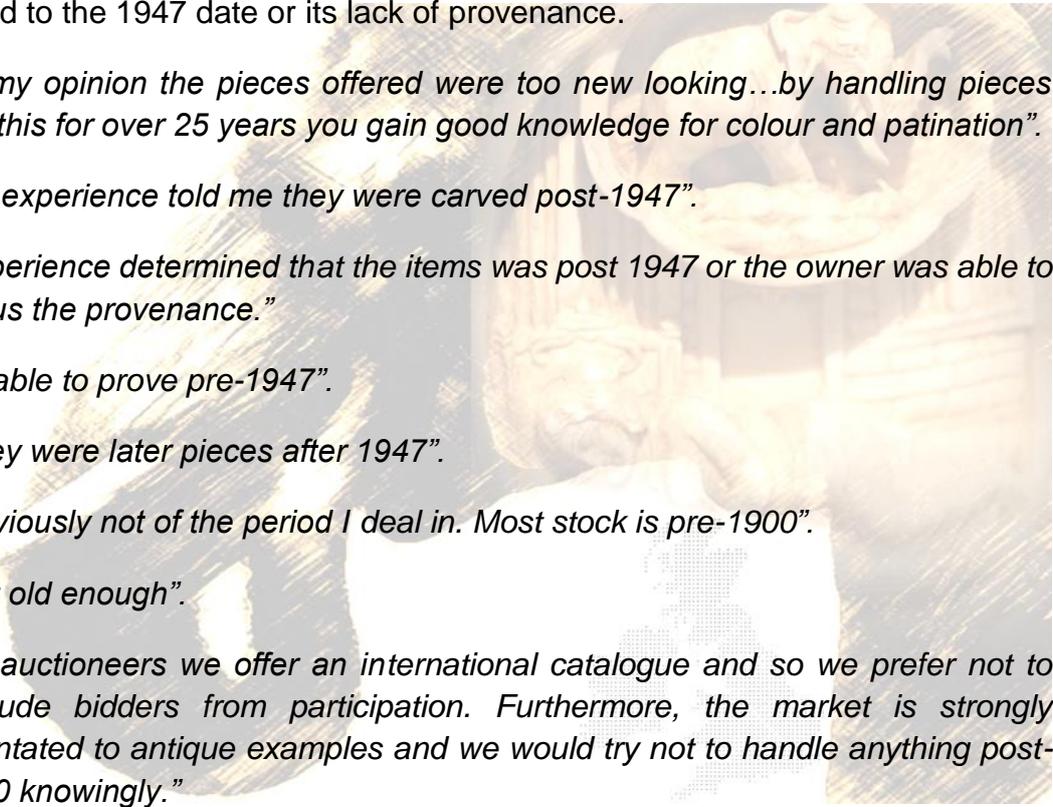
Auctioneers and dealers both took a similar approach to their purchase of ivory items. Five (56%) of the auctioneers who answered this question had decided against taking in items because they were concerned about their legality to sell on. The comparable figure for dealers was seventeen (53%). Respondents to the survey showed a clear understanding of the law as it affects the sale of ivory in the UK. Many of the respondents spoke of items being “illegal” or “post 1947”. It was also clear from the responses that, following the recent cases which have seen auction houses fined for selling illegal post-1947 ivory or unworked ivory, others wished to avoid being caught out. This is exemplified by one survey respondent who said that he *“didn’t want what happened to Chiswick auctions to happen to us, for only a small amount of commission.”* Another respondent, who clearly wished to show he not only understood the regulations but the wider context of the debate stated that: *“I didn’t believe them to date from pre-1947. I have no interest in modern ivory; am eager to prevent poaching of ivory; wish to protect living elephants and indeed all endangered species and only appreciate beautiful and culturally important objects from a bygone time when people thought differently. Indeed, it is more that some of the objects I love happen to be made of ivory. I don’t think any proper ‘antique person’ covets an object purely because it is made from a piece of an animal!”*

One respondent also admitted turning away ivory items not because of concerns regarding legality but because they were *“concerned about the current debate”*. This

was explored further in interviews in which an interviewee said *“everybody’s very, very nervous...everybody’s scared to buy because they are worried they are going to have something that is commercially worthless. They are thinking about inheritance, they are thinking about their children...there are all sorts of connotations.”*

If it is the case that these objects are losing their appeal to U.K. buyers because of the risk that it may in the (near) future be impossible to resell, then this is an interesting development in the debate regarding the closing of the UK’s legal antiques ivory market. It becomes clear that fears over the future legality of the trade in antique ivory could have an effect on business, if it is not already doing so.

Interviewees and respondents cited other reasons for turning away ivory items. Several respondents also made direct reference to the age of the items in question and referred to the 1947 date or its lack of provenance.

- 
- *“In my opinion the pieces offered were too new looking...by handling pieces like this for over 25 years you gain good knowledge for colour and patination”.*
 - *“My experience told me they were carved post-1947”.*
 - *“Experience determined that the items was post 1947 or the owner was able to tell us the provenance.”*
 - *“Unable to prove pre-1947”.*
 - *“They were later pieces after 1947”.*
 - *“Obviously not of the period I deal in. Most stock is pre-1900”.*
 - *“Not old enough”.*
 - *“As auctioneers we offer an international catalogue and so we prefer not to exclude bidders from participation. Furthermore, the market is strongly orientated to antique examples and we would try not to handle anything post-1900 knowingly.”*
 - *“Unsure whether they were old enough to be sold legally”.*

The CITES Convention came into force in 1975, establishing the 1947 cut-off date. Interviewees reported seeing items, particularly which they believed dated from the late 1940s through to the 1960s – items which had been legal to acquire at the time and subsequently become illegal to sell. Mark Dodgson, the Secretary General of BADA has estimated that there are more than two million items in UK homes made either of ivory or with an ivory component, that some of which will fall within the 1940-1960 time frame.

One respondent referred to a variety of reasons for turning an item away:

“Not authentic – modern reproductions. Obvious recent repaired. Lack of provenance.”

Finally, aesthetics were a consideration:

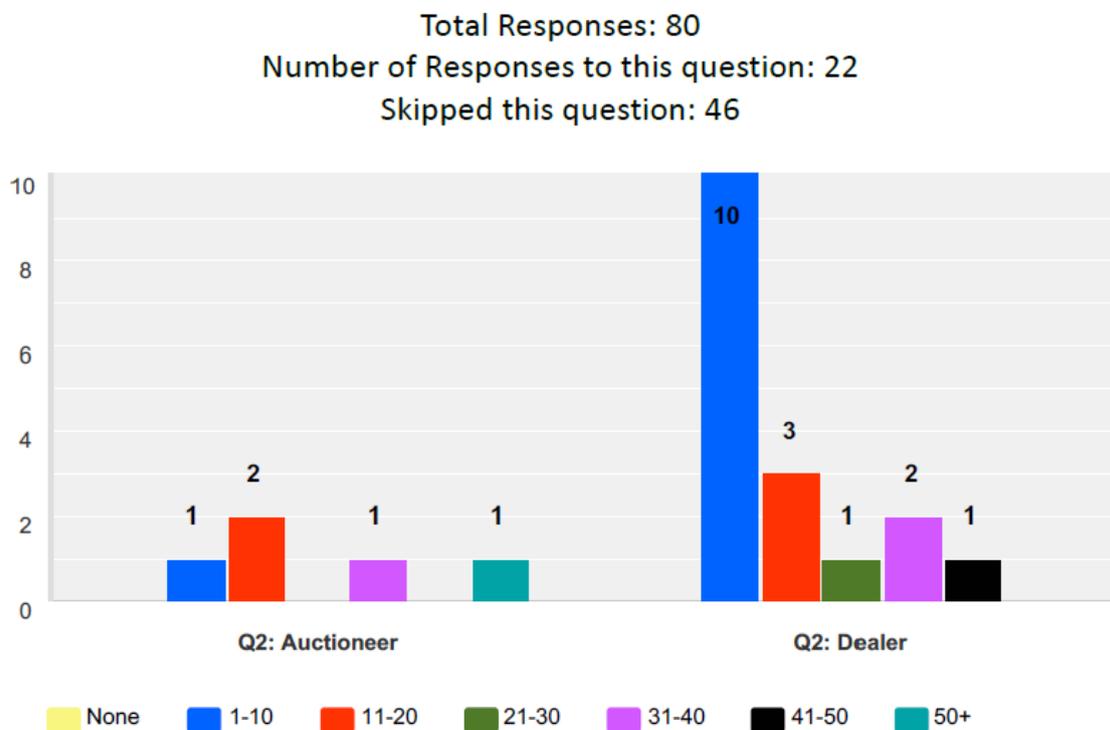
“Because they were crude, ugly, un-commercial and illegal to sell.”

iii. Number of ivory goods “turned away”

The survey investigated how much ivory was being turned away (fig. 15) and a total of twenty two dealers and auctioneers answered this question.

Figure 15 No. of ivory goods "turned away" in 2015

Q19 Please state how many ivory goods you have turned away over the past year (in 2015):



Dealers

Ten of the seventeen dealers who responded (59%) stated that they sold between one to ten pieces of ivory a year. Only one of the dealers (6%) had sold more than forty ivory artefacts in the year.

Auctioneers

Five auctioneers responded to this question. Of these five, there was one positive response in each of the categories of one to ten items, thirty one to forty items and

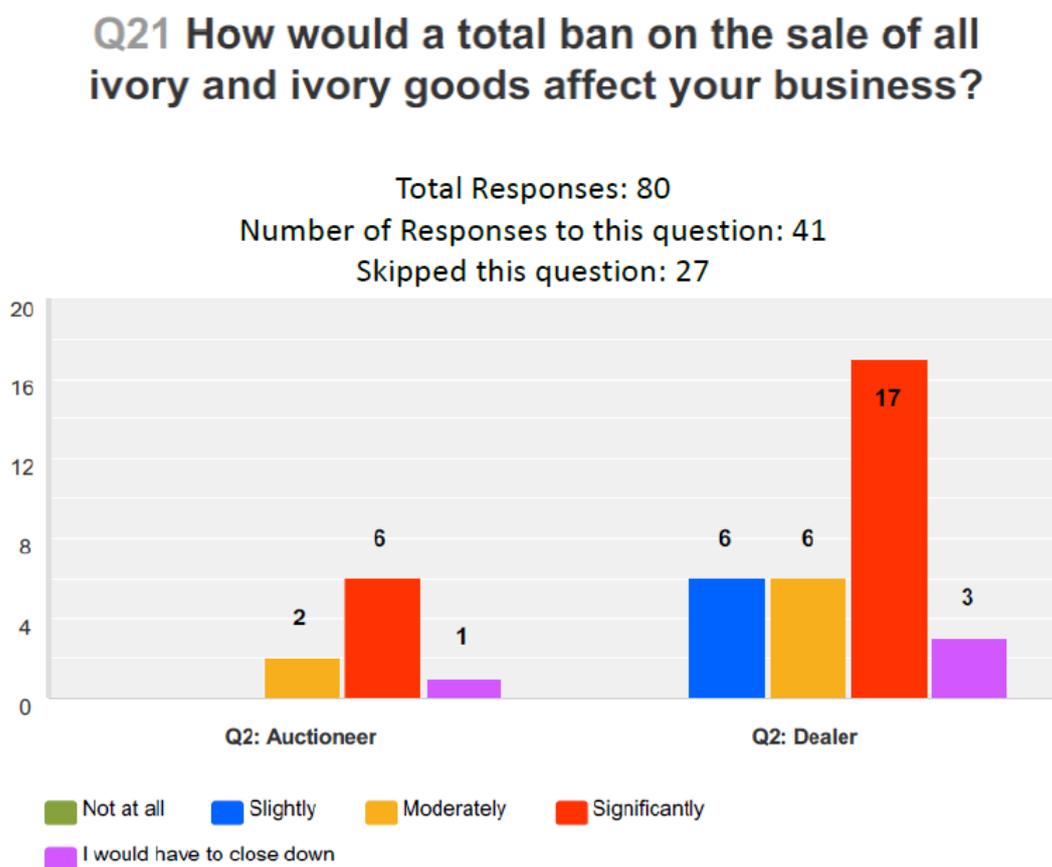
more than fifty items (20% in each case). Two auctioneers (40%) reported that they had turned away between 11-20 ivory items.

Although the respondent figures are small, auctioneers appear more likely to turn away more ivory than dealers. There may be a number of reasons for this difference. One of these is the way the two branches of the trade operate with regards to appraisals. Some auction houses offer well-advertised, regular specific valuation days to the public and, as a result of these, may have many items shown to them for sale. Dealers do not offer such a service and, as a result, dealers may see less ivory.

Effect of a total ban

Members of the trade have been vocal in the national and trade press about the impact a total ban would have on them. Max Rutherford, a well known and respected dealer of netsuke, stated that a ban would put him out of business (Macquisten, 2015) and his concerns have been reiterated by the antiques trade associations.

Figure 16 Effect of a ban on the sale of antique ivory in the U.K.



Auctioneers

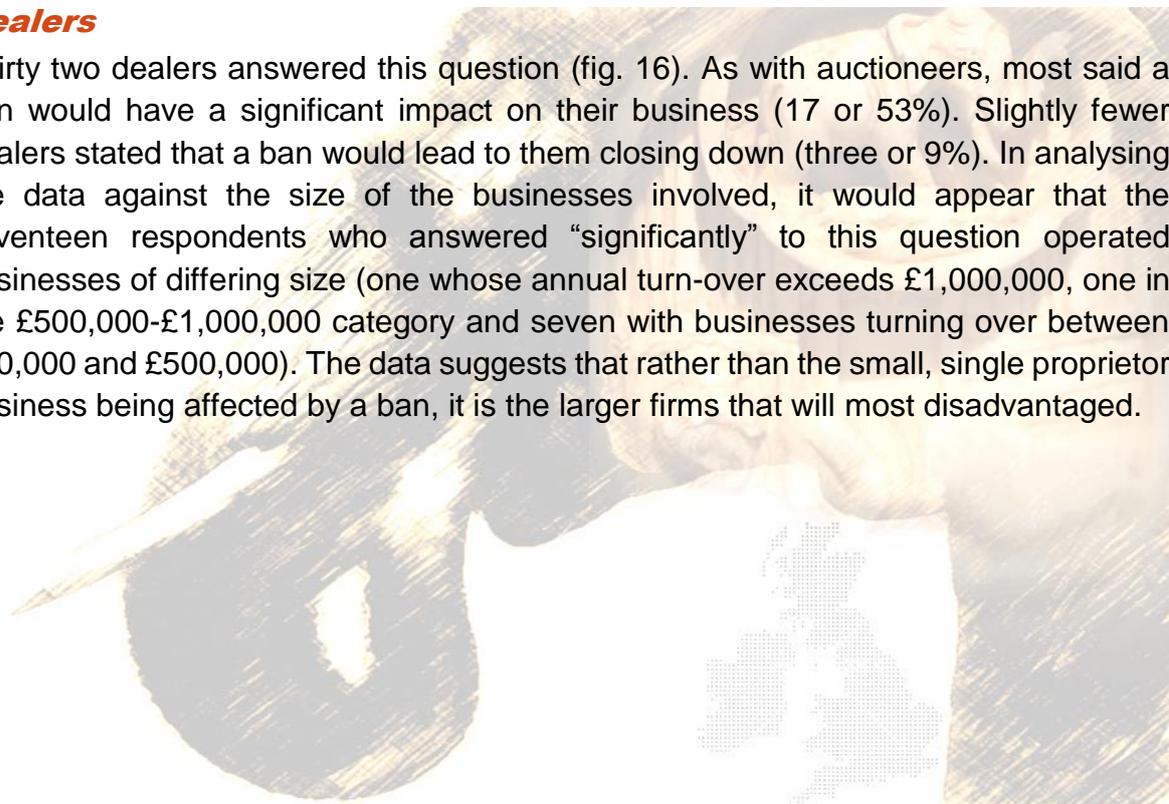
Nine auctioneers answered this question (fig. 16). Whilst only 1 auctioneer said a ban would lead to them closing down, six said that it would have a significant impact on

them. The respondent who stated that their business would have to close down also said that they sold more than one hundred ivory items per year. Four said that they were selling more than one hundred ivory items a year, and one between sixty and eighty. In contrast, the other auctioneers who stated a ban would have a significant impact on their businesses were only selling between twenty and forty pieces of ivory a year (perhaps indicating that the value of these items is high.)

The data regarding the impact of a ban was also cross referenced with the size of the businesses responding to the question. The auctioneer who responded that their business would close down had a business turning over more than £1,000,000 a year and, of the eight who responded that a ban would have a significant impact on their business, four of these businesses had a turnover in excess of £1,000,000.

Dealers

Thirty two dealers answered this question (fig. 16). As with auctioneers, most said a ban would have a significant impact on their business (17 or 53%). Slightly fewer dealers stated that a ban would lead to them closing down (three or 9%). In analysing the data against the size of the businesses involved, it would appear that the seventeen respondents who answered “significantly” to this question operated businesses of differing size (one whose annual turn-over exceeds £1,000,000, one in the £500,000-£1,000,000 category and seven with businesses turning over between £50,000 and £500,000). The data suggests that rather than the small, single proprietor business being affected by a ban, it is the larger firms that will most disadvantaged.



5.DISCUSSIONS

The aim of this report was to explore the sale of ivory within the antiques trade's in the U.K. What we have learnt from the results of this exercise is that the issue is complex and multidimensional, and a range of research techniques are required to understand the full extent of the ivory trade in the U.K.

A comparison of the sector shows the economic position of antiques dealers to be very different to that of auctioneers. Of the estimated 20,000 UK dealers, some of these will be dealing part time, perhaps to supplement another income or simply to make some money from their passion. The data suggests that rather than the small, single proprietor business being affected by a complete closure of the domestic ivory market, it is the larger firms that will most disadvantaged by a total ban. The survey results show that for almost half of respondents their businesses were not dependent upon the sale of ivory items however for thirty two of the fifty six respondents ivory sale could be considered important. One example, is the respondent reporting that his sales of ivory accounted for 75-100% of this turn-over, it is fundamental.

Not only is the antiques trade diverse in nature, encompassing the extremes of highly experienced specialist dealers and auctioneers to general house clearance firms who may be selling at car boot sales, but the trade has no overarching regulatory body to whom they are responsible and to which they can turn for advice and guidance. Of the more than 20,000 antiques dealers and auctioneers working in U.K. only around 1500 are members of a trade association. Therefore whilst membership is of potential importance when considering the role the trade associations have in developing a strategy to educate the antiques trade regarding CITES regulations it cannot be the only one. The challenge is how to engage and educate those who are not. In particular, the dilemma for the trade is how it deals with educating the thousands of small, possibly part-time, dealers. As with all trades, antique dealers and auction houses are at risk of being judged by the standards of the worst of their number (rather than the best) and so the introduction of a robust, **easily accessible** best practice guide is of key importance if the British antiques trade wish to continue to sell pre-1947 worked ivory.

Knowledge and Experience

During the project the research team met with highly specialist and knowledgeable dealers and auctioneers who had proven risk assessment strategies in place for the assessment of ivory which they followed closely. However, researchers also witnessed transactions at small fairs and car boot sales where dealers showed little or no knowledge of the item they were selling. One example of this witnessed was the car boot sale dealer who assured a potential buyer of an ivory bangle that it was antique because it had been "tested". When the buyer asked how it had been tested the dealer

said she had “put a hot pin in it”. This may have indicated the material but it would not have given any indication as to age or legality.

This study found that respondents to the survey did have a sound basic knowledge of the COTES regulations. Respondents referred to the 1947 cut-off date and to the recent cases involving members of the antiques trade. However, interviewees also stated that they found DEFRA’s guidance to be unclear and unhelpful stating that “*the explanations and terminology they use is not clear*” and that “*the guidance is flimsy*”.

The study also found almost all respondents said that they used their “knowledge and experience” to assess ivory which came into their possession. “Knowledge and experience”, the survey found was based upon an assessment of the colour of the item, the quality of its carving, etc., and interviewees used phrases like: “you know it when you see it”. The data showed that some respondents also used other techniques (for instance investigating its provenance) to supplement their professional knowledge including carrying out additional research regarding the items. However, only one fifth of the respondents had asked for a third party specialist to verify an item’s legality, and none of the respondents used scientific testing as a means of authenticating an item for sale. With scientific testing currently costing in excess of £400, this is more than the value of many items being offered for sale, and so it is not surprising that the trade are not using this method of assessment. The train of elephants sold in the Chiswick case went under the hammer at £100.

How the antiques trade view the reliability of their assessment strategies going forward is important, and it is also something that policy makers will need to consider in drafting guidelines as to what might constitute “documentary proof” as to the age of an ivory item.

Specialty Ivory Objects

The trade indicated that there are certain ivory goods which are of limited interest to the illegal trade. An example of this would be the portrait miniature which has insufficient ivory for re-working, and is of no cultural interest to the Far Eastern buyer. However, the risk remains that illegal ivory could be sold as pre-1947 ivory, and this was of concern to some of the interviewees. This fear was also evidenced by auctioneer’s Bamfords decision in January 2017 to immediately stop lotting items made entirely from ivory. The auction house is the first to introduce such a voluntary ban, although it excludes goods with an ivory component. James Lewis of Bamfords’ stated that “Certain parts of the environmental lobby believe in an outright ban – I disagree with that wholeheartedly. My issue is with solid antique ivory, such as carved tusks and large Okimono figures, which end up on shelves in Hong Kong beside modern ivory”. (Antiques Trade Gazette, 2016).

The Ivory Passport

One potential response to the issue may be the so-called “ivory passport” system which was suggested by several of the dealers interviewed for the study. Such a

passport would replace the current Article 10 certificate and remain (unlike an Article 10 certificate) with an item for ever. The item could not be sold without its accompanying passport, which would, rather like a car log, record past owners and provenance as well as detailed descriptions and photographs of the item. Interviewees suggested that this would be a more accurate and safe system than the current Article 10 certificate which, they suggested, was open to abuse as it fails to categorise and describe the item. While the cost of a passport would be higher than that of the Article 10 certificate (figures in the hundreds of pounds were mooted by interviewees) an item would only need to acquire it once.

As with scientific testing, however, while such a system may be acceptable to dealers and auctioneers selling high value ivory items, it does not deal with the thousands of low value pieces seen at fairs, car boot sales and shops and which routinely change hands for tens of pounds.

One interviewee also raised the issue of compensation for dealers and collectors of ivory in the event of a complete closure of the U.K.'s domestic ivory market. The dealer in question described this as the "nuclear option" which would see owners, dealers and collectors of ivory receiving the cash value of their item in the event of them becoming illegal to sell. Whilst this may be an acceptable proposition to parties who would suffer a financial loss as a result of a total ban it is difficult to see that it is something to which the government would wish to commit. It does however undoubtedly leave buyers of hitherto legal items at a considerable financial disadvantage. However, this type of situation is not without precedent. Following "The Public Inquiry into the Shootings at Dunblane Primary School on 13 March 1996" conducted by Lord Cullen (Cullen, 1996) the British Government instigated a ban on the public ownership of hand guns in the U.K. Following the ban, the government introduced a £150 million programme to compensate handgun owners for firearms handed in to police stations during an amnesty period that ran from July 1997 through February 1998. That being said, if BADA are correct in their estimation of there being in excess of two million ivory items in British homes, the compensation pot would need to be considerably larger than that established following the Cullen Report.

The current law in the U.K. prohibits the sale of post-1947 ivory. However, this research highlights that the law is not able to regulate on the expertise and knowledge of the seller responsible for identifying the age of the item being offered for sale. If the law cannot govern, it cannot be effectively enforced. There is no central database collating information regarding the sale of ivory in the U.K. As a result, the trade in antique ivory in the U.K. is dependent upon the seller of the item correctly and honestly assessing it to be pre-1947 worked ivory. Whilst none of the interviewees admitted to selling post 1947 ivory many of them stated that they either know of dealers or auctioneers who would sell post-1947 ivory, or that they had witnessed illegal ivory being sold in the U.K. The ivory trade in the U.K. therefore depends on goodwill rather than the proper enforcement of the law.

However, the survey also found that some of respondents stated that their businesses would be either significantly affected or would have to close down if the government implemented a total ban on the sale of pre-1947 worked ivory. Interviewees expressed genuine concerns for the future of their businesses which currently operate perfectly legally.



6. CONCLUSION

This report concludes that, given the intricacies and certainties relating to the current ivory trade in the U.K., there is a need for a significant structural change to the law governing the sale of ivory. This is required both to protect sellers of genuine antique ivory and to effectively police and enforce the regulations against sellers of post-1947 ivory items.

The British government has committed to tackling the illegal trade in wildlife. Research has also been commissioned under the Illegal Wildlife Trade (IWT) Challenge Fund and Darwin Fund (administered by DEFRA), both of which are aimed at tackling the trade at source. The Conservative Party have also in successive Manifestos, pledged to examine the closing of home markets – this being most recently mooted in Andrea Leadsom’s September 2016 announcement regarding a ban on the sale of modern ivory.

What is clear from the May 2013 implementation of the changes to the “worked item” derogation, is that all stakeholders must be party to (and fully informed of) regulatory amendments. The antique trade associations have consistently expressed their concerns about the extension of an ivory ban to affect pre-1947 worked ivory, and point to the potentially negative impact on the trade of such a ban. The difficulty for policy makers, in the event that they should endorse a legal antique trade in ivory, is the creation of workable, enforceable and effective regulations that distinguish the legal ivory trade from the illegal trade in ivory.

The policy decisions taken by DEFRA over the coming months are of vital importance. Auctioneers and dealers understandably do not want to see a ban on the sale of pre-1947 worked ivory, however their concerns must be balanced against the real and imminent threat to the future of wild elephant populations and to the fact that the current legal trade acts as a cover for the illegal one.

7. RECOMMENDATIONS

Given the complexity and diversity found in the ivory trade in the U.K. it is difficult to be categorical in providing a highly prescriptive set of recommendations to resolve the problems of governing the trade in ivory. However, the findings of this report do highlight key issues that need to be addressed, both in terms of research and policy making practices. These are set out below:

Recommendations for further research

This study highlighted the difficulties in obtaining information from the antiques trade about the nature of their practices regarding the sale of ivory. We would therefore recommend further research is conducted into the early supply chain and the volume of goods passing through the car boot sale market.

The study has shown that the sale of ivory in the U.K. extends beyond London. Therefore we recommend that further, larger scale research is conducted to investigate the extent and nature of sales of ivory across the U.K. and online.

Recommendations to the Antique Trade Organisations

The research conducted has shown that the main trade associations do not have information available to their members (via their websites) regarding the legislation and regulations governing the sale of ivory items. While it is accepted that the dealers and auctioneers who are members of a trade association are in the minority, the associations are, nevertheless, in a unique position to disseminate information and guidance to their members with regards to the laws and regulations affecting the sale of ivory.

Therefore, the antiques trade associations are encouraged to:

- Compile and make widely available to their members “best practice” guidance on the laws and regulations regarding the sale of ivory within the UK and EU. They should also compile similar guidance for their member dealers who trade outside the EU (particularly with the United States). The dealers caught in Miami earlier this year, for example, who saw their stock destroyed were all members of LAPADA and stated that they did not know about the rules regarding the importation of ivory into the U.S.
- The Trade Associations are in a position to go further than assisting in the continuing professional development of their own members and it is recommended that they also take a lead with regards to the education of the wider trade. There are a number of potential ways this could be achieved. Firstly, by the provision of a well-publicised referral service to all the trade not just members. Secondly, by offering training to members of the trade by way of a continuing professional development programme (which must include non-trade association members as well as to members). Finally, by the provision of

an easy to follow and easily accessible Best Practice Guide available to all members of the antiques trade, be they members of a trade association or not. The trade will be judged not by the dealers and auctioneers who have strict and effective policies in place, but by those who do not. It is therefore in the interests of the trade associations to raise the levels of education and awareness of the law across the spectrum, and not just to their own members.

Recommendations to DEFRA

- Following DEFRA's announcement that the regulations will shortly change and that dealers will need to provide "documentary evidence" as to the provenance of an ivory item being offered for sale, it is recommended that DEFRA, in conjunction with stakeholders, create clear and unambiguous guidance as to what "documentary evidence" will be sufficient to prove the age of an item of ivory being offered for sale. If such documentary evidence is to include scientific testing, it is recommended that steps are taken to ensure that this is provided on a cost effective basis, and that dealers and auctioneers are directed to reputable firms who can offer such a service.
- It is recommended that DEFRA should give consideration, in conjunction with the antiques trade, to the setting up, implementation and administration of a passport type style for higher value ivory items or items of cultural or artistic significance.
- It is recommended that DEFRA gives consideration to the regulatory control of the sale of lower value ivory items. Whilst it would be economically viable for dealers and auctioneers to obtain a passport for higher value items, much of the ivory sold through the antiques trade is of comparatively low value (as in the Chiswick Auction Rooms case). If a trade in antique ivory is to continue in the U.K., DEFRA need to take the lead in developing a workable system which can be put in place to deal with these items.

REFERENCES

- Antiques Trade Gazette Reported (2016) Auctioneers Bamfords introduce ban on solid ivory. Available at: <https://www.antiquestradegazette.com/news/2016/auctioneers-bamfords-introduce-ban-on-solid-ivory/> (Accessed: 25 November 2016).
- Animal and Plant Health Agency, Endangered Species: Application for Commercial Use. <https://www.gov.uk/government/publications/endangered-species-application-for-commercial-use> (Accessed: 12 February 2017)
- Annual Report of CITES Parties (2016). <https://cites.org/eng/resources/reports.php> (Accessed: 12 February 2017)
- Antique Trade Gazette. Available at: <https://www.antiquestradegazette.com/search?query=ivory%20ban&page=5> (Accessed: 23 November 2016).
- ATG Reporter, (2001), Anglo-Indian is all the Raj Available at: <https://www.antiquestradegazette.com/news/2001/anglo-indian-is-all-the-raj/> (Accessed: 24 November 2016).
- BAMF, (2014) The British Art Market Foundation, The British Art Market in 2014. Available at: <http://www.tbamf.org.uk/wp-content/uploads/2014/.../British-Art-Market-2014.pdf> (Accessed 23 November 2016).
- BBC (2016) Celebrity antiques road trip - BBC Two. Available at: <http://www.bbc.co.uk/programmes/b01mnrhk> (Accessed: 23 November 2016).
- BBC (2016) Flog it! - BBC One. Available at: <http://www.bbc.co.uk/programmes/b006mk0g> (Accessed: 23 November 2016).
- British Antique Dealers Association. <http://www.bada.org/> (Accessed: 12 February 2017)
- Brown, R. and Jones, C.G. (2011) Blood ivory: The massacre of the African elephant. United Kingdom: The History Press.
- C.R. Thhouless. H.T. Dublin, J.J. Blanc, D.P. Skinner, T.E. Daniel, R.D. Taylor, F. Maisels, H.L. Frederick and P. Bouche (2016). African Elephant Status Report 2016: an update from the African Elephant Database. Occasional Paper Series of the IUCN Species Survival Commission, No. 60 IUCN/SSC African Elephant Specialist Group. IUCN, Gland, Switzerland.
- Capon, A. (2016) Sothebys increases buyers premium. Antiques Trade Gazette, Available at: <https://www.antiquestradegazette.com/news/2016/sothebys-increases-buyers-premium/> (Accessed: 23 November 2016).
- COMM (2008) The European Union and trade in wild fauna and flora - environment - European commission. Available at: http://ec.europa.eu/environment/cites/legislation_en.htm (Accessed: 23 November 2016).
- Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1975 Available at: <https://www.cites.org/eng/app/index.php>
- Coombs, J. (2005) 'The Internet's Impact of the Antiques Trade', International Society for Landscape, Place & Material Culture, 37(2), pp. 26–41.
- Cox, C. (2017) 'Why china's ivory ban is a mammoth step towards saving the elephant. Available at: <https://theconversation.com/why-chinas-ivory-ban-is-a-mammoth-step-towards-saving-the-elephant-71186> (Accessed: 7 February 2017).
- Dos Santos, E (2015) The Lost Elephants of the Ancient World and his march to extinction.
- Endangered Species Act 1973. http://r.search.yahoo.com/_ylt=A0LEVItUP61Yw1UAIWsPxQt.:_ylu=X3oDMTByNXM5bzY5BGNvbG8DYmYxBHBvcwMzBHZ0aWQDBHNIYwNzcg--/RV=2/RE=1487777748/RO=10/RU=https%3a%2f%2fwww.fws.gov%2fendangered%2fesa-library%2fpdf%2fESAall.pdf/RK=0/RS=aRBGJszO5jJrmKXlIfXVMxjNq4- (Accessed: 12 February 2017).
- EU Council Regulation (EC) No. 33/97. http://ec.europa.eu/environment/cites/legislation_en.htm (Accessed: 12 February 2017.)

IUCN, African Elephant Status Report (2016). <https://www.iucn.org/news/poaching-behind-worst-african-elephant-losses-25-years-%E2%80%93iucn-report> .(Accessed: 12 February 2017).

Lau, W., Crook, V., Musing, L., Guan, J. and Xu, L. (2016) A rapid survey of UK ivory markets. TRAFFIC, Cambridge, UK.

Lidington, H. (2002) 'The role of the internet in removing the 'shackles of the saleroom': Anytime, anyplace, anything, anywhere', *Public Archaeology*, 2(2), pp. 67–84. doi: 10.1179/146551802793157051.

Macquisten, I. (2015) 'UK ivory ban would destroy my business'. Available at: <https://www.antiquetrade gazette.com/news/2015/uk-ivory-ban-would-destroy-my-business/> (Accessed: 25 November 2016).

Magistrates' Court Sentencing Guidelines: Sentencing for Wildlife Trade and Conservation Offences, November 2002. <https://www.sentencingcouncil.org.uk/the-magistrates-court-sentencing-guidelines/> (Accessed: 12 February 2017).

Microsoft® Encarta® Online Encyclopedia 2000 (1997) Ivory carving. Available at: <http://autocww2.colorado.edu/~toldy2/E64ContentFiles/DecorativeArts/IvoryCarving.htm> (Accessed: 24 November 2016).

National Association of Valuers and Auctioneers. <http://www.nava.org.uk/> (Accessed: 12 February 2017).

Neme, L.A. (2009) *Animal investigators: How the world's First wildlife forensics lab is solving crimes and saving endangered species*. United States: Scribner.

R v Sara Wilkinson [20 October 2014 Isleworth Crown Court]

R. v Chiswick Auctions (William Rouse), [2014] (Ealing Magistrates Court).

Recruit R, 'Becoming An RICS Member | RICS Recruit' (RICS Recruit, 2016) <http://www.ricsrecruit.com/article/becoming-an-rics-member/>(Accessed 24 November 2016)

Schmied, S.A.K., Brunnermeier, M.J., Schupfner, R. and Wolfbeis, O.S. (2011) 'Age assessment of ivory by analysis of 14C and 90Sr to determine whether there is an antique on hand', *Forensic Science International*, 207(1-3), pp. e1–e4. doi: 10.1016/j.forsciint.2010.10.022.

Society of Fine Art Auctioneers and Valuers (November 2016). <http://sofaa.org/> (Accessed: 12 February 2017)

Team, T.S. (2002) How to start an antiques business - startups.Co.Uk: Starting a business advice and business ideas. Available at: <http://startups.co.uk/how-to-start-an-antiques-business/> (Accessed: 23 November 2016).

The Association of Art and Antiques Dealers. <http://lapada.org/> (Accessed: 12 February 2017)

The British Art Market Foundation, *The British Art Market in 2014* (2014). <http://tbamf.org.uk/portfolio/the-eu-directive-on-arr-and-the-british-art-market-2/> (Accessed: 12 February 2017)

The Conservative Party Manifesto 2015. Available at: <https://www.conservatives.com/manifesto> (Accessed: 23 November 2016).

The National Association of Valuers and Auctioneers Available at: <http://www.nava.org.uk/> (Accessed: 23 November 2016).

The Public Inquiry Into The Shootings At Dunblane Primary School On 13 March 1996'(The Stationary Office 1996) <http://webcache.googleusercontent.com/search?q=cache:4Eq5xOBXlvEJ:lx.iriss.org.uk/sites/default/files/resources/025.%2520The%2520Cullen%2520Inquiry%2520Report%2520into%2520the%2520Shootings%2520at%2520Dunblane.pdf+%&cd=2&hl=en&ct=clnk&gl=uk&client=firefox-b> (Accessed 29 November 2016)

The US Fish and Wildlife Service. <https://www.fws.gov/> (Accessed: 12 February 2017).

TRAFFIC, 'The Elephant Trade Information System (ETIS) And The Illicit Trade In Ivory: A Report To The 17Th Meeting Of The Conference Of The Parties To CITES' (CITES 2016)

Tusk. Poaching crisis. Retrieved February 7, 2017, from <http://www.tusk.org/poaching-crisis/uk>
Vidal, J. (2016) 'UK to crack down on ivory sales', Guardian, 16 September, .

Wolf, G. (ed.) (2007) Ancient civilizations: The illustrated guide to belief, mythology, and art.
New York: Barnes & Noble.

WWF, Tackling illegal wildlife trade in the UK. Available at:
http://www.wwf.org.uk/what_we_do/illegal_wildlife_trade/wildlife_trade_in_the_uk2/
(Accessed: 23 November 2016).



8. APPENDIX

Additional Assessments and Research

In order to obtain an overarching view of the U.K.'s current role in the international ivory trade, researchers also briefly reviewed the following information:

- ETIS and EU-TWIX²¹ seizure data involving the U.K.
- CITES trade data on the import and ex-port of ivory from the U.K. between 2005 and 2014.
- Recent case law featuring the antiques trade and sale of illegal ivory.

The latest CITES trade data (for *Elephantidae*, which includes trade data for both the African and Asian Elephants) was published on the 4th May 2016²² and showed complete UK returns for the period 2005-2014. However, due to the fact that within the EU the sale and purchase of antique ivory is permitted without an Article 10 certificate (and would therefore not appear in a trade database) it is necessary to consider trade across the wider EU (despite the focus of this report on the UK).

In terms of worked ivory, the trade databases refer to the number of items (rather than offering a detailed description of the type and size of an item) making it difficult to make a year on year comparison of the total amount of ivory recorded by the database. It was however possible to evaluate the reason for the trade as the databases codes as follows: items for commercial use (code: T), for personal use (code: P) and for scientific use (code: S).

Seizure Data

A summary of seizure data was provided by The National Wildlife Crime Unit, sourced by them from the ETIS data.²³

Seizure data is either reported in terms of the weight of the seizure or the number of items seized. ETIS has developed models based on previous data collected to produce an estimated weight for all seizures. In terms of worked ivory, the weight is adjusted to account for the loss of ivory due to the carving. This results in an inflation in the weight of an item by approximately 30%.

The data enables analysis of:

- Seizures made in the UK
- Seizures that involved the UK (for instance as a transit port or the place from which the seized item had originated).

Funding constraints did not permit a large scale physical survey of antiques shops, fairs, auction houses and car boot sales. However, where the opportunity presented

²¹ The European Union Traffic in Wildlife Information Exchange (<http://eu-twix.org/>)

²² Annual Reports of CITES Parties: https://cites.org/sites/default/files/annual_reports.pdf (accessed 16th September 2016)

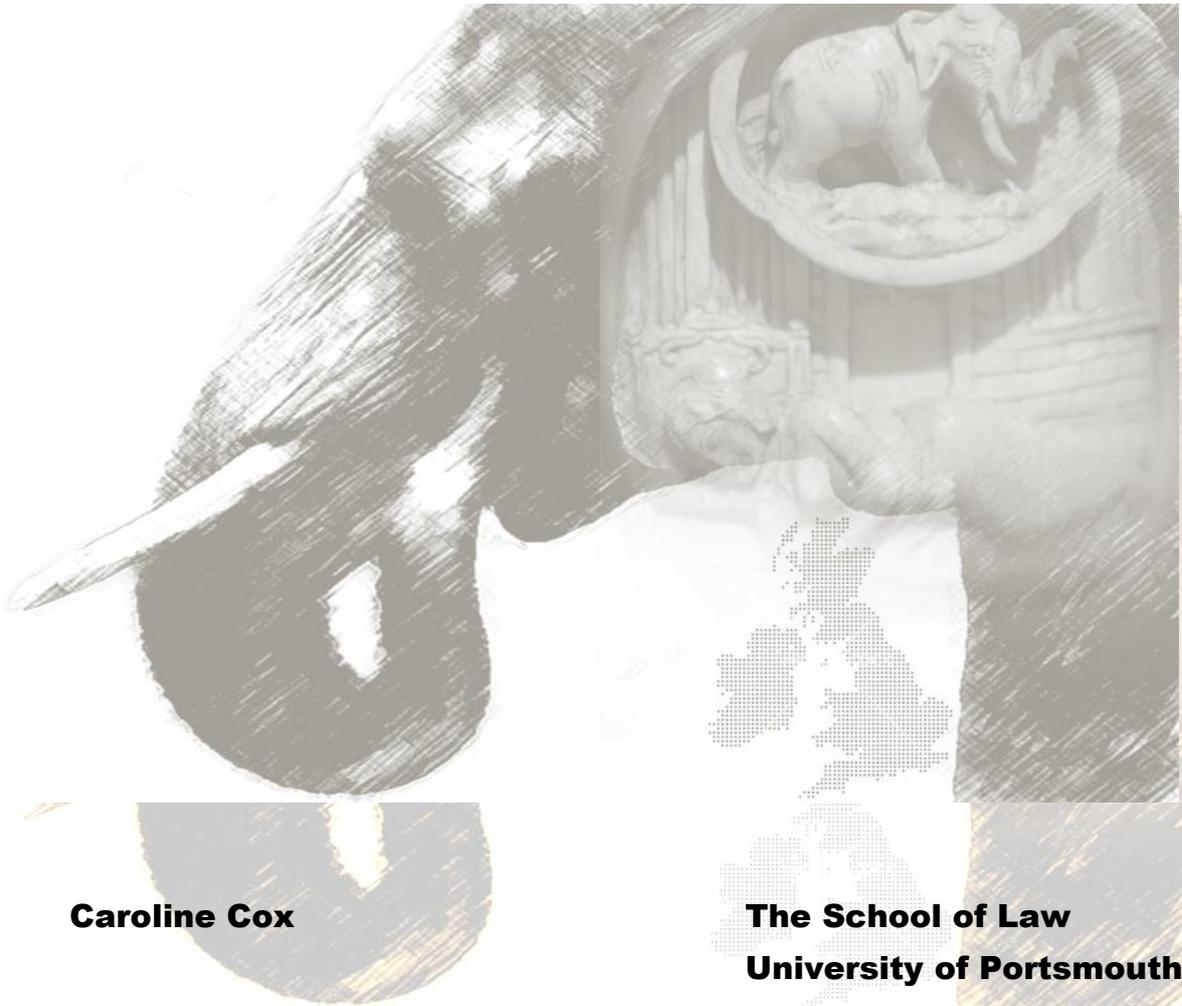
²³ TRAFFIC, 'The Elephant Trade Information System (ETIS) And The Illicit Trade In Ivory: A Report To The 17th Meeting Of The Conference Of The Parties To CITES' (CITES 2016).

itself, researchers visited such locations to make physical observations, notes were made and then appear in this report together with any additional information obtained from the traders concerned as to their awareness of the law.



THE ELEPHANT IN THE SALE ROOM

An Inquiry into the UK Antiques Trade's Sale of Ivory



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