

## THE LEGAL RECORDS AT RISK (LRAR) PROJECT

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<http://ials.sas.ac.uk/research/areas-research/legal-records-risk-lrar-project>

## Legal Records at Risk Guideline 5: advice to legal institutions on the business benefits of depositing records in an archives

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### What is the issue and why should legal institutions care?

Private sector “legal” records have never been collected systematically in the UK other than by a very small number of specialist archives<sup>1</sup>. Collecting in the public archives sector has tended to be ad hoc (ie as and when individuals or legal bodies such as law firms decide to clear out some of their records). As a result research using legal records is inevitably weighted towards the pre-twentieth century study of government policy, legislation and the courts, producing a historical picture of the UK’s legal framework and legal services which is skewed towards the policies and actions of central government. Does this matter?

All the major UK banks, commercial companies such as Unilever, Diageo and Marks & Spencers, non-governmental bodies such as Transport for London, Network Rail, the Royal Medical Colleges and numerous religious and charitable institutions recognise the financial and reputational benefits of running their own in-house archives, yet legal institutions, it seems, do not. Why is this and does it matter?

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<sup>1</sup> Such as the Archives of the Inns of Court, the Law Society and the Records of Legal Education Archives. Not to be confused with the almost universal practice followed by institutions of depositing their non-current records en masse in a warehouse, basement or lower-tier server for indefinite storage.

Unless systematic efforts are made towards collecting private sector legal records in the same way as other private sector records we are in danger of losing a significant proportion of our legal heritage. Does this matter? We believe it does.

## **Why are institutions specialised to law reluctant to preserve their archives?**

### **The cost factor**

Cost, understandably, is a major factor behind any legal institution, large or small, deciding not to create and maintain an in-house archives. Yet this does not explain why legal institutions may be reluctant to deposit records in an archive repository such as a local authority record office. Record offices do not charge for their services, though they may – and indeed should - seek a financial contribution from depositors towards the cost of deposit. This is negligible compared to the year-on-year cost of storing information in 3<sup>rd</sup> party records stores or on-site pending eventual destruction, yet many legal institutions either are not aware that county record offices will collect, preserve and eventually make accessible their historic records at minimal cost or prefer to pay for indefinite storage in a warehouse or basement. Why?

### **The confidentiality factor**

One reason may be the undertaking law firms and barristers' chambers, for example, make to their clients to keep their information confidential. The long-term confidentiality rules which apply to client files do not, however, apply to the business records of legal bodies – and these are just as important historically as client records, if not more<sup>2</sup>.

All archives have well developed techniques for dealing with 'sensitive' records, including closure periods and conditions on access and use; they operate under strict confidentiality guidelines and follow The National Archives' advice to close all deposited records for at least 20 years and personal data for 100 years<sup>3</sup>. Any legal institution depositing records with an archives can also stipulate its own more stringent confidentiality requirements.

### **The embarrassment factor**

Another, more understandable, reason is concern about embarrassment/reputational damage, even in relation to records over 20 years old. An institution may be reluctant to make records available to the public because some might reveal former mistakes or contain statements or notes which are politically incorrect by today's standards. This is in fact a short-sighted argument, since denying access to archives does not stop the stories from being there. Archives in fact have the potential to help draw a line under a distasteful aspect of the company history<sup>4</sup>.

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<sup>2</sup> For examples of business records of historical value see The Law Society's Practice Note: [Depositing records and documents with public sector archives](#) (15 December 2010)

<sup>3</sup> TNA [Code of practice for archivists and records managers under Section 51\(4\) of the Data Protection Act, 2007](#)

<sup>4</sup> "In any organisation...there will also be elements of which people may not be so proud. Practices which were just a part of life 300 years ago may be frowned upon now. Decisions made 40 years ago which seemed right at the time turned out to be the wrong choice with the benefit of hindsight. And sometimes, as we all know,

In other words, legal bodies should be encouraged to see their archives as business assets rather than liabilities. Most businesses now recognise that they should be seen to be good corporate citizens and be transparent. Part of that should be allowing access to their archives and the history of their business, even if it does mean revealing links to practices which are now disapproved of. The alternative is being viewed as having something to hide.

## **Why should legal institutions care about their archives? What's in it for them?**

We understand that legal practitioners are busy people and that appraising the potential research value of records is rarely a top priority when running a business. Yet managing one's business records efficiently so as to reduce costs and provide a good service to clients is, or should be, a high priority. Archives are simply the end of the process.

Lack of awareness in business of the value of archives and their management leads to:

- Under-utilisation of business records and history as a marketing and client relations tool and for involvement in wider corporate social responsibility projects.
- The unwitting destruction of important business records, particularly at periods of change, such as merger, acquisition and buy-outs.
- Loss of records that could be used to provide legal protection or safeguard Intellectual Property Rights and trademarks.
- Legal bodies ignoring and/or destroying their own heritage.

## **What are the business benefits of archiving records?**

The business benefits of preserving legal records of permanent value include:

### **Commercial benefits:**

- Reducing the time it takes to locate information of importance.
- Re-use of records for strategic planning, corporate branding, firm histories etc.
- Removal of on-going management costs if an external archive is used.
- Reducing storage costs – including IT costs - as records are systematically disposed of.
- Better compliance with regulatory and legal requirements (especially around the management of client files and personal data in general).
- An improved understanding of the institution's historical context.

### **Reputational benefits:**

- Giving a clearer picture of the importance of private sector legal institutions in the development of the UK's legal and business framework.
- Gaining a reputation for enhanced transparency, honesty and community involvement.
- The business seen as caring about/part of the community, not removed from it.
- Greater client confidence due to improved efficiency in client records management.
- Good PR – honesty, learning from mistakes etc.

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people have been downright dishonest...But if we deny access to the archives, we deny access to the other side of the story too. And there is always the danger that by not letting people in, they will automatically assume the worst." Maria Sienkiewicz (Group Archivist, Barclays Group Archives): [\*'Take the 109 bus and bring a packed lunch': Confidentiality, reputation and logistics – the challenges and opportunities of opening up business archives\*](#). Presentation at the Business Archives Council conference 2014

- Better understanding by the public of the value of legal services.

TNA summarises the benefits to businesses of maintaining archives (whether in-house or transfer to a third party archive repository) as follows: “Across the globe communications and marketing teams are re-engineering corporate branding and identity to emphasise their pasts. Most successful companies have secret commercial weapons in the form of their archives, an often under-used asset that can be used to increase brand awareness, build commercial identity and help grow business. Information is a powerful business tool that can be turned to corporate advantage. Companies already know that research and development information is valuable, but the knowledge, experience and investment locked in company archives is an asset that can underpin core business. Business archives contain the evidence that gives a company its edge or marks it out as different and special, making it stand out from its competitors”<sup>5</sup>.

### **Does the benefit outweigh the effort involved?**

There are three options open to legal institutions wishing to dispose of records:

Option 1: store them en masse in a basement, warehouse or “archive” server and – eventually - destroy them. This is always more costly than implementing disposal rules in a timely fashion, especially as regards digital records, which are more expensive to keep over time than physical because the IT systems they are stored in will need regular and costly upgrading or replacement to ensure continued accessibility. Blanket destruction, already practised for many digital records (eg emails) due to the perceived cost of selecting material for long-term retention, can result in a loss of business continuity as crucial records (such as contracts) are inadvertently lost.

Option 2: Set up an in-house archives for material of value and destroy the rest once it becomes redundant. Setting up and managing an in-house archives is expensive, but can certainly justify the cost (Barclays Bank recently saved upwards of £1 billion by being able to produce historic records held in its archives for a court case<sup>6</sup>).

Option 3: Deposit valuable records in a 3<sup>rd</sup> party archives such as a county record office and destroy the rest once it becomes redundant. Transferring records to an external archives costs institutions very little in the larger scheme of things other than some effort and planning on the part of the information owners to engage with archives.

### **Conclusion**

There is a cost to archiving records but this is minimal compared to the cost and risks of indiscriminate storage of all records, including rubbish, or of blanket destruction. It is also outweighed by the commercial and reputational benefits of making sure that records of archival value are preserved for posterity.

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<sup>5</sup> TNA, [Corporate Memory: A guide to managing business archives](#), 2009

<sup>6</sup> See presentation by the Barclay’s Group Archivist here:

[http://ials.sas.ac.uk/sites/default/files/files/Research/LRAR/LRAR\\_2nd\\_Seminar\\_Presentations\\_Nov\\_2016.pdf](http://ials.sas.ac.uk/sites/default/files/files/Research/LRAR/LRAR_2nd_Seminar_Presentations_Nov_2016.pdf)