

UNIVERSITY OF LONDON

Who cares? Legal records and poor records management

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Legal Records at Risk project – *launched September 2015*

- Identify - and facilitate the rescue of - post 1900 legal records of potential value which may be at risk.
- Broaden the concept of "legal" records from traditional definition (court records or formal documents) to include records of individuals and institutions specialized to law and business legal records, mainly in the private sector.
- Does not collect records but acts as a conduit through which legal records of value (in all formats and media) are identified, preserved and made available for research.

Why are C20 private sector legal records especially at risk?

- Globalisation and mergers
- Confidentiality concerns
- Organisational inertia – IRM not embedded in work processes and/or viewed as an IT responsibility
- Distinct lack of interest on the part of legal institutions – records not seen as an asset
- Digital obsolescence – records will not survive for posterity
- Reduced resources on the part of archive repositories – or no repositories at all!



Globalisation and mergers

Leading to:

- Confusion over which institution is responsible for what records (and functions)
- Loss of business and historical continuity



Confidentiality concerns

The legal profession's insistence on client confidentiality and legal professional privilege – which they see as infinite – are real barriers both to transparency now and to saving many legal records for posterity later



So information is not seen as an asset

- The legal profession is the most secretive about how it works of all private sector bodies I've encountered in 40 years as a records manager.
- Something to hide? Or just no concept that information can be an asset?

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"We rarely back up our data. We'd rather not keep a permanent record of everything that goes wrong around here!"

Or is it just plain lack of interest?

We have contacted 10 major London Law Firms (twice), plus 56 other legal institutions..

- We have had three positive responses..
- Four negative responses...
- Five tentative responses...
- And no response at all from the rest!

Auctioning of legal records;
personal data left in
warehouses...does anybody care?

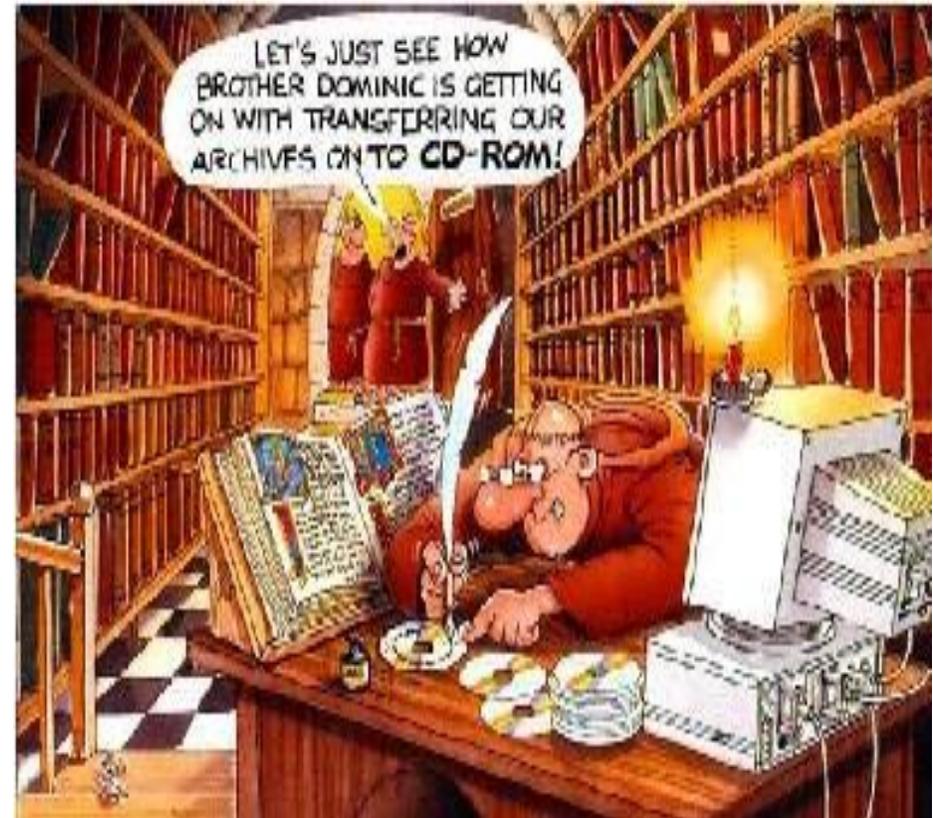


Digital obsolescence...

All institutions face the issue of digital obsolescence.

Without pro-active records management by the information owners from the point of creation to disposal how many records will survive as evidence?

No evidence that the legal profession is concerned about this



Ending up with a bad business model

- Excess recordkeeping, storage and disposal costs
- Poor service to clients
- Difficulty in complying with regulatory or legislative requirements
- Inability to re-use information effectively
- Bad PR – legal profession seen as arcane, secretive and over-charging for services



Archives? What archives?

- Business archives dominated by: banking; booze; retailers. Very few legal archives
- Can't find a single law firm with an in-house archive open to the public!
- Local authority archives have collected records ad hoc, mostly deeds.
- Most are now suffering from vastly reduced resources, affecting their ability to collect even these records.



So there's a lack of diversity of legal records available for research

- Plenty of court records and government legal records available and accessible.
- Far fewer private sector legal records (other than deeds) readily available, leading to.....
-A government-centric view of the history and development of the UK's legal framework and its impact on social and cultural change.



What are we doing about all this?

- Publishing case studies/examples of best or worst practice;
- Holding seminars on, eg, the business benefits of good records management; how confidentiality and access can be managed; why information should be seen as an asset rather than a liability;
- With TNA, the BRA and other interested bodies, developing a strategy to identify and rescue private sector records at risk;
- Undertaking a feasibility study to see if a Legal Archives Trust should be set up to carry on the work of LRAR post 2018 and...

Lobbying the legal profession to manage its records better!

- Demonstrating the ROI and reputational benefits of good IRM and archiving
- Providing practical IRM guidance and advice to the legal community
- Larger practices encouraged to employ or contract records management and archives services
- Archival considerations should be managed from the outset.

From the horse's mouth (with apologies to the Legal Standards Board)

“For many people, an initial barrier [to engagement with legal professionals] is lack of awareness and understanding of lawyers and the law...understanding is further clouded by the amount of legal jargon...Greater visibility and understanding of the role of the legal services regulatory and complaints bodies will provide reassurance and ultimately lead to greater trust.” LSB, [Lowering barriers to accessing services report](#) 13 March 2016

A broader contribution to history

- Documenting the development of an important service industry
- Documenting the development of the legal profession
- Records relevant to significant legal, political and social changes
- Contributions to social, legal, geographic, economic and family history



We have asked the IRMS directly for help...

- There's lots of best practice IRM advice which could be used by the private sector. Most (though not all) is aimed at existing records managers in the public sector, rather than directly addressing the problems faced by organisations where there are a) few statutory requirements to manage records b) no records managers or b) unqualified records managers.
- We have asked the IRMS to consider developing an advocacy programme aimed at the private sector to facilitate better records management.

Could we all work together?

We consider that the disconnect which still seems to exist between archives and IRM professionals in the UK should continue to be actively whittled away via better communications and joint activities; without good IRM there will be few archives to save in the future. For example...



For legal records, there needs to be..

- A responsible approach agreed between lawyers, records managers and archivists which acknowledges complexities and challenges.
- A generic retention schedule which provides transparency about different record sets and allows a debate around the future of these records
- Agreed client consent processes which are transparent about destruction and/or archival deposit.
- A templated records deposit contract, agreed with ICO, TNA, IRMS, SRA, ARA and BRA.

It's all about managing the records

- Good IRM means that information which is important will be identified and made permanently for analysis and research.
- The IRMS in particular is well placed to offer proactive advice on a national level to private sector bodies on how to manage their digital and paper records so as to ensure their survival. We want you to work with us, TNA and others in developing a national private sector records rescue strategy.



Conclusions and next steps

Planning for the future:

- A national records rescue service to save private sector records in general.
- A Legal Archives Trust funded by the legal profession to rescue legal records in particular.



Questions/suggestions?

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

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