

Is our legal heritage at risk?

What might be done to rescue private sector legal records



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Private sector legal records are at risk of becoming lost or inaccessible through globalization, digital obsolescence, physical neglect, lack of interest on the part of information owners or reduced archive resources to preserve and provide access to the records. All records in the private sector face similar challenges, but modern legal records (early twentieth century to the present day) are particularly vulnerable due to recent developments which are transforming the nature, organisation, regulation and economics of legal services. These changes are outstripping the capacity of the traditional providers of legal research facilities to make relevant records available to researchers. Additionally, unless systematic efforts are made towards collecting private sector legal records, research using modern legal records will continue to be weighted towards the study of the legislation and the courts, producing a lopsided historical picture of the UK's legal framework. In short we are in danger of losing our heritage.

Why is this important?

It is true that our law is founded on precedent and if there is no precedent or guide it becomes difficult to answer the question. For judges, life would become pretty intolerable if there were no law reports. Happily, there is no danger of that, but for researchers and those who advance the law through their research, practitioners must understand that it becomes equally difficult if not impossible to understand what happened and why it happened if the records cannot be accessed. In the same way no lawyer can understand a case without a thorough analysis of the factual matrix.

Private sector legal records do not only have significance for students of law. The legal practitioner's role as an integral part of UK business and social development needs to be understood; therefore it must be studied and evaluated. Without relevant records this will be an uphill task.

What is the Legal Records at Risk project doing about this?

To facilitate the preservation of important legal records The Legal Records at Risk Project, based at the Institute of Advanced Legal Studies, University of London, was founded in September 2015 to:

- Broaden the concept of "legal" records from their traditional definition as court records or deeds to the records of private sector institutions specialized to law (ISLs), including arbitration and mediation services, barristers, insolvency practitioners, legal executives, licensed conveyancers, multi-disciplinary practices, notaries, patent attorneys, pro bono legal services, scriveners, solicitors, trade mark attorneys and providers of ancillary services such as law publishers and legal stationers.
- Raise the awareness of the information owners of private sector legal records as to the value of their records and assist them to unlock the potential of the records for both internal business reference and external research use. In so doing they will raise their own external profile and demonstrate their importance in the development of the UK's legal framework.
- Broaden the perspective of legal research, which has hitherto been primarily concerned with investigating the pre C20 records of the courts, largely due to the dearth of alternative sources.
- Widen the use of C20 and C21 legal records by demonstrating their relevance to a number of research disciplines in addition to legal research, such as sociology, biography, economics, geography, race and gender.
- Identify and facilitate the rescue of legal records of potential value by developing a more cost-effective model for transfer of records (in both hard copy and digital format) to appropriate repositories.

One major category of legal records with which the project is concerned is solicitors' records. The Law Society, working with the Selden Society, has for many years encouraged solicitors to seek options for the preservation of their firms' historically significant legal documents. TLS's practice note [Depositing records and documents with public sector archives](#) (15 December 2010) provides advice on depositing old client documents or older records documenting a firm's history with the appropriate local authority record office. Many records offices, however, are now operating on severely reduced resources, compromising their ability to accept private sector records. The British Records Association, which used to act as a warehousing facility prior to arranging the transfer of records to archives offices, no longer has the capacity to provide this storage service. Solicitors' records of value are, therefore, more at risk now than in the past.

To these records at risk we must add the records of defunct law firms in the Intervention Archives, managed by Capita on behalf of the Solicitors' Regulation Authority. The SRA is seeking an archivist to help identify records of potential research value and locate relevant archive repositories, but this may well be a time-consuming and costly exercise.

The Legal Records at Risk project: Objectives

The primary goal of this project is to change the culture surrounding the perception of what legal records actually are and to facilitate their use in academic research. In doing so we hope to enhance the relationship between legal practitioners, researchers and archivists. This will be undertaken in collaboration with the Business Archives Council, the British Records Association, The National Archives and others.

Its first priority will be to identify and save private sector records at risk by devising a co-ordinated strategy for the identification and preservation of business records of value, including legal records. This strategic work will be supported by practical advice and guidance to legal practitioners on how to lessen the cost and improve the efficiency of their information management practices, both to remove the burden of managing archival records and to reduce on-going management and storage costs for both paper and digital records.

The project will not collect records but will act as a conduit through which legal records of value (in all formats and media) are identified, preserved and made available for research. It will seek to rescue specific legal records of research value which are or may be at risk and to co-ordinate their deposit in an appropriate archive repository. It will also publish a short book describing the project, its methodology and its successes and failures. The book will include details of the case studies into the records and record keeping of specific ISLs and into collections of legal records – and their reference use - held in business and higher education archives. The book will include a census of private sector ISLs in England and Wales, with details of what, if any, provision has been made to preserve their archives and details of specific case studies, including:

- Solicitors' records: in partnership with the British Records Association, developing generic guidance for law firms wishing to deposit records with archives which will also assist them in reducing the costs of managing their current information, particularly digital records.
- Legal records held in business archives: a case study of dispute resolution records held in the Transport for London Corporate Archives is underway, with the twin aims of demonstrating the scope and content of legal records within business archives and the business context within which they sit.
- Legal publishing records: a case study of the records of a prominent legal publisher has been completed; negotiations are now underway to find a suitable repository for the firm's records of permanent value.
- Records of a solicitor's practice: a firm outside London with an in-house records manager and archives has agreed to be the subject of a case study which should provide other legal practitioners with an example of how instituting best practice in managing information reduces costs, improves efficiency and assists in preserving our legal heritage.

How can legal practitioners help?

The project needs champions from individuals within the legal practitioner community. Without the involvement of the profession there will be a huge gap in material available from which to study the

rapid changes to our legal services over the past century. This gap will widen exponentially as almost all records are now created and managed digitally, yet digital continuity and obsolescence is not on the radar of most ISLs nor even of many research institutions and archives.

The project would benefit from legal practitioners describing the issues they may be facing in managing and disposing of legal information; asking for advice on particular challenges such as digital continuity; seek guidance on how to identify records of value both for business use and for external research; request contacts to relevant archival repositories.

The project would also benefit from input from law schools to: advise on their research requirements and the categories of records in which they might be interested; ask for help in locating potential archive repositories and records; suggest ways to make legal records already held in archives more accessible.

Benefits for the professional Institutions

The project can help institutions specialised to law to reduce on-going information management costs and to identify records of potential research value by:

- Giving practical advice on recordkeeping to facilitate efficient and compliant business practices.
- Reducing storage costs as records are systematically disposed of.
- Identifying ISLs with similar issues, developing a community of practice.
- Giving a clearer picture of the importance of private sector ISLs in the development of the UK's legal and business framework.

Benefits for Legal Education

The key problem in legal education is to make the education fit for purpose in an increasingly rapidly changing legal environment. Standards must be maintained and whilst workshops and case studies are well known in law schools there is still a gulf between law school and the office. Many do very well academically at law school and yet have difficulty adjusting to office practice and commercial realities. Whilst many law teachers have some practical experience many others do not and hence what is taught in the law school is not quite what happens in practice. The burden often lies on the firm to train the lawyer into office practice. If therefore researchers at our law schools and universities had access to original documentation some of the illusory expectations of students and office managers might well be dispelled.

The project is being led by Clare Cowling, an experienced archivist and records manager. You can contact her at clare.cowling@sas.ac.uk. For the latest project news see our website: <http://ials.sas.ac.uk/research/lrar/lrar.htm>, which includes details of our introductory seminar/workshop. Further workshops are planned.