

Legal Records at Risk Pilot Project

Report on Archive & Record Repositories

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1 PROJECT BACKGROUND AND OBJECTIVES

1.1 Background

The legal profession, like many others, works in both the public **and** private sectors. Records relating to the law and the justice system are managed as part of the public records system, but material that is not subject to the provisions of the Public Records Acts and current legislation is under-represented in the archival domain.

Earlier studies revealed that many institutions and individuals specialised to law (ISLs), especially in the private sector, have significant records that are potentially at risk. These studies included:

- The Legal Records in the Commonwealth project jointly-sponsored by the Association of Commonwealth Archivists & Records Managers and the Commonwealth Legal Education Association (1994)
- The Records of Legal Education Project by the Institute of Advanced Legal Studies (IALS) (1998)
- The 2010 Records at Risk project by the British Records Association (BRA) (2012)

The risks posed include the 'non-discovery' of records because they are not catalogued, a lack of awareness of the potential business and historical value (for research purposes or to retain the 'corporate memory'), and neglect or deliberate destruction. The proposed Legal Records at Risk (LRAR) Project aims to address these risks by identifying such records and making proposals for:

- An appraisal of current guidelines for record-keeping (in the legal sector and archives domain) and suggestions for updated advice where required
- A review of the current state of records management by those specialising in law (individuals and organisations)
- Raising awareness of the link between current records and their possible later use as items of historical/archival value
- Safekeeping material of long-term value (either in-house, in off-site storage, or at an archive repository).

1.2 Objectives

This report on archive and record repositories has been produced following an initial pilot project that will inform the wider LRAR Project. The pilot project objectives were:

- To gain an overview of existing archive material (both catalogued and un-catalogued) relating to the law and the legal profession currently held in record repositories
- To discover collecting policies and classification schemes relating to legal records
- To identify significant gaps in current archival holdings relating to the law
- To identify ISLs whose records would be of potential archival interest, but which have not been transferred to an archive and may be at risk

2 SCOPE & METHODOLOGY

2.1 Scope

The pilot project investigated the existence and scope of archives (potentially in all formats e.g. paper, digital) relating to the law, the legal profession and ancillary services, held by:

- Local record offices (county and city archives)
 - University and other higher education archives
 - Specialist archives e.g. Inns of Court
 - Other bodies e.g. law firms, professional and para-professional organisations and institutions e.g. The Law Society
 - Individuals within the legal and academic professions
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- The pilot project also considered records and gaps in collecting policies identified by other projects and surveys including:
 - The BRA's on-going work with the Law Society and the Solicitors Regulation Authority (SRA) including work on intervention records
 - Work by the Selden Society on English legal history
 - TNA National and sector archive strategies

2.2 Methodology

Information was gathered primarily by desk research, supplemented by informal discussions and contacts with archivists and others involved with record-keeping.

Information about the project was also circulated to the archive profession via the archives-nra mailing list, but this did not generate a wide response, and given the limited resources and time-scale of the pilot project it became apparent that it would not be feasible to conduct formal in-depth surveys or interviews with archivists at this stage.

- Research was therefore conducted by means of:
- Investigating collecting (and disposal) policies and related documents on the scope of an institution's work, where available on websites
- Searching online portals including TNA's Discovery, the Archives Hub and AIM 25, using pre - defined search terms relating to ISLs (based on the draft categories of legal records defined in the LRAR census document)
- Searching individual archive catalogues online, using the same criteria
- Literature searches (reports, publications, strategies, policies etc)
- Informal discussions and contact with existing professional contacts and organisations e.g. Archives & Records Association (ARA), TNA, BAC, BRA, Chartered Institute of Library & Information Professionals (CILIP), The British & Irish Association of Law Librarians (BIALL)

3 RESEARCH RESOURCES

3.1 Previous surveys and publications

As noted above, previous surveys and publications were considered in order to gain an overview of current initiatives and wider archival issues of particular relevance to the

project , including The BRA's Records at Risk report and the National Archives national and sector collection strategies & reports.

In addition, publications such as Lesley Richmond & Bridget Stockford's *Company Archives – the survey of the records of 1000 of the first registered companies in England & Wales* (Business Archives Council, 1986) and the BAC's *Directory of Corporate Archives* (1997) were also consulted.

3.2 Archive catalogue searches

Searches were made using the major online portals such as Discovery (which includes material held by TNA and other local, regional and national repositories); AIM 25 (higher education institutions, learned societies, cultural organisations and livery companies within the greater London area) and the Archives Hub (aimed at academic researchers, providing a searchable catalogue including university and research institutions, museums, local archives and other public bodies). Individual online catalogues and other resources across a wide range of relevant archives were also used. The results were largely for fully catalogued collections: un-catalogued records do not generally appear in online catalogues but are shown in the TNA annual returns of accessions.

A more in-depth survey of repositories in several counties (Warwickshire, Devon and Surrey) was made to get a feel for the types of legal records deposited in various institutions. This work confirmed that the majority of such items were client records rather than the working records of ISLs – suggesting that the latter types of record are at risk if they are not being kept or considered as worthy of deposit.

Initial searches using broad terms e.g. solicitor, barristers, law, legal, court, mostly resulted in too many references to be meaningful. For example, the term solicitor (as a creator of records) produced 1181 results and 63,170 results for solicitors in the Discovery catalogue. By contrast, more focussed searches were made using more specific terms e.g. Patent Agents, Law Publishers, Law Stationer, Commissioner for Oaths, Notary, Legal Executive, Conveyancer, Insolvency Practitioners, and these produced far fewer results, and in many cases, none at all.

3.3 Additional online finding aids

The database of the archives of non-governmental organisations (DANGO) compiled by the University of Birmingham was searched using simple generic terms and this proved to be useful in identifying collections of campaigning and research organisations. A search for entries including Law and Lawyers produced some references to collections held by established archives e.g. The Society of Labour Lawyers (at LSE, although uncatalogued) and collections retained by their owners and mainly uncatalogued e.g. The Law Centres Federation, which holds several boxes of uncatalogued material from 1976 onwards.

The annual returns of accessions received by archive repositories, supplied to The National Archives (TNA), and the Annual business records deposits lists published by Business Archives Council (BAC) were also consulted and these provided a useful insight in to the extent of both catalogued and uncatalogued collections.

TNA annual returns of accessions to repositories, available in print to 1993 and on line from 1994 were also searched. The returns are arranged by pre-defined subject

categories, of which the most relevant was Legal History. Searches produced a wide variety of examples including solicitors' client records and personal papers, personal reminiscences of individual policeman, magistrates and petty sessions records, papers of leading academics and members of the judiciary, records relating to public inquires and police matters.

The online BAC annual business records deposits lists (1968-2010) were also studied for references to the legal profession and produced a similar variety references, including the records of regional law societies and solicitors' firms. The online BAC annual business records deposits lists (1968-2010) were also studied for references to the legal profession and produced a similar variety references, including the records of regional law societies and local solicitors.

A sample detailed search for each year available online in the TNA annual returns (1999-2013) was also started for the three counties mentioned above (Warwickshire, Devon and Surrey) and produced a similar range of results.

Finding aids and supplementary information held online by individual repositories, such as the London Metropolitan Archives subject and company name indexes, were also searched.

4 FINDINGS

4.1 Record Repositories: holdings

The project findings to date confirm the initial view that non-public records relating to the legal profession are significantly under-represented in archive repositories, with the notable exception of the Institute of Advanced Legal Studies. Examples of material, both public and non-public records held by archives and record repositories are given below.

Each record office has its own collecting policies and priorities and the coverage of law-related records of local interest is inevitably patchy. Despite the standard collection policy model suggested by the TNA for repositories to use, not all organisations follow this.

However, Law-related collections can be found in most county and city record offices, but their focus is primarily on local court records (especially because many record offices are designated Places of Deposit for Public Records) and on solicitor's records. The vast majority of records deposited by solicitors, mainly through the important rescue work of the BRA, consist of deeds, client records and accounts, rather than practice and business records. Only a few examples of the latter have been noted and it would appear that solicitor's own business records have either not been retained or are not regarded by their owners as being of historic value. We recommend that this be further investigated as part of the proposed LRAR project.

Records of Local Law Societies can be found in many local record offices, and these form a significant archival resource, although many are un-catalogued and are therefore not readily available.

Some references to Patent Agents were found in the correspondence of clients and other organisations, but only one reference was found to the records of an individual agent, in

Manchester City Archives. We found no significant holdings of other para professional and para legal organisations, although TNA's discovery catalogue includes references to correspondence with the Insolvency Practitioners Association in the records of the The Department of Trade, The Insolvency Service and the Council on Tribunals. There is also one reference in the records of a local solicitor held in Dorset History Centre.

University and Higher Education Archives hold much material relating to the law and the legal profession, although we found no consistent approach to collecting policy and the scope and scale of collections varied considerably, but include the records of law Departments and Research institutes, the papers of eminent academic staff, lawyers or members of the judiciary: they may also collect the records of other organisations considered to be of research value e.g. legal and justice campaigning organisations, legal research organisations and NGOs.

The Institute of Advanced Legal Studies is clearly the most significant and extensive academic specialist archive relating to legal history. Its collections, which include The Records of Legal Education Archive, The Archives of the Bar Council, The International Law Association, Law Librarianship archives and its own institutional archive, are widely used by academic researchers, legal biographers and family historians.

We also examined a random sample of the archives of other universities, including, LSE, UCL KCL, QMUL, and the Universities of Cambridge, Oxford and Durham. The Modern Records Centre at Warwick University and the University of Birmingham were also included in the regional/county surveys. In addition to the records of law departments, we found several examples of the papers of eminent individuals, e.g. at Warwick, Cambridge, LSE and IALS. LSE was particularly rich in collections relating to individuals and campaigning groups. Legal biography and oral history projects were also noted e.g. Cambridge Eminent Legal Scholars oral history archive, LSE Legal Biography Project, British Library Legal Lives project and these form an important archival resource.

Other law related archives were reviewed. The Inns of Court have extensive and well used archive collections relating to their own history and activities: their collection policies focus primarily on the history of the Inns and their members, and they do not collect additional law related material.

The Law Society retains its own archive (with the exception of older examination results, which have been transferred to the IALS). Many local Law Societies have deposited records in local record offices (see above) and further details can be found in the TNA annual returns of accessions. Some regional Law Societies also responded to enquiries from the project researcher and gave details of material they still hold: they should be encouraged to deposit further material.

The Law Society also works with the SRA and the BRA on intervention records and the transfer of client records to relevant repositories. We understand that current issues relating to Intervention records are still to be resolved, but we recommend that the LRAR project should monitor developments, and should seek further involvement, possibly in partnership with the BRA.

4.2 Collecting Policies

Collecting policies, where available online, were studied in order to gain an overview of potential interest in acquiring legal records.

These policies tend not to mention records of ISLs specifically: they are included in the general category of business records. Court records are usually referred to when the repository's statutory role as a place of deposit for public records is mentioned (e.g. magistrates courts, petty sessions and manorial courts). University archives' collecting policies focus mainly on central and departmental university records, but may also include subject based collections as part of a wider research resource reflecting the universities' own research interests and specialisations.

Specialist and individual archives, e.g. Inns of courts, Law Society, SRA, professional and academic organisations were also examined: these also show a wide variation in style and level of detail, but collection scope tends to be more clearly defined, focussing primarily on the records of the organisation, rather than collecting related subject material

Some collecting policies mention areas that a particular repository sees as under-represented in its collections but no evidence was seen that records of ISLs were singled out for mention (apart from in the general business records category) and there is little evidence of targeted collection policies or acquisition funds.

Although a collecting policy statement check-list and other guidance is available on TNA website, many repositories do not appear to have followed this model and there is considerable variation in the level of detail of collection policies and statements. The lack of a central repository for collecting policies, as highlighted in the BRA Archives at Risk Report may also be a contributory factor to an inconsistent approach.

4.3 Record and retention/disposal guidance

A considerable amount of detailed and practical guidance is available to record creators and custodians, but the absence of a statutory framework governing non public records, other than tax, contractual, governance and other statutory compliance requirements suggests that this advice is frequently ignored or regarded as low priority. We have not been able to find any specific guidance for para professional organisations.

Examples of guidance available to records creators and depositors were sought out, including:

- The Bar Council / Barristers practice: including the Bar Council guidelines 'Practice Management For The Bar' which makes no direct reference to record keeping, records management or the potential archival importance of records - although it does refer to data protection and the security of born-digital/computer records.
- Solicitors / The Law Society guidance: including guidance on access to the corporate archive, material to be considered for the corporate archive, and a collection management policy
- SRA / Intervention archives: detailed records disposal schedule for SRA departmental records which states that records should be either destroyed or kept permanently, for business and legal purposes. Records of permanent value to be transferred to The Law Society's Archive.

- TNA records and information management best practice guides
- Other guides including business records classification schemes, keeping records to meet corporate requirements, records collection policy, managing business archives (corporate memory)
- BAC: setting up an archive, managing business archives website (which also refers to the business archives at risk crisis management team)
- BRA: guide on the care of records
- The legal profession: LexisNexis guide to document retention policy, Chubb's a lawyers guide to records management issues

4.5 Record repositories: current issues

The current economic climate and subsequent cut backs, coupled with uncertainty over long-term funding in the heritage and other sectors has led to fewer resources and staff, particularly in the local and county record office domain. The trend for trust status organisations to manage ever-dwindling resources is also changing the landscape in which record keepers operate. For example, Kent Libraries, Archives and Registration service has recently completed a public consultation phase and is understood to be recommending that the service be outsourced to a charitable trust (to be created).

Other local archive services are managed under a joint operating agreement. Two successful and highly acclaimed examples are The Keep, a partnership between East Sussex RO, The University of Brighton and the Royal Pavilion & Museums and Hull History Centre, a partnership between Hull City Archives, Hull Local Studies Library and Hull University Archives.

Others are managed via an outsourced service provider e.g. Greenwich Leisure Ltd which manages Wandsworth and Greenwich archive services. Others have combined their archive and heritage services with new community library provision e.g. Tower Hamlets.

However, funding remains a major issue, particularly in relation to cataloguing projects, which are increasingly dependent on external sources including the heritage lottery Fund and the National Archives cataloguing fund. Bids to both these schemes are highly competitive and are subject to specific criteria governing public access, community and volunteer involvement and outreach programmes. University Archives are also subject to increasing financial pressure, although they are generally better placed to access additional sources of funding available to the academic community.

The LRAR project should therefore be aware that the transfer of archive material identified as part of the proposed LRAR project will have resource implications, for storage, cataloguing and long term preservation.

4.6 National and sector strategies and reports

Many issues raised in previous surveys and reports are still relevant today. They include a lack of time and resources and an apparent lack of awareness of the importance of good record-keeping systems for the legal sector's 'business records', which can be puzzling to an outsider, especially with the importance attached to ensuring that client records are dealt with appropriately. Further issues include the need for records management systems to be used properly and for guidance from the archives and legal sectors to be followed (if they are known about in the first place).

The British Record Association's major study and report on Archives at Risk (2012), raises many issues relevant to the project, including a lack of awareness of records at risk, poorly defined collecting policies and increasing financial and resource constraints.

- The project also reviewed The National Archives National Collections Strategy and the sector strategies for Business Records, Architecture & Construction Records and Religious Archives. The objectives of LRAR accord closely with those of the National Strategy, in particular:
- mapping the current archive landscape to identify 'gaps' in existing collections
- discovering where important information is not being collected, maintained or preserved to facilitate access and reuse
- defining when, how and why collections might be deemed 'at risk'
- identifying weaknesses in collecting policies and collection management practices
- providing a focus for debate around determining the 'value' of collections and potential collections

The strategy reports provide excellent models and methodologies, which can and should be used by the proposed LRAR project.

5 CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

- There is considerable disparity of provision between the two sectors (public and business/private). Records considered to be at risk are mainly, but not exclusively in the business/private category. The BRA Records at Risk report of 2010 identified the key issues and associated risks facing record repositories: these and other recent issues (such as funding) continue to present considerable challenges. Key issues for the project to consider are :
- Most local record offices have local solicitors' records but these usually relate to clients rather than solicitors' own business records
- Local record office collecting policies do not always refer specifically to legal and law related records as a separate category
- Archive repositories, in particular local record offices, are subject to increasing financial and resource constraints
- The transfer of additional material will have resource implications for any receiving repository and it is unlikely that any significant deposit of records would be possible without suitable funding and long term financial support
- Solicitors' records are both business and client records and their permanent preservation should be subject to SRA guidelines
- The status of Barristers and practice records is less clear as they work as self-employed individuals, although it is expected that these records would be managed according to Bar Council practice guidelines. However, these guidelines do not include guidance on permanent preservation.
- IALS is the pre-eminent and most extensive specialist legal archive and there will undoubtedly be an expectation on the part of potential depositors that it will provide a home for further collections
- University archives collect departmental records which may include those of Law

- Departments; they also collect personal papers of eminent academic staff .
- Some may also collect research related collections and may be willing to accept similar material identified by the LRAR project
- There is no apparent evidence of corporate law firms depositing their own business (non-client) records, or retaining their own archives: this needs further investigation by direct approach

5.2 Recommendations

This report recommends that the Project should work with others who have already produced relevant surveys and reports (that can act as models for follow on projects relating to LRAR) and to tie in with existing national collections strategies and findings.

We recommend that the project should seek the involvement of TNA, BRA, BAC, and others as partners who can bring their expertise and experience to any follow up projects and raise the profile of the issue of records at risk or undiscovered. The input of others in the archive profession will also help to reassure potential depositors that archivists have the expertise to manage confidential, restricted records.

If and when funding is found to continue the LRAR project, it is suggested that work is done on a short-term and long-term basis. This takes into account the short-term nature of most funding and will allow for different phases to be developed as and when funding and resources allow. This would act as a stimulus to attract further funding.

We therefore recommend that the project should develop both long and short term objectives.

5.2.3 Short term objectives

Short term work can act as pilot work for longer-term research and will maintain project momentum pending major funding. It will reinforce and develop the work already completed and targeted case studies or regional work will show what can be achieved if research is widened out in longer-term projects. Suggestions include:

- Regional surveys/case studies – repositories holding legal records and selected ISLs which hold their own records (not deposited in an archive)
- Liaison with archives & legal bodies which have supplied guidelines for those caring for legal records – to develop guidelines, and raise the profile/importance of these e.g. to highlight and improve if required the guidance from the Law Society and others in the legal profession on managing records and potential archives
- Extending the more detailed survey of repositories in Warwickshire, Devon and Surrey to include other areas e.g. Wales, Oxfordshire, London (using organisations own online catalogues and finding aids as well as the TNA annual returns of accessions)
- Identifying un-catalogued records that have been deposited and could qualify for funding e.g. from the National Cataloguing Grant Scheme administered by TNA and the BAC business records funding programme
- Widening out the detailed analysis of TNA annual returns of accessions from the areas mentioned above
- Identifying more supporters/champions in the research/academic community, and

the archive/heritage and legal sector

5.2.4 Longer term objectives

A long term aim of the LRAR project will be to produce a systematic overview of existing archive provision for legal records in the business/private sector. It will also aim to improve the guidance for record keepers, to ensure that good archival and records management procedures are followed.

We recommend that this work should be further developed in partnership with others including TNA in order to create a national strategy for Legal Records, as part of TNA's strategic development programme. We believe that this will be the most beneficial long term approach for LRAR and should build on the experience of surveys and reports that have been undertaken for other sectors. Two examples that can act as models to follow are TNA's Business Archives Strategy of 2009; the 2010 religious archives survey, which was a partnership between TNA, the ARA and the Religious Archives Group (with financial support from The Pilgrim Trust); and the 2013 architecture, building and construction records survey (partnership of TNA and the BAC).

- Other areas to explore could include:
- Liaising with the BRA, The Law Society/SRA, and storage providers over the issue of intervention records backlog to look at 1) the need for better flagging of records at risk in the business records category as used by SRA when 'indexing' these records, and 2) seeking more resources and support for the project and the BRA to reduce the backlog and to avoid the potential loss of archival material.
- Liaising with the same organisations involved in intervention records to ensure that the appraisal/flagging of records includes a robust retention schedule that allows for reviews at regular intervals to avoid the scenario of deciding that everything has to either be kept permanently or disposed of without any further review
- National surveys to develop the work of regional surveys and case studies
- Structured visits and interviews with archivists and others to discuss in depth issues such as policies, holdings, funding issues and the willingness to accept further deposits
- Identifying potential homes for records at risk
- Looking at the apparent lack of evidence showing that corporate law firms are depositing their own business (non-client) records, or retaining their own archives
- Liaison with bodies representing the heritage and information professions such as the ARA, CILIP, BIALL

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APPENDIX: Research resources and publications consulted

1 Archive catalogues and on-line resources

The Archives Hub <http://www.archiveshub.ac.uk/index.html>

AIM 25 <http://www.aim25.ac.uk/>

Discovery (TNA catalogue, incorporating the National Register of Archives)
<http://discovery.nationalarchives.gov.uk/>

ARCHON directory of archives <http://discovery.nationalarchives.gov.uk/find-an-archive>

Database of Non Governmental Organisations (DANGO)
<http://www.dango.bham.ac.uk/index.htm>

Accessions to Repositories: <http://www.nationalarchives.gov.uk/accessions/>

Inns of Court Archives

<http://www.innertemple.org.uk/history/the-archives>

<https://www.middletemple.org.uk/library-and-archive/>

<https://www.graysinn.org.uk/history/archives>

<http://www.lincolnsinn.org.uk/index.php/library/the-inns-archives>

2 National and sector policies & strategies

TNA national strategy statement

<http://www.nationalarchives.gov.uk/documents/information-management/ncs-vision-strategy-and-principles.pdf>

Archives in the 21st Century report <http://www.nationalarchives.gov.uk/archives-sector/archives-21-century.htm>

Business Archives Strategy <http://www.nationalarchives.gov.uk/archives-sector/business-archives-strategy.htm>

Business Archives strategy report

http://www.businessarchivescouncil.org.uk/materials/national_strategy_for_business_archives.pdf

Architecture and Construction records <http://www.nationalarchives.gov.uk/archives-sector/architecture-building-construction-records.htm>

Religious Archives strategy <http://www.nationalarchives.gov.uk/archives-sector/religious-archives-survey.htm>

Religious Archives survey & report

<http://www.nationalarchives.gov.uk/documents/information-management/tna-ras-web-17-nov.pdf>

3 Publications

Lesley Richmond & Bridget Stockford: ***Company Archives – the survey of the records of 1000 of the first registered companies in England & Wales*** (Business Archives Council, 1986)

Business Archives Council (BAC): ***Directory of Corporate Archives*** (1997)

4 Guidance

Archives legislation guide: <http://www.nationalarchives.gov.uk/archives-sector/legislation.htm>

TNA Legal Records guide: <http://www.nationalarchives.gov.uk/records/research-guides/crime-and-law.htm>

The Law society: <http://www.lawsociety.org.uk/support-services/advice/practice-notes/depositing-records-files/>

Solicitors Regulation Authority: General records disposal schedule

The Bar Council: <http://www.barcouncil.org.uk/>

The Selden Society: <http://www.selden-society.qmw.ac.uk/>

The British Records Association: <http://www.britishrecordsassociation.org.uk/>

The Business Archives Council <http://www.businessarchivescouncil.org.uk/> and <http://www.managingbusinessarchives.co.uk/>