



Storage and Retention of Original Will Documents

Ministry of Justice Consultation: Response from the British Records Association

The [British Records Association \(BRA\)](#) is a charity which aims to promote the preservation, understanding, accessibility and study of our recorded heritage for the public benefit. It is open to anyone interested in records and archives whether local historians, academics, professional archivists, or custodians and owners of collections, or simply those who are curious about the record of our past.

Question 1: Should the current law providing for the inspection of wills be preserved?

Yes. The reasons within the rationale for public inspection of wills outlined in paragraph 18 remain valid and important.

Question 2: Are there any reforms you would suggest to the current law enabling wills to be inspected?

We would welcome the development of more formal guidance on how the right of inspection may be disapplied, as described in paragraph 22. This could result in greater consistency of decision-making by judges and probate registrars. Organisations such as the Information Commissioner's Office (ICO) and The National Archives (TNA) would be well-placed to develop such guidance.

Question 3: Are there any reasons why the High Court should store original paper will documents on a permanent basis, as opposed to just retaining a digitised copy of that material?

The Association supports the development of online resources, and applauds the revolution in opportunities for accessing original records which archive digitisation projects have generated. We would welcome such a project to increase online access to will documents.

However we know of no major archive digitisation project which has destroyed the original records following the creation of digital surrogates. There are several grounds for continuing to store original paper will documents on a permanent basis after digitisation has taken place.

The preservation of digital content is a complex and developing field which has only been recognised as a discipline in recent decades. In summary, digital records require ongoing management and attention to ensure that they remain accessible and authentic, that is, that they have not been altered and are therefore evidentially and legally valid. Chief among the necessary tasks for digital records is migration of content to take account of changes in hardware and software. This will continue to challenge all organisations which hold such records, given that the business models of the dominant technology companies will inevitably lead to technologies becoming obsolete over time. Performing such migrations successfully is highly technical and costly, given the complexity of digital records and the relationships of the various elements within them. Without appropriate policies, systems and expertise, records can easily become unrecoverable.

Digital records are vulnerable not just during periods of migration. They can become inaccessible through so-called 'bit rot' where individual units which make up the digital record become corrupted. They can be easily deleted by accident, or lost on portable media. Perhaps most significantly they are at risk of cyberattacks, as has recently been demonstrated at the British Library, or system failure. Overall, the risks of not having the original paper record as potential back-up are considerable.

It is understandable that consideration is being given to reducing costs by not storing the paper documents on an ongoing basis. A digitisation project on this scale will be expensive, and needs to justify itself. However we argue that the costs of digitisation are likely to be greater than budgeted. The cost of digitisation itself should not be under-estimated, when in addition to the cost of capturing the images, significant resources can be required for cataloguing, conservation, quality assurance and other processes. Storage of digital images may be perceived as cheaper than physical storerooms (although the climate impact of data

centres should be borne in mind) but the migration and preservation costs referred to above would then add considerably to that.

This is not an additional reason to destroy the paper documents after digitisation, but rather the opposite. We advise that if the wills are to be digitised, they should be digitised properly, with an adequate budget which mitigates the risks involved. One clear risk in our experience of digitisation projects is that they are never perfect. Pages are missed or other mistakes are made, making recourse to the originals necessary. Some aspects of the content, such as inks or seals, cannot be recreated adequately in digitised versions. The planning and budget need to cover all of this.

Question 4: Do you agree that after a certain time original paper documents (from 1858 onwards) may be destroyed (other than for famous individuals)? Are there any alternatives, involving the public or private sector, you can suggest to their being destroyed?

As outlined in our response to question three, the Association very much disagrees with the proposed destruction of the original paper documents.

However as noted, we would broadly support increased digitisation, potentially in partnership with a commercial service. There are several examples of such a model working well for records with strong potential for family history research. Digitisation could also lead to the paper records occupying cheaper storage, with further cost savings through fewer retrievals. This is where costs can and should be controlled.

Question 5: Do you agree that there is equivalence between paper and digital copies of wills so that the ECA 2000 can be used?

Not relevant, given our responses to questions three and four.

Question 6: Are there any other matters directly related to the retention of digital or paper wills that are not covered by the proposed exercise of the powers in the ECA 2000 that you consider are necessary?

Not relevant, given our responses to questions three and four.

Question 7: If the Government pursues preserving permanently only a digital copy of a will document, should it seek to reform the primary legislation by introducing a Bill or do so under the ECA 2000?

Not relevant, given our responses to questions three and four.

Question 8: If the Government moves to digital only copies of original will documents, what do you think the retention period for the original paper wills should be? Please give reasons and state what you believe the minimum retention period should be and whether you consider the Government's suggestion of 25 years to be reasonable.

Not relevant, given our responses to questions three and four.

Question 9: Do you agree with the principle that wills of famous people should be preserved in the original paper form for historic interest?

Selecting particular wills in this manner would be inadvisable and heavily liable to bias. It is impossible to predict which individuals or categories of person are likely to be of historic interest to future generations.

Question 10: Do you have any initial suggestions on the criteria which should be adopted for identifying famous/historic figures whose original paper will document should be preserved permanently?

As per our response to question nine, we believe this approach to be fundamentally flawed.

Question 11: Do you agree that the Probate Registries should only permanently retain wills and codicils from the documents submitted in support of a probate application? Please explain, if setting out the case for retention of any other documents.

No additional comments to make on this aspect of the consultation.

Question 12: Do you agree that we have correctly identified the range and extent of the equalities impacts under each of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts as appropriate.

The proposal to prioritise the wills of famous/historic figures risks marginalising sections of society which have previously been ignored and unrecognised. As one example, the history of disabled people is recognised as a 'hidden history' and would probably not be well represented within the wills selected without a concerted effort to address societal barriers and bias in any selection process. The same goes for the history of others who share protected characteristics such as the history of LGBTQ+ people, Black, Asian and Southeast Asian history and the history of religions, beliefs and social class in the UK.

If digitisation is to proceed, we need to ensure that enhanced access is fair for all, including people with disabilities and other cognitive and communication impairments. They may require assistive technology such as screen readers and/or good quality transcripts to read digitised wills, and this requires the correct, accessible application of technology in any digitisation project to be successful.