



## **A response from the Council of the Royal Historical Society to the Ministry of Justice consultation on the 'Storage and retention of original will documents'**

The [Royal Historical Society](#) is a learned society for historians, within and beyond higher education. Our interest in this consultation relates to the importance of wills as historical documents and sources, both for professional historians and those undertaking personal research. Our responses therefore address those questions that concern the proposed future format and handling of wills as historical documents.

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

The Society does not offer a view on this legal question.

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

The Society does not offer a view on this legal question.

### **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 Royal Historical Society has extensive experience of working with both print and digitised historical records. Recent advances in digitisation and digital access to records are undoubtedly considerable and beneficial to the work of professional historians.

However, the Society is firmly of the opinion that a digitised version of a document is not equivalent to the original hard copy. Professional historians do not consider digital records to be adequate or effective versions of paper records. They are surrogates, with their own distinct properties. Digital versions are not regarded as replacements for the paper document on which a digital record is based—in this case, wills dating from 1858. Digitisation of historical records should therefore not be considered a prelude to the destruction of the original paper document. This premise underlies all digitisation projects

of historical records undertaken by professional historians and archivists, including by those most active in and committed to the potential of digital resources and tools for historical research.

We draw your attention to the following reasons why the High Court should store original paper will documents on a permanent basis:

i. **The relative quality and utility of paper versus digital records.** It is the Society's view that the technology and infrastructure to digitise and securely store manuscript paper records at scale does not exist to a level sufficient to consider destruction of the original paper versions. The Government's proposal makes no reference to the form of the proposed digitisation of paper wills; however, we are confident—based on extensive experience of working in this field—that proposed methods of digitisation will result in only partial capture of the content of the paper archive.

A highly influential study has shown that, for a broadly comparable historical collection, the digitisation of print sources resulted in 50% of a document's original content not being adequately captured for text searching. The challenge and limitations of digitisation increase very considerably for manuscript sources in multiple hands, as is the case with historic wills. In addition to the imaging and OCR ('Optical Character Recognition') capture of the original wills, robust metadata, compliant with international standards, would be required for each document to ensure discoverability.

In such circumstances, researchers always rely on the existence of the original paper copy to supplement any digital surrogate in which detail is lost. For the Government to propose destroying paper documents after their digitisation fundamentally misunderstands the limits of digital content, and how digital and paper operate in tandem—with paper records always remaining the primary version.

ii. **Digital content remains vulnerable to deterioration, corruption and loss.** The costs of storing digital records are fully appreciated by professional historians, not least through digitisation projects of their own. Digital resources require regular updating and storage capacity to ensure access, with the expense and challenge of effective data storage increasing with the scale of the resource. Digital preservation is a costly ongoing process and not a one-off act of digitisation. While the UK is leading in the development of digital preservation capacity and practice, the field as a whole is far from the maturity that would be required for a project of the scale proposed in this consultation. The potential risks to the historical record are enormous.

Digital-only records are also acutely vulnerable to corruption and loss, as is readily apparent at the British Library following the cyber-attack of October 2023. This event was not foreseen and is having a very serious, ongoing and under-appreciated effect on research—including for students in UK Higher Education who make extensive use of digitised resources. The British Library cyber-attack makes clear how quickly and easily digital resources can be rendered inaccessible, with no timetable for easy reinstatement. For this to occur to a resource for which the paper copies had been consciously destroyed would be

a very serious loss of historical data that are used extensively not just by professional historians but also by many millions of family historians.

**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?**

The Society fundamentally disagrees with the Government's proposal to destroy original paper documents of this kind, regardless of the document's date or the subject of an individual will. To professional and private historical researchers, for whom wills are a key resource, the value of the record does not diminish with the passage of time.

The High Court's paper holdings of wills post 1858 constitute the fullest possible collection of these records. To propose breaking up this collection by introducing dates before which paper copies of wills were not kept would destroy a corpus that currently allows research, at scale, on social and economic historical themes.

Models of digitisation for other historical sources show that digital content is, of course, valuable and often provides a useful starting point for research for those without immediate access to original paper records. However, we stress that digital copies of paper records are not equivalent to the original source and should not be considered as such. Where both paper and digital content exist, researchers use these distinctive formats together, not in isolation.

We therefore propose that copies of post-1858 wills are digitised and made accessible to all, allowing for paper copies to be retained and stored in less accessible and therefore lower cost sites. A combination of digitisation and new forms of paper copy storage is worth serious consideration. What is not acceptable is the wilful loss of an existing format for the perceived benefits of an often-precarious digital alternative.

Equally, it would be wrong for the Ministry to assume that a wholly digital option for wills, post 1858, would necessarily be cheaper than the current form of paper storage. The costs of a digitisation and digital preservation project on the proposed scale are unknown. What is clear, however, is that there would be a requirement for sustained investment beyond any initial system build. This would include, but not be limited to, the maintenance of robust digital workflows, creation of appropriate metadata at the document level, periodic migration of data, and provision for data security.

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

The Society does not believe in the equivalence between paper and digital copies of wills, for the reasons set out above (see question 3). It therefore does not agree that ECA 2000 could be used to change the government's policy toward the retention and public provision of wills.

**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?**

The Society does not offer a view on this question of parliamentary process.

**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?**

The Society does not offer a view on this question of parliamentary process.

**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.**

The Society is concerned with the value and use of wills as historical documents and resources. This focus includes future generations of professional and private researchers who, like today's historians, will seek secure and complete records of wills proved now and in the future. We therefore do not agree that the Government's suggestion of 25 years for retention of paper wills before destruction is reasonable.

A deadline of 25 years (or any other timescale) is also inconsistent with the Government's interest in retaining paper copies of the wills of so-called 'famous people'. By this logic, individuals will need to have gained celebrity within a short time-scale after their deaths; the wills of any figures subsequently identified as 'famous' by later generations will have been destroyed.

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

No: the Society fundamentally disagrees with the principle of retaining a selection of paper wills for 'famous people' at the expense of the full corpus of paper documents. The study of famous people is not how historical research is undertaken, and to consider this a suitable measure is to wholly neglect and misunderstand the importance and use of wills as historical sources.

Historical research focuses not on a handful of individuals but on human society at scale. Historians appreciate that past societies are understood through the study of all human actors (not just a subjectively defined elite) and through study of the daily practices of their lives. As records of family connections, social networks, material culture and personal wealth, wills—as a genre and studied at scale—offer valuable insights to social and economic change in the past.

Given the current partiality and precarity of digital data capture and preservation, such understanding would be at serious risk if the Government were to pursue its proposal for

wills post 1858. The losses experienced by the professional research community would be matched by those of private researchers, notably family historians whose interest draw invariably on wills as personal records of daily life rather than of historical celebrities.

We also note that the consultation's reference to The National Archives' practice of showcasing wills of famous individuals is misleading. The National Archives does promote ready access to selected wills via its website, but these are digital copies of paper documents they also retain, in addition to the many thousands of digital and paper copies of wills of less well-known individuals. The National Archives' practice is therefore better understood as the popular promotion of an important digital / paper resource, rather than an expression of archival selection or policy.

**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?**

The Society does not agree with the proposal to retain only paper wills of selected famous / historic figures, as noted above. To professional and private historians, the corpus of paper wills is important for its research value which will be realised on a case-by-case basis. Figures of historical interest for the individual researcher cannot be conflated with famous or historic figures.

Likewise, historical individuals of importance and interest are assessed differently by the concerns and heritage of individuals and their wider community. This makes selection and preservation criteria impossible to determine. Historical interest, and indeed contemporary celebrity, are not static concepts. Through their work, historians show how figures considered important by one generation may lose significance, while those previously overlooked in an archive gain importance and familiarity as historians develop new approaches to understanding the past.

**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.**

Good archiving practice seeks to retain documents in full. The Society is particularly concerned to preserve the archival collection of post-1858 wills in its entirety.

**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 Society does not offer a view on this question.