



RESPONSE TO OPEN CONSULTATION DOCUMENT ('the document')
ENTITLED 'STORAGE AND RETENTION OF ORIGINAL WILL DOCUMENTS'
PUBLISHED ON 15 DECEMBER 2023

In paragraph 14 of the document you state that the list of bodies to whom the document has been sent '...is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.'

This is the response of The Federation of Family History Societies (Company No. 2930189 Registered Charity No. 1038721) (the 'FFHS'). FFHS is this year celebrating the 50th anniversary of its foundation. Its members comprise over 170 member societies based in the UK as well as overseas. Such member societies themselves are owned by persons interested in exploring their family history, by identifying, verifying and documenting their ancestral origins and descent. The total number of individuals who belong to our member societies worldwide is estimated to be at least 100,000 and could be higher. Several individuals belong to more than one society thus making it hard to determine the exact number.

We consider that we are entitled to respond in fulfilment of our charitable objects.

These are twofold as described in our Articles of Association¹, namely:

1. *to promote, encourage and foster the study of family history, genealogy and heraldry and in furthering this to co-ordinate and assist the work of member societies and bodies interested in family history, genealogy and heraldry.*
2. *to promote the preservation, security and accessibility of archive material.*

In 2014 it was reported in a press statement ('the press statement')² that 2 million searches for wills post-1858 had been made. Many of those researchers will have been members of our member societies. There clearly is a demand for testamentary documents. Given our charitable objects we are very interested in your proposals and their likely impact.

We have drawn our member societies' attention to your consultation paper and suggested that they might wish to write to you themselves, which we believe several have done. They have also made known to us their views, which enable us to reflect the thoughts and concerns of a large number of interested persons, who are not listed in paragraph 13 of the document, whose views should be taken into account. We include extracts from our members' comments.

We believe that the number of signatories to a petition to Parliament ('the petition') started by Richard Holt against your proposals to destroy wills (more than 12,812 as we write this)³ demonstrates the strength of feeling of a sizeable number of members of the public interested in

¹ Copy available at Companies House

² [41 million wills available to search online for the first time - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/41-million-wills-available-to-search-online-for-the-first-time)

³ <https://petition.parliament.uk/petitions/654081>



family, local and social history whom you neglect to consider or mention in your consultation. Their views need to be considered.

QUESTION ONE: should the current law providing for the inspection of wills be preserved?
[covering paragraphs 1-22 of the document]

- a. Generally we believe that the current public right to inspect wills should be retained.
- b. It has existed for over 150 years. Earlier wills going back to the 14th century have been preserved and are retained by archives throughout the country, including The National Archives ('TNA'). Access to them is not limited, so why due to a historic reason (creation of the new Probate court) should post-1858 wills and documents be withdrawn?
- c. However we do not consider that it is necessary for the older wills and probate documents, the subject of the consultation, to be retained in the custody of HMCTS in perpetuity.
- d. Instead we suggest that a date for current retention by HMCTS should be agreed as you propose in paragraphs 42 -50 and when the relevant date has been reached those wills and documents should be treated as 'historic records' and transferred to TNA, who already hold the highest ecclesiastical court wills (Prerogative Court of Canterbury) dating from 1382 until 1858, including virtually all of the wills proved in the Commonwealth Period in the 17th century. Ecclesiastical Court documents, including wills proved prior to 1858, are also held in other record offices including the Borthwick Institute at the University of York. A complete run of original documents from the 14th century to the 21st century would be achieved if you follow our proposals.
- e. A member society who has sent us a copy of their independent response to you, agrees with us: *'While we consider that original wills should be preserved, we do not consider it necessary that this be done indefinitely by the High (or any other) Court. The consultation paper does not refer to the possibility of passing them specifically to the National Archives, as was eventually done following some resistance by the Lord Chancellor's Department, in the case of wills proved in the Prerogative Court of Canterbury (often called the "Doctors' Commons wills"). The problem that had existed with those was not a threat of destruction, but the insufficiency of search facilities at Somerset House. We recognise that the cost of storage is likely to be similar whatever body is responsible for it. It seems appropriate, though, for it to be borne by the body with general responsibility for preservation of public records rather than by the court that granted probate. As implied by the consultation paper, wills that are more than a few years old are rather more likely to be of historical, rather than current legal, interest.'*⁴
- f. We can understand that HMCTS will need to retain original wills and other documents recently proved or registered with the Probate Registry for a number of years, since there might be a need to revoke a grant due to the discovery of fraud or undue influence rendering the will or some of its legacies invalid .

⁴ Folkestone and District Family History Society



- g. Equally a later discovery that the testator was murdered by a beneficiary would result in forfeiture of the legacy to the murderer and the Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011 might need to be taken into account where unlawful killing occurs, otherwise than murder.
- h. Updated forensic techniques could well prove that a testator was actually murdered or unlawfully killed or that a will was forged, several years after it was proved by the court, so HMCTS will need to retain original wills as suggested in paragraph 42 onwards and we comment upon this further below. We suggest minimum retention periods in answer to Question Eight.
- i. In our opinion there is, with respect, an omission in your statement in paragraph 20, since you do not refer to the retention of wills or documents or the procedures in the District Probate Registries which have until recently been the court registries where the majority of wills have been proved and retained in England and Wales, not the Principal Registry in Holborn. See our further comments on this in answer to Question Three.

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

[covering paragraphs 1-22 of the document]

- a. In paragraphs 1-22 you ignore the valid interest of historians in wills and probate documents. They are a primary source of evidence for family historians, genealogists, local and also social historians. Continued access to them is very important.
- b. Scanned digitised copies are clearly useful to researchers working from home, but the uncertainty of how secure in the long term the digitised copies will be, plus what will happen when technology progresses, as it will, and the digitised copies are no longer capable of being read or downloaded, means that it would be folly to destroy the original wills and ancillary documents, which might need to be accessed to produce new readable copies.
- c. Concerns have been expressed as to the accuracy of present scans. We quote from two societies who have responded to us: *'...I have no objection to the digitization of wills, grants and letters of administration. My only concern, and this is from experience of the current system, [is] parts of the documents are frequently missed off the scanned copy. I have copies of wills where the last word or two have been missed from the end of each line on a page....[or]....scans where the bottom of the page has been missed and on a couple of occasions even one of the witnesses has been missed. At present I can complain and the scan is re-done for me and we're all happy but if scans are done with the same quality control as we currently have then vital information may be lost for ever.'*⁵
- d. *'I have often had to refer to the original documents because the digital record is unclear.'*⁶
- e. *'I have also previously had quality issues regarding Wills typed in the 1940s through to the 1970s where I assume, the contrast is too strong so faint words have disappeared altogether and bold words usually show*

⁵ Chairman of member society

⁶ Letchworth and District Family History Group



*too much ink in that letters such as o, e and a are indistinguishable - easy for common words but when the Will is referring to an address or field name, it becomes very frustrating. I don't know if they intend to use the existing scans they've already done as a start to their database but I hope not.*⁷

- f. We suggest transferring 'historic wills' and other documents (as defined below) to TNA. This would mean that a body whose purpose is to preserve and allow access to records, would have the expertise required to safeguard and conserve the originals.
- g. We strongly suggest that wills proved, say over 50 years ago and relevant documents, should be treated as 'historic wills' and that they should come under the aegis of the Public Records Act 1958 ('PRA')(as amended) by the insertion in Schedule 1 of PRA, the requirement that all such wills and ancillary documents should be considered to be 'public records' and transferred from the custody of the Lord Chancellor, who is currently the responsible person, by virtue of section 8 of PRA (as amended), to the Keeper of the TNA.
- h. Court records are the responsibility of the Lord Chancellor and section 8(2) PRA (as amended) states that the power of the President of the Probate Division of the High Court to direct where wills and other documents mentioned in Section 170 of the Supreme Court of Judicature (Consolidation) Act 1925 are to be deposited and preserved shall be transferred to the Lord Chancellor. He should therefore exercise his power to designate the older wills and documents as 'public records' as defined in the PRA. As far as we are aware probate court records are not classed as 'public records' in Schedule 1 of the PRA and this causes the problem with which HMCTS is seeking to address.
- i. If our suggestion was taken up there would consequently be financial savings for the Department of Justice, which appears to be an objective of HMCTS: it would not be required to pay Iron Mountain (IM) for the continuing storage and safekeeping of over 150 years of wills and documents; probably IM would only be responsible for wills proved in the last 50 years (or whatever period might eventually be chosen) (see our comments to Question Eleven) and it would be able to transfer the older wills (those proved over 50 years ago) to TNA. The cost of conservation would be passed to another body. Indeed, it is possible that IM might still be responsible for storage and scanning of the historic wills as it has been doing this for other records under the control of TNA. Clearly a renegotiation of the present contract between HMCTS and IM would be required.
- j. Those wishing to see historic wills proved post-1858 until 1974 would be able to do so in accordance with TNA procedures or use the scanned copies. Wills proved after 1974, the 50 year period moving forward annually, should remain open to inspection through HMCTS either as a scanned copy or the original.
- k. TNA would be responsible for scanning the older wills and documents transferred to it. It would appear that IM began scanning wills stored with it seven years ago in 2017 and so maybe 7/20th of the wills and documents to be scanned have been already scanned? They state that it could take up to 20 years to complete scanning of all the documents and as 7 years have elapsed since their statement we presume 7/20th of the scanning has been completed.

⁷ Chairman of member society



- l. If scanned copies are available these should be coloured scans not black and white, so that marks or annotations on the wills are more easily spotted and the scanned document will more accurately reflect the original.
- m. One of our respondents also suggests that *'...every scan should show a 20mm margin outside the original page thus indicating that it is the entire page you are looking at.'*⁸ They also query if it intended to use the existing scans that have already been done and express the hope that this is not so. Better quality scans should be prepared.

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

[paragraphs 23-33]

- a. It is interesting that in November 2009, the government stated that⁹ *'archives are increasingly a popular cultural and educational resource used to support the study of local and family history'*. We wholeheartedly agree with this. By destroying, as proposed, original documents you will deprive the public and future researchers of original records which have been scanned and which may become illegible or unusable as we explain further below.
- b. We are concerned that your proposals to destroy original wills are misconceived. At least twelve of our member societies are equally horrified at the suggestion and are against the suggestion. We set out extracts from some of their comments below.
- c. One says *'The subject was seriously discussed at our recent AGM, with many of our members expressing strong feelings on the matter. We are all completely against the Government's proposal, even though we do sympathise with the problems that increased storage creates. As family historians we have all encountered the need at one time or another to view ancestors' Wills and the ability to view originals has been essential in many cases. The thought that the Government is even thinking about destroying them fills us all with horror.'*¹⁰
- d. A second says: *'No objections to the wills being digitised, but the originals should not be destroyed. Destruction is short sighted and cannot be made safe from increased cyber threats or future proofed against changes in technology to make them available..... If you can digitise and make available pre 1858 PCC wills whilst still keeping the originals then the post 1858 should be kept also.'*¹¹
- e. A third would support your suggestion but seek re-assurance *'... These documents are important public records that should not be destroyed unless they are replaced by good quality digital images, that have been individually verified by a third party as readable and complete.'*¹²

⁸ Chairman of Member Society

⁹ [Archives for the 21st Century CM 7744 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

¹⁰ Lancaster & District Family History Group

¹¹ Northants Family History Society

¹² Northumberland and Durham Family History Society



- f. Another says: *'If it is decided that a move to electronic storage is to be the way forward then it is imperative that both the will and all associated documents must be retained in some form. Members historical experience with the Land Registry's actions regarding the destructions of historic deeds has raised this as an important issue.'*¹³
- g. A fifth society says in its response to you, which has been copied to us, the following: *'Our reasons for believing that the original documents should be preserved are:*

It is probably impracticable to be sure of perfect copying. We are aware of a copy supplied under the current arrangement with a page missing.

It is likely that there are a few instances of wills' having unusual features rather than simply having been written on paper: eccentric use of material, attached seals and so on.

It is probably difficult to reproduce these adequately for all purposes, and unlikely that reproduction of the register copies will be adequate to do full justice (in the popular sense) to the original.

*We may expect future scientific developments that will make possible examination of documents to answer questions that do not currently arise but will one day be asked by historians.'*¹⁴ They continue: *'For the reasons given in the preceding answer, we do not consider it right to destroy the originals regardless of their ages. It has not been suggested that pre-modern wills held by the Public Record Office, county record offices and the Borthwick Institute should be destroyed, and these are by definition older than the modern wills.'*¹⁵

- h. Digitising wills clearly has benefits to researchers who use computers and the internet as you suggest. However, those with no access to computers or the internet will be excluded from accessing original records.
- i. To destroy original paper documents after digitisation would be foolhardy if the digital copy is defective, of which there are many present instances. The advantage of retaining the historic wills and documents is that they could always be referred to if new scanned copies are required in the future.
- j. We doubt that current digitised copies still be usable and accessible in 50 years' time. Several commentators have made similar comments.
- k. We have seen how various methods of 'copying' original documents have changed in a reasonably short period: microfilms gave way to microfiche, then 'floppy discs' of two sizes to be read on computers, followed by CD Roms and later DVDs using drives on computers which now use USB storage functions on pen drives and sticks to plug into computers instead. How soon before they will not be available on computers? If the original wills and documents are unavailable there will be a loss for future generations. It

¹³ Dorset Family History Society

¹⁴ Folkestone & District Family History Society

¹⁵ Folkestone & District Family History Society



is not impossible that it will be necessary to see the original wills and documents e.g. to rescan them using new methods of capturing images but if HMCTS have destroyed the originals, as suggested, this would be impossible.

- i. One of our members says: *'Digitisation does not eliminate risk of loss (the server on which they are saved could be attacked whether intentionally or otherwise, by an enemy of the state, or by "scammers"). Neither does it mean that, in the future as technology changes, the ability to access the digitised images becomes compromised. You only have to think of floppy disks, or punched cards, for example. However unlikely these situations might be, they are the reasons we all back up our data religiously onto a secure and independent storage device. The operative word is back-up: it does not replace the original, just makes a safe copy of it. Digitisation of wills should therefore be seen as a sensible back-up for the original documents, not as a replacement for them. The only original document is just that: the original document.'*¹⁶
- n. The enormous and extremely costly problems recently experienced by The British Library demonstrate the problems that scammers can cause. The main catalogue of the Library was eventually restored months after the attack.¹⁷
- o. A retired science teacher, who is a family historian, has referred to the 'Taguchi method of quality control' which focuses on design and development to create efficient, reliable products. As a well-known engineer, his method is used worldwide and his concepts demonstrate that every human intervention in a process, produces one error in every twenty thousand items. As the digitation of wills will involve a large number of human interventions in the process, this provides evidence that all original documents must be retained for use in correction of many errors in digitised documents.¹⁸
- p. We ask why is it right to assert that documents of undoubted historic interest and educational value should be destroyed? Would it be appropriate to destroy Domesday Book or a version of Magna Carta or any other public record that has been scanned just because they have been scanned and are available online? What is suggested is moving towards the argument that all original documents should be destroyed once scanned and we would find that totally unacceptable. We would not be alone.
- q. In the Federation's opinion the set of probate documents, the subject of the consultation, taken as a whole, are of huge historic significance and should not be destroyed even if they are scanned. The vast majority of our members who have contacted us have expressed similar views.
- r. As the press statement we refer to above says¹⁹ : *"...Every will among the 41 million is a precious historical document that can provide remarkable insight into generations of lives*

¹⁶ Norfolk Family History Society

¹⁷ [British Library starts restoring services online after hack - BBC News](#)

¹⁸ Nuneaton and North Warwickshire Family History Society

¹⁹ [41 million wills available to search online for the first time - GOV.UK \(www.gov.uk\)](#)



lived and lost. The wills offer us a unique glimpse of individuals in their roles as father or mother, friend or colleague.....It gives the general public, here and overseas, the chance to get closer to their ancestors. The ease of access enabled by technology is matched by careful preservation of the original paper records. These are and will remain in trust for future generations in a secure, temperature-controlled environment....” Your proposals will break the ‘trust for future generations’. It is only ten years ago that the so called reassurance was given.

s. We find the terms of your consultation paper to be ambiguous and unclear in several respects. You refer to original wills stored with HMCTS and refer to the Principal Probate Registry (‘PPR’). We assume you include in your document the original wills retained by the District Probate Registries (‘DPRs’) prior to the changes introduced in 2021. You do not explain the processes which were involved. Not all original wills were held at the PPR, many were retained by DPRs. DPRs now appear to be closed.

t. The procedures at DPRs meant that original wills together with the Executors Oaths, sworn by executors who wished to prove the wills, were retained by the DPRs and copies of the will and ensuing grant were sent to PPR to enable them to prepare the annual calendar of wills proved by the probate court. What will happen to these copies (initially transcriptions but as the 20th century progressed invariably photocopies and now we assume scanned versions)? Are these copies held by PPR now stored with IM and are they included in the storage and scanning cost figure you quote of £4.5 million? This figure ought to be adjusted as a result of a Freedom of Information request by Richard Holt, a member of AGRA, who started the SaveOurWills petition referred to by us above. The request and response can be found at the WhatDoTheyKnow website.²⁰

u. Several DPRs have handed over the wills (or copies of their wills) proved from 1858 onwards, in their possession, to local archives. For example Sussex DPR. One of our member societies confirms this. They say *‘We note that the pre-modern wills held at district probate registries were (with the exception of those destroyed by enemy bombing) passed to county record offices without any threat of destruction.’*²¹

The older historic DPR wills (from 1858 up to about 1940) are no longer retained by HMCTS in many instances. Nevertheless, do your plans envisage that DPR wills, wherever stored, will be digitised and then destroyed? Indeed have DPR wills and documents already been transferred to IM and the Probate Records Centre in Birmingham? If not, is it intended that they should be?

v. You do not specifically refer to intestacy documents. What about applications for Grants of Letters of Administration (‘Admon’) where an intestacy is involved? What are your plans for retaining, digitising and destroying the original documents leading to and the actual grant of an Admon?

²⁰ https://www.whatdotheyknow.com/request/information_on_consultation_stor#incoming-2523183.

²¹ Folkestone & District Family History Society



- w. We assume that grants involving Admons, with the will annexed, will be digitised with the original wills the subject of the application?
- x. Do you intend to permit postal requests for searches and the obtaining of wills and Grants of Probate or Admons or must all requests for copies be done online?

QUESTION FOUR: 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?

[paragraphs 23 -33]

- a. No, we disagree with destruction. See the reasons set out in answer to Question Three.
- b. Likewise see our suggestions that the older wills and documents be treated as ‘public records’ and that they should be protected as public records under PRA after transfer to TNA.

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

[paragraphs 34-40]

- a. No, we disagree that ECA 2000 should be used. As explained in our replies above, the older wills should be treated as ‘public records’ and removed from the custody of HMCTS.
- b. In cases where the copies of wills and documents are indistinct or defective or if researchers seek to view the original in person, they must be able to access the original wills or documents.
- c. The Advisory Council for National Records and Archives (‘ACNRA’) is not included in your list of persons to whom copies of the consultation have been sent and this seems to us to a most surprising and bad omission.
- d. By way of a reminder of the effect of PRA 1958 (as amended), we refer you to the comments about the public records system on the TNA website.²²

“Who agrees what should be retained?”

The Secretary of State can grant approval to retain records that have reached 20 years. Departmental Records Officers (‘DROs’) within government departments are ordinarily responsible for making applications to retain records, which are assessed in the first instance by The National Archives. The requests are then considered by the Advisory Council on National Records and Archives, which is chaired by the Master of the Rolls, and composed of academics, researchers, archivists, former officials and MPs. The Advisory Council scrutinises the applications, and those it agrees are passed to the Secretary of State to request final approval.”

²² [The public records system - The National Archives](#)



- e. The above begs the question of when and what discussions regarding the transfer of the old wills and other documents to TNA have taken place between HMCTS, the TNA and the Lord Chancellor and if the ACNRA has been involved in discussions?
- f. Given the fact that TNA is a party listed in paragraph 13 of the document what comments have they made on the proposals?
- g. The wills under the charge of HMCTS if subject to the PRA would clearly be 'public records' as the majority of them would be more than 20 years old. We consider that they ought to be subject to the procedures required by the PRA as amended albeit that the period should be 50 years not 20 years.

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

[paragraphs 34-40]

- a. We do not feel that ECA 2000 ought to apply. You should follow the PRA in respect of 'historic' records as we suggest above in response to Question Two paragraphs g and h. Your failure to do that would in our opinion be an error and you would not address the problem in the appropriate manner.
- b. In fact the Court service states that it currently follows PRA systems in the 'Records Retention and Disposition Schedule' ('RRD schedule')²³ although as we see it, the provisions of PRA do not currently apply to wills and documents as they are not included in Schedule 1 to PRA.
- c. This should be corrected as suggested above by us by inserting a reference to wills and documents held by DPRs or PPR proved a certain time ago. It would resolve your difficulty.
- d. We observe that the RRD schedule does not appear to have been the subject of any consultation similar to the present one. Why not, given that it deals with destruction of original documents?
- e. A member society suggests the following: *'Another problem I've had (and still am!) is the denial that a particular Will exists yet it can clearly be seen in the indexes. It took six applications for the same Will before I eventually got a copy once (and the only reason why I persisted was that I got the grant on my third application!). Now, will the digitization lead to new indexes or will we still be applying for them using scanned images of the annual indexes? Perhaps a new index will hopefully rectify this problem.'*²⁴
- f. Another society states the following: *'... as public records, digital images should be freely available at suitable locations or by on-line purchase. They should not be sold exclusively to commercial companies.'*²⁵
- g. A third says: *'As a final point, we believe that it goes without saying that if such a process goes ahead it must ensure that digital copies of these documents*

²³ [probate-registries-rrds.docx \(live.com\)](https://www.live.com/probate-registries-rrds.docx)

²⁴ Chairman of a member society

²⁵ Northumberland and Durham Family History Society



*must bear the same legal authority as the originals.*²⁶

QUESTION SEVEN 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?

[paragraphs 34-40]

- a. We do not agree it should do either.
- b. See our response to Question Two. It is we believe open to the Lord Chancellor to add records which are not covered in the First Schedule to the PRA and he could add wills and documents now held by the DPRs or PPR to the list of records which will be classed as ‘public records’ thereby physically removing them from HMCTS (or IM) and depositing them with TNA.
- c. We do not consider that ECA 2000 should be used if you decided to proceed despite our objections as stated above. One of our society respondents says: *‘We should prefer that any legislative change be made by a parliamentary bill, noting as we do that the [ECA 2000] Act requires only the negative-vote procedure for statutory instruments made under its authority. An earlier initiative by the government concerning General Register Office certificates, that would have impeded genealogical research, was prevented only by a parliamentary committee, and no committee would have an opportunity to consider an order made under this Act.’*²⁷

QUESTION EIGHT: 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 period should be and whether you consider the government’s suggestion of 25 years to be reasonable.

[paragraphs 41-50]

- a. We do not accept the premise but despite this if you did still proceed, we suggest 50 years rather than 25 years, since it seems most unlikely that applications to overturn grants will be successful if made beyond that period. Most beneficiaries are likely to have died by the end of this period. Witnesses’ memories may be unreliable beyond that period even if the individuals are still alive.
- b. One of our members says:²⁸ *‘Retention period for original documents is a difficult question but it is felt that 25 years seems too short bearing in mind the increasing average age demographic. Perhaps 50 years might be a better target’.*

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

[paragraphs 51-52]

²⁶ Dorset Family History Society

²⁷ Folkestone & District Family History Society

²⁸ Dorset Family History Society



- a. Yes because we believe that all original wills and documents should be retained. In any event, how do you determine who is 'famous'? One of our members says²⁹: *'How will such people be identified? Will the time and effort involved in such a process result in an erosion of any financial savings made?'*
- b. Another says³⁰: *'All documents should be treated in the same way, and no distinction made between those considered to be from important persons. Wills are extremely important to family history but are also used in many other areas of historical research. It is not possible to predict those that could be invaluable in the future.'*
- c. A third says³¹: *'Whatever method is used to judge whether a person is sufficiently 'famous' for their original will to be preserved is necessarily subjective. A person who may be well known in one part of the country may be completely unheard of elsewhere. An example that comes first to mind: Jeremiah Colman, 'famous' locally as the founder of Colman's mustard, but is anyone in (say) Cumbria likely to have heard of him? I suspect not.'*
- d. Your example of the wills of William Shakespeare and Jane Austen being famous persons, whose wills pre 1858 are preserved by TNA, is not a particularly good example since the Ecclesiastical Courts' wills have been preserved as a whole, not just those of famous persons, so their wills are preserved irrespective of their fame.
- e. Someone might be considered 'famous' today but be forgotten in 50 years' time or vice versa. Artists whose works of art now realise large sums of money when sold were often ignored at their death but would now be treated by some as 'famous'. If they left a will and it was destroyed because they were unknown at death but became famous a hundred years later you would not be able to preserve their will as it would have been destroyed.
- f. Our suggestion that wills proved over 50 years ago should be classified as public records and handed over to TNA would preserve the will and it would not be necessary to decide if a testator was famous or not. HMCTS would not need to be involved in determining if someone was 'famous' and therefore that their will should be retained.
- g. If you did proceed as you suggest would you not have to follow a complicated structure of reviewing those eligible on an annual basis? Would you accept that their wills will be preserved for posterity? Can we accept an undertaking to this effect will be kept? In our response to Question Three paragraph r, we have drawn your attention to the press statement ³² when it was said that all wills would be retained for posterity and that they would be held in trust. Yet this consultation demonstrates that previous assurances are worthless and not going to last for ever.

QUESTION TEN: 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?

[paragraphs 51-52]

²⁹ ibid

³⁰ Northumberland and Durham Family History Society

³¹ Norfolk Family History Society

³² [41 million wills available to search online for the first time - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/41-million-wills-available-to-search-online-for-the-first-time)



- a. We do not agree with your suggestion. If you follow our suggestions above to make older wills and other documents ‘public records’ it would be unnecessary.

QUESTION ELEVEN: 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?

[Paragraphs 53 -54]

- a. No. There are many other documents which should be preserved in order to make sense of the applications for a grant of representation to the PPR and DPRs.
- b. You list several ancillary papers held by HMCTS but do not mention caveats, which until recently were submitted to Leeds DPR. We see from RRD Schedule³³ that caveats are retained for 3 years from use. Will they be digitised and then destroyed? Whilst the caveats can be effective in delaying the issue of a grant of probate for a relatively short time, nevertheless they are an important part of the probate process and should be dealt with accordingly and added to the list in paragraph 53 of the document.
- c. We would also suggest that the following be added too:
- Admin bonds given by administrators
 - Grants of Admons
 - Grants of Admons with the will annexed
 - Grants de bonis non
 - Second grants
 - Cessate grants
 - Affidavits of plight
 - Affidavits of script
 - Settled oaths issued by registrars prior to the application for a grant, which will have been returned to the DPR or PPR with the actual application
 - Rectification of the will under the Non-Contentious Probate Rules
 - All the above documents relate to grants issued in Common Form –not in Solemn Form. Documents generated during cases and proof in Solemn Form should similarly be retained and made available as public records.
- d. The RRD schedule sets out a long list of documents and their intended present destruction dates.³⁴ It was published on 1 March 2021 and it suggests that the following should never be destroyed:
- Wills and grants of representation (including video recordings of witnessed signatures)
 - Statement of Truths (the old Executors’ oaths)
 - Codicils
 - Renunciations (revocations)

³³ [probate-registries-rrds.docx \(live.com\)](https://www.live.com/probate-registries-rrds.docx)

³⁴ [probate-registries-rrds.docx \(live.com\)](https://www.live.com/probate-registries-rrds.docx)



- Probate engrossment
 - Powers of attorney (or power of consent)
 - Reason for delay
 - Alteration of grant
 - All birth, death and marriage court cases (divorce, adoption, etc.)
 - Deed poll
 - Ancillary affidavits and witness statements
 - Inventory and account of estates
 - Order of domicile
 - Forged wills and related paperwork
 - Notarial or official copies of foreign wills
 - Official copies of entrusting documents
 - Notarial or official copies of certificates of inheritance
- e. It then provides that most other documents should be destroyed after 50 years (not 25 years as you propose).
- f. We see no reason to alter the present system of retention of the documents itemised in the RRD schedule but when they are 50 years old, they should be transferred from HMCTS to TNA.

Response approved by Executive Committee of the FFHS on 16th February 2024

Signed on its behalf by its authorised signatory David S Lambert its Company Secretary

David S Lambert