CAB 103/784

Part I of 2

RESTRICTED

CABINET OFFICE

THIS FILE MUST NOT GO OUTSIDE THE CABINET OFFICE

HR 10/3

Custody of the private collection of documents of Sir Winston Churchill held in the Chartwell Trust

1

FILE BEGINS 1 May 1991	ENDS 12.8.91	FILE No. HR 10/3

PART NU 1

INDEX HEADINGS

Private collections of official documents.			

REFERRED TO	DATE	REFERRED TO	DATE	REFERRED TO	DATE
CLOSED 1991 DR 1991					

CLOSED 1991

CAB 103/784

Other Files containing Matter Bearing on this Subject

FILE No.	TITLE

REVIEW OF REGISTERED FILES
DISPOSAL RECOMMENDATIONS

File number HR 10/3 part 1

File title Custody of the private collection of documents of Sir Winston Churchill held in the Chartwell Trust.

Desk officer Miss P.M. Andrews.

This file has been closed. Under the Public Records Act 1958, it must be reviewed (normally five years after it has passed out of active use). This review determines whether the file may then be destroyed or will be of further value to the department.

To assist reviewing at the appropriate time, you should now consider the likely future use of the file.

If you decide that the file should be destroyed at the first review, tick box **a** below. If you decide that the file merits further consideration at second review, when the file is 25 years old, please tick box **b** below.

If, however, you consider that the content of the file to be so short-lived that its retention for a further five years would be unjustified, or if there is a reason (perhaps statutory or customary) to retain the file for a period between five and twenty-five years, please indicate the period in box **c** below.

☐ **a**. Destroy at first review, **five** years after closing date

☑ **b**. Consider again at second review, **twenty-five** years after opening date

c. Retain for ☐ years

If you have ticked box **b**, is the file likely to merit permanent preservation? ☑ Yes, or ☐ No

Signature of desk officer P M Andrews

Date 14 / 8 / 91

CAB OS89 (4/89)D

First Review of Files

1. File number HR 10/3 Part 1

2. File title Custody of the Private Collection of documents of Sir Winston Churchill held in the Chartwell Trust.

3. Date of first review 5. 3. 98

4. Desk officer's recommendation given on CAB form 66
(tick box)

Destroy at first review	Retain for further review at		No CAB form 66 Recommendation given
	...... years (insert number)	Second review	
		✓	

5. Reviewing officer's recommendation
(tick box)

Destroy at first review	Retain for further review at	
	...... years (insert number)	Second review
		✓

6. Reviewing officer's comments on his/her recommendation above:
(Where the reviewing officer's recommendation differs from the desk officer's, the reason(s) should be stated)

A cause célèbre if ever there was one! Papers still needed for research in the Historical Section

Signature of reviewing officer Richard Ponman

CAB form 67

FOLIO REGISTER — FILE No. HR 10/3

FOLIO	DATE	CODE REF.	FOLIO	DATE	CODE REF.	FOLIO	DATE	CO[illegible]F.
28	24.7.91	H091/467	37	6.8.91	A091/2044			
29	26.7.91	H091/478	38	8.8.91	H091/496			
30	26.7.91	amendment to attach to f.29	39	12.8.91	H091/509			
31	26.7.91	H91/294						
32	29.7.91	A091/1899						
33	29.7.91	M/S letters						
34	30.7.91	A091/1929						
35	1.8.91	A9516						
36	2.8.91	A9576						

CAB. FORM 31

3754 346207 20,000 5/76 GL. 3917

FOLIO REGISTER — FILE No. HR 10/3

FOLIO	DATE	CODE REF.
1	1·5·91	A091/1081
2	2·5·91	H091/302
3	8·5·91	H091/317
4	9·5·91	H091/324 + A5222
5	10·5·91	A091/1146
6	17·5·91	H091/374 A5692
7	20·5·91	H91/208
8	21·5·91	H091/383
9	23·5·91	H091/385 A5895
10	30·5·91	H091/389
11	6·6·91	A6544
12	7·6·91	H91/232
13	11·6·91	H091/401
14	24·6·91	A7528
15	26·6·91	A091/1607 H91/259
16	28·6·91	H091/428
17	2·7·91	H091/433 + A7785
18	3·7·91	A091/1650
19	4·7·91	H091/440
20	5·7·91	H91/274
21	10·7·91	H091/447
22	11·7·91	H091/451 + A8307
23	11·7·91	H091/452
24	12·7·91	H091/453 + A8424
25	12·7·91	H91/283
26	12·7·91	H091/454
27	22·7·91	H091/463

CAB. FORM 31

3754 346207 20,000 5/76 GL. 3917

FINANCIAL TIMES

SALEROOM

Strength of silver market confirmed 8

LONDON dealers were bidding briskly at Sotheby's auction of European silver in Geneva. The sale on Monday evening, which totalled SwFr 4.7m (£1.9m) with a modest 13 per cent unsold, showed the underlying strength of the silver market.

S.J. Phillips paid the highest price, £289,243 for a set of four hexagonal silver stands made by Elie Pacot in Lille around 1710. They were sold by Lord Rosebery.

The same dealer bought a pair of candlesticks by the same maker for £157,769, more than twice their estimate.

Another London dealer, Koopman, acquired a silver gilt bowl and cover made by Biennais, Napoleon's personal goldsmith, for the Emperor's sister, Elisa, for £135,857, and an eight-piece service made in Vienna by Georg Hann in 1790, for £83,267.

An inkstand by Biennais in silver gilt, with its original leather case, did exceptionally well, selling for £197,211, around three times its estimate.

Christie's is having less success with its run of Geneva sales and the auctions of both applied and decorative 20th-century arts were around 50 per cent unsold.

There was one star, Jean Cocteau, whose 1926 illustration for the frontispiece of the book Deux Travesties sold for £90,945, compared with an estimate of just over £2,000. It consists of the three words, "Photographie sur demande".

Three more Cocteau drawings exceeded estimates and the book illustrations of other 20th-century greats, such as Picasso, Braque, and Chagall also found buyers. But there was minimal interest in the editions of ceramics decorated by Picasso.

In the decorative arts, a floor lamp and a wall mirror by the Parisian decorator and designer Rateau sold for £121,976 and £77,621 respectively in private deals after the auction, at prices under thei low estimates.

Antony Thorncrof

Wednesday, May 15, 1991

THE TIMES

Badminton cabinet 15

From the Chairman of the National Art Collections Fund

Sir, Tomorrow afternoon their lordships are debating the funding of the arts in Britain. This is timely: in three days the export stop on the Badminton cabinet runs out. The history of the cabinet over the last year has shown how our export control has ceased to function as it was intended. The Export Advisory Committee recommended that the cabinet should remain in Britain, and yet, as I write, it seems almost certain that it will leave these shores.

Neither private sources nor the grant-making bodies are able to save these exceptional works of art which rarely appear on the market. If nothing is done we shall continue to see the draining away of our greatest artistic treasures. I hope that the government will dip into its contingency reserve for the sake of future generations.

Yours faithfully,
NICHOLAS GOODISON,
Chairman,
National Art Collections Fund,
20 John Islip Street, SW1.
May 14.

Daily Telegraph

Van Gogh cremation was joke

By Robert Whymant in Tokyo

A JAPANESE millionaire who said he wanted his Van Gogh and Renoir paintings to be cremated with him was only joking.

Yesterday, Mr Ryoei Saito, 79, honorary chairman of Daishowa Paper, said he was astonished by the reaction to his comment; adding that he intended to preserve the paintings forever for Japan and for Shizuoka prefecture, south-west of Tokyo, where his brother is governor.

"I would like to leave these paintings behind for all future generations," he said.

He made the cremation comment two weeks ago. A year ago, he paid more than £48·5 million for Van Gogh's Dr Gachet and nearly £46 million for Renoir's Au Moulin de la Galette.

"I've been telling people close to me to burn the paintings with my coffin," he had said on being declared Japan's biggest taxpayer of 1990.

"When I die, if the inheritance tax is tens of billion yen, it will be a tremendous hassle (for my children)."

At the time, it was, apparently, plain to the Japanese that Mr Saito was attempting a joke.

"It was supposed to be a joke, but it was taken seriously in France," the Sankei Shimbun newspaper said yesterday.

"Westerners have a jealousy complex that resulted in unreasonable criticism of what was supposed to be humorous. This is because Japanese buying power is able to acquire so much important art."

Daily Telegraph

Poetic priority 17

EARL'S COURT has always seemed an unlikely location for Mount Parnassus, and it is finally to be abandoned by the nation's poets. Next month the Poetry Society will hold an emergency meeting to decide the fate of its peeling stucco building in SW5, the heart of bedsit-land.

The trustees want to sell up and move closer to Bohemia — well, to Covent Garden, anyway — but the details of the move are contentious.

The poet Blake Morrison — a former member of the general council — would like the Society to transform itself altogether. "It simply doesn't work at the moment," he tells me. "The poetry world is antagonistic and riven enough already, and the present building has just made it worse. Ideally they should get a small office somewhere — the South Bank perhaps — and rent a space for readings."

Others have even more radical suggestions. Alastair Niven, the Po Soc's paymaster at the Arts Council, feels that the scribblers should leave London altogether. "The taxpayer in Walsall should feel it's his Poetry Society, too," he says. "I'm not excited by the idea of glitzy new premises bought at the expense of the society's national work."

Walsall's rhymesters need not start composing welcome odes just yet, though. Chris Green, the Society's director, is determined on a fashionable London venue where trainee Dylan Thomases can reel around in time-honoured style. "I think we need a bar," he says. "That's really very important."

□ *PITY Prince Edward. His new employers — The Theatre Division — are doing very nicely out of a new West End offering called Same Old Moon, but every evening the poor chap must have to suppress his winces. Half way through the play, which is set in Ireland, one of the characters suggests asking the Queen to "give back the six counties".*

Grinning and bearing it manfully, the Prince told me at last night's first night that he is quite inured to such lèse majesté. "You would be surprised at how many plays make reference to the Royal Family," he said ruefully. "I just don't notice them — it's an occupational hazard."

6/1

1. Lord Randolph Churchill's papers (32 boxes).

2. The letters from the 1st Duke of Marlborough, to Heinsius, the Grand Pensionary of the Netherlands, presented to Sir Winston by the Dutch National Archives by the Dutch Government (and placed in the Churchill Archives Centre by the late Lady Spencer-Churchill with the written record that it was Sir Winston's and her own wish that they should remain here in perpetuity; the Dutch Government having expressed anxiety through the Foreign Office lest these papers should ever be put up for auction).

3. The Marlborough Papers - six letter books written by the First Duke of Marlborough during the War of the Spanish Succession; and 35 unique Orders of Battle of the period.

Heinsius papers and other collections :-

Phrase : "no provision in the legislation governing public records which wd permit even the first step to be taken in such a direction"

if C & A papers shd go PREM 3 & 4 should also go
no doubt they were public records.

Beneficiaries: Winston Churchill
Julian Sandys
Mrs Piers Dixon
Miss Cecilia Sandys
(20 yrs after death of the last of these, the Settlement ends).

13 Line 7 "with them"
It would appear preferable to negotiate with Trustees and only resort to attempt to prevent the sale of the "Family" papers if negotiations were to break down.

14. Before negotiation with the Trustees can begin we must obtain a definitive legal view on our right over the Official papers given the time that has elapsed since they were in Official custody and also an independent valuation of the papers deemed to be the property of the Trustees. [Subject to your views I will take further advise on these points.]

15. Further matters for consideration are with whom the Trustees would negotiate. The direct purchase of the papers by the Treasury or another Government dept. would set a dangerous precedent for other heritage causes [and there exist at present no mechanisum for such a purchase]. The possible purchasers other than HMG direct would appear to be either Churchill College or British Library, both of which would require the financial assistance of the NHMF & probably HMG. The resourses available to Churchill Coll. are not known exactly, but they are believed to be small. The British Library has just over £600,00 to spend on acquisitions for the "Special Collection" in 1991-2. It is not known how much of this is already committed to purchase material to the Library's lending role. Significant purchases, such as the Trumbull Papers last year, has only been possible with NHMF assistance (1.38 million £ grant for the Trumbull Archive). It is extremely unlikely that the Fund would be willing to provide more than £2 million (if that) for the "Family " papers. Recent examples of the "Heritage Crises" such as Canova's "3 Graces" Badminton Cabinet have shown the difficulty of raising large sums of money by public appeal when grants from the Fund cannot net the whole cost (eg £1.5 million for the Cabinet). Given a conservative estimate of the cost of the non official part of the "Family" papers [£6 million] a substantial sum will probably be required direct from HMG to acquire these papers.

✓ Official [illegible] sale at
Legal c figure →
I do [illegible] Tr c purchasing
body.
looks better if the body buys
the items

sceptical of [illegible]

Who sets value
normally
Royl Com' Historical Manuscripts

difficulty to go to the private sector.

douceur level might have to be increased
to make up to them

Cab Office legal view on official [illegible]
[illegible] Ch Coll & Brit Lib
NHMF doing the negotiating [illegible] OAL
Informed

RESTRICTED

39

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

Ref: HO 91/509

12 August 1991

Miss Y Woodbridge
Repartmental Record Officer
HM Treasury
Parliament Street
LONDON SW1P 3AG

Dear Yvonne

CHURCHILL/CHARTWELL PAPERS

I last wrote to you on the above topic on 11 April 1991 when the "approach to HMG" had just been received from the Trustees.

You may wish to know that at the meeting which Sir Robin Butler had with the Trustees on 1 May 1991 it was revealed that Sotheby's valuation of the 'Family' (ie Chartwell) papers alone is £20 million (the Marlborough and Heinius papers are separately valued at £250,000 and £180,000 respectively). The Trustees are looking to HMG for £12.5 million to buy out the Trustees' interest (this, in their view, takes account of the estate duty exemption and the douceur). The Trust Deed has been re-written and the agreement with the publisher amended so that access may be allowed two years after publication of the last volume of the biography.

In theory therefore the Chartwell papers should be open for research now. In practice the review, which we began last summer, of the official element of the archive is continuing and is unlikely to be completed before the Autumn at the earliest.

In the meantime the emphasis has changed from access to ownership which, inevitably, the Trustees are contesting. To date, Counsels' opinion has been sought and the advice received is that "there is a strongly arguable case that the Crown can claim equitable title to the documents as against the Archive Trustees as constructive trustee~~d~~s" on the grounds that the papers were held by Churchill on trust for the Crown (hence the wording of Clause 11 (ii) of the 1946 Trust Deed) and that the present Trustees are similarly placed. This opinion has been notified to the Trustees (Mr Montrose) who, in his usual swift, shooting from the hip, response, has said that the Trustees will want to consider the implications of the advice received by Sir Robin and that he will "revert" to him on the question following formal determination of the status of the 'official' element. In the meantime Mr Montrose asks if Sir Robin is able to indicate the Government's attitude more generally as to the integrity and acquisition of the archive.

I am consulting Treasury Solicitor on how Sir Robin, who is on leave until the end of the month, should reply to Mr Montrose and will keep you informed of developments.

I am sending a copy of this letter to Duncan Chalmers and Nicholas Cox, PRO, John Marchant and Brian Wright, IR and to Andrea Smith, LCD.

Yours ever Pat

MISS P M ANDREWS

RESTRICTED

by DICK MURRAY
Transport Correspondent

GOVERNMENT ministers were at the centre of an escalating row today over the even[illegible]l cost to passengers of the British Rail [illegible]-off. Commuters could face ticket price rises of up to 15 per cent to help fund the sale, it was revealed today.

BR managers played what could prove to be their trump card in a leak of highly-sensitive documents which detail fare increases of up to eight times the rate of inflation.

It came as the chairman of the national passenger watchdog said the cost of splitting BR into 25 regional operations would fall on the fare-paying public.

Mr Michael Patterson, secretary of the Central Transport Consultative Committee, said that the extra costs were likely to be "on top of any fare increase that BR might propose for its own purposes".

The leak comes just 24 hours before new figures will show that complaints by BR passengers over the past 12 months have soared — with watchdog groups saying lack of Government investment is to blame. Transport ministers are now guaranteed a political furore when the Commons returns from its annual holidays in October.

A BR spokesman said "restructuring will lead to additional costs and those costs have to be met from some quarter".

Critics of the BR sale have long warned that passengers — and commuters in particular — will have to take the brunt of the cost. Earlier this year the Evening Standard revealed details of a Labour Party report — again based on BR figures — that the sell-off would mean fares rising by as much as 130 per cent.

BR sources put the eventual cost of privatisation at £200 million. Only £12 million has been set aside for that purpose with the rest having to come from increased fares.

The main initial cost is in breaking BR into 25 regional operations.

Huge additional expenses will also be incurred with the refurbishment of London commuter lines.

Leader comment: Page 5

Daily Telegraph
10th August 1993
Page 14

Guarding the railman's pension

reported that the

The Earl of Caithness, Transport

Copyright

sell

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

Ref: HO91/496 ✓ 8 August 1991

C J Gregory Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
LONDON
SW1H 9JS

Dear Colin

CHURCHILL/CHARTWELL

Thank you for your letter of 26 July 1991 which was awaiting me on my return from leave on Monday 5 August. I was most grateful for your help in providing briefing for Sir Robin Butler on Counsel's Opinion. I attach a copy of his letter to Mr Montrose which was sent out on 29 July.

Mr Montrose has, as predicted, responded quickly. A copy of his letter dated 2 August is also attached. I expect you have a copy of my letter of 21 September 1989 to which he refers but if not please let me know and I will send one across. As your papers will show this letter was written in close consultation with Mark Blythe and before the Trustees' real intentions had been made known - at that stage they were still talking about valuing the papers for insurance purposes and we were talking about access.

The letter has been acknowledged as Sir Robin is now on leave until the end of the month, but, on his return, he will wish to reply to the last paragraph and I should be grateful for your advice on this. My initial view is that he should simply re-iterate the line which has been taken all along that the archive should be preserved as an entity in the national interest with access being granted for the purpose of research. I would not have thought that he should allow himself to be drawn on the question of "acquisition". If you agree this line I will try my hand at a draft and send it for your comment.

Reverting to your letter would it not suffice simply to ask Counsel to confirm that their Opinion applies to all the documents described in the instructions rather than to ask them for a further opinion?

On the copyright question we have no further details. You will see that on the 'Summary of papers on Cabinet Office files' (Item 7 in the first instructions) there is an entry for 17 January 1963 which says "WSC assigned copyright in Chartwell and post-1945 papers to C & T publications". There is no file reference next to this entry and the only nearly contemporaneous document I have located is the letter from Anthony Moir (Trustees' Solicitor) to the Cabinet Secretary dated 15 October 1963 which says that when the Trustees assigned copyright to C&T Publications two clauses were inserted; both contained the provisions of Clause 11(ii) of the 1946 Settlement. (28/2/404).

However, on 22 September 1970 Sir 'Jock' Colville wrote to Sir W Armstrong at the Treasury about estate duty exemption attaching a Memorandum which begins:-

> "Sir Winston's pre-1946 papers were comprised, together with the copyright in them, in the Chartwell Trust dated 1946. His post-1945 papers were owned by him until his death. But he did on the 17 January 1963 assign the copyright in these papers to C&T Publications Ltd" (5/20 Pt 2 F56)

If you would like to see these documents please let me know.

Yours

Pat

MISS P M ANDREWS

Mr Gregory 'phoned on 21/8 to apologise for not having replied to this letter. He is on leave now until 28/8. He will then draft a letter for Sir Robin Butler to send to Lord Callaghan based on the one sent to Mrs Thatcher. He agreed with my proposed line on the reply to Montrose & I said I would prepare a draft to reach him on his return.

PMA 21/8.

37

CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 071-270 0101

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler KCB CVO

Ref. A091/2044 ✓

6 August 1991

c- ~~Miss Andrews~~
D10.6.92

Dear Mr Montrose,

I am writing to acknowledge your letter of 2 August 1991 to Sir Robin Butler. Sir Robin is away at present, but will reply substantively on his return.

Yours sincerely,
Sonia Phippard

(Miss S S Phippard)
Private Secretary

Ian Montrose Esq
Goodman Derrick & Co
9-11 Fulwood Place
Gray's Inn
London WC1V 6HQ

Sp 36

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L.D.E. 122
GROUPS II and III

CABINET OFFICE
A 9576 ✓
5 AUG 1991
FILING INSTRUCTIONS
FILE No. ....

YOUR REF

OUR REF IM/ep

DATE 2 August, 1991

c- Miss ~~Andrews~~
D10.6.92

Dear Sir Robin,

Churchill

Thank you for your letter of 29 July. I note your advice that the Government could not make an offer to purchase the archives along the lines suggested.

As you say the Trustees will want to consider the implications of the advice you have received as to the 'official' element of the 'Family' papers. You may be aware that this formed part of the subject matter of correspondence in 1989 with the Cabinet Office Historical Section, and I would refer to Miss Andrews' letter of 21 September 1989 in which it was stated that 'it seems to me inappropriate to debate with you the precise nature and extent of the Trustees' interest in the archive, on the one hand, and the Government's on the other'.

Following formal determination of the status of the 'official' element, and I shall in due course revert to you on this question, it may then be highly appropriate to establish the precise nature and extent of the Trustees' interest in the archive.

Subject thereto it would be helpful if you were able to indicate the Government's attitude more generally as to the integrity and acquisition of the archive.

Yours sincerely,

Ian Montrose

Ian Montrose

Private & Confidential

Mr Robin Butler, KCB CVO,
Cabinet Office,
Whitehall,
LONDON SW1 2AS

CABINET OFFICE
A 9516 ✓
2 AUG 1991
FILING INSTRUCTIONS
FILE No. ....

35

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

c- Miss Andrews

SIR ROBIN BUTLER

The Prime Minister has seen the letter you have written to the Solicitor acting for the Churchill Trustees. He was grateful to be kept informed of this and for the warning of possible trouble ahead.

CABINET OFFICE
H Internal
-2 AUG 1991
FILING INSTRUCTIONS
FILE No. ....

ANDREW TURNBULL

1 August 1991

24

CABINET OFFICE
A 8424
15 JUL 1991
FILING INSTRUCTIONS
FILE No. ....

HO91/453

SIR ROBIN BUTLER

CHURCHILL/CHARTWELL ARCHIVE: CONFERENCE WITH COUNSEL

Counsel, Mr Charles, has asked Treasury Solicitor for further information about the tax payable should the Churchill archive be exported in contravention of the estate duty undertakings and whether the papers are subject to restrictions on export. On the former, Counsel have been referred to correspondence which I had with Inland Revenue which shows that duty would be payable at the rate applicable when exemption was granted but on the current value of the items; on the latter, Treasury Solicitor has produced a short note, attached.

Counsel also asked for further background material in relation to the Trustees' offer to sell the papers to the Government. They have been provided with copies of Mr Tebbitt's letter to the Prime Minister to which he attached the memorandum which set out the Trustees' proposals for the sale of the papers, your minute to the Prime Minister dated 10 May 1991, and Mr Montrose's letter of 24 June 1991 all of which you have. Counsel have also been sent copies of correspondence which I have had with Inland Revenue and with Treasury Solicitor. I will bring these with me to the Conference in case Counsel refer to them.

Pat Andrews

MISS P M ANDREWS

Historical Section
12 July 1991

2. Are the papers subject to restriction on export?

Goods manufactured or produced more than 50 years before the date of exportation may not be exported without a licence granted by the Secretary of State for Trade and Industry under the Export of Goods (Control) Order 1989 (S.I. 1989/2376) made under section 1 of the Import, Export and Customs Powers (Defence) Act 1939. The proposed export of items which may be of national importance is considered by the Reviewing Committee on the Export of Works of Art (a committee of experts appointed by the Minister for the Arts). If the Committee considers an item to be of national importance they would normally recommend that the Secretary of State defers his determination of the licence application for a period of up to six months, to provide an opportunity for an offer to be made by a public or private purchaser at the fair market price. If such an offer is made during the deferred period the Secretary of State will normally refuse the licence.

An Open General Export Licence permits the export of certain items below specified values. However, "manuscripts, documents and archives" do not benefit from this licence and a specific licence must therefore be sought for the export of archive material over 50 years old.

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

Our Ref: HO91/452 ✓
Your Ref: T & M 69/340/CJG

11 July 1991

C J Gregory Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
LONDON
SW1H 9JS

Dear Colin

CHURCHILL/CHARTWELL ARCHIVE

Could you please substitute the attached undertaking by Lord Birkenhead for the one enclosed with my letter of 10 July 1991. I did not notice yesterday that he had been asked to revise the undertaking to bring it into line with that given by Mr Martin Gilbert. Apologies.

Yours sincerely
Pat

MISS P M ANDREWS

PS I also attach, as discussed on the telephone, a copy of Sir Robin Butler's submission to the Prime Minister and of Mr Montrose's latest letter.

PMA.

Ref.A091/1929 ✓

c- Miss Andrews
D 10.6.92

MR TURNBULL

The Churchill Archive

--- 32 The Prime Minister might like to be aware of the attached letter which I have written to Mr Montrose who is acting for the Churchill trustees. I have also sent a copy to Winston Churchill MP. The position taken in the letter is based on Counsel's advice.

2. It is not inconceivable that this letter might cause Mr Norman Tebbit to approach the Prime Minister again in the hope of finding a way round the road block.

F.E.R.B.

ROBIN BUTLER

30 July 1991

F

33

CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 071-270 0101

From the Secretary of the Cabinet and
Head of the Home Civil Service
Sir Robin Butler KCB CVO

29 July 1991

~~c-Miss Andrews~~
D 10.6.92

Dear Winston,

I enclose a copy of a letter I have written to Mr. Montrose about the Churchill Archive. As you will see, the matter is not straightforward. I am sorry not to be more helpful.

Yours sincerely,

Robin

Winston Churchill Esq MP
House of Commons

CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 071-270 0101

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler KCB CVO

Ref. A091/1899 ✓

29 July 1991

~~c- Miss Andrews~~ D 9.6.92

Dear Mr. Montrose,

The Churchill Archive

When we met at lunch on 1 May 1991 I said that I would consider the suggestion that the Chartwell or 'Family' papers should be purchased by Her Majesty's Government and that I would get back to you. I am sorry that it has taken me longer to do this than I anticipated.

I mentioned during our discussion that the 'Family' papers include many official papers, relating to Sir Winston Churchill's appointments as a Minister of the Crown. I am advised that the 'official' element of the 'Family' papers remains Crown property and the Government could not, of course, spend public monies on the acquisition of such official papers.

Sir Winston himself recognised the official nature of these documents, hence the wording of Clause 11(ii) of the 1946 Trust Deed, repeated in subsequent Deeds and undertakings, which restricts the Trustees' right to dispose of them without the Prime Minister's consent. The Settlement made on 27 December 1990 would appear to be in breach of this provision, and I am advised that this would have implications for the settlement's validity.

In the light of this advice you will understand that the Government could not make an offer to purchase the collection along the lines suggested by the Trustees when we met. I recognise that the advice which I have received is contrary to what has been the Trustees' understanding and that they will now want to consider its implications.

Yours sincerely,

Robin Butler

Ian Montrose Esq
Goodman Derrick & Co
9-11 Fulwood Place
Gray's Inn
London WC1V 6HQ

Folio 31

THE TREASURY SOLICITOR
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Miss P M Andrews
Historical Section
Cabinet Office
Hepburn House
Marsham Street
London SW1P 4HW

Please quote

Your reference HO91/467

Date 26 July 1991

CABINET OFFICE
H 91/294 J
29 JUL 1991
FILING INSTRUCTIONS
FILE No. ....

Dear Pat,

CHURCHILL/CHARTWELL

I expect this will reach you after you have gone on leave. I gave you a copy of Counsels' opinion last night and this morning we agreed the following wording to go into a covering minute for Sir Robin Butler:-

> "Overall it confirms their view that the Limitation Acts probably prevent the Crown from asserting full legal ownership over the documents but that Churchill can be regarded as having held them on trust for the Crown and the present trustees are similarly placed. Counsel therefore concluded that "there is a strongly arguable case that the Crown can claim equitable title to the documents as against the Archive Trustees as constructive trustees". Counsel also advise that in their opinion clause 11(ii) of the 1946 Settlement is enforceable by the Crown. They do not think it likely that the Public Records Act, the Official Secrets Act or the law of confidence will provide much assistance. They say the question of copyright is largely academic. This is all very much along the lines of what they said at the Consultation."

You mentioned that Counsel seem to have confined themselves to the categories of documents described in the Law Officers' Opinion of 1934. I think it very unlikely that Counsels' advice would differ in respect of official documents collected by Churchill when he was a Minister not in the Cabinet, but if you would like me to I can ask Counsel to provide a further opinion confirming that their advice applies to all the official documents described in the instructions.

Counsel have also asked for further details of the transfer of copyright in 1963. Please let me know if you have any more details on this.

[illegible] am sending a copy of this letter, together with a copy of the Opinion to Michael Carpenter (Law Officers' Secretariat), Sally Finn (Lord Chancellor's Department) and Nicholas Cox (Public Record Office).

Yours,

C J Gregory

Amendment to the letter to Ian Montrose suggested by Mark Blythe, Treasury Solicitor and recommended by Mr Nursaw

> "The Settlement made on 27 December 1990 would appear to be in breach of this provision, with obvious implications for the Settlement's validity."

26.7.91.

29

CABINET OFFICE
A 9223 ✓
26 JUL 1991
FILING INSTRUCTIONS
FILE No. ....

HO91/478 ✓

Thank you.
Pl. type for my sig and
get Mr. Churchill on the phone
for me. FERB
26.7.

SIR ROBIN BUTLER

CHURCHILL/CHARTWELL ARCHIVE: THE 'FAMILY' PAPERS

At the Conference with Counsel, Mr Hart QC and Mr Charles, on Wednesday 17 July 1991, held to discuss the Crown's rights in the pre-1945 papers in the Churchill Archive, it was agreed that they would submit a Written Opinion; this is now attached.

Overall it confirms their view that the Limitations Acts probably prevent the Crown from asserting full legal ownership over the documents but that Sir Winston Churchill can be regarded as having held them on trust for the Crown and that the present Trustees are similarly placed. Counsel therefore conclude that "there is a strongly arguable case that the Crown can claim equitable title to the documents as against the Archive Trustees as constructive trustees". Counsel also advise that, in their opinion, Clause 11(ii) of the 1946 Settlement is enforceable by the Crown.

Counsel do not think it likely that the Public Records Act, the Official Secrets Act or the law of confidence will provide much assistance and take the view that the question of copyright is largely academic. This is very much in line with what they said at the Conference.

I also attach a letter, drafted in consultation with Treasury Solicitor which, if you agree, you may wish to send to Mr Montrose just before you go on leave; you had in mind to have a word with Mr Winston Churchill before doing so.

I shall be away next week (for a week from 29 July). Mr Colin Gregory, Treasury Solicitor, tel. no. 210 3344 has very kindly said that he will be happy to help should you have any queries on the Opinion or the letter.

Pat Andrews

MISS P M ANDREWS

Historical Section
26 July 1991

DRAFT LETTER FOR SIR ROBIN BUTLER TO SEND TO:-

Ian Montrose Esq
Goodman Derrick & Co
9-11 Fulwood Place
Gray's Inn
LONDON
WC1V 6HQ

When we met at lunch on 1 May 1991 I said that I would consider the suggestion that the Chartwell or 'Family' papers should be purchased by Her Majesty's Government and that I would get back to you. I am sorry that it has taken me longer to do this than I anticipated.

I mentioned during our discussion that the 'Family' papers include many official papers, relating to Sir Winston Churchill's appointments as a Minister of the Crown. I am advised that the 'official' element of the 'Family' papers remains Crown property and the Government could not, of course, spend public monies on the acquisition of official papers which they own.

Sir Winston himself recognised the official nature of these documents, hence the wording of Clause 11(ii) of the 1946 Trust Deed, repeated in subsequent Deeds and undertakings, which restricts the Trustees' right to dispose of them without the Prime Minister's consent. The Settlement made on 27 December 1990 may indeed be in breach of this provision.

An offer to purchase the collection along the lines suggested by the Trustees when we met would not therefore be appropriate. The Trustees will no doubt wish to reconsider their position in the light of what I say above.

THE CABINET OFFICE
RE: SIR WINSTON CHURCHILL'S PAPERS

JOINT OPINION

The Treasury Solicitor
Queen Anne's Chambers
28 The Broadway
London SW1H 9JS

THE CABINET OFFICE
RE: SIR WINSTON CHURCHILL'S PAPERS

JOINT OPINION

1. Crown ownership in principle

1.1. We agree with the Opinion of the Law Officers dated 18th June 1934 that documents of the categories to which they refer were and remained Crown property, notwithstanding the licence granted by successive Cabinets from 1917 onwards (with the exception of the 1924-1929 Conservative Cabinet). That licence did not have the effect of transferring absolute ownership to the Minister. Pace that Opinion, we doubt whether the licence permitted the Minister to destroy the documents, although the question seems wholly academic. We agree that the licence could not be used by assigns or personal representatives of the Minister to assert a continued right to possession as against the Crown.

1.2. The categories concerned are:

> Group 1: The original MSS of which the Minister retained possession so far as the same were initialled (either by the Minister or an official) for official use;
>
> Group 2: Copies of (1) made by or at the direction of the Minister and retained by him as spare copies;
>
> Group 3: Copies of (1) made on the instructions of the Minister and sent by his direction to the Cabinet Office for circulation, and circulated with the heading "This document is the property of His Britannic Majesty's Government. Secret";
>
> Group 4: Copies of (1) made in the Cabinet Office and

circulated with the same heading;

Group 5. Copies made and circulated (with the same heading) by the Cabinet Office of Cabinet Minutes, or of certain other Cabinet documents composed in the Cabinet Office.

2. Is the Crown's right of action barred and its title extinguished? Rights of action at common law.

2.1. The Crown's right of action to assert its right to possession of the goods lies prima facie in conversion and/or detinue[1]. Conversion is a tort constituted by a "dealing" by the defendant with property in a manner inconsistent with the true owner's title. The true owner's right to bring an action is barred after a lapse of 6 years from the date of the first such dealing (see s.3(1) Limitation Act 1939, s.3(1) Limitation Act 1980). Detinue consisted of the refusal by the defendant to deliver up property to the true owner following demand made. Under the pre 1939 law it was theoretically possible for an owner whose right of action in conversion was barred to make a subsequent demand for return, thus triggering a new period for the purposes of an action in detinue: he could not sue for damages in conversion but his title, for the purposes of detinue, had not been extinguished[2].

2.2. The Limitation Act 1939 set about curing this anomaly by providing (in Section 3(2)), in effect, that the title of the true owner would be extinguished six years after the date of the first conversion in respect of which he had a right of action.

2.3. It is absolutely clear that, so far as actions in

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[1] now abolished (see Torts (Interference with Goods) Act 1977, but the gist of the action remains.

[2] The theory was put into practice in Wilkinson v,. Verity (1871) L.R. 6 C.P. 206, in a decision which was criticised, and which has been argued to be inconsistent with the later case of Beaumont v. Jeffrey [1925] Ch. 1 (see Preston & Newsom's Limitation of Actions, 3rd ed., at p.43. Sed quaere.) See also Clayton v. Le Roy [1911] 2 KB 1031 per Fletcher Moulton LJ at 1048.

conversion are concerned, the Limitation Acts 1939 and 1980 apply to the Crown (see s.30 of the 1939 Act and s.37 of the 1980 Act). They apply to "proceedings by or against the Crown" in like manner as to proceedings between subjects. The language of Section 3(2) of each Act is, however, directed not to the time limit within which a proceeding may be brought but with the date at which a title is extinguished. It is therefore arguable, as matter of literal interpretation, that s.3(2) does not apply to the Crown. Given the purpose of s.3(2), namely to prevent the bringing of actions in detinue long after the period during which an action in conversion might be brought, we have little doubt that this argument is a bad one. We note that the Law Officers reached the same conclusion, albeit in language evincing some hesitation, in 1956[3].

2.4. The essential question, therefore, is whether either Mr (later Sir) Winston Churchill or his assigns, the trustees for the time being of his 1946 Archives Settlement and its successor settlements (to whom we refer compendiously as "the Archive Trustees"), have ever been guilty of a sufficient "dealing" with the Crown papers in their possession to constitute the tort of conversion for the purposes of starting the statutory period running.

2.5. In our view the making of the 1946 Settlement constituted such a "dealing". It has been said that conversion is "the most intuitive and perhaps the most discretionary of all torts"[4], but the recital of his possession of the documents, and their assignment and confirmation of them to the Trustees to be held on trusts in which the rights of the Crown were reduced to a restriction on publication sale or disposition without the consent of the Prime (and other relevant) Minister seem to us to add up to a dealing inconsistent with the Crown's title. The contrary is arguable, but we would not care to argue it. Even so, it does not automatically follow from that that a right of

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[3] see the Opinion in the matter of the records of Edw.II included with our papers.

[4] see Palmer, Bailment, at p.128.

action accrued to the Crown in 1946. A plaintiff may only sue in conversion if he has possession or an immediate right to possession. As a consequence of the licence to retain which Mr Churchill enjoyed, the Crown had no such right to possession (at least in respect of the post 1917 documents[5]) immediately before the making of the 1946 1934 Settlement. However, in our view the making of the Settlement was inconsistent with the terms of the licence and gave rise to an immediate right to possession in the Crown[6]. Again the contrary is arguable, but we would not care to argue it.

2.6. If we are wrong about that, were there any other acts or events which were "dealings" for the purposes of the tort of conversion or gave rise to a cause of action in detinue? We doubt it. The following have been suggested:

(i) Churchill's refusal to return papers in 1935. As to this, it seems to us that he was entitled to refuse to return post 1917 papers by virtue of the licence granted by the post 1917 Cabinets;

(ii) the settlement of 1963. If the original 1946 Settlement was no conversion, it is difficult to see why the subsequent 1963 Settlement, created in exercise of a power conferred by the 1946 Settlement, should have been one. It is a separate question whether the 1963 Settlement was a "disposition" which required consent under the 1946 Settlement (see paragraph 7.2. below);

(iv) the assignment of copyright in 1963. We are not sure what assignments of copyright were made, or purportedly made, in 1963 of the pre-1945 papers and require further information on this[7]. However, in principle we do not see

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[5] We think the 1924-29 documents probably follow the same rule).

[6] cf Moorgate Mercantile Ltd v. Finch & Read [1962] 1 QB 701, C.A.

[7] please supply.

why the assignment of copyright should amount to a "dealing" so far as the right to possession of the documents themselves is concerned;

(iv) Churchill's death in 1965. Given the fact of the 1946 Settlement, this event (and any subsequent vesting in, or by, his personal representatives) will not have affected ownership of the documents, and will therefore not have constituted a dealing. However, if we are wrong that the Crown had a right of possession immediately following, and consequent upon, the making of the 1946 Settlement, it is arguable that the death (and resulting expiration of the licence), gave rise to a theretofore non-existent right to possession. Whether that would have resulted in the 1946 Settlement ripening into an actionable "dealing" seems to us questionable.

2.7. We conclude that the Crown's rights of action at common law to ownership of the documents are but weakly arguable.

3. Is the Crown's right of action barred and its title extinguished? Rights of action in equity.

3.1. If it can be plausibly asserted that Mr Churchill was "a trustee" of the relevant documents for the Crown, the Limitation Acts paint a different picture. No period of limitation is prescribed for an action by a beneficiary against a trustee to recover trust property in possession of the trustee or previously received by the trustee and converted to his use (see Section 19(1)(b) of the 1939) Act and Section 21 of the 1980 Act). Such a trustee might plead the equitable defences of laches or acquiescence, but it is respectably arguable that neither defence can be pleaded against the Crown (see Halsbury's Laws, 4th ed., paras 896 and 962 in relation to laches: acquiescence from which consent may be inferred may stand on a different footing).

3.2. Was Mr Churchill a trustee of the documents? There are some grounds for saying that he expressly accepted the office of trustee in relation to the documents (see his letter dated 19th November 1934 to Sir Rupert Howorth), but (assuming the veracity of the assertion he makes in that letter) it may be that he was doing no more than acknowledging his obligations of confidence in relation to the <u>information</u> contained in them. However, for the Crown to assert an equitable title (and therefore constructive trusteeship in Mr Churchill), it may not be necessary to assert an express acceptance by him of the office of trustee. As a matter of general principle, a person in a fiduciary relationship who receives property by virtue of that relationship must account for it to the person to whom the duty is owed. Being under that duty in relation to the relevant property, he may be described as a constructive trustee of it[8]. The Limitation Acts' definitions of "a trustee" are by reference to Section 68(17) of the Trustee Act 1925, and thus include a constructive trustee.

Not sure
about this

3.3. Was Mr Churchill a constructive trustee of the documents? In our view this question depends on whether his original possession of them arose out of a fiduciary relationship owed by him to the Crown? We are not aware of any authority directly touching on the question whether the duty of a Cabinet Minister to the Crown may properly be characterised as a fiduciary relationship for this or any other purpose. However, the question has but to be posed in these terms, for the correct answer to suggest itself as obvious. If the duty of a Cabinet Minister to the Crown is not a fiduciary one, it is hard to conceive that other offices or employments can give rise to such duties in the absence of express contract.

3.4. If Mr Churchill was a constructive trustee, are his assigns (the 1946 Trustees and their successors the trustees of the 1963 and 1990 Settlements) likewise trustees? The answer to this question depends on whether they had sufficient knowledge, actual or imputed, of the trust on which Mr Churchill (constructively)

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[8] see per Bowen L.J. in <u>Soar v. Ashwell</u> [1893] 2 QB 390 at 397, and <u>Chettiar v. Chettiar</u> [1935] AC 163.

held the documents. Since they must have known of the capacity in which he acquired them, it is not (in our opinion) difficult to impute to them the requisite degree of knowledge.

3.5. We conclude that there is a strongly arguable case that the Crown can claim equitable title to the documents as against the Archive Trustees as constructive trustees. Once the initial step is taken (of analysing the original relationship as fiduciary) it is difficult to see what answer there is to that claim short of acquiescence by the Crown in the Archive Trustees' title amounting to consent. The only evidence of such acquiescence appears to us to lie in (a) the grant of estate duty exemptions which only made sense on the footing of Sir Winston's competency to dispose, and (b) the terms of the 1964 undertaking (by the then trustees of the 1963 Settlement) which described the documents as "State Papers formerly belonging to Sir Winston and which came into existence prior to his resignation as Prime Minister in 1945". The first of these does not unduly trouble us, since the exemptions were, as we understand it, global exemptions covering documents which were undoubtedly Sir Winston's in addition to those now claimed by the Crown. The latter is more difficult. However, we do not on balance think that the wording of the undertaking, taken as a whole, amounted to a sufficient acknowledgment of Sir Winston's title to bar a suit by the Crown in equity to establish its beneficial ownership of the documents at the present time.

5. Public Records Act 1958?

We agree with the analysis in our Instructions, and the conclusion that this Act applies to government departments and other creators of potential public records, but not to existing records that may have strayed from public possession. We note the Opinion of the Law Officers in 1914 as to the effect of the Public Record Office Act 1838, and also their reference to an "indefeasible right of the Crown to its official records". We do not, however, share the view (if it was then held) that the

Crown's right to its official records was incapable of alienation. Such a bald proposition seems unsupported by authority, ancient or modern, and is inconsistent with the existence of more limited propositions (which are supported by authority) as to the limitations on alienability of certain types of Crown property, e.g. the Crown jewels (see Halsbury's Laws, 4th ed, para 1061).

6. Official Secrets Act 1989

Section 8(4) relates to retention by a person, in defiance of an official direction of documents, "which it would be an offence under section 5 for him to disclose without lawful authority." This raises an interesting point of construction. Sections 1 to 3 of the Act create offences of disclosure of "damaging" official information to which a defence is available in each case on proof by the accused of the absence of certain mental elements. By contrast, the offence created by Section 5(2) is made subject to, inter alia, sub-section (3); and that sub-section does not start with the words "It is a defence for the person charged...", but, rather, with the words ".....a person does not commit an offence under sub-section (2) unless..[the disclosure is damaging and the mental elements are present]". In our view this is crucial for the purposes of the potential offence under Section 8(4). For an official direction to have teeth the person to whom it is directed must, in our opinion, be capable of being shown to know, or have reasonable cause to believe, that disclosure of the information (or document or article) would be "damaging" within the meaning of the earlier relevant sections, e.g. Section 1(4); and, in any case, it must also in fact be "damaging". We should be extremely surprised if this could be plausibly asserted in relation to the contents of most of the documents here under consideration. While there may be some in the relevant category, it is hard to suppose that this will be a telling point in any negotiation for the purchase of the archive.

7. Clause 11(ii) of the 1946 Settlement

7.1. We first consider the validity of this Clause. In our view, to the extent that it seeks to fetter property in perpetuity whether or not it remains in trust, it is prima facie an invalid restraint on alienation. However, to the extent that it merely fetters the Trustees in their dealings with the property while it remains in trust it is perfectly valid, and (in our opinion) enforceable at the suit of the persons (the Prime and other relevant Minister for the time being) in whom the power of consent is vested. As a matter of construction, it seems to us strongly arguable that it purports to achieve the former result (the contrasting wording in Section 11(iii) is particularly to be noted in this context). On its face it would prevent the Trustees from disposing of the relevant document to the beneficiary otherwise absolutely entitled at the end of "the Specified Period" as defined in the 1946 Settlement. It does not, however, follow that the sub-clause should be denied its more limited validity as a brake upon the power of the Trustees so long as the trust validly lasts.

7.2. We think it arguable, although academic, that the 1963 Settlement was a "disposition"[9] for which consent should have been sought under Clause 11(ii). That seems to us probably to depend upon a technical question in the law of trusts, much canvassed in the context of the capital gains tax legislation, as to whether the 1963 Settlement was a wholly new settlement or simply took effect under the old (cf Bond v. Pickford [1983] STC 517, C.A.). The latter is probably the better view, not least because of the express inclusion of (inter alia) Clause 11(ii) of the 1946 Settlement by reference.

7.3. A stronger case can be made, on the same technical grounds, that the 1990 Settlement was a "disposition" in breach of the restriction in the 1963 Settlement carried forward from the 1946 Settlement. We see no reason why this point should not now be

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[9] the actual wording is "shall not...dispose..".

taken by the Crown. The remedy is an action for a declaration that the disposition constituted by the 1990 Settlement was in breach of that provision and therefore void, alternatively an order that it be set aside. Threat of such an action might well be sufficient to extract from the 1990 Trustees (a) an admission that their Settlement is subject to a limitation in the terms of Clause 11(ii) of the 1946 Settlement, and (b) an undertaking in more satisfactory terms than that given in 1964 by the then Trustees of the 1963 Settlement.

7.4. In this connection it should be noted that the 1990 Settlement contains no express reference to Clause 11(ii) of the 1946 Settlement. We doubt if this was an accidental omission, and there must be room at least for suspicion that the omission was in the hope that the existence of the restriction (which we think probably impliedly applies to the 1990 Settlement) might in practice get forgotten. We are not clear what fiscal returns, or determinations by the Inland Revenue, have been necessitated by the making of the 1990 Settlement. It is important that the Crown does not pass up the opportunity either to protest at the omission of the restriction, or to take the point as to the invalidity (or voidability) of the 1990 Settlement.

8. Is the 1964 Undertaking enforceable by the Crown against the present Archives Trustees, and if so how?

8.1. We regret to advise that in our opinion the 1964 undertaking in hindsight suffers from two major defects in its drafting. First, it is on its face binding only on the parties thereto (i.e. the then trustees) who did not, as might have been expected covenant to procure a similar undertaking from their successors as trustees. Secondly, the undertaking they gave in relation to beneficiaries was, semble, not that the beneficiary would give a similar undertaking to the Crown but that they would receive a similar undertaking from the beneficiary[10]. In those circumstances we do not see to what useful legal use, independently of the general fiduciary claim, the undertaking can be put at the present time.

8.2. The undertaking may, however, have significance in two ways. First, its existence (and to some extent its wording) seems to us consistent with and arguably confirmatory of the existence of fiduciary duties owed by the 1963 Trustees as holders of the State Papers. Secondly, it might be argued against the Crown that it cannot go back on the promises made by it either expressly (i.e. permitting the 1963 Trustees to retain possession) or impliedly (i.e. permitting the 1963 Trustees to "vest" the papers in a Beneficiary subject to his undertaking the relevant obligation). Such an argument cuts both ways, since no successor of the 1963 Trustees or Beneficiary could claim the benefit of this permission without submitting to the burdens of the document.

9. Copyright

9.1. The question whether the Crown owns the legal title to the copyright depends on whether the compositions were made "by or under the direction or control of Her Majesty or a Government Department" (see s.39 of the Copyright Act 1956 as applied by paragraph 40 of Schedule 1 to the Copyright Designs and Patents Act 1988). It seems to us doubtful whether documents in Groups 1 and 2 come within these words, although (as the Treasury Solicitor pointed out in Consultation) it would be odd if the view could not be taken that documents prepared by a Minister in his official capacity were prepared under the direction or control of the Minister.

6.2. However, we consider that the question is largely academic

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[10] The contrary is arguable: it may be that the Trustees cannot successfully impose the obligation on the beneficiary without causing him to enter into a direct covenant with the Crown.

in the present context, since any copyright enjoyed by Mr Churchill in the State Papers would have been held on trust for the Crown (cf., e.g., Antocks Lairn Ltd v. I Bloohn Ltd [1972] RPC 219 and other cases cited at para 362 of Copinger & Skone James on Copyright, 12th edn.).

10. Confidence

It is extremely difficult to specify what types of information are (or were originally) subject to an obligation of confidence. We would, expect, however, that most of the documents thought worthy of retention by Mr Churchill in his pre 1945 Offices of State would originally have been of a confidential nature. However, in most cases we would expect the passage of time to have evaporated the confidential nature of the information. So far as concerns documents which would be disclosable under the Public Record Office Act, we do not see how any claim to confidence could seriously be maintained. As regards documents which would not be so disclosable (because of the view taken by the Lord Chancellor under that Act), the Court would not be bound by the Lord Chancellor's view but could make up its own mind (cf the approach of the Court in the Crossman Diaries case[11]). In any event, to prevent publication it would probably have to be shown not only that the information was confidential but that it was in the public interest that its disclosure be enjoined (see, e.g. A-G v. Jonathan Cape [1976] 1 Q.B. 752 at 770, and A-G v. Guardian Newspapers Ltd (No 2) [1990] A.C. 109, per Scott J at 144-5, Dillon L.J. at 201, Bingham L J at 214-223, Lord Keith at 257 and Lord Goff at 283).

Michael Hart
Michael Hart QC

Charles
William Charles
Lincoln's Inn
25th July 1991

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[11] A.-G. v. Jonathan Cape [1976] 1 QB 752 at 771.

CABINET OFFICE

Historical Section
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Telephone 071-217 6050

Ref: HO91/467 ✓

24 July 1991

C J Gregory Esq
Treaury Solicitor
Queen Anne's Chambers
28 Broadway
LONDON
SW1H 9JS

Dear Colin

We spoke yesterday about Sir Robin Butler's letter to Mr Montrose and I enclose a copy of the letter incorporating your suggested amendments.

I also enclose a slightly amended version for your consideration. I have, as you will see changed the first paragraph to remove the reference to "handling" as we do not, in fact, address that in the rest of the letter. I have also re-ordered the sentences in the second paragraph.

I do just wonder about the words "in equity if not law" which is why I have put them in square brackets. Mr Montrose will pounce on any chink in our armour - would it not be better to end the sentence on "remains Crown property"?

Could you let me know whether my amended version of the letter with "in equity if not law" omitted meets with your approval?

Yours sincerely

Pat

MISS P M ANDREWS

PS Also enclosed is the minute to Mrs Thatcher (when Prime Minister) which we mentioned.

Amended

DRAFT LETTER FOR SIR ROBIN BUTLER TO SEND TO:-

Ian Montrose Esq
Goodman Derrick & Co
9-11 Fulwood Place
Gray's Inn
LONDON
WC1V 6HQ

When we met at lunch on 1 May 1991 I said that I would consider the suggestion that the Chartwell or 'Family' papers should be purchased by Her Majesty's Government and that I would get back to you. I am sorry that it has taken me longer to do this than I anticipated.

I mentioned during our discussion that the 'Family' papers include many official papers, relating to Sir Winston Churchill's appointments as a Minister of the Crown. I am advised that the 'official' element of the 'Family' papers remains Crown property ~~(in equity if not law)~~ and the Government could not, of course, spend public monies on the acquisition of official papers which they own.

Sir Winston himself recognised the official nature of these documents, hence the wording of Clause 11(ii) of the 1946 Trust Deed, repeated in subsequent Deeds and undertakings, which restricts the Trustees' right to dispose of them without the Prime Minister's consent. The Settlement made on 27th December 1990 may indeed be in breach of this provision.

Recommended by Colin Gregory after seeing Counsel's written Opinion.

An offer to purchase the collection along the lines suggested by the Trustees when we met would not therefore be appropriate. The Trustees will no doubt wish to reconsider their position in the light of what I say above.

DRAFT LETTER FOR SIR ROBIN BUTLER TO SEND TO:-

Ian Montrose Esq
Goodman Derrick & Co
9-11 Fulwood Place
Gray's Inn
LONDON
WC1V 6HQ

When we met at lunch on 1 May 1991 I said, that I would consider how the Trustees' proposals for the purchase by Her Majesty's Government of the Chartwell or 'Family' papers should be handled and that I would then get back to you. I am sorry that it has taken me longer to do this than I anticipated.

I mentioned during our discussion that the 'Family' papers include official papers relating to Sir Winston Churchill's many appointments as a Minister of the Crown. The Government could not, of course, spend public monies on the acquisition of official papers which they own. I am advised that the 'official' element of the 'Family' papers remains Crown property in equity if not law.

Sir Winston himself recognised the official nature of these documents, hence the wording of Clause 11(ii) of the 1946 Trust Deed, repeated in subsequent Deeds and undertakings, which restricts the Trustees' right to dispose of them without the Prime Minister's consent.

An offer to purchase the collection along the lines suggested by the Trustees when we met would not therefore be appropriate. The Trustees will no doubt wish to reconsider their position in the light of what I say above.

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

Ref: HO91/463 ✓

22 July 1991

C J Gregory Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
LONDON
SW1H 9JS

Dear Colin

We spoke following the Conference with Counsel last week when I told you that because my leave immediately precedes Sir Robin Butler's I need to get to him before the end of this week a draft of a letter for him to send to Mr Montrose of Goodman Derrick as Trustee of the Churchill Archive.

Sir Robin would like to have Counsel's written Opinion before he contacts Mr Montrose even if he does not show his hand at this stage with regard to the legal arguments which we may deploy at a later stage. You kindly agreed to contact Counsel to see whether the Opinion could reach us in this time-scale.

I attach a draft outline of the sort of letter I think Sir Robin may wish to send to Mr Montrose. I have left a space where I hope you will advise on a sentence or two on what we believe the legal situation to be without, as I say, giving too much away!

Your early comments on and additions to the letter to Mr Montrose would be much appreciated.

Yours sincerely

Pat

MISS P M ANDREWS

DRAFT LETTER FOR SIR ROBIN BUTLER TO SEND TO:-

Ian Montrose Esq
Goodman Derrick & Co
9-11 Fulwood Place
Gray's Inn
LONDON
WC1V 6HQ

When we met at lunch on 1 May 1991 I said that I would consider how the Trustees' proposals for the purchase by Her Majesty's Government of the Chartwell or 'Family' papers should be handled and that I would then get back to you. I am sorry that it has taken me longer to do this than I anticipated.

I mentioned during our discussion that the 'Family' papers include official papers relating to Sir Winston Churchill's many appointments as a Minister of the Crown. The Government could not easily justify the use of public monies to buy back documents produced by, or for Sir Winston in this capacity and which I am advised.........[Continue to be Crown property]

S "official" element in "Family" [illegible] [illegible] [illegible]
in equity if not law.

of crown
spend public
monies on
acquisition
[illegible] / [illegible] Crown

Sir Winston himself recognised the official nature of these documents, hence the wording of Clause 11(ii) of the 1946 Trust Deed, ~~and~~ repeated in subsequent Deeds and undertakings, which restricts the Trustees' right to dispose of them without the Prime Minister's consent.

The matter is not therefore as clear cut as was thought and you may wish to consider further before deciding whether a formal approach should be made.

offer to purchase
[illegible]
not law
[illegible]
2 [illegible] be appropriate
[illegible] doubt
[illegible] reconsider [illegible] what I say above

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

HO91/454 ✓

C J Gregory Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

12 July 1991

Dear Colin

CHURCHILL/CHARTWELL ARCHIVE

In my letter of 10 July 1991 I said that Randolph Churchill had submitted that part of the biography which he wrote and had accepted the Cabinet Secretary's ruling that one document he wished to reproduce could not be used. I find that this is not quite accurate. The permission to use certain documents was sought by a Mr Montague Brown who was editing thepublication of photographic facsimiles taken from the Second Volume of the biography and permission to reproduce Churchill's Privy Councillor's Oath was refused. I think we assumed that the request was made on behalf of Randoph Churchill but it would appear that it was made for a different purpose. This is perhaps irrelevant for the purpose of the Conference with Counsel and, in any event, it does show that those concerned with the biography recognised that official clearance for use of the papers had to be sought, I thought however that I should point out the inaccuracy, for which I apologise.

Yours sincerely

Pat

MISS P M ANDREWS

THE TREASURY SOLICITOR
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Please quote T&M 69/340/CJG

Your reference HO91/440

Date 12 July 1991

CABINET OFFICE
H 91/283 ✓
12 JUL 1991
FILING INSTRUCTIONS
FILE No.

Dear Pat,

CHURCHILL/CHARTWELL ARCHIVE

Thank you for your letters of 10 and 11 July.

I enclose a copy of some further Instructions which I have sent to Counsel.
attached + copy also at annex :

Copies of this letter go to Michael Carpenter (Legal Secretariat to the Law Officers), Sally Finn (Lord Chancellor's Department), Nicholas Cox (Public Records Office) and John Marchant (Inland Revenue).

Yours sincerely,

C J Gregory

C

THE CABINET OFFICE

RE: SIR WINSTON CHURCHILL'S PAPERS

FURTHER INSTRUCTIONS TO COUNSEL TO ADVISE IN CONSULTATION ON WEDNESDAY 17TH JULY 1991 AT 70 WHITEHALL SW1 AT 4.30PM AND IN WRITING

Counsel have herewith copies of the following:-

1. Correspondence between Miss Andrews of the Cabinet Office and Mr Marchant of the Inland Revenue in July 1989 and July 1990.

2. Letter from Mr Tebbitt to the Prime Minister dated 27th March 1991 with attachments.

3. Note from Sir Robin Butler to the Prime Minister dated 10th May 1991.

4. Letter from Mr Montrose dated 24th June 1991.

5. Letter from Miss Andrews to Instructing Solicitor dated 10th July 1991 with attachments.

Mr Charles of Counsel has raised some queries with Instructing Solicitor.

1. If the papers are exported from the UK in contravention of the estate duty undertakings, what tax becomes payable?

This question is addressed in the exchanges of correspondence between Miss Andrews of the Cabinet Office and Mr Marchant of the Inland Revenue (1). Counsel will see that duty is payable at the rate applicable when the exemption was granted and not at current rates. However duty is payable on the current value of the items.

2. Are the papers subject to restriction on export?

Goods manufactured or produced more than 50 years before the date of exportation may not be exported without a licence granted by the Secretary of State for Trade and Industry under the Export of Goods (Control) Order 1989 (S.I. 1989/2376) made under section 1 of the Import, Export and Customs Powers (Defence) Act 1939. The proposed export of items which may be of national importance is considered by the Reviewing Committee on the Export of Works of Art (a committee of experts appointed by the Minister for the Arts). If the Committee considers an item to be of national importance they would normally recommend that the Secretary of State defers his determination of the licence application for a period of up to six months, to provide an opportunity for an offer to be made by a public or private purchaser at the fair market price. If such an offer is made during the deferred period the Secretary of State will normally refuse the licence.

An Open General Export Licence permits the export of certain items below specified values. However, "manuscripts, documents and archives" do not benefit from this licence and a specific licence must therefore be sought for the export of archive material over 50 years old.

Mr Charles indicated to Instructing Solicitor that it would be helpful if Counsel had some further background material in relation to the trustees' offer to sell the pre-1945 papers to the Government. The proposal is put forward in a memorandum sent by Mr Norman Tebbitt to the Prime Minister (2). It was discussed at a lunch Sir Robin Butler had with the trustees (Mr Ian Montrose and Mr Peregrine Churchill), together with Lord Goodman and Mr Winston Churchill MP, on 1st May. Counsel have before them a copy of Sir Robin's note to the Prime Minister following that lunch (3). Counsel also have a copy of a further letter written by Mr Montrose asking when the trustees might expect a response. Sir Robin has replied simply that he hopes to respond soon.

Counsel also have before them a letter from Miss Andrews to

Instructing Solicitor dated 10th July 1991. It refers to the events surrounding Lord Hankey's request to Churchill to return the papers in 1934. It also has attached to it a letter from Randolph Churchill submitting his part of Churchill's biography for clearance and undertakings signed by Churchill's other biographers, Martin Gilbert and Lord Birkenhead.

If Counsel have any further queries before the Consultation please would they telephone Mr Colin Gregory of Instructing Solicitor (071-210 3344).

THE CABINET OFFICE

RE: SIR WINSTON CHURCHILL'S PAPERS.

FURTHER INSTRUCTIONS TO COUNSEL TO ADVISE IN CONSULTATION ON WEDNESDAY 17TH JULY 1991 AT 70 WHITEHALL SW1 AT 4.30PM AND IN WRITING

Mr Michael Hart QC
2 New Square
Lincoln's Inn
London WC2A 2RU

with you

Mr William Charles
13 Old Square
Lincoln's Inn
London WC2A 3UA

The Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

Tel: 071-210 3344

Ref: T&M 69/340/CJG

Date: 12 July 1991

Contents of letter discussed with and approved by Mr Wright

①

Inland Revenue
Capital and Valuation Division

Somerset House
London
WC2R 1LB

Telephone 071-438

lw 6/7

Miss P M Andrews
Cabinet Office
Historical Section
Hepburn House
Marsham Street
LONDON
SW1P 4HW

Your ref H090/189

Our ref CAP/IHT/39/88

Date 6 July 1990

Dear Pat

CHURCHILL/CHARTWELL PAPERS

You wrote to me on 7 June to inquire whether the heritage exemption on the Trust Archives can be cleared by payment of the original Estate Duty (ED) liability.

I am afraid that there is no statutory provision for an exemption to be "bought out" in the way you suggest. The ED rules do provide for a recapture charge to be levied on a breach of the undertakings given in return for exemption and it is of course possible that the trustees might attempt to engineer such a breach if that served their purpose. However, this is certainly <u>not</u> something which we would wish to encourage and it should not be mentioned as a possibility to the trustees.

The recapture charge would be calculated on the <u>current</u> value of the Trust Archives, thus the absence of a valuation at an earlier date would be irrelevant. ED would be charged at the rate which would have applied to the death estate in respect of which the exemption was granted. In the present instance this is 50 per cent.

One practical option open to the trustees is a private treaty sale of the Trust Archives to one of the bodies within Schedule 3 to the Inheritance Tax Act (copy enclosed for your information). In that event no ED would be payable and the <u>conditional</u> exemption would be converted into an <u>absolute</u> exemption. But the sale price at which the Trust Archives would be offered to the Schedule 3 body would have to reflect the ED exemption. The position might best be illustrated by the following example which assumes that the Trust Archives have a current value of £1 million. On that basis the special price would be calculated thus:

Present Value	£1,000,000
<u>Deduct</u> ED liability at 50%	500,000
	£ 500,000
<u>Add back</u> 25% of the ED liability (the "douceur")	£ 125,000
Price to be paid by Schedule 3 body	£ 625,000

cc. Mr Wright

The above simplifies the true position since it ignores the Capital Gains Tax (CGT) liability which the trustees would incur on a sale. As with ED, the CGT liability would be deducted from the current value and 25 per cent of it (the "douceur" applies to CGT as well as to ED and its successors capital transfer tax and inheritance tax) added back.

Unless you have any immediate questions I think we now need to wait to see precisely what the trustees propose before being able to consider the possible tax implications further.

Yours ever

John.

J G MARCHANT

Encl.

Inland Revenue
Capital and Valuation Division

Somerset House
London
WC2R 1LB

Telephone 01-438 6583

Miss P M Andrews
Cabinet Office
Historical Section
Hepburn House
Marsham Street
LONDON SW1P 4HW

Your ref HO 89/330
Our ref CAP/IHT/39/88
Date 7 AUGUST 1989

CABINET OFFICE
H 89/305
-9 AUG 1989
FILING INSTRUCTIONS
FILE No

Dear Miss Andrews

CHURCHILL/CHARTWELL PAPERS

Thank you for your letter of 28 July.

I am sure it will come as no great surprise to learn that the first of your 2 questions cannot be answered with a definitive 'yes' or 'no'!

Exemption from estate duty on the death on 6 June 1968 of Randolph F E S Churchill was claimed, and granted, in respect of "the bound and unbound documents boxes and casket comprised in the definition of "The Trust Archives" contained in Clause 1(d)(i) of the said Settlement and now [date of application 4 December 1970] a subject to the trusts of the said Settlement". Whether the term "The Trust Archives" covers items 2, 3 and 4 as shown in the 3rd paragraph of Ian Montrose's letter dated 13 June 1989 is a question of fact which, I'm afraid, cannot be resolved on the basis of the information contained in the Revenue files. Whereas Ian Montrose claims that "All these items are specified in the original deed of settlement of 31 July 1946" (a copy of which I enclose together with a copy of the 1963 Settlement) I can only find a specific reference to item 3 (the Heinsius Letters) - see Part 4 of the Schedule to the Settlement. The matter is further complicated by the apparent dispute over ownership of some of the papers - see the penultimate paragraph of Peregrine Churchill's letter of 21 April 1989 and the 4th paragraph of Ian Montrose's letter of 13 June 1989. Having regard to the terms in which the latter is couched, and while nothing may hang on it from the Revenue's viewpoint, you may wish to try to establish with the Solicitors (a) precisely which papers are claimed to be now owned personally by Peregrine and Winston, and (b) when and in what circumstances those 2 became entitled to the ownership of the papers as against the trustees of the Settlement. No doubt this is something on which you will be seeking the Treasury Solicitor's advice.

The second question, at least, can be answered with certainty and rather more briefly. I have confirmed with Brian Wright of the CTO that, in accordance with the terms of Section 40 Finance Act 1930, any estate duty claim arising in the present case will be charged at the rate which would have applied to the death estate in respect of which exemption was last granted and <u>not</u> at current rates.

I have not copied this letter to anyone other than Brian Wright but please feel free to do so if you wish.

I hope you had an enjoyable week away from the Office. I myself am on leave for the 2 weeks commencing 7 August.

Yours sincerely

for J G MARCHANT

cc Mr Wright (CTO)

(misc4.txt)

FOLIO 73

CABINET OFFICE
HISTORICAL SECTION
Hepburn House, Marsham Street, London, SWIP 4HW
Telephone: 01-xxxx 217 6506

Our Ref: HO 89/330 ✓
Your Ref: CAP/IHT/39/88

28 July 1989

J G Marchant Esq
Inland Revenue
Capital and Valuation Division
Somerset House
LONDON
WC2R 1LB

Dear John

CHURCHILL/CHARTWELL PAPERS

I wonder if you are yet in a position to let me have answers to two questions which have arisen in the course of the recent correspondence with the Trustees of the Churchill Archive Settlement. The first, in my letter to Miss Court of 19 June 1989 (copied to you) is whether the Lord Randolph Churchill Political Papers 1874-1895, Heinsius Letters from John Churchill 1701-1714 and First Duke of Marlborough Six Volumes of letters 1697-1711, (items 2, 3 and 4 respectively in Mr Montrose's letter of 13 June 1989 to Mr Correlli Barnett) are covered by the estate duty exemption arrangements. The second is the question of the rate at which estate duty would be charged if there was a breach of the exemption conditions, a point raised again in Mr Montrose's letter of 13 July to me and in my letter of 18 July to Miss Court (both copied to you). I think it would help to be armed with these answers against the time when Mr Montrose returns to the charge.

You, and other members of our Group to whom I am copying this letter, might be interested to know that I visited Churchill College 26 July to be present when the Sotheby's valuers started work on the Archive. From the small proportion we saw during the day it was apparent that the Archive still contains a large proportion of official papers, (including many about the Duke of Windsor) many of them now very old and doubtless many of them released and/or releasable but checking that will take a long time.

Relations between the College and the Trustees are now bad, with the College having refused to let Sotheby's take away the Heinsius papers until further advice had been sought. This further advice is being sought of the Foreign Office but, as the papers seem fairly clearly to belong to the Trustees, it is not clear what the FCO could do unless and until there should be any proposal to sell, at which point, depending upon the answer to the first question in paragraph 1 above, we would all have an interest! At present the line is that the valuation being undertaken by Sotheby's is for insurance purposes only.

I am on leave next week. On my return I shall be meeting Miss Wheldon, Treasury Solicitor's Department again and will hope to circulate a further draft letter to Mr Montrose shortly thereafter.

/I am

[illegible]m copying this letter to June Court and Mike Ellis, LCD, Duncan Chalmers and Nicholas Cox, PRO, Brian Wright (IR) and Yvonne Woodbridge (HMT).

Yours ever

Pat

MISS P M ANDREWS

②

HOUSE OF COMMONS
LONDON SW1A 0AA

27 March 1991

Rt Hon John Major MP
Prime Minister
10 Downing Street
LONDON SW1

D John,

It was good of you to allow me to tell you of the problem facing the Trustees of the Archive Settlement.

The enclosed memorandum describes how Churchill's papers came to be divided. In essence his pre-1945 personal papers have been since 1963 in the ownership of The Archive Settlement. The trustees are required to manage the trust to the benefit of the lineal descendants of Sir Winston and the principal beneficiary is now Winston Churchill.

The post-1945 papers are now in the possession of Churchill College. In 1971 an attempt was made to raise funds to enable the purchase of the pre-1945 papers in order that they could be donated to Churchill College. This failed.

So we now have the Archive Centre at Churchill College, built to house his papers but the major part of those papers are there only on loan and subject to a trust which must now move to sell them in the interest of the beneficiary.

Page 5 of the memorandum puts forward proposals to avoid the break-up and dispersion (probably abroad) of the archive. That would require a negotiated private sale with the State. I am told the sum would not be huge.

The trustees wanted you to be aware of this proposal before it is taken forward in order that deadlocked positions are not reached with all the unhappy publicity that might arise before the issue had come to your notice.

If I can help as an intermediary in any way I would be happy to do so.

Yours

Norman.

MEMORANDUM CONCERNING THE PAPERS OF SIR WINSTON CHURCHILL

The archives of Sir Winston Churchill comprise a collection of the highest importance, which has been recognised as of national interest. The material is divided into two ownerships. The greater part, papers from early life until Churchill's resignation as Prime Minister on 27 July 1945, are owned by the Trustees of the Archive Settlement ('the Family Papers'). The papers of the post Second World War period are owned by Churchill College Cambridge ('the College Papers'). Both the Family Papers and the College Papers are held at Churchill College.

The separation of ownership, contrary to the wishes of Sir Winston Churchill, indirectly arose as a result of the establishment of Churchill College Cambridge. The College was founded as a memorial to Churchill's life and work. In the early 1970s an Archive Centre was set up to provide a special feature for the College, otherwise primarily scientific in character, which would focus upon the political, military and diplomatic life of the Churchill era. Central to its success was the acquisition of the Churchill archives. Hitherto the archives had been located at Chartwell or in recent years at The Bodleian Oxford where they remained until removal in 1980 to Churchill College.

On 31 July 1946 Sir Winston Churchill had settled his papers together with the copyright upon trusts widely drawn for the benefit of his family. Arrangements were put in hand for publication of his war memoirs - The History of the Second World War - and consideration received by the Trustees for the sale of copyright permitted support to be given to the family of Sir Winston Churchill. For some twenty years until the funds were exhausted the 1946 Settlement represented the principal source of financial independence for the Churchill family.

By 1963 the original purpose of the 1946 Settlement had run its course. A re-settlement was effected by Sir Winston Churchill on 5 December 1963 ('the Archives Settlement') to create more restrictive trusts in favour of his lineal descendants. The assets of the Archives Settlement were confined to the Family Papers. The principal beneficiary was originally the Honourable Randolph Churchill. Upon his death on 6 June 1968 he was succeeded by his son Mr. Winston Churchill MP. The Trustees have exercised their power to cut down the interest of the principal beneficiary and thereby pass down to succeeding generations the greater part of the beneficial interest. Exemption from Estate Duty arising on the death of the Honourable Randolph Churchill was granted under Section 48 (1) Finance Act 1950 upon undertakings being given in modified form permitting restricted access during the period of the publication of the official biography.

Sir Winston Churchill died in 1965. By the terms of his will the post 1945 papers were left absolutely to Lady Spencer-Churchill. The gift was not subject to any trust, nor were the papers designated heirlooms as in the case of other personal property. The wish was expressed however that if the post 1945 papers were not sold by Lady Spencer-Churchill during her lifetime they should be left to the Trustees of the Archives Settlement. The intention was to unite the entire Churchill archive in one ownership for the benefit of the family. That wish was not complied with. Lady Spencer-Churchill survived her husband twelve years, during which period Churchill College and its Archive Centre came into existence. By her will Lady Spencer-Churchill left the post 1945 papers to Churchill College.

Among the principal instigators of Churchill College had been Sir John Colville and Lady Soames, who were executors of the wills both of Sir Winston Churchill and Lady Spencer-Churchill. Sir John Colville was trustee also of the 1946 Settlement and of the Archives Settlement until his death in November 1987. Not only is it probable that Lady Spencer-Churchill was influenced by the establishment of Churchill College as a memorial to her late husband, but it was also perhaps anticipated that the Family Papers would in some manner find their way into the ownership of the College.

In 1971 active fund raising had taken place for the Archive Centre and an attempt was made to secure sponsorship for the purchase of the Family Papers from the Archives Settlement in order that they could be donated to Churchill College. After the failure of this attempt a proposal was briefly mooted that the Archives Settlement should be broken to permit the voluntary surrender of the Family Papers to the College. As this would have amounted to a serious breach of trust, the proposal was abandoned. Left unresolved therefore was the inherent contradiction of the Archive Centre; an institution built for the purpose of holding the Churchill archive, of which the major part was deposited only on a temporary basis, and subject to a private trust drawn for the benefit of the lineal descendants of Sir Winston Churchill.

[illegible] Winston Churchill MP [illegible] agree?

The resources of the Archive Centre are modest. It relies for the greater part of its' funding upon Churchill College which itself has limited resources. The ownership of the College Papers is not fettered, and while it is highly unlikely that they will be disposed of by the College in the foreseeable future, there is concern long term that the principal objectives of the College may take precedence over the support of the Archive Centre. As the College Papers do not constitute permanent endowment and are subject to no restriction upon sale, their dispersal is therefore possible.

It is necessary to state that until lately the fiduciary obligations of the Trustees of the Archives Settlement towards the beneficiaries have been obscured by external factors - completion of the official biography and the general family support of Churchill College and the Archive Centre. This resulted principally from the role played by the late Sir John Colville with the tacit agreement of Mr Winston Churchill MP as the beneficiary of the Archives Settlement, of which he was for a short period a Trustee. In addition he is an Honorary Fellow of Churchill College and a Trustee of the Archive Centre. The present Trustees of the Archives Settlement are conscious of the need to fulfil the original objective of Sir Winston Churchill in making the re-settlement in 1963 - namely to secure the financial independence of his lineal descendants, by means of the only material asset obtained during his life, that is the papers he had written himself or created during his long political and literary career. The fulfilment of that original objective can only be carried out by the sale of the Family Papers.

For these reasons the Trustees of the Archives Settlement put forward the following proposals for consideration:

1 That the Family Papers should be acquired by the State through a negotiated private treaty.

2 That ownership be vested either in Churchill College or in the British Library.

3 That if vested in Churchill College terms are imposed which ensure the inalienability both of the Family Papers and the College Papers.

4. That to encourage an appeal for independent funding of the Archive Centre a contribution would be made by the Trustees of the Archives Settlement at the direction of the beneficiaries.

The Trustees of the Archive Settlement have instructed Sotheby's to advise as to value and following investigations during the last year they are now in a position to proceed with a negotiated sale. This would necessarily have regard to customary arrangements concerning the 'douceur' upon sale to the State. Short particulars prepared by Sotheby's of the various items are attached hereto.

discover.

It will be noted that subsidiary items are contained in the Family Papers: material relating to the First Duke of Marlborough and to Lord Randolph Churchill. The former are more properly regarded as belonging to the corpus of the Marlborough Papers acquired by the State in lieu of Estate Duty following the death of the 10th Duke of Marlborough in 1972, where ownership was transferred to the British Library.

Were these proposals to be adopted, the position would be achieved that this pre-eminently important archive would no longer be in divided ownership, subject as to the major part to the terms of a private family trust and hence to withdrawal and sale, but in place transferred to the public domain, as a permanent record of the life and work of Sir Winston Churchill

IM/25.x.90

SIR WINSTON CHURCHILL (1874-1965)

THE CHURCHILL ARCHIVE (1874-1945)

Archive of Sir Winston Churchill, from his earliest years until the end of his term of office as Prime Minister in 1945, comprising in the region of 2000 archive boxes of papers, many hundreds of thousands of pages in all, formerly preserved at Chartwell.

The collection covers *in extenso* Churchill's private, political and literary life throughout this period, and includes detailed documentation of his life as a schoolboy; as a correspondent in South Africa (including his own draft account of his escape from the Boers); as M.P. for Oldham (1900-1905); as President of the Board of Trade (1908-1910); as Home Secretary (1910-1911); as First Lord of the Admiralty (1911-1915); as Minister of Munitions (1917); as Secretary for War and Air (1919-1920; as Secretary for the Colonies (1921-1922); as Chancellor of the Exchequer (1924-1929); as First Lord of the Admiralty again (1939-1940); and as wartime Prime Minister (1940-1945), among various other appointments, positions and responsibilities he occupied in these years.

The archive contains extensive correspondence throughout this period from many hundreds of people, including many of Churchill's family, colleagues and major political associates and world leaders (among them such figures as Lloyd George, Lord Beaverbrook, Chaim Weizmann, Edward VIII, George VI and President Roosevelt), with retained drafts or carbon copies of many letters by Churchill himself.

His early, pre-1900, private papers include a series of letters by him to his parents and notebooks and diaries by him. His political papers, relating to all his various official and public activities over half a century, include his drafts or typescripts of some hundreds of his speeches from 1900 onwards; draft letters justifying his proceedings at the Sidney Street affair in 1911; some hundreds of memoranda exchanged with Admiral Fisher in the Admiralty; his draft plans for the Gallipoli campaign and statements for the subsequent Dardanelles Commission of Enquiry in 1916; many other reports and memoranda relating to the First World War; his extensive papers relating to the organisation of the Air Force in 1918-1919; and innumerable other papers about subjects as diverse as India, Irish Home Rule, Bolshevism, Palestine, the Budget, the Abdication of Edward VIII (including Churchill's draft statement about the affair) and the rise of Nazism.

In addition there are a substantial number of Churchill's literary manuscripts, papers and corrected proofs, including extensive files for *The World Crisis*, *The Aftermath*. *Marlborough*. *Great Contemporaries*, *A History of the English Speaking Peoples* and some hundreds of articles for newspapers and magazines. Some of Churchill's legal and financial papers in the archive relate directly to his literary work.

Churchill's extensive wartime papers for 1939-1945 (in several hundred boxes containing intelligence received by him on all aspects of the war and drafts or copies of his outgoing memoranda) include his drafts of letters and telegrams to his generals, Stalin, Roosevelt, De Gaulle, Eisenhower and others; his notes on conferences with Stalin and others; and his annotated drafts and typescript reading copies of many of his speeches, among them the celebrated Battle of Britain speech (``...This was their finest hour...''). They also contain Attlee's autograph letter thanking Churchill for his congratulations on Attlee's election victory on 26 July 1945.

THE RANDOLPH CHURCHILL ARCHIVE

Over 4500 letters and memoranda constituting Lord Randolph Churchill's papers from 1870 to 1895, including extensive correspondence by such major political associates as Sir John Gorst, Sir Henry Wolff, Lord Salisbury, A.J. Balfour, the Earl of Rosebery and Lord Rothschild, as well as Disraeli (letter of congratulation of Churchill's maiden speech), Gladstone, Roberts, Curzon, W.T. Stead, Charles Dilke, G.A. Sala and very many others and also including retained drafts or copies of about 500 letters and memoranda (some of them lengthy and important ones) by Randolph Churchill himself; the correspondence covers every aspect of Churchill's political life and all the major issues in which he was involved, including the formation of Salisbury's government, Gladstone's Home Rule bill, Ireland, various elections, the Primrose League and realignment of the Conservative Party, India, the Army and Navy estimates, his resignation as Chancellor of the Exchequer and much else, many thousands of pages, bound in 31 large albums, morocco, with an additional detailed index volume, 1870-1895

This collection was used by his son, Winston Churchill, as the major source material for his biography Lord Randolph Churchill (1906).

FIRST DUKE OF MARLBOROUGH PAPERS

Collection of about 600 letters and documents relating to Marlborough, the majority bound in six volumes, including c.120 autograph letters signed by Marlborough and c.150 letters signed by him, almost all campaign letters from 1697 to 1710 with detailed military and political intelligence, including his four-page account of the Battle of Blenheim written immediately afterwards (14 August 1704) and the announcement of his victory at Ramillies (24 May 1706), with details of various other sieges and engagements, a number also concerning his arrangements and negotiations with the Dutch States General; the other documents including letters addressed to him, despatches by others sent to the Secretary of War, articles signed by him in 1702, copies of other related letters, some drafts of treaties and articles of surrender (Liege, Bonn), a series of French plans of battle made afterwards and a document signed by Walpole and others giving the Duchess of Marlborough £5000 in 1727.

This collection was used by Sir Winston Churchill as source material for his Marlborough (1933-1938).

HEINSIUS PAPERS

Collection of well over 600 letters by the first Duke of Marlborough to Anthonie Heinsius, Grand Pensionary of Holland, 1701-1711, the great majority entirely autograph, together with a number of other related letters, being detailed political and campaign letters. This collection was presented to Sir Winston Churchill in 1945 by Queen Wilhelmina on behalf of the people of the Netherlands as a token of gratitude for his part in the liberation of that country, and it is accompanied by an illuminated certificate to that effect signed by the Queen.

The letters were all edited by B. Van 'T Hoff in 1951.

CABINET OFFICE
Internal
13 MAY 1991
FILING INSTRUCTIONS
FILE No.

③ ⑤

Ref.A091/1146

c- Miss Andrews

PRIME MINISTER

Churchill/Chartwell Archive

I met the Trustees of the Archive Settlement, Mr Peregrine Churchill and Mr Ian Montrose of Goodman Derrick, at lunch on 1 May 1991. Mr Winston Churchill MP and Lord Goodman were also present. The proposals contained in the Memorandum which Norman Tebbit passed to you under cover of his letter of 27 March 1991 were raised and I agreed to discuss them with you before advising Mr Winston Churchill on how the Trustees should now proceed. The Annex to this minute sets out the background to the issues raised and the situation as it appears today to form the basis for our discussion.

2. The Trustees told me at our meeting that their first proposal would be to sell the papers to the Government but if that was not possible they would look for another beneficiary to buy the papers and lodge them with Churchill College. Only if this failed would they instruct Sotheby's to find another buyer. Their strong wish is that the papers should remain in this country and both Mr Winston Churchill and Lord Goodman expressed the view that if there was a risk of the papers going abroad, the Government would be bound to step in and acquire them. The Trustees would require an export licence for that part of the archive which was more than 50 years old.

3. The first issue for consideration is therefore whether the papers should be purchased by HMG, given that the Trustees are looking for a price of £12.5 million. Initial legal advice is that there is nothing intrinsically difficult, from a legal viewpoint, in the purchase of the Trustees' interest in the papers. There is no doubt that the collection is of unique historical importance to the nation and that there would be a considerable public outcry if it was sold into private hands,

particularly abroad. Such a purchase could lead to requests for the holders of other archives of national importance with similar threats that refusal would lead to a sale abroad; conversely, refusal to purchase such an important archive could lead to more sales abroad if the holders/owners interpreted the refusal as a lack of Government interest.

4. An important point to be taken into account is that the Government has never waived its rights over the 'official' papers in the Chartwell "Family" collection. Whether, legally, the Government could claim "ownership" is something on which we shall need to take further advice. However, although the present Trustees appear to wish to contest the matter, HMG's interest in the papers was fully recognised in the earlier Trust deeds quoted in the Annex and has been sustained in recent correspondence between the Trustees and the Cabinet Office. It would, in any event, seem wrong on the face of it for the Government to be put in the position of buying back papers which are or have been public records or copies of them.

5. There would appear to be two possible courses of action; either to seek to prevent the sale of the "Family" papers on which our main bargaining card, apart perhaps from public opinion, would seem to be our claim to ownership, or at least an interest in, the 'official' papers, which amount to something between one-third and a half of the 'Family' papers and which cannot be sold without the permission of the Prime Minister of the day; or to invite a formal proposal from the Trustees and negotiate with them.

6. The other potential purchasers mentioned by the Trustees-Churchill College, which has all along been the intended home of the archive (for which its Archive Centre was primarily built), or the British Library - would both require substantial financial assistance from the National Heritage Memorial Fund and/or from the Government if they were to buy the papers. Churchill College is believed to have adequate funds to maintain the Archive but is

unlikely to be able to raise the funds to purchase it; the British Library has just over £600,000 to spend on acquisitions for the "Special Collection" in 1991-92 of which some may already been committed. The National Heritage Memorial Fund is unlikely to be able to provide more than £2 million (if that). Thus, even if the 'Official' papers were adjudged to comprise half of the "Family" papers and the sale price was thus reduced to something like £6 million, a substantial sum would be required direct from the Government to enable us to buy out the Trustees' interest. Subject to your views I shall take further advice on these points.

7. The immediate issue is the question of what guidance I should give to the Trustees about how they should now proceed. Subject to your views, I am inclined to advise them that there could hardly be a worse time for the Government to be faced with a proposal to find a substantial sum of money for a purpose of this sort; that the Government will be bound to consider very carefully its own rights in the matter, but that if the Trustees want to dispose of their interest, the next step is for them to mae a formal proposal which the Government can then consider, though without any commitment.

F.E.R.B.

ROBIN BUTLER

10 May 1991

ANNEX

1. The Archive Settlement, which has recently been re-written for the benefit of future generations of the Churchill family, covers the Chartwell papers, now referred to by the Trustees as the "Family Papers" and comprises a collection of some 2,000 boxes relating to Sir Winston Churchill's private life from his childhood to 1945; to his literary and political careers; to his official (Ministerial) positions in the Colonial Office, the Board of Trade, the Home Office, the Admiralty, Munitions, War and Air, the War Council, the War Cabinet of 1917-1919 and his Premiership 1940-45, also early family papers and heirlooms acquired by Sir Winston.

2. These pre-1945 papers are, with the possible exception of the 'official' papers, which the collection contains (including large quantities of copy documents, and a proportion of original documents taken away by Sir Winston when he left the various offices), owned by the Trustees and are deposited in the archive Centre at Churchill College, Cambridge. Also at Churchill College are the post-1945 papers which were left by Sir Winston Churchill to Lady Churchill who in turn left them in her will to the College. They comprise mainly personal papers but with an 'official' component, albeit smaller than that which resides in the "Family" papers; they are owned outright by Churchill College.

3. The original Trust Deed drawn up by Sir Winston Churchill in 1946 to cover the Chartwell "Family" papers said, in Clause 11(ii):

> "The Trustees shall not at any time make public or sell or dispose of any document or information relating to any office, Ministry or Department of the British Government since 1900 or any paper of an official character without the permission of the Prime Minister of England for the time being and the other Ministers (if any) for time being representing the office, Ministry or Department concerned."

4. The Archive Settlement, containing the same provision in respect of the official papers, replaced the 1946 Trust in December 1963. It, however, made provision for the Archive to be transferred to one of the male heirs at any time and so, to avoid a break in the protection afforded by Clause 11 the Secretary of the Cabinet concluded a "gentlemen's agreement" with the Trustees which was signed in April 1964. It said:-

> "In consideration of your permitting us, as Trustees of Sir Winston Churchill's Archives Settlement, to retain under our control the State Papers formerly belonging to Sir Winston and which came into existence prior to his resignation as Prime Minister in 1945 and any further State Papers formerly belonging to him which may come into our hands together with any Catalogues relating to them, we write to give your our formal assurance that we will not without your consent, vest such papers in any Beneficiary without imposing upon him an obligation similar in terms to that contained in Clause 11(ii) of the Settlement known as "The Chartwell Trust" and receiving from such Beneficiary an undertaking to impose a similar obligation on any further disposal of the State Papers and Catalogues".

5. In 1970 Estate Duty exemption was granted in respect of the pre-1945 CHARTWELL "Family" papers and the post-1945 CHURCHILL "College" papers under Section 40 of the Finance Act 1930 on condition that:-

a. the documents were kept permanently in the United Kingdom;

b. reasonable facilities for examining the objects for purposes of research were allowed to any person authorised by the Treasury so to examine them.

11 c.

The Trustees could not comply with the access condition at c. because in 1963 they had sold their copyright to the firm which

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11 c.

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pto for true copy

was to publish the biography of Sir Winston and had also agreed that access would not be allowed until 10 years after the publication of the last Volume of the biography. The Treasury therefore agreed an extra-statutory concession under which their right to authorise access should not be exercised until an agreement on access had been concluded between the Trustees and Her Majesty's Government (HMG).

6. Sothebys have valued the pre-1945 "Family" papers at £20 million. However, any sale price has to reflect the estate duty exemption granted in 1971. Taking that into account the Trustees say that they are looking for a figure of £12.5 million, a figure which Inland Revenue agree reflects the estate duty position and the usual private treaty douceur of 25 per cent, assuming that the valuation itself is accurate.

(4)

GOODMAN DERRICK & CO.

SOLICITORS

LORD GOODMAN C H

[illegible]R. MACKENZIE	J. J. MAUNSELL
J. T. P. ROBERTS	R. M. PERROT
P. G. PERRY	P. L. J. SWAFFER
I. MONTROSE	T. J. LANGTON
DIANA RAWSTRON	G. E. HAMLEN
M. J. COLLINS	SUSAN TOPPING
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L.D.E. 122
GROUPS II and III

YOUR REF

OUR REF IM/ep

DATE 24 June, 1991

CABINET OFFICE
A 7528
26 JUN 1991
FILING INSTRUCTIONS
FILE No. ....

c- Miss Andrews

Dear Sir Robin,

I refer to our meeting on 1 May, when it was agreed that the Memorandum concerning the Churchill Archives would be treated as officially tabled, and you kindly undertook to let the trustees have a response indicating the Government's attitude.

I should be most grateful to know whether the matter is still under consideration, and when the trustees may expect to have your response. If you require any further clarification the trustees would be please to attend you for this purpose.

Yours sincerely,

Ian Montrose

CABINET OFFICE
M Internal
27 JUN 1991
FILING INSTRUCTIONS
FILE No. ....

Private & Confidential

Sir Robin Butler KCB, CVO,
Cabinet Office,
Whitehall,
LONDON SW1

(5)

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

Our Ref: HO91/447
Your Ref:T&M69/340/CJG

10 July 1991

C J Gregory Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
LONDON SW1H 9JS

Dear Colin

CHURCHILL/CHARTWELL ARCHIVE

In your letter of 20 May 1991 you said that we needed to know why Hankey asked Churchill to return his official papers in the face of the Law Officers' Opinion that such papers could be retained during an ex-Minister's lifetime.

It may be that the exchange between Hankey and Churchill which refer to the public interest comprises sufficient explanation but I have been looking through the 1934 papers to see whether there was ever any discussion of the implications of the Law Officers' Opinion. I have found none. There is an exchange between Sir Rupert Howarth Cabinet Office and Sir Thomas Barnes, Treasury (?Treasury Solicitor) in July 1934 in which Sir Thomas, having looked at the letters in draft, says:-

> "Having regard to the Law Officers' Opinion,........ I think it is permissible to write upon the footing that the documents are the property of the Government and I have stiffened up the letters a little to accord with that assumption."

It was agreed that nothing should be said at the outset to the recipients of the letters about the legal position, it could be explained to them if they enquired!

On another point I wondered whether it would be of interest to Counsel to know that the biographers of Churchill gave undertakings which refer to the restrictions imposed by Clause 11 of the 1946 Chartwell Trust. I enclose a copy of those given by Martin Gilbert and Lord Birkenhead - researchers permitted access to the papers gave similar undertakings.

I have not found a similar undertaking signed by Randolph Churchill, presumably because he was a member of the family, but he submitted for clearance the text of that part of the biography which he wrote (see copy letter attached) [and accepted the Cabinet Secretary's ruling that one document he wished to reproduce could not be used.]

This was Montague Brown, not Churchill

This seems to me to indicate that it was all along accepted that Her Majesty's Government had "rights" over the papers and the information they contain.

Yours sincerely

Pat Andrews

MISS P M ANDREWS

OFFICE
A2084
25 FEB 1969
FILING INSTRUCTIONS
FILE No. 80/5

THE MAP HOUSE
HARCOURT HILL
OXFORD

TELEPHONE 46307

24 February 1969

Dear Sir,

In consideration of the Crown permitting me to have access to papers (other than duplicates of papers to which the public have authorised access) to which Clause 11 of the Chartwell Trust applies, and to other papers of a similar character to which I may be permitted access in future, I HEREBY UNDERTAKE THAT

(i) I will make use of such papers only for the purpose of writing the official biography of Sir Winston Churchill pursuant to an agreement of 24 October 1968 made between C. & T. Publications Limited and myself;

(ii) I will be bound by the provisions of the Official Secrets Acts 1911 and 1939 in respect of such papers;

(iii) I will submit to you two copies of the galley proofs of the main and ancillary volumes of such biography and will accept any amendments or deletions which you may ask me to make on grounds of public policy;

(iv) I will ensure that the name and address of any assistant I employ now, or may propose to employ in the future, on work requiring similar access to the papers shall be sent to you, and that before the assistant takes up work he or she shall sign an assurance addressed to you in similar terms to paragraphs (i) and (ii) of this letter.

Yours faithfully,

Martin Gilbert

Martin Gilbert

The Secretary
Cabinet Office

23 April, 1969

Dear Sir,

In consideration of the Crown permitting me to have access to papers (other than duplicates of papers to which the public have authorised access) to which Clause 11 of the Chartwell Trust applies, and to other papers of a similar character to which I may be permitted access in future, I HEREBY UNDERTAKE THAT

(i) I will make use of such papers only for the purpose of writing a single-volume biography of Sir Winston Churchill pursuant to an Agreement which is intended to be entered into between C. & T. Publications Limited and myself;

(ii) I will be bound by the provisions of the Official Secrets Acts 1911 and 1939 in respect of such papers;

(iii) I will submit to you two copies of the galley proofs of such biography and will accept any amendments or deletions which you may ask me to make on grounds of public policy;

(iv) I will ensure that the name and address of any assistant I employ now, or may propose to employ in the future, on work requiring similar access to the papers shall be sent to you, and that before the assistant takes up work he or she shall sign an assurance addressed to you in similar terms to paragraphs (i) and (ii) of this letter.

Yours faithfully,

Birkenhead

The Secretary,
Cabinet Office.

EAST BERGHOLT 363

STOUR
EAST BERGHOLT
SUFFOLK

CABINET OFFICE
A 6156
-6 MAR 1967
FILING INSTRUCTIONS
FILE No. 80/5

FOLIO 19

2 Encl

4 March 1967

18

Dear Sir Burke

Further to my letter of 4 March 1967, A6155 I send you herewith a list of all the Crown Copyright which I would like to use in Volume II. I send also a full set of marked galleys so that the items maybe more readily identified.

I cannot believe that I am using anything that would be contrary to the public interest, but I fully see that you have to be satisfied upon this point.

Apologising once more for troubling you with this so late in the day.

Yours sincerely

Randolph S. Churchill

Sir Burke Trend, KCB, CVO,
Cabinet Office,
LONDON, S.W.1.

CABINET OFFICE
A 8307
11 JUL 1991
FILING INSTRUCTIONS
FILE No.

HO91/451

SIR ROBIN BUTLER

Pl. attach x| for the meeting folder, which I will take to Glyndebourne.
PBRB 11.7.

CHURCHILL/CHARTWELL ARCHIVE

The Conference with Counsel will now take place in your room at 4.30 pm on Wednesday 17 July 1991. Counsel are Mr Michael Hart QC, and Mr William (Bill) Charles; also attending will be Mr Jim Nursaw, Mr Mark Blythe and Mr Colin Gregory, Treasury Solicitors, Dr Nicholas Cox, PRO, Ms Sally Finn, Legal Adviser to the Lord Chancellor's Department and me.

also copies at annex 2.

I attach a copy of Treasury Solicitor's instructions to Counsel which incorporate our suggested amendments; I will bring with me the documents referred to on Page 1 (unless you would like to see any of them beforehand). Also attached is a copy of the Deed of Resettlement which the Trustees' Solicitors sent to Inland Revenue in May and which has been forwarded to Counsel. Treasury Solicitor does not however think that the Deed of Resettlement will affect the issue. It does not include a reference to the restrictions in Clause 11 of the 1946 settlement but Treasury Solicitor is of the opinion that this should not matter greatly as the resettlement is supplemental to the 1963 settlement which does contain a provision applying Clause 11.

I have recently reminded Treasury Solicitor that our continued interest in the 'official' papers in the Archive has been acknowledged throughout by virtue of the fact that the biographers of Churchill gave undertakings relevent to the restrictions imposed by Clause 11 of the 1946 Settlement agreeing, inter alia, to accept amendments or deletions sought on grounds of public policy. I attach a copy of Mr Martin Gilbert's undertaking. There is an identical one signed by Lord Birkenhead who wrote a one volume biography and shorter versions signed by researchers over the years.

Flag A

x| I think you still have the briefing which I prepared for your lunch with the Trustees on 1 May 1991 (my minute of 24 April 1991) and my minute of Flag B 9 May to which I attached a draft minute to the Prime Minister; you wrote to the Prime Minister on 10 May 1991. These, together with the instructions to Counsel will, I hope, provide adequate briefing for the Conference with Counsel but if there is anything further I can provide please let me know.

Flag C

Pat Andrews

MISS P M ANDREWS

Historical Section
11 July 1991

THE CABINET OFFICE

RE: SIR WINSTON CHURCHILL'S PAPERS

INSTRUCTIONS TO COUNSEL TO ADVISE IN CONSULTATION ON MONDAY 8TH JULY 1991 AT 4.30PM. AND IN WRITING

Counsel have herewith copies of the following:- at annex

(1) Correspondence with Sir Winston Churchill in 1934-1936 about the return of official papers;

(2) Settlement made between the Rt. Hon. Winston Churchill and others on 31st July 1946;

(3) Settlement made between Lady Churchill and others on 5th December 1963;

(4) Undertaking given by Lady Churchill and others on 9th April 1964;

(5) Applications for exemption from estate duty and undertakings given under section 48 of the Finance Act 1950 by Lady Churchill on 27th November 1970 and by Sir Leslie Rowan and Mr J R Colville on 4th December 1970, and related undertakings given by the Treasury;

(6) Contents page of catalogue prepared by the Public Records Office; sample page of catalogue; and sample page of Cabinet Office inventory;

(7) Summary of papers on Cabinet Office files;

(8) Law Officers' opinions relating to:

  (a) return of Cabinet papers (1934);
  (b) Register of Edward the Black Prince (1914);
  (c) Memorandum of Works of Edward II (1956).

Background

Instructing Solicitor acts for the Cabinet Office. Counsel are asked to advise on the ownership of Sir Winston Churchill's papers and on other rights the Crown may have in respect of them.

The Churchill Archives Centre at Churchill College, Cambridge was built with funds provided by American admirers of Sir Winston and houses archive material relating to Churchill and the period during which he lived. Papers he acquired during his lifetime form a substantial part of the archive; these relate to his private and political life, and also include early family papers and heirlooms. They cover his ministerial career as Under-Secretary of State for the Colonies (1906-8), President of the Board of Trade

(1910-11), First Lord of the Admiralty (1911-15 and 1939-40), Chancellor of the Duchy of Lancaster (1915), Minister of Munitions (1917), Secretary of State for War (1918-21), Air (1918-21), and the Colonies (1921-22), Chancellor of the Exchequer (1924-29) and Prime Minister (1940-45). They include numerous official papers which he retained after leaving office, comprising large quantities of copy documents and a considerable proportion of original documents (papers, memoranda, correspondence, etc.) which had they remained in official custody would have become subject to the Public Records Act 1958.

In 1946 Sir Winston made a settlement (the 1946 settlement) in which he settled those papers (the pre-1945 papers) acquired by him prior to his resignation in 1945, together with certain other property, on various trusts for the benefit of his family. The pre-1945 papers were resettled in 1963 by a further settlement (the 1963 settlement). Instructing Solicitor understands that further changes have recently been made to the trusts on which the pre-1945 papers are held.

Papers created after 1945 (the post-1945 papers) were left by Sir Winston in his will to his wife. He intended that Lady Churchill should bequeath them to the trustees of the 1946 settlement (the archives trustees), but instead she left them to Churchill College, who now own them outright. This in outline is the background to the case.

The archives trustees have approached the Government to see whether they would be willing to buy the pre-1945 papers. In considering how to respond the Government needs to know whether it can maintain that it owns some of the documents already and what other rights it may have in respect of them. These instructions address questions of ownership, public records, official secrets, copyright and confidence and the enforceability of specific provisions in the settlements and undertakings given by the archives trustees.

The 1946 and 1963 settlements

Counsel have before them copies of the 1946 and 1963 settlements ((2) and (3)). It is not necessary to consider in detail the precise terms of the trusts for the benefit of Sir Winston's descendents. Clause 1 of the 1946 settlement recites that the settlor has "in his possession the records and memoranda shortly mentioned in parts 1 and 2 of the Schedule hereto (some of which may be of such a nature that they ought not to be divulged to the public without due precautions being taken in the public interest)...". Clause 2 recites that the settlor has delivered to the trustees "the documents, boxes and casket shortly mentioned in the Schedule hereto". The Schedule lists four categories of papers: records and memoranda relating to Sir Winston's early and middle life up to 1934; records and memoranda relating to the period 1934-1945, including material relating to the first Duke of Marlborough; papers formerly belonging to Lord Randolph Churchill; and a tortoiseshell casket containing letters from the first Duke of Marlborough to the Grand Pensionary Heinsius of the Netherlands.

Clause 2 of the 1946 settlement also assigns to the trustees the copyright in the documents (so far as it belonged to Sir Winston).

Clause 11(ii) of the 1946 settlement is particularly important. It reads:-

> "The Trustees shall not at any time make public or sell or dispose of any document or information relating to any office, ministry or department of the British Government since the year One thousand nine hundred or any official papers of a general character without the permission of the Prime Minister of England for the time being and the other Ministers (if any) for the time being representing the office, ministry or department concerned".

The 1963 settlement altered the trusts on which the papers were held. In particular the trustees were given power to vest the collection in a single beneficiary absolutely. Clause 2(j) of the 1963 settlement provides that clauses 9 to 13 inclusive of the 1946 settlement are to continue to apply; these of course include clause 11(ii).

Copyright

In 1963 Sir Winston Churchill assigned the copyright in the post-1945 papers to a company called C&T Publications Limited, a subsidiary of the Daily Telegraph. The archives trustees assigned the copyright in the pre-1945 papers to that company also. This was done in connection with a biography of Sir Winston Churchill which was being prepared, initially by his son Randolph and subsequently by Martin Gilbert. Lord Birkenhead was also commissioned to write a short biography of Churchill. The assignment to C&T Publications provided that none of the papers should be made public until 10 years after publication of the last volume of the official biography. This did not take place until 1988. Instructing Solicitor understands that it has recently been agreed with C&T Publications that the period of 10 years be reduced to 2 years.

Location of the papers

The pre-1945 papers were originally housed in the Muniment Room at Chartwell Manor. Subsequently they were kept at Lloyds Bank before being moved to the Bodleian Library at Oxford while Martin Gilbert worked on them. Finally they were transferred by the archives trustees to Churchill College in 1980. Instructing Solicitor is not aware of the terms on which the documents were transferred to Churchill College, but the transfer clearly did not involve any change of ownership.

The 1964 undertaking

The provision in the 1963 settlement enabling the archives trustees to vest the collection in a single beneficiary absolutely was apparently intended to enable the collection to be given by the beneficiary to an institution such as Churchill College. The 1963 settlement does not however contain any limitation on the power of disposal of any beneficiary becoming absolutely entitled. In order to ensure that the protection given by clause 11(ii) of the 1946 settlement continued without a break an undertaking was obtained from the archives trustees in 1964 in the following terms, copies of which Counsel have before them (4):

> "To:
>
> The Secretary of the Cabinet,
> Cabinet Office,
> Great George Street,
> London, S.W.1.
>
> The Rt Hon. Winston Churchill's Archive Settlement
>
> In consideration of your permitting us, as Trustees of Sir Winston Churchill's Archive Settlement, to retain under our control the State Papers formerly belonging to Sir Winston and which came into existence prior to his resignation as Prime Minister in 1945 and any further State Papers formerly belonging to him which may come into our hands together with any Catalogues relating to them, we write to give you our formal assurance that we will not without your consent, vest such Papers in any Beneficiary without imposing upon him an obligation similar in terms to that contained clause 11(ii) in the Settlement known as "The Chartwell Trust" and receiving from such Beneficiary an undertaking to impose a similar

obligation on any further disposal of the State Papers and Catalogues

Dated 9th April 1964

(signed) C S Churchill
T L Rowan
John Colville
Anthony Moir"

Estate duty exemptions

In 1969 and 1970 there were extensive discussions about the form of undertaking to be given in connection with the Estate Duty exemptions claimed following the death of Sir Winston and his son Randolph. Exemption was granted in respect of both the pre- and post- 1945 papers under section 40 of the Finance Act 1930, as amended. Exemption under the section was subject to the following conditions, set out in section 48 of the Finance Act 1950:

(a) the objects would be kept permanently in the United Kingdom, and should not leave it temporarily except for a purpose and a period approved by the Treasury; and
(b) reasonable steps would be taken for the preservation of the objects; and
(c) reasonable facilities for examining the objects for the purpose of seeing the steps taken for their preservation or for purposes of research would be allowed to any person authorised by the Treasury so to examine them.

The archives trustees (in respect of the pre-1945 papers) and Lady Churchill (in respect of the post-1945 papers) were unwilling to give an undertaking in terms of paragraph (c) above partly because they felt that some of the documents of a more intimate personal nature should not be open to public scrutiny, but mainly because the agreement under which copyright had been assigned to C&T Publications provided that access should not be permitted until 10 years after the last volume of Churchill's biography had been published. Eventually, undertakings were given in the form required by the tax legislation, in return for which the Treasury undertook that pending agreement on the terms of access they would not exercise their right to authorise access to the papers. Once agreement on the terms of access had been reached the Treasury would authorise access in accordance with the terms of the agreement. Counsel have before them copies of the undertakings and the counter-undertakings (5). Discussions have continued sporadically on the question of access, but no agreement has ever been reached.

The ownership of the papers

In principle, each document would need to be considered separately in order to determine its ownership. This is clearly not practical. Counsel have before them copies of the contents page of the catalogue prepared by the Public Records Office in the early 1960s together with a sample page from the catalogue and a sample from the inventory which is currently being drawn up by a reviewer from the Cabinet Office. These give an idea of the sort of papers which the "official part" of the pre-1945 archive contains.

The position before 1934

Prior to the First World War there were no restrictions on Ministers retaining papers. During the First World War, Cabinet Minutes became more formal and after August 1917 War Cabinet documents were headed "This document is the property of His Britannic Majesty's Government" with the addition of the word "secret". Cabinet documents have continued to bear this heading since then. In August 1917 the War Cabinet also decided that on leaving office Ministers should either hand over their

Cabinet papers to their successors or return them to the Cabinet Office. The first meeting of the post-War Cabinet in November 1919 considered a proposal imposing on the Secretary a duty to recover Cabinet papers from ex-Ministers or their executors, but the proposal was not adopted. Instead, each Cabinet at its final meeting (with the exception of the Conservative Government of 1924-29 which resigned after the General Election without a final meeting of the Cabinet) adopted a resolution enabling Ministers to retain such documents as they wished. This continued until the last meeting of the Labour Cabinet on 24 August 1931.

Developments in 1934

In 1934, in the wake of Edgar Lansbury's biography of his father George Lansbury, the Cabinet decided that it was the duty of all Cabinet Ministers on vacating office to return all Cabinet minutes and papers to the Secretary. At the same time an opinion was sought from the Law Officers on the extent to which Cabinet papers were recoverable from Ministers. Counsel have before them copies of the instructions and the opinion, which sets out the history more extensively, including the full text of the 1934 Cabinet resolution (8a). The Law Officers were asked to advise on a number of different catagories of document. Their advice was that an informal draft prepared by a Minister at home might never become an official document, but that once a draft had been initialled by the Minister for an official purpose it would have become an official document. The other types of document under consideration were all held to be official documents. The Law Officers decided that on the basis of the concluding resolutions of each successive Cabinet (with the exception of the 1924-29 Government) Cabinet Ministers were entitled to refuse to return Cabinet papers. On balance they felt that there was no right of retention in the case of papers held by Ministers not in the Cabinet, but they felt that the arguments were so finely balanced that no distinction should be drawn. In either case, they felt that the right was personal to the Minister concerned and did not apply after his death. They advised that a right of action would lie against the personal representatives of a deceased Minister for the return of official documents. They also considered that an offence would be committed under section 2 of the Official Secrets Act 1911 if a Minister or personal representative refused to return an official document.

The law in 1934

The Law Officers advised that the appropriate method of proceeding would be the issue of a latin information. This was a particular form of action - correctly described as an information of devenerunt - used by the Crown to recover property which had come into the hands of a third party. It was abolished by section 13 of the Crown Proceedings Act 1947 and is no longer available. The law of limitation as it affects the Crown has also changed since 1934. The old doctrine "nullum tempus occurrit regi" still applied so that an action by the Crown to recover its property could not be time barred. Similarly it was established that the Crown was not affected by the equitable doctrine of laches. However, these doctrines were modified by section 30 of the Limitation Act 1939, now section 37 of the Limitation Act 1980.

The present law

The changes in the law made by the Limitation Act 1939 and the Crown Proceedings Act 1947 mean that the question of ownership is to be determined in accordance with the ordinary law. The law relating to public records and to official secrets is also relevant however, and will be examined below. Consideration will also be given to whether clause 11(ii) of the 1946 settlement or the undertakings given by the archives trustees and by Lady Churchill in 1964 are capable of founding a cause of action. Finally the question of copyright and confidence will be considered.

Conversion and detinue

Prior to 1 January 1978, the correct form of action for the recovery of property wrongfully retained by another was an action in detinue. Detinue was abolished by section 2(1) of the Torts (Interference with Goods) Act 1977 on the basis that the tort of conversion would be available in all situations where detinue was available (except in the case of loss or destruction of the goods by a bailee which is dealt with by section 2(2) of the 1977 Act but is unlikely to be material in the present case). It has been argued that the abolition of detinue has left a gap in the law as conversion would not necessarily have been committed in every case where detinue was available: see N E Palmer (1981) 44 MLR 87. However, any deficiency in this area is unlikely to be material if ownership is determined by events prior to 1 January 1978.

Section 3(2) of the Limitation Act 1939 provided that where a cause of action in respect of the conversion or wrongful detention of a chattel accrues to a person, and he does not recover possession of the chattel for six years, his title to the chattel is extinguished. Section 3(2) of the 1980 Act is in similar terms.

It has been argued that because section 37 of the 1980 Act (and section 30 of the 1939 Act) states that the Act applies "to proceedings by or against the Crown", section 3(2) does not bind the Crown since it relates to title, not proceedings. The Law Officers considered this question in 1956 in the context of an opinion they gave on the possible recovery of a Memorandum of Works of Edward II (referred to below (8c)). They felt that although the question was not free from doubt, they were inclined to the view that section 3(2) was so related to section 3(1) and to proceedings that notwithstanding the limitations of section 30(1) section 3(2) would be held to apply to the Crown. Even if the Law Officers were wrong, and section 3(2) does not bind the Crown, it would not seem to assist the Crown since it would still be barred from bringing proceedings to recover its property. It is necessary to consider whether any event has started time running under the Limitation Acts.

Events after 1934

In 1934 Churchill was asked along with other ex-ministers to return official documents in his possession. Churchill refused. Counsel have before them copies of this correspondence (1). Churchill refers in his letter of 19th november 1934 to a settlement by Lord Randolph Churchill of State papers, with a prohibition on publication without Government consent, and states that he has himself executed a similar deed with a similar provision. In June 1935 Sir Maurice Hankey, then Secretary of the Cabinet, wrote to Churchill setting out the Cabinet Office view of the law (following the 1934 Law Officers' Opinion) and stating their reasons for wishing the papers to be kept under their control. The letter acknowledges that a Minister may retain documents during his lifetime if he insists. Churchill replies by asserting his intention to retain documents during his lifetime. He questions what was meant by Cabinet papers and states that many important notes about Cabinet business which he had dictated were his own property. The Cabinet Office replied, conceding that original informal drafts prepared by a Minister at home which never became official documents, fell outside the scope of their definition. Later in 1935 it was decided (with the approval of the Cabinet) not to take any further action against Churchill during his lifetime. In April 1936 the Cabinet Secretary noted that Churchill had returned all Cabinet Minutes and that he was hopeful that he would recover a great part of the Cabinet papers. (Churchill was of course then holding a large number of other official papers that were not Cabinet documents.) Apart from a note on the Cabinet Office file in 1945 to the effect that Churchill was said to be taking away the printed copies of his minutes but that copies would remain in HMG possession, nothing further appears to have happened until the settlement of 1946. These events are also referred to in slightly more detail in the summary of the Cabinet Office files on the subject which Counsel have before them (7).

The first question to be considered is whether Churchill's refusal to return papers when requested in 1934 has resulted in the Crown's title to them being extinguished. All the papers created by Churchill prior to 1934 were created by him at a time when Ministers were permitted to retain documents. As the Law Officers recognised in their opinion of 1934, and Sir Maurice Hankey acknowledges in his letter of 15th June 1935, this meant that Ministers could if they chose decline to return documents. On this basis the documents could not be said to be "wrongfully retained". The Limitation Act 1939 had not of course been enacted in 1934; it came into force on 1 July 1940. Although the Act is not stated to be retrospective, and section 33 provides expressly that actions already barred and pending actions are not to be affected, section 3(2) would appear to have the effect of extinguishing the title of a person to a chattel which had been wrongfully detained more than six years previously.

Counsel are asked to advise whether the Crown's title to papers which Churchill refused to return in 1934 and 1935 would have been extinguished in 1940 or 1941 following the coming into force of the Limitation Act 1939.

Events after 1939

Churchill returned to office as First Lord of the Admiralty between 1939 and 1940 and of course held office as Prime Minister from 1940 to 1945. It does not appear that any specific demand was made to him for the return of papers, although he was aware of the terms of the Cabinet resolution of 1934. As has been mentioned in 1946 he made a settlement of all the pre-1945 papers which might now be the subject of a claim of official ownership. He would have been aware not only of the Cabinet resolution of 1934, but also of the Cabinet Office view that in relation to pre-1934 documents he was entitled to retain them only during his lifetime and they would be recoverable from his personal representatives.

The 1946 settlement could therefore be regarded as a conversion of the documents. It is not clear when the Cabinet Office became aware of the settlement, but their files would seem to indicate that it was not until nearly six years later in June 1952 when the Cabinet Secretary met Churchill's solicitor, Anthony Moir. The 1946 settlement does not purport to transfer property in all the documents to the trustees. Clause 1 recites that Churchill "having in his possession" the documents "lately decided to make proper provision for safeguarding the same and to settle therewith the other property hereinafter assigned". Clause 2 recites that Churchill had delivered the documents to the trustees and he assigns the copyright in them "so far as such copyright belongs to him". Clause 11(ii) (the restriction on disclosure) is silent on the question of ownership. It could therefore be argued that the 1946 settlement did not amount to a conversion of the official documents in Churchill's possession. It could, however, have amounted to a breach of any implied agreement to the effect that he was allowed to retain documents for his lifetime only. Counsel are asked to advise whether the settlement of 1946 could constitute a conversion such as to start time running under section 3(2) of the Limitation Act 1939, and if so whether the date when the Government became aware of the settlement would make any difference to the date when Crown ownership would be extinguished.

Events after 1963

As explained above, Churchill made a further settlement in 1963, following which the archives trustees undertook in 1964 not without the Cabinet Secretary's consent to vest the papers in any beneficiary without imposing on him an obligation in the terms of clause 11(ii) of the 1946 settlement. The undertaking was expressed to be given "in consideration of your permitting us, as Trustees of Sir Winston Churchill's Archive settlement, to retain under our control the State Papers formerly belonging to Sir Winston". The expression "belonging to" is ambiguous but could be interpreted in this context to mean "in the possession of". The trustees by the use of the expression "State Papers" clearly recognised a State interest in the papers and could be interpreted as having acknowledged Crown ownership, particularly when taken with the reference to retention, which seems to imply that were it not for the undertaking the Government could have demanded the State papers back. This document will presumably be of limited value if Crown ownership had already been extinguished, but it would appear to be evidence in support of the view that it had not. Section 23 of the Limitation Act 1939 (now section 29 of the 1980 Act) (which provides for a fresh accrual of action on acknowledgement or part payment) did not apply to the acknowledgement of title to chattels. The 1964 undertaking could not therefore, in the view of Instructing Solicitor, be used to revive title if it had been extinguished. Nevertheless, it could perhaps operate as some form of estoppel, preventing the trustees from denying the Crown's title. Counsel are asked to advise on this.

Public records

The law relating to public records is now contained in the Public Records Act 1958, which replaced the Public Record Office Act 1838. There does not appear to be any procedure in the 1958 Act for the recovery of strayed public records. Records which are not in the Public Record Office or a place of deposit appointed by the Lord Chancellor under the Act (Churchill College has not been so appointed) are the subject of section 3. Section 3(1) provides that it is the "duty of every person responsible for public records of any description which are not in the Public Record Office or a place of deposit... to make arrangements for the selection of those records which ought to be permanently preserved and for their safe-keeping". Subsection (2) provides that duties under this section are to be performed under the guidance of the Keeper of Public Records; and subsection (4) provides that public records selected for permanent preservation under the section are to be transferred not later than 30 years after their creation to the Public Record Office or an appointed place of deposit. Subsection (7) provides that "Any question as to the person whose duty it is to make arrangements under this section with respect to any class of public records shall be referred to the Lord Chancellor for his decision". Section 10(1) defines "public records" by reference to Schedule 1. Paragraph 2(1) of that Schedule provides that with certain exceptions "administrative and departmental records belonging to Her Majesty... and, in particular, records of... any department... or records of any office, commission or any body or establishment whatsoever under Her Majesty's Government... shall be public records. Section 3 is on the face of it capable of applying to public records in the custody of Churchill College but the clear intention of the section is that it should apply to government departments and other creators of potential public records and not to existing records that may have strayed from public possession.

Counsel are referred to two opinions which were obtained from the Law Officers in the present century, one relating to a Memorandum of Works of Edward II, and the other to a Register of his grandson, Edward the Black Prince (8). The Memorandum turned up in a shop in Pall Mall in 1956; the Register turned up in the course of a move by a firm of solicitors from Bedford Row to New Square in 1913. In both cases the opinion of the Law Officers was sought on whether the documents could be recovered. Both opinions were decided on the basis of the Public Record Office Act 1838. Section 20 of that Act defined "record" as "all rolls, records, writs, books, proceedings, decrees, bills, warrants, accounts, papers, and documents whatsoever of a public nature belonging to Her Majesty..." Section 1 of the 1838 Act, which established the Public Record Office under the control of the Master of the Rolls, referred to "records belonging to Her Majesty which now are or ought to be deposited in the several record offices, courts, places and custody hereinafter mentioned..." Section 2 enabled Her Majesty to order that records "deposited in any office, court, place, or custody other than as hereinbefore mentioned" should be under the charge of the Master of the Rolls; and section 3 contained a procedure under which the Master of the Rolls could issue a warrant for the delivery of records. In 1956 the Law Officers held that "custody" meant "official custody" and that notwithstanding the reference in section 1 to records which "ought to be deposited" in the places mentioned, the Act could not operate in relation to public records held in private hands. The Law Officers went on to express the view already mentioned that any title the Crown might have had to the memorandum would have been extinguished by section 3(2) of the Limitation Act 1939.

Although the instructions make it clear that the Law Officers were aware of the earlier opinion relating to the Register of Edward the Black Prince their 1956 opinion does not refer to it and they appear to have reached the opposite conclusion. (The earlier opinion was given before 1939 so the question of limitation did not arise, but this does not seem to have been the reason for their change of mind.) The 1914 instructions asked for the Law Officers' view on whether the Register could be recovered either under the 1838 Act or "by force of the indefeasible right of the Crown to its official records". The Law Officers held that the documents were "records" within the meaning of section 20 of the 1838 Act and that the Crown was prima facie entitled to their custody under the terms of the Act and an Order in Council made under section 2 (covering documents in any place other than the places mentioned in section 1). The Law Officers went on, however, to express an opinion on whether the documents could have been alienated by the Crown since their creation. They stated that their opinion preceded "on the hypothesis which on the whole we think accurate that the Crown never owned these documents as private and personal property and could not effectively transfer their ownership to third parties". This and the reference in the Instructions to the "indefeasible right of the Crown to its official records" raises an interesting question about whether public records are capable of being alienated. A thorough search of old books would be necessary to establish whether such a principle ever existed, but Instructing Solicitor in a brief search has found no mention of it. In any event if there were any such principle in ancient times, even if it survived until 1914, it is unlikely, in the view of Instructing Solicitor, that it would have survived the Public Records Act 1958, and it would also now be subject to the Limitation Act. Instructing Solicitor understands from the Lord Chancellor's Department that the possibility that public records are inalienable was considered in the context of the Australian Constitution (Public Record Copy) Act 1990 (c.17). That Act was passed to enable the record copy of the Commonwealth of Australia Consitution Act 1900, which was on loan to Australia, to be kept there permanently. The 1990 Act sidesteps the issue of alienability by declaring that the copy of the 1900 Act on loan to Australia should cease to be included in the public records to which the Public Records Act 1958 applies.

Official secrets

In their 1934 opinion the Law Officers expressed the view that an offence would be committed under section 2 of the Official Secrets Act 1911 if a Minister, or an executor or administrator or assign, retained official papers. Counsel will be aware that section 2 has been repealed (although in principle a prosecution could still be brought for an offence committed under it) and the relevant provisions are now contained in the Official Secrets Act 1989. The 1989 Act is more restricted in scope.

Section 8(4) provides that a person who fails to comply with an official direction for the return or disposal of a document or other article commits an offence. The subsection applies only to documents or articles "which it would be an offence under section 5 above for him to disclose without lawful authority". The documents were entrusted to Churchill College not by Churchill himself but by the archives trustees, and it would therefore appear that for section 5 to apply the documents must have been "disclosed" (which is defined in section 13(1) to include parting with possession) "without lawful authority". The other requirements of section 5 would also need to be satisfied, in particular disclosure has to be "damaging" for the purposes of section 1 (security and intelligence), 2 (defence) or 3 (international relations).

Section 8(5) makes it an offence to fail to comply with an official direction to return or dispose of documents or other articles which it would be an offence under section 6 to disclose without lawful authority. Section 6 relates to information entrusted in confidence to other States or international organisations; this might conceivably be relevant.

Under section 9 of the Act no prosecution may be brought without the consent of the Attorney General. The prosecution of Churchill College for refusing to "return" the papers to official custody, or indeed of the archives trustees if they were to attempt to remove the documents from Churchill College and sell them, is a purely hypothetical possibility, but nonetheless Counsel are asked to consider it.

Clause 11(ii) of the 1946 Settlement

Counsel are also asked to consider the enforceability of clause 11(ii) of the 1946 settlement and the 1964 undertaking given by the archives trustees. Clause 11(ii) states the trustees "shall not make public or sell or dispose of any document or information" relating to a Government department since 1900 without the permission of the Prime Minister and the Minister concerned. The first question is whether the clause, as a restraint on alienation, is valid at all. There is a line of authority holding that a restriction on alienation in an absolute gift of property is void. A relatively recent example is the case of In re Brown [1954] 1 Ch 39. In that case a testator bequeathed and devised his business and business properties to his wife for life with remainder to his four sons. He directed that if a son disposed of his interest to any person other than one of his brothers his share was forfeited and held on certain discretionary trusts. Harman J held that the prohibition on alienation was void and not binding.

Harman J held that the doctrine applied to personalty as well as to realty (page 44). It is referred to in Coke upon Littleton (11th Edition, Part 1, Book 3, Section 360) where it is said "if a feoffment be made upon this condition, that the feoffee shall not alien the land to any, this condition is void". However Coke goes on: "but if the condition be such that the feoffee shall not alien to such a one, naming his name, or to any of his heirs or of the issue of such a one, etc, or the like, which conditions do not take all power of alienation from the feoffee, etc, then such condition is good". The cases seem mostly to relate to devises and bequests, but it could be argued that the principle was equally applicable to an inter vivos settlement since "feoffment" in Coke would appear to refer to an inter vivos form of conveyence. The restriction in the 1946 settlement prevents the trustees from selling without the consent of the Prime Minister and the Minister concerned. It could therefore be argued that it is not an absolute bar and is therefore not void. Reference might be made in this context to the case of In re Rosher (1884) 26 Ch 801. In that case a testator devised an estate to his son subject to a condition that if he should wish to sell the estate during the testator's wife's lifetime, she should have an option to buy it (for a substantial undervalue). The condition was held to be void. It would be necessary to distinguish this case from the case of the 1946 settlement on the basis that clause 11(ii) does not give the Government a right to buy the documents, it is merely that no sale can take place without the relevant consent.

Assuming that clause 11(ii) is not void, is it enforceable at the instance of the Crown? The Crown is not a beneficiary under the settlement and has provided no consideration for it. Counsel are asked to advise whether there is any form of action known to law which the Crown could use to enforce clause 11(ii), in the absence of a claim in contract or as cestui qui trust. The possibility of an action to restrain disclosure of confidential information is considered below.

The 1964 undertaking

The same is not necessarily true of the undertaking given by the archives trustees in 1964. This, Counsel will recall, was given "in consideration of your permitting us, as Trustees of Sir Winston Churchill's Archive settlement, to retain under our control the State Papers formerly belonging to Sir Winston". The undertaking states that the trustees will not vest documents in any beneficiary without imposing upon him an obligation in terms of clause 11(ii). In the view of Instructing Solicitor "an obligation similar in terms to that contained in clause 11(ii)" could probably not be enforced by the Crown any more easily than the obligation contained in clause 11(ii) itself, so the undertaking may be of limited legal value. There is also some doubt about whether the parties intended the undertaking to be legally binding. A minute from the Cabinet Secretary to the Prime Minister in January 1964 referred to the desirability of concluding "some form of gentleman's agreement". The agreement does, however, appear to be phrased in legal terms: it is referred to in a covering letter from Anthony Moir to the Cabinet Secretary as "the Assurance in the agreed form". A further difficulty is that those who signed it are no longer the archives trustees, although it appears to be intended to have continuing effect, since it applies to "any further State Papers formerly belonging to [Churchill] which may come into our hands". Counsel are asked to consider whether the undertaking could be enforced by the Crown against the present archives trustees.

Copyright

It is also necessary to consider the question of copyright. Copyright was assigned by Churchill to the archives trustees in the 1946 settlement "so far as such copyright belongs to him". Neither the assignment in the 1946 settlement nor the subsequent assignment to C&T Publications could have assigned the copyright in documents the copyright in which was vested in the Crown.

The law on Crown copyright is now found in section 163 of the Copyright, Designs and Patents Act 1988. Paragraphs 40 and 41 of Schedule 1 to that Act contain transitional provisions relating to works made before the coming into force of the Act on 1 August 1989. Under paragraph 40 section 163 of the Act applies to an existing work (a work made before 1 August 1989) if section 39 of the 1956 Act applied to the work immediately before commencement of the 1988 Act. Section 39(1) provided that Her Majesty should be entitled to the copyright in every original literary work "made by or under the direction or control of Her Majesty or a Government Department". Each document would need to be considered separately, but Counsel are asked to advise whether ownership of copyright would be coextensive with "official ownership" of the document itself at the time a document was created: in other words whether the tests set out by the Law Officers in their 1934 opinion for determining which documents could be recovered from Ministers (or in the case of pre-1934 documents from their personal representatives after their death) are also relevant in determining whether a document was written "by or under the direction or control of Her Majesty or a Government Department". Copyright is not of course relevant in determining who owns the documents, but could be relied on to restrain publication by the archives trustees or, more significantly, by a purchaser from the archives trustees.

Confidential information

The law of confidence is also relevant in this context. The 1946 settlement recited that some of the documents ought not to be made public, and clause 11(ii) expressly acknowledged this. Counsel are asked to advise whether publication of official information that has not come into the public domain under the Public Records Act could be restrained by injunction. Information of this type could fall into two categories. Where a document is duplicated in the Public Record Office, but the document remains closed to public access, a duty of confidence will presumably still exist in respect of it. Where a document is not duplicated in the Public Record Office it would be necessary to determine whether it contained information to which a duty of confidence attached. Counsel are asked to advise what criteria should be adopted for determining this. Counsel are also asked to advise generally on how the passage of time since 1934 will have affected any action to restrain disclosure of confidential information. On the basis that breach of confidence as such is actionable in equity rather than contract or tort, the Limitation Act would presumably not apply. The doctrine of laches however would apply in a dispute between subjects, but historically it has not been possible to plead laches against the Crown (for a recent case see the decision of the Privy Council in Associated Minerals Consolidated Limited v. Wyong Shire Council [1975] AC 358).

Lord Randolph Churchill's papers

In principle the considerations stated above apply in relation to the ownership of and copyright or confidence in official documents contained in Lord Randolph Churchill's papers. The undertaking in clause 11(ii) of the 1946 settlement will not, however, apply since it relates only to documents created after 1900. However in view of the time that has elapsed it is not considered that any claim can realistically be made by the Crown in relation to Lord Randolph's papers. The same is true of the material used by Sir Winston Churchill in his Life of the Duke of Marlborough.

The Heinsius letters

The Heinsius letters were presented to Sir Winston Churchill by the Queen and Government of the Netherlands on 2 November 1945. (Churchill resigned as Prime Minister on 26th July 1945.) In order to establish their ownership it will be necessary to consider the precise circumstances of the gift and any accompanying documentation. Counsels' opinion is not being sought on this aspect at this stage.

Questions for Counsel

Counsel are asked to advise generally, and in particular on the following questions:-

1. What criteria should be adopted for determining which documents in the Churchill archive originally belonged to the Crown, and in particular does Counsel agree with the conclusions of the Law Officers in 1934?

2. Does the Crown retain ownership of any of the documents? In particular:

   (a) does section 3(2) of the Limitation Act 1980 (previously section 3(2) of the Limitation Act 1939) apply?

   (b) if so, have any of the following events started time running:-

    - (i) Churchill's refusal to return papers in 1935;
    - (ii) the settlement of 1946;
    - (iii) the settlement of 1963;
    - (iv) the assignment of copyright in 1963;
    - (v) Churchill's death in 1965;
    - (vi) any other event?

  (c) how does the 1964 undertaking affect the position (see also question 7 below)?

3. If the Crown does retain ownership, by what form of legal proceedings could it be enforced?

4. Can the Crown maintain a right to possession of official documents in the archive on the basis of:

   (a) the Public Records Act 1958; or

   (b) any ancient right of the Crown to its records?

5. If an official direction is given to the trustees for the return of official documents would their failure to comply constitute an offence under section 8(5) or (6) of the Official Secrets Act 1989?

6. Is clause 11(ii) of the 1946 settlement valid? If it is, can it be enforced by the Crown, and if so, how?

7. Is the 1964 undertaking enforceable by the Crown against the present archives trustees? If so, how?

8. Does the Crown retain ownership of copyright in official documents in the archive?

9. Could the Crown restrain disclosure of confidential information in the documents, and what criteria determine which documents are affected?

A consultation has been arranged for 4.30pm on Monday 8th July at Mr Hart's chambers. If Counsel require any further information before the consultation please would they telephone Mr Mark Blythe of Instructing Solicitor (210 3049).

THE CABINET OFFICE

RE: SIR WINSTON CHURCHILL'S PAPERS

INSTRUCTIONS TO COUNSEL TO ADVISE IN CONSULTATION ON MONDAY 8TH JULY 1991 AT 4.30PM. AND IN WRITING.

Mr Michael Hart, Q.C.
2 New Square
Lincoln's Inn
London WC2A 2RU

with you

Mr William Charles
13 Old Square
Lincoln's Inn
London WC2A 3UA

The Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

Tel: 071-210 3049

Ref: T&M 69/340/CJG

Dated: 5 June 1991

In Estate Duty Cases, this form, when completed, should be annexed to the Inland Revenue Affidavit, Scottish Inventory or Estate Duty account in which the exemption from duty is claimed. If for any reason it cannot be so annexed, it should be forwarded to the Controller, Estate Duty Office, Minford House, London, W.14, or, in Scottish cases, to the Registrar, Estate Duty Office, 6 Waterloo Place, Edinburgh 1.

Applications concerning Capital Gains Tax only should always be forwarded to the Controller, Estate Duty Office, Minford House (as above).

Application for exemption under Section 40 Finance Act, 1930, and Section 31(3) Finance Act, 1965, and undertaking under Section 48 Finance Act, 1950, as amended by Section 31(7) Finance Act, 1965.

To The Lords Commissioners of Her Majesty's Treasury

~~I~~/We Sir Thomas Leslie Rowan, K.C.B., C.V.O. of 16 The Vale Chelsea London S.W. and John Rupert Colville, C.B., C.V.O. of The ~~of~~ Old Rectory Stratfield Saye Reading Berkshire as the Trustees of a Settlement known as "The Archives Settlement" dated ~~as (1)~~ 5th December 1963

make application in respect of the objects specified ~~in~~ overleaf,

for exemption from:

(i) Estate Duty and Capital Gains Tax in connection with the death of The Hon. Randolph Frederick Edward Spencer Churchill who died on the 6th June 1968

~~(ii) Capital Gains Tax in connection with the gift dated the~~

and ~~I~~/We undertake as regards such of those objects as may be declared by the Treasury to be of national, scientific, historic or artistic interest that, until the objects again pass on a death or are disposed of, whether by sale or gift or otherwise,

(a) the objects will be kept permanently in the United Kingdom, and will not leave it temporarily except for a purpose and a period approved by the Treasury (2); and

(b) reasonable steps will be taken for the preservation of the objects; and

(c) reasonable facilities for examining the objects for the purpose of seeing the steps taken for their preservation, and for purposes of research, will be allowed to any person authorised by the Treasury so to examine them, (3) ~~save that the documents specified in Schedule.........annexed shall be excluded from this undertaking so far as it relates to the examination of the documents for purposes of research.~~

Signature(s) T. L. Rowan John Colville

Date of application 4 December 1970

(1) The undertaking should be signed by the beneficiary who has or will have possession of the objects; where the objects are subject to a trust, or held for a minor, the undertaking should also be signed by the trustees, or guardian, as appropriate. If the beneficiary in possession relinquishes possession of the objects whether by sale or gift or otherwise, the Controller, Estate Duty Office, should be informed immediately, giving the name and address of the person to whom they are being transferred.

(2) Any application for the temporary export of exempted articles (e.g. for exhibition purposes) should be sent to the Controller, Estate Duty Office, well in advance of any arrangements for their transit.

(3) Attention is drawn to Section 48(2) of the Finance Act, 1950. If it is desired that any documents for which the exemption from Estate Duty and/or Capital Gains Tax is claimed should be excluded from undertaking (c) above, a schedule should be annexed giving particulars of the documents and the grounds on which the claim for exclusion is based.

Con. No. 13

043690. 2,500. 11/68. CAM A1971. Gp. 657

The bound and unbound documents boxes and casket comprised in the definition of "The Trust Archives" contained in clause 1 (d) (i) of the said Settlement and now subject to the trusts of the said Settlement.

In Estate Duty Cases, this form, when completed, should be annexed to the Inland Revenue Affidavit, Scottish Inventory or Estate Duty account in which the exemption from duty is claimed. If for any reason it cannot be so annexed, it should be forwarded to the Controller, Estate Duty Office, Minford House, London, W.14, or, in Scottish cases, to the Registrar, Estate Duty Office, 6 Waterloo Place, Edinburgh 1.

Applications concerning Capital Gains Tax only should always be forwarded to the Controller, Estate Duty Office, Minford House (as above).

Application for exemption under Section 40 Finance Act, 1930, and Section 31(3) Finance Act, 1965, and undertaking under Section 48 Finance Act, 1950, as amended by Section 31(7) Finance Act, 1965.

To The Lords Commissioners of Her Majesty's Treasury

I/~~We~~ The Right Honourable Clementine Ogilvy Baroness Spencer-Churchill, G.B.

of Flat 26 7 Princes Gate London S.W.7

as (1) the specific legatee under the Second Codicil dated 12th December 1963 to the Will of my late husband The Right Hon. Sir Winston Leonard Spencer Churchill

make application in respect of the objects specified ~~in~~ overleaf,

for exemption from:

(i) Estate Duty and Capital Gains Tax in connection with the death of The Right Hon. Sir Winston Leonard Spencer Churchill who died on the 24th January 1965

~~(ii) Capital Gains Tax in connection with the gift dated the~~ ....

and I/~~We~~ undertake as regards such of those objects as may be declared by the Treasury to be of national, scientific, historic or artistic interest that, until the objects again pass on a death or are disposed of, whether by sale or gift or otherwise,

(a) the objects will be kept permanently in the United Kingdom, and will not leave it temporarily except for a purpose and a period approved by the Treasury (2); and

(b) reasonable steps will be taken for the preservation of the objects; and

(c) reasonable facilities for examining the objects for the purpose of seeing the steps taken for their preservation, and for purposes of research, will be allowed to any person authorised by the Treasury so to examine them, (3) ~~save that the documents specified in Schedule............annexed shall be excluded from this undertaking so far as it relates to the examination of the documents for purposes of research~~.

Signature(s) Spencer-Churchill

Date of application 27 November 1970

(1) The undertaking should be signed by the beneficiary who has or will have possession of the objects; where the objects are subject to a trust, or held for a minor, the undertaking should also be signed by the trustees, or guardian, as appropriate. If the beneficiary in possession relinquishes possession of the objects whether by sale or gift or otherwise, the Controller, Estate Duty Office, should be informed immediately, giving the name and address of the person to whom they are being transferred.

(2) Any application for the temporary export of exempted articles (e.g. for exhibition purposes) should be sent to the Controller, Estate Duty Office, well in advance of any arrangements for their transit.

(3) Attention is drawn to Section 48(2) of the Finance Act, 1950. If it is desired that any documents for which the exemption from Estate Duty and/or Capital Gains Tax is claimed should be excluded from undertaking (c) above, a schedule should be annexed giving particulars of the documents and the grounds on which the claim for exclusion is based.

Con. No. 13

043690. 2,500. 11/68. CAM A1971. Gp. 657

All the papers and documents (usually known as "the post-1945 documents") bequeathed to me by the said Codicil.

THE CABINET OFFICE

RE: SIR WINSTON CHURCHILL'S PAPERS

FURTHER INSTRUCTIONS TO COUNSEL TO ADVISE IN CONSULTATION ON WEDNESDAY 17 JULY 1991 AT 70 WHITEHALL SW1 AT 4.30PM. AND IN WRITING.

Mr Michael Hart, Q.C.
2 New Square
Lincoln's Inn
London WC2A 2RU

with you

Mr William Charles
13 Old Square
Lincoln's Inn
London WC2A 3UA

The Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

Tel: 071-210 3049

Ref: T&M 69/340/CJG

THE CABINET OFFICE

RE: SIR WINSTON CHURCHILL'S PAPERS

FURTHER INSTRUCTIONS TO COUNSEL TO ADVISE IN CONSULTATION ON WEDNESDAY 17 JULY 1991 AT 70 WHITEHALL SW1 AT 4.30PM. AND IN WRITING

Counsel have herewith copies of the following:-

(1) Letter dated 20 May 1991 from Walker Martineau to the Capital Taxes Office together with a Deed of Resettlement dated 27 December 1990;

(2) Re-typed page from the 1963 Settlement.

In the Instructions which Counsel already have before them Instructing Solicitor said that he understood that further changes had recently been made to the trusts on which the pre-1945 papers were held. Instructing Solicitor has now received a copy of the Deed of Resettlement and Counsel have copies before them. The Deed would not appear to affect the answers to the questions raised in the earlier Instructions, but Counsel will wish to see the document for the sake of completeness.

Counsel may wish to note that, unlike the 1963 settlement, the latest resettlement makes no reference to clause 11 of the 1945 settlement. Instructing Solicitor regrets that clause 2(j) of the 1963 settlement (which as stated in the previous Instructions applied various provisions of the 1945 settlement, including clause 11, to the 1963 settlement) is not very legible in the copies Counsel have before them. A re-typed copy of the relevant page is therefore enclosed with these Instructions.

[RE-TYPED COPY OF THE PENULTIMATE PAGE OF THE 1963 SETTLEMENT]

the insurance cataloguing storage maintenance binding or repair of any documents boxes or other chattels for the time being forming part of the Resettlement Property

(j) Subject to the provisions of clause 3 hereof the powers and provisions contained in clause 4 and in clauses 9 to 14 inclusive of the Chartwell Trust shall continue to apply to the Resettlement Property as far as those powers and provisions are applicable thereto and are not inconsistent with the trusts powers and provisions herein declared and contained

3. NOTHING herein contained shall affect any property subject to the trusts of the Chartwell Trust other than the recent Resettlement Property and the income thereof or shall affect any copyright in or arising out of the Trust Archives or any part or parts thereof whether such copyright was assigned by the 1963 Assignment or otherwise or is still vested in the Present Trustees

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first before written

THE SCHEDULE above referred to

The Ancillary Fund

The following investments now standing in the name of Cox & Co (Nominees) Limited

1,000	Lloyds Bank Limited shares of One Pound each
1,200	Guardian Assurance Company Limited shares of five shillings each
900	Associated Portland Cement Limited units of One pound each

Walker Martineau

64 Queen Street, London EC4R 1AD Telephone 071-236 4232 CDE 553 Fax 071-236 2525

GDFED/
Your ref. F60817/1968 J
Our ref. 23.bro
20th May 1991

The Controller
Capital Taxes Office
Designated Property Section
Rockley Road
London W14 ODF

[illegible]

CABINET OFFICE
H 91/240
4 JUL 1991
FILING INSTRUCTIONS
FILE No.

Dear Sirs,

<u>Churchill Archives Trust</u>
<u>Randolph Churchill Deceased</u>

We act for the Trustees of the Churchill Archives Trust of 5th December 1963 in respect of which there was an exemption claim made on the death of Randolph Churchill on the 6th June 1968.

The Trustees of the Archives Trust have recently exercised their powers of appointment and as a result part of the trust funds now become held on discretionary trusts.

We enclose a copy of the Deed of Resettlement. Although the trust assets remain with the same trustees they would like to renew the exemption consequent on the termination of Mr Winston Churchill's interest in that part of the trust which now becomes held on discretionary trusts.

You will see the part becomes held on accumulation and maintenance trusts and this is not a chargeable transfer. We imagine that no re-exemption is required but that portion remains subject to the tingent estate duty charge. ✓

We would be grateful if you would let us have any necessary forms of undertaking to complete.

We confirm that the only assets in the trust are the exempted items.

Please let us know if there is any further information you need.

Yours faithfully,

May/0108

Thames Valley Office: Minerva House, Valpy Street, Reading RG1 1AR and 49 Church Street, Theale, Reading RG7 5BX Telephone 0734-591422 Fax 0734-583824

DATED 27 December 1990

H W S CHURCHILL

I MONTROSE

Resettlement of
1963 Churchill Archives Trust

WALKER MARTINEAU STRINGER SAUL
64 Queen Street
London EC4R 1AD

RLU003.D68

THIS DEED of RE-SETTLEMENT is made the 27th day of December One thousand nine hundred and ninety

BY HENRY WINSTON SPENCER CHURCHILL of Fairdown Vernham Street Vernham Dean Andover Hants and IAN MONTROSE of 9-11 Fulwood Place Gray's Inn London WC1V 6HO ("the Present Trustees")

SUPPLEMENTAL to a Settlement dated 5th December 1963 ("the 1963 Settlement") and made between 1) Lady Clementine Ogilvy Churchill Anthony Forbes Moir Sir Thomas Leslie Rowan and John Rupert Colville 2) The Right Hon Sir Winston Leonard Spencer Churchill ("Sir Winston")

WHEREAS

(A) The Present Trustees are the present trustees of the Settlement

(B) The 1963 Settlement gives to the trustees for the time being a wide power ("the overriding power") in their absolute and unfettered discretion at any time or times to settle the property subject to the trusts of the 1963 Settlement for the benefit of the specified descendant (as defined in the 1963 Settlement) and his male issue

(C) The Present Trustees wish to exercise the overriding power in the ways set out below

(D) The property now subject to the trusts of the 1963 Settlement consists of the records and memoranda of Sir Winston and other materials more particularly set out and referred in the 1963 Settlement as the "Resettlement Property" and the "Trust Archives" which expressions have the same meaning in this deed as in the 1963 Settlement

(E) The Trustees no longer own the copyright in the Trust Achives which reverted to the estate of Sir Winston by virtue of Section 5(2) of the Copyright Act 1911

NOW THIS DEED IRREVOCABLY WITNESSES as follows

1 Definitions

IN this deed where the context so admits

(a) 'the Trust Fund' shall mean

(i) the Resettlement Property

(ii) all money investments or other property paid or transferred by any person or persons to or so as to be under the control of and (in either case) accepted by the Trustees as additions and

(iii) all accumulations (if any) of income directed to be held as an accretion to capital and

(iv) the money investments and property from time to time representing the said money investments property additions and accumulations

(b) 'the Perpetuity Date' means the twentieth anniversary of the date of the death of the last survivor of the descendants of Sir Winston living on the 31st July 1946 which descendants are named in the Second Schedule

(c) 'the Trust Period' shall mean the period ending on the earlier of:

(i) the Perpetuity Date

(ii) such date as the Trustees shall by deed specify (not being a date earlier than the date of execution of such deed or later than a date previously specified)

(d) 'the specified descendant' shall mean the person who would be in the absence of any disclaimer or surrender entitled for the time being to a peerage of the United Kingdom limited to the heirs male of the body of Sir Winston

(e) 'the specified descendant's share' shall mean that part of the Trust Fund set out in the Third Schedule

(f) 'Randolph's Fund' shall mean that part of the Trust Fund set out in the Fourth Schedule

(g) 'Jack's Fund' shall mean that part of the Trust Fund set out in the Fifth Schedule

(h) 'Randolph' shall mean Randolph Leonard Spencer Churchill who was born on the 22 January 1965

(i) 'Jack' shall mean John Gerard Averell Churchill who was born on the 27 August 1975

(j) 'the Discretionary Fund' shall mean that part of the Trust Fund set out in the Fourth Schedule

(k) 'the Beneficiaries' shall mean the following objects or persons (whether or not such objects or persons are now in existence or come into existence during the Trust Period):

  (i) the specified descendant

  (ii) the male issue of any person who is or has been the specified descendant

(l) references to children grandchildren and issue shall be construed so as to exclude

  (i) illegitimate and adopted children grandchildren and issue and

  (ii) persons claiming descent through those so excluded

2 Resettlement

In exercise of the overriding power and of every or any other enabling them the Present Trustees HEREBY IRREVOCABLY APPOINT and DECLARE that the Trust Fund shall be held upon the trusts and with and subject to the powers and provisions set out in this deed

3 Trust for sale

THE Trustees shall hold the Trust Fund upon trust as to investments or property other than money in their absolute discretion to sell call in or convert into money all or any of such investments or property but with power to postpone such sale calling in or conversion and to permit the same to remain as invested and upon trust as to money with the like discretion to invest the same in their names or under their control in any of the investments authorised by this settlement or by law with power at the like discretion from time to time to vary or transpose any such investments for others so authorised

4 Power of appointment

THE Trustees shall hold the capital and income of the Trust Fund upon such trusts in favour or for the benefit of all or such one or more of the Beneficiaries exclusive of the other or others of them in such shares or proportions if more than one and with and subject to such powers and provisions for their respective maintenance education or other benefit (including administrative powers and provisions and discretionary trusts and powers and in such manner generally as the Trustees (subject to the application (if any) of the rule against perpetuities) by any deed or deeds revocable during the Trust Period or irrevocable and executed during the Trust Period shall appoint Provided always that no exercise of this power shall invalidate any prior payment or application of all or any part or parts of the capital or income of the Trust Fund made under any other power or powers conferred by this Settlement or by law

5 Trusts in favour of the specified descendant

UNTIL and subject to and in default of any appointment under Clause 4

(a) the Trustees shall pay or apply the income of the specified descendant's share upon trust during the Trust Period for the specified descendant for life [illegible]

(b) at the expiration of the Trust Period the Trustees shall hold the specified descendant's share upon trust for the person who is at that time the specified descendant in tail male

(c) the Trustees shall have power to pay or apply any part of the capital of the specified descendant's share to or for the absolute benefit of the specified descendant for the time being and discharged from these trusts

6 Randolph's Fund

UNTIL and subject to and in default of any appointment under Clause 4

(a) the Trustees shall pay the income of Randolph's Fund to Randolph for life [illegible]

(b) the Trustees shall have power to pay or apply the whole or any part of the capital of Randolph's Fund to or for the absolute benefit of Randolph freed and discharged from these trusts

(c) subject as above the Trustees shall hold the income and capital of Randolph's Fund upon trust for such one or more of the male issue of Randolph in such shares and at such ages and upon such trusts and in such manner generally as the Trustees shall (subject to the application (if any) of the rule against perpetuities) by deed or deeds revocable during the Trust Period or irrevocable and executed during the Trust Period appoint

(d) subject as above the Trustees shall hold the income and capital of Randolph's Fund upon trust for the first oldest or only son of Randolph who shall attain the age of 30 years before the end of the Trust Period or be living and under that age at the end of the Trust Period

(e) subject as above the Trustees shall hold the income and capital of Randolph's Fund upon the trusts declared below in relation to Jack's Fund and as one fund therewith

(f) subject as above the Trustees shall hold the income and capital of Randolph's Fund upon the trusts declared below in relation to the Discretionary Fund and as one fund therewith

7 Jack's Fund

UNTIL and subject to and in default of an appointment under Clause 4 (but subject to sub clause (e) below)

(a) the Trustees shall hold the capital and income of Jack's Fund upon trust for Jack if he shall attain the age of 25 years

(b) subject as above Section 31 of the Trustee Act 1925 (as modified below) shall apply to Jack's Fund

(c) upon Jack attaining the age of 25 years Jack's fund shall not vest absolutely but shall be held by the Trustees upon the trusts and with and subject to the power set out in relation to Randolph's Fund but with the substitution of Jack for Randolph

(d) Subject as above the Trustees shall hold the income and capital of Jack's Fund upon the trusts declared above in relation to Randolph's Fund and as one fund therewith

(e) Nothwithstanding anything else in this deed the powers in clause 4 shall not be exercisable in relation to Jack's Fund or any part unless at the time of such exercise an interest in possession subsists in Jack's Fund or the part in relation to which the power is being exercised

8 Trusts in default of appointment

[illegible]TIL and subject to and in default of any appointment under Clause 4

(a) The Trustees shall pay or apply the income of the Discretionary Fund to or for the benefit of all or such one or more of the Beneficiaries exclusive of the other or others of them as shall for the time being be in existence and in such shares if more than one and in such manner generally as the Trustees shall in their absolute discretion from time to time think fit

(b) Notwithstanding the trusts powers and provisions declared and contained in this clause the Trustees may

   (i) at any time or times during the Trust Period pay or apply the whole or any part or parts of the capital of the Discretionary Fund to or for the benefit of all or such one or more of the Beneficiaries exclusive of the other or others of them in such shares if more than one and in such manner generally as the Trustees shall in their absolute discretion think fit

   (ii) (subject to the application (if any) of the rule against perpetuities) pay or transfer any income or capital of the Trust Fund to the trustees of any other trust wherever established or existing under which all or any one or more of the Beneficiaries is or are interested (whether or not all or such one or more of the Beneficiaries is or are the only objects or persons interested or capable of benefiting under such other trust) if the Trustees shall in their absolute discretion consider such payment or transfer to be for the benefit of all or such one or more of the Beneficiaries

9 Ultimate default trusts

SUBJECT as above and if and so far as not wholly disposed of for any reason whatever by the above provisions the capital and income of the Trust Fund shall be held in trust for Winston Spencer Churchill absolutely

10 Administrative powers

THE Trustees shall in addition and without prejudice to all statutory powers have the powers and immunities set out in the First Schedule provided that the Trustees shall not exercise any of their powers so as to conflict with the beneficial provisions of this Settlement

11 Extended power of maintenance

SECTION 31 of the Trustee Act 1925 shall be deemed to apply as if the words 'may in all the circumstances be reasonable' had been omitted from paragraph (i) of subsection (1) and in substitution there had been inserted the words 'the Trustees may think fit' and as if the proviso at the end of subsection (1) had been omitted

12 Extended power of advancement

SECTION 32 of the Trustee Act 1925 shall be deemed to apply as if the proviso (a) of subsection (1) had been omitted

13 Trustee charging clause

(a) ANY trustee which shall be a trust corporation or company authorised to undertake trust business shall be entitled in addition to reimbursement of its proper expenses to remuneration for its services in accordance with its published terms and conditions for trust business in force from time to time and in the absence of any such published terms and conditions in accordance with such terms and conditions as may from time to time be agreed between such trustee and the person or persons by whom the power of appointing new trustees is for the time being exercisable

(b) Any trustee who is a solicitor or other person engaged in a profession or business shall be entitled to charge and be paid all normal professional or other charges for business done services rendered or time spent personally or by such trustee's firm in the administration of these trusts including acts which a trustee not engaged in any profession or business could have done personally

(c) Any trustee shall be entitled to retain any brokerage or other commission which may be received personally or by such trustee's firm in respect of any transaction carried out on behalf of this Settlement for which such trustee or trustee's firm is in the normal course of business allowed brokerage or other commission notwithstanding that the receipt of such brokerage or commission was procured by an exercise by such trustee or the Trustees of powers over the Trust Fund

14 Appointment of new trustees

A person may be appointed to be a trustee notwithstanding that such person is not resident in the United Kingdom and remaining out of the United Kingdom for more than twelve months shall not be a ground for the removal of a trustee

15 Clause headings

THE clause headings are included for reference only and do not affect the interpretation of this settlement

IN WITNESS whereof the parties hereto have executed this deed the day and year first above written

THE FIRST SCHEDULE

[Administrative powers]

1 Power of investment

(a) SUBJECT as provided below any monies requiring investment may be invested in or upon any investments of whatever nature and wherever situate whether producing income or not (including the purchase of any immovable or movable property or any interest in such property and including purchases made for the purpose of enabling all or any one or more of the Beneficiaries to have the occupation use or enjoyment in specie of the asset purchased or other purposes which the Trustees consider to be in the interests of any one or more of the Beneficiaries) as the Trustees shall in their absolute discretion think fit so that the Trustees shall have the same full and unrestricted powers of making and changing investments of such monies as if they were absolutely and beneficially entitled to such monies and without prejudice to the generality of the above the Trustees shall not be under any obligation to diversify their investment of such monies

(b) The acquisition of any such reversionary interest or any policy of insurance or assurance sinking fund policy or other policy of whatever nature or any annuity or securities or other investments not producing income or of a wasting nature or for any other reason not within the meaning of the word 'investment' strictly construed shall be deemed to be an authorised investment of trust monies if the Trustees shall consider the same to be for the benefit of any one or more of the Beneficiaries

(c) Where any such reversionary interest policy security or investment as is described in subclause (b) is comprised in the Trust Fund or where any other security or investment is sold with the right to receive the dividend or interest accrued or accruing no part of any accretion to the value or of any premium or bonus or other sum (whether in respect of arrears of or prospective dividend or interest or income or otherwise) which accrues or is payable when the same falls into possession or is redeemed or matures or on repayment of the capital monies so secured or when any sale or disposal is made shall be apportionable to or be treated as income

(d) The Trustees shall have power to exchange property for other property of a like or different nature and for such consideration and on such conditions as they in their absolute discretion think fit

2 Power to lend and to give guarantees

(a) THE Trustees shall have power to lend money or property to any one or more of the Beneficiaries either free of interest or on such terms as to payment of interest and generally as the Trustees shall in their absolute discretion think fit

(b) The Trustees shall have power to guarantee the payment of money and the performance of obligations in respect of any existing or future borrowings by any one or more of the Beneficiaries from third parties or guarantees indemnities or other commitments of like nature given to third parties by any one or more of the Beneficiaries including without prejudice to the generality of the above the power to pledge the whole or part of the assets comprising the Trust Fund in support of any such guarantee given as above by the Trustees and to enter into such indemnities as they shall in their absolute discretion think fit in connection with any such guarantee

3 Power to permit occupation of property and enjoyment of chattels

THE Trustees shall have power to permit any one or more of the Beneficiaries to occupy or reside in or upon any real or immovable property or to have the enjoyment and use of chattels or other movable property for the time being held upon these trusts on such terms as to payment of rent rates taxes and other expenses and outgoings and as to insurance repair and decoration and generally upon such terms as the Trustees shall in their absolute discretion think fit

4 Power to borrow

THE Trustees shall have power to borrow and raise money on the security of the Trust Fund for any purpose (including the investment of the monies so raised as part of the Trust Fund) and to mortgage charge or pledge any part of the Trust Fund as security for any monies so raised and to guarantee the payment of money and the performance of obligations in respect of borrowings by any company fully or partly owned by the Trustees and in connection with such guarantees to enter into such indemnities as the Trustees shall in their absolute discretion think fit

5 Powers in relation to real property

WHERE the Trust Fund for the time being includes any real or immovable property (in this clause referred to as 'the land')

(a) The Trustees may lease all or any part of the land for any purpose and whether involving waste or not and for any term and either wholly or partly in consideration of a rent (whether fixed or variable) or fine or premium or the erection improvement or repair or any agreement to erect improve or repair buildings or other structures on the land and may accept (with or without consideration) surrender of any lease of all or any part of the land

(b) The Trustees may in executing any trust or power of sale sell all or any part of the land either wholly or partly in consideration of an annual sum payable either in perpetuity or for any term (whether definite or indefinite) and being either reserved out of the land sold or secured in such other manner as the Trustees shall in their absolute discretion think fit

(c) The Trustees may in executing any trust or power of sale or leasing:

(i) sell or lease all or any part of the land whether the division is horizontal or vertical or made in any other way

(ii) sell or lease or reserve any easement or right or privilege over all or any part of the land

(iii) sell or lease or except or reserve any timber or mines or minerals on or in or under all or any part of the land together with any easements rights or privileges of cutting or working and carrying away the same or otherwise incidental to or connected with forestry or mining purposes

(iv) impose and make binding for the benefit of all or any part of the land sold or leased any restrictions or stipulations as to user or otherwise affecting any part of the land retained

(v) accept in exchange for all or any part of the land to be sold or leased (either with or without any money paid or received for equality of exchange) any other real or immovable property or any lease

(vi) enter into any contract or grant any option for the sale or leasing of all or any part of the land or otherwise for the exercise by the Trustees of any of their above powers

(d) The Trustees shall not be bound to see to nor be liable or accountable for omitting or neglecting to see to the repair or insurance of any buildings or other structures on the land or to the payment of any outgoings or otherwise as to the maintenance of the land or any buildings or other structures on the land but may maintain repair or insure the same in such manner and to such extent as they shall in their absolute discretion think fit

(e) The Trustees may from time to time expend monies altering or improving the land or any buildings or other structures on the land (including erecting demolishing or rebuilding the same) to such extent and in such a manner as they shall in their absolute discretion think fit and any certificate in writing of any architect or surveyor employed by the Trustees to the effect that any work specified in such certificate is or includes an alteration or an improvement to the land or any such building or other structure shall be conclusive as between the Trustees and the Beneficiaries that any money expended on such work was properly expended in exercise of this power

6 Powers in relation to chattels

WHERE the Trust Fund for the time being includes any chattels (in this clause referred to as 'the chattels')

(a) The Trustees may sell lease hire deposit store or otherwise deal with the chattels upon such terms as they shall in their absolute discretion think fit

(b) The Trustees shall not be bound to see to nor be liable or accountable for omitting or neglecting to see to the repair or insurance of the chattels but may repair and insure the chattels in such a manner and to such an extent as they shall in their absolute discretion think fit

Power to trade

(a) THE Trustees shall have power to trade or take part in any venture in the nature of trade whether solely or jointly with any other person and whether or not by way of partnership (limited or general) and for these purposes make such arrangements as they shall in their absolute discretion think fit and may delegate any exercise of this power to any one or more of their number or to a company or partnership formed for this purpose

(b) Any power vested in the Trustees under this Settlement shall (where applicable) extend to any arrangements in connection with any such trade or venture and in particular but without prejudice to the generality of the above the Trustees' powers of borrowing and charging shall extend to any borrowing arrangements made in connection with such trade or venture and whether made severally or jointly with others or with unequal liability and the Trustees shall be entitled to be fully indemnified out of the Trust Fund against all personal liability to which they may become in any manner subject in connection with any such trade or venture

8 Power to give indemnities

(a) THE Trustees shall have power to enter into any indemnity in favour of any former trustee or any other person in respect of any fiscal imposition or other liability of any nature prospectively payable in respect of the Trust Fund or otherwise in connection with this Settlement and to charge or deposit the whole or any part of the Trust Fund as security for any such indemnity in such manner in all respects as they shall in their absolute discretion think fit

(b) The Trustees shall have power to give or enter into any indemnity warranty guarantee undertaking or covenant or enter into any type of agreement that they shall in their absolute discretion think fit relating to the transfer or sale of a business or private company shareholding held or owned for the time being by the Trustees whether relating to the business or company itself its assets liabilities shares or employees or any other aspect of the business or company in favour of any transferee purchaser or other relevant party and including any limitation or restriction on value or otherwise as the Trustees shall in their absolute discretion think fit

9 Exclusion of apportionment

THE statutory and equitable rules of apportionment shall not apply to this Settlement and the Trustees shall be permitted to treat all dividends and other payments in the nature of income received by them as income at the date of receipt irrespective of the period for which the dividend or other income is payable

10 Power to deal with insurance policies

THE Trustees shall in addition and without prejudice to all statutory and other powers conferred upon them have the following powers in relation to any insurance policy ('the policy') from time to time comprised in the Trust Fund

(a) To borrow on the security of the policy for any purpose

(b) To convert the policy into a fully paid-up policy for a reduced sum assured free from payment of future premiums

(c) To surrender the policy wholly or any part or any bonus attaching to the policy for its cash surrender value

(d) To sell the policy or any substituted policy on such terms as the Trustees shall in their absolute discretion think fit

(e) To exercise any of the powers conferred by the policy or with the consent of the insurer to alter the amount or occasion of the payment of the sum assured or to increase or decrease the amount of the periodic premiums (if any) payable under the policy or to alter the period during which the premiums are payable and to do any of these things notwithstanding that the sum assured may be reduced subject always to production of evidence of insurability satisfactory to the insurer

11 Power to vary administrative provisions

THE Trustees shall have power at any time or times during the Trust Period by deed or deeds to revoke or vary any of the administrative provisions of this Settlement or to add any further administrative provisions as the Trustees may consider expedient for the purposes of this Settlement and without prejudice to the generality of the above for ensuring that, at all times there should be a trustee of this Settlement and that the Trust Fund shall be fully and effectively vested in or under the control of such trustee and that the trusts of this Settlement shall be enforceable by the Beneficiaries provided always that the power conferred by this clause shall only be exercisable if the Trustees shall be advised in writing by a lawyer of at least 10 years' standing qualified in the law of the jurisdiction which for the time being is the proper law of this Settlement that it would be expedient for the purposes of this Settlement that the administrative provisions be revoked varied or added to in the manner specified in such written advice and that such power shall be exercisable only by the Trustees executing a deed in a form appropriate to carry such advice into effect

12 Release of powers

THE Trustees may by deed or deeds and so as to bind their successors as trustees release or restrict the future exercise of all or any of the powers by this Settlement or by law conferred on them either wholly or to the extent specified in any such deed or deeds notwithstanding the fiduciary nature of any such powers

13 Power of appropriation

THE Trustees shall have power in their absolute discretion to appropriate any part of the Trust Fund in its then actual condition or state of investment in or towards satisfaction of any interest or share in the Trust Fund as may in all the circumstances appear to them to be just and reasonable and for the above purposes from time to time to place such value on any or all investments or other property as they shall in their absolute discretion think fit

14 Power to vote and to employ nominees and custodians

IN respect of any property comprised in the Trust Fund the Trustees shall have power

(a) To vote upon or in respect of any shares securities bonds notes or other evidence of interest in or obligation of any corporation trust association or concern whether or not affecting the security or the apparent security of the Trust Fund or the purchase or sale or lease of the assets of any such corporation trust association or concern

(b) To deposit any such shares securities or property in any voting trust or with any depositary designated under such a voting trust

(c) To give proxies or powers of attorney with or without power of substitution for voting or acting on behalf of the Trustees as the owners of any such property

(d) To hold any or all securities or other property in bearer form or in the names of the Trustees or any one or more of them or in the name of some other person or partnership or in the name or names of nominees without disclosing the fiduciary relationship created by this Settlement and to deposit the said securities and any title deeds or other documents belonging or relating to the Trust Fund in any part of the world with any bank firm trust company or other company that undertakes the safe custody of securities as part of its business without being responsible for the default of such bank firm trust company or other company or for any consequent loss

15 Power to delegate management of investments

(a) THE Trustees shall have power to engage the services of such investments adviser or advisers as the Trustees may from time to time think fit ('the investment adviser') to advise the Trustees in respect of the investment and reinvestment of the Trust Fund with power for the Trustees without being liable for any consequent loss to delegate to the investment adviser discretion to manage all or any part of the Trust Fund within the limits and for the period stipulated by the Trustees and the Trustees shall settle the terms and conditions for the remuneration of the investment adviser and the reimbursement of the investment adviser's expenses as the Trustees shall in their absolute discretion think fit and such remuneration and expenses shall be paid by the Trustees from the Trust Fund

(b) The Trustees shall not be bound to enquire into nor be in any manner responsible for any changes in the legal status of the investment adviser

(c) The Trustees shall incur no liability for any action taken pursuant to or for otherwise following the advice of the investment adviser however communicated

16 Power to receive remuneration

NO trustee shall be liable to account for any remuneration or other profit received by such trustee in consequence of such trustee acting as or being appointed to be a director or other officer or servant of any company notwithstanding that such appointment was procured by an exercise by such trustee or by the Trustees of voting rights attached to securities comprised in the Trust Fund

17 Power to promote companies

THE Trustees may (without prejudice to the generality of their powers of investment) promote or join with any other person or persons in promoting or incorporating any company in any part of the world or subscribe for or acquire any of the shares or stock or debentures or debenture stock or loan capital of any company with a view to or in consideration of

(i) the establishment and carrying on by such company of a business of any kind which the Trustees are for the time being authorised to carry on themselves and the acquisition of any of the assets comprised in the Trust Fund which may be required for the purposes of such business

(ii) the acquisition of the assets and undertaking of any business being carried on by the Trustees under the above power

(iii) the acquisition of all or any of the assets comprised in the Trust Fund to be held as investments of the company acquiring the same

18 Trustees not bound to interfere in business of company in which the settlement is interested

THE Trustees shall not be bound or required to interfere in the management or conduct of the business of any company wherever resident or incorporated in which the Settlement shall be interested although holding the whole or a majority of the shares carrying the control of the company but so long as the Trustees shall have no notice of any act of dishonesty or misappropriation of monies on the part of the directors having the management of such company the Trustees shall be at liberty to leave the conduct of its business (including the payment or non-payment of dividends) wholly to the directors and the Beneficiaries shall not be entitled to require the distribution of any dividend by any such company or require the Trustees to exercise any powers they may have of compelling any such distribution

19 Power to insure property

THE Trustees shall have power to insure against any loss or damage from any peril any property for the time being comprised in the Trust Fund for any amount and to pay the premiums out of the Trust Fund

20 Power to appoint agents

THE Trustees shall have power instead of acting personally to employ and pay at the expense of the Trust Fund any agent in any part of the world whether attorneys solicitors accountants brokers banks trust companies or other agents without being responsible for the default of any agent if employed in good faith to transact any business or act as nominee or do any act in the execution of these trusts including without prejudice to the generality of the above the receipt and payment of monies nd the execution of documents

21 Power to permit self-dealing

THE Trustees shall have power to enter into any transaction concerning the Trust Fund notwithstanding that one or more of the Trustees may be interested in the transaction other than as one of the Trustees

22 Indemnity

IN the execution of these trusts no trustee

(a) shall be liable for any loss to the Trust Fund arising by reason of any improper investment made in good faith or for the negligence or fraud of any agent employed by such trustee or by any of the Trustees although the employment of such agent was not strictly necessary or expedient or by reason of any mistake or omission made in good faith by such trustee or by any of the Trustees or by reason of any matter or thing except wilful or individual fraud or dishonesty on the part of the trustee who is sought to be made liable

(b) shall be obliged to ascertain before distributing amongst the Beneficiaries the whole or any part of the Trust Fund whether any person whose parents are not married to each other at the time of birth or who claim through such a person is or may be entitled to an interest in the Trust Fund nor shall a trustee be liable to any such person of whose existence the trustee has no notice or who claims through such a person

Delegation of powers

(a) THE Trustees may delegate to any one or more of their number the operation of any bank account in their names

(b) Any Trustee shall have power at any time (notwithstanding any rule of law to the contrary) by deed or deeds revocable during the Trust Period or irrevocable and executed during the Trust Period to delegate to any person (including in cases where there is more than one trustee to any other or others of the Trustees) the exercise of all or any powers conferred on such trustee notwithstanding the fiduciary nature of such power or powers

THE SECOND SCHEDULE

The descendants of Sir Winston living as 31st July 1946 and at the date of this deed

Winston Spencer Churchill MP
The Lady Soames
The Hon Julian Sandys Q C
The Hon Edwina Sandys
The Hon Celia Perkins

THE THIRD SCHEDULE

(The specified descendant's share)

Four tenths of the Trust Fund

THE FOURTH SCHEDULE

(Randolph's Fund)

One tenth of the Trust Fund

THE FIFTH SCHEDULE

(Jack's Fund)

One twentieth of the Trust Fund

THE SIXTH SCHEDULE

(The Discretionary Fund)

Nine twentieths of the Trust Fund

SIGNED as a deed by the said
HENRY WINSTON SPENCER CHURCHILL
in the presence of:-

HWS Churchill

J. W. Mead
2 Storey Drove
[illegible] Street
SF11 0EL

SIGNED as a deed by the said
IAN MONTROSE in the presence of:-

Ian Montrose
by his attorney
Diane M Rawstron

B D WALSH
9-11 FULWOOD PLACE
GRAYS INN
LONDON WC1

RLU003. D68

OFFICE
X2084
25 FEB 1969
FILING INSTRUCTIONS
FILE No. 80/5

THE MAP HOUSE
HARCOURT HILL
OXFORD

TELEPHONE 46307

24 February 1969

Dear Sir,

In consideration of the Crown permitting me to have access to papers (other than duplicates of papers to which the public have authorised access) to which Clause 11 of the Chartwell Trust applies, and to other papers of a similar character to which I may be permitted access in future, I HEREBY UNDERTAKE THAT

(i) I will make use of such papers only for the purpose of writing the official biography of Sir Winston Churchill pursuant to an agreement of 24 October 1968 made between C. & T. Publications Limited and myself;

(ii) I will be bound by the provisions of the Official Secrets Acts 1911 and 1939 in respect of such papers;

(iii) I will submit to you two copies of the galley proofs of the main and ancillary volumes of such biography and will accept any amendments or deletions which you may ask me to make on grounds of public policy;

(iv) I will ensure that the name and address of any assistant I employ now, or may propose to employ in the future, on work requiring similar access to the papers shall be sent to you, and that before the assistant takes up work he or she shall sign an assurance addressed to you in similar terms to paragraphs (i) and (ii) of this letter.

Yours faithfully,

Martin Gilbert

Martin Gilbert

The Secretary
Cabinet Office

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

Our Ref: HO91/447 ✓
Your Ref:T&M69/340/CJG

10 July 1991

C J Gregory Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
LONDON SW1H 9JS

Dear Colin

CHURCHILL/CHARTWELL ARCHIVE

In your letter of 20 May 1991 you said that we needed to know why Hankey asked Churchill to return his official papers in the face of the Law Officers' Opinion that such papers could be retained during an ex-Minister's lifetime.

It may be that the exchange between Hankey and Churchill which refer to the public interest comprises sufficient explanation but I have been looking through the 1934 papers to see whether there was ever any discussion of the implications of the Law Officers' Opinion. I have found none. There is an exchange between Sir Rupert Howarth Cabinet Office and Sir Thomas Barnes, Treasury (?Treasury Solicitor) in July 1934 in which Sir Thomas, having looked at the letters in draft, says:-

> "Having regard to the Law Officers' Opinion,........ I think it is permissible to write upon the footing that the documents are the property of the Government and I have stiffened up the letters a little to accord with that assumption."

It was agreed that nothing should be said at the outset to the recipients of the letters about the legal position, it could be explained to them if they enquired!

On another point I wondered whether it would be of interest to Counsel to know that the biographers of Churchill gave undertakings which refer to the restrictions imposed by Clause 11 of the 1946 Chartwell Trust. I enclose a copy of those given by Martin Gilbert and Lord Birkenhead - researchers permitted access to the papers gave similar undertakings.

I have not found a similar undertaking signed by Randolph Churchill, presumably because he was a member of the family, but he submitted for clearance the text of that part of the biography which he wrote (see copy letter attached) and accepted the Cabinet Secretary's ruling that one document he wished to reproduce could not be used.

This seems to me to indicate that it was all along accepted that Her Majesty's Government had "rights" over the papers and the information they contain.

Yours sincerely

Pat Andrews

MISS P M ANDREWS

20

THE TREASURY SOLICITOR
Queen Anne's Chambers
28 Broadway London SW1H 9JS
Telephones Direct Line 071-210 3344
Switchboard 071-210 3000
Telex 917564 GTN 210
Fax Nos. 071-222 6006 - 071-210 3488
DX No. 2318 Victoria

Miss P M Andrews
Historical Section
Cabinet Office
Hepburn House
Marsham Street
London SW1P 4HW

CABINET OFFICE
H 91/274
5 JUL 1991
FILING INSTRUCTIONS
FILE No.

Please quote T&M 69/340/CJG
Your reference HO91/440
Date 5 July 1991

Dear Pat,

CHURCHILL/CHARTWELL ARCHIVE

Thank you for your letter of 4 July. I do not think the Deed of Resettlement will affect the answers to the questions we have asked Counsel, but as you will see from the enclosed Instructions I have sent copies to Counsel so as to ensure they have a complete picture. I have pointed out that the Deed of Resettlement does not include a reference to the restrictions in clause 11 of the 1945 settlement, but I would not have thought this matters greatly as the resettlement is supplemental to the 1963 settlement which does contain a provision applying clause 11.

As you know the Consultation has been rearranged for Wednesday 17 July at 4.30pm. at Sir Robin Butler's office. Those attending will be Mr Hart, Mr Charles, Nicholas Cox, Sally Finn, Mark Blythe and myself.

I am sending copies of this letter and the Instructions to Michael Carpenter (Legal Secretariat to the Law Officers), Sally Finn (Lord Chancellor's Department) and Nicholas Cox (Public Records Office).

Yours sincerely,

Colin Gregory

C J Gregory

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

Our Ref: HO91/440 ✓
Your Ref: T& M 69/340/CJG

4 July 1991

C J Gregory Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
LONDON
SW1H 9JS

Dear Colin

CHURCHILL/CHARTWELL ARCHIVE

I attach a copy of a letter I have received today from Inland Revenue. You will see that it is from Walker Martineau, the Churchill Trustees' Solicitors, enclosing in turn a copy of the Deed of Resettlement. We knew, from Sir Robin Butler's account of his meeting with the Trustees on 1 May 1991, that the terms of the Trust Deed had been amended, but no details were given. You may wish to see and advise Counsel on the revised terms.

Yours sincerely

Pat Andrews

MISS P M ANDREWS

Subject to Sir Robin Butler's agreement the meeting will be at 4:30 on 17 July and attended by Michael Hart QC, William (Bill) Charles - both Counsel, Mark Blythe, Colin Gregory, T. Sols, N G Cox, PRO, possibly Sally Finn, LCD and me.

PMA
5.7.91.

CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 071-270 0101

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler KCB CVO

Ref. A091/1650

3 July 1991

c - Miss Andrews D 1.8.91

Dear Mr. Montrose,

Thank you for your letter of 24 June. I am sorry that I have not yet been able to come back to the trustees with a response indicating the Government's attitude to the memorandum concerning the Churchill Archives. This has not been because the matter has been overlooked and I hope to be able to do so soon.

Yours sincerely,

Robin Butler

Ian Montrose Esq
Goodman Derrick & Co
9-11 Fulwood Place
Gray's Inn
LONDON WC1V 6HQ

17

CABINET OFFICE
A 7785
2 JUL 1991
FILING INSTRUCTIONS
FILE No. ....

HO91/433

Pl. type as ~~suggested by Miss Andrews~~ — as on tape. with the additional words I have indicated.
I should like to attend the Conference with Counsel. Would Counsel like to come to my room?
RRB
2.7

SIR ROBIN BUTLER

CHURCHILL/CHARTWELL ARCHIVE

I have consulted Mr Mark Blythe, Treasury Solicitor, about your proposed reply to Mr Montrose's letter of 24 June 1991.

Mr Blythe advises that either the reply should await the outcome of the meeting with Counsel on 8 July or that it should be short and non-commital. He suggests the addition of the following at the end of the first paragraph:-

> This has not been because the matter has been overlooked and
> "I hope to be able to do so soon."

and the deletion of the whole of the remainder of the draft. Mr Blythe is of the opinion that Mr Montrose will not be expecting anything more than this.

I should myself prefer the short reply suggested rather than no reply until after 8 July; as you mentioned earlier we cannot be sure that the 8 July Conference will be conclusive.

My Blythe asked whether you might wish to attend the Conference with Counsel. I said I thought not but that I would mention it to you. It is presently fixed for 4 30 on 8 July but could probably be re-arranged if you so wished.

Pat Andrews

MISS P M ANDREWS

Historical Section
2 July 1991

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

Ref: HO91/428 ✓ 28 June 1991

M Blythe Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
LONDON SW1H 9JS

Dear Mark

CHURCHILL/CHARTWELL ARCHIVE

According to Sir Robin Butler's account of his meeting with the Trustees on 1 May 1991, Mr Winston Churchill asked his advice on how the Trustees should proceed; should they, for example, put a formal proposition to the Government? Sir Robin's response was that he would reflect on the matter and get back to Mr Churchill with advice. Sir Robin has had a preliminary discussion with the Prime Minister when it was agreed that Sir Robin would go back to the Trustees to invite them to spell out their proposals and at the same time warn them of the legal position. I suggested to Sir Robin that his next contact with the Trustees might await the outcome of the conference with Counsel on 8 July but he has been pre-empted by a letter from Mr Montrose which, as you will see, tries to jump several of the fences at once!

Sir Robin, subject to our advice, would like to reply as indicated (typed version supplied). My inclination would be to leave out the bit about asking Ministers to reach a view on the matter which suggests that we have done so and we have not, except for Sir Robin's preliminary word with the Prime Minister.

I should be most grateful for a word when you have seen this; Sir Robin will want to reply fairly quickly!

Yours

Pat

MISS P M ANDREWS

DRAFT LETTER FOR SIR ROBIN BUTLER TO SEND TO:

I Montrose Esq
Goodman Derrick & Co
Solicitors
9-11 Fulwood Place
Gray's Inn
LONDON WC1V 6HQ

Thank you for your letter of 24 June. I am sorry that I have not yet been able to come back to the Trustees with a response indicating the Government's attitude to the Memorandum concerning the Churchill Archive.

Partly this has been a matter of asking Ministers to reach a view on this with so many other pressing matters to decide. But also it has been a question of the extent to which the "Family Archive" contain papers which should already be properly regarded as the property of the Government or which are covered by the "Gentlemen's Agreement" between my predecessor and the Trustees dated 1964. We are considering that matter which, as you will understand, would be relevant to a formal proposition in the Memorandum. When I have clarified this issue, I will be in touch with you again.

FOLIO 15

CABINET OFFICE
H 91/259 ✓
27 JUN 1991
FILING INSTRUCTIONS
FILE NO.

Ref. A091/1607 ✓

MISS ANDREWS

The Churchill Archive

I ran into Mr Winston Churchill MP at the Gulf Thanksgiving Parade. I took the opportunity of apologising that I had not been back to him more quickly about the Churchill Archive. I said that the legal position had turned out to be complicated and that there were a number of papers in the family archive which could be regarded as official papers and therefore the Government's property anyway and which appeared to be covered by the condition in the original Trust, and subsequently in the "gentleman's agreement", that they would not be sold without the permission of the Prime Minister of the day. The Government's rights in this matter would naturally affect its willingness to purchase, and we were therefore seeking legal advice which might take some time.

2. Mr Churchill said (as at the lunch) that he thought that the official papers had previously been separated out. I said that he might have been given misleading advice by his lawyers on this. All that had been separated out was the PREM papers, which related to the Second World War, but there were plenty of other documents remaining in the Archive which appeared to fall within the description of official papers and within the terms of the "gentleman's agreement".

3. Mr Churchill did not respond much, but seemed rather hang dog.

F.E.R.B.

ROBIN BUTLER

26 June 1991

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the
ude.

is still
to have
ation the
se.

This is not what
Sir R Butler's
account of the
meeting suggests.

FOLIO 14

GOODMAN DERRICK & CO.

SOLICITORS

LORD GOODMAN C H

J. R. MACKENZIE
J. T. P. ROBERTS
P. G. PERRY
I. MONTROSE
DIANA RAWSTRON
M. J. COLLINS
P. T. HERBERT
J. J. MAUNSELL
R. M. PERROT
P. L. J. SWAFFER
T. J. LANGTON
G. E. HAMLEN
SUSAN TOPPING
D. P. EDWARDS

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L. C. B. GOWER

9-11 FULWOOD PLACE,
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LONDON WC1V 6HQ

TEL. 071-404 0606

TELEX: 21210 LITLAW G
FAX: 071-831 6407
L.D.E. 122
GROUPS II and III

YOUR REF

OUR REF IM/ep

DATE 24 June, 1991

CABINET OFFICE
A 7528 ✓
26 JUN 1991
FILING INSTRUCTIONS
FILE No. ....

c- Miss Andrews
D16.7.91

– to provide draft reply?

Dear Sir Robin,

I refer to our meeting on 1 May, when it was agreed that the Memorandum concerning the Churchill Archives would be treated as officially tabled, and you kindly undertook to let the trustees have a response indicating the Government's attitude.

I should be most grateful to know whether the matter is still under consideration, and when the trustees may expect to have your response. If you require any further clarification the trustees would be please to attend you for this purpose.

Yours sincerely,

c- Miss Andrews

Subject to the advice of Miss Andrews and our lawyer, I'm inclined to reply as follows

Thank you for your letter of 24 June. I am sorry that I have not yet been able to come back to the trustees with a response indicating the Government's attitude to the Memorandum concerning the Churchill Archives. Partly this has been a matter of asking Ministers to reach a view on this with so many other ~~important~~ pressing matters to decide. But also it has been a question of the extent to which ~~[illegible]~~ the "Family Archive" contain papers which should already be properly regarded as the property of the Government or which are covered by the "Gentlemen's Agreement" between my predecessor and the Trustees dated 1964. We are considering that matter which, as you will understand, would be relevant to a formal proposition ~~from~~ in the ~~Trustees that the Government should buy the Archive~~ Memorandum. When I have clarified this issue, I will be in touch with you again.

Ian Montrose

Private & Confidential

Sir Robin Butler KCB, CVO,
Cabinet Office,
Whitehall,
LONDON SW1

FOLIO 13

CABINET OFFICE
A 6802 ✓
12 JUN 1991
FILING INSTRUCTIONS
FILE No. ....

HO91/401 ✓

SIR ROBIN BUTLER

CHURCHILL/CHARTWELL ARCHIVE

In his minute of 6 June 1991 Mr Turnbull records that, during your discussion with the Prime Minister on the above topic, it was agreed that you would go back to the Trustees, in slow time, to invite them to spell out their proposals, but that you would warn them of the legal position and indicate that the Government would seek to enforce its rights.

I have now heard from Treasury Solicitor, Mr Gregory, that a consultation with Counsel, Mr A W H Charles,and Mr Michael Hart QC has been arranged for 4 30 p m on Monday 8 July. If you are content I shall attend and, on the assumption that you will not wish to go back to the Trustees until the consultation with Counsel has taken place, provide a draft letter as soon as possible thereafter.

I queried with Mr Gregory his statement in the Instructions to Counsel that, in his view, Clause 11(ii) of the 1946 Settlement, which said that the Trustees should not sell or dispose of papers of an official character without the permission of the Prime Minister,was not enforceable by the Crown. He has amended the sentence in the Instructions to make it more neutral but says that he does not think that anyone has so far focussed on how exactly the provision might be enforced by the Crown. Given that the papers are at Churchill College who will be as reluctant to give them up as we would be I would have thought that as long as the provisions of the Clause are confirmed as legally valid a way of enforcing them should not be too difficult to find!

c - Miss Andrews

Pat Andrews

MISS P M ANDREWS

Historical Section
11 June 1991

I may not be able to wait until after 8 July before making an initial response to Mr. Churchill. In any case I guess that Counsel will take some more time after 8 July to reach a conclusion. But I will wait a bit longer, and see if Mr. Churchill chases me!

FERB
12.6.

FOLIO 12

THE TREASURY SOLICITOR
Queen Anne's Chambers
28 Broadway London SW1H 9JS
Telephones Direct Line 071-210 3344
Switchboard 071-210 3000
Telex 917564 GTN 210
Fax Nos. 071-222 6006 - 071-210 3488
DX No. 2318 Victoria

Miss P M Andrews
Cabinet Office
Historical Section
Hepburn House
Marsham Street
London SW1P 4HW

Please quote T&M 69/340/CJG

Your reference

Date 7 June 1991

CABINET OFFICE
H 91/232 ✓
- 7 JUN 1991
FILING INSTRUCTIONS
FILE No. ....

Dear Pat,

CHURCHILL/CHARTWELL ARCHIVE

I refer to your letter of 30 May and our subsequent telephone conversations.

I enclose a copy of the instructions as sent to Counsel. I am not sending you the enclosures as they are the same as those attached to the draft I sent to you on 20 May with the substitution of the undertakings sent to me by Mr Wright of the Inland Revenue and the addition of the correspondence with Churchill in 1934/35 which you sent me recently. I am enclosing the latter with copies sent to copy addressees as they will not have seen it.

I hope I have incorporated all your comments into the instructions. I have changed the sentence about the enforceability of clause 11(ii) to make it more neutral. As I mentioned on the telephone, I am not sure that anyone has focused before on how exactly this might be enforced by the Crown. I note that Huw Llewellyn, at the end of his note of 5th February 1990, states in relation to clause 11(iii) of the 1946 settlement (which relates to the Heinsius papers) that "HMG has no formal standing to intervene, but we could no doubt throw weight behind the beneficiaries' objection". Clause 11(iii) does not of course mention the need to obtain ministerial permission and so it might be possible to distinguish it on that ground, but I suspect that the position in relation to clause 11(ii) is in fact no different.

As you know I shall be away on business until 3 July. A consultation with Counsel at Mr Hart's chambers has been arranged for 4.30pm on Monday 8th July. I do not need to let Counsel know who is attending until after I get back. If in the meantime anything else should arise, Mark Blythe will be dealing with the matter in my absence.

I am sending copies of this letter and the instructions to Michael Carpenter (Legal Secretariat to the Law Officers), Sally Finn (Lord Chancellor's Department) and Alexandra Nicholle (Public Records Office).

Yours sincerely,

Colin Gregory

C J Gregory

Sec
11

CABINET OFFICE
A 6844 ✓
6 JUN 1991
FILING INSTRUCTIONS
FILE No. ....

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

c - Miss ~~Andrews~~ D1.8.91

SIR ROBIN BUTLER

CHURCHILL/CHARTWELL ARCHIVE

You discussed with the Prime Minister your minute of 10 May. The Prime Minister hoped it would be possible to avoid a public argument on the disposal of the archive, or at least postpone it for some time. He commented that the Trustees were clearly working on the assumption that the Government would not dare to allow the papers to go abroad and could therefore be pressured into paying up money to prevent this. Public opinion might think ill of the Churchill family for seeking to extract money but could not be relied upon to support the Government if it resisted.

You explained that when Sir Winston Churchill left office he had taken with him a large number of papers which were really State papers. Undertakings had been given in 1946 that the Trustees would not dispose of papers of an official character without the permission of the Prime Minister of the day and this undertaking had subsequently been reaffirmed. The Government was not, therefore, without bargaining chips. It was agreed that you would go back to the Trustees, in slow time, to invite them to spell out their proposals but that you would warn them of the legal position regarding the papers and indicate that the Government would seek to enforce its rights. One effect of this might be to whittle down the number of papers which the Government might be invited to purchase, and hence the cost; it might even discourage the Trustees from pursuing this at all.

You pointed out that Mr Tebbit had become involved in this issue and suggested that the Prime Minister might speak to him to indicate that the Government would think ill of being pressured to buy back papers, many of which were really Government papers in the first place. The Prime Minister agreed to consider this but would want to review the exchange of correspondence with Mr Tebbit.

You pointed out that the issues at stake in this case could be repeated with other archives, e.g. that of Harold Macmillan.

AT

ANDREW TURNBULL
6 June 1991

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

Our Ref: HO91/389 ✓
Your Ref: T&M 69/340/CJG

30 May 1991

C J Gregory Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
LONDON
SW1H 9JS

Dear Colin

CHURCHILL/CHARTWELL ARCHIVE

Thank you for your letter of 20 May 1991 enclosing draft Instructions to Counsel. I passed a copy to the Lord Chancellor's Department for their legal advisers asking that comments be sent to you direct.

I attach, as requested, the 1934-36 correspondence between Churchill and Hankey. I have not yet been able to discover an explanation of the reason for the request to return the official papers except insofar as it is explained in the correspondence ie that the Cabinet had decided that it was in the public interest to do so. I am looking for a copy of the "secret and personal circular" referred to in Churchill's letter to Howarth dated 19 November 1934 which might throw some light on the matter. If/when it comes to light I shall send you a copy and, in this context, I confirm that there is no objection to Counsel being shown the summary of files (Item (7)).

I hope that you will by now have had copies of the estate duty applications and undertakings direct from Mr Brian Wright, Inland Revenue.

With regard to the Instructions themselves, about which I have consulted Sir Robin Butler, we have the following comments.

(i) the impression given in the Instructions is that the only documents we are interested in are Cabinet papers and minutes. In fact the 'official' component of the archive comprises a mixture of papers, minutes and a vast amount of correspondence all of which would, had it remained in official custody, become subject to the Public Records Act 1958. May I suggest that the sentence at the top of the second page "They include....leaving office." might be amended to read:-

> "They include large quantities of copy documents and a considerable proportion of original documents (papers, memoranda, correspondence etc) which, had they remained in official custody, would have been covered by the Public Records Act in 1958".

You may wish to consider whether this point should be inserted elsewhere in the Instructions.

(ii) another impression given by the Instructions at least until very far into them is that we need legal advice only on the comparatively narrow issue of "ownership". As you know, however, we also need advice on such rights as we may have over the 'official' papers in the light of the various undertakings given by the Trustees. This is referred to on the tenth and thirteenth pages but could, with advantage, be mentioned earlier. We suggest that on the second page, after "In considering how to respond.....already." you might add:-

> ", or has undertakings, enforceable against the Trustees, which prevent them from offering some of the papers for sale without the agreement of the Government of the day."

(iii) relating to (ii) above, the statement on the tenth page of the Instructions that "In the view of Instructing Solicitor, clause 11 (ii) is not enforceable at the instance of the Crown....." is surprising, even alarming, since, as is clear from the summary at (7), although HMG has not sought over all these years to reclaim the 'official' papers this was on the assumption that the 1946 and 1964 undertakings gave us rights over the use and disposal of them. It was also on this assumption that the recent correspondence with the Trustees has been conducted, on legal advice. It may be that I have misunderstood the sentence but I should be grateful if it could be clarified; it seems, on the face of it, to prejudice the answer to Question 7 to Counsel.

Yours sincerely

Pat Andrews

MISS P M ANDREWS

PS I also attach some papers provided by the Foreign and Commonwealth Office about the Heinsius papers. It would seem that this is a battle which may have to be fought out separately but you may be interested to see the correspondence, particularly the letter of 11 August 1964 to the Trustees' then Solicitor recording Sir Winston and Lady Churchill's wishes in respect of these papers.

With the compliments of the

LIBRARY AND RECORDS
DEPARTMENT

FOREIGN AND COMMONWEALTH OFFICE
CORNWALL HOUSE
STAMFORD STREET
SE1 9NS

CHURCHILL ARCHIVES CENTRE
CHURCHILL COLLEGE CAMBRIDGE CB3 0DS TELEPHONE (0223) 336087
KEEPER: CORRELLI BARNETT, M.A.

FROM THE KEEPER

CB/mc

17 January 1990

LRR 334/1
RECEIVED IN REGISTRY
13FEB1990
DESK OF
REGISTRY
INDEX
Action Taken
14/2

See ⑦

Mr I S Lockhart
Library and Records Department
Room CW 315
Foreign and Commonwealth Office
Cornwall House
Stamford Street
London SE1 9NS

Dear Mr Lockhart

The Heinsius Papers

To confirm our telephone conversation yesterday, the present position with reference to these papers is that, on the further instruction of the College Council following another demand from the Trustees, they were released to Sothebys' representatives on 27 November 1989, together with the presentation casket in which they were given to Sir Winston by the Dutch Queen and Government. Sothebys' still retain them. We are told by the Trustees that these (and other papers) have been removed for the purposes of valuation for insurance.

The last statement of intent that we have received from Mr Ian Montrose, a Trustee of the Churchill Archives Settlement (and a partner in Goodman, Derrick & Co) was in a letter dated 13 July 1989, in which he wrote: "It is not the wish of the Trustees to withdraw these items (the Heinsius Papers, First Duke of Marlborough and Lord Randolph Churchill papers) from deposit at present, other than for the purpose of the Sotheby valuation."

Yours sincerely

M A Allen

pp Correlli Barnett

CHURCHILL ARCHIVES CENTRE
CHURCHILL COLLEGE CAMBRIDGE CB3 0DS TELEPHONE (0223) 336087
KEEPER: CORRELLI BARNETT, M.A.

FROM THE KEEPER

CB/mc

6 December 1989

Mr Lockhart
Miss Veitch

STRICTLY CONFIDENTIAL

Miss Pat Barnes
Library & Records Dept
Foreign & Commonwealth Office
London SW1A 2AH

Do you have any background on (a) the Heinsius papers & (b) Montgomery-Hyde's (& 'Cynthia')?. The correspondence between the Misses Bennett and Lovell could mean that the latter will be in touch with us shortly, with some specific requests which, presumably, we will not be able to satisfy!

[illegible]

Dear Pat

Firstly, I would like to report that, on the instructions of the Chartwell Trustees, the Heinsius papers have now been removed to London for valuation by Sotheby's. Is this a matter about which the Dutch Government should be informed?

See LRR 333/26

Secondly, I enclose for information copies of a letter from a Miss Lovell, enquiring about Montgomery-Hyde's papers, and of Liz Bennett's reply to her.

With all best wishes

Yours ever

Bill

Correlli Barnett

encs

I have no knowledge of the Heinsius pps - but will enquire. Miss Lovell has already written in to LRD. Action is in hand.

11/12

0508 70410 (Home)

CHURCHILL ARCHIVES CENTRE
CHURCHILL COLLEGE CAMBRIDGE CB3 0DS TELEPHONE (0223) 336087
KEEPER: CORRELLI BARNETT, M.A.

FROM THE KEEPER

CONFIDENTIAL

CB/mc

26 July 1989

Miss Pat Barnes
Head of Records
Foreign and Commonwealth Office
London SW1A 2AH

Dear Pat

I feel the Foreign and Commonwealth Office ought to know that the trustees of Sir Winston Churchill's Archives Settlement (Mr Ian Montrose, a partner in Goodman Derrick and Co, and Mr Peregrine Churchill) have instructed the College to release to Sotheby's, for the purposes of insurance valuation, the Heinsius Papers, being the letters written to Grand Pensionary Heinsius by the First Duke of Marlborough. These papers were given to Sir Winston as a mark of appreciation by the Dutch Government and were deposited in this Archives Centre by the late Lady Spencer-Churchill. We have on file a letter from her expressing her own and Sir Winston's wish that the papers should remain in Churchill College in perpetuity. This letter was written in reponse to anxiety voiced by the Dutch Government, through the Foreign Office, lest these papers should ever be put up for sale at auction. I enclose relevant photocopies.

2. 26 July 1989

Miss Pat Barnes
Head of Records
Foreign and Commonwealth Office

The College Council at a meeting yesterday ordered the Master formally to instruct me not to release the Heinsius papers to Sotheby's representatives when they visited the College on 26 July (today). However, Mr Peregrine Churchill, as a Trustee, has only accepted the College's refusal to release the papers under protest. The College has refused to release the papers on the grounds that it wishes to obtain further advice; and I should therefore be grateful for the advice of the Foreign and Commonwealth Office.

With all best wishes

Yours ever

Kell

Correlli Barnett

encs

Reference LRR 334/1

RECEIVED IN REGISTRY

13 FEB 1990

DESK OFF

PA

14/2

⑥

Mr Lockhart
Library and Records Dept

2/2

THE HEINSIUS PAPERS

1. You have asked me whether the trustees of Sir Winston Churchill's archives are entitled to sell the 'Heinsius Papers' ie the 613 letters written by John Churchill to Grand Pensionary Heinsius of the Netherlands during the period of the Grand Alliance. The FCO is concerned that this could cause offence to the Dutch Government. The letters were given to Sir Winston Churchill by Queen Wilhelmina in 1945.

2. Sir Winston made two settlement documents setting out the powers and duties of the trustees, the first in 1946 and the second in 1963 to supplement the first. As you say, our working copies are not very good and in places are illegible. Clause 11(ii) of the 1946 document is half missing, and we shall have to find out, if possible, what the wording is in case it is relevant to the Heinsius Papers. I suspect that it deals with the document in Parts 1 and 2 of the Schedule. The Heinsius Papers are in Part 4.

3. The 1963 settlement (clause 2(a)) continues the trustees obligations under clause 4 and clauses 9-14 of the 1946 settlement. Under clause 10 the trustees have all the powers of absolute owners of the archives but shall not

> "... sell or alienate or part with the ownership or control of any of [the Heinsius Papers] except by making over the same to some beneficiary or beneficiaries ... becoming absolutely entitled under this Deed." (Clause 11(iii))

4. This clause is not very happily worded. I have not been able to find a legal interpretation of 'making over', but my view is that it does not include selling the papers and simply handing the proceeds to the beneficiary. That interpretation would be inconsistent with the beneficiary having become absolutely entitled to the documents. Under the general law (the Trustee Investments Act 1961) trustees do have power to sell trust property and invest the proceeds unless a contrary intention is shown in the settlement

HL1AFK

document. In my view, the intention behind clause 11(iii), looked at in context, is to prevent sale and to retain the Heinsius Papers in the Churchill family. If I am correct it would be open to the beneficiaries of the settlement to prevent the trustess selling the Heinsius Papers. Please note that HMG has no formal standing to intervene, but we could no doubt throw weight behind the beneficiaries' objection.

Huw Llewellyn

5 February 1990

Huw Llewellyn
Assistant Legal Adviser
W44/2 270 3072

cc Sarah Lampert
WED

HL1AFK

(2)

Reference ....

LRR 334/1
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INDEX | PA | Action
14/2

Mr I C Lockhart
Library and Records Department

THE HEINSIUS PAPERS

1. Thank you for copying your minute about the Heinsius papers to me. The trustees of all settlements are in legal terms the "owners" of the settlement property. However, this does not always mean that they are free to do as they wish with the trust property. The powers and duties of the trustees of the archives settlement will depend primarily upon the written terms of the settlement document. Do we know whether there is such a settlement document in existence, and can we get hold of a copy?

Huw Llewellyn.

12 January 1990

Huw Llewellyn
Assistant Legal Adviser
W44/2 270 3072

cc Mr Synott, WED

See (4)

Cabinet Office have a copy of the settlement document & are sending it over. The question is "does it cover the Heinsius pps?"

16

HL1AFD

CODE 18-77

(1)

Reference LRK 334/1

RECEIVED IN REGISTRY
12 JAN 1990
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S.H.

CONFIDENTIAL

Mr Synnott
WED W62

10/1

THE HEINSIUS PAPERS

1. In May 1946, Sir Winston Churchill visited the Netherlands as a guest of Queen Wilhelmina. During his visit he was given a gift of 613 letters written by John Churchill to Grand Pensionary Heinsius during the period of the Grand Alliance. The only reference in FCO records to this gift is in para 12 of HMA's despatch Number 293 of 21 May 1946 to Ernest Bevin (PRO piece number FCO 371 1153) copy attached.

Flag A
attached

2. In 1964 the Dutch Ambassador spoke to the PUS, Sir Harold Caccia , to say that the Dutch wanted to ensure that after Sir Winston's death these papers did not go to auction. There is no trace of this approach in FCO files and we only know of it and Sir Winston's wish that the papers should never be sold, by the copy of Montague Brown's letter to Anthony F Moir of 11 August 1964.

Folio 10
Flag B

3. The Papers have now been sent, on instructions from the Chartwell Trustees, to Sotheby's in London for valuation. This could be for insurance purposes (but if insurance was the reason why did the valuer not visit Cambridge where the papers have been held in the Churchill Archives Centre?) It seems more likely that they are to be valued for sale or as a means for the Chartwell Trustees (described by many knowledgeable people as a thoroughly untrustworthy group) to obtain a large sum of money from HMG to guarantee that they are not put up for sale.

Folio
Flag C 10/11

4. Should the papers appear in a Sotheby's catalogue it will be seen, at the very least by the Dutch, as an extremely impolite action by the Chartwell Trustees. I am sure that when the letters were gifted to Sir Winston they were seen by the Dutch as a gift to the Nation, but unfortunately no protective covenant was placed on them at that time. (Heinsius was the Dutch Regent during the absence of William III in England and a passionate opponent of Louis XIV. The analogy with the joint resistence to Hitler is clear). You may wish to consider speaking to the Dutch Ambassador in confidence about our concerns. His report to the Dutch Monarch might lead to an approach to HM the Queen which may result in the papers being returned to the Churchill Archive.

CONFIDENTIAL

/5.

Flag D
Flag E

5. I have assumed thoughout my research into this subject that under English Law the Trustees of the Archives Settlement have the right to sell any part of the Archive (the letters of 2 January 1969 to Winston Churchill and March 71 from Lady Churchill mention ownership). The Legal Advisers, to whom I am copying this minute may be able to clarify this point.

I S Lockhart
Library and Records Department
(CW 315 217 2049)

cc H Llewellyn,
Legal Adviser W44/2

10 January 1990

A

side of [illegible] the Heads of the Canadian, Australian and South African Missions and the Head of the British Military Mission were present. I sat on The Queen's right and Mr. Churchill on her left: the Prime Minister was opposite Her Majesty, with Mrs. Churchill on his right and my wife on his left. At the beginning of the meal The Queen proposed the health of Their Majesties The King and Queen and the British Royal family. Having obtained Her Majesty's permission to do so, I then rose and proposed Her Majesty's own.

8. There was considerable comment on the omission from the list of guests o the wives of the Minister for Foreign Affairs and of the Netherlands Ambassador in London.

9. After dinner The Queen collected Mr. Churchill, the Prime Minister, the Netherlands Ambassador in London, my wife and myself around her, and at 10.15 she turned to me and asked when I would like her to go to bed as she knew Mr. Churchill wanted to have a talk with me before I left. I begged Her Majesty not to hurry a she stayed another quarter of an hour. When she had gone, the rest of the party dispersed and I joined Mr. Churchill in his sitting-room, where we went through his notes for some of his speeches. I left the Palace at 12.15 a.m.

10. On May 9th Mr. Churchill drove into the Hague to attend a luncheon given him in the beautiful Salle de Trêves, by the Netherlands Government and to addres in the afternoon, a joint Session of the States-General. This, I am told, is th first occasion when a foreigner has been asked to address this ancient assembly. At the outskirts of the Hague he was greeted by the Burgomaster and again, as at entry into Amsterdam, large and enthusiastic crowds assembled to salute him. Mr Churchill drove slowly through the crowds smiling and waving and making the "V" sign.

11. Mr. Churchill's speech on this occasion, like his other speeches, was broadcast. It was listened to with the closest interest, and greeted with a sto of applause. It was felt, indeed, as many Dutchmen afterwards said, to be a gre moment in the Netherlands when the well-known voice, to which so many Dutchmen ha listened clandestinely during the occupation, was heard for the first time speaki on Dutch soil. At the close of the speech the whole assembly rose to its feet a cheered. When Mr. Churchill and his party left the hall the audience broke quit spontaneously into "God Save the King".

12. Mr. Churchill spoke on the broadest lines and made no remarks which, I think, need occasion controversy. He mentioned with deep appreciation the gift made him by the Queen of the 613 letters written by John Churchill to Heinsius, the Grand Pensionary, during the years of the Grand Alliance. One point of interest was the reference which he made to Professor Gerbrandy and to the part latter played in leading the Dutch resistance in London and defending Netherlands interests abroad. Since the London Government was replaced after the liberatio by the present Government, insufficient recognition has gone to the men who serv their country from London during the war. There has indeed been almost a conspiracy of silence about them since their return. Professor Gerbrandy was greatly touched by Mr. Churchill's reference to him and to his services and I ha reason to believe that Mr. Churchill's words have made Dutchmen better aware of services which this zealous patriot rendered to his country. At the close of h speech, harking back to his Brussels speech of last year, Mr. Churchill reverted the theme of a "United States of Europe" as an ultimate possibility under the guiding hand of the world organisation of the United Nations.

13. The ceremony at Leiden was held in the afternoon of May 10th. Mr. Churchill was received by the Senate of the University and conducted by them in the great Church of St.Peter's, which was thronged with people and decorated wi a great profusion of flowers. There, in the presence of T.R.H.Princess Julian

/and

01-584 7171.

FLAT 26,
7, PRINCES GATE,
LONDON, S.W.7.

Personal

Dear Sir William,

There is at Chartwell a magnificent collection of 630 original manuscript letters from John Churchill, first Duke of Marlborough, to Antonie Heinsius; in an 18th century tortoise-shell casket, and a book about them edited by V. van T.Hoff, bound in vellum and presented by Dr. Sticker. These letters were the gift of the Netherlands Government and were presented to my Husband by Queen Wilhelmina, in 1945. I enclose a copy of the document which accompanys them.

These letters are the property of the Churchill Archives Settlement and I have suggested to the Trustees of this Settlement, and they are in agreement with me, that the letters could if you thought it a good idea be deposited at Churchill

[illegible]

March 1961

College, Cambridge.

I should point out that these letters are not insured in view of their great value and the amount that it would cost to insure them.

If you would like to have the Marlborough Letters deposited at Churchill College you should contact Miss Hamblin at Chartwell, Westerham, Kent, Crockham Hill 318, to discuss transportation.

Yours Sincerely

Clementine
Spencer Churchill

Tel: 073 278 368 (Crockham Hill)

Copy of Document accompanying Marlborough Letters

"As a token of the deep gratitude felt by the Netherlands Nation for the inspired and vigorous prosecution of the War against Germany, Italy and Japan (1939-1945) by WINSTON SPENCER CHURCHILL, resulting in the defeat of their oppressors and the restoration of their freedom, the Royal Netherlands Government presents to him 630 original manuscript letters written by his forbear the First Duke of Marlborough to Antonie Heinsius, Grand Pensionary of Holland, who, bound by friendship, together led the British and Netherlands nations to victory in another long and memorable struggle for the preservation of their Religious, Political and civil liberties.

The Hague - October 25 - 1945"

Signed by Queen Wilhelmina and three of her Ministers.

2nd January, 1969.

Winston S. Churchill, Esq.,
Broadwater House,
Chailey,
Nr. Lewes,
Sussex.

Mr. Pawsey says that he and an expert from the V. & A. were concerned to find that the collection of letters from the First Duke of Marlborough to Heinsius are still folded up in a casket at Chartwell instead of being laid out flat. These documents belong to the Trustees of the Archives Settlement.

As far as I can see there are another 300 letters of the Duke of Marlborough, together with some maps, which were given to your grandfather by Sir Lewis Stirling. These are heirlooms, at present owned by the Executors and eventually to be the property of your grandmother for her life, of you for your life ("use and enjoyment") and then of your eldest son.

The legal owners of the Marlborough documents are thus different, but it seems to me that they ought to be kept together. I have consulted your grandmother, who says that she does not think that they should remain at Chartwell since there is no room to exhibit them there, and in any case they have nothing whatever to do with Chartwell. She therefore proposes that they should be lent to Churchill College with the other documents, and that the College should be entrusted with their maintenance and display.

RP

9

CABINET OFFICE
A 5895 ✓
23 MAY 1991
FILING INSTRUCTIONS
FILE NO. ....

HO91/385 ✓

Miss Andrews
Thank you. I agree generally. Specific comments below.
FERB 27.5.

SIR ROBIN ~~BUTLER~~

CHURCHILL/CHARTWELL

You may wish to see the draft Instructions to Counsel on which Treasury Solicitor (Mr Colin Gregory) has asked for early comments. They are, I am afraid, very long. I have not attached all the accompanying documentation – at annex – which adds up to a very bulky package indeed but can let you have it if you wish.

Much of the material is familiar, being taken from various briefings but some is pure legal argument. My only comment at this stage would be to suggest that it should be made clearer, early on in the Instructions, that we need legal advice not only on the comparatively narrow issue of ownership but also on such rights as we may have (or not have) over the 'official' documents in the light of the various undertakings given by the Trustees. This is sought on the tenth and thirteenth pages but could I think with advantage be mentioned earlier. ✓ Agreed; I have suggested an addition on ~~[illegible]~~ the second page.

The impression is given also that the only documents we are interested in are Cabinet papers and minutes whereas the 'official' component of the archive comprises a mixture of papers, minutes and a vast amount of correspondence all of which would, had it remained in official custody, become subject to the Public Records Act. This might be remedied by amending the sentence at the top of the second page to read:-

> ✓ "They include large quantities of copy documents and a considerable proportion of original documents (papers, memoranda, correspondence etc) which, had they remained in official custody, would have been covered by the Public Records Act in 1958."

Treasury Solicitor asks whether there is any objection to Counsel being shown the summary of our files which was prepared by Miss Wheldon at an earlier stage and the correspondence between Lord Hankey and Sir Winston Churchill in 1934-36 - items (1) and (7) on the list on page 1 of the Instructions. I see no reason why Counsel should not see these items.

Would you be content for me to reply to Treasury Solicitor making these comments? Yes.

I did also wonder whether it should be stated somewhere that although, as is clear from the summary at (7), HMG has never sought to "reclaim" the "official" papers this was on the assumption that the 1946 and 1964 undertakings gave us rights over the use and disposal of them. I was somewhat surprised to read on the tenth page of the Instructions that:-

> "In the view of Instructing Solicitor, clause 11(ii) [of the 1946 Settlement] is not enforceable at the instance of the Crown......"

but perhaps the reason for this will become clearer at the Conference with Counsel.

I think we should query this at this stage. This appears to prejudice the answer to one of the questions put to Counsel.

Pat Andrews

MISS P M ANDREWS

Historical Section
23 May 1991

FOLIO 8

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

HO91/383 ✓

Ms A J Smith
Lord Chancellor's Department
Trevelyan House
Great Peter Street
London SW1P 2BY

21 May 1991

Dear Andrea

CHURCHILL/CHARTWELL ARCHIVE

I have today received from Treasury Solicitor two copies of draft at annex - Instructions to Counsel with the request that I should pass one copy to the PRO for their Legal Advisers. I do not see much point in sending the copy all the way to Kew for it to come back to the Legal Adviser so I am regarding this as something of a misunderstanding and passing it to you instead - could you get it to LCD's Legal Adviser?

Mr Gregory, Treasury Solicitor, asks for comments by Thursday, 30 May as shortly after that he is away on business until 3 July and obviously does not want to wait until his return to take the matter a stage further. May I suggest that comments, if any, are sent to Mr C J Gregory, Treasury Solicitor direct, with a copy to me ?

Yours
Pat

MISS P M ANDREWS

THE TREASURY SOLICITOR
Queen Anne's Chambers
28 Broadway London SW1H 9JS
Telephones Direct Line 071-210
Switchboard 071-210 3000
Telex 917564 GTN 210
Fax Nos. 071-222 6006 - 071-210 3488
DX No. 2318 Victoria

Miss P M Andrews
Cabinet Office
Historical Section
Hepburn House
Marsham Street
London SW1P 4HW

CABINET OFFICE ✓
H 91/208
21 MAY 1991
FILING INSTRUCTIONS
FILE No.

Please quote T&M69/340/CJG
Your reference H091/302
Date 20 May 1991

Dear Pat,

CHURCHILL/CHARTWELL ARCHIVE

Further to our telephone conversation I enclose a draft of the Instructions to Counsel – at annex to determine ownership of Sir Winston Churchill's papers. You said you would pass a copy to the PRO, and ask them to send a copy to their legal advisers at the Lord Chancellor's Department. I should be grateful for comments by Thursday 30 May. As I mentioned, I shall be away from the office from 7 June to 3 July.

One of the enclosures is a summary of your files prepared by Juliet Wheldon: please can you confirm that you are happy for me to disclose it to Counsel. I do not have copies of the correspondence between Churchill and Lord Hankey in 1934-36 which is referred to in the summary. The early correspondence with Churchill himself is of course particularly crucial in determining ownership and I would therefore be grateful if you could let me have copies of these items and confirm that I may disclose them to Counsel. I think we also need to know, if it is not clear from the correspondence why Lord Hankey asked Churchill to return the official papers he took away before 1934 when the Law Officers had advised that such papers could be retained by ex-Ministers during their lifetime.

IR sending direct

The other documents to which I refer which I do not have on my file are the estate duty applications and undertakings given by Lady Churchill and the Trustees in 1970. It would be helpful if I could have copies of these (although I have a specimen of what appears to be the relevant form which would probably do for the purposes of the Instructions if copies of the signed forms are not readily available).

I am still discussing with Mark and Juliet which Counsel to go to.*

I am sending a copy of this letter to Juliet.

Yours sincerely,

Colin Gregory

C J Gregory

*Since dictating this I have heard that the Attorney General has agreed that we should instruct Michael Hart QC jointly with Bill Charles.

Miss Andrews

c-~~FERB~~

CABINET OFFICE
A 5692 ✓
20 MAY 1991
FILING INSTRUCTIONS
FILE No. HO91/374

FOLIO 6

1. ~~MR DAVIE~~

2. SIR ROBIN ~~BUTLER~~

I think we must be guided by the Law Officers on this; if they consider a Leader to be necessary we shall have to find the money from somewhere.

RD 20/5

Agreed
FERB 21.5

CHURCHILL/CHARTWELL ARCHIVE

Mr Mark Blythe, Treasury Solicitor, will shortly be circulating draft instructions to Treasury Counsel as the next stage in determining our legal position in relation to the 'official' papers in the Chartwell Archive, now referred to by the Trustees as the "Family Papers". Having taken account of comments he will then arrange a Conference with Counsel.

In the meantime Mr Blythe proposes to consult the Law Officers' Department with a view to consulting a "Leader" as well as Treasury Counsel - an as yet unidentified QC who would be expected not only to give an additional view on our legal position but also advise on tactics.

Under the arrangement which came into force in April this year we shall have to pay for this legal advice. The addition of a "Leader" will add what Mr Blythe describes as "some thousands" to the costs. In the light of this Mr Blythe has asked me to confirm that we are prepared to authorise him to go ahead.

Although it seems likely we shall need all possible legal advice and there would seem to be no reason why Mr Blythe should not consult the Law Officers' Department we should, I feel, be consulted again before a "Leader" is retained. We could then authorise or not in the light of the circumstances then prevailing.

Would you be content for me to authorise Mr Blythe to consult Treasury Counsel (on the basis of Instructions which we shall have the opportunity to comment upon), to consult the Law Officers' Department as necessary, but to seek authorisation again should it be deemed necessary to retain a "Leader".

Pat Andrews

MISS P M ANDREWS

Historical Section
17 May 1991

Ref.A091/1146

c- Miss Andrews D 1.8.91

PRIME MINISTER

Churchill/Chartwell Archive

I met the Trustees of the Archive Settlement, Mr Peregrine Churchill and Mr Ian Montrose of Goodman Derrick, at lunch on 1 May 1991. Mr Winston Churchill MP and Lord Goodman were also present. The proposals contained in the Memorandum which Norman Tebbit passed to you under cover of his letter of 27 March 1991 were raised and I agreed to discuss them with you before advising Mr Winston Churchill on how the Trustees should now proceed. The Annex to this minute sets out the background to the issues raised and the situation as it appears today to form the basis for our discussion.

2. The Trustees told me at our meeting that their first proposal would be to sell the papers to the Government but if that was not possible they would look for another beneficiary to buy the papers and lodge them with Churchill College. Only if this failed would they instruct Sotheby's to find another buyer. Their strong wish is that the papers should remain in this country and both Mr Winston Churchill and Lord Goodman expressed the view that if there was a risk of the papers going abroad, the Government would be bound to step in and acquire them. The Trustees would require an export licence for that part of the archive which was more than 50 years old.

3. The first issue for consideration is therefore whether the papers should be purchased by HMG, given that the Trustees are looking for a price of £12.5 million. Initial legal advice is that there is nothing intrinsically difficult, from a legal viewpoint, in the purchase of the Trustees' interest in the papers. There is no doubt that the collection is of unique historical importance to the nation and that there would be a considerable public outcry if it was sold into private hands,

particularly abroad. Such a purchase could lead to requests for the holders of other archives of national importance with similar threats that refusal would lead to a sale abroad; conversely, refusal to purchase such an important archive could lead to more sales abroad if the holders/owners interpreted the refusal as a lack of Government interest.

4. An important point to be taken into account is that the Government has never waived its rights over the 'official' papers in the Chartwell "Family" collection. Whether, legally, the Government could claim "ownership" is something on which we shall need to take further advice. However, although the present Trustees appear to wish to contest the matter, HMG's interest in the papers was fully recognised in the earlier Trust deeds quoted in the Annex and has been sustained in recent correspondence between the Trustees and the Cabinet Office. It would, in any event, seem wrong on the face of it for the Government to be put in the position of buying back papers which are or have been public records or copies of them.

5. There would appear to be two possible courses of action; either to seek to prevent the sale of the "Family" papers on which our main bargaining card, apart perhaps from public opinion, would seem to be our claim to ownership, or at least an interest in, the 'official' papers, which amount to something between one-third and a half of the 'Family' papers and which cannot be sold without the permission of the Prime Minister of the day; or to invite a formal proposal from the Trustees and negotiate with them.

6. The other potential purchasers mentioned by the Trustees-Churchill College, which has all along been the intended home of the archive (for which its Archive Centre was primarily built), or the British Library - would both require substantial financial assistance from the National Heritage Memorial Fund and/or from the Government if they were to buy the papers. Churchill College is believed to have adequate funds to maintain the Archive but is

unlikely to be able to raise the funds to purchase it; the British Library has just over £600,000 to spend on acquisitions for the "Special Collection" in 1991-92 of which some may already been committed. The National Heritage Memorial Fund is unlikely to be able to provide more than £2 million (if that). Thus, even if the 'Official' papers were adjudged to comprise half of the "Family" papers and the sale price was thus reduced to something like £6 million, a substantial sum would be required direct from the Government to enable us to buy out the Trustees' interest. Subject to your views I shall take further advice on these points.

7. The immediate issue is the question of what guidance I should give to the Trustees about how they should now proceed. Subject to your views, I am inclined to advise them that there could hardly be a worse time for the Government to be faced with a proposal to find a substantial sum of money for a purpose of this sort; that the Government will be bound to consider very carefully its own rights in the matter, but that if the Trustees want to dispose of their interest, the next step is for them to mae a formal proposal which the Government can then consider, though without any commitment.

F.E.R.B.

ROBIN BUTLER

10 May 1991

ANNEX

1. The Archive Settlement, which has recently been re-written for the benefit of future generations of the Churchill family, covers the Chartwell papers, now referred to by the Trustees as the "Family Papers" and comprises a collection of some 2,000 boxes relating to Sir Winston Churchill's private life from his childhood to 1945; to his literary and political careers; to his official (Ministerial) positions in the Colonial Office, the Board of Trade, the Home Office, the Admiralty, Munitions, War and Air, the War Council, the War Cabinet of 1917-1919 and his Premiership 1940-45, also early family papers and heirlooms acquired by Sir Winston.

2. These pre-1945 papers are, with the possible exception of the 'official' papers which the collection contains (including large quantities of copy documents, and a proportion of original documents taken away by Sir Winston when he left the various offices), owned by the Trustees and are deposited in the archive Centre at Churchill College, Cambridge. Also at Churchill College are the post-1945 papers which were left by Sir Winston Churchill to Lady Churchill who in turn left them in her will to the College. They comprise mainly personal papers but with an 'official' component, albeit smaller than that which resides in the "Family" papers; they are owned outright by Churchill College.

3. The original Trust Deed drawn up by Sir Winston Churchill in 1946 to cover the Chartwell "Family" papers said, in Clause 11(ii):

> "The Trustees shall not at any time make public or sell or dispose of any document or information relating to any office, Ministry or Department of the British Government since 1900 or any paper of an official character without the permission of the Prime Minister of England for the time being and the other Ministers (if any) for time being representing the office, Ministry or Department concerned."

4. The Archive Settlement, containing the same provision in respect of the official papers, replaced the 1946 Trust in December 1963. It, however, made provision for the Archive to be transferred to one of the male heirs at any time and so, to avoid a break in the protection afforded by Clause 11 the Secretary of the Cabinet concluded a "gentlemen's agreement" with the Trustees which was signed in April 1964. It said:-

> "In consideration of your permitting us, as Trustees of Sir Winston Churchill's Archives Settlement, to retain under our control the State Papers formerly belonging to Sir Winston and which came into existence prior to his resignation as Prime Minister in 1945 and any further State Papers formerly belonging to him which may come into our hands together with any Catalogues relating to them, we write to give your our formal assurance that we will not without your consent, vest such papers in any Beneficiary without imposing upon him an obligation similar in terms to that contained in Clause 11(ii) of the Settlement known as "The Chartwell Trust" and r eceiving from such Beneficiary an undertaking to impose a si ilar obligation on any further disposal of the State Pap rs and Catalogues".

5. In 970 Estate Duty exemption was granted in respect of the pre-1945 CHARTWELL "Family" papers and the post-1945 CHURCHILL "College" papers under Section 40 of the Finance Act 1930 on condition that:-

a. he documents were kept permanently in the United ingdom;

b. easonable facilities for examining the objects for rposes of research were allowed to any person thorised by the Treasury so to examine them.

ΛΛ c.

The Truste s could not comply with the access condition at c. because in 1963 they had sold their copyright to the firm which

c) reasonable facilities for examining the objects for purposes of research were allowed to any person authorised by the Treasury so to examine them.

4. The Archive Settlement, containing the same provision in respect of the official papers, replaced the 1946 Trust in December 1963. It, however, made provision for the Archive to be transferred to one of the male heirs at any time and so, to avoid a break in the protection afforded by Clause 11 the Secretary of the Cabinet concluded a "gentlemen's agreement" with the Trustees which was signed in April 1964. It said:-

> "In consideration of your permitting us, as Trustees of Sir Winston Churchill's Archives Settlement, to retain under our control the State Papers formerly belonging to Sir Winston and which came into existence prior to his resignation as Prime Minister in 1945 and any further State Papers formerly belonging to him which may come into our hands together with any Catalogues relating to them, we write to give your our formal assurance that we will not without your consent, vest such papers in any Beneficiary without imposing upon him an obligation similar in terms to that contained in Clause 11(ii) of the Settlement known as "The Chartwell Trust" and receiving from such Beneficiary an undertaking to impose a similar obligation on any further disposal of the State Papers and Catalogues".

5. In 1970 Estate Duty exemption was granted in respect of the pre-1945 CHARTWELL "Family" papers and the post-1945 CHURCHILL "College" papers under Section 40 of the Finance Act 1930 on condition that:-

a. the documents were kept permanently in the United Kingdom;

b. reasonable facilities for examining the objects for purposes of research were allowed to any person authorised by the Treasury so to examine them.

The Trustees could not comply with the access condition at c. because in 1963 they had sold their copyright to the firm which was to publish the biography of Sir Winston and had also agreed that access would not be allowed until 10 years after the publication of the last Volume of the biography. The Treasury therefore agreed an extra-statutory concession under which their right to authorise access should not be exercised until an agreement on access had been concluded between the Trustees and Her Majesty's Government (HMG).

6. Sothebys have valued the pre-1945 "Family" papers at £20 million. However, any sale price has to reflect the estate duty exemption granted in 1971. Taking that into account the Trustees say that they are looking for a figure of £12.5 million, a figure which Inland Revenue agree reflects the estate duty position and the usual private treaty douceur of 25 per cent, assuming that the valuation itself is accurate.

4

CABINET OFFICE
A 5222 ✓
9 MAY 1991
FILING INSTRUCTIONS
FILE NO. ....

HO91/324 ✓

Pl. type for my sig.

Before my bilateral with the PM can Mr Andrews pl. advise on the last sentence of para 4 of my minute of 1 May – the other archives which could claim similar treatment.
RBRB

SIR ROBIN BUTLER

cc Mr Davie

CHURCHILL/CHARTWELL ARCHIVE

Thank you for your minute of 1 May 1991 recording the main points which emerged from your discussion with the Trustees of the Archive Settlement, Mr Peregrine Churchill and Mr Montrose at which Mr Winston Churchill MP and Lord Goodman were also present.

You asked me to put in hand the preparation of a submission to the Prime Minister reporting on where we have got to. The attached draft has been seen by Mr Blythe, Treasury Solicitor and Mr Henderson, OAL and takes account of their comments.

Mr Blythe is taking steps to consult Treasury Counsel, possibly next week about our legal position in respect of the official papers, and thinks that it will thereafter probably be necessary or at least prudent to consult the Attorney General.

Mr Henderson was very anxious that the financial problems inherent in the Trustees' proposals should be made clear to the Prime Minister at an early stage - hence paragraph 15 which suggests that as the resources of both the British Library and Churchill College are limited, it is probable that a substantial sum will be required from central Government funds if the papers are to be acquired. OAL also point out in support of this view that recent examples such as the "3 Graces" and the Badminton Cabinet show the difficulty of raising large sums by public appeal when the National Heritage Memorial Fund could not meet the whole cost as it could not in the case of the Chartwell "Family" papers.

I have said that we may need to consult OAL again, following your discussion with the Prime Minister, on the question of to whom any formal proposal should be made.

If I may comment briefly on a few of the points recorded in your minute, as you know from my minute of 24 April, Churchill College would be prepared to enter into a legally binding agreement <u>not</u> to dispose of the papers and are confident of having sufficient funds to maintain and run the archive (point iii); the current situation at Churchill College is that, with the Trustees' agreement, we are reviewing the papers so that material of continuing sensitivity can be removed. No access is allowed without reference to me, nor, as you say, under the 1964 Agreement, and the Estate Duty exemptions provisions, should it be (point iv). The reference to a three-way division of papers in 1964 (point v) must be a misunderstanding. It was not the Public Record Office which "divided" the papers; those which became the PREM series were never part of the Chartwell papers; they remained in either No 10 or the Cabinet Office until they were formally deposited in the Public Record Office.

In the light of point viii, may I continue to keep Mr Correlli Barnett informed of developments in confidence? As you know, with your agreement, I consulted him before providing the briefing for your meeting; I feel that I owe him some sort of "progress" report.

Pat Andrews

MISS P M ANDREWS

Historical Section
9 May 1991

DRAFT MINUTE FOR SIR ROBIN BUTLER TO SEND TO:-

THE PRIME MINISTER

CHURCHILL/CHARTWELL ARCHIVE

I met the Trustees of the Archive Settlement, Mr Peregrine Churchill and Mr Ian Montrose of Goodman Derrick, at lunch on 1 May 1991. Mr Winston Churchill MP and Lord Goodman were also present. The proposals contained in the Memorandum which Mr Tebbit passed to you under cover of his letter of 27 March 1991 were raised and I agreed to discuss them with you before advising Mr Winston Churchill on how the Trustees should now proceed. The purpose of this minute is to set out the background to the issues raised and the situation as it appears today to form the basis for our discussion.

2. The Archive Settlement, which has recently been re-written for the benefit of future generations of the Churchill family, covers the Chartwell papers, now referred to by the Trustees as the "Family Papers" and comprises a collection of some 2,000 boxes relating to Sir Winston Churchill's private life from his childhood to 1945; to his literary and political careers; to his official (Ministerial) positions in the Colonial Office, the Board of Trade, the Home Office, the Admiralty, Munitions, War and Air, the War Council, the War Cabinet of 1917-1919 and his Premiership 1940-45, also early family papers and heirlooms acquired by Sir Winston.

3. These pre-1945 papers are, with the possible exception of the 'official' papers which the collection contains (including large quantities of copy documents, and a proportion of original

documents taken away by Sir Winston when he left the various offices) owned by the Trustees and are deposited in the Archive Centre at Churchill College, Cambridge. Also at Churchill College are the post-1945 papers which were left by Sir Winston Churchill to Lady Churchill who in turn left them in her will to the College They comprise mainly personal papers but with an 'official' component, albeit smaller than that which resides in the "Family" papers; they are owned outright by Churchill College.

4. A further collection of papers relating to Sir Winston's Premiership are the official Private Office papers of the period 1940-45. These are deposited in the Public Record Office in the PREM series and are quite separate from the Chartwell "Family" papers.

5. The original Trust Deed drawn up by Sir Winston Churchill in 1946 to cover the Chartwell "Family" papers said, in Clause 11 (ii)

> "The Trustees shall not at any time make public or sell or dispose of any document or information relating to any office, ministry or department of the British Govenment since 1900 or any paper of an official character without the permission of the Prime Minister of England for the time being and the other Ministers (if any) for time being representing the office, ministry or department concerned."

6. The Archive Settlement, containing the same provision in respect of the official papers, replaced the 1946 Trust in December 1963. It, however, made provision for the Archive to be transferred to one of the male heirs at any time and so,

to avoid a break in the protection afforded by Clause 11 the then Secretary of the Cabinet concluded a "gentlemen's agreement" with the Trustees which was signed in April 1964. It said:-

> "In consideration of your permitting us, as Trustees of Sir Winston Churchill's Archives Settlement, to retain under our control the State Papers formerly belonging to Sir Winston and which came into existence prior to his resignation as Prime Minister in 1945 and any further State Papers formerly belonging to him which may come into our hands together with any Catalogues relating to them, we write to give you our formal assurance that we will not without your consent, vest such papers in any Beneficiary without imposing upon him an obligation similar in terms to that contained in Clause 11 (ii) of the Settlement known as "The Chartwell Trust" and receiving from such Beneficiary an undertaking to impose a similar obligation on any further disposal of the State Papers and Catalogues"

7. In 1970 Estate Duty exemption was granted in respect of the pre-1945 CHARTWELL "Family" papers and the post-1945 CHURCHILL "College" papers under Section 40 of the Finance Act 1930 on condition that:-

a) the documents were kept permanently in the United Kingdom;
b) reasonable steps were taken for their preservation;
and
c) reasonable facilities for examining the objects for purposes of research were allowed to any person authorised by the Treasury so to examine them.

The Trustees could not comply with the access condition at c) because in 1963 they had sold their copyright to the firm which was to publish the biography of Sir Winston and had also agreed that access would not be allowed until 10 years after the publication of the last Volume of the biography. The Treasury therefore agreed an extra-statutory concession under which their right to authorise access would not be exercised until an agreement on access had been concluded between the Trustees and Her Majesty's Government (HMG).

8. Negotiations on an access agreement had started in 1968 but were not concluded during the period when the papers were being used by the biographer, Mr Martin Gilbert. The last volume of the biography was published in 1988 although work on some of the Companion volumes remains to be completed. The Trustees have amended their agreement with the publishers so that access may be allowed two years after publication of the last volume of the biography, and appear to think that this means that the papers may now be made available to researchers at Churchill College. However the undertakings mentioned above mean, in my view, that such access can only be granted by agreement with HMG and, with the agreement of the Trustees, the papers are being reviewed so that any material of continuing sensitivity can be removed before access to researchers is granted.

9. Whatever the situation with regard to access it is the Trustees' proposals with regard to the sale of the papers which are of immediate concern. Sothebys have valued the pre-1945 "Family" papers at £20 million. With the possible exception of the Heinsius papers which were presented to Sir Winston by the Dutch

Government, this is the only part of the archive in which HMG has a legitimate interest. Given that Estate Duty exemption was granted in respect of the 'Family' papers any sale price has to reflect the exemption. Taking that into account the Trustees say that they are looking for a figure of £12.5 million, a figure which Inland Revenue agree reflects the estate duty position and the usual private treaty douceur of 25%, assuming that the valuation itself is accurate.

10. The Trustees told me at our meeting that their first proposal would be to sell the papers to the Government but if that was not possible they would look for another beneficiary to buy the papers and lodge them with Churchill College. Only if this failed would they instruct Sotheby's to find another buyer. Their strong wish is that the papers should remain in this country and both Mr Winston Churchill and Lord Goodman expressed the view that if there was a risk of the papers going abroad, the Government would be bound to step in and acquire them. The Trustees would require an export licence for that part of the archive which was more than 50 years old.

11. The first issue for consideration is therefore whether the papers should be purchased by HMG. Initial legal advice is that there is nothing intrinsically difficult, from a legal viewpoint, in the purchase of the Trustees' interest in the papers. There is no doubt that the collection is of unique historical importance to the nation and that there would be a considerable public outcry if it was sold into private hands, particularly abroad. Such a purchase could lead to requests

from the holders of other archives of national importance with similar threats that refusal would lead to a sale abroad; conversely, refusal to purchase such an important archive could lead to more sales abroad if the holders/owners interpreted the refusal as a lack of Government interest.

12. An important point to be taken into account is that the Government has never waived its rights over the 'official' papers in the Chartwell "Family" collection. Whether, legally, the Government could claim "ownership" is something on which we shall need to take further advice. However, although the present Trustees appear to wish to contest the matter, HMG's interest in the papers was fully recognised in the earlier Trust Deeds quoted in paragraphs 5 and 6 above and has been sustained in recent correspondence between the Trustees and the Cabinet Office. It would, in any event, seem wrong, on the face of it for the Government to be put in the position of buying back papers which are or have been public records or copies of them.

13. There would appear to be two possible courses of action; either to seek to prevent the sale of the "Family" papers on which our main bargaining card, apart perhaps from public opinion, would seem to be our claim to ownership, or at least an interest in, the 'official' papers, which amount to something between one-third and a half of the 'Family' papers; or to invite a formal proposal from the Trustees and negotiate with them. Depending upon your views, the best course may be negotiate with the Trustees and only resort to an attempt to prevent the sale if negotiations were to break down.

14. Before any negotiations could begin we would need definitive legal advice on our rights over the 'official' papers given the time that has elapsed since they were in official custody and in the light of the earlier undertakings; also an independent valuation of the papers deemed to be the property of the Trustees.

15. Further matters for consideration are with whom the Trustees would negotiate and to whom they should make their formal proposal. So far as I am aware there is no precedent for direct negotiations with HMG over such matters. The other potential purchasers mentioned by the Trustees - Churchill College, which has all along been the intended home of the archive and for which its Archive Centre was primarily built, or the British Library - would both require substantial financial assistance from the National Heritage Memorial Fund and/or from the Government. Churchill College is believed to have adequate funds to maintain the Archive but is unlikely to be able to raise the funds to purchase it; the British Library has just over £600,000 to spend on acquisitions for the "Special Collection" in 1991-92 of which some may already be committed. The National Heritage Memorial Fund is unlikely to be able to provide more than £2 million, (if that). Thus, even if the 'official' papers were adjudged to comprise half of the "Family" papers and the sale price was thus reduced to something like £6 million a substantial sum would be required direct from the Government to enable us to buy out the Trustees' interest. Subject to your views I shall take further advice on these points.

CABINET OFFICE

Historical Section

Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

HO91/317 ✓

8 May 1991

C E Henderson Esq
Office of Arts and Libraries
Horse Guards Road
London SW1P 3AL

Dear Mr Henderson

CHURCHILL/CHARTWELL

I enclose a copy of the note which Sir Robin Butler sent to me following his meeting with the Trustees of the Archive Settlement on 1 May, together with a first draft of the submission to the Prime Minister which Sir Robin asked me to put in hand and which I have to get to him by lunchtime tomorrow, Thursday, 9 May 1991.

The first eight paragraphs repeat the background briefing prepared for Sir Robin. It is therefore on paragraphs 9 - 14 on which I should welcome your comments plus advice on any further points you think I should include. Should I, for example, say anything more than I have in paragraph 14 about where the money might be found to purchase the papers if that is what is decided; should I make any mention of the National Heritage Memorial Fund and/or the likely view of the Export of Works of Art Committee, assuming that the archive would come within its remit if a sale abroad was proposed?

I am sorry to have to ask for comments at short notice again but if you could possibly telephone me with any comments by close of play today, this would be greatly appreciated.

Yours sincerely

Pat Andrews

MISS P M ANDREWS

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

Ref: HO91/302 ✓ 2 May 1991

M Blythe Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
LONDON
SW1H 9JS

Dear Mark

CHURCHILL/CHARTWELL ARCHIVE

I attach a copy of a note which I have received from Sir Robin Butler following his lunch with the Trustees on 1 May 1991.

You will see that I am asked to put in hand a submission to the Prime Minister reporting on where we have got to. I shall need to get this to Sir Robin by noon on Thursday, 9 May 1991 at the latest. I am out of the office for most of today and have not yet fully digested the implications of what Sir Robin has been told but am sending you a copy quickly in case there is any advice you would care to offer for inclusion in the submission.

Yours

Pat

MISS P M ANDREWS

FOLIO 1

CABINET OFFICE
H Internals
2 MAY 1991
FILING INSTRUCTIONS
FILE No.

Ref. A091/1081 ✓

MISS ANDREWS

c Mr Davie D 31.5.91

Churchill/Chartwell Archive

I was very grateful for the briefing in your minute of 24 April for my lunch with Mr Winston Churchill MP today, Lord Goodman, Mr Peregrine Churchill and Mr Montrose who are present.

2. The following were the main points which emerged from the discussion:-

i. The Sotheby's valuation of the family papers alone is £20 million. After allowing for the estate duty exemption and the douceur, the trustees are looking for £12.5 million. They did not offer - and I did not ask for - a sight of the Sotheby's valuation, but expect the Government to obtain their own valuation.

ii. This does not include the Marlborough Papers and the Heinsius Papers which are valued at £250,000 and £180,000 respectively. The trustees are thinking of disposing of these separately and have it in mind that at any rate the Marlborough Papers should go to the British Library.

iii. One of the trustees' worries is that Churchill College might at some time want to dispose of the papers or no longer able or willing to find the funds to run the archive. They also feel that making the archive available to the public will require more staff. Hence the proposals that the ownership of the "Family Papers" should be vested in the Government or the British Library and that there should be an appeal to raise funds for the running of the archive, to which Mr Winston Churchill would make a donation from his share of the proceeds to the trust. (The trust has been re-written so that the beneficiaries are Mr Winston Churchill 40%, his two sons 10% and 5% respectively, a trust fund for future generations 55%. Mr Churchill proposes to put part of his share of the proceeds into a trust for his daughters.)

iv. The trustees have amended their agreement with the publishers of the Winston Churchill biography so that access may be allowed two years after the publication of the last volume of the biography. Churchill College should now therefore be providing access and are doing so when asked, but are not publicising the availability of the papers since they would have no staff to deal with them. (It is not clear to me that such access is consistent with the "Gentlemen's Agreement" of 1964.)

v. I commented that there were official papers in the "Family Collection" in which the Government had not given up its claim of possession. Mr Montrose tried to contest this by saying that in 1964 the Public Record Office had divided the papers between the "Family Papers", the "College Papers" and the "Premier Papers": the latter had been returned to the Public Record Office and, while there was concern about the confidentiality of some of the documents in the "Family Papers" Mr Montrose did not believe that this amounted to a claim of possession. He sought to invoke your name to support this, but I said that my advice was that the "Family Papers" still contain documents to which the Government could claim possession.

vi. The trustees wanted to make rapid progress with obtaining a response from the Government. If the response was negative, they would want in the Autumn to look round for another beneficiary who might buy the "Family Papers" and lodge them with Churchill College. Only if this failed would they instruct Sotheby's to find another buyer. Their strong wish was that the papers should remain in this country and both Mr Winston Churchill and Lord Goodman said that, in their judgement, if there was a risk of the papers going abroad, the Government would be bound to step in and acquire them.

vii. Mr Winston Churchill would not want to play a prominent part in these negotiations himself, although he would of course be willing to have a private word with the Prime Minister, if the Prime Minister wished. But the main agent for the trustees (who are, in fact, Mr Peregrine Churchill and Mr Montrose, and no longer include Mr Winston Churchill) would be Mr Montrose.

viii. While the proposals had been discussed with the former and present masters of Churchill College and Mr Correlli Barnett, neither the College nor the trustees wanted to make it necessary for the College to discuss a formal proposition for fear of leaks.

3. Mr Winston Churchill asked for my advice on how the trustees should now proceed: should they put a formal proposition to the Government? I said that I would like to reflect on that and discuss with the Prime Minister how he would want the matter handled. I said that I would try to get back to Mr Churchill with advice on this in about two weeks.

4. Could you please now prepare for me a draft minute to the Prime Minister reporting on where we have got to. It seems to me that there are two choices: either to be obstructive and put such obstacles as we can in the way of the sale of the "Family Papers" (on which our main bargaining card would seem to be our claim to possession of the official papers in the "Family Collection" and

(X)

the "Gentlemen's Agreement" or to invite a formal proposal from the trustees and negotiate with them on it. One relevant factor in this is the likelihood that other archives could follow the Churchill lead and similarly blackmail the Government into buying the archive for fear that it would go abroad.

5. Could you please put in hand the preparation of a submission to the Prime Minister on this which I could put up next week in time for discussion with him at my next bilateral.

F.E.R.B.

ROBIN BUTLER

1 May 1991

ANNEX to HR10/3 part 1

Custody of the private collection of documents of Sir Winston Churchill held in the Chartwell Trust

① - Draft (1) 17.5.91 of Instructions to Counsel to advise in writing

② Copies of papers listed (1) - (8c)

③ Flagged A B and C. attachments referred to on f.22 and f25

For distribution of this Circular letter see list on back hereof.

1

SECRET AND PERSONAL.

Reference Cab./D/95.

Offices of the Cabinet,
2, *Whitehall Gardens, S.W.* 1,
September , 1934.

CABINET PAPERS.

1. I have been requested by the Prime Minister to write to you, as a former member of the Cabinet, regarding an important question of Cabinet procedure which has recently been under consideration by the Cabinet, namely, the retention by Cabinet and other Ministers on leaving office of their Cabinet Papers.

2. You may remember that, under a ruling in 1908 of the Committee of Imperial Defence, it has been the practice for the Secretary of that Committee to recover all Committee of Imperial Defence records from Ministers on leaving office. During the War, the War Cabinet, impressed by the grave dangers of Cabinet Papers getting into wrong hands after the retirement or death of ex-Cabinet Ministers, decided to adopt the same procedure, with the result that during the War it was customary for Ministers, on vacating office, to return their Papers to the Cabinet Offices.

3. After the War this rule was relaxed, and it became open to Ministers on leaving office to retain possession of Cabinet Papers, with the result that a very large number of such documents, including Cabinet Minutes and other highly secret Papers, are now in the possession of living ex-Ministers and the representatives of deceased Ministers.

4. I am sure that you will fully appreciate the very grave consequences which the loss of many of these Papers would entail, and how acutely the public interest might be prejudiced thereby. Every year adds to the number of documents which have thus passed out of the safe-keeping of official custody, while the transfer in course of time to legal representatives lessens the sense of immediate personal responsibility under which these documents are held.

5. The Cabinet have, therefore, decided that in future it shall be the duty of Cabinet and other Ministers, on vacating office, to return forthwith to the Secretary to the Cabinet all Cabinet Minutes and Papers issued to them while in office, and have directed the Secretary to recover all such

documents accordingly. The Cabinet have also instructed the Secretary to the Cabinet to invite all Cabinet and other Ministers who have held office since November 1919, and also the representatives of deceased Ministers, to return to the Cabinet Offices the Cabinet Minutes and Papers retained by those Ministers respectively when they vacated office.

6. It is, of course, fully recognised that satisfactory arrangements must be made to enable an ex-Cabinet Minister, after returning his Papers, to refer at any time to the Cabinet Minutes and other Cabinet Papers circulated to him while in office, and the Cabinet have in fact decided that members of former Cabinets shall continue to have the right of access to the record copies of all Cabinet Minutes and Papers issued to them during the time that they were members of the Cabinet. Accordingly, these records will always be available to you at this Office, where they are kept in convenient form and properly indexed.

7. I am, therefore, writing to you under the direction of the Cabinet to ask you to co-operate in this decision by returning to the Cabinet Office any Cabinet Minutes and other Cabinet Papers and the Minutes and documents of Cabinet Committees and Sub-Committees which you may have retained when you vacated office, on the understanding, of course, that you will always have the fullest right of access to the record copies of these Papers preserved in the Cabinet Offices.

8. If you will be good enough to let me know when and where it would be convenient to you that any such Papers should be handed over, I will arrange for their collection (if in the London area) by a responsible Cabinet Office official, who will give a receipt in exchange for the Papers. If, however, the Papers are not in the London area, I propose to make special arrangements for their collection after further consultation with you.

Acting Secretary to the Cabinet.

To

Mr W. Adamson.
Dr C. Addison.
Mr A.V. Alexander.
Mr L.S. Amery.
Lord Amulree
Sir M. Barlow
Mr Wedgwood Benn.
Miss M. Bondfield.
Lord Bridgeman.
Mr W.S. Churchill.
Mr J.R. Clynes.
Mr H.A.L. Fisher.
Sir A. Geddes.
Mr D. Lloyd George.
~~Sir J. Gilmour~~.
Mr A. Greenwood -
Lord Greenwood.
Sir A. Griffiths-Boscawen.
Mr A. Henderson.
Sir S. Hoare.
Sir R. Horne.
Mr G. Lansbury.
Lord Lee.
Mr H.B. Lees-Smith.
Lord Moyne

Lord Alness.
(formerly Mr R. Munro)
Lord Noel Buxton.
Lord Olivier.
Lord Passfield.
Lord Peel.
Lord Eustace Percy.
Lord Reading.
Sir Herbert Samuel.
Mr T. Shaw.
Sir A. Sinclair.
Lord Snowdon.
Sir C. Trevelyan.
Mr T. Johnston.

WESTERHAM 93.

CHARTWELL,
WESTERHAM,
KENT.

19th November 1934

Confidential.

Dear Sir Rupert,

I beg to acknowledge your secret and personal circular of September 20, to which I have now given full consideration. The present Cabinet is no doubt entitled to make any arrangements which it chooses for the safe keeping of its documents, and the measures they propose seem to be appropriate to that purpose. So far as concerns the past I am not aware of any facts which would lead me to accept your invitation to return any documents of the kind specified which I may have in my possession. My father, Lord Randolph Churchill left all his State papers to trustees under a deed which inter alia provided "that no such Political or State documents, correspondence or paper relating either to the Department of the India Office or the Department of the Foreign Office shall be printed, published or used in any way either directly or indirectly without the written consent of Her Majesty's Secretary of State for either of the said Departments for the time being". These injunctions were of course observed by me. I have myself executed a similar deed, governing the custody and secrecy after my death of such State documents as I have preserved; and I have invariably obtained the prior sanction of the Government of the day for any use which I have made of them. I do not therefore desire to make any change in the practice I have hitherto pursued.

Yours faithfully,

Winston S. Churchill

Sir Rupert B. Howorth, K.C.M.G., C.B.,

RECEIVED IN
24 JAN 1935
CABINET REGISTRY

SECRET AND PERSONAL. January 23rd, 1935.

My dear Barnes,

You will remember the question of the Recovery of Cabinet Papers about which the Law Officers gave an Opinion last Summer. On the whole the replies to our requests have been satisfactory, and there are only two or three cases in which we have had definite regusals to co-operate.

Of these cases the most important is Mr. Winston Churchill, who has in his possession a very large number indeed of Cabinet Papers of all sorts. I enclose a copy of Mr. Churchill's reply, which so far has only been acknowledged.

It is quite clear that Mr. Churchill has no intention during his lifetime of returning his Papers, and as it is also clear that we cannot compel him to return his Papers (see opening paragraphs of the Opinion) I think that we shall have to acquiesce, however regrettable it may be that there should be exceptions to the general rule.

Mr. Churchill, however, is not content to retain the Papers during his life, ~~but~~ he has apparently, following the example of his father, executed a trust deed "governing the custody and secrecy after my death of such State documents as I have preserved".

I assume that the remarks in paragraphs 5, 6 and 7 of the Opinion would apply on Mr. Churchill's death to the arrangements which he has made, and that the Trustees of the deed which he has executed would have no defence to a demand that all the documents should be returned, and that if they proved obdurate legal proceedings could successfully be taken against them in the last resort for the recovery of the documents.

If this is so the question then arises whether we ought to inform Mr. Churchill now of the legal position, or whether it would be better to await the event and then take action.

In any event the terms of any communication now made to Mr. Churchill will have to be approved in advance by the Prime Minister. My own view is strongly in favour of the matter being thrashed out with Mr. Churchill now. No doubt this will mean considerable correspondence and possibly some clamour, but I feel that to refrain from telling Mr. Churchill in his lifetime our view of the position would be unfair to him and might to some extent prejudice the position after his death.

Possibly the best course would be for Hankey at the outset to speak to Mr. Churchill, and if so would there be any objection to Hankey disclosing the fact that the Law Officers had advised on the whole position last Summer, and that on this particular point their advice was as set out in paragraph 5 of the Opinion, without of course showing him that Opinion, adding a warning if thought necessary that an offence would be committed under Section 2 of the Official Secrets Act, 1911, in the event of the Trustees insisting on retaining any of the documents in question after they had been requested to surrender them? No doubt Mr. Churchill would reply that he must have a written communication on the subject, in which case we should of course consult you on the draft. I should be very grateful if you would let me have your views on the points mentioned above and on any others that may occur to you.

Yours very truly,

(Sd.) R. B. HOWORTH.

Sir Thomas Barnes, C.B.E.
Office of Treasury Solicitor,
Storey's Gate, S.W.1.

Secret & personal

RECEIVED IN
1 FEB 1935
CABINET REGISTRY

Storey's Gate,
St. James's Park,
London, S.W. 1.

25th January, 1935.

My dear Howorth,

I have received your letter of the 23rd instant enclosing a copy of Mr. Winston Churchill's answer to your request for the surrender by him of Cabinet papers in his possession, and I think it clear that paragraphs 5, 6 and 7 of the Law Officers' Opinion will apply to Mr. Churchill's legal personal representatives or trustees if they retain any Cabinet papers without the express authority of the Government. I also agree that the retention of the documents in those circumstances would constitute an offence against Section 2 of the Official Secrets Act, 1911, although whether proceedings under that Section ought to be taken is a matter which can only be decided in the light of the circumstances existing at the time. In view of the terms of his letter, it would, I think, be desirable that Mr. Churchill should be made aware of the Government's view at once, but it is not improbable that a letter stating the legal position would tend to stiffen Mr. Churchill's resolve not to comply with your request. I think, with you, that if Hankey could speak to Mr. Churchill in the first instance, it would be a desirable course to adopt.

P.T.O.

He would no doubt point out the reasons which moved the Cabinet to make the request for the return of the documents and point out that, if the documents were returned, arrangements would be made to have them available for Mr. Churchill if at any time he wanted to refer to them. If, in order to fortify his case, Hankey thinks it desirable to refer to the legal position, I see no reason why he should not say that the Cabinet, in considering the question of Cabinet documents generally, have taken legal advice not only with regard to the position of Cabinet Ministers themselves, but also with regard to the legal personal representatives of Cabinet Ministers into whose possession Cabinet papers may come upon the death of a Cabinet Minister. He might then, if he thinks fit, indicate in general terms the effect of the advice which has been received. You will no doubt agree, however, that if a reference is made to the Opinion for the purposes of emphasising the Government's view that the legal personal representatives of Mr. Churchill must, in any

25th January, 1935.

case, hand over the documents on his death, it would only be right that he should be aware of the fact that the advice does not question his right to retain the documents during his lifetime, if he so desires. If Hankey's conversation with Mr. Churchill fails in its object, I agree that it would be desirable to consider the form of the letter to be sent to Mr. Churchill, putting on record the Government's view as to the position of his trustees if they retain Cabinet documents after Mr. Churchill's death.

Yours sincerely,

T. J. Barnes

P.S. I have spoken to the Attorney General & he approves of this letter.

Sir Rupert Howorth, K.C.M.G., C.B.,
Cabinet Office,
2, Whitehall Gardens,
S. W. I.

SECRET.

RECOVERY OF CABINET PAPERS.

Mr. Churchill's Case.

1. Mr. Churchill has in his possession a very large number of post war Cabinet Papers relating to the period 1919-1922 when he was successively Secretary of State for War, Air and the Colonies, and 1924-29 when he was Chancellor of the Exchequer. In particular he has retained practically all the Papers of the years 1924-1929.

2. Mr. Churchill replied to our letter of September 20th on 19th November (see letter attached flagged 'A'). In effect he says that while the Cabinet are entitled to make what arrangements they like as regards the present and future, as concerns the past he is unaware of any facts which would lead him to accept the invitation to return his Papers. Moreover, he adds that following his Father's example he has executed a trust deed 'governing the custody and secrecy after his death of such State documents as he has preserved'.

3. I have consulted with the Treasury Solicitor whose letter (which has been approved by the Attorney General) is flagged 'B'. I also attach a copy of the Opinion

of the Law Officers of 18th June last flagged 'C'.

4. In this Opinion the Law Officers in effect advised that the legal position in regard to the retention of Papers by post war ex Cabinet Ministers during their lifetime ~~has~~ differeds from the position after their death. A living ex Minister is entitled to retain his Papers during his life and if he declines to surrender them he cannot be compelled to do so (see Opinion paras. 1 to 4). The Executors or Trustees of a deceased Minister, on the other hand are not entitled to retain documents of this character, the right to the possession of which reverts to the Crown on the death of the ex Minister. If these representatives, without express authority, insist on retaining the documents, such retention would constitute an offence under the Official Secrets Act (see Opinion paragraphs 5,6 and 7). The Treasury Solicitor advises that in both these respects the particular case of Mr. Churchill is covered by the Opinion of the Law Officers on the general question.

5. Taking first the retention by Mr. Churchill of his Papers during his life, I think that as in other cases every effort should be made to persuade him to come into line, and in this connection it may be noted that his letter

is no point blank refusal, but rather invites a reasoned reply.

6. The Treasury Solicitor agrees that it is desirable that Mr. Churchill should be informed as to the position and that, if possible, this had better be done, in the first instance, by word of mouth rather than in writing. Sir Thomas Barnes is in favour of the Secretary seeing Mr. Churchill and explaining to him the Cabinet's reasons for their decision; that the Cabinet had taken legal advice, not only with regard to the position of Cabinet and ex Cabinet Ministers themselves, but also with regard to the legal personal representatives of deceased Cabinet Ministers, and that that advice does not question his right to retain the documents during his lifetime, if he so insists.

7. Our letter of 20th September was based on this advice and accordingly invited him to co-operate by returning his Papers. Arguments such as the following might be used to try and convince him:

(1) the grave dangers to the public interest if Papers remain outstanding, as evidenced by cases such as the Lansbury Case:

(2) over 85 per cent. of those concerned have already agreed to return their Papers and

[Lord C wford
is already
taking this line]

there is no reason to suppose that many of the remaining 15 per cent. will not do so, If, however, ex Ministers like Mr. Churchill refuse to co-operate, it will be most difficult, if not impossible, to dissuade others from following his example:

(3) while it is, of course, recognised that Mr. Churchill is in a position to ensure the safe custody of his Papers, other ex Ministers may not be so favourably situated, but in a matter of this kind it is not practicable for us to attempt to discriminate and all must be treated alike.

(4) he can always have access here to the record copies of his Papers. We might indeed undertake that if he will give his Papers up we will preserve them here intact in a way which will enable him always to refer, if he desires, to his own particular copies.
[While we should be most reluctant to make this concession owing to the inconvenience and to our lack of storage facilities it might ease the position to do so].

8. If, however, Mr. Churchill is unmoved by considerations of this kind we can only of course regretfully acquiesce in his retaining his Papers <u>during his lifetime</u>. If so, this will constitute a troublesome and embarrassing precedent.

9. As regards the position after his death, Mr. Churchill might be told that the Cabinet are advised that persons are not entitled to retain documents of the character in question of which they have obtained

possession as Executors, Administrators or assigns of a Minister. An ex Minister would be entitled to destroy the documents if he so desired, but if he failed to do so in his lifetime, the right to possession of them would on his death revert to the Crown. The Cabinet were also advised that an offence would be committed under Section 2 of the Official Secrets Act if an Executor or Administrator or assign retained any of the documents in question after having been requested to surrender them.

10. It should be made clear to Mr. Churchill that the Trustees of the Trust Deed executed by him would be covered by the above advice of the Law Officers.

11. We may at a later date have to put on record the Government's view of the position, and if so any written communication would have to be settled in consultation with the Treasury Solicitor.

3rd May, 1935.

-SECRET AND PERSONAL-

15th June, 1935.

My dear Winston,

You may remember that on 20th September last Sir Rupert Howorth, acting on my behalf, wrote to you about your post war Cabinet Papers, and that on 19th November last you replied to the effect that you did not see your way to accept the invitation to return the documents of the kind in question now in your possession and that you had made arrangements for the transfer to Trustees after your death of such State documents as you might have preserved.

I am sorry that it has not been practicable to send an earlier reply to your letter. The delay is due partly to very heavy pressure of work here, but also because I felt that it would be more satisfactory to you to have the position as a whole submitted to you, and this I could not do until we had completed the large number of investigations which the Cabinet decision of a year ago rendered necessary.

I can give you my unqualified assurance that this decision to revert, as regards the future to the war-time practice in regard to the return of Cabinet Papers was only reached after the most exhaustive review of the whole question, and after the Cabinet had come to the conclusion that the public interest necessitated this change of procedure. At the same time the Cabinet decided that all ex Cabinet and other Ministers who had received Papers since the War should be invited to co-operate in the new arrangements by returning their Papers.

Some of the reasons for the Cabinet decision are briefly summarised in paragraphs 2 and 4 of the printed letter of 20th September.

Among these reasons was the possibility of an unauthorised person obtaining access to these secret documents. With the passage of years a very large number of documents of this character were in the possession of ex Cabinet Ministers, some of whom, like yourself, were in a position to safeguard them, while others were not in that position. These facts had become known and there was a very real danger of documents getting into the possession of foreign agents or other evilly disposed persons who would use them to the grave prejudice of the public interest.

I need not emphasise the gravity of the risks involved in this state of affairs. No one will appreciate their importance more thoroughly than yourself. Speaking generally the conclusion of the Cabinet was based on the impossibility of ensuring <u>in all cases</u> the proper protection of the documents against loss or accident or theft unless they were placed in official safe custody, and the impracticability of differentiating in this matter betwee individual ex Ministers. If the public interest is to be fully safeguarded in this respect it is, of course, most desirable and indeed essential that all concerned should observe the same procedure. If exceptions are once made it will be most difficult, if not impossible, to maintain the new procedure, not only in regard to the documents of the last 15 years but, what is very much more important, as regards all future documents of this kind.

The Cabinet fully realise, of course, that ex Cabinet Ministers may wish to refer from time to time to Papers circulated to them when they were in office, and t meet this point it was agreed that in such cases ex Ministers should, during their lifetime, always enjoy the fullest possible right of access to the record copie of such Papers preserved in the Cabinet Offices.

You may be interested to know that about 90 per cent. of those to whom the printed circular letter was sent on 20th September have already agreed to surrender their Papers, and that in practically all these cases the transaction is now complete. In several of the remaining cases correspondence is still in progress, and I have no reason to suppose that in these cases those concerned will eventually decline to co-operate in the new procedure. Many of the replies received express warm and unqualified approval of the course which the Cabinet have adopted: there have only been a few cases where objections have been raised, and in some of these we know that the outstanding Papers are few and unimportant.

The Cabinet has not made this request without being fully convinced of the reality of the dangers to which I have referred, or of the insufficiency of any general safeguard other than that proposed. There is no question of the legal right of the Minister to retain the documents during his lifetime if he insists upon doing so. But it is right for me to say that the Cabinet has been advised that the authority under which the Minister himself retains them does not extend to his executors or trustees to whom they may be transferred, and from whom they would therefore be recoverable. Moreover, if they insisted on retaining the documents, such retention would constitute an offence under the Official Secrets Acts. The controversies which would arise in the circumstances are of the kind which everyone must agree it is most desirable in the public interest to avoid. But it is necessary to refer to them here, as quite clearly the disposition by the Trust Deed to which you refer in your letter falls within the purview of the advice which has been given to the Cabinet.

I apologise for troubling you with this long explanation, but I feel that you ought to know these facts before you reach any final decision. I personally very much hope that you will see your way to review the matter in the light of what I have said, and that you will then feel able to accept the Cabinet's invitation to co-operate in the new procedure by returning your outstanding Papers. If it would make it easier for you to return the Papers, I should be quite ready to give you an assurance that these actual Papers would, during your lifetime, be preserved here intact, and that every possible facility would be given to you to refer to them at any time.

I need hardly say how sorry I am that this matter should cause you the slightest trouble or inconvenience.

Yours very Sincerely,

(Sigd) M.P.A. Hankey.

The Rt. Hon. Winston S. Churchill, C.H., M.P.,
Chartwell,
Westerham,
Kent.

Sir R Howorth

STERHAM 93.

CHARTWELL,
WESTERHAM,
KENT.

20 JUN 1935
CABINET REGISTRY

18th June 1935

<u>Secret and Personal</u>

My dear Maurice,

Many thanks for your Secret and Personal letter of June 15. I am very glad to learn that "there is no question of the legal right of a Minister to retain the documents during his lifetime if he insists upon doing so". As at present advised I propose to avail myself of that legal right. In that respect I fear I have nothing to add to my formal letter to the Secretary of the Cabinet of September 20.

I may say however, without prejudice, that I am not quite clear as to precisely what papers you define as "Cabinet Papers". The actual minutes of the Cabinet have never been kept by me. Do you refer then to the Blue Papers circulated on different questions from time to time to the Cabinet? I have of course a number of these, though many have been destroyed. Of these the ones to which the retention of which I attach particular importance are the very large class which I have dictated myself and circulated to the Cabinet. These deal with all kinds of questions, and are of particular value to me in refreshing my own mind with what I then thought and said. In this class I have of course not only the printed documents, but my own typescript from which the originals were set up. These are my property subject to my governing obligations. In a number of cases I dictated memoranda for the Cabinet which were in fact never printed, or being printed never circulated. It is clear that none of your provisions would apply to these for they did not in fact come within the purview of the Cabinet. Nevertheless some of them are the most revealing of all and deal with matters so secret that I eventually decided not even to bring them before the full Cabinet. Again I have copies of a number of private letters which I have written to colleagues on matters of secrecy. It seems to me therefore very difficult for me to draw the line in principle, and that there is in fact no safeguard but the honour and probity of a minister of the Crown. That has hitherto for many generations proved sufficient.

I may add that it would be a matter of enormous labour to search through my archives of twenty years of Cabinet office and distinguish between the different catagories of documents involved. I certainly could not undertake this labour at the present time.

I can readily understand that the character of Cabinets is changing since the Socialists came into office, and I am not going to criticise any arrangements which the Cabinet of today may impose upon itself, or its successors. But I thought it unbecoming of a Prime Minister with Mr. Ramsay MacDonald's record, both in the war and in the general strike, to have Ministers of the past circularised in this fashion.

Yours sincerely,

Winston S. Churchill

Col. Sir Maurice Hankey, G.C.B., G.C.M.G., G.C.V.O.

RECEIVED IN
[illegible] 1935
CABINET REGISTRY

SECRET AND PERSONAL.

27th June, 1935.

My dear Winston,

I am much obliged for your "Secret and Personal" letter of 18th June. You will not, I am sure, resent my saying how much I regret to learn that, as at present advised, you propose to avail yourself of your legal right to retain the Cabinet documents during your lifetime

In the second paragraph of your letter you say that you are not quite clear as to precisely what Papers I define as "Cabinet Papers". On this point there can, I think, be no question that all documents, whether in typed or printed form, circulated to the Cabinet and the Committee of Imperial Defence and their Committees by, or through, the Cabinet Office are undoubtedly covered by the definition. These documents include Cabinet Minutes; memoranda circulated to the Cabinet (these constitute the C.P. series of Papers and are the same as your Blue Papers); and the Minutes and Memoranda of all Cabinet and Committee of Imperial Defence Committees.

I agree that there may be cases where it may be open to doubt whether particular draft documents are, or are not, official documents. Speaking generally, however, I am advised that once a draft has been initialled for an official purpose it becomes an official document. On the other hand, original informa drafts prepared by a Minister, say at home, or some scheme or proposal which never became an official document, would fall outside the definition.

As regards your copies of Cabinet Minutes, the position so far as we have been able to ascertain, is a follows. You did <u>not</u> retain your copies of Cabinet Minutes of the years 1919-1922. As regards the years 1924-1929, however, I have ascertained from the Treasur that among the Papers you took away in the summer of 1929 were two boxes, numbered V and VI, containing your Cabinet Minutes of the period when you were Chancellor of the Exchequer. I attach a copy of a note from the Chancellor of the Exchequer's Private Secretary which confirms our records in this respect.

I recognise, of course, the very great trouble and inconvenience which the search through your archives would involve, and I need hardly say that if we could assist you in any way, for example, by placing at your disposal for this purpose the services of one or two reliable and experienced members of the staff here, I should be only too happy to arrange accordingly. I think it possible that after a search through the Papers by experienced hands you might find yourself able to return at once a number of the outstanding Papers.

Yours very sincerely.

(Sgd.) M. P. A. Hankey

The Rt. Hon. S. Winston Churchill, C.H.
Chartwell,
Westerham,
Kent.

RECEIVED IN
23 APR 1940
4/3/14
CABINET REGISTRY

Sir R. Howorth

1. I am afraid I suggested to Mr Banks that we might have another go at Mr Churchill, now that he has an official private Secretary (or rather four or five).

But now that I have looked again at the file, and all the business of getting opinions from Treasury Solicitor, my heart fails me.

Especially as Mr Churchill "came clean" to a limited extent in 1936.

I expect you will agree that the present is not the time to grasp this nettle.

I agree that no useful purpose could or would be served by reopening this controversy at this juncture
R.B.H. 22/4.

2. Would you care to move the Admiralty to say what they did with Lord Stanhope's Cabinet papers, as suggested in the first paragraph of the draft?

Done
R.B.H.

W.D.W.

21/4/40

W D Wilkinson

②

15471

THIS DEED OF SETTLEMENT

made the Thirty first day of July One thousand nine hundred and forty six BETWEEN THE RIGHT HONOURABLE WINSTON LEONARD SPENCER CHURCHILL O.M., C.H., M.P. (hereinafter called "the Settlor") of the one part and his Wife CLEMENTINE OGILVY CHURCHILL THE RIGHT HONOURABLE BRENDAN BRACKEN P.C., M.P. and THE RIGHT HONOURABLE FREDERICK ALEXANDER BARON CHERWELL (hereinafter together called the Trustees which expression where the context so admits includes the Trustees or Trustee for the time being of this Deed) of the other part WITNESSETH and it is hereby agreed and declared as follows :-

1. THE Settlor having in his possession the records and memoranda shortly mentioned in parts 1 and 2 of the Schedule hereto (some of which may be of such a nature that they ought not to be divulged to the public without due precautions being taken in the public interest) lately decided to make proper provision for safeguarding the same and to settle therewith the other property hereinafter assigned and this Settlement is accordingly made for giving effect to such decision and also in consideration of the natural affection of the Settlor for his issue

2. THE Settlor has for the purposes of this Deed paid to the Trustees the sum of ~~[illegible]~~ Two THOUSAND POUNDS and delivered to them (or to some or one of them on behalf of all) the documents boxes and casket shortly mentioned in the Schedule hereto And he hereby assigns to them the copyright (as defined by Section 1 (2) of the Copyright Act 1911) in all the said documents (so far as such copyright belongs to him) and assigns and confirms to them the said documents boxes and casket and all his interest therein And the expression the Trust Property hereinafter used means and includes the said sum documents boxes casket and copyright and all investments rights and property hereafter for the time being representing the same or at any time added (or representing assets added) to the capital or corpus of the Trust Property by way of further settlement accretion accumulation or otherwise

3. THE Trustees shall henceforth hold the Trust Property and its income upon the trusts and with and subject to the powers and provisions following

4. THE Trustees with the consent of the Settlor during his life or after his death at their discretion (but subject where they are relevant to the provisions of Clause 11 hereof) may from time to time realise the Trust Property or any part or parts thereof

invest the same and change the investment thereof within the range authorised by Clause 9 of this Deed

5. THE expression the Specified Period hereinafter used means the period from the date of this Deed until whichever of the three following dates or events shall first occur namely (i) the First day of January One thousand nine hundred and sixty six (ii) such if any date as the Trustees being not less than two in number shall at any time hereafter with the consent in writing of the Settlor during his life or after his death at their discretion by deed executed on or before that date prescribe for the end of the Specified Period and (iii) the failure by death of all the issue of the Settlor whether now living or hereafter to be born

6. DURING the Specified Period the Trustees shall pay or apply the income of the Trust Property unto or for the support or benefit of all or any one or more of the following persons for the time being in existence namely the issue of the Settlor (whether now living or hereafter to be born) and the wives and husbands and widows and widowers (whether or not remarried) of any such issue such payment or application to be made at or for such times in such shares (if more than one) in such manner and upon

any such terms or conditions (not benefiting the Settlor or any wife or widow of his) as the Trustees in their discretion shall from time to time think proper and so that they may pay income to any person or persons for application under this clause without themselves being bound to see to the actual application thereof PROVIDED ALWAYS that the Trustees in their discretion may at and for any time or times during the life of the Settlor within five years from the date of this Deed accumulate the whole or any part or parts of the income of the Trust Property by investing the same and (if and so far as thought proper) the resulting income thereof in manner hereinafter mentioned and all accumulations of income so made shall be added to and form part of the capital of the Trust Property for all purposes

7. PROVIDED ALWAYS that the Trustees being not less than two in number may in their discretion at any time or times within the Specified Period appropriate or realise or raise the wholeor any part or parts of the capital of the Trust Property and transfer or pay the same to or apply the same for the benefit of (or settle the same on or for) all or any one or more of the issue of the Settlor (whether now living or hereafter to be born) in such shares (if more than one) in such manner and upon any such terms or

conditions (not benefiting the Settlor or any wife or widow of his) as the Trustees shall think proper Discharged either wholly or partially (as the case may require) from the trusts powers and provisions of this Deed And any Settlement made by the Trustees under this power on or for any person may contain such trusts powers and provisions whatsoever as the Trustees shall think proper in favour or for the benefit of (or exercisable by) all or any one or more of such person and his or her issue and the wives and husbands and widows and widowers (whether or not remarried) of such person and issue respectively and so that the Trustees may by any such Settlement delegate in any manner and to any extent the exercise of this power at any time or times (due regard being had to the law concerning remoteness) But this power shall not be exercised during the life of the Settlor without his consent in writing

8. FROM and after the end of the Specified Period and subject to the foregoing powers and provisions the Trustees shall hold the trust property and its income

(1) As to one or the first half thereof in trust for the issue per stirpes of the Settlor (except his son Randolph and that son's issue) who shall be living immediately after such end (and who if a male

children of any child of his now living shall being male attain the age of twenty one years or being female attain that age or marry) and if more then one in equal shares per stirpes

Or in default of any such issue upon the same trusts as and by way of addition to the other or second half next hereinafter mentioned and

(ii) as to the other or second half of the Trust Property Upon trust to pay the income of such second half to the Settlor's son Randolph during his life and after his death

(a) the Trustees shall hold one or the first moiety of such second half In trust (both capital and income) for Randolph's issue per stirpes (except his son Winston and that son's issue) who shall [illegible] Randolph and being male attain the age of [illegible] years or being female attain that age or [illegible] if more than one in equal shares per stirpes

Or in default of any such issue Upon the same trusts as and by way of addition to the other or second moiety next hereinafter mentioned and

(b) the Trustees shall hold the other or second moiety of the said second half of the Trust Property Upon trust to pay the income of such second moiety to Randolph's son Winston during his life and subject thereto in trust (both capital and income) for his

(Winston's) issue per stirpes who shall survive both Randolph and Winston and being male attain the age of twenty one years or being female attain that age or marry and if more than one in equal shares per stirpes

Or in default of any such issue Upon the same trusts as and by way of addition to the said first moiety and

(c) subject to the foregoing trusts the Trustees shall hold the second half of the Trust Property Upon the same trusts as and by way of addition to the first half thereof and

(iii) subject to all the foregoing trusts the Trustees shall hold the Trust Property and its income In trust for Randolph absolutely

(iv) PROVIDED ALWAYS that the statutory power of advancement in respect of the Trust Property and each half thereof shall extend to the whole (and not merely to one half) of each share or interest in the capital concerned

9. SUBJECT to any consent prescribed by Clause 4 hereof any money liable to be invested under this Deed may be invested in any investments of whatsoever nature and wheresoever (including the purchase of any rights interests or property whether movable or immovable and including the lending or deposit

or money on any personal or other security and upon any terms as freely as if the Trustees were absol- [illegible] beneficially entitled to the moneys [illegible]

[illegible] And they shall have the like unrestricted power of changing investments from time to time And section 32 of the Law of Property Act 1925 (or corresponding provisions in the case of immovable property situate elsewhere than in England or Wales) shall apply to any immovable property to be purchased by the Trustees and they shall have in respect thereof all the powers of disposition leasing management repair building development equipment furnishing and improvement (and all other powers) of an absolute beneficial owner (including in particular full powers to stock farms and to carry on equip and finance any farming or other business in any part of the world) and may in that behalf make any outlay out of the income or capital of the Trust Property <u>PROVIDED ALWAYS</u> that no loan or deposit of money shall at any time be made hereunder to or with the Settlor or any wife or widow of his and that the Trustees shall not be liable for any loss or damage which may happen at any time to any documents or chattels for the time being included in the Trust Property or to any immovable property situate outside Great Britain

10. SUBJECT to the provisions of Clause 11 hereof

the Trustees shall have all the powers of an absolute beneficial owner for dealing with or disposing of the Trust Property from time to time including in particular the fullest powers to publish or arrange for the publication of any documents and to exercise all other rights of copyright on any terms and in any manner And they may raise and pay out of the capital or income of the Trust Property any sums required from time to time for or in connection with the exercise of any of their powers And may allow any documents or chattels for the time being included in the Trust Property to be or to remain held or deposited on their behalf by or with any person or persons (in England or elsewhere) for any period and on any terms without themselves being liable for any loss or damage occasioned thereby

11. PROVIDED ALWAYS as follows:-

(i) During the life of the Settlor the Trustees shall not publish or arrange for the publication of any document or exercise any other right of copyright hereunder without his consent

(ii) The Trustees shall not at any time make public or sell or dispose of any document or information relating to any office ministry or department of the British Government since the year One thousand nine hundred or any official papers of a general character without the permission of the Prime Minister of England for the time being and the other Ministers (if any) for the time being representing the office ministry or department concerned

(iii) The Trustees shall not at any time sell or alienate or part with the ownership or control of any of the documents and casket mentioned in parts 3 and 4 of the Schedule hereto except by making over the same to some beneficiary or beneficiaries (or the successors in title of some beneficiary or beneficiaries) becoming absolutely entitled under this Deed

(iv) The Trustees in their discretion may conclusively decide in each case whether and to what extent any moneys or benefits at any time held by them hereunder are to be treated as or allocated to capital or income and may make any divisions or apportionment accordingly and may in any such matter adopt and act upon the advice or decision of any accountant or actuary or legal or other adviser

(v) The documents hereby settled shall not include any which the Trustees may exclude as mentioned in the note at the end of the Schedule hereto

12. ANY of the Trustees for the time being who shall be an individual engaged in any profession or business may be employed by the Trustees and shall be

entitled to charge and be paid all professional or other reasonable and proper charges for any business done or services rendered or time spent by him or his firm in connection with the trusts powers or provisions of this Deed whether or not within the usual scope of his profession or business and although not of a nature requiring the employment of a professional or business person

13. DURING the life of the Settlor the statutory power of appointing new trustees of this Deed shall be exercisable only with his consent in writing

14. Subject to any consent required by the last foregoing clause any Company or Corporation whatsoever may at any time be appointed to be a trustee (either ordinary or custodian) of this Deed on such terms and conditions as to remuneration (payable out of the trust premises) or otherwise as the persons or person making the appointment (and the Settlor if still living) shall think proper

IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written

THE SCHEDULE ABOVE REFERRED TO

PART 1.

Records and memoranda relating to the early middle life of the above named settlor including in particular the years 1906 (when he first became a Minister of the Crown, to 1934

These are contained in some 75 boxes which are now or were lately in the Muniment Room at Chartwell Manor. The catalogue of the contents of the said boxes is included in the documents mentioned in this Part 1

PART 2.

Records and memoranda relating to the second Great War and preceding years from 1934 to 1945 and material used in the Settlor's Life of the Duke of Marlborough These are contained in some of the said boxes referred to in Part 1 of this Schedule

PART 3.

Papers formerly belonging to Lord Randolph Churchill bound in upwards of twenty white vellum volumes and now or lately at Blenheim

PART 4.

The tortoiseshell casket with 613 letters therein from the First Duke of Marlborough to the Grand Pensionary Heinsius of the Netherlands all of which were presented to the above named Settlor by the Queen and Government of the Netherlands on 2nd November 1945 (the letters having been collected from the archives of that country) These letters have been or may soon be published under the auspices or with the concurrence of the Government of the Netherlands

NOTE WHEREAS apart from historical memoranda the said seventy five boxes or some of them contain many papers such as private family or personal letters petty day-to-day transactions bills and the like AND WHEREAS the Settlor has not been able to give the time necessary to sort these out NOW THEREFORE the trustees in their discretion may exclude from the foregoing Settlement any such records or memoranda (mentioned in Parts 1 and 2 of this Schedule) as they may for any reason decide to be insignificant or unsuitable for inclusion therein Their decision in this matter shall be made as soon as conveniently practicable (it is hoped certainly within a year from the present date) and they may delegate their powers and discretion in the matter to any person or persons (who may if thought fit be or include any of themselves) and such powers shall include full authority to destroy or enable the destruction of any documents the preservation of which may in their (or their delegate's) opinion be no longer necessary or for any reason inadvisable.

SIGNED SEALED and DELIVERED
by the said Right Honourable Winston Leonard Spencer Churchill in the presence of

Winston Leonard Spencer-Churchill

Anthony Moir
70 Pall Mall SW1
Solicitor

SIGNED SEALED and DELIVERED
by the said Clementine Ogilvy Churchill in the presence of

Clementine Ogilvy Churchill

Anthony Moir
as above

SIGNED SEALED and DELIVERED
by the said Right Honourable Brendan Bracken in the presence of

Brendan Bracken

Private Secretary

SIGNED SEALED and DELIVERED
by the said Right Honourable Frederick Alexander Baron Cherwell in the presence of

Cherwell

Anthony Moir
as above

③

THIS SETTLEMENT is made the 5th day of December One thousand nine hundred and sixty-three BETWEEN LADY CLEMENTINE OGILVY CHURCHILL G.B.E. the wife of The Right Honourable Sir Winston Leonard Spencer Churchill K.G., O.M., C.H., M.P. of Chartwell Westerham in the County of Kent ANTHONY FORBES MOIR of 8 Waterloo Place Pall Mall in the County of London Solicitor SIR THOMAS LESLIE ROWAN K.C.B., C.V.O. of 16 The Vale Chelsea in the County of London Company Director and JOHN RUPERT COLVILLE C.B., C.V.O. of The Old Rectory Stratfield Saye Reading in the County of Berks Banker (hereinafter called "the Present Trustees") of the one part and the said THE RIGHT HONOURABLE SIR WINSTON LEONARD SPENCER CHURCHILL K.G., O.M., C.H., M.P. (hereinafter called "the Settlor") of the other part AND IS SUPPLEMENTAL to a Settlement (hereinafter called "the Chartwell Trust") dated the Thirty-first day of July One thousand nine hundred and forty six and made between the Settlor of the one part and the said Lady Clementine Ogilvy Churchill The Right Honourable Brendan Bracken and The Right Honourable Frederick Alexander Baron Cherwell of the other part WHEREUNDER the bound and unbound documents boxes and casket more particularly specified in the Schedule to the Chartwell Trust and the investments particulars whereof are set forth in the Schedule hereto (excluding such of the records and memoranda mentioned in Parts 1 and 2 of the said Schedule to the Chartwell Trust as have been excluded by the trustees of the Chartwell Trust under the power vested in them from the settlement thereby created) are (as well as other property) held (subject as regards the said documents to certain now subsisting rights and contracts affecting the same) upon the trusts and with and subject to the powers and provisions declared and contained in the Chartwell Trust

WHEREAS:-

(A) The Chartwell Trust gives power to the trustees for the time being thereof being not less than two in number in their discretion at any time or times within a period therein mentioned (which has not yet expired) to appropriate or realise or raise the whole or any part or parts of the capital of the property for the time being subject to the trusts of the Chartwell Trust and to transfer or pay the same to or apply the same for the benefit of (or settle the same on or for) all or any one or more of the issue of the Settlor (whether living at the date of the Chartwell Trust or thereafter to be born) in such shares (if more than one) in such manner and upon such terms or conditions (not benefiting the Settlor or any wife or widow of his) as the said trustees shall think proper discharged either wholly or partially (as the case may require) from the trusts powers and provisions of the Chartwell Trust And any settlement made by the said trustees under the said power on or for any person may contain such trusts powers and provisions whatsoever as they shall think proper in favour or for the benefit of (or exercisable by) all or any one or more of such person and his or her issue and the wives and husbands and widows and widowers (whether or not remarried) of such person and issue respectively and the said trustees may by any such settlement delegate in any manner and to any extent the exercise of the said power at any time or times (due regard being had to the law concerning remoteness) But the said power may not be exercised during the life of the Settlor without his consent in writing

(B) The Present Trustees are now the trustees of the Chartwell Trust and wish with the consent of the Settlor to exercise the said power by resettling the said documents boxes and casket and the said investments in manner hereinafter appearing

NOW THIS DEED WITNESSETH as follows:-

1. IN this Deed unless the context otherwise requires -

(a) "The specified descendant" means -

(i) at any time during the life of the Settlor the person who would at that time and in the absence of any disclaimer or surrender be the heir apparent or heir presumptive to a peerage of the United Kingdom limited to the Settlor and the heirs male of his body and

(ii) at any time after the death of the Settlor the person who would at that time and in the absence of any disclaimer or surrender be entitled for the time being to enjoy such a peerage as aforesaid

(b) "The Trustees" means the Present Trustees or other the trustees or trustee for the time being of the Chartwell Trust

(c) "The 1963 Assignment" means the Deed of Assignment dated the Seventeenth day of January One thousand nine hundred and sixty three and made between the Present Trustees of the one part and C. & T Publications Limited of the other part

(d) "The Trust Archives" means -

(i) the said bound and unbound documents boxes and casket more particularly specified in the Schedule to the Chartwell Trust excluding first such of the records and memoranda mentioned in Parts 1 and 2 of that Schedule as the trustees of the Chartwell Trust may under the power vested in them have excluded from the Settlement thereby created and secondly any copyright in or arising out of any of the said documents whether such copyright was assigned by the 1963 Assignment or otherwise or is still vested in the Present Trustees and

(ii) the investments rights moneys and property which may hereafter from time to time represent such documents boxes and casket (excluding as aforesaid) as a result of any future dealing or dealings with the same

(e) "The Ancillary Fund" means the said investments particulars whereof are set forth in the said Schedule hereto and the investments moneys and property from time to time representing those investments

(f) "The Resettlement Property" means the Trust Archives and the Ancillary Fund

(g) "The Perpetuity Date" means the twentieth anniversary of the date of the death of the last survivor of the descendants of the Settlor living on the Thirty-first day of July One thousand nine hundred and forty six

2. IN exercise of the power hereinbefore recited and of any or every other power them enabling and with the consent of the Settlor testified by his execution hereof the Present Trustees hereby appropriate and

settle the Resettlement Property and declare in regard thereto as follows:

(a) The Resettlement Property and the income thereof shall henceforth be held (subject as regard the Trust Archives and any income therefrom to all subsisting rights and contracts affecting the same) upon the trusts and with and subject to the powers and provisions hereinafter declared and contained in regard thereto discharged wholly from the trusts powers and provisions of the Chartwell Trust except so far as those trusts powers and provisions are herein saved or repeated

(b) From and after the date hereof the Trustees shall have power (but during the lifetime of the Settlor only with his written consent) in their absolute and unfettered discretion at any time or times before the Perpetuity Date to deliver transfer or pay the whole or any part or parts of the Resettlement Property to the person who is at the time of such exercise of this power the specified descendant or to apply the same for his benefit or to settle the same on him and his male issue in accordance with the provisions of the next following subclause of this clause as the Trustees shall think fit discharged either wholly or partially from the trusts powers and provisions of the Chartwell Trust and this Deed but so that no such exercise of this power shall benefit the Settlor or any wife or widow of his

(c) Any settlement made on any specified descendant and his male issue by the Trustees under the power contained in the preceding subclause of this clause may create any interest or interests whatsoever whether absolute or limited and whether vested or contingent and whether in possession or in reversion and may divide any assets or income comprised therein into any shares and may create such trusts whether mandatory or discretionary and contain such powers of appointment maintenance advancement and otherwise as the Trustees shall think fit being trusts and powers in favour of all or any one or more of the specified descendant and his male issue and any such settlement may contain such administrative powers and provisions as the Trustees shall think fit

(d) Until and subject to any or every exercise of the power hereinbefore contained and of the other powers hereby or by law conferred upon them the Trustees shall hold the Trust Archives in trust until the Perpetuity Date to permit the same to be possessed used and enjoyed (subject to such donditions and requirements for the safe custody and preservation of the Trust Archives as the Trustees may from time to time impose) by the person who is from time to time the specified descendant and shall until the Perpetuity

Date pay to that person the income of the Ancillary Fund and any income arising from the Trust Archives

(e) In default of any subject to any or every exercise of the power hereinbefore contained and of the other powers conferred upon the Trustees as aforesaid the Resettlement Property shall on and after the Perpetuity Date be held in trust for the person who is on the Perpetuity Date the specified descendant in tail male

(f) If the trusts hereinbefore declared concerning the Resettlement Property or any part or parts thereof shall fail or determine (otherwise than by the attainment by any person or persons of an absolutely vested interest or absolutely vested interests in the entirety thereof under the power hereinbefore contained) then subject to the said trusts and to the said power and the other powers conferred on the Trustees as aforesaid and to any or every exercise of those respective powers the Resettlement Property or part or parts thereof concerned (as the case may be) and the income thereof shall be held in trust for such descendant or descendants of the Settlor and if more than one in such shares and manner in all respects as the person who is the specified descendant immediately before such failure or determination or the Perpetuity Date (whichever shall first occur) shall by any deed or deeds revocable or irrevocable executed before such failure or determination and before the Perpetuity Date (but during the lifetime of the Settlor only with his consent in writing) appoint

(g) Subject to the trusts hereinbefore declared and to the powers hereby or by law conferred and to any or every exercise of those powers the Resettlement Property and the income thereof shall be held in trust absolutely for Winston Churchill (the grandson of the Settlor and son of Randolph Frederick Edward Spencer Churchill M.B.E.)

(h) The person who is from time to time entitled as the specified descendant to the possession use and enjoyment of the Trust Archives under subclause (d) of this clause shall have power from time to time with the consent of the Trustees (and subject to such conditions and requirements as aforesaid) to lend the Trust Archives or any part or parts thereof for the purpose of exhibition or study in any part of the world

(i) In addition and without prejudice to any power contained in the Chartwell Trust and hereby by incorporation conferred upon them the Trustees shall until the Perpetuity Date have power from time to time to apply the whole or any part or parts of the income or if insufficient is in hand any part or parts of the capital of the Resettlement Property in or towards

[RE-TYPED COPY OF THE PENULTIMATE PAGE OF THE 1963 SETTLEMENT]

the insurance cataloguing storage maintenance binding or repair of any documents boxes or other chattels for the time being forming part of the Resettlement Property

(j) Subject to the provisions of clause 3 hereof the powers and provisions contained in clause 4 and in clauses 9 to 14 inclusive of the Chartwell Trust shall continue to apply to the Resettlement Property as far as those powers and provisions are applicable thereto and are not inconsistent with the trusts powers and provisions herein declared and contained

3. NOTHING herein contained shall affect any property subject to the trusts of the Chartwell Trust other than the recent Resettlement Property and the income thereof or shall affect any copyright in or arising out of the Trust Archives or any part or parts thereof whether such copyright was assigned by the 1963 Assignment or otherwise or is still vested in the Present Trustees

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first before written

THE SCHEDULE above referred to

The Ancillary Fund

The following investments now standing in the name of Cox & Co (Nominees) Limited

1,000	Lloyds Bank Limited shares of One Pound each
1,200	Guardian Assurance Company Limited shares of five shillings each
900	Associated Portland Cement Limited units of One pound each

the income [illegible] charge [illegible]
or repair of [illegible] taxes or other [illegible] or

(3) Subject to the provisions of [illegible] hereof the powers and provisions contained in clause 4 and in clauses 9 to 14 inclusive of the Chartwell Trust shall continue to apply to the Resettlement Property so far as those powers and provisions are applicable thereto and are not inconsistent with the trusts powers and provisions herein declared and contained

3. NOTHING herein contained shall affect any property subject to the trusts of the Chartwell Trust other than the Resettlement Property and the income thereof or shall affect any copyright in or arising out of the Trust Archives or any part or parts thereof whether such copyright was assigned by the 1963 Assignment or otherwise or is still vested in the Present Trustees

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first before written

THE SCHEDULE above referred to

The Ancillary Fund

The following investments now standing in the name of Cox & Co (Nominees) Limited

1,000	Lloyds Bank Limited shares of One Pound each
1,200	Guardian Assurance Company Limited shares of five shillings each
700	Associated Portland Cement Limited units of One pound each

& one on next p

THE SCHEDULE (continued)

2,450 Philip Hill Investment Trust shares of five shillings each

SIGNED SEALED AND DELIVERED)
by the said Lady Clementine)
Ogilvy Churchill in the)
presence of :-)

Clementine Ogilvy Churchill L.S.

G. Hamblin
Well Cottage
Chartwell (Secretary)

SIGNED SEALED AND DELIVERED)
by the said Anthony Forbes)
Moir in the presence of :-)

Anthony F. Moir L.S.

H. B. James
8 Waterloo Place, Pall Mall
London S.W.1.
Private Secretary

SIGNED SEALED AND DELIVERED)
by the said Sir Thomas Leslie)
Rowan in the presence of :-)

T. L. Rowan L.S.

G. Temple
Vickers House
Millbank London S.W.1
(Secretary)

SIGNED SEALED AND DELIVERED)
by the said John Rupert)
Colville in the presence of:)

John Colville L.S.

J. Butler
34 Chrysell
London, E.C.2
(Secretary)

SIGNED SEALED AND DELIVERED)
by the said The Right)
Honourable Sir Winston)
Leonard Spencer Churchill)
in the presence of :-)

Winston S. Churchill L.S.

Doreen Pugh.
10 Hereford Sq.
S.W.7 (Secretary)

94

FLADGATE & Co

ANTHONY F. MOIR.
RICHARD V. SPENS
J. B. GILBART SMITH
J. A. McCRACKEN.

Consultant: G. FLADGATE FINCH

Telegrams: FLADGATES. LESQUARE. LONDON
Telephone: WHITEHALL 7401 3 & 0718

8, WATERLOO PLACE,
PALL MALL,
LONDON, S.W. 1.

Our Reference AFM/H.S

9th April, 1964.

Sir Burke Trend, K.C.B., C.V.O.
Cabinet Office,
London. S.W.1.

PRIVATE AND CONFIDENTIAL.

Dear Sir Burke,

The Chartwell Trust.

I now have pleasure in enclosing the Assurance in the agreed form signed by the Trustees.

I had intended to despatch the agreed letter to Randolph Churchill this week, but I hear that, at present, he is in Capri recuperating from his operation. I have deemed it wise, once again, to delay writing this letter for a short time.

Yours sincerely,

Anthony Moir

ENCL.

RECEIVED IN
12 JUN 1964
4/3/14
CABINET REGISTRY

To:
The Secretary of the Cabinet,
Cabinet Office,
Great George Street,
London. S.W.1. –

The Right Hon. Sir Winston Churchill's Archives Settlement

In consideration of your permitting us, as Trustees of Sir Winston Churchill's Archives Settlement, to retain under our control the State Papers formerly belonging to Sir Winston and which came into existence prior to his resignation as Prime Minister in 1945 and any further State Papers formerly belonging to him which may come into our hands together with any Catalogues relating to them, we write to give you our formal assurance that we will not without your consent, vest such Papers in any Beneficiary without imposing upon him an obligation similar in terms to that contained in clause 11(ii) of the Settlement known as "The Chartwell Trust" and receiving from such Beneficiary an undertaking to impose a similar obligation on any further disposal of the State Papers and Catalogues

DATED 9th April 1964

C. S. Churchill

T. L. Rowan

John Colville

Anthony Moir

Anthony Moir

5

In Estate Duty Cases, this form, when completed, should be annexed to the Inland Revenue Affidavit, Scottish Inventory or Estate Duty account in which the exemption from duty is claimed. If for any reason it cannot be so annexed, it should be forwarded to the Controller, Estate Duty Office, Minford House, London, W.14, or, in Scottish cases, to the Registrar, Estate Duty Office, 6 Waterloo Place, Edinburgh 1.

Applications concerning Capital Gains Tax only should always be forwarded to the Controller, Estate Duty Office, Minford House (as above).

Application for exemption under Section 40 Finance Act, 1930, and Section 31(3) Finance Act, 1965, and undertaking under Section 48 Finance Act, 1950, as amended by Section 31(7) Finance Act, 1965.

To The Lords Commissioners of Her Majesty's Treasury

~~I~~/We Sir Thomas Leslie Rowan, K.C.B., C.V.O. of 16 The Vale Chelsea London S.W. and John Rupert Colville, C.B., C.V.O. of The

~~of~~ Old Rectory Stratfield Saye Reading Berkshire

as the Trustees of a Settlement known as "The Archives Settlement" dated

~~as (1)~~ 5th December 1963

make application in respect of the objects specified ~~in~~ overleaf,

for exemption from:

(i) Estate Duty and Capital Gains Tax in connection with the death of The Hon. Randolph Frederick Edward Spencer Churchill who died on the 6th June 1968

~~(ii) Capital Gains Tax in connection with the gift dated the~~

and ~~I~~/We undertake as regards such of those objects as may be declared by the Treasury to be of national, scientific, historic or artistic interest that, until the objects again pass on a death or are disposed of, whether by sale or gift or otherwise,

(a) the objects will be kept permanently in the United Kingdom, and will not leave it temporarily except for a purpose and a period approved by the Treasury (2); and

(b) reasonable steps will be taken for the preservation of the objects; and

(c) reasonable facilities for examining the objects for the purpose of seeing the steps taken for their preservation, and for purposes of research, will be allowed to any person authorised by the Treasury so to examine them, (3) ~~save that the documents specified in Schedule.......... annexed shall be excluded from this undertaking so far as it relates to the examination of the documents for purposes of research.~~

Signature(s) T. L. Rowan John Colville

Date of application 4 December 1970

(1) The undertaking should be signed by the beneficiary who has or will have possession of the objects; where the objects are subject to a trust, or held for a minor, the undertaking should also be signed by the trustees, or guardian, as appropriate. If the beneficiary in possession relinquishes possession of the objects whether by sale or gift or otherwise, the Controller, Estate Duty Office, should be informed immediately, giving the name and address of the person to whom they are being transferred.

(2) Any application for the temporary export of exempted articles (e.g. for exhibition purposes) should be sent to the Controller, Estate Duty Office, well in advance of any arrangements for their transit.

(3) Attention is drawn to Section 48(2) of the Finance Act, 1950. If it is desired that any documents for which the exemption from Estate Duty and/or Capital Gains Tax is claimed should be excluded from undertaking (c) above, a schedule should be annexed giving particulars of the documents and the grounds on which the claim for exclusion is based.

Con. No. 13

043690. 2,500. 11/68. CAM A1971. Gp. 657

The bound and unbound documents boxes and casket comprised in the definition of "The Trust Archives" contained in clause 1 (d) (i) of the said Settlement and now subject to the trusts of the said Settlement.

In Estate Duty Cases, this form, when completed, should be annexed to the Inland Revenue Affidavit, Scottish Inventory or Estate Duty account in which the exemption from duty is claimed. If for any reason it cannot be so annexed, it should be forwarded to the Controller, Estate Duty Office, Minford House, London, W.14, or, in Scottish cases, to the Registrar, Estate Duty Office, 6 Waterloo Place, Edinburgh 1.

Applications concerning Capital Gains Tax <u>only</u> should always be forwarded to the Controller, Estate Duty Office, Minford House (as above).

<u>Application for exemption under Section 40 Finance Act, 1930, and Section 31(3) Finance Act, 1965, and undertaking under Section 48 Finance Act, 1950, as amended by Section 31(7) Finance Act, 1965.</u>

<u>To The Lords Commissioners of Her Majesty's Treasury</u>

I/~~We~~ The Right Honourable Clementine Ogilvy Baroness Spencer-Churchill, G.B.E.

of Flat 26 7 Princes Gate London S.W.7

as (1) the specific legatee under the Second Codicil dated 12th December 1963 to the Will of my late husband The Right Hon. Sir Winston Leonard Spencer Churchill

make application in respect of the objects specified ~~in~~ overleaf,

for exemption from:

(i) Estate Duty and Capital Gains Tax in connection with the death of The Right Hon. Sir Winston Leonard Spencer Churchill who died on the 24th January 1965

~~(ii) Capital Gains Tax in connection with the gift dated the~~

and I/~~We~~ undertake as regards such of those objects as may be declared by the Treasury to be of national, scientific, historic or artistic interest that, until the objects again pass on a death or are disposed of, whether by sale or gift or otherwise,

(a) the objects will be kept permanently in the United Kingdom, and will not leave it temporarily except for a purpose and a period approved by the Treasury (2); and

(b) reasonable steps will be taken for the preservation of the objects; and

(c) reasonable facilities for examining the objects for the purpose of seeing the steps taken for their preservation, and for purposes of research, will be allowed to any person authorised by the Treasury so to examine them, (3) ~~save that the documents specified in Schedule .... annexed shall be excluded from this undertaking so far as it relates to the examination of the documents for purposes of research~~.

Signature(s) Spencer-Churchill

Date of application 27 November 1970

(1) The undertaking should be signed by the beneficiary who has or will have possession of the objects; where the objects are subject to a trust, or held for a minor, the undertaking should also be signed by the trustees, or guardian, as appropriate. If the beneficiary in possession relinquishes possession of the objects whether by sale or gift or otherwise, the Controller, Estate Duty Office, should be informed immediately, giving the name and address of the person to whom they are being transferred.

(2) Any application for the temporary export of exempted articles (e.g. for exhibition purposes) should be sent to the Controller, Estate Duty Office, well in advance of any arrangements for their transit.

(3) Attention is drawn to Section 48(2) of the Finance Act, 1950. If it is desired that any documents for which the exemption from Estate Duty and/or Capital Gains Tax is claimed should be excluded from undertaking (c) above, a schedule should be annexed giving particulars of the documents and the grounds on which the claim for exclusion is based.

Con. No. 13

043690. 2,500. 11/68. CAM A1971. Gp. 657

All the papers and documents (usually known as "the post-1945 documents") bequeathed to me by the said Codicil.

In Estate Duty Cases, this form, when completed, should be annexed to the [illegible] [illegible] Inventory or Estate Duty account in which the exemption from duty is claimed. If for any reason it [illegible] be so annexed, it should be forwarded to the Controller, Estate Duty Office, Minford House, Rockley Road, West Kensington, London, W.14, or, in Scottish cases, to the Registrar, Estate Duty Office, 6 Waterloo Place, Edinburgh 1.

Applications concerning Capital Gains Tax only should always be forwarded to the Controller, Estate Duty Office, Minford House (as above).

Application for exemption under Section 40 Finance Act, 1930, and Section 31(3) Finance Act, 1965, and undertaking under Section 48 Finance Act, 1950, as amended by Section 31(7) Finance Act, 1965.

To The Lords Commissioners of Her Majesty's Treasury

I/We..

....

of ....

....

as (1)...

apply for exemption from

(i) Estate Duty and Capital Gains Tax in connection with the death of ....

....who died on the...............................

(ii) Capital Gains Tax in connection with the gift dated the ....

in respect of the objects specified in ....

and I/We undertake as regards such of those objects as may be declared by the Treasury to be of national, scientific, historic or artistic interest that, until the objects again pass on a death or are disposed of, whether by sale or gift or otherwise,

(a) the objects will be kept permanently in the United Kingdom, and will not leave it temporarily except for a purpose and a period approved by the Treasury (2); and

(b) reasonable steps will be taken for the preservation of the objects; and

(c) reasonable facilities for examining the objects for the purpose of seeing the steps taken for their preservation, and for purposes of research, will be allowed to any person authorised by the Treasury so to examine them, (3) save that the documents specified in Schedule..............annexed shall be excluded from this undertaking so far as it relates to the examination of the documents for purposes of research.

Signature(s)

Date of application

(1) The undertaking should be signed by the beneficiary who has or will have possession of the objects; where the objects are subject to a trust, or held for a minor, the undertaking should also be signed by the trustees, or guardian, as appropriate. If the beneficiary in possession relinquishes possession of the objects whether by sale or gift or otherwise, the Controller, Estate Duty Office, should be informed immediately, giving the name and address of the person to whom they are being transferred.

(2) Any application for the temporary export of exempted articles (e.g. for exhibition purposes) should be sent to the Controller, Estate Duty Office, well in advance of any arrangements for their transit.

(3) Attention is drawn to Section 48(2) of the Finance Act, 1950. If it is desired that any documents for which the exemption from Estate Duty and/or Capital Gains Tax is claimed should be excluded from undertaking (c) above, a schedule should be annexed giving particulars of the documents and the grounds on which the claim for exclusion is based.

4th December 1970

Gentlemen,

Finance Act 1950: Section 48

Section 48(1) of the Finance Act, 1950, requires that exemption from Estate Duty of objects of national, scientific, historic or artistic interest under Section 40 of the Finance Act 1930 shall apply to objects passing on a death occurring after 28th July, 1950 only if certain undertakings are given by an appropriate person. Section 48(2) of the Finance Act, 1950 empowers the Treasury to exclude from that part of the undertaking relating to examination of documents for the purposes of research any documents which contain information which for personal or other reasons ought to be treated as confidential.

I am directed by the Lords Commissioners of Her Majesty's Treasury to inform you that They are satisfied in regard to the documents comprising the Archives Settlement in which the Hon. Randolph Churchill (deceased) had a life interest, that some restriction of access to these papers for the purposes of research is appropriate. In these circumstances, the Treasury undertake that until such time as agreement on terms of access to the bound and unbound documents, boxes and casket comprised in the definition of 'the Trust Archives' contained in Clause 1(d)(i) of the Archives Settlement and now subject to the trusts of the said Settlement, is reached between H.M.G. and the Trustees of the Archives Settlement, They will not exercise Their right to authorise access to the papers. Once agreement on terms of access has been reached, the authorisation by the Treasury of access to the papers will be in accordance with the terms of the Agreement.

I am, Gentlemen,
Your obedient Servant,

Sir Leslie Rowan, K.C.B., C.V.O.,
J. R. Colville, Esq., C.B., C.V.O.,
as The Trustees of the Archives Settlement.

27th November 1971

Madam,

Finance Act 1950: Section 48

Section 48(1) of the Finance Act 1950 requires that exemption from Estate Duty of objects of national, scientific, historic or artistic interest under Section 40 of the Finance Act 1950 shall apply to objects passing on a death occurring after 28th July, 1950 only if certain undertakings are given by an appropriate person. Section 4 (2) of the Finance Act 1950 empowers the Treasury to exclude from that part of the undertaking relating to examination of documents for the purposes of research any documents which contain information which for personal or other reasons ought to be treated as confidential.

I am directed by the Lords Commissioners of Her Majesty's Treasury to inform you that They are satisfied, in regard to certain documents forming part of the estate of Sir Winston Spencer Churchill, deceased, that some restriction of access to these papers for the purposes of research is appropriate. In these circumstances, the Treasury undertake that until such time as agreement on terms of access to all the papers and documents (usually known as "the post-1945 documents") bequeathed to you, is reached between H.M.G., the Trustees of the Archives Settlement, and you (or your personal representatives), They will not exercise Their right to authorise access to the papers. Once agreement on terms of access has been reached, the authorisation by the Treasury of access to the papers will be in accordance with the terms of the Agreement.

I am, Your Ladyship,
Your obedient Servant,

D.A.V. Allen

Lady Spencer-Churchill, G.B.E.

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CONTENTS

SUMMARY LIST OF CLASSES

Page

OFFICIAL: Prime Minister

Chartwell				
✓ 20/1	1940			Correspondence etc.
✓ 2 B.	1940			Correspondence (copies)
✓ 3	1940		Private Office	Correspondence A
✓ 4	1940		" "	" " B-C
5	1940		" "	" " D-K
6	1940		" "	" " L-M
✓ 7	1940		" "	" " N-R
✓ 8	1940		" "	" " S-Y
9	1940		H.R.H. The Duke of Windsor	
10	1940		Churchill File	
11	1940		Appointments to Office	
12	1940		Applications for Employment	
13	1940		Personal Minutes	Printed
14	1940		Personal Telegrams	"
15	1940		Telegrams and Letters - Roosevelt (1939/40)	"
✓ 16	1940	Jul.- Sep.	Military Intelligence Reports	
✓ 17	1940		Operations in Norway	
✓ 18	1940		Exchange of British Troops in India	
✓ 19	1940			Engagement Cards
20	1941			Correspondence etc.
21	1941	Jan.- Jun.		Correspondence (copies)
✓ 22 P	1941	Jul.- Dec.		Correspondence (copies)
✓ 23	1941		Private Office	Correspondence A
✓ 24	1941		" "	" " B

CHARTWELL CLASS 27 - WAR CABINET

27/[illegible] fi[illegible]	1915 and Jan-July 1917	Papers & memo for War Cabinet on Economy on use of petrol: Conference of the Allies at Petrograd Jan, Feb 1917: Report of Sub Cttee on Munitions to Plenary Conference on demands put forward by Russian Government: Naval War Policy comparative tables of UK & US fleets versus German: Memo on question of making munitions of War Acts binding upon the Crown: discussions on manpower 10th REport of the Director General of National Sefvice to War Cabinet.	All Official
27/2 file	1915 and Sept-Oct 1917	War Cabinet Papers on:- Airship Construction Policy: Air preparations and offensive: Bombing operations: aeronautical supplies with Board of Trade Comments; airships for the Fleet: memo by Sir Edward Carson on Economic Offensive: Meetings of Air Policy Cttee: summaries of military situation in various theatres of war: Manpower and Reconstruction.	
27/3 file	1917 November	War Cabinet papers on: Air Force Bill: Duplication and Waste of Effort: Political situation in Russia: Effect on Manpower of acceptance of foreign contracts: Recruitment and Organisation of women on work of national importance Report on making Ministry of War Acts binding upon the Crown: Minutes of Meetings between UK War Cabinet and Heads of UK Government Depts with members of US Mission Maintenance of Armed Forces: Shipping situation: Recruitment for Army	
27/4 file	1917 November December	War Cabinet Papers on: Manpower and Recruiting: Analysis of Army at home: Political situation in Russia Maintenance of Armed Forces: Report on existing and prospective labour demand and how to deal with it: Release of Munitions Workers for Army: Tanks as time and man savers use. Waste Products	
27/5 file	1917	War Cabinet Papers: Minutes of Meetings of Ariel operations September to October 1917: Paper on Air Raids and bombing of Germany	
27/6 file	1917	War Cabinet Papers Minutes of Meetings of Air Raids Committee: defences against air raids	

CHARTWELL 24 OFFICIAL PAPERS OF COMMITTEE ON IMPERIAL DEFENCE

24/ 1909 ffs 1-34 (not all numbered)	Ariel navigation and Forth-Clyde Canal Sub Cttee of Cttee on Imperial Defence on Ariel navigation Summary of Evidence and Proposed conclusion: Sub Cttee on Strategical aspects of Forth Clyde canal scheme: Terms of reference of Committees: Proceedings at meetings.	6 pages
24/2 1909-1910 ffs 1-19	Better insurance schemes for National Service men required to serve abroad when health suffers: Proposed conditions and stage payment: Use of Reserve Corps in Army at home and abroad Proposed compulsory Home Army styled Army of National Defence only liable for service abroad in event of war directly endangering security of UK	
24/3 1911 ffs 1-4	Irish Question; Defence of Ireland from sea: Cession of Heligoland: maintenance of food supplies in wartime: military needs of Empire: safety of naval stores in magazines. Home Ports Defence Paper: Report on Winston Churchills visit to Germany & meeting with Emporer: Defence of River Thames in time of war: War risks to shipping bringing food to UK	
24/4 1912 ffs 1-19	Work of Committee of Imperial Defence (CID) Appointments to Committee: Defences at Cromarty, Scapa Flow and Humber: Meetings of Cromarty Sub-Committee	
24/5 1912 ffs 1-3 (not all folio numbered)	Print of CID: Strategical situation in the Mediterranean: minutes of meetings attended by Ministers from Canads: Representation of Dominion on CID Translation of German Naval Law Amendment Bill.	16 pages 4 pages 5 pages
24/6 1913-1914 ffs 1-10	Map showing distribution of troops available for Home Defence after first Concentration of the Central Force 1913 appointments to command of 4th Hussars War Planning for Home Defence: Procedures in CID.	
24/7 1911 ffs 1-2	Memorandum by Winston Churchill on military aspects of the Continental Problem.	4 pages August 1911

19th November 1934 WSC Letter 4/3/14	Acknowledges a secret and personal circular on the subject of Government paper. States that WSC is not "aware of any facts which would lead me to to accept your invitation to return any documents of the kind specified which I may have in my possession". Refers to a settlement by Lord Randolph Churchill, of state papers, with a prohibition on publication without HMG consent and states that WSC has himself executed a similar deed, with a similar provision.
23rd January 1935 Letter to T.Sol. 4/3/14	Records Churchill's reaction. Refers to the Law Officers' Opinion of 1934 and suggests that the legal position should be thrashed out with WSC.
25th January 1935 Letter from T.Sol. 4/3/14	Letter, agreed with the AG, concurs in view that WSC should be made aware of HMG's view that the papers should not be retained after his death.
3rd May 1935 Memorandum 4/3/14	Records events so far, including the Law Officers' advice on Government papers, and advises approach to WSC.
18th June 1934 Law Officers' Opinion 4/3/14	Advises, that in view of past Cabinet Minutes, ex Cabinet Ministers can retain their papers during their lifetime but that executors, administrators or assigns do not have any such right. The right to possession of the documents reverts to the Crown on the death of the Minister and continued retention would be an offence under section 2 of the Official Secrets Act. Reference is made to the possible difficulty of identifying the relevant papers in any proceedings for recovery.
3rd May 1935 Minute to Cabinet Secretary 4/3/14	Covering minute for Memorandum, doubting whether WSC will be moved by Cabinet Office arguments and suggesting that he is acting in consultation with Lloyd George.

15th June 1935 Letter to WSC (Agreed by T.Sol.) 4/3/14	Sets out Cabinet Office view of the law and their reasons for wishing the papers to be kept under their control.
18th June 1935 Letter from WSC 4/3/14	WSC asserts intention to retain documents during his lifetime. Questions what is meant by Cabinet papers and states that many important notes about Cabinet business which he had dictated were his own property.
27th June 1935 Letter to WSC (Agreed by T.Sol.) 4/3/14	Contains Cabinet Office definition of what is meant by Cabinet papers, conceding that original informal drafts prepared by a Minister at home which never became an official document, fall outside the definition.
5th December 1935 Note 4/3/14	No further action to be taken during WSC lifetime (approved by Cabinet).
19th April 1936 Note 4/3/14	Cabinet Secretary notes that WSC has returned all Cabinet Minutes and that he hopes to recover a great part of the Cabinet papers.
28th July 1945 Note 4/3/14	WSC said to be taking away the printed copies of his minutes but that copies would remain in HMG possesion.
31st July 1946 WSC Settlement T&M69/340	
26th March 1947 Note for Record 4/3/14	Deakin given access to Cabinet Office papers.
24th May 1952 Note 4/3/14	Emphasises historical importance of an archive of the complete working papers of a British Prime Minister at war.

27th June 1952 Note for Record 4/3/14	Record of meeting between Cabinet Secretary and WSC solicitor, Moir. Records Moir as saying that WSC's literary settlement was made on 31st July 1946 (trustees: Mrs Churchill, Brendan Bracken and Lord Cherwell) £2,000 plus 75 boxes of papers then at Chartwell conveyed to trustees. Four boxes contained collection of more Cabinet papers. Settlement for ultimate benefit of WSC's children with a power to assign benefits to any one of those in the period up to January 1966. Provision that none of documents to be published without WSC's consent during his lifetime and no public disclosure to be made of any papers relating to the work of any Government Department except with the consent of the relevant departmental Minister and Prime Minister of the day. Cabinet Secretary notes that trust does not extend to wartime files at present in Cabinet Office (on the basis that these were being looked after temporarily on WSC's behalf) and that prohibition on publication ceases to be applicable when the documents pass from the trustees to WSC's children. Note records that Moir was informed of the Cabinet Office view of the legal position (which was said to be news to him); that value was seen in preserving a single collection of Churchill papers; but that if the settlement was extended the Cabinet Office would certainly want the prohibition on publication extended to cover the papers in the hands of the ultimate beneficiaries. The note records that WSC subsequently stated that he was not particularly interested in the Cabinet Office documents and that he proposed to go through the trust papers, extracting some to make a second settlement in favour of Mrs Churchill.
31st May 1956 Law Officers' Opinion T&M 69/340	Opinion on effect of Public Record Office Act 1938 and Limitation Act 1939

3rd May 1961
Note for Record
4/3/14

Record of meeting between Moir and Cabinet Secretary. Notes present position on WSC papers is that:

(i) Papers up to 1945 are the property of the literary trust lodged in steel cabinets at Lloyds Bank;

(ii) Papers from 1945 onwards are WSC's personal property at Chartwell;

(iii) Some 500 No 10 files, relating to World War II, in the custody of the Cabinet Office.

Notes that the first two collections, certainly, are a mixture of private and state papers and that (as indicated in the note of 27th June 1952) the powers of the trustees over the documents in (i) expire on 1st January 1966, at which point the inhibition on disclosure and publication would cease. Trustees are now considering whether the documents in their care should not be scrutinized to see how many state papers were included and how control over publication might be achieved in respect of some private documents.

2nd June 1961
Note
4/3/14

Records Cabinet Secretary's decision that trustees should not be pressed to make a microfilm record but but that the preparation of an index would be advisable as would the inclusion in a fresh heirloom settlement of a prohibition on publication by future custodians of the papers. No 10 files to be retained.

29th June 1961 Note of Meeting 4/3/14	Records meeting between Cabinet Secretary and trustees. Agreed that index should be made of the papers under control of trust and that it would be desirable for the papers at Chartwell also to be catalogued. Moir confirmed Counsel's advice that trust period could not be extended but that the trustees could execute a fresh settlement, incorporating the provision against publication. Microfilming of most important papers agreed. (PRO subsequently retained a copy of the microfilm.)
19th July 1961 Report 4/3/14	PRO officials estimate task of arranging and catalogueing contents would be a full-time job for one man over 12 to 18 months.
1st August 1961 Letter to Moir 4/3/14	Informs Moir of PRO report.
18th August 1961 Note for Record 4/3/14	Meeting between Moir and Cabinet Secretary. Moir asserts that trustees have no power to offer to PRO papers within their control and that WSC and Lady Churchill will not offer post-1945 papers to PRO.
6th March 1962 Letter 5/20	PRO to Moir saying that microfilm of papers not expected to be made available to public except after after full consultation with Chartwell trustees and in any event not before papers belonging to Chartwell Trust made available to public. "It may be that some point of copyright might arise at some stage but I think this could be left until nearer the time when it will arise."
4th April 1962 Note 4/3/14	Records PRO activities, on repayment terms, in organising papers.

1st May 1962 Note 4/3/14	Note suggests that, since no further action was taken when WSC refused to surrender the papers in his possession, it was quite possible that the Crown had lost its title to them under the Limitation Act. LCD not to be brought in for the time being.
17th May 1962 Letter to Moir 4/3/14	PRO services not to be offered for post-1946 papers unless trustees willing to exercise influence to secure that these are kept intact and in due course made available for public inspection in UK. Following point made "for purpose of record". Among the papers of the Chartwell Trust are a number which were received or created by Sir Winston in his capacity as Prime Minister, and which prima facie are "public records"; I do not wish to press this aspect now but, in any future consideration about the destination of papers, the rights of the Crown in certain of them should be borne in mind".
15th January 1963 Letter 4/3/14	PRO to Cabinet Office. PRO author says he believes that the Cabinet Office shares his views that "whatever may be the strict legal position on the Crown's rights in some of the papers, it would be wrong to attempt to break up the present unity of the collection".
17th January 1963	WSC assigned copyright in Chartwell and post-1945 papers to C&T publications.
18th January 1963 Letter 4/3/14	Cabinet Office reply to PRO stating that Brook did did not contemplate trying to recover public records if suitable arrangements can be made.

28.2.63   4/3/14

Wilson to Mori

"I think I must press for the assurance from the Trustees that they will exercise their influence to secure that the whole of the collection (i.e. the pre 1945 and the post 1945 papers) will be kept intact and in due course made available to public inspection at some suitable place in this country"

See Wilson to Mor 12.9.63 on 4/3/14

1st March 1963 Letter 4/3/14	Moir to PRO. Asks whether PRO content with proposed new settlement. States that trustees would have no power to lay down a monetary requirement that no papers should be available to public inspection but refers to WSC's childrens' intention that final resting place for the papers should be Churchill College.
29th May 1963 Letter 4/3/14	Moir to Lady Churchill, enclosing draft settlement. Trust archives taken out of existing trusts, subject to the prohibition on publication. Trustees have power to vest trust archives absolutely in a beneficiary. (This provision being inserted primarily so that transferee could give the archives to Churchill College).
15th October 1963 Letter 28/2/404	Moir to Cabinet Secretary, mentioning that when Trustees assigned copyright to C&T publications cl.11 was inserted.
13th November 1963 Letter 4/3/14	Cabinet Secretary informed by Moir of the proposed new settlement and that the post-1945 papers will become amalgamated in the hands of the trustee in practice after the death of WSC and Lady Churchill.
5th December 1963 Further Settlement T&M69/340	
31st December 1963 Letter 4/3/14	Cabinet Secretary asks Moir about the effect of the draft settlement.
3rd January 1964 Letter	Moir responds to Cabinet Secretary confirming that trustees could transfer the archives to a specified descendant without imposing similar conditions to those of clause 11 of the Chartwell Trust.

22nd January 1964 Minute to PM 4/3/14 +++++++++++++++++	Cabinet Secretary informed PM of position on WSC papers. Specifically raises the question of whether legal title to the official papers should be conceded but suggests there are problems, including the Limitation Act point. Also refers to the unique historical importance of the papers. He recommends "so far as the question of legal title to the papers is concerned, we should leave matters thus - ie neither asserting our (rather doubtful) entitlement nor explicitly waiving it". Refers to to problems which may occur after the trustees lose control of the papers and suggests desirability of a gentleman's agreement that transfer before the end of the perpetuity period would not take place without the transferee agreeing to accept the clause 11 obligation.
24th January 1964 Minute 4/3/14	PM agrees.
27th January 1964 Note for Record 4/3/14	Cabinet Secretary says trustees very sympathetic and that it was agreed that a form of words would be found about the continuation of clause 11 obligation.
30th March 1964 Letter 4/3/14	Cabinet Secretary asks Moir about the position on the proposed 1945 papers.
18th March 1964 Letter 4/3/14	Moir encloses amended draft assurance intended to meet Cabinet Secretary's points.
9th April 1964 Assurance 4/3/14	Assurance in agreed form sent by trustees to Cabinet Secretary

4th May 1964 Letter 4/3/14	PRO amend foreword to WSC papers to avoid concession of ownership.
9th February 1965 Note for Record 28/2/404	Cabinet Secretary records meeting with Moir, when Moir asked "almost too casually" whether WSC's death would make any difference to the papers since he had some vague idea that, when a politician died, the authorities required his family and executors to surrender any official papers. Moir was asked what the trustees would do if they were faced with a request of this kind. "He thought deeply for a moment and then said that he would expect the trustees to be very reluctant to comply, unless the authorities could establish, beyond question, that title to the papers in question still remained with them and had not passed to the trustees." It was agreed that the question would not be put formally to the trustees.
23rd July 1968 Letter 5/20	PRO to trustees' solicitors stating that all the official series among Chartwell and Churchill papers are regarded as Crown copyright.
27th September 1968 Letter 5/20	Colville to Cabinet Secretary, recording that Norman Brook had frequently told the Chartwell settlement trustees that, although the Crown would not wish to demand papers back, they must necessarily take an interest in their disposal and safe custody and would certainly wish to intervene if at any future date any of Sir Winston's descendants tried to sell them.
5th December 1968 Letter 5/20	Letter from Colville, enclosing a Memorandum with proposals on the future custody of the Chartwell papers. Proposed that the ultimate depository of the papers (including those "which are the subject of Crown copyright") should be Churchill College. Hoped that Cabinet Office and LCD would agree to temporary lodging of the papers in the Bodleian .

9th December 1968 Letter 5/20	Cabinet Office to LCD, inter alia questioning whether copyright is a satisfactory way of describing the relevant official papers since it may already be running out in relation to papers previously published by WSC.
17th December 1968 Note for Record	Records arrangements thought necessary by Cabinet Office, LCD and PRO to give effect to informal understandings with the trustees.
6th January 1969 Letter 5/20	Miss Nunn to Colville. Agreed transfer of Churchill Trust papers, ie up to 1945 to Bodleian and transfer of 1945-1964 papers to Churchill College subject to conditions that: (i) access to clause 11 papers not permitted without consent of LCD and Cabinet Office; (ii) the state papers are not copied except for transmission to printers; and (iii) except with consent, LCD and Cabinet Office papers will not be removed from the libraries.
7th January 1969 Letter 5/20	Colville to Miss Nunn agreeing arrangements.
10th February 1969 Letter 5/20	Miss Nunn to LCD. Cabinet Secretary has asked for further consideration to be given to ownership of public records plus implications of 30 years rule.
11th February 1969 Letter 5/20	LCD to Cabinet Office, referring to Law Officers' Opinion of 1956. Conclusion drawn that effect of Limitation Act is that Crown is walking on thin ice.

14th February 1969 Minute 5/20	Miss Nunn to Cabinet Secretary explaining LCD views.
7th March 1969 Letter 5/20	Miss Nunn to Colville enclosing Memorandum of proposals, including statement that "the Government are prepared to acquiesce in the retention of public records in the collection on the basis that it remains a unity and there is no unauthorised undisclosure and that there is reasonable access (in the case of public records access in accordance with arrangements approved by LCD)".
19th March 1969 Letter T&M69/340	LCD to Treasury Solicitor, explaining the position.
11th April 1969 Letter 5/20	Treasury to Cabinet Office explaining estate duty position.
23rd April 1969 Note of Meeting 5/20	Records T Sol's advice that HMG could not now establish a claim to ownership of the official material, theoretically some control might be claimed through Crown copyright in the Official Secrets Act but this would be doubtfully effective and if exercised or threatened could be an embarrassment for HMG and to threaten the estate duty point would imply valuation (which was impossible).
28th April 1969 Letter T&M 69/340	T Sol to LCD enclosing a draft agreement, which "deliberately ignored Crown copyright" and covered Crown ownership "with delicacy".
30th April 1969 Minute 5/20	Miss Nunn to Cabinet Secretary recording T Sol advice and the position on estate duty.

5th May 1969 Note of Meeting	Note of meeting with the trustees. Records: post-1945 papers were the absolute property of Lady Churchill, who intended them to pass to Churchill College and be amalgamated with the Chartwell Trust papers. Chartwell Trust explained plus the fact that copyright in these papers and the Churchill papers "insofar as it rested with the trustees and Lady Churchill" have been sold to C&T publications and other publishers. Meeting agreed that the integrity of the collection should be preserved and that Mr Winston Churchill's interest might perhaps be transferred to Churchill College under a charitable trust but that this step should be deferred. Trustees had difficulty in agreeing proposals about access made by Cabinet Office because of agreement with C&T publications. Mention made of PRO implications, including the fact that a considerable part of the papers were duplicated in the PRO.
22nd May 1969 Letter 5/20	Trustees' solicitors to Cabinet Office commenting on on letter and draft note of 5th May meeting.
10th June 1969 Note of Meeting 5/20	PRO handling.
17th February 1970 Letter 5/20 T&M69/340	Treasury to Cabinet Office dealing with estate duty exemptions.
6th March 1970 Letter 5/20 T&M69/340	PRO to LCD stating that unique items in the Chartwell papers were either not a particularly large proportion or not particularly sensitive from the point of view of the publishers.

10th March 1970 Letter 5/20 T&M69/340	Treasury to Cabinet Office stating that the estate duty position would have to be settled despite the the fact that there was no formal agreement yet on the lines of the 5th May 1969 meeting.
25th March 1970 Note of Meeting 5/20 T&M69/340	
5th August 1970 Letter T&M69/340	Treasury to T Sol seeking advice on estate duty exemptions.
22nd September 1970 Letter plus Memorandum T&M69/340	Colville to Armstrong seeking to ameliorate the estate duty exemptions in relation to the post 1945 papers.
9th October 1970 Letter 5/20 T&M69/340	Treasury Permanent Secretary to Colville responding to letter and offering an extra statutory concession in relation to both the post and pre-1945 papers.
27th November 1970 Letter 5/20	Extra statutory undertaking for post-1945 papers.
4th December 1970 Letter 5/20	Extra statutory undertaking for pre-1945 papers.
28th May 1971 Letter T&M69/340	Colville to Cabinet Secretary, suggesting that the pre-1945 papers should be purchased from Mr Winston Churchill.
19th July 1971 Letter 5/20 5/23	Cabinet Secretary to Colville turning down suggestion "aside from any question of who actually "owns" the Churchill papers, where we have recognised that the trustees might have "rights", although we have not accepted that these would extend to any official papers which might be involved".