CONFIDENTIAL

CABINET OFFICE

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CLOSED 1995

HR 10/3

FILE TITLE

CUSTODY OF THE PRIVATE COLLECTION OF DOCUMENTS OF SIR WINSTON CHURCHILL HELD IN THE CHARTWELL TRUST.

PART NUMBER 12

FILE BEGINS 5.1.95 ENDS 21.4.95 | FILE No. HR 10/3 | PART NUMBER 12

INDEX HEADINGS

REFERRED TO	DATE	REFERRED TO	DATE	REFERRED TO	DATE

CLOSED 1995

CAB 103/814

Part 1 of ~~3~~ 4

THERE IS AN ANNEX TO THIS FILE

CONFIDENTIAL

Dd 8219054 9/91 C20 GP 2276/2 CCN 52299

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58M	13.4.95	NOTE						
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59	18.4.95	Draft.	Public Records i				(Stored	
60	18.4.95	Letter	Private Possessio				Records	
59M	18.4.95	H95/285	Note of 1282 by				file	1999)
			BCheeseman LCD			?		
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OS90 (6/89)D

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OS90 (6/89)D

FOLIO REGISTER-FILE No. HR 10/3 PT. 12

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1	5·1·95	A117 H95/8	10	21·3·95	Minute	22	4·4·95	H95/237A
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8	10·3·95	N.F.R.	20	3·4·95	H95/233A			
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OS90 (6/89)D

HO95/288 c- Miss Andrews (by fax)

Many thanks. I am content, subject to getting Farrers to make the amendments. PSRB 21.4

CABINET OFFICE
A 6774
21 APR 1995
PUBLIC RECORDS INSTRUCTIONS
FILE No.

SIR ROBIN BUTLER

CHURCHILL ARCHIVE

I attach a copy of the briefing which has been provided for the Secretary of State for National Heritage and which will be made available to Press Offices prior to the announcement relating to the Churchill Archive. This has been drafted by the Department of National Heritage with contributions from me and from Treasury Solicitors.

You will see that A 22c) has a piece still in square brackets. These words appeared in briefing which we produced over a year ago when the litigation started. I have assumed the situation still to be the same but did not wish to cause alarm by making too many enquiries.

I had hoped to let you see the final version of the legal documents but Treasury Solicitors are still in discussions with Farrers who are unable finalise matters until Monday. Farrers have been somewhat remiss in circulating documents purporting to be the final version without consulting us and are now resisting further amendments, but they have not even made changes which we requested at an early stage.

I enclose the latest version of the legal documents; the Lord Chancellor, in his letter of 19 April, supposed that you would wish to see them yourself. I have checked to see if further amendments are necessary to meet the Lord Chancellor's points. The only one that can be met in the documents themselves is his third point about the Purchase Agreement making it clear that no financial consideration is being given to the Family Trustees in respect of the state papers. To achieve this we need to amend the Purchase Agreement so that it refers to the Trustees interest in the papers. This is a point which you made some time ago and which was passed to Farrers but which they have not yet incorporated.

Finally I enclose a copy of the latest letter sent to Farrers by Treasury Solicitors so that you can see what are the outstanding points.

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
21 April 1995

24 APR '95 10:25 P.2

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ENQUIRIES:
071 217 6050

URGENT
YES/NO

FACSIMILE LEADER

NAME: M C Carpenter

DEPARTMENT: Treasury Solicitor's Dept

ADDRESS: Queen Anne's Chambers

FAX No: 7 210 3503

FROM: Pat Andrews

DOCUMENT REFERENCE/TITLE: Churchill papers

TOTAL NUMBER OF PAGES: +1 DATE: 24-4-95

MESSAGE:

Minute to Sir R Butler with his ms comment in reply.

ACKNOWLEDGEMENT REQUIRED YES/ NO

21.4.95

CABINET OFFICE
H Int.....
24 APR 1995
FILING INSTRUCTIONS
FILE No

Ref. A095/1223

MR ALLAN

c PJ/Mr Phillips
Mr Carpenter (TSol)
Miss Andrew

Churchill Archive

Thank you for your minute of 10 April in which you said that the Prime Minister would be interested in the advice on the points made in the Lord Chancellor's letter of 7 April and in how the decision with regard to the purchase of the Churchill Archive was to be presented.

2. In his letter of 7 April the Lord Chancellor expressed concern about the Government making a deed of gift of public records to a private owner and asked that his preferred solution of depositing the material in Churchill College Archive Centre which would be designated a place of deposit under Section 4 of the Public Records Act 1958 should be considered by officials.

3. Advice from Treasury Counsel is that whilst Churchill College could be designated a place of deposit under Section 4 of the Public Records Act such designation would be an empty gesture. This is because the papers have been out of official custody since long before the 1958 Act was passed and therefore there is no power under the Act to direct the transfer of papers in the Churchill Archive to Churchill College.

4. The Lord Chancellor has now accepted this. In his letter of 19 April he makes further points about certain presentational aspects of the proposal which we are now considering. It is not possible for us to meet the Lord Chancellor's second point about not handing over as a gift anything which would be of value in isolation since, by definition, the official papers to be included in the Deed of Gift have an intrinsic value collectively

and some of them individually, but I understand that retention of the archive in this country, intact, at Churchill College and available to researchers will be regarded as acceptable recompense for HMG's 'gift'. The other points which the Lord Chancellor wishes us to consider present no problems.

5. On the question of presentation, as you surmised, it will be for Lord Rothschild and the National Heritage Memorial Fund (NHMF) to make the announcement. The Secretary of State for National Heritage is intending to be at the NHMF's press conference, as he has attended those of other Lottery distributors, but the announcement will be the Fund's own. As you will appreciate, it is crucial that the decisions of the Lottery distributors are seen to be independent of Ministers or the expenditure would have to be classified as part of the public expenditure planning total.

6. The Secretary of State will stress the Archive's particular significance to this year's 50th Anniversary of VE Day. As you know, we have put to Lord Rothschild that the announcement in relation to the Churchill Archive should be shifted from 26 April to coincide with the VE Day Commemoration but Lord Rothschild sees some difficulties with this which I understand he will be discussing with your office this evening. In any case, the general line to take will be that the decision to purchase was the Fund's own but followed an independent valuation of the Archive and that the Government's role was limited to the need for the Prime Minister to give his consent to the transfer of ownership of the papers (including the official papers). He will say, if the Prime Minister is content for him to do so, that such consent has been given and that the acquisition of the archive by Cambridge University afforded the opportunity to keep a set of papers of key importance to the nation together in this country in a publicly available form, accessible to scholars and students who wish to consult them.

7. The Secretary of State and the No 10, Cabinet Office and DNH Press Offices will all be fully briefed on the background to the NHMF's announcement.

8. I should be grateful if you could confirm that the Prime Minister is now content for the announcement to be made.

Yours ever, R.B.

ROBIN BUTLER

21 April 1995

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77

URGENT
YES/NO

FACSIMILE LEADER

NAME: Ms C Hobley

DEPARTMENT: DNH

ADDRESS: 2-4 Cockspur Street SW1Y 5DH

FAX No: 0171 211 6170

FROM: Pat Andrews

DOCUMENT REFERENCE/TITLE: CHURCHILL: Q & A BRIEFING

TOTAL NUMBER OF PAGES: + 2 DATE: 21-4-95

MESSAGE:

Comments on Q & A briefing
Suggest you check Background & Presentation
with Eleri Wones, T. Sol.

ACKNOWLEDGEMENT REQUIRED YES/ NO

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HO95/282

Ms C Hobley
Cultural Property Unit
Department of National Heritage
2-4 Cockspur Street
London SW1Y 5DH

21 April 1995

Dear Carol

CHURCHILL ARCHIVE: Q & A BRIEFING

Thank you for letting me see the briefing for the Secretary of State and the revised Q & A briefing.

I have a few comments on the briefing as follows:-

Background

'deposited' has a particular meaning in the records world. It would perhaps be better to change the wording of the first line and use 'located' or 'held' at Churchill College.

It was 1989 when the Trustees first raised with us questions relating to ownership and copyright so the "about" in the second line of the second paragraph could be deleted.

In the third paragraph, "elected to settle the matter through the courts" sounds a little odd, perhaps "decided to seek a ruling from the Courts" would be better?

You might like to add "in 1990" following "re-settlement" at the end of the third paragraph.

It is not at all clear to me that the litigation ever was suspended although there were proposals that this should be so. The two-line paragraph referring to this does not really add anything and I suggest it should be deleted.

The last sentence of the Background note does not quite reflect HMG's contribution to keeping the Archive intact. Could it perhaps read:-

> "This was accepted by the NHMF Trustees and, in order to ensure that the Archive was kept intact, the Government agreed to drop the litigation and to transfer the State papers formally to Churchill College".

Presentation

You have asked for my comments on the second sentence of the second paragraph. I suggest:-

> "This can be achieved by pointing out that what is being purchased by the Lottery funds is the Churchill Family Trustees' interest in the archive. The State papers to which the Crown lays claim are being transferred to Churchill College under a separate agreement".

I understand that Treasury Solicitor (Ms Wones) has only been asked for comments on the actual Qs & As. It would be as well to ask her to cast an eye over the background and presentation notes as well since some of the points made are still under discussion with Farrers.

Q & As

A5 "It's" should be "its"

A20 You may wish to ask Treasury Solicitor to confirm but I believe copyright owners are the Crown, W Churchill MP, C& T Publications and Peregrine Churchill.

A22 a) Second sentence should read "They do, however, include <u>copies of</u> minutes to....."

c) I am trying to check this but have not yet managed to do so.

A23 Square brackets can be removed.

Yours ever

Pat

MISS P M ANDREWS

DRAFT Q & A BRIEF

On 26th April 1995 there [may] be an announcement that a grant is being made to Cambridge University by the National Heritage Memorial Fund from lottery money to enable the University to purchase pre-1945 papers in the Churchill Archive and for them to be held in Churchill College, Cambridge together with post-1945 papers which the College already owns.

Q1 What does the Archive consist of?

A1 Personal, political and literary papers, official documents relating to his Ministerial and Prime Ministerial appointments spanning the years 1906-1945, including drafts of Sir Winston Churchill's wartime speeches.

The Archive as a whole spans the years 1874-1945 and documents Churchill's life as a schoolboy, as a correspondent in South Africa, as an MP, as well as his appointments as a Minister of the Crown.

Q2 Does the purchase price include a price for the official documents?

A2 No but the official documents are being transferred to [Cambridge University] by Deed of Gift to ensure that the Archive is kept intact at Churchill College. Copyright in the official papers will be retained by the Crown.

Q3 Didn't the Government enter into litigation to establish ownership of the official documents?

A3 Yes. Litigation to establish ownership began in 1993 by means of an Originating Summons. This has now been withdrawn by the Attorney General.

Q4 Why?

A4 Now that it can be ensured that the archive will remain intact at Churchill College there is no further point to the litigation.

Q5 Who has agreed to the transfer of the official documents?

A5 Her Majesty The Queen has been consulted and has consented to the Transfer. As required under a settlement drawn up by Sir Winston Churchill in 1946 and subsequent correspondence, the Prime Minister has also been consulted and [given his consent].

Q6 Why have these official documents not gone to the Public Record Office where they can be seen by researchers?

A6 It is believed to be in the public interest that the Archive containing Sir Winston Churchill's papers should be preserved intact and not broken up. They will remain at Churchill College where they have been since the 1970s. Copies of many of the documents are already in the Public Record Office on the files of the relevant government departments.

Q7 Will the Archive be publicly available?

A7 Yes, as indeed it has been since the completion of the official biography by Martin Gilbert in [1991].

Q8 Who are the beneficiaries of the sale?

A8 [Members of the Churchill family - check]

Q9 What about the papers of other Prime Ministers?

A9

a. On relinquishing office, Prime Ministers have, by convention, taken with them certain 'personal' papers which have been written, signed, sent or received by the Prime Minister personally. They do not include copies of Cabinet documents. They do, however, include copies of minutes to Ministerial colleagues, telegrams, speeches etc. These papers are 'personal' only because they are written, signed, sent or received by the Prime Minister personally. Many are public records, the counterparts of which remain on official files and are made publicly available in the Public Record Office after 30 years. Those copies which are taken away by outgoing Prime Ministers are subject to the Official Secrets Act and remain in Crown Copyright.

b. The final destination of these papers is a matter for the former Prime Minister or his/her Trustees. Most deposit them in University libraries - Eden, Attlee, Chamberlain, for example.

c. [CHECK - Lady Thatcher and Sir Edward Heath are believed still to be working on their papers; Lord Callaghan's biographer is working on his;] Lord Stockton's papers are at the Bodleian Library as are Lord Wilson's.

d. Prime Ministers who have relinquished office since Lord Wilson have been asked to give an undertaking not to allow their 'personal' papers to go out of the country.

e. With the agreement of the present Prime Minister, only papers which are truly personal will, in future, be removed from official custody.

Q10 Can other Prime Ministers' 'personal' papers be sold in the same way as the Churchill Archive?

A10 Purely personal papers can be sold at any time. The official papers in Sir Winston's archive are not being sold. [We would expect to apply the same principles to any other archive].

Q11 Correct use of lottery money?

A11 This is a matter for the National Heritage Memorial Fund.

Q12 Why money from the lottery and not from the Exchequer?

A12 Lottery money is a more appropriate source of funding - it falls within the NHMF's criteria for use of lottery funds.

Q13 Who will now own the Archive?

A13 Cambridge University will own both the pre-1945 papers (through a Purchase Agreement and a Deed of Gift) and the post-1945 papers [assigned] to them by Churchill College.

Q14 Where can the Archive be seen?

A14 At the Archive Centre, Churchill College, Cambridge, on application to the Keeper.

Q15 Can the Archive be sold overseas by the University?

A15 No. The new Churchill Trustees hold the whole of the Archive under a charitable trust and may not sell any part of it without the consent of the Heritage Lottery Trustees. As Trustees of a charitable trust, the Trustees may not, in any event, dispose of the permanent endowment of the charitable trust without the consent of the Charity Commissioners or of the Courts.

Q16 Does the Government have any say over a future sale of the Archive?

A16 A sale of the Archive could not take place without the consent of the Heritage Lottery Trustees, the Charity Commissioner and/or the Courts. The Government considers that these bodies are best placed to supervise this charitable trust.

Q17 What about the costs of the litigation?

A17 As is normal where cases are discontinued, each side is to bear its own costs.

Q18 What are the costs to the Government?

A18 ?

Q19 Can anyone now copy the papers in the Archive?

A19 Any copying this is more extensive than is allowed for in the Copyright Designs and Patents Act 1988 will require the licence of the copyright owners.

Q20 What about the plans of the Churchill family to raise still more money by copying the Archive onto CD-Rom discs?

A20 Any such copying of the entire Archive will require the consent of all the copyright owners and suitable terms will have to be negotiated.

CABINET OFFICE
H Int.....
24 APR 1995
FILING INSTRUCTIONS
FILE No.

PDL 76

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 0171-270 0101 *Facsimile* 0171-270 0208

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

Ref: A095/1218

21 April 1995

C. Miss Andrew
M. Carpenter (TSols)

Dear Jacob,

CHURCHILL PAPERS

Thank you for your letter of 13 April 1995. I am delighted that the purchase of the Archive is likely to be among the first successful applications the NHMF will announce.

You asked about the use you might make of some of the famous speeches at the time the acquisition is made public. I suspect some wires may have got slightly crossed here.

The question which Farrers put to us related very directly to the terms of the Purchase Agreement. Since, as you well know, the question of ownership of part of the Archive has been the subject of dispute between the Government and the Churchill Trustees, we felt it unwise to highlight those very papers in the context of the Purchase Agreement. We therefore expressed a preference that the Fund should use only those documents which were clearly within the Trustees' ownership. On the other hand, I appreciate that you want to lay stress in your announcement on the Archives' significance to the 50th anniversary of VE Day and the papers you have identified are obviously relevant to that.

May I suggest a possible way forward? It seems to me that, provided it is made clear at the press conference that what the NHMF have purchased is the <u>personal</u> papers of Sir Winston Churchill, stretching from his childhood, through his schooldays to the end of the

/Second World War, and . . .

Lord Rothschild
Chairman
National Heritage Memorial Fund
10 St James's Street
LONDON

Second World War, and that, together with the official papers, this enables the whole Archive to be displayed at Churchill College, then you could use a copy of the page from the VE broadcast, since it would represent part of the whole Archive. On this basis, we should be happy to give our consent to copying the documents you have identified, subject to all the other legal issues, on which I know the Treasury Solicitor's Department are in discussion with Farrers, being tied up.

I am copying this letter to Hayden Phillips.

Yours ever,

Robin

ROLL 75

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3029 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

Miss P Andrews
Historical & Records Section
Cabinet Office
Hepburn House, Marsham Street
London SW1P 4HW

Please quote: A930329G/EW

Your reference:

Date: 21 April 1995

CABINET OFFICE
H 95/301
24 APR 1995
FILING INSTRUCTIONS
FILE No

Dear Pat

The Churchill Papers

I promised to send to you the other day the engrossment of the Deed of Gift and Copyright Licence in readiness for completion. I now enclose the same. You will see that it has been prepared in duplicate and therefore you will need to sign both parts where indicated by the pencil crosses. Your signature must be witnessed and you must complete your full name after the words "signed as a deed by". I have marked on the duplicates the details that the witness needs to supply when witnessing your signature.

If you have any queries about the procedure for signing and witnessing the enclosed, please do not hesitate to telephone me. One point I should draw your attention to is that in the second schedule, clause 1(a), there is a typographical error which has not been picked up by Farrer & Co. The "y" is missing from the word "any" at the end of the first line. You will see I have marked this in pencil. Please can you ensure that you mark in the "y" in ink and initial the amendment. This will need to be done on both copies.

Once you have signed and had the enclosed documents witnessed, could you return them to me so that I can hold them in readiness for the completion of this matter. I will not release either document to Farrer & Co until such time as I am satisfied everything is in order.

done 24/4/95

Yours sincerely

Eleri Wones

74

THE TREASURY SOLICITOR

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Direct Line 0171 210 3029 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

FACSIMILE

To:	**Miss Pat Andrews**	**From:**	**Eleri Wones**
Dept:	**CO – Historical Section**	**No. of Pages:**	**8 inclusive**
Fax No:	**217 6010**	**Date:**	**21 April 1995**

Re: **The Churchill Papers**

Herewith my suggested amendments to the Q+As. Let me know if you have any comments. I'll be sending them to Chris Hobley shortly

Eleri

If this facsimile does not reach you in its entirety, please contact my secretary on 0171–210 3006.

Q & A BRIEF

Q1. What does the Archive consist of?

A1. The Archive as a whole spans the years 1874-1945 and documents Churchill's life as a schoolboy, as a correspondent in South Africa, as an MP, as well as his appointments as a Minister of the Crown. It includes personal, political and literary papers and official documents relating to his Ministerial and Prime Ministerial appointments spanning the years 1906-1945, including drafts of Sir Winston Churchill's wartime speeches.

Q2. Does the purchase price include a price for the official documents?

A2. No, but the official documents are being transferred by Deed of Gift to a newly constituted charitable trust based at Churchill College to ensure that the Archive is kept intact. Copyright in the official papers will be retained by the Crown.

Q3. Didn't the Government enter into litigation to establish ownership of the official documents?

A3. Yes. Litigation began in 1993 by means of an Originating Summons. This has now been ~~discontinued~~ withdrawn by the Attorney General.

Q4. Why?

A4. Now that it can be ensured that the Archive will remain intact there is no further point to the litigation.

Q5. The fate of the Archive is an emotive issue, especially in the year of the 50th anniversary of VE Day. Hasn't the Government effectively been forced into dropping litigation to avoid public outcry?

A5. The decision to make the Lottery application was one for the University and the College, and the decision to accept it was for the NHMF Trustees. The Government does not play a part in this process, but it has always been the Government's wish that the Archive remains

intact at Churchill College and we are happy to support the outcome.

Q6. Who has agreed to the transfer of the official documents?

A6. Her Majesty the Queen has been consulted and has consented to the transfer. As required under a settlement drawn up by Sir Winston Churchill in 1946, the Prime minister has also been consulted and [given his consent].

Q7. Why have these official documents not gone to the Public Records Office where they can be seen by researchers?

A7. It is believed to be in the public interest for Sir Winston's papers to be preserved intact and not broken up. They will remain at Churchill College where they have been since the 1970's along with his post-1945 papers which were bequeathed to the College by Lady Churchill. Copies of many of the documents are already in the Public Record Office on the files of the relevant government departments.

Q8. Will the archive by publicly available?

A8. Yes, as it has been since the completion of the official biography of Churchill by Martin Gilbert in 1991.

Q9. Who can see that Archive?

A9. Scholars or students, on application to the Keeper.

Q10. Who are the beneficiaries of the sale?

A10. Winston Churchill, MP and his direct heirs.

Q11. Winston Churchill MP has at times been a critic of the Government. Are you hoping he will be more sympathetic following this generous settlement?

A11. These matters are unrelated. ~~Not logical~~ it is not appropriate ~~to~~ suggest that ~~an~~ decision might affect

Winston Churchill's view of Government policy.

Q12. We thought the Government came close to purchasing the Archive some time ago. Isn't the Lottery effectively now picking up a Government spending commitment and breaching the additionality rules?

A12. The Government entered into discussions, but no agreement was ~~not~~ reached or commitment made to purchase the Archive.

Q13. What about the costs of the litigation?

A13. As is normal where cases are discontinued, each side is to bear its own costs.

Q14. What are the costs to the Government?

A14. ~~[Advice being sought from TSD]~~ Those relating to the litigation commenced in 1995. These remain to be finally quantified

Q15. How was the valuation arrived at?

A15. Independent advice was taken [from a well respected dealer in antiquarian books and manuscripts].

Q16. Do you think this is a correct use of Lottery money?

A16 However, does seem appropriate as ~~It is interesting to note that~~ NHMF is the successor to the National Land Fund which was established in 1946 as a memorial to the dead of the two world wars.

Q17 The partnership funding consists of £1m from the J Paul Getty Charitable Trust. Do you think this is enough as a proportion of the purchase price?

A17 This is a matter for the NHMF Trustees.

Q18 Who will now own the Archive?

A18 A specially constituted Charitable Trust set up by the Members of Churchill College specifically for this purpose.

Q19 Can the Archive be sold at some future date?

A19 No. The new Churchill Trustees will hold the whole of the Archive under a charitable trust and may not sell any part of it without the consent of the Heritage Lottery Trustees. As Trustees of a charitable trust, the Trustees may not, in any case, dispose of the permanent endowment of the trust without the consent of the Charity Commissioners or of the Courts

Q20 Can anyone now copy papers in the Archive?

A20 Any copying which is more extensive than is beyond that allowed by the Copyright Designs and patents Act 1988 will require the licence of the copyright owners. for in

Q21 What about the plans of the Churchill family to raise still more money by copying the Archive into CD-Rom discs?

A21 Any such copying would require the consent of all the copyright owners and suitable terms would have to be negotiated.

Q22 What about the papers of other Prime Ministers?

A22 a) On relinquishing office, Prime Ministers have, by convention, taken with them certain 'personal' papers which have been written, signed, sent or received by the Prime Minister personally. They do not include copies of Cabinet documents. They do, however, include minutes to Ministerial colleagues, telegrams, speeches etc. These papers are 'personal' only because they are written, signed, sent or received by the Prime Minister personally. Many are public records, the counterparts of which remain on official files and are made publicly available in the public Record Office after 30 years. Those copies which are taken away by outgoing Prime Ministers are subject to the Official Secrets Act and remain in Crown Copyright.

b) The final destination of these papers is a matter for the former prime Minister or his/her Trustees. Most deposit them in University libraries - Eden, Atlee, Chamberlain, for example.

c) [CHECK - Lady Thatcher and Sire Edward Heath are believed still to be working on their papers; Lord Callaghan's biographer is working on his;] Lord Stockton's papers are at the Bodleian Library as are Lord Wilson's.

d) Prime Ministers who have relinquished office since Lord Wilson have been asked to give an undertaking not to allow their 'personal' papers to go out of the country.

e) With the agreement of the present Prime Minister, only papers which are truly personal will, in future, be removed from official custody.

Q23 Can other Prime Ministers' 'personal' papers be sold in the same way as the Churchill Archive?

A23 Purely personal papers can be sold at any time. The official papers in Sir Winston's archive are not being sold. [We would expect to apply the same principles to any other archive.]

CHURCHILL ARCHIVE

Background

This important Archive, which is currently held at Churchill College, Cambridge consists of papers relating to Sir Winston Churchill between 1874 and 1945 and, in particular, to his Ministerial and Prime Ministerial career from 1906 to 1945. It also contains literary papers such as drafts for his many speeches and books. There are a number of papers which are not in the Public Records Office and copies of others on which manuscript notes by Sir Winston will be of interest to historians.

The question of the potential disposal of the Archive by the Churchill family Trustees, first arose in 1989 when questions were raised by the Trustees as to ownership and copyright. Following lengthy negotiations, the Department of National Heritage and the National Heritage Memorial Fund put together a funding package in the hope of acquiring the Archive by means of Private Treaty Sale, but this foundered when ownership of some documents could not be satisfactorily established. These are the so-called "State papers" which are official documents relating to the periods during which Sir Winston Churchill occupied Ministerial and Prime Ministerial appointments.

When an impasse in the negotiations was reached, the Government decided to seek a ruling from the courts. The litigation was to establish both the question of ownership and whether any of the State papers could be removed from the Archive without the permission of the Prime Minister. (This had been stipulated in a settlement drawn up in 1946 and reaffirmed in 1964, but written out by the Trustees, without the consent of the Prime Minister, on a further re-settlement in 1990.)

In the meantime, Cambridge University and Churchill College submitted a Lottery application to fund the purchase of the archive at a cost of £12.5 million (which also covers an endowment to meet the cost of the long term care, conservation and display of the papers). This was accepted by the NHMF Trustees and, in order to ensure that the Archive was kept intact, the Government agreed to drop the litigation and to transfer the State papers formally to Churchill College.

Presentation

Under the earlier proposal for purchasing the Archive, the NHMF would have been committing grant-in-aid (supplemented by a call on the Reserve) and it was therefore appropriate that DNH took the lead in negotiations. Now that the solution involves Lottery funding, DNH no longer has a formal role in the settlement although it can celebrate the outcome which achieves the Government's wish to see the Archive kept intact at Churchill College and also links well with this year's commemoration of VE Day.

Care must, however, be taken to avoid any suggestion that the Lottery is paying for papers which already belong to the State. This can be achieved by pointing out that what is being purchased by the Lottery funds is the Churchill Family Trustees' interest in the Archive. The State papers to which the Crown lays claim are being transferred to Churchill College under a separate agreement. They will be passing into the care of a newly constituted Trust set up specifically for the purposes of the Lottery application and to ensure the Archive remains intact.

There may also be some criticism generated by the fact that the purchase money will be going directly to Winston Churchill, MP and, again, it will be important to be clear that the decision which gave effect to this was solely for the NHMF Trustees and not one for the Government.

BOL 73

Erica Bolton & Jane Quinn Ltd
15 Prebend Gardens, London W4 1TN

URGENT FAX MESSAGE

TO: MELANIE LEACH

FAX NO: 0171 270 0208

FROM : JANE QUINN

NUMBER OF PAGES (INCLUDING THIS ONE): 2

DATE: 21.4.95.

OUR FAX NO IS (081) 994 4598. IN THE EVENT OF THIS TRANSMISSION BEING INCOMPLETE OR ILLEGIBLE PLEASE CONTACT US ON (081) 995 5592/5245. THE INFORMATION CONTAINED IN THIS FAX IS CONFIDENTIAL.

DRAFT PRESS RELEASE AS DISCUSSED.

CONFIDENTIAL DRAFT

CHURCHILL'S PAPERS SECURED FOR THE NATION ON EVE OF VE DAY ANNIVERSARY

One of Britain's most valuable historical assets, Sir Winston Churchill's pre-1945 papers, will be saved for the nation as the result of one of the first grants from the ***Heritage Lottery Fund***. The announcement was made in London today by Lord Rothschild, Chairman of the Trustees of the National Heritage Memorial Fund (NHMF).

The £11.5 million grant will enable the newly formed Sir Winston Churchill Archive Trust to acquire the papers for the Archive Centre at Churchill College, University of Cambridge, from the Churchill family trustees. The Heritage Lottery Fund will also provide £1 million for an endowment for the long-term care of the archive, and £750,000 for development costs to include conservation and exhibition. The consent of the Prime Minister has been given to the sale. The trust will receive a matching gift from Churchill College of Sir Winston's post-1945 papers which means that the complete Churchill archive will now be preserved in perpetuity for the benefit of historians and the broader public. Exhibitions of the papers are also planned in London, Edinburgh, Cardiff and other centres next year.

This vast collection of over 1.5 million private and public papers includes almost everything Churchill ever wrote from his first tear-stained letters to his mother as a homesick schoolboy up to the moment of his defeat in the 1945 election. Included are young Winston's school reports; letters from every sovereign from King Edward VII to the Queen, every prime minister from Lord Salisbury to Lord Home, and many of the great soldiers, sailors and airmen of both world wars. Churchill's literary papers including typescripts of all his books, such as "Great Contemporaries", "My Early Life" and "The History of the English Speaking Peoples" and a note from King George VI describing how he and Queen Elizabeth (now the Queen Mother) saw the bombing of Buckingham Palace in the Blitz.

Of special interest are Churchill's wartime papers including early typescript drafts with handwritten annotations of some of his most famous wartime speeches including 'We shall fight them on the beaches...' and 'This was their finest hour.' It is particularly appropriate that the acquisition of the papers coincides with the VE day anniversary celebrations. The archive includes Churchill's actual VE Day radio broadcast and this will be read out at a special VE Day concert on.....

The Churchill Archive Centre, which also includes papers from many of Churchill's contemporaries, situated within the grounds of Churchill College in Cambridge, was purpose-built in 1974 to house all Sir Winston Churchill's papers. The centre is the only British equivalent of one of the great American presidential libraries and draws scholars from all over the world. The archive was built and endowed by a group of eminent Americans including Walter Annenberg, Vincent Astor, Henry Ford II and David Rockefeller.

A most generous donation of £1 million from Mr John Paul Getty's Charitable Trust has been an essential factor in securing the archive.

The National Heritage Memorial Fund was established in 1980 by the National Heritage Act to provide financial assistance for the acquisition, preservation and maintenance of land, buildings, objects and collections of outstanding importance to the national heritage. The 1993 National Lottery Act designated NHMF as the distributor of the heritage share of proceeds from the National Lottery. The Heritage Lottery Fund Enquiry Service Number for potential applicants is 0171 649 1345.

26 April 1995

PRESS ENQUIRIES PERDITA HUNT 0171 747 2030
ERICA BOLTON/JANE QUINN 0181 995 5592/5245

ASX

PDL/ 72

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 0171 217 6050
Fax 0171 217 6010

HO95/283

Ms Eleri Wones
Treasury Solicitor's Department
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

21 April 1995

Dear Eleri

THE CHURCHILL PAPERS

Thank you for your letter of today's date enclosing the draft of your letter to Farrer & Co.

I have only one comment. I wonder if your 2. might read better as follows:-

> I am instructed that the use of Bernard Quarritch's description of the Archive as the First Schedule is inappropriate and unnecessary. It refers in detail to "official papers", the ownership of which is disputed and is the subject of current litigation, and it is, after all, a question of fact as to which documents and papers are currently lodged and housed at Churchill College. I suggest therefore that the use of the Schedule be dispensed with and that Recital A should be amended to read..... to:-
>
> > "The Archive of Sir Winston Churchill may be described as divided into those papers created after 27 July 1945 already in the ownership and possession of Churchill College, Cambridge ("the post 1945 papers") and the remainder of the papers ("the Chartwell Papers") which include those papers known as "the Literary Papers" ~~and which are~~ referred to in Recital (B) and in item 4 of the Second Schedule."

I have removed the references in your re-draft to the papers being lodged and housed at C College because that is stated in Recital (B) although the word used is "deposited". I think we need to include the reference to the Literary Papers as shown because they are the ones taken away by the Trustees and which we must ensure are returned.

Yours Pat

MISS P M ANDREWS

PDL 71

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3029 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

Mrs Elizabeth Bowes-Smith
Farrer & Co
66 Lincoln's Inn Fields
London WC2A 3LH

Please quote: A930329G/EW

Your reference: JLH/EBS/JAS/jft

Date: 21 April 1995

CABINET OFFICE
H 95/311
25 APR 1995
FILING INSTRUCTIONS
FILE No.

By Fax and Post

Dear Mrs Bowes-Smith

The Churchill Papers

I refer to my various telephone conversations yesterday with your colleague Mr Julian Smith regarding the above. As promised I am now writing to formally confirm the points that remain at issue in respect of the Purchase Agreement. They are as follows:-

1. Recital A

The reference in this Recital to "Premier Papers" should be deleted. As you no doubt appreciate, although this term is defined, it is not subsequently used in the main body of the Purchase Agreement. This is because the documents that fall within this definition are not the subject of the sale and purchase. Mr Carpenter in his letter to Mrs Hill dated 7 April raised the point but it was not subsequently addressed by Mrs Hill in her reply.

2. Use of Bernard Quarritch's Schedule

I am instructed that the use of Bernard Quarritch's description of the Archive as the First Schedule is inappropriate and unnecessary. It refers in detail to "official papers", the ownership of which is disputed and is the subject of current litigation, and it is, after all, a question of fact as to which documents and papers are currently lodged and housed at Churchill College. I suggest therefore that the use of the Schedule be dispensed with and that Recital A should be amended to read .....

"The Archive of Sir Winston Churchill may be described as divided into those papers created after 27 July 1945 already in the ownership and possession of Churchill College, Cambridge ("the post 1945 papers") and the remainder of the papers ("the Chartwell Papers") which include those papers known as "the Literary Papers" referred to below in Recital (B) and in item 4 of the Second Schedule."

3. Recital E and clause 1

The Recital and the clause should be amended to make it clear that the subject matter of the sale and purchase is the interest that the Churchill Trustees have in the Chartwell Papers and not the Chartwell Papers in toto; some of which have been the subject of the current litigation. Such an amendment is compatible with the warranty given by the Churchill Trustees at clause 5 of the Purchase Agreement which is after all a qualified rather than an absolute one.

4. The Third Schedule – Recital (B) and clause 1 of the Copyright Licence

As I made clear to Mr Julian Smith, the wording of the above fits ill with the definition of the "copyright papers" contained in Recital D of the Purchase Agreement and the wording of clause 7. Recital B purports to state "the whole copyright in all the copyright papers" is vested in the Grantors whilst clause 1 contains a warranty along the same lines. In this context, I would draw your attention to the wording in the copy of Recital D and clause 7 attached. In the light of the above I suggest that Recital B and clause 1 respectively should be amended to read as follows:–

"Copyright in the Copyright Papers is variously vested in the Grantors as set out in Recital D of the Agreement"

"The Grantors warrant to the University that they have done no act or thing which would prevent them granting the Copyright Licence herein contained to the University"

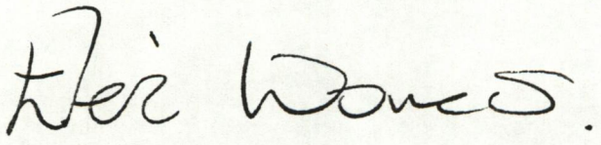
And clause 2 be amended by inserting words "of their" after the word "whole" in line 2.

I would like to make it clear that although some of the points made above have been addressed in correspondence between Mrs Hill and Mr Carpenter and no doubt on the telephone, the importance and need for the proposed amendments has only become apparent upon my receipt of the documentation in its final form on 18 April and my referring to my

clients for their observations and instructions.

Please may I have a response to this letter as soon as possible. I look forward to hearing from you shortly.

Yours sincerely



Eleri Wones

those papers described under the heading "Literary" in the said description of the Archive ("the Literary Papers")

(B) All the Post 1945 Papers and the Chartwell Papers are currently deposited with Churchill College aforesaid except certain of the Literary Papers which are not deposited with Churchill College but are currently under the control of the Churchill Trustees

(C) The ownership of certain of the Chartwell Papers is currently the subject of litigation ("the Litigation") between the Crown and the Churchill Trustees in the action HM Attorney General v Montrose and Churchill (CH 1993 HNO 8050)

(D) The copyright in the Post 1945 Papers and in the Chartwell Papers is vested either in Mr Winston Churchill or in C&T Publications Ltd or in Mr Peregrine Churchill (hereinafter together referred to as "the Copyright Holders" which expression shall include their respective successors in title as holders of the copyright in the Copyright Papers as defined below) except in so far as copyright in such papers received by Sir Winston Churchill is vested in third parties and except in so far as copyright in the Chartwell Papers is vested in the Crown and the papers in which copyright is so vested in Mr Winston Churchill or C&T Publications Limited or Mr Peregrine Churchill are hereinafter referred to as "the Copyright Papers"

(E) The Churchill Trustees wish to sell and the University wishes to purchase the Chartwell Papers and provisional terms in respect of such sale were negotiated in December 1994 by Mr Winston Churchill

(F) NHMF wish the University to purchase the Chartwell Papers and have agreed to provide or procure funding for the University for that purpose

4. Mr Peregrine Churchill HEREBY CONFIRMS that if and in so far as he has any claim to any of the Chartwell Papers he assigns and transfers to the University all such right title or interest as he has in such papers (but specifically excluding copyright) and will if so called upon to do execute such further or other documents to give effect thereto as the University shall request

5. The Churchill Trustees HEREBY WARRANT that (except as hereafter referred to) they have unencumbered title to sell the Chartwell Papers

Such warranty shall not extend to any papers

a) to which the Crown may have a better claim or

b) in respect of which Mr Peregrine Churchill has a better claim and in respect of which such claim is assigned to the University

PROVIDED THAT neither the qualifications to the warranty set out above nor any other provision stipulation or condition contained in this Agreement or the Schedules hereto shall constitute any admission acknowledgement or acceptance by the Churchill Trustees of any claims made by the Crown whether in the Litigation or otherwise

6. The Churchill Trustees shall procure and Mr Winston Churchill confirms that on or prior to completion the University shall be granted a copyright licence in the form set out in the Third Schedule hereto

7. The Copyright Holders and all persons duly authorised by them shall be permitted by the owners or holders for the time being of the Copyright Papers to exercise the right of access (without charge) to the Chartwell Papers and Post 1945 Papers at all reasonable time or times to enable them to exploit (including in particular to record material on CD-Rom disc and microfilm) such copyrights as may be owned by or licensed to them but shall not have the right to remove any such papers from their place of deposition for such purpose. Such permission to exercise such right of

Hard Copy

PDL 70

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3029 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

Mrs P Andrews
Cabinet Office
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW

Please quote: A930329G/EW

Your reference:

Date: 21 April 1995

Dear Pat

The Churchill Papers

Further to our various telephone conversations yesterday, I now enclose a draft of the letter that I am proposing to send to Farrer & Co, setting out the amendments that should be incorporated in the documentation to enable matters to go forward.

I think that the letter speaks for itself and I hope sets out matters clearly. I would much appreciate your comments as soon as possible.

From my dealings with Farrers I have discovered that the University of Cambridge is holding a formal meeting on Monday evening to ratify the agreements that they are entering into in connection with the Churchill Papers. In the light of this I think it is most important that I push ahead and obtain agreement to the outstanding matters that are causing concern as soon as possible.

It has been suggested to me by Farrers that one way of "getting around" the difficulty of presenting further engrossed documents for signature by the various members of the Churchill family who might object to doing this, is for the solicitors involved to initial any amendments required upon obtaining their clients' authority. This may or may not be a way of reducing the embarrassment factor of having sent out engrossed documents prior to the drafts being agreed by the Treasury Solicitor in their final form.

I look forward to hearing from you.

CABINET OFFICE
H 95/296
25 APR 1995
FILING INSTRUCTIONS
FILE No.

Yours sincerely

Eleri

Eleri Wones

POLL 69M

Cultural Property Unit
Department of National Heritage
2-4 Cockspur Street, London SW1Y 5DH
Tel: 0171-211 6158
Fax: 0171 211 6170

FAX TRANSMISSION COVER SHEET

Date: 20/4/95
To: Pat Andrews
Fax: 217 6010
Subject: Churchill
Sender: Carol Hobley

YOU SHOULD RECEIVE 2 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 0171-211 6158

I attach a copy of the briefing we will be putting up to the Secretary of State (when it's complete). I have added a few things to your Q+A of which I hope you approve.

All being well, I hope to complete this tomorrow when Treasury Solicitors have had time to check it. If you would like to let me have any comments, I can incorporate them and let you have the final version.

Thank ya

Carol Hobley

This has already been seen by Margaret O'Mara.

CHURCHILL ARCHIVE

Background

located / held

This important Archive, which is currently [deposited] at Churchill College, Cambridge consists of papers relating to Sir Winston Churchill between 1874 and 1945 and, in particular, to his Ministerial and Prime Ministerial career from 1906 to 1945. It also contains literary papers such as drafts for his many speeches and books. There are a number of papers which are not in the Public Records Office and copies of others on which manuscript notes by Sir Winston will be of interest to historians.

The question of the potential disposal of the Archive by the Churchill family Trustees, first arose in ~~about~~ 1989 [when questions were raised by the Trustees about ownership and copyright.] Following lengthy negotiations, the Department of National Heritage and the National Heritage Memorial Fund put together a funding package in the hope of acquiring the Archive by means of Private Treaty Sale, but this foundered when ownership of some documents could not be satisfactorily established. These are the so-called "State papers" which are official documents relating to the periods during which Sir Winston Churchill occupied Ministerial and Prime Ministerial appointments.

decided to seek a ruling from the Courts on ownership

When an impasse in the negotiations was reached, the Government elected to settle the matter through the courts. ~~The~~ litigation was began in 1993 to establish both the question of ownership and whether any of the State papers could be removed from the Archive without the permission of the Prime Minister. (This had been stipulated in a settlement drawn up in 1946 and reaffirmed in 1964, but written out by the Trustees, without the consent of the Prime Minister, on a further re-settlement in 1990.)

[~~At the request of the Churchill Trustees,~~ The court action was later suspended whilst an attempt to establish an accurate valuation of the papers.] was sought and [negotiations to settle were continued]

[In the meantime,] In 1994 Cambridge University and Churchill College submitted a Lottery application to fund the purchase of the archive at a cost of £12.5 million (which also covers an endowment to meet the cost of the long term care, conservation and display of the papers). This was accepted by the NHMF Trustees and as a consequence the Government felt it appropriate to assist in keeping the Archive intact by agreeing that litigation might be dropped and the State papers

or £12.7 check.

following an enquiry by the Treasury about access. *

* In order to ensure that the Archive was kept intact agreed to drop the litigation and to transfer the State papers also to Churchill College

transferred to Churchill College.

Presentation

Under the earlier proposal for purchasing the Archive, the NHMF would have been committing grant-in-aid (supplemented by a call on the Reserve) and it was therefore appropriate that DNH took the lead in negotiations. Now that the solution involves Lottery funding, DNH no longer has a formal role in the settlement although it can welcome celebrate the outcome which achieves the Government's wish to see the Archive kept intact at Churchill College and also links well with this year's commemoration of VE Day.

Care must, however, be taken to avoid any suggestion that the Lottery is paying for papers which already belong to the State. This can be achieved by pointing out that the disputed papers are being transferred, with the agreement of the Prime Minister, to Churchill College [but are not part of Cambridge University's purchase - *Miss Andrews, is this ok?*]. They will be passing into the care of a newly constituted Trust set up specifically for the purposes of the Lottery application and to ensure the Archive remains intact.

There may also be some criticism generated by the fact that the purchase money will be going directly to Winston Churchill, MP and, again, it will be important to be clear that the decision which gave effect to this was solely for the NHMF Trustees and not one for the Government.

What is being purchased by the Lottery funds is the Churchill Family Trustees' interest in the archive. The ~~paper~~ State papers to which the Crown lays claim are being .... under a separate agreement.

Q & A BRIEF

Q1. What does the Archive consist of?

A1. The Archive as a whole spans the years 1874–1945 and documents Churchill's life as a schoolboy, as a correspondent in South Africa, as an MP, as well as his appointments as a Minister of the Crown. It includes personal, political and literary papers and official documents relating to his Ministerial and Prime Ministerial appointments spanning the years 1906–1945, including drafts of Sir Winston Churchill's wartime speeches.

Q2. Does the purchase price include a price for the official documents?

A2. No, but the official documents are being transferred by Deed of Gift to a newly constituted charitable trust based at Churchill College to ensure that the Archive is kept intact. Copyright in the official papers will be retained by the Crown.

Q3. Didn't the Government enter into litigation to establish ownership of the official documents?

A3. Yes. Litigation began in 1993 by means of an Originating Summons. This has now been withdrawn by the Attorney General.

Q4. Why?

A4. Now that it can be ensured that the Archive will remain intact, there is no further point to the litigation.

Q5. The fate of the Archive is an emotive issue, especially in the year of the 50th anniversary of VE Day. Hasn't the Government effectively been forced into dropping litigation to avoid public outcry?

A5. The decision to make the Lottery application was one for the University and the College, and the decision to accept it was for the NHMF Trustees. The Government did not play a part in this process, but it has always been the it's wish that the Archive remain intact at

********** -COMM.JOURNAL- ********** DATE 19-APR-1995 ***** TIME 17:06 **** P.1

MODE = MEMORY TRANSMISSION START=19-APR 17:05 END=19-APR 17:06

FILE NO.= 031

NO.	COM	ABBR/NTWK	STATION NAME/ TELEPHONE NO.	PAGES	PRG.NO.	PROGRAM NAME
001	OK	☎	72116230	003/003		

-HRS 0171 217 6010 -

********** - 071 217 6010- **********

Churchill College and we are happy to support the outcome.

Q6. Who has agreed to the transfer of the official documents?

A6. Her Majesty The Queen has been consulted and has consented to the transfer. As required under a settlement drawn up by Sir Winston Churchill in 1946, the Prime Minister has also been consulted and [given his consent].

Q7. Why have these official documents not gone to the Public Records Office where they can be seen by researchers?

A7. It is believed to be in the public interest for Sir Winston's papers to be preserved intact and not broken up. They will remain at Churchill College where they have been since the 1970s along with his post-1945 papers which were bequeathed to the College by Lady Churchill. Copies of many of the documents are already in the Public Record Office on the files of the relevant Government departments.

Q8. Will the archive be publicly available?

A8. Yes, as it has been since the completion of the official biography of Churchill by Martin Gilbert in 1991.

Q9. Who can see that Archive?

A9. Scholars or students, on application to the Keeper of the Archive at the College.

Q10. Who are the beneficiaries of the sale?

A10. Winston Churchill, MP and his direct heirs.

Q11. Winston Churchill MP has at times been a critic of the Government. Are you hoping he will be more sympathetic following this generous settlement?

A11. These matters are unrelated. Not logical to suggest that an NHMF decision might affect

********** -COMM.JOURNAL- ********** DATE 19-APR-1995 ***** TIME 17:03 **** P.1

MODE = MEMORY TRANSMISSION START=19-APR 17:03 END=19-APR 17:03

FILE NO.= 030

NO.	COM	ABBR/NTWK	STATION NAME/ TELEPHONE NO.	PAGES	PRG.NO.	PROGRAM NAME
001	INC	☎	72116230	000/001		

-HRS 0171 217 6010 -

********** - 071 217 6010- **********

Winston Churchill's view of Government policy and the decision to accept the Lottery application was, of course, for the NHMF, not for Government.

Q12. We thought the Government came close to purchasing the Archive some time ago. Isn't the Lottery effectively now picking up a Government spending commitment and breaching the additionality rules?

A12. The Government entered into discussions, but agreement was not reached to purchase the Archive.

Q13. What about the costs of the litigation?

A13. As is normal where cases are discontinued, each side is to bear its own costs.

Q14. What are the costs to the Government?

A14. [Advice being sought from TSD] N/A

Q15. How was the valuation arrived at?

A15. The NHMF (?) took independent advice from a well respected dealer in antiquarian books and manuscripts.

Q16. Do you think this is a correct use of Lottery money?

A16 This is a matter for the NHMF, but the application seems to fall squarely within its guidelines [*Could Lottery Division advise please. Is this correct?]*. In this case, it is interesting to note that NHMF is the successor to the National Land Fund which was established in 1946 as a memorial to the dead of the two world wars.

Q17 The partnership funding consists of £1m from the J Paul Getty Charitable Trust. Do you think this is enough as a proportion of the purchase price?

A17 This is a matter for the NHMF Trustees.

Q18 Who will now own the Archive?

A18 A specially constituted Trust set up by the Members of Churchill College specifically for this purpose.

Q19 Can the Archive be sold at some future date?

A19 The new Churchill Trustees will hold the whole of the Archive under a charitable trust and may not sell any part of it without the consent of the Heritage Lottery Trustees. As Trustees of a charitable trust, the Trustees may not, in any case, dispose of the permanent endowment of the trust without the consent of the Charity Commissioners or of the Courts.

Q20 Can anyone now copy papers in the Archive?

A20 Any copying beyond that allowed by the Copyright Designs and Patents Act 1988 will require the licence of the copyright owners [*Could Miss Andrews please advise who they are. Presumably the Government, the Churchill family and...?]*

The Crown, Winston Churchill MP & Peregrine Churchill

Q21 What about the plans of the Churchill family to raise still more money by copying the Archive on to CD-Rom discs?

A21 Any such copying would require the consent of all the copyright owners and suitable terms would have to be negotiated.

Q22 What about the papers of other Prime Ministers?

A22 a) On relinquishing office, Prime Ministers have, by convention, taken with them certain 'personal' papers which have been written, signed, sent or received by the Prime Minister personally. They do not include copies of Cabinet documents. They do, however, include copies of minutes to Ministerial colleagues, telegrams, speeches etc. These papers are 'personal' only because they are written, signed, sent or received by the Prime Minister personally. Many are public records, the counterparts of which remain on official files and are made publicly available in the public Record Office after 30 years. Those copies which

are taken away by outgoing Prime Ministers are subject to the Official Secrets Act and remain in Crown Copyright.

b) The final destination of these papers is a matter for the former Prime Minister or his/her Trustees. Most deposit them in university libraries - Eden, Atlee, Chamberlain, for example.

"No Attlee" - are you checking this?

c) [CHECK - Lady Thatcher and Sire Edward Heath are believed still to be working on their papers; Lord Callaghan's biographer is working on his;] Lord Stockton's papers are at the Bodleian Library, as are Lord Wilson's.

d) Prime Ministers who have relinquished office since Lord Wilson have been asked to give an undertaking not to allow their 'personal' papers to go out of the country.

e) With the agreement of the present Prime Minister, only papers which are truly personal will, in future, be removed from official custody.

Q23 Can other Prime Ministers' 'personal' papers be sold in the same way as the Churchill Archive?

A23 Purely personal papers can be sold at any time. The official papers in Sir Winston's archive are not being sold. [We would expect to apply the same principles to any other archive.]

20.4.95

FOI 69

HO95/279

SIR ROBIN BUTLER

CHURCHILL ARCHIVE

In his minute of 10 April Mr Alex Allan says that the Prime Minister would be interested to see advice on the Lord Chancellor's proposal that the official material in the Churchill Archive should be deposited in Churchill College Archive Centre which would be designated a place of deposit under Section 4 of the Public Records Act 1958, and that he would be grateful for advice on how a decision with regard to the transfer of the Archive would be presented.

Advice from Treasury Counsel is that there is no power under the Public Records Act 1958 to designate the Archive Centre for this purpose. The Centre could be so designated but not for these particular papers which have been out of official custody since long before the Act came into effect and which are therefore not records to which the 1958 Act can apply. It follows therefore that the official material in the Churchill Archive cannot be either deposited or presented under the provisions of the 1958 Act and the only way of achieving the aim of transferring the material to the new Trust and of preserving the Archive intact in this country would appear to be by Deed of Gift. You will see from his letter of 19 April that the Lord Chancellor has now accepted this but he has asked that four specific points should be taken into account in the public presentation of the issue:-

1 that no papers which may properly be called 'public records' are being handed over as part of the transaction;

2 that HMG is not handing over as a gift anything which would be of value in isolation from the archive as a whole;

3 that the Purchase Agreement should make clear that no financial consideration is being given to the Family Trustees in respect of those papers which form part of the Deed of Gift;

4 that the Government's fundamental objective has been that of securing the Churchill Archive in its entirely and in perpetuity, in the public interest.

1 and 4 present no problems - it has been established that the papers are not public records and 4 states the Government's objective correctly. 3 is a little out of line with the Lord Chancellor's earlier acceptance of the fact that the purchase price contains an element of buying out the risk of litigation but we have stated categorically that the official papers are not being bought outright with the lottery money - hence the Deed of Gift.

3 presents something of a problem since the official papers do have a value, both collectively and, some of them, individually but I am assured by the Lord Chancellor's officials that he simply wished to record these points and have them considered; the argument that we see the retention of the archive in this country, intact and at Churchill College as being sufficient recompense seems likely to satisfy this point. We do not need to go back to him on this, but a letter after the event saying that his points were noted and pointing out the difficulty about 3 would be appreciated.

On the question of the announcement, this will be made by Lord Rothschild and the National Heritage Memorial Fund. The Department of National Heritage stresses that it is crucial that the decisions of the Lottery distributors are seen to be independent of Ministers. It is proposed that the general line to take will be that the decision to purchase the Archive was the Fund's own but followed an independent valuation, and that the Government's role was limited to the need for the Prime Minister to give his consent to the transfer of ownership of the papers (including the official papers). I have asked to see the text of the proposed announcement but have not yet received it.

I attach a suggested draft minute to Mr Allan which has been drawn up in consultation with DNH and Treasury Solicitors.

Treasury Solicitors are still in discussion with Farrers about the Purchase Agreement, Deed of Gift etc. I am hoping to have agreed versions to send over to you later today.

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
20 April 1995

DRAFT MINUTE FOR SIR ROBIN BUTLER TO SEND TO

MR ALLAN, NO 10

CHURCHILL ARCHIVE

Thank you for your minute of 10 April in which you said that the Prime Minister would be interested in the advice on the points made in the Lord Chancellor's letter of 7 April and in how the decision with regard to the purchase of the Churchill Archive was to be presented.

In his letter of 7 April the Lord Chancellor expressed concern about the Government making a deed of gift of public records to a private owner and asked that his preferred solution of depositing the material in Churchill College Archive Centre which would be designated a place of deposit under Section 4 of the Public Records Act 1958 should be considered by officials.

Advice from Treasury Counsel is that whilst Churchill College could be designated a place of deposit under Section 4 of the Public Records Act such designation would be an empty gesture. This is because the papers have been out of official custody since long before the 1958 Act was passed and therefore there is no power under the Act to direct the transfer of the papers in the Churchill Archive to Churchill College.

The Lord Chancellor has now accepted this. In his letter of 19 April however he expresses continuing concern about certain presentational aspects of the proposal which we are now considering. It is not possible for us to meet the Lord Chancellor's second point about not handing over as a gift anything which would be of value in isolation since, by definition, the official papers to be included in the Deed of Gift have an intrinsic value collectively and some of them individually, but I understand that retention of the archive in this country, intact, at Churchill College and available to researchers will be regarded as acceptable recompense for HMG's 'gift'. The other points which the Lord Chancellor wishes us to consider present no problems.

On the question of presentation, as you surmised, it would be for Lord Rothschild and the National Heritage Memorial Fund (NHMF) to make the announcement. They plan to do so on 26 April when they reveal the first batch of successful NHMF Lottery applications. The Secretary of State for National Heritage is intending to be at the NHMF's press conference on that day, as he has attended those of other Lottery distributors, but the announcement will be the Fund's own. Indeed, as you will appreciate, it is crucial that the decisions of the Lottery distributors are seen to be quite independent of Ministers or the expenditure would have to be classified as part of the public expenditure planning total.

The Secretary of State will stress the Archive's particular significance to this year's 50th Anniversary of VE Day. The general line to take will be that the decision to purchase was the Fund's own but followed an independent valuation of the Archive and that the Government's role was limited to the need for the Prime Minister to give his consent to the transfer of ownership of the papers (including the official papers). He will say, if the Prime Minister is content for him to do so, that such consent has been given and that the acquisition of the archive by Cambridge University afforded the opportunity to keep a set of papers of key importance to the nation together in this country in a publicly available form, accessible to scholars and students who wish to consult them.

The Secretary of State and the No 10, Cabinet Office and DNH Press Offices will all be fully briefed on the background to the NHMF's announcement.

I should be grateful if you could confirm that the Prime Minister is now content for the announcement to be made.

Ref: A095/1217

CABINET OFFICE
H Int.....
24 APR 1995
FILING INSTRUCTIONS
FILE No.

c. PS/Mr Phillips
Mr Carpenter (Treasury Solicitors)
Miss Anderson

MR ALLAN

The Churchill Archive

The Prime Minister raised with me this morning the suggestion that the announcement of the allocation of Lottery funds by the NHMF for the purchase of the Churchill Archive would be better received if it could be made in the context of VE Day and it should therefore be postponed from 26 April to the period around 7 - 9 May.

2. At my request, Hayden Phillips has explored this with Lord Rothschild. Lord Rothschild was resistant to moving the date of the general announcement of heritage allocations from the Lottery, which he has already once postponed, and Hayden Phillips has therefore tried on him the alternative of holding over the Churchill announcement until the VE Day commemoration. Lord Rothschild is considering both alternatives and Hayden Phillips is to see him tomorrow morning, after which he will report both to you and to me.

3. If Lord Rothschild can be persuaded, the proposal will have to be sold to the Churchill family; but I would have thought it likely that they will see the attraction of associating the announcement with the VE Day celebrations.

R.B.

ROBIN BUTLER

20 April 1995

CABINET OFFICE
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW
Fax: 071 217 6010

ENQUIRIES:
071 217 6050

FOI 67

URGENT
YES/NO

FACSIMILE LEADER

NAME: Ms ELERI JONES

DEPARTMENT: TREASURY SOLICITORS DEPARTMENT

ADDRESS: QUEEN ANNE'S CHAMBERS

FAX No: 210 3503

FROM: PAT ANDREWS

DOCUMENT REFERENCE/TITLE: CHURCHILL ARCHIVE

TOTAL NUMBER OF PAGES: + 8 DATE: 20-4-95

MESSAGE:

Ld Chancellor's letter of 19 April
Draft to Sir R Butler
Draft minute to No 10
revised draft letter to Lord Rothschild
all for comment!

Pat
20/4.

ACKNOWLEDGEMENT REQUIRED YES/ NO

DRAFT

HO95/279

SIR ROBIN BUTLER

CHURCHILL ARCHIVE

In his minute of 10 April Mr Alex Allan says that the Prime Minister would be interested to see advice on the Lord Chancellor's proposal that the official material in the Churchill Archive should be deposited in Churchill College Archive Centre which would be designated a place of deposit under Section 4 of the Public Records Act 1958, and that he would be grateful for advice on how a decision with regard to the transfer of the Archive would be presented.

Advice from Treasury Counsel is that there is no power under the Public Records Act 1958 to designate the Archive Centre for this purpose. The Centre could be so designated but not for these particular papers which have been out of official custody since long before the Act came into effect and which were therefore never records to which the 1958 Act could have applied.

It follows from this that the official material in the Churchill Archive cannot be either deposited or presented under the provisions of the 1958 Act. The only way of achieving the aim of transferring the material to the new Trust and of preserving the Archive intact in this country would appear to be by Deed of Gift. In presenting this publicly we shall need to make clear that the papers are to be transferred into a Trust which has been set up with the principal purpose of acquiring and caring for the papers. Maintenance of the whole Archive, including the official papers, is to be overseen by the Royal Commission for Historical Manuscripts in conditions which largely mirror those which would apply had the Archive Centre been designated a place of deposit.

On the question of the announcement, this will be made by Lord Rothschild and the National Heritage Memorial Fund. The Department of National Heritage stresses that it is crucial that the decisions of the Lottery distributors are seen to be independent of Ministers. It is proposed that the general line to take will be that the decision to purchase the Archive was the Fund's own but followed an independent valuation, and that the Government's role was limited to the need for the Prime Minister to give his consent to the transfer of ownership of the papers (including the official papers). I have asked to see the text of the proposed announcement but have not yet received it.

I attach a suggested draft minute to Mr Allan which has been drawn up in consultation with DNH and Treasury Solicitors.

MISS P M ANDREWS

Historical and Records Section
20 April 1995

DRAFT MINUTE FOR SIR ROBIN BUTLER TO SEND TO

MR ALLAN, NO 10

CHURCHILL ARCHIVE

Thank you for your minute of 10 April in which you said that the Prime Minister would be interested in the advice on the points made in the Lord Chancellor's letter of 7 April and in how the decision with regard to the purchase of the Churchill Archive was to be presented.

In his letter of 7 April the Lord Chancellor expressed concern about the Government making a deed of gift of public records to a private owner and asked that his preferred solution of depositing the material in Churchill College Archive Centre which would be designated a place of deposit under Section 4 of the Public Records Act 1958 should be considered by officials.

Advice from Treasury Counsel is that whilst Churchill College could be designated a place of deposit under Section 4 of the Public Records Act such designation would be an empty gesture because there is no power under the Act to direct the transfer of the papers in the Churchill Archive to Churchill College. This is because the papers have been out of official custody since long before the 1958 Act was passed and the papers are not therefore subject to its provisions.

The Lord Chancellor makes the further point, in his letter of 19 April that [ ],

On the question of presentation, as you surmised, it would indeed be for Lord Rothschild and the National Heritage Memorial Fund (NHMF) to make the announcement. They plan to do so on 26 April when they reveal the first batch of successful NHMF Lottery applications. The Secretary of State for National heritage is intending to be at the NHMF's press conference on that day, as he has attended those of other Lottery distributors, but the announcement will be the Fund's own. Indeed, as you will appreciate, it is crucial that the decisions of the Lottery distributors are seen to be quite independent of Ministers or the expenditure would have to be classified as part of the public expenditure planning total.

The Secretary of State will stress the Archive's particular significance to this year's 50th Anniversary of VE Day. The general line to take will be that the decision to purchase was the Fund's own but followed an independent valuation of the Archive and that the Government's role was limited to the need for the Prime Minister to give his consent to the transfer of ownership of the papers (including the official papers). He will say, if the Prime Minister is content for him to do so, that such consent has been given and that the acquisition of the archive by Cambridge University afforded the opportunity to keep a set of papers of key importance to the nation together in this country in a publicly available form, accessible to scholars and students who wish to consult them.

The Secretary of State and the No 10, Cabinet Office and DNH Press Offices will all be fully briefed on the background to the NHMF's announcement.

POL 66

Department of National Heritage

2-4 Cockspur Street
London
SW1Y 5DH
071-211 6194
Fax: 071-211 6230

FAX TRANSMISSION COVER SHEET

Date: 20 April 1995

To: Miss P M Andrews

Fax: 217 6010

Subject: Churchill Archive

Sender: Mrs Marjorie Reader (PS Miss Margaret O'Mara)

YOU SHOULD RECEIVE 5 PAGE(S), INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 071-211 6194

Please see the attached two drafts. Are you content, please?

Can we say that Michael Carpenter is content?

Marjorie Reader

CABINET OFFICE
H .....
20 APR 1995
FILING INSTRUCTIONS
FILE No. .....

f:\april\ml

DRAFT PRIVATE SECRETARY LETTER TO

Ms Melanie Leech
Private Secretary to Sir Robin Butler
Cabinet Office
70 Whitehall
London
SW1A 2AS

CHURCHILL ARCHIVE

Your office asked for advice on the letter Lord Rothschild wrote to Sir Robin Butler on 13 April.

As Sir Robin will appreciate, Lord Rothschild's request is more awkward than it at first appears. If the papers he has identified are photocopied for the press conference, that could raise questions about the large sum the NHMF were paying to secure papers which, the press may conclude, should be regarded as the property of the State already and might also stir up the Trustees, by focusing attention on the very papers whose ownership had been in dispute. That said, in PR terms, Lord Rothschild clearly has a strong point!

I enclose a draft reply which offers a possible way forward. We have discussed it with Pat Andrews and Michael Carpenter and they are content. The penultimate paragraph makes it

clear that there are still some outstanding issues to be resolved, since, as we understand it, we have not yet secured the Prime Minister's consent to the transfer of ownership and the Deed of Gift has not yet been signed.

f\april\lr

DRAFT REPLY TO

Lord Rothschild
National Heritage Memorial Fund
10 St James's Street
London
SW1A 1EF

CHURCHILL PAPERS

Thank you for your letter of 13 April. I am delighted that the purchase of the Archive is likely to be among the first batch of successful applications the NHMF will announce on 26 April.

You asked about the use you might make of some of the famous speeches at the time the acquisition is made public. I suspect some wires may have got slightly crossed here.

The question which Farrers put to us related very directly to the terms of the Purchase Agreement. Since, as you well

know, the question of ownership of part of the Archive has been the subject of dispute between the Government and the Churchill Trustees, we felt it unwise to highlight those very papers in the context of the Purchase Agreement. We therefore expressed a preference that the Fund should use only those documents which were clearly wihtin the Trustees' ownership. On the other hand, I appreciate that you want to lay stress in your announcement on the Archive's significance

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to the 50th anniversary of VE Day and clearly the papers you have identified are relevant to that.

May I suggest a possible way forward? It seems to me that, provided it is made clear at the press conference that what the NHMF have purchased is the personal papers of Sir Winston Churchill, stretching from his childhood, through his schooldays to the end of the Second World War, and that, together with the official papers, this enables the whole Archive to be displayed at Churchill College, then you could use a copy of the page from the VE broadcast, since it would represent part of the whole Archive. On this basis, we should be happy to give our consent to copying the documents you have identified, subject to all the other legal issues, on which I know the Treasury Solicitors' Department are in

discussion with Farrers, being tied up.

I am copying this letter to Hayden Phillips.

ROBIN BUTLER

~~ROBIN BUTLER~~

TOTAL P.04

Hard Copy

POL 65

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3029 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

CABINET OFFICE
H 95/291
24 APR 1995
FILING INSTRUCTIONS
FILE No.

FACSIMILE

To:	**Mrs Pat Andrews** **Historical & Records Section**	**From:**	**Eleri Wones**
Dept:	**Cabinet Office**	**No. of Pages:**	**8 inclusive**
Fax No:	**217 6010**	**Date:**	**20 April 1995**

Re: **Churchill Archive**

Many thanks for your fax.

I now return the drafts you supplied me with as slightly amended. I do not think my amendments are substantive but you may like to have a word with me about them on receipt of the fax.

I have noted the comments of Lord Mackay in his letter to Sir Robin Butler dated 19 April. From this letter it is clear he has accepted the advice supplied by Treasury Counsel regarding section 4 of the Public Records Act 1958. On the question of the presentational points which he has highlighted, I have the following comments:-

1. Lord Mackay refers to the need to substantiate the fact that no papers which may be properly called "public records" are being handed over as part of the transaction. This point goes back to the issue which we have already covered regarding section 4 of the Public Records Act 1958; namely, that whilst the documents may be "official papers" they are not "public records" because they are no longer in official custody. Thus the documents being transferred by HMG in the current transaction do not constitute "public records".

2. By definition, papers held by HMG must have some value independently of the Archive as a whole.

3. The Purchase Agreement makes it clear that the consideration is linked exclusively to the Chartwell Papers. I appreciate, however, that this is slightly cosmetic as some of the Chartwell Papers are the subject of the current litigation.

4. This I think is everybody's objective.

I am now completing the checking of a Purchase Agreement in its final form as submitted by Farrer & Co. I will telephone you shortly.

Yours sincerely

Eleri

Eleri Wones

P.S. Since dictating the above we have spoken. I am seeking to obtain the amendments to the draft Purchase Agreement we discussed.

D.

If this facsimile does not reach you in its entirety, please contact my secretary on 0171–210 3006.

DRAFT

HO95/279

SIR ROBIN BUTLER

CHURCHILL ARCHIVE

In his minute of 10 April Mr Alex Allan says that the Prime Minister would be interested to see advice on the Lord Chancellor's proposal that the official material in the Churchill Archive should be deposited in Churchill College Archive Centre which would be designated a place of deposit under Section 4 of the Public Records Act 1958, and that he would be grateful for advice on how a decision with regard to the transfer of the Archive would be presented.

Advice from Treasury Counsel is that there is no power under the Public Records Act 1958 to designate the Archive Centre for this purpose. The Centre could be so designated but not for these particular papers which have been out of official custody since long before the Act came into effect and which ~~were~~ are therefore ~~never~~ not records to which the 1958 Act ~~could have applied~~ can apply.

It follows from this that the official material in the Churchill Archive cannot be either deposited or presented under the provisions of the 1958 Act. The only way of achieving the aim of transferring the material to the new Trust and of preserving the Archive intact in this country would appear to be by Deed of Gift. In presenting this publicly we shall need to make clear that the papers are to be transferred into a Trust which has been set up with the principal purpose of acquiring and caring for the papers. Maintenance of the whole Archive, including the official papers, is to be overseen by the Royal Commission for Historical Manuscripts in conditions which largely mirror those which would apply had the Archive Centre been designated a place of deposit.

On the question of the announcement, this will be made by Lord Rothschild and the National Heritage Memorial Fund. The Department of National Heritage stresses that it is crucial that the decisions of the Lottery distributors are seen to be independent of Ministers. It is proposed that the general line to take will be that the decision to purchase the Archive was the Fund's own but followed an independent valuation, and that the Government's role was limited to the need for the Prime Minister to give his consent to the transfer of ownership of the papers (including the official papers). I have asked to see the text of the proposed announcement but have not yet received it.

I attach a suggested draft minute to Mr Allan which has been drawn up in consultation with DNH and Treasury Solicitors.

MISS P M ANDREWS

Historical and Records Section
20 April 1995

DRAFT MINUTE FOR SIR ROBIN BUTLER TO SEND TO

MR ALLAN, NO 10

CHURCHILL ARCHIVE

Thank you for your minute of 10 April in which you said that the Prime Minister would be interested in the advice on the points made in the Lord Chancellor's letter of 7 April and in how the decision with regard to the purchase of the Churchill Archive was to be presented.

In his letter of 7 April the Lord Chancellor expressed concern about the Government making a deed of gift of public records to a private owner and asked that his preferred solution of depositing the material in Churchill College Archive Centre which would be designated a place of deposit under Section 4 of the Public Records Act 1958 should be considered by officials.

Advice from Treasury Counsel is that whilst Churchill College could be designated a place of deposit under Section 4 of the Public Records Act such designation would be an empty gesture ~~because~~ there is no power under the Act to direct the transfer of the papers in the Churchill Archive to Churchill College. This is because the papers have been out of official custody since long before the 1958 Act was passed and the ~~papers are not therefore subject to its provisions~~ return.

The Lord Chancellor makes the further point, in his letter of 19 April that [ ],

On the question of presentation, as you surmised, it would indeed be for Lord Rothschild and the National Heritage Memorial Fund (NHMF) to make the announcement. They plan to do so on 26 April when they reveal the first batch of successful NHMF Lottery applications. The Secretary of State for National Heritage is intending to be at the NHMF's press conference on that day, as he has ~~attended~~ already those of other Lottery distributors, but the announcement will be the Fund's own. Indeed, as you will appreciate, it is crucial that the decisions of the Lottery distributors are seen to be quite independent of Ministers ~~or the expenditure would have to be classified as part of the public expenditure planning total.~~

The Secretary of State will stress the Archive's particular significance to this year's 50th Anniversary of VE Day. The general line to take will be that the decision to purchase was the Fund's own ~~but followed~~ made after the commissioning by it an independent valuation of the Archive, and that the Government's role was limited to the need for the Prime Minister to give his consent to the transfer of ownership of the papers ~~including the~~ (which include some official papers). He will say, if the Prime Minister is content for him to do so, that such consent has been given and that by the acquisition of the archive by Cambridge University afforded the opportunity to keep a set of papers of key importance to the nation together in this country in a publicly available form, accessible to scholars and students who wish to consult them.

The Secretary of State and the No 10, Cabinet Office and DNH Press Offices will all be fully briefed on the background to the NHMF's announcement.

DRAFT REPLY TO

Lord Rothschild
National Heritage Memorial Fund
10 St James's Street
London SW1A 1EF

CHURCHILL PAPERS

Thank you for your letter of 13 April. I am delighted that the purchase of the Archive is likely to be amongst the first batch of successful applications the NHMF will announce on 26 April.

You asked about the use of some of the famous speeches at the time the acquisition is made public. I suspect some wires may have got slightly crossed here.

The question which Farrers put to us related very directly to the terms of the Purchase Agreement. Since, as you well know, the question of ownership of part of the Archive has been the subject of dispute between the Government and the Churchill Trustees we felt it unwise to highlight those very papers in the context of the Purchase Agreement. We therefore expressed a preference for the use of only those documents which are clearly within the Trustees' ownership. On the other hand I appreciate that you want to lay stress in your announcement on the Archive's significance to the 50th anniversary of VE Day and clearly the papers you have identified are relevant to that.

20-APR-1995 08:22 FROM HKS 0171 217 6010 TO 72103503 P.08/09

May I suggest a possible way forward? It seems to me that provided it is made clear at the press conference that what the NHMF have purchased with the 12.5million is the personal papers of Sir Winston Churchill, stretching from his childhood, through his schooldays to the end of the War and that, ~~together with the official papers,~~ which also comprises official papers this enables the whole Archive to be displayed at Churchill College, then the VE day speech could perhaps be shown as part of the whole archive. On this basis we should be happy to give our consent to copying the documents you have identified, subject to all the other legal issues, on which I know Treasury Solicitors are in discussion with Farrers, being tied up.

FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN

HOUSE OF LORDS
LONDON SW1A 0PW

Sir Robin Butler GCB CVO
Cabinet Secretary
Cabinet Office
70 Whitehall
London SW1A 2AS

CABINET OFFICE
H 95/290
20 APR 1995
FILING INSTRUCTIONS
FILE No.

19 April 1995

Dear Robin,

CHURCHILL ARCHIVE

When I wrote on this matter on 7 April, I was concerned that references in the dratt Deed of Gift and related papers appeared to recognise beyond dispute that some 'public records' were included within the papers which are currently deposited at the Churchill Archive and which form the subject of the proposed transaction. In accord with this initial view, I suggested that it would be more appropriate to deal with this element of the transaction in accord with section 4 of the Public Records Act 1958.

I have now seen more detailed papers on this subject, including the letter of 11 April from Stephanie Panting to Mark Ormerod and its enclosures. It is clear that a substantial proportion of the preceding documents have been concerned with the point whether the State has valid and viable claims to ownership of papers within the Archive and Trust. Although it has been determined that it would not be prudent to pursue this question to resolution, I am prepared to accept the view that even if we regard some of the papers as ours, the Archive does not currently contain any documents which fall within the scope of the 1958 Act as 'public records'. This is because they have at no relevant time been within the custody or control of a body referred to in the 1958 Act. I note only that if the disputed papers were now to be transferred into the custody of the Public Record Office - and the legal opinions largely turn on whether such documents could be retrieved by the State and conclude that the likelihood of our achieving this is small - they would certainly become 'public records'. The proposed settlement bypasses this step.

I remain concerned at certain presentational aspects of this proposal. The existence of a Deed of Gift, albeit in terms which downplay the State interest, establishes that material in which the State may have some degree of interest is being gifted to private ownership (the Churchill Archive Trustees), in return for no consideration whatsoever. Equally, it is nonetheless clear (as Ms Panting's letter notes) that some element of the £12.5m sum referred to in the Purchase Agreement represents an element of buying out the risk of litigation over the papers covered by the Deed of Gift, and the price of maintaining the integrity of the Archive as a whole. In some sense, therefore, money provided by public funds will be contributing towards the purchase of the public's interest in these papers.

In view of this, I believe that in our public presentation of this issue we must be able to substantiate that:

- no papers which may properly be called 'public records' are being handed over as a part of this transaction;
- HMG is not handing over as a gift anything which would be of value in isolation from the archive as a whole;
- the Purchase Agreement should make clear that no financial consideration is being given to the Family Trustees in respect of those papers which form part of the Deed of Gift; and
- the Government's fundamental objective has been that of securing the Churchill Archive in its entirety and in perpetuity, in the public interest.

I have not seen the latest drafts of the Deed of Gift and related documents, and I am sure you will wish to satisfy yourself that they are in line with these points. I am copying this letter to the Prime Minister, the Secretary of State for National Heritage and the Attorney General.

Yours ever,

John.

63

CABINET OFFICE
H 95/289
19 APR 1995
FILING INSTRUCTIONS
FILE No.

f:\april\ml

DRAFT PRIVATE SECRETARY LETTER TO

Ms Melanie Leech
Private Secretary to Sir Robin Butler
Cabinet Office
70 Whitehall
London
SW1A 2AS

Pat
I'd be grateful for quick comments from you & Michael I will then send up to Hayden
Magure 19/4

CHURCHILL ARCHIVE

Your office asked for advice on the letter Lord Rothschild wrote to Sir Robin Butler on 13 April.

As Sir Robin will appreciate, Lord Rothschild's request is more awkward than it at first appears. If the papers he has identified are photocopied for the press conference, that could raise questions about the large sum the NHMF were paying to secure papers which, the press may conclude, should be regarded as the property of the State already and might also stir up the Trustees, by focusing attention on the very papers whose ownership had been in dispute. That said, in PR terms, Lord Rothschild clearly has a strong point!

I enclose a draft reply which offers a possible way forward. [We have discussed it with Pat Andrews and Michael Carpenter and they are content. The penultimate paragraph makes it

I hope he needed done because of this line

clear that there are still some outstanding issues to be resolved, since, as we understand it, we have not yet secured the Prime Minister's consent and the Deed of Gift has not yet been signed.]

f:\april\lr

DRAFT REPLY TO

Lord Rothschild
National Heritage Memorial Fund
10 St James's Street
London
SW1A 1EF

CHURCHILL PAPERS

Thank you for your letter of 13 April. I am delighted that the purchase of the Archive is likely to be among the first batch of successful applications the NHMF will announce on 26 April.

You asked whether the Government would reconsider the decision not to permit some of Churchill's most famous speeches to be copied for use at your press conference. I suspect some wires may have got slightly crossed here.

Farrar

The question which Mrs Hill put to us related very directly to the terms of the Purchase Agreement. Since, as you well know, the question of ownership of part of the Archive has been the subject of dispute between the Government and the Churchill Trustees, we felt it unwise to highlight those very papers in the context of that Agreement.

On the other hand, I know that you want to lay stress in your announcement on the Archive's significance to the 50th

anniversary of VE Day and clearly the papers you have identified are very relevant to that.

May I suggest a possible way forward? It seems to me that, provided you explain at the press conference that the NHMF have purchased the whole Archive, stretching from Winston's youth to the last days of war, and have on display copies of material relating to the whole period, you should be able easily to avoid any charge that you have spent £12½ million solely in acquiring papers which were already the property of the State and you will be much less likely to provoke the Trustees by focusing attention on those papers which have been the subject of legal dispute. We should be happy to give our consent to copying on this basis, [subject to all the other legal issues being tied up, on which I know Michael Carpenter is in discussion with Farrers.]

I am copying this letter to Hayden Phillips.

ROBIN BUTLER

Hard copy

f:\april\pa

RESTRICTED - POLICY

DEPARTMENT OF NATIONAL HERITAGE

2-4 Cockspur Street,
London SW1Y 5DH
Telephone: 0171-211 6193
Facsimile: 0171-211 6230

Head of Libraries, Galleries and Museums Group

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

CABINET OFFICE
H 95/288/
25 APR 1995
FILING INSTRUCTIONS
FILE NO

19 April 1995

Dear Pat,

CHURCHILL ARCHIVE

I enclose, as promised, a contribution to the minute Sir Robin Butler will want to send in response to Alex Allan's minute of 10 April. Our interest, of course, lies in Alex's third paragraph.

I drafted the passage in consultation with Paul Jenkins and it has been seen by others here, including Hayden Phillips' office. We shall let you have a copy of our detailed Q & A briefing as soon as it is available.

Yours sincerely,

Margaret

MISS M O'MARA

f:\april\pacmfsrb

CONTRIBUTION TO DRAFT MINUTE FROM SIR ROBIN BUTLER

The Prime Minister also asked how the decision would be presented.

As you surmised, it would indeed be for Lord Rothschild and the NHMF who made the announcement. They plan to do so on 26 April when they reveal the first batch of successful NHMF Lottery applications ~~on 26 April~~. The Secretary of State for National Heritage is intending to be at the NHMF's press conference on that day, as he has attended those of other Lottery distributors, but the announcement will be the Fund's own. Indeed, as you will appreciate, it is crucial that the decisions of the Lottery distributors are seen to be quite independent of Ministers or the expenditure would have to be classified as part of the public expenditure planning total.

The Secretary of State will stress the archive's particular significance to this year's 50th anniversary of VE Day. The general line to take will be that the decision to purchase was the Fund's own but followed an independent valuation of the archive. The Government's role was limited to the need for the Prime Minister to give his consent to the transfer of ownership of the papers. This he was happy to do (on the assumption he is), bearing in mind that the acquisition of the archive by Cambridge University afforded the opportunity to keep a set of papers of key importance to the nation together in this country in a publicly available form, accessible to any scholars or students who wished to consult them.

The Secretary of State and the No 10, Cabinet Office and DNH Press Offices will all be fully briefed on the background to the NHMF's announcement.

? and to the parellel Transfer of the Official papers in the Archive

SECRETARY OF STATE
DEPT. OF NATIONAL HERITAGE
C 95/755
11 APR 1995
FILING INSTRUCTIONS
FILE No .....

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

10 April 1995

SIR ROBIN BUTLER

CHURCHILL ARCHIVE

The Prime Minister was grateful for your minute of 5 April about the plans for settling the ownership of the Churchill Archive. He has also seen the Lord Chancellor's letter of 7 April.

The Prime Minister feels that the Lord Chancellor makes an important point about the difficulties of transferring public records to a private owner in these circumstances. He would be interested to see the advice from officials on the Lord Chancellor's alternative course.

The Prime Minister would also be grateful for advice on how a decision would be presented. Would it be Lord Rothschild and the NHMF who made the announcement and indicated that it was their decision to use Lottery resources under their control to finance the purchase? What role would they say that the Government had taken, and what would be the Government's own line?

I am copying this minute to Mark Ormerod (Lord Chancellor's Department), John Kingman (Department of National Heritage) and Juliet Wheldon (Law Officers' Department).

ACSA

ALEX ALLAN

M. Hobley
MA 13.4.95

SECRETARY OF STATE	
DEPT OF NATIONAL HERITAGE	
ACTION	M- Hobley
BY	As Appropriate
ADVICE DRAFT REPLY (If Appropriate) Official Reply DNH (OK)	COPIES TO: VISCOUNT ASTOR MR PHILLIPS MISS O'MARA

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3029 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

Pat Andrews
Cabinet Office
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW

Please quote: A930329G/EW

Your reference:

Date: 19 April 1995

Dear Pat

I refer to our recent various telephone conversations and as promised I now enclose a copy of a letter dated 18th April which I have just received from Farrer & Co supplying final copies of the documents that they have now engrossed and sent out for signature.

In order to forward this letter to you without delay I have not read or checked the enclosed documentation to see whether or not it accords with the amended drafts approved by Paul Jenkins and Michael Carpenter. I hope to have done this by the time you receive the enclosed.

As indicated on the telephone I think it is a little remiss of Farrer & Co not to have supplied copies of the documents in their final form prior to their being released to the various parties in Cambridge for execution.

Please let me know if you have any comments concerning the enclosed documents.

I look forward to hearing from you.

Yours sincerely

Eleri

Eleri Wones

CABINET OFFICE
H 95/287/1
19 APR 1995
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FILE No.

FARRER & CO

66 LINCOLN'S INN FIELDS LONDON WC2A 3LH
Telephone 0171-242 2022 Facsimile 0171-831 9748 Telex 24318 FARRER G DX 32

R A Griffiths
A M Farrer
M H Boyd-Carpenter CVO
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Miss M E Falk
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N S D Bulmer
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I J Dicker
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C R A Anderson
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S J Bruce
S J Pring
J P D Wienand

Consultant
Mrs M T Picton-Turbervill

Associates
Miss J L Brown
W G F Gee
N Richards

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

Your Ref A930329G/MC
Our Ref JLH/EBS/JAS/lf

For the attention of Eleri Wones

18 April 1995

Dear Sir

Churchill Papers

We enclose, as requested, copies of the final versions of all of the documents that have previously been sent to either Paul Jenkins or Michael Carpenter in draft.

These are :

1. The Purchase Agreement;

2. Deed of Gift and Copyright Licence;

3. Declaration of Charitable Trust; and

4. Agreement relating to the Churchill Archive (previously referred to as "Conditions of Grant").

The Declaration of Trust has been executed and the Trust is now a registered Charity.

As discussed, the only document that will actually require execution by the Cabinet Office is the Deed of Gift and Copyright Licence.

Yours faithfully

Farrer & Co.

Farrer & Co is regulated by the Law Society in the conduct of investment business

HO95/278

SIR ROBIN BUTLER

CHURCHILL ARCHIVE

In his letter of 6 April, which arrived just after you had gone on leave, Sir Robert Fellowes says that The Queen has no objection to the transfer of the State papers, including correspondence with members of the Royal Family and the Royal Household, to Churchill College.

Sir Robert also asks, in respect of the few papers about which Mr Oliver Everett expressed concern in 1992, whether it might be possible for Royal-related papers to be kept under a separate heading and for The Queen's Librarian at Windsor to be informed when there is a request to see them.

The papers about which Mr Everett expressed concern were removed from the Archive and, together with other sensitive documents, placed in sealed boxes in the Archive Centre at Churchill College. They will remain there despite the change of ownership and the Deed of Gift gives us the right to specify conditions as to their safekeeping and to access. I have spoken to the Archivist at Churchill College who assures me that nothing will change so far as these papers are concerned; he will, at some stage, wish to discuss with us and with Mr Everett dates on which sensitive material might be returned to the Archive but this is nothing new - we always envisaged that the papers would be returned to the main Archive as and when their sensitivity passed.

I attach a draft reply to Sir Robert for your consideration.

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
19 April 1995

DRAFT LETTER FOR SIR ROBIN BUTLER TO SEND TO :-

The Rt Hon Sir Robert Fellowes KCB CVO
Buckingham Palace
London SW1A 1AA

CHURCHILL ARCHIVE

Thank you for your letter of 6 April which arrived just after I had left to go on leave. I am most grateful to you for letting me know that The Queen does not object to the transfer of the State papers in the Churchill Archive to Churchill College, Cambridge.

The papers about which Oliver Everett expressed reservations in 1992 were removed from the Archive and are stored separately in the Archive Centre in sealed boxes. The Deed of Gift by which ownership of the papers will pass to the new Trustees gives us the right to specify conditions as to the safekeeping of and access to these papers and we are assured by the Archivist that, despite the change of ownership, nothing will change in this respect. The Archivist may get in touch with Oliver in due course to discuss dates in the future when the withheld papers may possibly be returned to the Archive but, in the meantime, access will not be granted and nothing affecting the Royal Papers will be done without reference to The Queen's Librarian at Windsor.

In my letter of 5 April I said that the proposal was to announce on 20 April the allocation of funds from the Lottery to the National Heritage Memorial Fund for the purpose of the purchase; it is now proposed that, subject only to the Prime Minister's consent, the announcement should take place on 26 April.

Copy for Mrs Andrews

FOLIO 59M

THE TREASURY SOLICITOR

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DX 123242 St James's Park Fax 0171 210 3232 0171 222 6006 Switchboard 0171 210 3000 (GTN 210)

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Duncan Chalmers, Esq.,
24, Waldens Park Road,
Horsell,
Woking,
Surrey, GU21 4RW.

Please quote: WHG.

Your reference:

Date: 18th April, 1995.

CABINET OFFICE
H 95/285
19 APR 1995
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FILE No.

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FILE No.
19 APR 1995
H
CABINET OFFICE

CHURCHILL ARCHIVES

Hazlehurst

1. Hazlehurst's General Background and Introduction, paras. 3-7, may call for an answer from Pat Andrews rather than you, but it is convenient to discuss it here.

2. As you say, his para. 3 may depend on the width of his interpretation in para. 6. Is the statutory definition of "public records" a limit on the Relevant State Papers ("RSP") for which the Crown claims ownership? The papers produced by Winston Churchill as historian and journalist must be outside the scope of the claim, but an exchange of views about a candidate for ministerial office is less clear. As you point out, it may be difficult to separate political correspondence from official. Is this a point we need to look into? Miss Veitch may be able to say whether it is live or not.

3. Going back to para. 6, Hazlehurst says that Pat Andrews first adopts the definition of RSP in the summons, then qualifies it by reference to the 1934 correspondence, specifically p. 13 of PMA4. This Exhibit is referred to in para. 15 of the affidavit, part of Pat Andrews' section on correspondence with Winston Churchill prior to the 1946 Settlement. It seems to me a relevant part of the narrative which is not meant as a qualification of RSP.

4. Then Hazlehurst in his para. 5 says Pat Andrews subsequently seeks to extend RSP to working papers of

Continued/.....

Government Departments. In fact, these are referred to in an earlier paragraph, para. 7, as a mopping up category at the end of a classification of the Cabinet Papers comprised in the RSP.

5. As to Hazlehurst's para. 3, and the width of the claim, and the recourse to the Courts, can we not say the reason for this is that the Crown has not previously been given notice of a proposal to seel RSP of comparable importance?

6. Hazlehurst's para. 4 is very by and large and therefore difficult to answer, and we can make that point. However, you put forward relevant general considerations which could be used in evidence by you or Pat or both of you. Can they be particularised? E.g. is there PRO correspondence that could be produced?

7. Hazlehurst's next section is History - Cabinet Practice and Procedure, paras. 8-24. I have raised a few questions of detail on the attached marked copy of the first four pages of the affidavit. Generally, I think we shall need to go through this section of your commentary with Counsel to settle guidelines for your evidence - e.g., should you consider relevance, as in para. 15, or is that for Counsel?

8. Correspondence with Winston Churchill prior to 1946 Settlement: your treatment of this section also raises questions as to the boundary between your role and Counsel's.

9. The 1946 Settlement: your para. 32, last complete sentence on the page: Did Winston Churchill see the RSP as a source of income for his family? It may have been a purpose of the Trust, but surely not the purpose?

10. The remaining sections: Counsel may see in your para. 36 an opportunity of developing the policy of the Crown as owner, not always to insist on custody, but to accept satisfactory alternatives where they exist. Your paras. 38-40 will clearly need re-vamping into affidavit material.

11. Generally, we will need to exhibit documents referred to which have not already gone in as Exhibits.

Yours sincerely,

W.H. GODWIN.

CC: Ms. P. Andrews, Cabinet Office, Hepburn House, Marsham St.

COMMENTARY ON PAPERS IN ATTORNEY GENERAL v. MONTROSE (contd.)

F. Affidavit of Cameron Hazlehurst, 8 November 1994
General Background and Introduction — for Pat Andrews or Duncan Chalmers

1. The statement in paragraph 3 of the affidavit on the scope of the claim is an assertion unsupported by facts, though it presumably depends on the assumption in paragraph 6 that the claim extends to Churchill's papers created or acquired as a politician, an historian and a journalist, i.e. party political and private correspondence and papers. The point made in paragraph 6 about political correspondence and the example of correspondence about ministerial appointments is valid ; and it is sometimes difficult to separate such correspondence from official correspondence, particularly if the writers did not do so. It is for this reason that some correspondence of both ministers and officials is described as 'semi-official' (or in the past 'demi-official'). Moreover, political or private correspondence might on occasion be filed with other correspondence and papers of a clearly official nature and even on departmental files, though most private offices have sought to segregate it. The administrative context generally determines whether papers are treated as official, semi-official or private. The arrangement of the Chartwell Papers (Exhibit P.M.A.1) reflects these distinctions, with a substantial number of classes of official papers, but there are inevitably some papers of a wholly or mainly official nature in the classes of public and political papers. The work undertaken by the Cabinet Office Historical and Records Section (notably by Miss Veitch) has made it possible to clarify exactly which papers are official in character and accordingly form part of the 'Relevant State Papers'.

2. I too know of no previous instance in which the Crown has sought the assistance of the courts in claiming ownership of papers formerly belonging to a minister or of recovery of state papers. There have been instances when the possibility of court action has been made plain to those holding state papers, but mainly as a means of preventing publication or disclosure. Without specific statutory provision for recovery or a breach of an undertaking, legal proceedings must usually have appeared unlikely to succeed and have doubtless been seen as undesirable in such cases. The absence of case law is therefore not surprising.

3. The position stated in paragraph 4 of the affidavit is substantially true, but again unsupported by evidence. However, it is not valid to imply that the Crown's only or principal objective has been to prevent unauthorised publication of confidential information. This was part of a wider concern for control over state papers, including the circulation and custody of Cabinet documents. In respect of the Chartwell Papers concern was expressed by the Public Record Office as early as 1962 that the collection should in due course be made available to public inspection and by the Lord Chancellor's Office and the Cabinet Office from at least as early as 1968 that any official papers not duplicated among the public records should not be withheld from public inspection because they had

passed out of public custody. Moreover, these points were accepted by the Trustees in correspondence. (Exhibits P.M.A.12, pp.44-47 ; P.M.A.13, pp.9,14-15,20-21 (particularly the manuscript minute by Sir Burke Trend,15 November 1968) ; P.M.A.14, pp.1,4,14-16,27 et seq.; P.M.A.15 passim).

4. Nor do I think it is correct to say that 'what debate there has been on the subject of Ministerial papers during this century has hitherto been directed exclusively at the protection of confidential information'. It is true that there has been relatively little public debate about ministerial papers or other official papers in private hands, but there have been parliamentary questions about the private use of public documents for publication, irrespective of questions of confidentiality. There have also been questions about access to papers by former ministers and others. (See, for example, Hansard 14 February 1948, cols.521-522 (dealing with publcation by WSC) ; 9 February 1954, cols.1005-1026; 11 February 1954, cols.1361-1365).

5. Paragraph 5 of the affidavit has all the appearance of deliberate and perverse obtuseness. It is surely clear enough from paragraph 7 of Miss Andrews' affidavit that the Cabinet papers and the working papers of Government departments together comprise the Relevant State Papers referred to in paragraph 4 of her affidavit. The 'other, unspecified documents' adduced by Professor Hazlehurst can only, in the context, be the Cabinet papers. The definition of the 'Relevant State Papers', being limited to papers created or acquired by virtue of his ministerial offices, would not include papers created or acquired in his political or private capacities. Thus the 'Crown's inconsistency', the phrase used by Professor Hazlehurst in his paragraph 6, is his own artificial product.

6. By contrast, as I have already indicated, there is more justice in the point that some political correspondence might be said to have been created or acquired by virtue of ministerial office. On such matters as ministerial appointments (that is appointments to ministerial office by a prime minister not other appointments by a minister) it is often impossible to separate ministerial and political roles. Such instances illustrate the importance of context. It is possible to envisage circumstances in which papers relating to a ministerial appointment might be found in the files of official correspondence and papers from the Prime Minister's Office and, perhaps more commonly, other circumstances where the papers would be kept separately in series of political correspondence in that office or in the prime minister's own hands. Put in simple terms whether the papers were state papers or public records would depend upon which hat the prime minister was wearing at the time.

7. As you know I am entirely in agreement with the point made in paragraph 7 of the affidavit. The difficulty is that any statements or rulings about state papers generally will be more difficult to find, if they exist. It is clear, however, from the Cabinet Office files that the Cabinet secretary did not see himself as having any responsibility for the control of departmental papers other than those circulated to the Cabinet

and its committees and papers emanating from the Cabinet Office. Questions relating to departmental papers were a matter for the departmental minister or permanent head of department concerned, subject to the observance of any general rules issued by the Treasury and, where appropriate, consultation of other departments and, if necessary, the prime minister and/or the sovereign (PRO CAB 21/2161 : correspondence of Sir Rupert Howorth with H.C.Vincent, a private secretary at the Prime Minister's Office, October 1934 and G.W.Lambert at the War Office, January 1940 ; CAB 21/4380 : papers on access to Cabinet and departmental records, including paper C(P)(52)3 of 10 March 1952 on Cabinet Procedure).

Cabinet Practice and Procedure

8. The assertion in paragraph 8 of the affidavit is again unbacked by evidence. The statements in paragraph 9 are factual, but they do not establish any principle or convention of ownership of state papers by former ministers, merely that they felt free to take such papers with them.

9. ~~In~~ Paragraph 9 of the affidavit makes the point that Cabinet papers were not officially preserved during the 19th century and cites for practice before 1916 the PRO Handbook No.11 The Records of the Cabinet Office to 1922. The absence of Cabinet papers from the files of government departments may also be explained in other ways. In the period before the First World War many departments arranged their archives by type of document and then by year in bound volumes, though a few departments had begun to bring together papers by case and ultimately by subject. Printed papers were often kept separately from the main record series, even where original documents or drafts, of which they were copies, were so preserved. This was particularly true of those departments which undertook their own confidential printing, including Cabinet Papers. Record series of printed papers have not always been preserved, but the class of Cabinet Papers formerly preserved by the Foreign Office (PRO FO 899) was formed in this way. Where there was no library or record class of printed papers, Cabinet papers might be placed on the subject files which became more common after 1920. However, Cabinet Office procedures for the control and periodic removal and return of Cabinet papers gradually had the effect of substantially reducing the number of Cabinet papers preserved on departmental files. Finally, the content of departmental files is dependent upon efficiency of filing. It is not therefore safe to draw the conclusion from the absence of Cabinet papers on such files that they were held in ministerial offices. Indeed it is clear from [the Cabinet Office files] that collections of past Cabinet papers were held not in ministerial offices but by or on behalf of the permanent head of department in accordance with the rules governing ministerial access to papers of a previous administration.

December

Can you give references to Sanders and Carlington?

reference?

10. The point made in the preceding paragraph about the conclusions to be drawn from the absence of Cabinet papers on departmental files applies also to the point made in paragraph 10 of the affidavit. That absence does not establish that ministers themselves determined as a matter of course what was or was not a private document, though doubtless their views, if sought and expressed, would have carried considerable weight.

? No known instance of such a determination by a minister

? that their reports were not Crown property

It is, however, reasonable to suppose that Edwardian ministers would have taken the view expressed in relation to the prime minister's confidential reports to the sovereign; and indeed these are to be found in the PRO only as copies from the Royal Archives. It is also true that reports from the leaders of the House of Commons do not survive among departmental records. Such ministers are not usually departmental ministers. It has to be admitted that control over the offices of such ministers and other central Cabinet ministers without departmental portfolios has been less than effective, partly because they have often had party political as well as governmental duties.

11. The points made in paragraph 11 of the affidavit are factual and that made about the papers of Lewis Harcourt as Colonial Secretary would doubtless have applied to all those secretaries of state who regularly presented papers to Parliament.

12. One of the major difficulties in this case - indeed its very origins - lies in the fact that some ministers, often those who have held the greatest offices, have chosen not to bind themselves by rules which they had approved or even promulgated. This fact makes the line of argument adopted in paragraph 12 of the affidavit unsatisfactory, even allowing for the force of convention. It is certainly true that until the prime minister's office was staffed, in part, by permanent civil servants seconded from the major departments there was no basis for departmental archives at No.10. But to give that fact significance in relation to the constitutional status of the state papers created is to fall into the same trap of hindsight as the defendants allege on the part of the Crown. Incidentally, it is not clear what is the precise source of the quotation in the second sentence of paragraph 12, other than that it comes from the minutes of the Radcliffe Committee and from the reference cited is taken from the Cabinet Office set of committee papers. It is not among the exhibits, any more than the Committee of Imperial Defence document apparently quoted (though with the wrong reference) in paragraph 16.

? rule = convention

NIM(75)2 [Correct reference]

[Correct reference]

13. The accuracy of the statement in the last sentence of paragraph 13 of the affidavit has yet to be established, but it is notoriously difficult to prove a negative. [But have we had to disprove a negative?]

14. No one would question the special importance of wartime secrecy referred to in paragraph 14 of the affidavit, but that does not necessarily undermine attempts to maintain secrecy in peacetime or mean that the likelihood of disclosure was less in peacetime.

DC Can we discuss? BG

15. The point in paragraph 14 of the affidavit about the possibly defective character of the heading on Cabinet papers denoting ownership is surely irrelevant : the intention is clear and intelligible. It seems likely that the Law Officers' opinion was largely technical and for that reason was not acted upon.

16. The argument in paragraph 15 is valid, but it misrepresents Bridges' argument and in so doing seeks to demolish an argument that the Crown has not in fact advanced. The standing Cabinet secretariat and the maintenance of Cabinet records provided

CABINET OFFICE
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW
Fax: 071 217 6010

ENQUIRIES:
071 217 6050

FOI 59

URGENT
YES/NO

FACSIMILE LEADER

NAME: Miss M O'Mara

DEPARTMENT: DNH

ADDRESS: Cockspur St

FAX No: 211 6230

FROM: PAT ANDREWS

DOCUMENT REFERENCE/TITLE: CHURCHILL PAPERS

TOTAL NUMBER OF PAGES: + 2 DATE: 18.4.95

MESSAGE:

Suggested re-draft of letter to
Lord Rothschild.

ACKNOWLEDGEMENT REQUIRED YES/ NO

DRAFT REPLY TO

Lord Rothschild
National Heritage Memorial Fund
10 St James's Street
London SW1A 1EF

CHURCHILL PAPERS

FOL 59

Thank you for your letter of 13 April. I am delighted that the purchase of the Archive is likely to be amongst the first batch of successful applications the NHMF will announce on 26 April.

You asked about the use of some of the famous speeches at the time the acquisition is made public. I suspect some wires may have got slightly crossed here.

The question which Farrers put to us related very directly to the terms of the Purchase Agreement. Since, as you well know, the question of ownership of part of the Archive has been the subject of dispute between the Government and the Churchill Trustees we felt it unwise to highlight those very papers in the context of the Purchase Agreement. We therefore expressed a preference for the use of only those documents which are clearly within the Trustees' ownership. On the other hand I appreciate that you want to lay stress in your announcement on the Archive's significance to the 50th anniversary of VE Day and clearly the papers you have identified are relevant to that.

May I suggest a possible way forward? It seems to me that provided it is made clear at the press conference that what the NHMF have purchased with the 12.5million is the personal papers of Sir Winston Churchill, stretching from his childhood, through his schooldays to the end of the War and that, together with the official papers, this enables the whole Archive to be displayed at Churchill College, then the VE day speech could perhaps be shown as part of the whole archive. On this basis we should be happy to give our consent to copying the documents you have identified, subject to all the other legal issues, on which I know Treasury Solicitors are in discussion with Farrers, being tied up.

NOTE FOR RECORD

I spoke to Michael Carpenter on 13 September about the work still remaining to be done on the reports submitted by Duncan Chalmers and Bill Godwin.

Michael said that he needed to draw the two reports together in a draft which, when approved by all parties, would go to Sir Robin Butler. Matters with more urgent deadlines had prevented him from doing this to date. He accepted, however, that it was necessary to complete this work and we agreed that we should aim to get the report cleared and up to Sir R Butler before I go on holiday on 22 October.

PMA

MISS P M ANDREWS

Historical and Records Section
13 April 1995

6504

NATIONAL HERITAGE MEMORIAL FUND
10 ST JAMES'S STREET LONDON SW1A 1EF
TELEPHONE 0171 930 0963 FACSIMILE 0171 930 0968

From the Chairman: Lord Rothschild

13 April 1995

c Mr Carpenter (Tate)
Miss Anderson
c PS/MW Phillips

Dear Robin,

Grateful for advice and draft reply pls

Churchill Papers

Mark Green
(APS/S-R But
18/4/95

May I please send you the attached letter from Mr Michael Carpenter? It does seem extremely odd that we should not be allowed to make use of some of Churchill's most famous speeches at the time the acquisition is made public?

You will be pleased to hear however that we are making progress and hope to include the Churchill Papers when our first grants of Lottery money are announced on April 26th.

Yr ever,

Jack.

CABINET OFFICE
H 95/280
18 APR 1995
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FILE No.

(Lord Rothschild)

Sir Robin Butler GCB CVO
Secretary of the Cabinet
10 Downing Street
London SW1A 2AA

NCJR/sb
Encl: M Carpenter letter 12.4.95

THE TREASURY SOLICITOR
Queen Anne's Chambers, 28 Broadway, London SW1H 9JS
Direct Line 0171 210 3450 Direct Fax 0171 210 3503
Office of Public Service & Science Legal Adviser

Mrs J L Hill
Farrer & Co
66 Lincoln's Inn
London WC2A 3LH

Please quote:

Your reference: A930329G/MC

Date: 12 April 1995

Dear Mrs Hill

The Churchill Papers – press conference

Thank you for your letter of 7 April on which I have consulted my Cabinet Office colleagues.

Our clear preference is that only those documents which are clearly within the ownership of the Churchill Trustees should be copied for use at any press conference concerning the Purchase Agreement. As far as the documents are concerned, the Crown does not, therefore, consent to use of the final page of the "Finest Hour" speech (document 5) or of the account by King George VI of the bombing of Buckingham Palace (document 6) or of the page from the VE broadcast (document 8).

Copyright in the handwritten letter from President Roosevelt (document 7) is a matter for the late President's executors, although it may well be out of copyright shortly (i.e. 1 January 1996).

As far as the photographs are concerned, Crown copyright does not, of course, subsist in the first of those listed (WSC aged 8). If, as is thought probable, the remaining three photographs were first published by 31 December 1944, then copyright protection will have expired and the Crown would not object to copies being made.

Yours sincerely

M. Michael Carpenter

a. Mr Jenkins

ROLL 57

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

FACSIMILE

To:	**Miss Pat Andrews Cabinet Office**	**From:**	**Michael Carpenter**
Dept:	**Heritage & Records Section**	**No. of Pages:**	**2 inclusive**
Fax No:	**0171 217 6010**	**Date:**	**12 April 1995**

Re: **Churchill Archive** Q & A brief

I suggest you add the following to the comments I have already made in my letter of 6 April. It replaces Q.15 – A.18. I am copying to Paul Jenkins here, but I assume you will be copying to DNH/NHMF in any event.

M.C.

CABINET OFFICE
H 95/284/
18 APR 1995
FILING INSTRUCTIONS
FILE No.

If this facsimile does not reach you in its entirety, please contact my secretary on 0171–210 3006.

CABINET OFFICE
H
18 APR 1995
FILING INSTRUCTIONS
FILE No

Q.15 Can the Archive be sold overseas by the University?

A.15 No. The Churchill trustees hold the whole of the Churchill Papers Archive ~~on trust under~~ under a charitable trust and may not sell any part of the Archive without the consent of the Heritage Lottery Trustees. As trustees of a charitable trust, the Churchill Trustees may not in any event dispose of the permanent endowment of the charitable trust without the consent of the Charity Commissioners or of the court.

Q.16 Does the Government have any say over a future sale of the Archive?

A.17 A sale of the Archive could not take place without the consent of the Heritage Lottery Trustees, the Charity Commissioner and/or the court. The Government considers that these bodies are best placed to supervise this charitable trust

Q.18 What about the costs of the litigation?

A.19 As is normal where cases are discontinued, each side is to bear its own costs.

THE TREASURY SOLICITOR
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Miss P Andrews
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With the Compliments of

POLI 56

THE TREASURY SOLICITOR

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Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

Mrs J L Hill
Farrer & Co
66 Lincoln's Inn
London WC2A 3LH

Please quote:

Your reference: A930329G/MC

Date: 12 April 1995

Dear Mrs Hill

The Churchill Papers – press conference

Thank you for your letter of 7 April on which I have consulted my Cabinet Office colleagues.

Our clear preference is that only those documents which are clearly within the ownership of the Churchill Trustees should be copied for use at any press conference concerning the Purchase Agreement. As far as the documents are concerned, the Crown does not, therefore, consent to use of the final page of the "Finest Hour" speech (document 5) or of the account by King George VI of the bombing of Buckingham Palace (document 6) or of the page from the VE broadcast (document 8).

Copyright in the handwritten letter from President Roosevelt (document 7) is a matter for the late President's executors, although it may well be out of copyright shortly (i.e. 1 January 1996).

As far as the photographs are concerned, Crown copyright does not, of course, subsist in the first of those listed (WSC aged 8). If, as is thought probable, the remaining three photographs were first published by 31 December 1944, then copyright protection will have expired and the Crown would not object to copies being made.

Yours sincerely

Michael Carpenter

CABINET OFFICE
H 95/278
13 APR 1995
FILING INSTRUCTIONS
FILE No.

FOI 55

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

HO95/270

L C Oates Esq
Lord Chancellor's Department
Trevellyan House
Great Peter Street
London SW1P 2BY

12 April 1995

Dear Mr Oates

CHURCHILL ARCHIVE

We spoke yesterday afternoon about the Lord Chancellor's concerns relating to the transfer of ownership of official papers to the trustees of the charitable trust formed to maintain the Churchill Archive (the trustees being the Vice-Chancellor of the University of Cambridge, the University Librarian and the Master and Bursar of Churchill College).

We have, as you know, arranged for a letter to go from Sir Robin Butler's office to Mr Ormerod, Lord Chancellor's Office, in response to the Lord Chancellor's letter of 7 April which arrived after Sir Robin had gone on leave. This addresses, in some detail, the suggestion made by the Lord Chancellor that the official papers should be deposited at the Churchill College Archive Centre and the Archive Centre designated a place of deposit for them under Section 4 of the Public Records Act 1958. In our view there is no effective power so to designate the Archive Centre under Section 4.

You asked me also to address the complementary question of the wording of the Deed of Gift which refers to the transfer of certain material in the Archive over which the Crown claims ownership. It is our view, based on the Opinions of the Law Officers and of Treasury Counsel, that the mere fact that the Crown claims ownership of material does not make that material a "public record" to which the 1958 Public Records Act applies. The material may, perhaps, once have comprised public records to which the 1838 Act applied, but once they leave official custody, records cease to be ones to which that Act applied, as the Law Officers advised in 1956. Based on this advice Treasury Counsel advised in 1991 that the 1958 Act does not apply to these records, which have been out of official custody since 1946 and which never were records to which the 1958 Act could have applied.

It follows from this that the material in question may not be either deposited or presented under the provisions of the 1958 Act and it seems that the only way of achieving the aim of transferring the material to the new trust and of preserving the archive intact for the nation is by Deed of Gift.

The proposal therefore is that the papers are transferred into the ownership of a newly created Trust and maintained and managed by Churchill College. The Trust has been set up with the principal purpose of acquiring and caring for the papers. Maintenance of the whole archive, including the official papers, is to be overseen by the Royal Commission for Historical Manuscripts in conditions which largely mirror those which would apply had the Archive Centre been designated a place of deposit. Whilst, therefore, HMG is relinquishing ownership of the official papers (and The Queen has given Her consent to this) the integrity of the Archive has been assured in a way which would not have been the case had no Purchase Agreement and corresponding Deed of Gift been entered into, and may well not have been the case had litigation proceeded. By this means the entire Archive will, as HMG has always intended, be available to the nation for the purpose of research.

With regard to the wording of the Deed of Gift itself, if you think it would help, it might be possible to agree an amendment so that the reference is to "the Crown's interest in the material" rather than to "Crown material" in (D) of the Deed of Gift and elsewhere as appropriate. Michael Carpenter is advising the Cabinet Office in this matter and you may wish to discuss it directly with him.

I am copying this letter to Michael Carpenter and Paul Jenkins, (T. Sol), to Richard Jackson (LSLO) and to Nicholas Cox, PRO.

Yours sincerely

Pat Andrews

MISS P M ANDREWS

CABINET OFFICE
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW
Fax: 071 217 6010

ENQUIRIES:
071 217 6050

FOI 54

URGENT
YES/NO

FACSIMILE LEADER

NAME: DR N G COX

DEPARTMENT: PRO

ADDRESS: KEW, RICHMOND

FAX No: 0181 878 8905

FROM: PAT ANDREWS

DOCUMENT REFERENCE/TITLE: CHURCHILL ARCHIVE

TOTAL NUMBER OF PAGES: + 3 DATE: 12-4-95

MESSAGE:

Draft letter to Mr Oates as amended by Michael Carpenter. Any further comments please?

Pat 12/4.

ACKNOWLEDGEMENT REQUIRED YES/ NO

DRAFT LETTER TO:-

L C Oates Esq
Lord Chancellor's Department
Trevellyan House
Great Peter Street
London SW1P 2BY

CHURCHILL ARCHIVE

We spoke yesterday afternoon about the Lord Chancellor's concerns relating to the transfer of ownership of official papers to the trustees of the charitable trust formed to maintain the Churchill Archive (the trustees being the Vice-Chancellor of the University of Cambridge, the University Librarian, the Master and the Bursar of Churchill College.

We have, as you know, arranged for a letter to go from Sir Robin Butler's office to Mr Ormerod, Lord Chancellor's Office, in response to the Lord Chancellor's letter of 7 April which arrived after Sir Robin had gone on leave. This addresses, in some detail, the suggestion made by the Lord Chancellor that the official papers should be deposited at the Churchill College Archive Centre and the Archive Centre designated a place of deposit for them under Section 4 of the Public Records Act 1958. In our view there is no effective power so to designate the Archive Centre under Section 4.

You asked me also to address the complementary question of the wording of the Deed of Gift which refers to the transfer of certain material in the Archive over which the Crown claims ownership. It is our view, based on the Opinions of the Law Officers and of Treasury Counsel, that the mere fact that the Crown claims ownership of material does not make that material a "public record" to which the 1958 Public Records Act applies. The material may, perhaps, once have been public records to which the 1838 Act applied, but once they left official custody, records cease to be ones to which that Act applied, as the Law Officers advised in 1956. Based on this advice, Treasury Counsel advised in 1991 that the 1958 Act does not apply to these records, which have been out of official custody since 1946 and never were records to which the 1958 Act could have applied. Accordingly, they may not be either deposited or presented under its provisions, and the only way of achieving the aim of transferring the material to the new trust and of preserving the archive intact for the nation is by Deed of Gift.

The proposal therefore is that the papers are transferred into the ownership of a newly created Trust and maintained and managed by Churchill College. The Trust has been set up with the principal purpose of acquiring and caring for the papers. Maintenance of the whole archive, including the official papers, is to be overseen by the Royal Commission for Historical Manuscripts in conditions which largely mirror those which would apply had the Archive Centre been designated a place of deposit, Whilst, therefore, HMG is relinquishing ownership of the State (official) papers (and The Queen has given Her consent to this) the integrity of the Archive has been assured in a way which would not have been the case had no Purchase Agreement been entered into and may well not have been the case had litigation proceeded. By this means the entire Archive will, as HMG has always intended, be available to the nation for the purpose of research.

Michael Carpenter is advising the Cabinet Office in this matter and you may wish to discuss it directly with him.

I am copying this letter to Michael Carpenter and Paul Jenkins, Treasury Solicitors, to Richard Jackson (LSLO) and to Dr Nicholas Cox, PRO.

FOL 53

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

HO95/269

M C Carpenter Esq
Treasury Solicitor's Department
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

12 April 1995

Dear Michael

CHURCHILL ARCHIVE

I understand that you are in a meeting this morning. I am going into one at 11.15 which I hope will be over by lunchtime.

In the meantime Nicholas Cox has commented on the draft letter to Mr Oates. Nicholas says that he will simply reiterate that we are trying to have things both ways by asserting that the papers are Crown property but not public records. I said that you had assured me that the two statements were not incompatible!

Nicholas suggests that we would have a better chance of convincing Mr Oates if we were to refer to the Crown's "interest in" the papers rather than to Crown property. This seems a bit radical at this stage but what do you think? Perhaps you would like to have a word with Nicholas (GTN 3851 2405).

I shall ring when I return from my meeting.

Yours ever

Pat

MISS P M ANDREWS

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

FOLIO 52

HO95/268

Dr N G Cox
Director of Archival Services
Public Record Office
Kew
Richmond
Surrey
TW9 4DU

12 April 1995

Dear Nicholas

CHURCHILL ARCHIVE

I enclose, as agreed, a copy of the letter which went yesterday to Mr Ormerod in the Lord Chancellor's Office from Sir Robin Butler's Private Secretary.

Mr Oates, LCD, telephoned me yesterday afternoon and said that he understood that we had dealt comprehensively with the question of designating Churchill College as a place of deposit but pointed out that we needed also to deal with the other side of the coin - the wording of the Deed of Gift which seemed to him to be incompatible with our assertion that the papers were not public records covered by the Public Records Act.

I have tried my hand at a draft letter to Mr Oates which I have sent also to Michael Carpenter. I should be grateful for any comments you may have, particularly to strengthen the draft as we need, as you know, to resolve this matter pretty quickly. I may need to fax some further material to you so that you can check my assertion that the conditions in which the papers will be held will mirror those required of a designated body but perhaps we could have a word when you have seen the draft to see whether that is necessary.

Yours ever
Pat

MISS P M ANDREWS

DRAFT LETTER TO:-

L C Oates Esq
Lord Chancellor's Department
Trevellyan House
Great Peter Street
London SW1P 2BY

CHURCHILL ARCHIVE

We spoke yesterday afternoon about the Lord Chancellor's concerns relating to the transfer of ownership of the official papers in the Churchill Archive to Cambridge University and Churchill College.

We have, as you know, arranged for a letter to go from Sir Robin Butler's office to Mr Ormerod, Lord Chancellor's Office, in response to the Lord Chancellor's letter of 7 April which arrived after Sir Robin had gone on leave. This addresses, in some detail, the suggestion made by the Lord Chancellor that the official papers should be deposited at the Churchill College Archive Centre and the Archive Centre designated a place of deposit under Section 4 of the Public Records Act 1958.

You asked me also to address the complementary question of the wording of the Deed of Gift which refers to transferring ownership of Crown property. [It is our understanding that the fact of Crown ownership does not make that property public records to which the 1958 Public Records Act applies.] Since, as Counsel's 1991 Opinion shows, the 1958 Act does not apply to

these records, which have been out of official custody since 1946, and thus they may not be either deposited or presented under its provisions, the only way of achieving the aim of transferring ownership to Cambridge University and preserving the archive intact for the nation is by Deed of Gift.

The proposal therefore is that the papers are transferred into the ownership of a newly created Trust and maintained and managed by Churchill College. The Trust has been set up with the principal purpose of acquiring and caring for the papers. Maintenance of the whole archive, including the official papers, is to be overseen by the Historical Manuscripts Commission in conditions which largely mirror those which would apply had the Archive Centre been designated a place of deposit, Whilst, therefore, HMG is relinquishing ownership of the State (official) papers (and The Queen has given Her consent to this) the safety of the Archive has been assured in a way which would not have been the case had no Purchase Agreement been entered into and may well not have been the case had litigation proceeded. By this means the Archive will, as HMG has always intended, be available to the nation for the purpose of research.

It may be that this should be reflected more clearly in the Deed of Gift, perhaps by an addition along the following lines:-

[Michael Carpenter to advise]

PDL 51

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

FACSIMILE

To:	**Miss Pat Andrews Cabinet Office**	**From:**	**Michael Carpenter**
Dept:	**Historical & Records**	**No. of Pages:**	**3 inclusive**
Fax No:	**0171 217 6010**	**Date:**	**12 April 1995**

Re: **Churchill Archive**

see Folio 50.

If this facsimile does not reach you in its entirety, please contact my secretary on 0171–210 3006.

DRAFT LETTER TO:-

L C Oates Esq
Lord Chancellor's Department
Trevellyan House
Great Peter Street
London SW1P 2BY

CHURCHILL ARCHIVE

We spoke yesterday afternoon about the Lord Chancellor's concerns relating to the transfer of ownership of ~~the~~ official papers ~~in the Churchill Archive~~ to the trustees of the charitable trust formed to maintain the Churchill Archive (the trustees being the Vice-Chancellor of the University of Cambridge, the University Librarian, the Master and the Bursar of Churchill College) ~~Cambridge University and Churchill College~~.

We have, as you know, arranged for a letter to go from Sir Robin Butler's office to Mr Ormerod, Lord Chancellor's Office, in response to the Lord Chancellor's letter of 7 April which arrived after Sir Robin had gone on leave. This addresses, in some detail, the suggestion made by the Lord Chancellor that the official papers should be deposited at the Churchill College Archive Centre and the Archive Centre designated a place of deposit under Section 4 of the Public Records Act 1958. In our view, there is no effective power to designate the Archive Centre under section 4.

You asked me also to address the complementary question of the wording of the Deed of Gift which refers to the transferring of certain material in the Archive over which the Crown claims ownership ~~of Crown property~~. It is our view, based on the opinions of the Law Officers and of Treasury Counsel, that the mere fact that the Crown claims ~~It is our understanding that the fact of Crown ownership does not make that property public records~~ ownership of material does not make that material a 'public record' to which the 1958 Public Records Act applies. Based on this advice, Treasury Counsel ~~Since, as the 1991 Opinion shows,~~ advised in 1991 that the 1958 Act does not apply to material which, perhaps, once have been public records, to which the 1838 Act applied, but once they left official custody, records ceased to be ones to which that Act applied as the Law Officers advised in 1956.

and never were public records to which the 1958 Act could have applied.

these records, which have been out of official custody since 1946, ~~and thus~~ Accordingly, they may not be either deposited or presented under its provisions; the only way of achieving the aim of transferring ~~ownership to Cambridge University~~ the material to the new trust and preserving of the archive intact for the nation is by Deed of Gift.

The proposal therefore is that the papers are transferred into the ownership of a newly created Trust and maintained and managed by Churchill College. The Trust has been set up with the principal purpose of acquiring and caring for the papers. Maintenance of the whole archive, including the official papers, is to be overseen by the Historic Manuscripts Commission in conditions which largely mirror those which would apply had the Archive Centre been designated a place of deposit, Whilst, therefore, HMG is relinquishing ownership of the State (official) papers (and The Queen has given Her consent to this) the ~~safety~~ integrity of the Archive has been assured in a way which would not have been the case had no Purchase Agreement been entered into and may well not have been the case had litigation proceeded. By this means the entire Archive will, as HMG has always intended, be available to the nation for the purpose of research.

~~It may be that this should be reflected more clearly in the Deed of Gift, perhaps by an addition along the following lines:-~~

~~[Michael Carpenter to advise].~~

Your Michael Carpenter is advising the Cabinet Office in this matter and you may wish to discuss it directly with him.

I am copying this letter to Richard Jackson (CLSLO) and to Paul Jenkins (CT.Sol.)

TOTAL P.04

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

FOI 50

HO95/267

M C Carpenter Esq
Treasury Solicitor's Department
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

12 April 1995

Dear Michael

We spoke yesterday about Mr Oates' request to me to deal with the question raised by the Lord Chancellor about the Deed of Gift. Apparently the Lord Chancellor thinks that the wording of the Deed is incompatible with our assertion that the papers in the Churchill Archive are not public records - or at least not public records covered by the Public Records Act.

I have tried my hand at a response and should be grateful for any comments you may have. In particular can you think of wording for an amendment to the Deed of Gift which might convey the thoughts expressed? I hope my reference to the Historic Manuscripts Commission is right, also that the conditions in which the papers will be kept mirror those which would have applied had the Centre been designated a place of deposit under the Act. I am writing similarly to Nicholas Cox, PRO, but he, I think, will not have seen the documents setting up the Trust etc.

We agreed yesterday to try to resolve this matter with Mr Oates today so that we are not still on this hook after Easter so if you can strengthen the letter at all I shall be most grateful.

Yours ever

Pat

MISS P M ANDREWS

DRAFT LETTER TO:-

L C Oates Esq
Lord Chancellor's Department
Trevellyan House
Great Peter Street
London SW1P 2BY

CHURCHILL ARCHIVE

We spoke yesterday afternoon about the Lord Chancellor's concerns relating to the transfer of ownership of the official papers in the Churchill Archive to Cambridge University and Churchill College.

We have, as you know, arranged for a letter to go from Sir Robin Butler's office to Mr Ormerod, Lord Chancellor's Office, in response to the Lord Chancellor's letter of 7 April which arrived after Sir Robin had gone on leave. This addresses, in some detail, the suggestion made by the Lord Chancellor that the official papers should be deposited at the Churchill College Archive Centre and the Archive Centre designated a place of deposit under Section 4 of the Public Records Act 1958.

You asked me also to address the complementary question of the wording of the Deed of Gift which refers to transferring ownership of Crown property. It is our understanding that the fact of Crown ownership does not make that property public records to which the 1958 Public Records Act applies. Since, as Counsel's 1991 Opinion shows, the 1958 Act does not apply to

these records, which have been out of official custody since 1946, and thus they may not be either deposited or presented under its provisions, the only way of achieving the aim of transferring ownership to Cambridge University and preserving the archive intact for the nation is by Deed of Gift.

The proposal therefore is that the papers are transferred into the ownership of a newly created Trust and maintained and managed by Churchill College. The Trust has been set up with the principal purpose of acquiring and caring for the papers. Maintenance of the whole archive, including the official papers, is to be overseen by the Historic Manuscripts Commission in conditions which largely mirror those which would apply had the Archive Centre been designated a place of deposit, Whilst, therefore, HMG is relinquishing ownership of the State (official) papers (and The Queen has given Her consent to this) the safety of the Archive has been assured in a way which would not have been the case had no Purchase Agreement been entered into and may well not have been the case had litigation proceeded. By this means the Archive will, as HMG has always intended, be available to the nation for the purpose of research.

It may be that this should be reflected more clearly in the Deed of Gift, perhaps by an addition along the following lines:-

[Michael Carpenter to advise]

POL 49

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

Mrs J L Hill
Farrer & Co
66 Lincoln's Inn
London WC2A 3LH

Please quote:

Your reference: A930329G/MC

Date: 11 April 1995

Miss Andrews
Any comments on this?

The Churchill Papers – press conference

Thank you for your letter of 7 April on which I have consulted my Cabinet Office colleagues.

Our clear preference is that only those documents which are clearly within the ownership of the Churchill Trustees should be copied for use at any press conference concerning the Purchase Agreement. As far as the documents are concerned, the Crown does not, therefore, consent to use of the final page of the "Finest Hour" speech (document 5) or of the account by King George VI of the bombing of Buckingham Palace (document 6) or of the page from the VE broadcast (document 8).

Copyright in the handwritten letter from President Roosevelt (document 7) is a matter for the late President's executors, although it may well be out of copyright shortly (i.e. 1 January 1996).

As far as the photographs are concerned, Crown copyright does not, of course, subsist in the first of those listed (WSC aged 8). If, as is thought probable, the remaining three photographs were first published by 31 December 1944, then copyright protection will have expired and the Crown would not object to copies being made.

Michael Carpenter

CABINET OFFICE
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW
Fax: 071 217 6010

ENQUIRIES:
071 217 6050

FOL 48

URGENT
YES/NO

FACSIMILE LEADER

NAME: Ms S Panting

DEPARTMENT: CABINET OFFICE

ADDRESS: 70 WHITEHALL

FAX No:

FROM: PAT ANDREWS

DOCUMENT REFERENCE/TITLE: CHURCHILL ARCHIVE

TOTAL NUMBER OF PAGES: + 3 DATE: 11-4-95

MESSAGE:

We spoke. Letter to go to LCD this evening plse!

Enclosures will reach you separately from Michael Carpenter, T. Solicitor.

PLEASE COULD YOU FAX A COPY TO ME AS SOON AS THE LETTER IS SENT ?

see also Folios 44, 46, 47

ACKNOWLEDGEMENT REQUIRED YES/ NO

DRAFT LETTER FOR PRIVATE SECRETARY TO SIR ROBIN BUTLER TO SEND TO PRIVATE SECRETARY TO THE LORD CHANCELLOR

M E Ormerod Esq

Private Secretary to the Lord Chancellor

House of Lords, SW1A 0PW

CHURCHILL ARCHIVE

In his letter to Sir Robin Butler dated 7 April 1995 the Lord Chancellor says that he has asked his officials to look into the possibility of official material in the Churchill Archive being deposited at Churchill College under Section 4 of the Public Records Act 1958.

The letter arrived after Sir Robin Butler had left to go on leave and I am writing in his absence partly because of the very short time remaining before the announcement of the formal transfer of the Churchill Archive to Cambridge University is due to take place on 26 April but also because it seems, from the Lord Chancellor's letter, that his attention may not have been drawn to all of the relevant background and legal advice on this matter.

One of the issues considered before litigation was commenced by the Crown was the effect of the Public Records Act 1958. Treasury Counsel (Michael Hart QC and A W H Charles) advised on 25 July 1991 that the Public Records Act 1958 did not apply to existing records which may have strayed from public possession (as had all the official papers in the Churchill Archive by 1946).

In giving this Opinion, Counsel relied, inter alia on an opinion of the Law Officers given in 1956 (on a Memorandum of Works of Edward II) that "custody" for the purposes of Section 1 of the Public Record Office Act 1838 meant "official custody" and that, notwithstanding the reference in Section 1 of that Act to records "which ought to be deposited" in the places mentioned there, the Act could not operate in relation to public records held in private hands. The 1958 Act did not change this position and the Crown has advanced no argument based on the Public Records Act 1958 in the present litigation. (For your convenience I attach a copy of Counsel's instructions of 5 June 1991 a copy of the Joint Opinion of Counsel of 25 July, and a copy of the opinion of the Law Officers.)

In considering possible options for transferring the official papers to Churchill College it has been assumed that they are no longer public records and it would follow from Counsels' Opinion that there is no power under the 1958 Act, effective in the present circumstances, to designate Churchill College as a place of special deposit. Whilst Churchill College could, perhaps, be designated under Section 4(1), the designation would be an empty gesture because there would be no power under Section 4(3) to direct the transfer of the Churchill Archive to Churchill College. The power of direction under Section 4(3) of the 1958 Act appears to be available only in respect of public records and may not be used to transfer records held in private hands.

The £12.5 million referred to represents not only the purchase price for the purely private material but also an element of buying out the risk of litigation in which Counsel assessed our chances of success as, at best, 50/50. The sum also represents the price of maintaining the integrity of the Archive which the Prime Minister was advised he may properly take into account in determining whether or not to approve the transaction and in relation to which Counsel has advised that the Crown's claims are even weaker.

The conclusion of the considerations was therefore that a deed of gift was the most appropriate way of achieving HMG's aims and of transferring ownership to Cambridge, the latter being the basis upon which Cambridge University and Churchill College submitted their lottery application and which deposit under Section 4 of the Public Records Act would not, in fact, achieve.

We are advised that we should proceed with the transfer as planned on 26 April and that delay could result in a collapse of the whole arrangement. This could lead to a break-up of the archive which is what we have been trying very hard to prevent.

I should be grateful if you could arrange for the officials carrying out the Lord Chancellor's request to review the possibility of depositing the official papers rather than proceeding by way of deed of gift are made aware of the contents of this letter. Sir Robin Butler returns from leave on 20 April and will be glad to know then whether the Lord Chancellor is content with what is proposed.

CABINET OFFICE
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW
Fax: 071 217 6010

ENQUIRIES:
071 217 6050

FOLIO 47

URGENT
YES/NO

FACSIMILE LEADER

NAME: DR N G COX

DEPARTMENT: PUBLIC RECORD OFFICE

ADDRESS: KEW, RICHMOND

FAX No: 0181 878 8905

FROM: PAT ANDREWS

DOCUMENT REFERENCE/TITLE: CHURCHILL ARCHIVE

TOTAL NUMBER OF PAGES: +4 DATE: 11-4-95

MESSAGE:

2nd draft which includes Michael Carpenter's amendments ~~any~~ and yours.

Pat 11/4.

see Folios 46 below for first Draft.

ACKNOWLEDGEMENT REQUIRED YES/ NO

DRAFT LETTER FOR PRIVATE SECRETARY TO SIR ROBIN BUTLER TO SEND TO PRIVATE SECRETARY TO THE LORD CHANCELLOR

CHURCHILL ARCHIVE

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notwithstanding the reference in Section 1 of that Act to records "which ought to be deposited" in the places mentioned there, the Act could not operate in relation to public records held in private hands. The 1958 Act did not change this position and the Crown has advanced no argument based on the Public Records Act 1958 in the present litigation. (For your convenience I attach a copy of Counsel's instructions of 5 June 1991 a copy of the Joint Opinion of Counsel of 25 July, and a copy of the opinion of the Law Officers.)

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The £12.5 million referred to represents not only the purchase price for the purely private material but also an element of buying out the risk of litigation in which, [as Sir Robin's submission to the Prime Minister made clear], Counsel assessed our chances of success as, at best, 50/50. The sum also represents the price of maintaining the integrity of the Archive which the Prime Minister was advised he may properly take into account in determining whether or not to approve the transaction and in relation to which Counsel has advised that the Crown's claims are even weaker.

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DRAFT LETTER FOR PRIVATE SECRETARY TO SIR ROBIN BUTLER TO SEND TO PRIVATE SECRETARY TO THE LORD CHANCELLOR

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The letter arrived after Sir Robin Butler had left to go on leave and I am writing in his absence partly because of the very short time remaining before the announcement of the formal transfer of the Churchill Archive to Cambridge University is due to take place on 26 April but also because it seems, from the Lord Chancellor's letter, that his attention may not have been drawn to ~~the relevant rulings~~ all of the relevant background and legal advice on this matter.

One of the issues considered before litigation was commenced by the Crown was the effect of the Public Records Act 1958. Treasury Counsel (Michael Hart QC and A.W.H. Charles) advised on ~~Counsel's Opinion of~~ 25 July 1991 ~~advised~~ that the Public Records Act 1958 did not apply to existing records which may have strayed from public possession. In giving this Opinion, Counsel relied, inter alia on an opinion of the Law Officers given in 1956 (on the Memorandum of Works of Edward II) that "custody" for the purposes of Section 1 of the Public Records Act 1838 meant "official custody" and that, notwithstanding the reference in Section 1 of that Act 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 1958 Act did not change this position and the Crown has advanced no ~~such~~ argument based on the Public Records Act 1958 in the present litigation. (For your convenience, I attach a copy of Counsels' instructions of 5 June 1991 and a copy of the Joint Opinion of Counsel of 25 July 1991, and a copy of the opinion of the Law Officers).

α Whilst Churchill College could, perhaps, be designated under section 4 (1) the designation would be an empty gesture, because there would be no power under section 4(3) to direct the transfer of the Churchill Archive to Churchill College.

In considering possible options for transferring the official papers to Churchill College it has been assumed that they are no longer public records and (it would follow from Counsel's Opinion ~~suggests~~ that there is no power under the 1958 Act (effective in the present circumstances) to designate Churchill College as a place of special deposit. α ~~In any event~~, The powers of direction under Section 4(3) of the 1958 Act (appears to be) ~~is~~ available only in respect of public records transferred from the Public Record Office and may not be used in ~~respect of~~ transfer records held in private hands to some other place of deposit.

The £12.5 million referred to represents not only the purchase price for the purely private material but also an element of buying out the risk of litigation in which, as Sir Robin's submission to the Prime Minister made clear, Counsel assessed our chances of success as, at best, 50/50. The sum also represents the price of ~~and of~~ maintaining the integrity of the Archive which the Prime Minister was advised he may properly take into account in determining whether or not to approve the transaction, and in relation to which Counsel has advised that the Crown's claims are even weaker.

The conclusion of the considerations was therefore that a deed of gift was the most appropriate way of achieving HMG's aims and of transferring ownership to Cambridge, the latter being the basis upon which Cambridge University and Churchill College submitted their lottery application and which deposit under Section 4 of the Public Records Act would not, in fact, achieve.

We are advised that it is ~~presentationally advantageous~~ appropriate to proceed with the transfer as planned on 26 April and that delay could result in a collapse of the whole arrangement. This could lead to a break-up of the archive which is what we have been trying very hard to prevent.

I should be grateful if you could ensure that the officials carrying out the Lord Chancellor's request to review the possibility of depositing the official papers rather than proceeding by way of deed of gift are made aware of the contents of this letter. Sir Robin Butler returns from leave on ~~19~~ 20 April and will be glad to know then whether the Lord Chancellor is content with what is proposed. The Lord Chancellor will wish to know that The Queen has given her consent [as has the Prime Minister].

CABINET OFFICE
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW
Fax: 071 217 6010

ENQUIRIES:
071 217 6050

FOI 4b

URGENT
YES/NO

FACSIMILE LEADER

NAME: DR N G COX

DEPARTMENT: PRO

ADDRESS: KEW, RICHMOND

FAX No: 0181 878 8905

FROM: PAT ANDREWS

DOCUMENT REFERENCE/TITLE: CHURCHILL

TOTAL NUMBER OF PAGES: + 4 DATE: 11-4-95

MESSAGE:

Draft letter for comment.

Are you content please for me to send it to Sir R Butler's office for them to send to Ld Chancellor's PS?

Pat 11/4.

ACKNOWLEDGEMENT REQUIRED YES/ NO

DRAFT LETTER FOR PRIVATE SECRETARY TO SIR ROBIN BUTLER TO SEND TO PRIVATE SECRETARY TO THE LORD CHANCELLOR

CHURCHILL ARCHIVE

In his letter to Sir Robin Butler dated 7 April 1995 the Lord Chancellor says that he has asked his officials to look into the possibility of official material in the Churchill Archive being deposited at Churchill College under Section 4 of the Public Records Act 1958.

The letter arrived after Sir Robin Butler had left to go on leave and I am writing in his absence partly because of the very short time remaining before the announcement of the formal transfer of the Churchill Archive to Cambridge University is due to take place on 26 April but also because it seems, from the Lord Chancellor's letter, that his attention may not have been drawn to all of the relevant background and legal advice on this matter.

One of the issues considered before litigation was commenced by the Crown was the effect of the Public Records Act 1958. Treasury Counsel (Michael Hart QC and A W H Charles) advised on 25 July 1991 that the Public Records Act 1958 did not apply to existing records which may have strayed from public possession. In giving this Opinion, Counsel relied, inter alia on an opinion of the Law Officers given in 1956 (on the Memorandum of Works of Edward II) that "custody" for the purposes of Section 1 of the Public Records Act 1838 meant "official custody" and that,

notwithstanding the reference in Section 1 of that Act 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 1958 Act did not change this position and the Crown has advanced no argument based on the Public Records Act 1958 in the present litigation. (For your convenience I attach a copy of Counsel's instructions of 5 June 1991 a copy of the Joint Opinion of Counsel of 25 July, and a copy of the opinion of the Law Officers.)

In considering possible options for transferring the official papers to Churchill College it has been assumed that they are no longer public records and it would follow from Counsels' Opinion that there is no power under the 1958 Act, effective in the present circumstances, to designate Churchill College as a place of special deposit. Whilst Churchill College could, perhaps, be designated under Section 4(1), the designation would be an empty gesture because there would be no power under Section 4(3) to direct the transfer of the Churchill Archive to Churchill College. The power of direction under Section 4(3) of the 1958 Act appears to be available only in respect of public records transferred <u>from</u> the Public Record Office and may not be used to transfer records held in private hands to some other place of deposit.

The £12.5 million referred to represents not only the purchase price for the purely private material but also an element of buying out the risk of litigation in which, as Sir Robin's submission to the Prime Minister made clear, Counsel assessed our chances of success as, at best, 50/50. The sum also represents the price of maintaining the integrity of the Archive which the Prime Minister was advised he may properly take into account in determining whether or not to approve the transaction and in relation to which Counsel has advised that the Crown's claims are even weaker.

The conclusion of the considerations was therefore that a deed of gift was the most appropriate way of achieving HMG's aims and of transferring ownership to Cambridge, the latter being the basis upon which Cambridge University and Churchill College submitted their lottery application and which deposit under Section 4 of the Public Records Act would not, in fact, achieve.

We are advised that we should proceed with the transfer as planned on 26 April and that delay could result in a collapse of the whole arrangement. This could lead to a break-up of the archive which is what we have been trying very hard to prevent.

I should be grateful if you could arrange for the officials carrying out the Lord Chancellor's request to review the possibility of depositing the official papers rather than proceeding by way of deed of gift are made aware of the contents of this letter. Sir Robin Butler returns from leave on 20 April and will be glad to know then whether the Lord Chancellor is content with what is proposed.

POL 45

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

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

Ref: A095/1168

11 April 1995

c: Miss Andrews (by fax 11/4)

Dear Mark,

CHURCHILL ARCHIVE

In his letter to Sir Robin Butler dated 7 April 1995 the Lord Chancellor says that he has asked his officials to look into the possibility of official material in the Churchill Archive being deposited at Churchill College under Section 4 of the Public Records Act 1958.

The letter arrived after Sir Robin Butler had left to go on leave and I am writing in his absence partly because of the very short time remaining before the announcement of the formal transfer of the Churchill Archive to Cambridge University is due to take place on 26 April, but also because it seems, from the Lord Chancellor's letter, that his attention may not have been drawn to all of the relevant background and legal advice on this matter.

One of the issues considered before litigation was commenced by the Crown was the effect of the Public Records Act 1958. Treasury Counsel (Michael Hart QC and A W H Charles) advised on 25 July 1991 that the Public Records Act 1958 did not apply to existing records which may have strayed from public possession (as had all the official papers in the Churchill Archive by 1946).

In giving the Opinion, Counsel relied, inter alia on an opinion of the Law Officers given in 1956 (on a Memorandum of Works of Edward II) that "custody" for the purposes of Section 1 of the Public Record Office Act 1838 meant "official custody" and that, notwithstanding the

/reference in Section 1 of . . .

M E Ormerod Esq
PS/Lord Chancellor
House of Lords
LONDON SW1A OPW

reference in Section 1 of that Act to records "which ought to be deposited" in the places mentioned there, the Act could not operate in relation to public records held in private hands. The 1958 Act did not change this position and the Crown has advanced no argument based on the Public Records Act 1958 in the present litigation. (For your convenience I attach a copy of Counsel's instructions of 5 June 1991, a copy of the Joint Opinion of Counsel of 25 July and a copy of the opinion of the Law Officers).

In considering possible options for transferring the official papers to Churchill College it has been assumed that they are no longer public records and it would follow from Counsel's Opinion that there is no power under the 1958 Act, effective in the present circumstances, to designate Churchill College as a place of special deposit. Whilst Churchill College could, perhaps, be designated under Section 4(1), the designation would be an empty gesture because there would be no power under Section 4(3) to direct the transfer of the Churchill Archive to Churchill College. The power of direction under Section 4(3) of the 1958 Act appears to be available only in respect of public records and may not be used to transfer records held in private hands.

The £12.5 million referred to represents not only the purchase price for the purely private material but also an element of buying out the risk of litigation in which Counsel assessed our chances of success as, at best, 50/50. The sum also represents the price of maintaining the integrity of the Archive which the Prime Minister was advised he may properly take into account in determining whether or not to approve the transaction and in relation to which Counsel has advised that the Crown's claims are even weaker.

The conclusion of the considerations was therefore that a deed of gift was the most appropriate way of achieving HMG's aims and of transferring ownership to Cambridge, the latter being the basis upon which Cambridge University and Churchill College submitted their lottery application and which deposit under Section 4 of the Public Records Act would not, in fact, achieve.

We are advised that we should proceed with the transfer as planned on 26 April and that delay could result in a collapse of the whole arrangement. This could lead to a break-up of the archive which is what we have been trying very hard to prevent.

I should be grateful if you could arrange for the officials carrying out the Lord Chancellor's request to review the possibility of depositing the official papers rather than proceeding by way of deed of gift are made aware of the contents of this letter. Sir Robin Butler returns from leave on 20 April and will be glad to know then whether the Lord Chancellor is content with what is proposed.

I am copying this letter to Richard Jackson in the Law Officers Department.

Yours,

Stephanie Panting

Stephanie Panting
(Assistant Private Secretary)

CABINET OFFICE
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW
Fax: 071 217 6010

ENQUIRIES:
071 217 6050

FOI 44

URGENT
YES/NO

FACSIMILE LEADER

NAME: M C CARPENTER

DEPARTMENT: TREASURY SOLICITORS DEPT

ADDRESS: QUEEN ANNE'S CHAMBERS

FAX No: 210 3503

FROM: PAT ANDREWS

DOCUMENT REFERENCE/TITLE: CHURCHILL ARCHIVE

TOTAL NUMBER OF PAGES: + 3 DATE: 11-4-95

MESSAGE:
Draft Private Secretary letter for your comment.
Nicholas Cox is content to proceed as proposed.
I have not shown Lim the draft letter yet
and I have not yet heard from Melanie but
if we have the letter ready it can go as soon
as I have spoken to her.

Pat 11/4.

ACKNOWLEDGEMENT REQUIRED YES/ NO

DRAFT LETTER FOR PRIVATE SECRETARY TO SIR ROBIN BUTLER TO SEND TO PRIVATE SECRETARY TO THE LORD CHANCELLOR

CHURCHILL ARCHIVE

In his letter to Sir Robin Butler dated 7 April 1995 the Lord Chancellor says that he has asked his officials to look into the possibility of official material in the Churchill Archive being deposited at Churchill College under Section 4 of the Public Records Act 1958.

The letter arrived after Sir Robin Butler had left to go on leave and I am writing in his absence partly because of the very short time remaining before the announcement of the formal transfer of the Churchill Archive to Cambridge University is due to take place on 26 April but also because it seems, from the Lord Chancellor's letter, that his attention may not have been drawn to the relevant rulings on this matter.

Counsel's Opinion of 25 July 1991 advised that the Public Records Act 1958 did not apply to existing records which may have strayed from public possession. In giving this Opinion, Counsel relied, inter alia on an opinion of the Law Officers given in 1956 (on ~~the~~ a Memorandum of Works of Edward II) that "custody" for the purposes of Section 1 of the Public Records Office Act 1838 meant "official custody" and that, notwithstanding the reference in Section 1 of that Act to records "which ought to be deposited" in the places mentioned there, the Act could not operate in relation to public records held in private hands. The 1958 Act did not change this position and the Crown has advanced no such argument in the present litigation.

In considering possible options for transferring the official papers to Churchill College it has been assumed that they are no longer public records and Counsel's Opinion suggests that there is no power under the 1958 Act to designate Churchill College as a place of special deposit. In any event, the powers of direction under Section 4(3) of the 1958 Act is available only in respect of public records, transferred from the Public Record Office, and may not be used in respect of records held in private hands.

The £12.5 million referred to represents not only the purchase price for the purely private material but also an element of buying out the risk of litigation in which, as Sir Robin's submission to the Prime Minister made clear, Counsel assessed our chances of success as, at best, 50/50, and of maintaining the integrity of the Archive which the Prime Minister was advised he may properly take into account in determining whether or not to approve the transaction.

The conclusion of the considerations was therefore that a deed of gift was the most appropriate way of achieving HMG's aims and of transferring ownership to Cambridge, the latter being the basis upon which Cambridge University and Churchill College submitted their lottery application and which deposit under Section 4 of the Public Records Act would not, in fact, achieve.

We are advised that it is presentationally advantageous to proceed with the transfer as planned on 26 April and that delay could result in a collapse of the whole arrangement. This could lead to a break-up of the archive which is what we have been trying very hard to prevent.

I should be grateful if you could ensure that the officials carrying out the Lord Chancellor's request to review the possibility of depositing the official papers rather than proceeding by way of deed of gift are made aware of the contents of this letter. Sir Robin Butler returns from leave on 20 April and will be glad to know then whether the Lord Chancellor is content with what is proposed. [The Lord Chancellor will wish to know that The Queen has given her consent [as has the Prime Minister].

Hard Copy.

FOI 43M

Helston away Tues in Wed.

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

10 April 1995

6357

SIR ROBIN BUTLER

c- Miss Andrews

CHURCHILL ARCHIVE

The Prime Minister was grateful for your minute of 5 April about the plans for settling the ownership of the Churchill Archive. He has also seen the Lord Chancellor's letter of 7 April.

The Prime Minister feels that the Lord Chancellor makes an important point about the difficulties of transferring public records to a private owner in these circumstances. He would be interested to see the advice from officials on the Lord Chancellor's alternative course.

The Prime Minister would also be grateful for advice on how a decision would be presented. Would it be Lord Rothschild and the NHMF who made the announcement and indicated that it was their decision to use Lottery resources under their control to finance the purchase? What role would they say that the Government had taken, and what would be the Government's own line?

I am copying this minute to Mark Ormerod (Lord Chancellor's Department), John Kingman (Department of National Heritage) and Juliet Wheldon (Law Officers' Department).

ACSA

ALEX ALLAN

CABINET OFFICE
H Internal
11 APR 1995
FILING INSTRUCTIONS
FILE No.

FOL 43

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

Your ref: A930329G/MC
Our ref: HO95/260

M C Carpenter Esq
Treasury Solicitors Department
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

10 April 1995

Dear Michael

CHURCHILL PAPERS: REQUEST FOR USE OF CROWN COPYRIGHT DOCUMENTS AT PRESS CONFERENCE

Thank you for your letter of 10 April enclosing correspondence about the use of documents at the Press Conference.

My feeling, particularly in the light of the Lord Chancellor's expressed concern, is that it would be better if the documents to be used at the Press Conference should be those which clearly fall into the categories covered by the Purchase Agreement - ie private rather than official documents.

If you agree, this would leave items 1,2,3 and 4 to be used (item 7 will presumably be in US copyright rather than Crown Copyright?) and the first of the listed photographs. Item 8 will presumably be regarded as having been published in which case perhaps copyright has expired?

I am copying this letter to the recipients of yours.

Yours sincerely

Pat Andrews

MISS P M ANDREWS

POL 42

CABINET OFFICE
H 95/276
12 APR 1995
FILING INSTRUCTIONS
FILE No.

THE TREASURY SOLICITOR
Queen Anne's Chambers, 28 Broadway, London SW1H 9JS
Direct Line 0171 210 3450 Direct Fax 0171 210 3503
Office of Public Service & Science Legal Adviser

MINUTE

To:	**Miss P Andrews** **Cabinet Office** **Historical & Records Section**	**From:**	**Michael Carpenter**
Room:	**-**	**Date:**	**10 April 1995**

c.c. Mr Jenkins
Mr Jackson, LSLO
Mr Godwin
Miss Fassnidge

Churchill Archive : Letter from Lord Chancellor

1. Thank you for copying to me the letter of 7 April from the Lord Chancellor to Sir Robin Butler.

2. I do not think it is now open to the Crown to revert to the proposition that the Relevant State Papers are simply deposited in Churchill College.

3. I fear that the way matters have been presented to the Lord Chancellor may have led him to conclude that there is simply a purchase of private material for £12.5 million and a gift of official material. Viewed simply on this basis, there would be substance to the Lord Chancellor's criticism. However, as we well know, the price of £12.5 million contains within it an element to buy out the risk of the Crown failing altogether to make good its claims in the litigation. The other element is constituted by the gift of the official material. I think we can be confident that, without this element of gift, the price for the literary and private papers would have been higher.

4. As to the risk, we have advice from Counsel that the Crown's chances of success in relation to ownership of the Relevant State Papers are no better than even. The risk of a break up of the Archive, were the litigation to continue, must – if anything – be higher, given Counsels' advice as to the probable failure of any application by the

Crown to restrain a sale of the literary papers. The Prime Minister has been advised that maintaining the integrity of the Archive is a matter he may properly take into account in determining whether or not to approve the transaction, and at least some of the £12.5 million (together with the gift of official papers) represents the price for securing that objective.

5. As far as the Public Records Act 1958 is concerned, I do not think that there can now be any power to approve the College Archive Centre as a place of deposit under section 4, at least in so far as the approval relates to official papers which have been out of the Crown's custody since 1946.

6. In their opinion of 25 July 1991, Counsel advised that the 1958 Act did not apply to existing records which may have strayed from public possession. Counsel relied, *inter alia*, on an opinion of the Law Officers given in 1956 (on the Memorandum of Works of Edward II) that "custody" for the purposes of section 1 Public Records Act 1838 meant "official custody" and that, notwithstanding the reference in section 1 of that Act 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. If the 1838 Act could not operate in relation to documents held in private hands before 1958, it seems most unlikely that the 1958 Act changed the position with any retrospective effect. The Crown has advanced no such argument in the present litigation.

7. Moreover (I would suggest) the power of direction under section 4(3) of the 1958 Act is available only in respect of public records transferred from the Public Record Office and may not be used in respect of records held in private hands.

8. It is, of course, for these considerations that the device of a deed of gift has been adopted, so as to avoid an immediate confrontation between the parties over the question of ownership, the very issue disputed in the litigation.

9. I do not know where this leaves matters, but it seems to me clear that the course of depositing the Relevant State Papers under section 4 of the Public Records Act 1958 is simply not available, and that the deed and Purchase Agreement should continue as planned.

P.P. M C.

Hard copy

POLL 41

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

Mrs P Andrews
Cabinet Office
Historical & Records Section
Hepburn House
Marsham Street
London SW1P 4HW

Please quote: A930329G/MC

Your reference:

Date: 10 April 1995

Dear Pat,

Churchill Papers : Request for use of Crown copyright documents at Press Conference

1. You will see from the attached letter from Mrs Hill of Farrer & Co that our consent is sought to the use of certain photographs and documents at a Press Conference to announce the transaction/

2. In my view, the documents listed at 5 – 8 in the attached list are Crown copyright. I am not sure about the photographs, but I would have thought that the latter three were also Crown copyright.

3. That being said, I assume that you and copy recipients would be content for the documents to be used for the limited purposes of a press conference. Any comments from you or from copy recipients would be most welcome.

Yours sincerely,
Michael Carpenter

Michael Carpenter

c.c. Mr P Jenkins, T/Sol
Mr R Jackson, LSLO
Mr B Godwin, T/Sol
Miss Fassnidge, T/Sol
Mr G Robbie, HMSO

CABINET OFFICE
H 95/266
11 APR 1995
FILING INSTRUCTIONS
FILE No.

FARRER & CO

66 LINCOLN'S INN FIELDS LONDON WC2A 3LH
Telephone 0171-242 2022 Facsimile 0171-831 9748 Telex 24318 FARRER G DX 32

R A Griffiths
A M Farrer
M H Boyd-Carpenter CVO
C F Woodhouse
D A Lockhart
W J de Souza
Miss M E Falk
J H Evans
N S D Bulmer
R D Cooper
C R Jessel
G W Richards
R G Clinton
I J Dicker
C F Riseam
R W J Parry
J Morcom
J H Owen
J Thorne
Hon M T Bridges
W J Furber
Mrs F S Shackleton
Mrs J L Hill
M J Chantler
Miss E J Potter
R S Blair
P J Downy
A C Parkhouse
C R A Anderson
R E Foster
J M Bayliss
F Nation-Dixon
Miss S E Blore
S J Bruce
S J Pring
J P D Wienand

Consultant
Mrs M T Picton-Turbervill

Associates
Miss J L Brown
W G F Gee
N Richards

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

Your Ref
Our Ref JLH/mrt
Direct Fax 0171-831 6301

7 April 1995

Dear Mr Carpenter

The Churchill Papers

I attach a list of photographs and documents which are to be copied for use at the Press Conference. Some of these, clearly, will be Crown Copyright. Do you have any objection to their use in this way?

I should be grateful if you would confirm that documents which are Crown Copyright may be used for the Press Conference, and at the same time indicate which, in your view, that permission would cover.

Yours sincerely

Mrs J L Hill

Farrer & Co is regulated by the Law Society in the conduct of investment business

ALAN KUCIA
ARCHIVIST
336178/336087

ARCHIVES CENTRE
CHURCHILL COLLEGE
CAMBRIDGE
CB3 0DS

Date: 6 April 1995

To: Erica Bolton

Dear Erica,

I enclose a list of the Churchill photographs and documents which we are copying for use at the press conference:

Documents

1. Childhood letter(s) - WSC to Lady Randolph Churchill, 1884 (CHAR 28/13)
   Two possibilities - letter on blue paper, covered in kisses
   drawing of ? Lord Randolph Churchill

2. Report from St George's School, 1884 "Constant trouble to everyone and is always in some scrape or other...cannot be trusted to behave himself anywhere. (CHAR 28/44)

3. Page of account with Wine Merchant, 1908 (CHAR 1/86)

4. Letter from Clementine Churchill to WSC, while he was serving on Western Front, 1916 (CHAR 1/118)

5. Final page of "Finest Hour" speech of June 1940, typescript, with WSC's manuscript anotations (CHAR 9/140A) Crown copyright

6. Account, by King George VI, of bombing of Buckingham Palace, 1940 Crown Copyright
   (This is Crown Copyright, and we should get permission from The Queen's Private Secretary before publication)

7. Handwritten letter from President Roosevelt to WSC, Jan 1941 Crown copyright
   "Sail on, Oh Ship of State!
   Sail on Oh Union strong and great...."

8. Page from VE Broadcast on BBC, May 1945 Crown copyright

Photographs

WSC aged 8 years

Wartime studio portrait by Karsh or Cecil Beaton

Viewing Bomb Damage, Bristol, 1941

Making "V" sign

Alan

FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN

DL 40

HOUSE OF LORDS,
LONDON SW1A 0PW

CABINET OFFICE
H Internal
10 APR 1995
FILING INSTRUCTIONS
FILE NO

6235/

Sir Robin Butler GCB CVO
Cabinet Secretary
Cabinet Office
70 Whitehall
London SW1

7 April 1995

Dear Sir Robin

c- Miss Andrews
(immed desk by
10am 10/4)

CHURCHILL ARCHIVE

I have seen a copy of your minute to the Prime Minister of 5 April, and was grateful for the opportunity to discuss it with you.

I understand that the valuation of £12.5m placed on the Churchill Archive relates to the purely private material. However I understand that it is intended that Her Majesty's Government will transfer to the Churchill Trustees by deed of gift the ownership of the official material contained in the archive. I have to say that I am greatly concerned at the prospect of the Government apparently making a gift of public records to a private owner, who would then transfer these records to the Archive Centre along with material for which a considerable sum of money had been given from public funds.

My initial view is that it would be preferable if the Churchill Trustees were to sell their private interest in the papers to the College Archive Centre; while the official material was deposited by the Government in the Centre as a place of deposit of public records under section 4 of the Public Records Act 1958. I have therefore asked my officials to look into whether such a course would be possible.

More generally, as I mentioned to you in the course of our discussion, I would expect that the Prime Minister would wish to give careful consideration to the difficult presentational issues raised by this matter.

Copies of this minute go to the Prime Minister, the Secretary of State for National Heritage and the Attorney General.

Yours sincerely

Clare Ahmad

(Approved by the Lord Chancellor and signed in his absence by the Private Secretary)

POL (O) 39

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

Mrs Pat Andrews
Cabinet Office
Historical & Records Section
Hepburn House
Marsham Street
London SW1P 4HW

Please quote: A930329G/MC

Your reference:

Date: 7 April 1995

Dear Pat,

The Churchill Papers

I attach a copy of the letter I have received from Mrs Hill of Farrer & Co dated 6 April.

I do not think it appropriate simply to initial Mrs Hill's draft letter. It is generally unproblematical, but I would prefer to reply to her along the lines of the attached draft.

The draft deals with the question of access to documents of continued sensitivity, and with any liability on the part of Churchill College for authorising a copyright infringement. I think the point we need to get across is that whoever is holding these documents must give the Cabinet Office advance notice of any intention by third parties to copy the Archive so that we are in a position to take any necessary preventive action.

I would be grateful for any comments on the approach and the draft by early this afternoon.

Yours sincerely,
Michael Carpenter

Michael Carpenter

P.S. Also attached is Goodman Derrick's reply to my letter on copyright

c.c. Mr P Jenkins, T/Sol
Mr R Jackson, LSLO
Mr B Godwin, T/Sol
Miss Fassnidge, T/Sol
Mr G Robbie, HMSO

CABINET OFFICE
H 95/271
10 APR 1995
FILING INSTRUCTIONS
FILE No

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

Mrs J L Hill
Farrer & Co
66 Lincoln's Inn Fields
London WC2A 3LH

Please quote: A930329G/MC

Your reference:

Date: 7 April 1995

Draft

The Churchill Papers

Thank you for your letter of 6 April with its enclosures.

If I may deal first with the Deed of Gift and Copyright Licence, I am happy to confirm on behalf of the Cabinet Office that the reserved right to specify conditions as to the safekeeping of, and access to, material of continuing sensitivity is not intended to increase the number of papers to which restricted access applies. Such restrictions as are maintained in pursuance of this right relate to certain documents, rather than to certain individuals. That is to say that once the documents are made generally available, no new restrictions would be imposed in relation to those documents barring access by only certain individuals. In the case of documents of continuing sensitivity it is, of course, the case that access might be granted to certain individuals, but not to the public at large. The granting of such access would be by way of a relaxation of a general restriction, not the imposition of some new restraints.

If I may comment generally, the reservation of this right is intended only to secure the continued operation of the established practice between the Cabinet Office and Churchill College.

Turning now to the question of access to the Archive (apart from any part which is of continuing sensitivity) for the purposes of copying, I agree with your proposed further amendment to the Purchase Agreement. Indeed, if I may say so, it is an improvement which makes it abundantly clear that no form of copyright licence is intended.

I also agree that the Cabinet Office would not seek to render the Trustees of the Churchill Archive Trust or their agents or assignees liable for any authorisation of a copyright

infringement in circumstances where the infringer has relied on the permission given under clause 7 of the Purchase Agreement and

(i) the Trustees or their agents or assignees have warned those seeking to copy the Archive that they do so at their own risk, and

(ii) the Trustees or their agents or assignees have notified the Cabinet Office as soon as they have become aware of any intention by the "Copyright Holders" or persons acting on their behalf to copy the Archive in reliance on clause 7 of the Purchase Agreement.

I trust you will find this corresponds very closely to your draft letter. The only refinement is that the Cabinet Office is, I think, reasonably entitled to be given advance warning of any intention to copy, so that it is not faced with a *fait accompli*. I am entirely content that you should show this letter to Cambridge University and to Churchill College.

Michael Carpenter

FARRER & CO

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Mrs J L Hill
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S J Pring
J P D Wiensand

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Associates
Miss J L Brown
W G F Gee
N Richards

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

Your Ref
Our Ref JLH/mrt
Direct Fax 0171-831 6301

BY FAX & BY POST

6 April 1995

Dear Mr Carpenter

The Churchill Papers

I write with reference to your letters of 4 and 5 April.

We discussed on the telephone concerns which I had from the amendments you have made to Clause 1 of the Deed of Gift and Copyright Licence and Clause 7 of the Purchase Agreement. I enclose a proposed draft of the letter to cover these concerns and should be grateful for your comments on it.

Provided it is agreed, then:-

1. I can agree the form of the Deed of Gift and Copyright Licence as you have amended it, and

2. I can agree your amendments to the Purchase Agreement, subject only to the addition at the end of your amendment of the following sentence:

   "Such permission to exercise such right of access shall not be taken to purport to confer any right to exploit any copyright and any such exploitation shall be undertaken by the Copyright Holders at their own risk."

In the hope that we will be able to agree the wording of the draft letter satisfactorily, I am seeking now to agree with the solicitors acting for Mr Winston Churchill and for the Churchill Trustees the amendments you are proposing to the Purchase Agreement.

Yours sincerely

Judith Hill

Farrer & Co is regulated by the Law Society in the conduct of

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

Your Ref
Our Ref JLH/mrt
Direct Fax 0171-831 6301

DRAFT LETTER TO
MICHAEL CARPENTER OF THE TREASURY SOLICITORS

Dear Mr Carpenter

The Churchill Archive

I am writing in connection with:

A. The Deed of Gift and Copyright Licence ("the Deed of Gift") dated the day of made between the Cabinet Office and the Trustees of the Churchill Archive Trust, under the terms of which (inter alia) the Cabinet Office has given to the Trustees of the Churchill Archive Trust the papers which the Cabinet Office previously owned which form part of the Churchill Archives.

B. The fact that, subject to what follows, the Cabinet Office will not require the Trustees of the Churchill Archive Trust or its agents or assignees or to prevent the copying of parts of the Archive in which the Crown holds or claims the copyright.

1. Under the Deed of Gift the Crown reserves the right to specify conditions as to the safekeeping of, and access to, any material forming part of the Archive which is considered by the Cabinet Office to be of continuing sensitivity. You confirmed that the reservation is intended only to apply to those documents which have up until now been held by Churchill College with restricted access on the grounds of their sensitivity. You further

Michael Carpenter Esq

confirmed that, insofar as the Crown might wish to exercise the right it has reserved to specify other conditions, this would only be exercised to relax the current restricted access, not to increase the number of Papers to which the restricted access applies. Furthermore, the right will not be exercised by the Crown so as to specify conditions which would apply to certain individuals, but only to specify conditions to apply to certain documents. Thus, the situation would not arise where certain individuals would be granted access only to certain papers, the conditions would always be of general application but in relation to particular documents specified clearly by the Cabinet Office.

2. By virtue of the terms imposed in connection with the purchase of part of the Archive which was not owned by the Cabinet Office, the Churchill Archive Trustees or its agents or assignees are under an obligation to permit the Copyright Holders in those papers to have access to the entire Archive for the purposes of copying the same. You have confirmed that, provided;

(i) on granting such access, it is made clear to those seeking to copy the entire Archive that they do so at their own risk, and

(ii) the Trustees of the Churchill Archive Trust or their agents or assignees notify the Cabinet Office if at any time the entire Archive is so copied,

then the Cabinet Office would not seek to render the Trustees of the Churchill Archive Trust or its agents or assignees liable for any breach of copyright which may arise as a result of such copying.

I should be grateful if you would confirm that what I have said above reflects the conversations which we have had on the telephone concerning these points by signing and returning to me the enclosed copy of this letter.

Yours sincerely
Mrs J L Hill

c.c. Churchill Trustees

John Roberts
James MacKenzie
Jeffery Maunsell
Robin Perrot
Patrick Swaffer
Ian Montrose
Tim Langton

Diana Rawstron
Gregor Hamlen
Michael Collins
Paul Herbert
David Edwards

ASSOCIATES
Nicholas Armstrong
Claire Posner
Susan Smethurst
CONSULTANTS
Lord Goodman CH QC (Hon)
L C B Gower QC (Hon)

GOODMAN DERRICK
SOLICITORS

90 Fetter Lane
London EC4A 1EQ

Telephone 0171-404 0606
Telex 317210
Fax 0171-831 6407
DX 122 London

Our ref: IM/ep
Your ref: A930329G/MC

5 April 1995

Without Prejudice

Dear Sir

HM Attorney General -v- Montrose & Churchill

We refer to your letter of 5 April.

As the trustees of the Churchill Archive Settlement do not hold copyright in their capacity as trustees, questions of copyright have not been the subject of any claims in the litigation.

We would confirm therefore that the litigation and current draft documentation concerning the sale of the papers are 'neutral on the question of copyright ownership' save for references to access and licensing for or by parties other than the trustees.

We note your observations on storage in electronic medium, and are interested in your statement that 'The Crown would not be opposed in principle to such a proposal'. It should be noted however that such proposal emanated from the copyright holders rather than the trustees per se. It is clearly helpful to have your advice on this question which will be conveyed to the interested parties.

Yours faithfully

Goodman Derrick

GOODMAN DERRICK

Michael Carpenter Esq.
The Treasury Solicitor
Queen Anne's Chambers
28 Broadway
LONDON SW1H 9JS

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THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

FACSIMILE

To:	**Mrs P Andrews Cabinet Office**	**From:**	**Michael Carpenter**
Dept:	**Historical & Records Section**	**No. of Pages:**	**2 inclusive**
Fax No:	**0171 217 6010**	**Date:**	**7 April 1995**

Re: **The Churchill Papers**

Herewith a copy of Goodman Derrick's reply to my letter on copyright which should have been attached to my fax of this morning.

If this facsimile does not reach you in its entirety, please contact my secretary on 0171–210 3006.

c.c. Churchill Trustees

John Roberts
James MacKenzie
Jeffery Maunsell
Robin Perrot
Patrick Swaffer
Ian Montrose
Tim Langton

Diana Ramstron
Gregor Hamlen
Michael Collins
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Our ref: IM/ep
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5 April 1995

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We note your observations on storage in electronic medium, and are interested in your statement that 'The Crown would not be opposed in principle to such a proposal'. It should be noted however that such proposal emanated from the copyright holders rather than the trustees per se. It is clearly helpful to have your advice on this question which will be conveyed to the interested parties.

Yours faithfully

Goodman Derrick

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Michael Carpenter Esq.
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Queen Anne's Chambers
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Mrs P Andrews
Cabinet Office
Historical Records Section
Hepburn House
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With the Compliments of

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

PDL 37

Mrs J L Hill
Farrer & Co
66 Lincoln's Inn Fields
London WC2A 3LH

Please quote: A930329G/MC

Your reference:

Date: 7 April 1995

Dear Mrs Hill,

The Churchill Papers

Thank you for your letter of 6 April with its enclosures.

If I may deal first with the Deed of Gift and Copyright Licence, I am happy to confirm on behalf of the Cabinet Office that the reserved right to specify conditions as to the safekeeping of, and access to, material of continuing sensitivity is not intended to increase the number of papers to which restricted access applies. Such restrictions as are maintained in pursuance of this right relate to certain documents, rather than to certain individuals. That is to say that once the documents are made generally available, no new restrictions would be imposed in relation to those documents barring access by only certain individuals. In the case of documents of continuing sensitivity it is, of course, the case that access might be granted to certain individuals, but not to the public at large. The granting of such access would be by way of a relaxation of a general restriction, not the imposition of some new restraints.

If I may comment generally, the reservation of this right is intended only to secure the continued operation of the established practice between the Cabinet Office and Churchill College.

Turning now to the Purchase Agreement and the question of access to the Archive (apart from any part which is of continuing sensitivity) for the purposes of copying, I agree with your proposed further amendment. Indeed, if I may say so, it is an improvement which makes it abundantly clear that no form of copyright licence is intended.

I also agree that the Cabinet Office would not seek to render the Trustees of the Churchill Archive Trust or their agents or assignees liable for any authorisation of a copyright

infringement in circumstances where the infringer has relied on the permission given under clause 7 of the Purchase Agreement and

(i) the Trustees or their agents or assignees have warned those seeking to copy the Archive that they do so at their own risk, and

(ii) the Trustees or their agents or assignees have notified the Cabinet Office as soon as they have become aware of any intention by the "Copyright Holders" or persons acting on their behalf to copy the Archive in reliance on clause 7 of the Purchase Agreement.

I trust you will find this corresponds very closely to your draft letter. The only refinement is that the Cabinet Office is, I think, reasonably entitled to be given advance warning of any intention to copy, so that it is not faced with a *fait accompli*. I am entirely content that you should show this letter to Cambridge University and to Churchill College.

One final point concerns the reference to "the Premier Papers" in recital (A). Those advising the Crown have not seen the First Schedule referred to, but there seems no reason why the Premier Papers should be mentioned at all in the Purchase Agreement. The papers are in Crown ownership and held at the Public Record Office and mentioning them in the present context can only serve to cloud the issues.

Yours sincerely,

Michael Carpenter

Michael Carpenter

6.4.95.

POLI 36

DRAFT Q & A BRIEF

On [20th April] there may be an announcement that a grant is being made to Cambridge University by the National Heritage Memorial Fund from lottery money to enable the University to purchase the pre-1945 papers in the Churchill Archive and for them to be held in Churchill College, Cambridge together with post-1945 papers which the College already owns.

Q1 What does the Archive consist of?

A1 Personal, political and literary papers, official documents relating to his Ministerial and Prime Ministerial appointments spanning the years 1906-1945, including drafts of Sir Winston Churchill's wartime speeches.

The Archive as a whole spans the years 1874-1945 and documents Churchill's life as a schoolboy, as a correspondent in South Africa, as an MP, as well as his appointments as a Minister of the Crown.

Q2 Does the purchase price include a price for the official documents?

A2 No but the official documents are being transferred to [Cambridge University] by Deed of Gift to ensure that the Archive is kept intact at Churchill College. Copyright will be retained by the Crown.

Q3 Didn't the Government enter into litigation to establish ownership of the official documents?

A3 Yes. Litigation to establish ownership began in 1993 by means of an Originating Summons. This has now been withdrawn by the Attorney General.

Q4 Why?

A4 The litigation, as well as establishing ownership, was a means of ensuring that the archive remained intact at Churchill College. Now that this is no longer in question litigation is not necessary.

Q5 Who has agreed to the transfer of the official documents?

A5 Her Majesty The Queen has been consulted and has consented to the Transfer. As required under a settlement drawn up by Sir Winston Churchill in 1946 and subsequent correspondence, the Prime Minister has also been consulted and given his consent.

Q6 Why have these official documents not gone to the Public Record Office where they can be seen by researchers?

A6 It is believed to be in the public interest that the Archive containing Sir Winston Churchill's papers should be preserved intact and not broken up. They will remain at Churchill College where they have been since the 1970s. Copies of many of the documents are already in the Public Record Office on the files of the relevant government departments.

Q7 Will the Archive be publicly available?

A7 Yes, as indeed it has been since the completion of the official biography by Martin Gilbert in [1991].

Q8 Who are the beneficiaries of the sale?

A8 [Members of the Churchill family - check with them]

Q9 What about the papers of other Prime Ministers?

A9

a. On relinquishing office, Prime Ministers have, by convention, taken with them certain 'personal' papers which have been written, signed, sent or received by the Prime Minister personally. They do not include copies of Cabinet documents. They do, however, include copies of minutes to Ministerial colleagues, telegrams, speeches etc. These papers are 'personal' only because they are written, signed, sent or received by the Prime Minister personally. Many are public records, the counterparts of which remain on official files and are made publicly available in the Public Record Office after 30 years. Those copies which are taken away by outgoing Prime Ministers are subject to the Official Secrets Act and remain in Crown Copyright.

b. The final destination of these papers is a matter for the former Prime Minister or his/her Trustees. Most deposit them in University libraries - Eden, Attlee, Chamberlain, for example.

c. [CHECK - Lady Thatcher and Sir Edward Heath are believed still to be working on their papers; Lord Callaghan's biographer is working on his;] Lord Stockton's papers are at the Bodleian Library as are Lord Wilson's.

d. Prime Ministers who have relinquished office since Lord Wilson have been asked to give an undertaking not to allow their 'personal' papers to go out of the country.

e. With the agreement of the present Prime Minister, only papers which are truly personal will, in future, be removed from official custody.

Q10 Can other Prime Ministers' 'personal' papers be sold in the same way as the Churchill Archive?

A10 Purely personal papers can be sold at any time. The official papers in Sir Winston's archive are not being sold. [We would expect to apply the same principles to any other archive].

Q11 Correct use of lottery money?

A11 This is a matter for the National Heritage Memorial Fund.

Q12 Why money from the lottery and not from the Exchequer?

A12 Lottery money is a more appropriate source of funding - it falls within the NHMF's criteria for use of lottery funds.

Q13 Who will now own the Archive?

A13 Cambridge University will own both the pre-1945 papers (through a Purchase Agreement and a Deed of Gift) and the post-1945 papers [assigned] to them by Churchill College.

Q14 Where can the Archive be seen?

A14 At the Archive Centre, Churchill College, Cambridge, on application to the Keeper.

Q15 Can the Archive be sold overseas by the University?

A15 [The University may not sell the Archive without the consent of the Heritage Lottery Trustees [who are.....] who would be unlikely to sanction a sale abroad]

Q16 Does the Government have any say over a future sale of the Archive?

A16 No!

Q17 Is this right?

A17 The Government has transferred ownership to Cambridge University with the express purpose of enabling the archive to be kept in this country and intact. It would not be right to make this transfer conditional.

CABINET OFFICE
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW
Fax: 071 217 6010

ENQUIRIES:
071 217 6050

URGENT
YES/NO

FACSIMILE LEADER

NAME: M C CARPENTER

DEPARTMENT: TREASURY SOLICITORS DEPT

ADDRESS: QUEEN ANNE'S CHAMBERS

FAX No: 210 3503

FROM: PAT ANDREWS

DOCUMENT REFERENCE/TITLE: CHURCHILL ARCHIVE

TOTAL NUMBER OF PAGES: + 4 DATE: 6-4-95

MESSAGE:

Draft Q + A brief for comment / amendment / addition. If the date has gone back to 26th I do not need to bother Sir Robin with it until after Easter but as you may be on leave immediately after Easter it would be useful to have your comments before you go!

ACKNOWLEDGEMENT REQUIRED YES/ NO

Hand copy

FOI 35

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

Pat Andrews
Cabinet Office
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW

Please quote: A930329G/MC

Your reference:

Date: 6 April 1995

Dear Pat,

Churchill Papers : question and answer brief

I attach a copy of your Q & A brief with a number of small amendments marked in manuscript, and an attempted extra question on the copyright question.

I am taking the liberty of showing the Q & A brief as amended to Paul Jenkins, to see if he has any comments. No doubt the final version of the brief will need to be a joint Cabinet Office / DNH /NHMF effort.

Yours sincerely,

Michael Carpenter

Michael Carpenter

cc. Mr Jenkins

CABINET OFFICE
H 95/258/
10 APR 1995
FILING INSTRUCTIONS
FILE No.

DRAFT Q & A BRIEF

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Q3 Didn't the Government enter into litigation to establish ownership of the official documents? and a right to control the disposal of the Archive

A3 Yes. Litigation to establish ownership began in 1993 by means of an Originating Summons. This has now been ~~withdrawn by the Attorney General~~ discontinued.

Q4 Why?

A4 Now that it can be ensured ~~The litigation, as well as establishing ownership, was a means of ensuring~~ that the archive remains intact at Churchill College ~~Now that this is no longer in question litigation is not necessary~~ there is no further point to the litigation.

Q5 Who has agreed to the transfer of the official documents?

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Q15 Can the Archive be sold overseas by the University?

A16 [The University may not sell the Archive without the consent of the Heritage Lottery Trustees [who are.....] who would be unlikely to sanction a sale abroad]

Q17 Does the Government have any say over a future sale of the Archive?

A17 No! [Can the export not be made subject to a licence?]

Q18 Is this right?

A18 The Government has transferred ownership to Cambridge University with the express purpose of enabling the archive to be kept in this country and intact. It would not be right to make this transfer conditional.

Q.19 Can anyone now copy the papers in the Archive?

A.19 Any copying which is more extensive than is allowed for in the Copyright Designs and Patents Act 1988 will require the licence of the copyright owners

Q.20 What about the plans of the Churchill family to raise still more money by copying the Archive onto CD-Rom disc?

A.20 Any such copying of the entire Archive will require the consent of all the copyright owners and suitable terms will need to be negotiated.

The National Archives

DEPARTMENT/SERIES CAB 103/ PIECE/ITEM 814/5 (one piece/item number)	Date and sign
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Use black or blue pen to complete form.

Use the card for one piece or for each extract removed from a different place within a piece.

Enter the department and series,
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Enter the piece and item references, .
eg. 28, 1079, 84/1, 107/3

Enter extract details if it is an extract rather than a whole piece.
This should be an indication of what the extract is,
eg. Folio 28, Indictment 840079, E107, Letter dated 22/11/1995.
Do not enter details of why the extract is sensitive.

If closed under the FOI Act, enter the FOI exemption numbers applying to the closure, eg. 27(1), 40(2).

Sign and date next to the reason why the record is not available to the public ie. Closed under FOI exemption; Retained under section 3(4) of the Public Records Act 1958; Temporarily retained; Missing at transfer or Number not used.

BDL/ 33

CABINET OFFICE
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7 APR 1995
FILING INSTRUCTIONS
FILE No .....

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

Mrs J L Hill
Farrer & Co
66 Lincoln's Inn Fields
London WC2A 3LH

Please quote: A930329G/MC

Your reference:

Date: 5 April 1995

Dear Mrs Hill,

Churchill Papers

Thank you for your letter of 5 April with its enclosures.

I am grateful to you for your amendments to Recitals B and C. I note the points you have made in relation to Recital D (formerly E), but I do think it important that the Crown is satisfied that the Purchase Agreement cannot be construed in any way as amounting to a waiver of Crown copyright in favour of the "Copyright Holders" or Cambridge University.

The Crown is not, of course, a party to the Purchase Agreement so that it is perhaps unlikely that such a construction could be advanced against the Crown but I still find line 6–8 of Recital D rather tentative and ambiguous. In particular, the "better claim thereto" could be read as relating to the papers received by Sir Winston Churchill from third parties, rather than to copyright in the Archive generally. I would suggest the following small amendments:

> "..... except in so far as copyright in such papers received by Sir Winston Churchill is vested in third parties and except in so far as copyright in the Chartwell Papers is vested in the Crown and the papers ....."

In this regard, I do not think it appropriate to refer to the possibility of the Crown having "a better claim". Moreover, I consider that "by reason of Crown copyright" is too narrow; there may be documents in the Archive in respect of which copyright vests in Her Majesty other than by reason of section 18 Copyright Act 1911 and its successor provisions, moreover the claim to copyright ownership is also based on the fiduciary duty of Ministers to the Crown. It is therefore preferable to speak of such copyright as vests in the Crown.

As we discussed, the real point of difficulty is clause 7. The Crown would not be content with an arrangement which purported to licence the "Copyright Holders" to copy works, the copyright in which vests in the Crown. The reference to "recording of all Archive material on CD–Rom disk and microfilm" does, I suggest, contain a latent ambiguity. On the other

hand, I recognise the practical difficulty which would be faced by Churchill College in policing the copying of works by persons other than the copyright owners.

Without doing too much violence to the text, I would suggest the following:

> "The Copyright Holders and all persons duly authorised by them shall be permitted by the owners or holders for the time being of the Copyright Papers to exercise a right of access (without charge) to the Chartwell Papers and post 1945 Papers at all reasonable time or times to enable them to exploit (including in particular to record material on CD-Rom disk and microfilm) such copyright <u>as may be owned by them</u>, but shall not have the right to remove any such papers from their place of deposition for such purpose".(New text is underlined).

This formulation would properly reflect the principle that copying of the entire Archive on CD-Rom or otherwise requires the consent of all the copyright owners. Moreover, it would place no more burdens on Churchill College than it already has as custodian of the Archive. As the Crown is not party to the Purchase Agreement, the latter could not, strictly, be relied on to excuse any possible liability on the part of Churchill College for the implicit authorisation of an infringement of Crown copyright.

The College would not be so liable unless it procured the infringement or showed a wilful disregard of the Crown's rights. Whilst it would be burdensome for the College to "police" the copying (if any) which was done by the "Copyright Holders" it would not be unreasonable to expect the College to warn those persons that any copying of the entire Archive was being done at their own risk. The College would also no doubt inform the Cabinet Office that such copying was taking place.

I think it also worth pointing out that the question of any unauthorised copying is likely to remain academic. Following my discussion with Sir Matthew Farrer, I have written to Messrs Goodman Derrick to remind the Churchill Trustees that Crown copyright is not being assigned in the present transaction, so that any production of a CD-Rom of the entire Archive would require a separate negotiation.

Accordingly, and in the absence of any general resolution of the copyright question before the present documents are executed, it does not seem unreasonable to preserve the status quo.

Yours sincerely,

Michael Carpenter

Michael Carpenter

ROLL 32

FARRER & CO

66 LINCOLN'S INN FIELDS LONDON WC2A 3LH

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F Nation-Dixon
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Consultant
Mrs M T Picton-Turbervill

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Miss J L Brown
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Michael Carpenter Esq
The Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London
SW1H 9JS

Your Ref
Our Ref JLH/mrt
Direct Fax 0171-831 6301

BY FACSIMILE & BY POST: 0171 210 3503

5 April 1995

Dear Mr Carpenter

Churchill Papers

I am afraid I haven't been able to get instructions on the one or two points about which I was seeking them, but nevertheless I enclose the draft of the letter which I was proposing to send to you. This is on the understanding that my client has not yet had an opportunity of considering the various points that arise.

Perhaps we might have a word on the telephone when you have had a chance to consider it.

Yours sincerely

Mrs J L Hill

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The Treasury Solicitor
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Your Ref
Our Ref JLH/mrt
Direct Fax 0171-831 6301

4 April 1995

DRAFT.

Dear Mr Carpenter

Churchill Papers

Thank you for your letter of 3 April.

I hope that you will by now have seen the draft Transfer of the Crown's interest, which I sent to Paul on Monday.

I have amended the Purchase Agreement to refer to the Crown instead of to Her Majesty's Government, as you asked.

So far as the remaining points you raise are concerned, I have the following comments:

1. I do not think that it would be possible to refer simply to "the interest of" the Churchill Trustees in the Chartwell Papers. As you so rightly say, it is important to the University to obtain the warranty of the Churchill Trustees that they have the right to transfer the papers.

2. Recital B has been amended to read, as it currently does, at the request of the solicitors for the Churchill Trustees. Since, before the Purchase Agreement can take effect, one of the conditions is that all the literary papers which are not currently at Churchill will have to be returned there, I do not think it is material to concern ourselves over-much with their present whereabouts.

3. I have made the amendment you request to Recital C, but so far as Recital E is concerned I have not made any changes. This is because the drafts have been considered by a number of different parties and I am loathe to make changes unless they are vital. It does not seem to me that the changes you are proposing to Recital E are essential, albeit your draft may well be more elegant than the original. As currently drafted, the Recital does not state that the Papers received by Sir Winston Churchill from third parties are not

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FARRER & CO

Michael Carpenter Esq 4 April 1995

Crown Copyright, nor does it state that the question of whether or not any of the Papers are Crown Copyright is dependent on their ownership. Accordingly, I would prefer, unless you feel very strongly about it, not to make any changes to Recital E.

The Purchase Agreement is, as I have said, undergoing amendment as a result of comments by the various parties and I enclose the current draft lest there should be any changes to it about which you are not happy.

Yours sincerely

Mrs J L Hill

DATED **1995**

THE TRUSTEES OF THE NATIONAL HERITAGE MEMORIAL FUND

- and -

THE CHANCELLOR MASTERS AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE

- and -

IAN MONTROSE AND ANOTHER

- and -

HENRY WINSTON SPENCER CHURCHILL

- and -

WINSTON SPENCER CHURCHILL MP

PURCHASE AGREEMENT

relating to the pre 1945 Churchill Papers

Farrer & Co
66 Lincoln's Inn Fields
London WC2A 3LH

DRAFT~~23~~/MF.~~27.3.~~04.04.95

THIS AGREEMENT is made this day of 1995

BETWEEN:

(1) **THE TRUSTEES OF THE NATIONAL HERITAGE MEMORIAL FUND** of 10 St James's Street London SW1A 1EF ("NHMF~~the Heritage Trustees~~") and

(2) **THE UNIVERSITY COUNCIL acting on behalf of THE CHANCELLOR MASTERS AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE** ("the University")

(3) **IAN MONTROSE** of 90 Fetter Lane London EC4A 1EQ and **HENRY WINSTON SPENCER CHURCHILL** of Fairdown Vernham Street Vernham Dean Hampshire SP11 OEL ("the Churchill Trustees") and

(4) **HENRY WINSTON SPENCER CHURCHILL** of Fairdown Vernham Street Vernham Dean aforesaid ("Mr Peregrine Churchill") and

(5) **WINSTON SPENCER CHURCHILL MP** of Squerryes Lodge Westerham Kent TN16 1SJ ("Mr Winston Churchill")

WHEREAS:

(A) Set out in the First Schedule hereto is a description of the Archive of Sir Winston Churchill prepared by Bernard Quarritch Ltd. Such Archive is divided into those papers after the 27 July 1945 already in the ownership and possession of Churchill College Cambridge ("the Post 1945 Papers") the papers referred to therein as the

Premier Papers currently in the custody of the Public Record Office ("the Premier Papers) and the remainder of the papers ("the Chartwell Papers") which include those papers described under the heading "Literary" in the said description of the Archive ("the Literary Papers")

(B) All the Post 1945 Papers and the Chartwell Papers are currently deposited with Churchill College aforesaid except certain of the Literary Papers which are not deposited with Churchill College but are currently under the control of the Churchill Trustees

(C) The ownership of ~~C~~certain of the Chartwell Papers ~~are~~is currently the subject of litigation ("the Litigation") between ~~Her Majesty's Government~~the Crown and the Churchill Trustees in the action HM Attorney General v Montrose and Churchill (C.~~H.~~ 1993 HNQ 8050)

~~(D) Mr Peregrine Churchill has made claim to certain of the Chartwell Papers but the Churchill Trustees have not acceded to such claim~~

(D~~E~~) The copyright in the Post 1945 Papers and in the Chartwell Papers is vested either in Mr Winston Churchill or in C&T Publications Ltd or in Mr Peregrine Churchill (hereinafter together referred to as "the Copyright Holders" which expression shall include their respective successors in title as holders of the copyright in the Copyright Papers as defined below) except in so far as such papers were received by Sir Winston Churchill from third parties and except in so far as ~~Her Majesty's Government~~the Crown may have a better claim thereto by reason of Crown Copyright and the papers in which copyright is so vested in Mr Winston Churchill or C&T Publications Limited or Mr Peregrine Churchill are hereinafter referred to as "the Copyright Papers~~Copyright Chartwell Papers~~"

(~~E~~F) The Churchill Trustees wish to sell and the University wishes to purchase the Chartwell Papers and provisional terms in respect of such sale were negotiated in December 1994

(F) NHMF wish the University to purchase the Chartwell Papers and have agreed to provide or procure funding for the University for that purpose

NOW THIS AGREEMENT WITNESSES as follows:

1. Subject to the prior fulfilment of each of the conditions set out in the Second Schedule hereto then the University will buy and the Churchill Trustees will sell the Chartwell Papers for the sum of £12.5 million payable as hereinafter set out

2. ~~The~~ NHMF~~Heritage Trustees~~ shall use all reasonable endeavours to procure the fulfilment of conditions 2, 3 and 5 set out in the Second Schedule and to ensure that the University is provided with the funds required to make the payments referred to in Clause 3 hereof

3. Completion of the sale shall take place at Churchill College when legal transfer of ownership of all the Chartwell Papers shall take place by way of symbolic delivery Such completion shall take place within 14 days of the fulfilment of the last condition set out in the Second Schedule to be fulfilled

The sum of £2.5 million shall be paid over on completion and a further sum of £2.~~0~~5 million shall be paid on the expiry of each quarter thereafter for the next ~~4~~5 quarters PROVIDED ALWAYS that the University shall not be required to make any of the payments referred to above unless NHMF have in each case first provided to or procurred for the University the funds necessary to make the same. If any such payment shall remain outstanding for a period of six months from the

due date the Churchill Trustees shall be entitled to serve notice on the University to determine this Agreement and upon such determination the Churchill Trustees shall repay to the University all sums paid hereunder and the University shall retransfer to the Churchill Trustees by symbolic delivery ownership of the Chartwell Papers

4. Mr Peregrine Churchill HEREBY CONFIRMS that if and in so far as he ~~shall have~~ has any claim to any of the Chartwell Papers he ~~will~~ assigns and transfers to the University all such right title or interest as he has in such papers and will if so called upon to do execute such further or other documents to give effect thereto as the University ~~or the Heritage Trustees~~ shall request

5. The Churchill Trustees HEREBY WARRANT that (except as hereafter referred to) they have unencumbered title to sell the Chartwell Papers

Such warranty shall not extend

a) to any papers to which ~~Her Majesty's Government~~the Crown may have a better claim or

b) in respect of which Mr Peregrine Churchill has a better claim and in respect of which such claim is assigned to the University

PROVIDED THAT neither the qualifications to the warranty set out above nor any other provision stipulation or condition contained in this Agreement or the Schedules hereto shall constitute any admission acknowledgement or acceptance by the Churchill Trustees of any claims made by the Crown or Her Majesty's Attorney General whether in the Litigation or otherwise

6. The Churchill Trustees shall procure and Mr Winston Churchill confirms that on or prior to completion the University shall be granted a copyright licence [in the form set out in the Third Schedule hereto] [for the full term of copyright and any extension thereof in the Copyright Papers~~Copyright Chartwell Papers~~ in the terms

set out in the Third Schedule hereto such licence to be gratuitous and freely assignable to the owners for the time being of the Chartwell Papers and the Post 1945 Papers but not otherwise]

7. The Copyright Holders ~~The holders of the copyright in the Copyright Chartwell Papers~~ and all persons duly authorised by them shall be permitted by the owners or holders for the time being of the Copyright Papers to exercise ~~have~~ the right of access (without charge) to the Chartwell ~~p~~Papers and Post 1945 Papers at all reasonable time or times to enable them to exploit such copyrights including in particular recording of all archive material on CD-Rom disc and microfilm but shall not have the right to remove any such papers from their place of deposition for such purpose

In the event that pursuant to this right there shall be produced for the purposes of commercial exploitation recordings of Archive Material on CD-Rom disc and/or microfilm or otherwise one copy of each such product shall be provided free of charge to the University and one to Churchill College Cambridge

AS WITNESS the hands of the parties hereto

THE FIRST SCHEDULE

[see attached]

THE SECOND SCHEDULE

1. The Capital Taxes Office confirm the Special Purchase Price of £12.5m. to include the douceur

2. The Trustees of the J Paul Getty Charitable Trust undertake to make a grant of the sum of not less than £1 million sterling towards the Purchase Price of the Chartwell Papers

3. The litigation between HM Attorney General v Montrose and Churchill (C.H. 1993 H 8050) is discontinued upon application by HM Attorney General with no order for costs or otherwise

4. All those Literary Papers and other (if any) of the Chartwell Papers previously withdrawn from Churchill College be re-deposited there

5. The consent of the Prime Minister be given to the sale

THE THIRD SCHEDULE

The non-exclusive right to copy and use and to permit others to copy and use the Copyright Papers~~Copyright Chartwell Papers~~ solely for the purposes of research and to reproduce and permit others to reproduce the Copyright Papers~~Copyright Chartwell Papers~~ in any academic publication in any medium or language anywhere in the world but so that no use may be made of such right for the purposes of sale or other commercial exploitation

ADD 31

CABINET OFFICE
H .....
- 6 APR 1995
FILING INSTRUCTIONS
FILE No .....

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

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

Ref: A095/1094

5 April 1995

c: Miss Andrews

Dear Robert,

Churchill Archive

For some considerable time we have been in negotiation with the Churchill Trustees to ensure that the Chartwell papers, accumulated by Sir Winston Churchill before 1945, remained intact as an Archive and housed at Churchill College, Cambridge where they have been kept since the late 1970s, together with Sir Winston's post-1945 papers. In 1991, the Trustees, Mr Peregrine Churchill and Mr Ian Montrose of Goodman Derrick, together with Mr Winston Churchill MP told me that they intended to put the Chartwell papers up for sale and proposed purchase of the Archive by Her Majesty's Government.

The Archive contains a large number of documents created by and for Sir Winston Churchill in his various capacities as a Minister of the Crown, including as Prime Minister during the Second World War. These are regarded by us as official papers which could not be bought back with public monies. The Archive also contains papers relating to Sir Winston's literary activities, constituency papers and purely private, family, papers. The family were reluctant to acknowledge the Crown's continuing ownership of the official papers and, fearing that they may begin to sell elsewhere and thus break up the archive, we began legal proceedings in late 1993 to establish the Crown's claim.

However, during 1994, a further approach was made on behalf of the family with a view to reaching agreement on a value for the entire Archive taking account of the Crown's claim to ownership of the official papers. A value of £12.5 million has now been agreed with the family for their interest in the Archive. It is proposed, therefore that the Archive should be transferred in its entirety to Cambridge

/University and

The Rt Hon Sir Robert Fellowes KCB KCVO
Buckingham Palace
LONDON SW1A 1AA

University and held in the custody of Churchill College with ownership vested in a specially created trust. The purchase will be by means of a grant to Cambridge University from the National Heritage Memorial Fund from lottery funds and £1 million from the J Paul Getty Charitable Trust.

It is proposed that the official papers should also be transferred to Cambridge University, by means of a Deed of Gift. As I mention above these papers were created for and by Sir Winston in his Ministerial and Prime Ministerial capacities; they include correspondence from His Late Majesty King George VI and Queen Elizabeth, the Queen Mother, on a variety of matters which have all been the subject of consultation with Oliver Everett who agreed that, with very few exceptions, they may remain in the Archive and made available to researchers.

The proposed transfer to Cambridge University would secure the maintenance of an Archive at Churchill College which is intact and available to researchers, an aim we have pursued since the negotiations began. I propose to recommend to the Prime Minister that, subject to confirmation that Her Majesty The Queen has no objection to the transfer to Cambridge University of the State papers and the correspondence with members of the Royal Family, he consent to the transfer.

The proposal is that the allocation of funds from the Lottery to the National Heritage Memorial Fund for this purchase should be announced on 20 April.

Yours ever,

Robin

5.4.95

PDL 30

Miss Andrews

Ref. A095/1098

PRIME MINISTER

CABINET OFFICE
H Internal
- 6 APR 1995
FILING INSTRUCTIONS
FILE No

Churchill Archive

As I mentioned to you recently, there appears to be a real prospect that the protracted dispute about the ownership of the Churchill Archive at Churchill College may be brought to a conclusion before the end of the month. The matter cannot, however, finally be concluded until you have given your consent.

2. A Churchill family trust has always claimed ownership of the State Papers as well as the literary and other material in the pre-1945 papers in the Archive. The Crown has always disputed the family's claim to ownership of the State Papers and has also argued that, under the terms of various trusts and correspondence with the Cabinet Office, the family cannot sell such papers as they do own without the consent of the Prime Minister of the day.

3. Protracted negotiations between the National Heritage Memorial Fund (NHMF) and the Churchill family to try and resolve these issues and secure the Archive intact at Churchill College broke down in November 1993. Fearing that the family might take precipitate action to start selling papers from the Archive without your consent, proceedings were issued in the name of the Attorney General asserting the Crown's claim to ownership of the State Papers and the need to obtain your consent for any disposal of the other material.

4. The litigation proceeded until last Summer when the Churchill family asked for it to be suspended whilst further attempts were made to reach a settlement. Negotiations resumed

between the NHMF and the family to try and agree an appropriate value for the entire Archive but taking into account the Crown's claim to ownership of the State Papers. The NHMF were influenced in their negotiations by two new factors. First, they had fresh evidence to suggest that the value of the papers which were not claimed by the Crown was considerably higher than they had originally thought. Second, they were aware that the Crown's counsel had revised downwards our chances of success in the litigation having seen the evidence prepared by the family. Indeed, their advice on the "consent" claim was that our case was not strong enough to be able to resist a sale of Sir Winston's literary papers to fund the litigation and it looked increasingly likely that the integrity of the Archive would be destroyed with some of the papers leaving Churchill College forever. Against this background it was agreed with the family that an appropriate value for their interest in the Archive was £12.5 million.

5. In January this year Cambridge University and Churchill College made a joint application to the NHMF for a lottery grant to acquire and endow the Archive intact and secure forever at Churchill College in the ownership of a specially created trust. The J Paul Getty Charitable Trust will contribute £1 million to the project and the trustees of the NHMF agreed the lottery application on 21 March. Subject to obtaining your consent and the resolution of a number of minor legal problems, and subject to HM The Queen's consent (which is being sought) to the transfer to Cambridge University of the State Papers and correspondence between Sir Winston and members of the Royal Family, the NHMF hope to announce the decision when they unveil their first tranche of lottery grants on 20 April. Immediately prior to that the litigation would be brought to an end with each side bearing its own costs.

6. Consistent with the Crown's claims in the litigation, your consent is required to the necessary transfers of ownership. The effect of the transaction is that the documents which the Crown claims and those claimed by the family will all be transferred to a specially constituted charitable trust, suitably endowed and with the duty to preserve the Archive intact forever at Churchill College. Those to which the Crown lays claim will be

transferred by deed of gift. Although ownership of the documents will pass to the trust, copyright will be retained by the Crown in the State Papers and by the family in the rest. This will not inhibit significantly the use which the College can make of the Archive but it will leave it open to the Crown and the family to exploit the commercial potential of the documents until copyright expires.

7. It has never been entirely clear why the original Churchill trusts and subsequent correspondence stipulated that the consent of the Prime Minister of the day was required for disposal of the papers but, in the context of the present dispute, we have been advised that it would be appropriate for you to have regard to the desirability of keeping the Archive intact at Churchill College when deciding whether or not to give your consent. The transfers you are now asked to approve, of course, achieve this objective in a most satisfactory way. Consent may also have been thought appropriate to ensure that the confidentiality of some of the papers was preserved but the information the documents contain is now almost wholly in the public domain.

8. As I have already mentioned, there are a number of minor legal matters to be resolved but timing considerations make it difficult to wait for their resolution before seeking your consent. Assuming, however, that the legal issues are resolved without any significant changes to the proposed transaction and that The Queen raises no objection, I recommend that you give your consent to the transfer of the Archive to the University of Cambridge and Churchill College.

9. I am copying this minute to the Lord Chancellor, the Secretary of State for National Heritage and the Attorney General.

F.E.R.B.

ROBIN BUTLER

5 April 1995

BDL/6
29

C95/188/94

From: J O F Kingman
Date: 5 April 1995
Ext: 6239

MR HELSTON + pps.

cc: PS/Mr Phillips
Miss O'Mara
Miss Andrews (Cabinet Office)
Mr Corner
Mr MacDonald
Miss MacLean
Mr Jenkins (TSD)
Ms Hobley

CHURCHILL ARCHIVE

The Secretary of State has read and was grateful for your submission of 4 April.

J O F KINGMAN
Private Secretary

CABINET OFFICE
H 95-/257
- 6 APR 1995
FILING INSTRUCTIONS
FILE No

THE TREASURY SOLICITOR
Queen Anne's Chambers
28 Broadway London SW1H 9JS

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Mrs P Andrews
Cabinet Office
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW

With the Compliments of

Hard Copy

CABINET OFFICE
H 95/245
- 6 APR 1995
FILING INSTRUCTIONS
FILE No

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

Messrs Goodman Derrick
Solicitors
90 Fetter Lane
London EC4 1EQ
For the attention of Mr Wissun

Please quote: A930329G/MC

Your reference:

Date: 5 April 1995

Without Prejudice

Dear Sir,

HM Attorney General –v– Montrose

I am writing to you in my capacity as legal adviser to the Historical Records Section of the Cabinet Office and to the Controller of HM Stationery Office.

As you are of course aware, negotiations are presently underway to establish an acceptable basis for the future of the Churchill Archive and which would obviate the need for the present litigation. The necessary documents for a transfer of ownership of the papers comprising the Archive are being drawn up by Messrs Farrer & Co, and I believe you have received drafts.

The litigation has concerned the ownership of the papers in the Archive, and – in particular – the ownership of official papers, rather than the copyright which subsists in those papers. It is noted that it is not the intention of your clients to assign copyright in the papers to Cambridge University, and the Crown similarly does not propose to assign copyright in those papers in which Crown copyright subsists. The draft documents are, accordingly, neutral on the question of copyright ownership, and this neutrality reflects the course of the litigation. It follows that any discontinuance of the proceedings would be without prejudice to the question of copyright ownership.

The Cabinet Office is, of course, aware of the suggestion by your clients that the Archive should be stored in an electronic medium so as to be accessible, *inter alia*, on CD–Rom format. The Crown would not be opposed in principle to such a proposal, but on the assumption that the litigation is discontinued on an agreed basis, it would be necessary to reach a separate resolution of the copyright issues raised by the proposal. Such issues would, of course, include the question of copyright held by third parties.

I would imagine that this accords with your clients' expectations, but I would be grateful to know as soon as possible if this is not so.

Yours faithfully,

Michael Carpenter

Michael Carpenter

4.4.95

PDL 27

HO95/243

SIR ROBIN BUTLER

CHURCHILL ARCHIVE

Mr Hayden Phillips' letter of 4 April 1995 covers a draft minute to the Prime Minister seeking his consent, on a contingency basis, to the acquisition by Cambridge University and Churchill College of the Churchill Archive.

It is proposed that this acquisition, which is being brought about by means of a grant, payable out of lottery money, from the National Heritage Memorial Fund (NHMF), should be announced on 20 April 1995 when the NHMF makes its first tranche of lottery grants. It is thought presentationally advisable for the grant to Cambridge for the Churchill Archive to be made at the same time as other quite sizeable grants, the payment to the Churchill Trustees will be by far the largest, but we understand that there is another of approximately £8 million. If we are to be ready for the announcement on 20 April the Prime Minister's consent in principle has to be sought before Easter; only if something goes wrong with the legal issues still to be resolved will we need to go back to the Prime Minister immediately before the announcement.

I have discussed the draft minute with Treasury Solicitors to ensure that the points you were concerned about are covered. The draft does make clear, at the end of the fourth paragraph, that the £12.5 million is an appropriate value for the Churchill family's interest in the Archive - it does not define exactly what this interest is, as Treasury Solicitors advise that there is a value, unquantified, in buying out the family's claim on the State papers (had we litigated and lost that value would have been considerable). The draft also refers to the fact that the commercial potential of the copyright can continue be exploited (by both family and Crown) until it expires. I should prefer to add to the penultimate paragraph something along the lines of:-

> "...copyright expires. This means in practice that Mr Winston Churchill MP could continue to make money from the Archive but, if he seeks to exploit documents in which Crown Copyright subsists, the Crown could also gain through royalties."

I would also suggest that the last sentence of the penultimate paragraph should read:-

> "Consent may also have been thought.....the information the documents contain is now almost entirely in the public domain."

This reflects the fact that some documents have been removed on grounds of continuing sensitivity and are retained in the Archives Centre but are not made available to researchers.

You will have had a message from the Department of National Heritage about the Secretary of State's position with regard to the negotiations. You may wish to consider copying your minute to the Prime Minister also to the Lord Chancellor. I mentioned to you that the Keeper of Public Records has undertaken to brief the Lord Chancellor's Department on the matter and to try to secure his approval; in the absence of any views from Mr Dorrell this would give further Ministerial backing to the proposal.

Given that the official papers in the Archive were drawn up by or for Sir Winston Churchill in his capacity as a Minister of the Crown and that by the proposed Deed of Gift the Crown is divesting itself of this part of the Archive it is thought appropriate for the Palace to be informed of the transfer to Cambridge University. You may therefore wish to write to Sir Robert Fellowes along the lines of the attached draft which I have cleared with Mr Carpenter, Treasury Solicitor's Department.

I recommend that the Prime Minister's consent now be sought, subject to the satisfactory finalisation of the legal documents, including the Deed of Gift transferring ownership of the official papers to Cambridge University (which it is proposed that I should sign), and the consent of the Palace.

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
4 April 1995

DRAFT LETTER FOR SIR ROBIN BUTLER TO SEND TO:-

The Rt Hon Sir Robert Fellowes KCB KCVO
Buckingham Palace
London SW1A 1AA

CHURCHILL ARCHIVE

For some considerable time we have been in negotiation with the Churchill Trustees to ensure that the Chartwell papers, accumulated by Sir Winston Churchill before 1945, remained intact as an Archive and housed at Churchill College, Cambridge where they have been kept since the late 1970s, together with Sir Winston's post-1945 papers. ~~My predecessors thought that the integrity of the archive had been srecured and accepted by all parties but,~~ In 1991, the Trustees, Mr Peregrine Churchill and Mr Ian Montrose of Goodman Derrick, together with Mr Winston Churchill MP ~~sought to exercise what they perceived to be their rights of ownership by approaching~~ told me that they intended to put the Chartwell papers up for sale and proposed me with a view to purchase of the Archive by Her Majesty's Government.

The archive contains a large number of documents created by and for Sir Winston Churchill in his various capacities as a Minister of the Crown, including as Prime Minister during the Second World War. These are regarded by us as official papers which could not be bought back with public monies. ~~However,~~ The Archive also contains papers relating to Sir Winston's literary activities, constituency papers and purely private, family, papers. The family were reluctant to acknowledge the Crown's continuing ownership of the official papers and, fearing that they may begin to sell elsewhere and thus break up the archive, we began legal proceedings in late 1993 to establish the Crown's claim, ~~once and for all.~~

However, during 1994, a further approach was made on behalf of the family with a view to reaching agreement on a value for the entire archive taking account of the Crown's claim to ownership of the official papers. ~~An appropriate~~ value of £12.5 million has now been agreed with the family for their interest in the Archive. It is proposed, therefore that the Archive should be transferred in its entirety to Cambridge University and held in the custody of Churchill College with ownership vested in a specially created trust. The purchase will be by means of a grant to Cambridge University from the National Heritage Memorial Fund from lottery funds and £1 million from the J Paul Getty Charitable Trust.

It is proposed that the official papers should also be transferred to Cambridge University, by means of a Deed of Gift. As I mention above these papers were created for and by Sir Winston in his Ministerial and Prime Ministerial capacities; they include correspondence from His Late Majesty King George VI and Queen Elizabeth, the Queen Mother, on a variety of matters which have all been the subject of consultation with Oliver Everett who agreed that, with very few exceptions, they may remain in the Archive and made available to researchers.

The proposed transfer to Cambridge University would secure the maintenance of an Archive at Churchill College which is intact and available to researchers, an aim we have pursued since the negotiations began. ~~I propose,~~ therefore, subject to confirmation ~~your views and those of~~ that Her Majesty The Queen has no objection to the transfer to Cambridge University of the State papers and the correspondence with members of the Royal Family I proposed, to recommend to the Prime Minister that he consent to the transfer.

DRAFT LETTER FOR SIR ROBIN BUTLER TO SEND TO:-

The Rt Hon Sir Robert Fellowes KCB KCVO
Buckingham Palace
London SW1A 1AA

CHURCHILL ARCHIVE

For some considerable time we have been in negotiation with the Churchill Trustees to ensure that the Chartwell papers, accumulated by Sir Winston Churchill before 1945, remained intact as an Archive and housed at Churchill College, Cambridge where they have ~~resided since [ ]~~ been kept since the late 1970s. My predecessors thought that ~~it had been~~ the integrity of the Archive had been secured and accepted by all parties ~~that this was already so~~ but, in 1991, the Trustees, Mr Peregrine Churchill and Mr Ian Montrose of Goodman Derrick, together with Mr Winston Churchill MP approached me with a view to purchase of the Archive by Her Majesty's Government. sought to exercise their rights of ownership by

The archive contains a large number of documents created by and for Sir Winston Churchill in his various capacities as a Minister of the Crown, including as Prime Minister during the Second World War. These are regarded by us as official papers which could not be bought back with public monies. However, the Archive also contains papers relating to Sir Winston's literary activities, constituency papers and purely private, family, papers. The family were reluctant to acknowledge the Crown's continuing ownership of the official papers and, fearing that they may begin to sell elsewhere and thus break up the archive, we began legal proceedings in late 1993 to establish the Crown's claim once and for all.

However, during 1994, a further approach was made on behalf of the family with a view to reaching agreement on a value for the entire archive taking account of the Crown's claim to ownership of the official papers. ~~and~~ An appropriate value of £12.5 million has now been agreed with the family for their interest in the Archive. It is proposed, therefore that the Archive ~~shall~~ should be transferred in its entirety to Cambridge University ~~and~~ and held in the custody of Churchill College with ownership vested in a specially created trust. The purchase will be by means of a grant to Cambridge University from the National Heritage Memorial Fund from lottery funds and £1 million from the J Paul Getty Charitable Trust.

It is proposed that the official papers ~~will~~ should also be transferred to Cambridge University, by means of a Deed of Gift. As I mention above, these papers were created for and by Sir Winston in his Ministerial and Prime Ministerial capacities; they include correspondence from His Late Majesty King George VI and Queen Elizabeth, the Queen Mother, on a variety of matters which have all been the subject of consultation with Oliver Everett who agreed that, with very few exceptions, they may remain in the Archive and made available to researchers.

The ~~proposal of a~~ proposed transfer to Cambridge University would secure the maintenance of an Archive ~~intact~~ at Churchill College which is intact and available to researchers, ~~which has been our~~ an aim we have pursued since the negotiations began. I propose, therefore, subject to your views and those of Her Majesty, to recommend to the Prime Minister that he ~~to~~ consent to the transfer.

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CABINET OFFICE
H95/2461
- 5 APR 1995
FILING INSTRUCTIONS
FILE NO.

From: Michael Helston
Cultural Property Unit
Room 100
Tel: 071-211 6152

Date: 4 April 1995

SECRETARY OF STATE

cc: PS/Mr Phillips
Miss O'Mara
Miss Andrews (Cabinet Office)
Mr Corner
Mr MacDonald
Miss MacLean
Mr Jenkins (TSD)
Ms Hobley

CHURCHILL ARCHIVE

Issue

This minute provides updated information on the arrangements being made for the acquisition of the Churchill Archive by Churchill College, Cambridge.

Background

2. As you are aware, the Trustees of the National Heritage Memorial Fund have agreed to fund a Lottery application made by Cambridge University and Churchill College to acquire the Archive for the College. The Churchill family will receive £12.5m in staged payments and the Archive will pass into the ownership of a specially constituted charitable trust. The J Paul Getty Charitable Trust will also be contributing £1m to the project. The NHMF hope to announce the saving of the Archive as one of their first tranche of lottery decisions on 20 April, but before the matter can be concluded, two issues involving the Government need to be resolved.

(i) the Churchill Trustees need the Prime Minister's consent to the disposal of the papers in their possession; and

(ii) the Government needs to hand over to the University those papers which it regards as belonging to the State.

3. On (i) the trigger for seeking the Prime Minister's permission should be a request from the Churchill Trustees, but as they have always contended they no longer need the Prime Minister's permission, such an approach is unlikely to be generated without prompting. As this could lead to unwelcome delays and possibly to further dispute, it has been agreed that Sir Robin Butler should seek the Prime Minister's consent on a contingent basis. Mr Jenkins has supplied a draft for Sir Robin which has been seen by Mr Phillips and a decision is anticipated by the end of the week.

4. On the matter of the Government handing over to the College those papers which it regards as being its own, this can be achieved by deed of gift. Although care must be taken not to give the impression that any of these documents are being purchased by NHMF, there should not be a problem providing the deed is worded carefully.

5. Finally, the Archive contains correspondence from both George VI and the Queen to

Churchill. Robert Fellowes, as Private Secretary to the Queen and Keeper of the Queen's Archives, must therefore be consulted and this again is being handled by the Cabinet Office.

The role of DNH

6. Under previous proposals for purchasing the Archive, it was envisaged that NHMF would have been committing grant-in-aid (supplemented by a call on the Reserve). Mr Phillips would therefore have had Accounting Officer responsibilities, and it was appropriate that DNH took the lead in negotiations. Now that the solution involves lottery funding, DNH no longer has a formal role in the settlement. The Court case was brought on behalf of the Cabinet Office and its withdrawal is a matter for them and for the Attorney (this should take place shortly before the public announcement). The consent issue too is a matter for the Cabinet Office and not for DNH which has no interest in the documents as such.

MICHAEL HELSTON

C.C. Mrs P. Andrews
Hand copy

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

Mrs J L Hill
Farrer & Co
66 Lincoln's Inn Fields
London WC2A 3LH

Please quote: A930329G/MC

Your reference: JLH/mrt

Date: 4 April 1995

Dear Mrs Hill,

Churchill Papers

Paul Jenkins here has shown me a copy of the draft deed of gift and copyright licence.

In the hope that this is convenient, I attach a further copy of the draft with amendments marked in manuscript. I suggest that the deed and licence be executed by the Cabinet Office which, in this regard, acts on behalf of the Crown and is that emanation of the Crown which has the closest connection with the subject-matter. Miss P M Andrews of the Cabinet Office Historical and Records Section would be authorised to execute the deed.

I trust that the amendments are reasonably self-explanatory. In relation to clause 1, I should tell you that a small part of the Crown material is still of continuing sensitivity and the Crown would consequently need to reserve a right to specify conditions as to the safe keeping of, and access to, the material notwithstanding the assignment of ownership.

In relation to copyright, it is my understanding that the library and archive provisions of sections 37-43 Copyright Designs and Patents Act 1988 would apply to material which is Crown copyright. Subject to your views, I would not think it necessary to have any provision deeming Her Majesty to be a private person. Also in relation to copyright, I have suggested a new clause 1(c) so as to reserve the Crown's right to licence the storing of the Crown material in any medium by electronic means (such as by reproducing the material in CD-ROM form.

As before, please feel free to telephone me if any of this is not clear.

Yours sincerely,
Michael Carpenter

Michael Carpenter

CABINET OFFICE
H 95/24.3
- 6 APR 1995
FILING INSTRUCTIONS
FILE No.

DRAFT 2/MF.3.4.95

THIS DEED OF GIFT AND COPYRIGHT LICENCE is made this day of 1995

BETWEEN:

(1) The Cabinet Office ~~[HMG] (hereinafter called "HMG")~~ and

(2) **A**
B
C
D
hereinafter called "The Churchill Archive Trustees" which expression shall include the Trustee or Trustees of The Sir Winston Churchill Archive Trust as hereafter defined

WHEREAS:

(A) The Churchill Archive Trustees are the present Trustees of the Trust known as and herein referred to as The Sir Winston Churchill Archive Trust the principal purpose of which is to acquire and retain for use by Scholars and exhibition to the public of the Archive ("the Archive") of the late Sir Winston Churchill

(B) The Archive is presently situated at the Archive Centre at Churchill College Cambridge

(C) The ownership of certain material in the Archive ("the ~~HMG~~ Crown Material") more particularly referred to in the First Schedule hereto is vested in ~~HMG~~ the Crown as is the copyright therein

(D) ~~HMG~~ The Cabinet Office has agreed to transfer by way of gift to the Churchill Archive Trustees the ownership of the ~~HMG~~ Crown material but not the copyright therein

(E) ~~HMG~~ The Cabinet Office has agreed to grant to the Churchill Archive Trustees a Copyright Licence in the terms hereinafter appearing in respect of the ~~HMG~~ Crown material

NOW THIS DEED WITNESSETH:

1 ~~HMG~~ The Cabinet Office HEREBY TRANSFERS by way of gift the ownership of the ~~HMG~~ Crown Material to the Churchill Archive Trustees together with all other rights in such material excepting only the copyright therein which is expressly reserved to ~~HMG~~ the Crown as is the right of the Crown to specify conditions as to the safekeeping of and access to any material considered by the Cabinet Office to be of continuing sensitivity

By and with the authority of the Controller of Her Majesty's Stationery Office as administrator of all Crown copyrights, the Cabinet Office

2 HEREBY GRANTS in respect of the ~~HMG~~ Crown Material a Copyright Licence to the Churchill Archive Trustees in the terms of the Second Schedule hereto such licence to be royalty free and to extend throughout the world for the full period of copyright and any renewals extensions or revivals thereof

3 This Licence shall be freely assignable but only to the persons who shall from time to time be the owners of the ~~HMG~~ Crown Material or who shall have custody of such material

IN WITNESS

THE FIRST SCHEDULE

Those papers created or acquired by Sir Winston Leonard Spencer Churchill by virtue of the various offices he held as a member of the Government of the United Kingdom during his lifetime prior to the execution of the Settlement dated 21 July 1946 made by (1) the said Sir Winston Leonard Spencer Churchill and (2) his wife Clementine Ogilvy Churchill, the Rt Hon Brendan Bracken and the Rt Hon Frederick Alexander Baron Cherwell

THE SECOND SCHEDULE

The right by themselves or their duly authorised agents

1 To do all those acts and things by way of copying and supply of copies which ~~if the copyright in the HMG Material were vested in a private person the provisions of~~ Sections 37 to 43 inclusive of the Copyright Designs and Patents Act 1988 authorise librarians and archivists of a duly ~~presented~~ prescribed Library to do ~~so that the proprietor of the copyright in the HMG Material shall be deemed to be a private person~~ and the holder of this Copyright Licence for the time being shall be deemed for the purposes of the said Sections of the said Act to be a duly ~~presented~~ prescribed Library Provided Always -

(a) that in exercise of such rights the holder of the Licence shall comply with any conditions ~~presented~~ prescribed by the Secretary of State as referred to in the said Sections and

(b) the holder of the Licence having made a copy of any part of the ~~HMG~~ Crown Material in accordance with this Licence may thereafter transmit the same by any means whether electronic or otherwise and

whether now known or hereafter devised to any person authorised by such Sections to receive such copy, and

2 To reproduce any part of the ~~HMG~~ Crown Material in any catalogue ~~of~~ prepared for the purposes of any exhibition to the public of any such material.

(c) that, except for the purpose of (b) above, the holder of the Licence shall ~~not~~ otherwise be entitled to store the Crown material in any medium by electronic means.

THE SCHEDULE

In this Summons the following expressions have the following meanings:

(1) "Sir Winston Churchill" means Winston Leonard Spencer Churchill.

(2) "The 1946 Settlement" means the settlement dated 21st July 1946 made by (1) Sir Winston Churchill and (2) his wife Clementine Ogilvy Churchill, the Right Hon. Brendan Bracken and the Right Hon. Frederick Alexander Baron Cherwell.

(3) "The 1946 Settlement Papers" means the Papers referred to in Parts 1 and 2 of the Schedule to the 1946 Settlement.

(4) "The Relevant State Papers" means the papers included within the 1946 Settlement Papers which were acquired by Sir Winston Churchill by virtue of the various offices he held as a member of the Government of the United Kingdom prior to the execution of the 1946 Settlement.

(5) "The 1963 Settlement" means the settlement dated 3rd December 1963 and made between (1) Lady Clementine Ogilvy Churchill, Anthony Forbes Moir, Sir Thomas

Leslie Rowan, and John Rupert Colville and (2) Sir Winston Churchill.

(6) "The 1969 Correspondence" means the letter dated 6th January 1969 from the Cabinet Office to John Rupert Colville and the reply thereto dated 7th January 1969.

(7) "The 1990 Settlement" means the re-settlement (or subject to any relief granted pursuant to paragraph (6) of the Summons the purported re-settlement) dated 27th December 1990 and made by the Defendants as the trustees for the time being of the 1963 Settlement.

(8) "The Archive Trustees" means the trustees for the time being of (i) the 1946 Settlement, (ii) the 1963 Settlement and (iii) subject to any relief granted pursuant to paragraphs (6) and (7) of the relief sought by this summons, the 1990 Settlement.

If the Defendant does not acknowledge service, such judgment may be given or order made against or in relation to him as the Court may think just or expedient.

DATED this day of December 19

NOTE: This Summons may not be served later than 4 calendar months beginning with the above date unless renewed by order of the Court.

This Summons was taken out by The Treasury Solicitor of Queen Anne's Chambers, 28 Broadway, London SW1H 9JS, solicitor for the said Plaintiff.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

ROLL 24

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

FACSIMILE

To:	**Pat Andrews Cabinet Office**	**From:**	**Michael Carpenter**
Dept:	**Historical & Research**	**No. of Pages:**	**7 (inclusive)**
Fax No:	**217 6010**	**Date:**	**4 April 1995**

Re: **Churchill Papers**

CABINET OFFICE
H 95/242/1
- 4 APR 1995
FILING INSTRUCTIONS
FILE No.

If this facsimile does not reach you in its entirety, please contact my secretary on 0171–210 3006.

DRAFT 2/MF.3.4.95

THIS DEED OF GIFT AND COPYRIGHT LICENCE is made this day of 1995

BETWEEN:

(1) The Cabinet Office ~~HMG~~ ~~(hereinafter called "HMG")~~ and

(2) A
B
C
D

hereinafter called "The Churchill Archive Trustees" which expression shall include the Trustee or Trustees of The Sir Winston Churchill Archive Trust as hereafter defined

WHEREAS:

(A) The Churchill Archive Trustees are the present Trustees of the Trust known as and herein referred to as The Sir Winston Churchill Archive Trust the principal purpose of which is to acquire and retain for use by Scholars and exhibition to the public of the Archive ("the Archive") of the late Sir Winston Churchill

(B) The Archive is presently situated at the Archive Centre at Churchill College Cambridge

(C) The ownership of certain material in the Archive ("the ~~HMG~~ Crown Material") more particularly referred to in the First Schedule hereto is vested in ~~HMG~~ the Crown as is the copyright therein

(D) ~~HMG~~ The Cabinet Office has agreed to transfer by way of gift to the Churchill Archive Trustees the ownership of the ~~HMG~~ Crown material but not the copyright therein

(E) ~~HMG~~ The Cabinet Office has agreed to grant to the Churchill Archive Trustees a Copyright Licence in the terms hereinafter appearing in respect of the ~~HMG~~ Crown material

NOW THIS DEED WITNESSETH:

1 ~~HMG~~ The Cabinet Office HEREBY TRANSFERS by way of gift the ownership of the ~~HMG~~ Crown Material to the Churchill Archive Trustees together with all other rights in such material excepting only the copyright therein which is expressly reserved to ~~HMG~~ the Crown as is the right of the Crown to specify conditions as to access to and the safekeeping of any material considered by the Cabinet Office to be of continuing sensitivity

By and with the authority of the Controller of Her Majesty's Stationery Office as administrator of all Crown copyrights, the Cabinet Office

2 HEREBY GRANTS in respect of the ~~HMG~~ Crown Material a Copyright Licence to the Churchill Archive Trustees in the terms of the Second Schedule hereto such licence to be royalty free and to extend throughout the world for the full period of copyright and any renewals extensions or revivals thereof

3 This Licence shall be freely assignable but only to the persons who shall from time to time be the owners of the ~~HMG~~ Crown Material or who shall have custody of such material

IN WITNESS

THE FIRST SCHEDULE

Those papers created or acquired by Sir Winston Leonard Spencer Churchill by virtue of the various offices he held as a member of the Government of the United Kingdom during his lifetime prior to the execution of the Settlement dated 21 July 1946 made by (1) the said Sir Winston Leonard Spencer Churchill and (2) his wife Clementine Ogilvy Churchill, the Rt Hon Brendan Bracken and the Rt Hon Frederick Alexander Baron Cherwell

THE SECOND SCHEDULE

The right by themselves or their duly authorised agents

1 To do all those acts and things by way of copying and supply of copies which ~~if the copyright in the HMG Material were vested in a private person the provisions of~~ Sections 37 to 43 inclusive of the Copyright Designs and Patents Act 1988 authorise librarians and archivists of a duly ~~presented~~ prescribed Library to do ~~so that the proprietor of the copyright in the HMG Material shall be deemed to be a private person~~ and the holder of this Copyright Licence for the time being shall be deemed for the purposes of the said Sections of the said Act to be a duly ~~presented~~ prescribed Library Provided Always -

(a) that in exercise of such rights the holder of the Licence shall comply with any conditions ~~presented~~ prescribed by the Secretary of State as referred to in the said Sections and

(b) the holder of the Licence having made a copy of any part of the ~~HMG~~ Crown Material in accordance with this Licence may thereafter transmit the same by any means whether electronic or otherwise and

whether now known or hereafter devised to any person authorised by such Sections to receive such copy, and

2 To reproduce any part of the ~~HMG~~ Crown Material in any catalogue ~~of~~ prepared for the purposes of any exhibition to the public of any such material.

(c) that, except for the purpose of (b) above, the holder of the Licence shall otherwise not be entitled to store the Crown material in any medium by electronic means.

ADM 16 73

FROM: PAUL JENKINS
QUEEN ANNE'S CHAMBERS

TEL: 210 3256

DATE: 4 April 1995

MR CARPENTER

cc: Mr Jackson (LSLO)

CHURCHILL ARCHIVE

I enclose a self-explanatory letter and Deed of Gift from Judith Hill at Farrers. Would it just suffice to copy the Schedule to the Originating Summons?

Paul Jenkins

PAUL JENKINS

CABINET OFFICE
H 95/238A
- 4 APR 1995
FILING INSTRUCTIONS
FILE No

FARRER & CO

66 LINCOLN'S INN FIELDS LONDON WC2A 3LH
Telephone 0171-242 2022 Facsimile 0171-831 9748 Telex 24318 FARRER G DX 32

[redacted] A Griffiths
A M Farrer
M H Boyd-Carpenter CVO
C F Woodhouse
D A Lockhart
W J de Souza
Miss M E Falk
J H Evans
N S D Bulmer
R D Cooper
C R Jessel
G W Richards
R G Clinton
I J Dicker
C F Riseam
R W J Parry
J Morcom
J H Owen
J Thorne
Hon M T Bridges
W J Furber
Mrs F S Shackleton
Mrs J L Hill
M J Chantler
Miss E J Potter
R S Blair
P J Downy
A C Parkhouse
C R A Anderson
R E Foster
J M Bayliss
F Nation-Dixon
Miss S E Blore
S J Bruce
S J Pring
J P D Wienand

Consultant
Mrs M T Picton-Turbervill

Associates
Miss J L Brown
W G F Gee
N Richards

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

Your Ref
Our Ref JLH/mrt
Direct Fax 0171-831 6301

3 April 1995

Dear Paul

Churchill Papers

Thank you so much for your letter of 31 March.

I now enclose a draft Deed of Gift and Copyright Licence for you to consider.

You will see that I have used the second of the two alternatives which you offered by way of definition.

In fact, I think the ideal would be to simply copy the Schedule to the Originating Summons. If, on the other hand, this runs to several pages, then we may be better to stick to what we have got. What I think we want to avoid is to have the Schedule by reference to a document (the Originating Summons) which is not annexed to the Deed of Gift.

Do you have a copy of the Schedule to the Originating Summons, and is it of a manageable length, or shall we stick to the First Schedule as drawn? I look forward to hearing from you.

Yours ever

John

Farrer & Co is regulated by the Law Society in the conduct of investment business

FARRER & CO

DATED 1995

DEED OF GIFT AND COPYRIGHT LICENCE

FARRER & CO
66 Lincoln's Inn Fields
London WC2A 3LH

DRAFT 2/MF.3.4.95

THIS DEED OF GIFT AND COPYRIGHT LICENCE is made this day of 1995

BETWEEN:

(1) **[HMG]** (hereinafter called "HMG") and

(2) **A**
B
C
D
hereinafter called "The Churchill Archive Trustees" which expression shall include the Trustee or Trustees of The Sir Winston Churchill Archive Trust as hereafter defined

WHEREAS:

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(B) The Archive is presently situated at the Archive Centre at Churchill College Cambridge

(C) The ownership of certain material in the Archive ("the HMG Material") more particularly referred to in the First Schedule hereto is vested in HMG as is the copyright therein

(D) HMG has agreed to transfer by way of gift to the Churchill Archive Trustees the ownership of the HMG material but not the copyright therein

(E) HMG has agreed to grant to the Churchill Archive Trustees a Copyright Licence in the terms hereinafter appearing in respect of the HMG material

NOW THIS DEED WITNESSETH:

1 HMG HEREBY TRANSFER by way of gift the ownership of the HMG Material to the Churchill Archive Trustees together with all other rights in such material excepting only the copyright therein which is expressly reserved to HMG

2 HMG HEREBY GRANT in respect of the HMG Material a Copyright Licence to the Churchill Archive Trustees in the terms of the Second Schedule hereto such licence to be royalty free and to extend throughout the world for the full period of copyright and any renewals extensions or revivals thereof

3 This Licence shall be freely assignable but only to the persons who shall from time to time be the owners of the HMG Material or who shall have custody of such material

IN WITNESS

THE FIRST SCHEDULE

Those papers created or acquired by Sir Winston Leonard Spencer Churchill by virtue of the various offices he held as a member of the Government of the United Kingdom during his lifetime prior to the execution of the Settlement dated 21 July 1946 made by (1) the said Sir Winston Leonard Spencer Churchill and (2) his wife Clementine Ogilvy Churchill, the Rt Hon Brendan Bracken and the Rt Hon Frederick Alexander Baron Cherwell

THE SECOND SCHEDULE

The right by themselves or their duly authorised agents

1 To do all those acts and things by way of copying and supply of copies which if the copyright in the HMG Material were vested in a private person the provisions of Sections 37 to 43 inclusive of the Copyright Designs and Patents Act 1988 authorise librarians and archivists of a duly presented Library to do so that the proprietor of the copyright in the HMG Material shall be deemed to be a private person and the holder of this Copyright Licence for the time being shall be deemed for the purposes of the said Sections of the said Act to be a duly presented Library Provided Always -

(a) that in exercise of such rights the holder of the Licence shall comply with any conditions presented by the Secretary of State as referred to in the said Sections and

(b) the holder of the Licence having made a copy of any part of the HMG Material may thereafter transmit the same by any means whether electronic or otherwise and

whether now known or hereafter devised to any person authorised by such Sections to receive such copy

2 To reproduce any part of the HMG Material in any catalogue of any exhibition to the public of any such material

SOL/95
22

CABINET OFFICE
H 95/237A/
- 4 APR 1995
FILING INSTRUCTIONS

THE TREASURY SOLICITOR
Queen Anne's Chambers, 28 Broadway, London SW1H 9JS
Direct Line 0171 210 3450 Direct Fax 0171 210 3503
Office of Public Service & Science Legal Adviser

Mrs J L Hill
Farrer & Co
66 Lincoln's Inn Fields
London WC2A 3LH

Please quote: A930329G

Your reference:

Date: 4 April 1995

Dear Mrs Hill,

Churchill Papers

Paul Jenkins has suggested that I write to you setting out a number of small drafting points on the documents you are now settling. As you may know from Paul, I represent the interests of the Cabinet Office in this matter.

I understand that a form of assignment is being prepared which will secure the transfer of the Crown's interest in the "Chartwell" Papers (except as to copyright) to the University of Cambridge. The form of assignment will, I assume, serve to redress the balance of the documentation as a whole which at the moment, perhaps inevitably, suggests that the Crown has only a residual interest in the Chartwell Papers.

On this basis I am – if I may say so – broadly content with the draft Purchase Agreement, subject to the following points. First, I wonder if it is possible to refer to the interest of the Churchill Trustees in the Chartwell Papers, rather than simply to the Chartwell Papers. I put this forward only for consideration, as I can see there is a value to Cambridge University in the warranty given by the Churchill Trustees in clause 4. Secondly, I would suggest that recital (B) ought to specify more confidently where the Literary Papers (or a proportion of them) are now to be found. Would it be possible to refer to "certain of the Literary Papers which are now in the custody of the Churchill Trustees at Messrs Sothebys".

thirdly, I would suggest that recitals (C) and (E) might be re-drafted as follows:-

"(C) The ownership of certain of the Chartwell Papers is currently the subject of litigation between the Crown and the Churchill Trustees in the action HM Attorney General -v- Montrose and Churchill (CH

04/04 '95 TUE 12:57 FAX 0171 210 3503 T Sol 002

1993 H 8050).

(E) The copyright in the post–1945 papers and in the Chartwell Papers is vested in Mr Winston Churchill except in so far as copyright is vested in third parties or in the Crown and the papers in which copyright is vested in Mr Winston Churchill are hereinafter referred to as "the Copyright Chartwell Papers"."

I should explain that in relation to recital (E), papers received by Sir Winston Churchill from third parties might well be Crown copyright and that the subsistence of Crown copyright is not dependant upon the Crown's present claim to ownership of certain parts of the Chartwell Papers.

Finally, I would suggest that one should refer throughout to the "Crown" rather than to "Her Majesty's Government".

Please feel free to telephone me if any of this is not clear.

Yours sincerely,

Michael Carpenter

Michael Carpenter

c.c. PAUL JENKINS
HILARY FASSNIDGE
BILL GODWIN.
PAT ANDREWS.

04/04 '95 TUE 12:57 FAX 0171 210 3503 T Sol 003

21

april95\4ferb

DEPARTMENT OF NATIONAL HERITAGE
2-4 Cockspur Street,
London SW1Y 5DH
Telephone: 071-211 6255/6/7

CABINET OFFICE
A 5955
-4 APR 1995
FILING INSTRUCTIONS
FILE No.

From Hayden Phillips

To Sir Robin Butler
Company Cabinet Office
From Hayden Phillips
Company DNH
Tel No. 211 6255 No of Pages 3 4
FAX
Post-it™ Fax Note
Ref No: 7655

Sir Robin Butler GCB CVO
Cabinet Office
70 Whitehall
London SW1

4 April 1995

Dear Robin

CHURCHILL ARCHIVE

As you know from Pat Andrews, this matter appears to be moving towards a satisfactory conclusion. The NHMF have approved a lottery application from the University and Churchill College to acquire the Archive for the College in the ownership of a specially constituted charitable trust. The Churchill family trust will receive £12.5 million in staged payments. The Crown will give the State Papers to the new trust. It is intended that both the Crown and the family will retain copyright in the documents which they have hitherto owned.

The NHMF hope to announce the saving of the Archive as one of their first tranche of lottery decisions on 20 April. Before, however, the matter can be concluded, two issues involving the Government need to be resolved. First, the litigation must be terminated with each side bearing its own costs. I understand that your lawyers have this in hand. Second, and consistent with the Crown's claim in the litigation, the consent of the Prime Minister is required for the disposal to the new trust. I enclose a draft note seeking that consent.

As you will see, the Prime Minister's consent is sought on a contingent basis. This is not ideal but timing considerations make it impossible to delay seeking his consent until the Churchill family lawyers have finally approved the documentation. The NHMF lawyers do not envisage any problems in this regard but I think that we must recognise that if there was any significant change to the arrangements it might be necessary to go back to the Prime Minister. I understand that Robert Fellowes will also need to be consulted and that Pat Andrews will let you have a draft shortly.

I am copying my Secretary of State

Yours ever

Hayden

HAYDEN PHILLIPS

CABINET OFFICE
H Internal
-5 APR 1995
FILING INSTRUCTIONS
FILE No.

DRAFT MINUTE FROM SIR ROBIN BUTLER TO THE PRIME MINISTER

CHURCHILL ARCHIVE

There appears to be a real prospect that the protracted dispute about the ownership of the Churchill Archive at Churchill College may be brought to a satisfactory conclusion before the end of the month. The matter cannot, however, finally be concluded until you have given your consent.

A Churchill family trust has always claimed ownership of the State Papers as well as the literary and other material in the Archive. The Crown has always disputed the family's claim to ownership of the State Papers and has also argued that, under the terms of various trusts and correspondence with the Cabinet Office, the family cannot sell such papers as they do own without the consent of the Prime Minister of the day.

Protracted negotiations between the National Heritage Memorial Fund and the Churchill family to try and resolve these issues and secure the Archive intact at Churchill College broke down in November 1993. Fearing that the family might take precipitate action to sell the literary papers without your consent, proceedings were issued in the name of the Attorney General asserting the Crown's claim to ownership of the State Papers and the need to obtain your consent for any disposal of the other material.

The litigation proceeded until last Summer when the Churchill family asked for it to be suspended whilst further attempts were made to reach a settlement. Negotiations resumed

between the NHMF and the family to try and agree an appropriate value for the entire Archive but taking into account the Crown's claim to ownership of the State Papers. The NHMF were influenced in their negotiations by two new factors. First, they had fresh evidence to suggest that the value of the papers which were not claimed by the Crown was considerably higher than they had originally thought. Second, they were aware that the Crown's counsel had revised downwards our chances of success in the litigation having seen the evidence prepared by the family. Indeed, their advice on the "consent" claim was that our case was not strong enough to be able to resist a sale of the literary papers to fund the litigation and it looked increasingly likely that the integrity of the Archive would be destroyed with some of the papers leaving Churchill College forever. Against this background it was agreed with the family that an appropriate value for their interest in the Archive was £12.5 million.

In January this year Cambridge University and Churchill College made a joint application to the NHMF for a lottery grant to acquire and endow the Archive intact and secure forever at Churchill College in the ownership of a specially created trust. The J Paul Getty Charitable Trust will contribute £1million to the project and the trustees of the NHMF agreed the lottery application on 21 March. Subject to obtaining your consent and the resolution of a number of minor legal problems, the NHMF hope to announce the decision when they unveil their first tranche of lottery grants on 20 April. Immediately prior to that the litigation would be brought to an end with each side bearing its own costs.

Consistent with the Crown's claims in the litigation, your consent is required to the necessary transfers of ownership. The effect of the transaction is that the documents which the Crown

claims and those claimed by the family will all be transferred to a specially constituted charitable trust, suitably endowed and with the duty to preserve the Archive intact forever at Churchill College. Those to which the Crown lays claim will be transferred by deed of gift. Although ownership of the documents will pass to the trust, copyright will be retained by the Crown in the State Papers and by the family in the rest. This will not inhibit significantly the use which the College can make of the Archive but it will leave open the possibility that the Crown and the family may be able to exploit the commercial potential of the documents until copyright expires. It has never been entirely clear why the original trusts and subsequent correspondence stipulated that the consent of the Prime Minister was required but, in the context of the present dispute, we have been advised that it would be appropriate for you to have regard to the desirability of keeping the Archive intact at Churchill college when deciding whether or not to give your consent. The transfers you are now asked to approve, of course, achieve this objective in a most satisfactory way. Consent may also have been thought appropriate to ensure that the confidentiality of some of the papers was preserved but the information the documents contain is now in the public domain.

As I have already mentioned, there are a number of minor legal matters to be resolved but timing considerations make it difficult to wait for their resolution before seeking your consent. Assuming, however, that the legal issues are resolved without any significant changes to the proposed transaction, are you content to give your consent?

Hard copy

FROM: **PAUL JENKINS**
QUEEN ANNE'S CHAMBERS

TEL: **210 3256**

DATE: **3 April 1995**

PS/MR PHILLIPS

cc: **Miss O'Mara**
Miss Andrews (Cabinet Office)
Mr Carpenter (TSD)
Mr Corner
Mr Jackson (LSLO)
Mr MacDonald
Miss MacLean
Mr Helston
Miss Fassnidge (TSD)

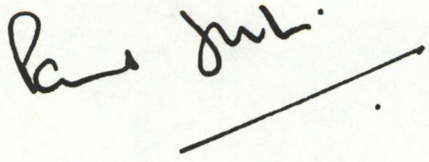
CHURCHILL ARCHIVE

Miss O'Mara's note to Mr Helston of 31 March records that we agreed to provide a draft note from Sir Robin Butler to the Prime Minister seeking the latter's consent to the transfer of the Crown and family interests in the Archive to the newly constituted charitable trust. I hope the attached draft will suffice.

It is slightly awkward to have to seek the Prime Minister's consent on a contingent basis but I think timing considerations make this inevitable. Sir Robin is away from the end of this week until 19 April and the Churchill family lawyer who is apparently needed to approve the documentation does not return from holiday until 10 April. If we wait to do anything until the lawyer returns and gives his approval it is difficult to see how the matter can be concluded in time for 20 April.

My covering note for Mr Phillips to send to Sir Robin makes no reference to Sir Robin's suggestion that our Secretary of State should agree to the proposal. I agree with Miss O'Mara that neither he nor indeed the Department have any formal role in the settlement. The court case was brought on behalf of the Cabinet Office and its withdrawal is a matter for them and, of course, for the Attorney. The consent issue too is a matter for the Cabinet Office and not

for the DNH which has no interest in the documents as such. Finally, we have no role in the lottery decision which is entirely a matter for the NHMF acting squarely within their lottery policy and our section 26 directions. The position is very different from that in 1993 when, as Miss O'Mara points out, it was the NHMF's proposed use of grant-in-aid which gave us a role in the matter.



PAUL JENKINS

DRAFT LETTER FROM HAYDEN PHILLIPS TO SIR ROBIN BUTLER

CHURCHILL ARCHIVE

As you know from Pat Andrews, this matter appears to be moving towards a satisfactory conclusion. The NHMF have approved a lottery application from the University and Churchill College to acquire the Archive for the College in the ownership of a specially constituted charitable trust. The Churchill family trust will receive £12.5 million in staged payments. The Crown will give the State Papers to the new trust. It is intended that both the Crown and the family will retain copyright in the documents which they have hitherto owned.

The NHMF hope to announce the saving of the Archive as one of their first tranche of lottery decisions on 20 April. Before, however, the matter can be concluded two issues involving the Government need to be resolved. First, the litigation must be terminated with each side bearing its own costs. I understand that your lawyers have this in hand. Second, and consistent with the Crown's claim in the litigation, the consent of the Prime Minister is required for the disposal to the new trust. I enclose a draft note seeking that consent.

As you will see the Prime Minister's consent is sought on a contingent basis. This is not ideal but timing considerations make it impossible to delay seeking his consent until the Churchill family lawyers have finally approved the documentation. The NHMF lawyers do not envisage any problems in this regard but I think that we must recognise that if there was any significant change to the arrangements it might be necessary to go back to the Prime Minister. I understand that you will also need to consult Robert Fellowes and that Pat Andrews will let you have a draft shortly.

HAYDEN PHILLIPS

DRAFT MINUTE FROM SIR ROBIN BUTLER TO THE PRIME MINISTER

CHURCHILL ARCHIVE

There appears to be a real prospect that the protracted dispute about the ownership of the Churchill Archive at Churchill College may be brought to a satisfactory conclusion before the end of the month. The matter cannot, however, finally be concluded until you have given your consent.

A Churchill family trust has always claimed ownership of the State Papers as well as the literary and other material in the Archive. The Crown has always disputed the family's claim to ownership of the State Papers and has also argued that, under the terms of various trusts, the family cannot sell such papers as they do own without the consent of the Prime Minister of the day.

Protracted negotiations between the National Heritage Memorial Fund and the Churchill family to try and resolve these issues and secure the Archive intact at Churchill College broke down in November 1993. Fearing that the family might take precipitate action to sell the literary papers without your consent, proceedings were issued by the Attorney General asserting the Crown's claim to ownership of the State Papers and the need to obtain your consent for any disposal of the other material.

The litigation proceeded until last Summer when the Churchill family asked for it to be suspended whilst further attempts were made to reach a settlement. Negotiations resumed between the NHMF and the family to try and agree an appropriate value for the entire Archive but taking into account the Crown's claim to ownership of the State Papers. The

NHMF were influenced in their negotiations by two new factors. First, they had fresh evidence to suggest that the value of the papers which were not claimed by the Crown was considerably higher than they had originally thought. Second, they were aware that the Crown's counsel had revised downwards our chances of success in the litigation having seen the evidence prepared by the family. Indeed their advice on the "consent" claim was that our case was not strong enough to be able to resist a sale of the literary papers before the litigation had been concluded. The family were threatening to sell the literary papers to fund the litigation and it looked increasingly likely that the integrity of the Archive would be destroyed with some of the papers leaving Churchill College forever. Against this background it was agreed with the family that an appropriate value for their interest in the Archive was £12.5 million.

In January this year Cambridge University and Churchill College made a joint application to the NHMF for a lottery grant to acquire and endow the Archive intact and secure forever at Churchill College in the ownership of a specially created trust. The J Paul Getty Charitable Trust will contribute £1 million to the project and the trustees of the NHMF agreed the lottery application on 21 March. Subject to obtaining your consent and the resolution of a number of minor legal problems, the NHMF hope to announce the decision when they unveil their first tranche of lottery grants on 20 April. Immediately prior to that the litigation would be brought to an end with each side bearing its own costs.

Consistent with the Crown's claims in the litigation, your consent is required to the necessary transfers of ownership. The effect of the transaction is that the documents which the Crown claims and those claimed by the family will all be transferred to a specially constituted charitable trust, suitably endowed and with the duty to preserve the Archive intact forever at

Churchill College. Although ownership of the documents will pass to the trust, copyright will be retained by the Crown in the State Papers and by the family in the rest. This will not inhibit significantly the use which the College can make of the Archive but it will leave open the possibility that the Crown and the family may be able to exploit the commercial potential of the documents until copyright expires. It is has never been entirely clear why the original trusts stipulated that the consent of the Prime Minister was required but, in the context of the present dispute, we have been advised that it would be appropriate for you to have regard to the desirability of keeping the Archive intact at Churchill College when deciding whether or not to give your consent. The transfers you are now asked to approve, of course, achieve this objective in a most satisfactory way.

As I have already mentioned, there are a number of minor legal matters to be resolved but timing considerations make it difficult to wait for their resolution before seeking your consent. I will also need to consult Robert Fellowes because the Archive includes letters from George VI and the Queen to Churchill. Assuming, however, that the Palace are content and the legal issues resolved without any significant changes to the proposed transaction, do you agree to give your consent?

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

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HO95/238/

Dr N G Cox
Director of Archival Services
Public Record Office
Kew
Richmond
Surrey
TW9 4DU

31 March 1995

Dear Nicholas

CHURCHILL ARCHIVE

You will recall that HMG instituted legal proceedings at the end of 1993 in order to get a legal ruling on ownership of the "official papers" in the Churchill Archive; this was in the light of threats by the Trustees to sell off some of the papers and thus break up the Archive.

During 1994, however, approaches were made to the National Heritage Memorial Fund (NHMF) on behalf of the Churchill family to re-open negotiations with a view to sale of the Archive by the Trustees, and further work was undertaken to identify and re-value those sections of the Archive which were indisputably in the ownership of the Trustees (the literary papers etc).

Towards the end of 1994 an appropriate value, taking into account the Government's claim, was agreed at £12.5 million. Copyright will remain as it is now, claimed by Mr Winston Churchill MP for the private papers and by HMG in respect of those papers in Crown Copyright.

A complicated structure has been devised by which Cambridge University will acquire the whole Archive with money granted to them by the NHMF from the National Lottery; it will be owned by a new Charitable Trust which is being set up to manage it and will be housed, as now, at Churchill College. A Purchase Agreement has been drawn up by the Legal Adviser to the NHMF, Sir Matthew Farrar. This will cover the purchase of the Trustees interest in the Archive. It is proposed that the official papers should pass to the University by means of a Deed of Gift. Sir Matthew Farrar is drafting that and I am hoping to have sight of it early next week.

If these negotiations succeed an announcement is proposed on 20 April 1995.

Although the "official papers" are not public records and not covered by the Public Records Act, having been for so long out of official custody, I am most concerned to ensure, so far as possible, that the official nature of the papers is recognised and that the Deed of Gift does not tie our hands in any way in dealing with other collections of papers. Although, if these negotiations succeed, the litigation will not proceed, we do not want to do or say anything which makes it look as if we are relinquishing our claim.

As you know the Keeper has spoken to me about this matter. She has very kindly agreed, when the appropriate moment comes, to put the Lord Chancellor's Department in the picture. In the meantime she has asked me to liaise with you over the matter of the Deed of Gift. I shall get in touch again as soon as I have it or know when it is likely to arrive. The timetable, as always, is exceedingly tight simply because both Sir Robin Butler and the Prime Minister are away after Thursday next, 6 April, and any concerns about the Deed or about the other legal documents will have to be cleared with them before they depart, if the 20 April date is to be met.

Yours ever

Pat

MISS P M ANDREWS

Miss Andrews

Yes thanks. In putting the draft forward I will want to be able to say that Mr. Darwall is fully content.

PBB 30.3.

CABINET OFFICE
A 5703
30 MAR 1995
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FILE No. .....

FOI 19

HO95/231

SIR ROBIN BUTLER

CHURCHILL ARCHIVE

On Tuesday evening last we discussed proposals for the purchase of the Churchill Archive by Cambridge University with money provided by the National Heritage Memorial Fund from Lottery money and you asked me to establish the length of copyright still subsisting in the official papers.

The answer is not as clearcut as it might be. There is a different ruling on duration of copyright depending upon whether a particular document has been published. If it has, copyright subsists for 50 years from publication, so documents published by Sir Winston Churchill himself, in his books about the Second World War for example, will be almost out of copyright. Documents published by Martin Gilbert in his Companion Volumes to the biography of Sir Winston will be protected for 50 years from publication - still some considerable time. Copyright in unpublished documents subsists for 125 years from the date the document was created or 50 years from the date the 1988 Copyright Act came into force, whichever is the later.

As I mentioned to you, subject to final clarification of some legal issues between Sir Matthew Farrar and the Churchill Trustees, it is proposed that the purchase of the papers should be announced on 20 April when the National Heritage Memorial Fund announces a number of other successful applications for lottery funds. As we discovered, because of Easter, leave, and the Parliamentary Recess, in order to meet the 20 April deadline, we need to get a submission to the Prime Minister by Thursday 6 April. You mentioned that you expected that the Secretary of State for National Heritage would put the submission forward but I understand that DNH feel that it would be more appropriate for you to do so, though they will provide the draft. I believe that Mr Hayden Phillips will be minuting you on this.

So far as the handling of the official papers is concerned it is proposed that the transfer should be by Deed of Gift. I am awaiting a draft Deed. When it arrives I should like to discuss it with the Public Record Office so that we can try, so far as possible, to avoid setting any unfortunate precedents; the Keeper of Public Records, Mrs Tyacke, has offered to inform the Lord Chancellor's Department of the outcome. You will recall that before litigation commenced the question of the future of the Churchill Archive was being discussed with LCD, PRO, Inland Revenue and HM Treasury. Given that the Treasury is no longer being asked to provide funds I see no reason to involve them or Inland Revenue but, simply because the official papers were once public records, I should like to carry PRO/LCD with us in these hopefully final stages. Are you content please?

Pat Andrews

MISS P M ANDREWS
Historical and Records Section
30 March 1995

30-MAR-1995 17:35 FROM HRS 0171 217 6010 TO 071 217 6010 P.02/02

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

HO95/229

M C Carpenter Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

30 March 1995

Dear Michael

CHURCHILL

I thought I should record the outcome of a very brief conversation I had with Sir Robin Butler on Tuesday evening about which we spoke early yesterday.

Sir Robin was not surprised at the news that Mr Winston Churchill MP was not proposing to assign copyright to Cambridge University and he was content that we should similarly not assign Crown Copyright. He asked me to find out what length of copyright remains in the papers. We discussed this and you referred me to a paper you had prepared on this a little while ago - I may need to come back to you on this.

Sir Robin noted paragraph 6 of the Purchase Agreement which permits the continued exploitation of copyright by holders which enables Mr Winston Churchill MP to continue to gain financially from the use of the papers in addition to the £12.5 million purchase price. Sir Robin asked that this point should be brought to the attention of Ministers when the sale proposals are put to them for approval.

Sir Robin also suggested that it should be made clear in the documents where appropriate that the valuation and the purchase price reflect what we are getting for £12.5 million ie the 'private' papers but <u>not</u> the official papers <u>nor</u> copyright, and that this can be justified.

It follows from this that the purchase agreement and other documents if appropriate should refer to sale by the Churchill Trustees and the family of their interest in the papers; Sir Robin suggests that paragraph 1. of the purchase agreement should read ".....the University will buy and the Churchill Trustees will sell the Churchill Trustees' interest in the Chartwell papers for the sum of.....'. Any further references to sale by the Trustees should be governed by this statement which reflects the warranty given in 4 a) and should also be made clear in (C) of the Conditions of Grant.

Further points (not raised by Sir Robin) on the purchase agreement:-

(B) - surely the purchase agreement cannot be finalised with this sub-paragraph stating that the Literary Papers are currently "believed to be held by Messrs Sotheby's". Someone must know where they are or have they been sold already? I think we and the University are entitled to be assured that these papers are in fact available for sale to the University.

(E) - is inaccurate. Some papers <u>received</u> by Sir Winston Churchill are Crown Copyright eg letters from other Ministers on official business. Also HMG's claim is not <u>by reason</u> of its claim to certain of the papers; they were Crown Copyright when created.

Is it correct in (E) and 4. to refer to HMG or should it be "the Crown"?

There may be other comments when we see the Deed of Gift which will presumably have to dovetail with the purchase agreement.

I mentioned to you that because of the Recess, leave etc, in order to meet the date for an announcement of 20 April we shall need to get a submission to the Prime Minister by the evening of Thursday 6 April. If it is not possible to tie the legal loose ends up by then Sir Robin Butler thought it should be possible to put a submission forward seeking approval subject to resolving any outstanding legal issues before 20 April.

Alternatively, you may wish to consider seeking a postponement of the announcement to allow more time for outstanding issues to be resolved - after all we have not even got the Deed of Gift yet! It would seem from Paul Jenkins' minute of 17 March that there may be other possible dates.

I also mentioned to you that Sir Robin Butler is expecting the submission to go to the Prime Minister from the Secretary of State for National Heritage. I shall need to minute Sir Robin formally about the disposal of the official papers before that, by which time we shall need to have decided who is to sign a deed of gift - should this be the Prime Minister?, also who is to consult the Palace and when.

I shall need to put a minute to Sir Robin Butler for this weekend covering the copyright point he raised and confirming the timetable. Perhaps we could have a word about this later in the day.

I am sending a copy of this letter to Paul Jenkins.

Yours ever

Pat

MISS P M ANDREWS

XX

Hard copy

FOL 16

CABINET OFFICE
H 95/233
- 3 APR 1995
FILING INSTRUCTIONS
FILE NO

THE TREASURY SOLICITOR
Queen Anne's Chambers, 28 Broadway, London SW1H 9JS
Direct Line 0171 210 3450 Direct Fax 0171 210 3503
Office of Public Service & Science Legal Adviser

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

Please quote: A930329G/MC

Your reference:

Date: 30 March 1995

Dear Miss Andrews

Churchill Archive

Thank you for your letter of 30 March which raises the question of copyright, the form of the Purchase Agreement and timetable. I deal with each of these points below.

Copyright

I think the only basis on which agreement is likely to be reached is that the transactions whereby the Archive passes into the ownership of Cambridge University are neutral as to copyright ownership. This has the unattractive feature that it remains open to Mr Winston Churchill MP to exploit such copyright as he owns in the documents which are the subject of the Purchase Agreement. However, it might also be noted that copyright will remain vested in the Crown in respect of the State papers.

It does not therefore follow that Mr Winston Churchill has a free hand in copying the Archive on to CD-ROM or otherwise. In order for the Archive to be copied in this way, the consent of all copyright owners would be required otherwise the copy will be an infringing copy. In practice, the benefits by way of royalties accruing from such exploitation will need to be shared, thus allowing the Crown to recoup at least part of the £12.5 million which is being laid out.

Clause 6 of the Purchase Agreement is not entirely satisfactory in this regard, as it purports to grant access to and licence one copyright owner to copy "all Archive material". Cambridge University should, in my view, be advised (and the Crown should insist) that any right of access for copying purposes should relate only to those papers, copyright in which is vested in the applicant. Otherwise Cambridge University will be making itself party to

a copyright infringement.

As far as the subsistence of Crown copyright is concerned, you may be assisted by the note I prepared last November (a further copy is attached). The position is not straightforward in as much as it is the copyright in each document which needs to be examined, rather than copyright in the State papers or the Archive as a whole. Nearly all of the papers will be ones originally protected by the Copyright Act 1911. 1911 Act protection is preserved by the 1956 and 1988 Acts to the effect set out in the attached note. The broad distinction is between published and unpublished work. If the documents have been published, copyright protection endures for 50 years after the date of first publication. In the case of unpublished works, copyright subsists for 125 years from the date of making or for 50 years from the date of the coming into force of the 1988 Act, whichever is the later. It would, I think, be a substantial exercise to establish which state papers have been published and which have not. My impression is that a considerable part of the state papers has not been published, with the result that Crown copyright protection has a considerable time to run.

As far as concerns copyright in the numerous non-official letters in the Archive, the copyright position may be even more difficult to establish in as much as any copier would only be free to copy such letters without a licence if he could be sure that 50 years has passed since the author's death. Any commercial exploitation of copyright in the Archive is therefore likely to prove problematic.

Form of the Purchase Agreement

I agree, if I may say so, with the points you have made about the Purchase Agreement. Sir Matthew Farrer is preparing a corresponding deed of assignment whereby the Crown's interest (apart from copyright) would be transferred to Cambridge University. The Purchase Agreement will thus be balanced by the assignment and it will be made more readily apparent that the Trustees are only selling what they own. Inevitably, when a matter is the subject of litigation, there would be a contested area in the middle in which the positions of both parties will overlap.

It might also be borne in mind that the buying-out of the risk in the Crown's claim to the State papers does have some value. Had it been determined by a Court that the Crown does have an indefeasible title to the State papers, the purchase price for the Archive collected by the Trustees would have been considerably smaller.

Timetable

I doubt whether the purchase documentation will be settled in time before the Prime

Minister's consent is sought, so that I agree that approval could only be sought on a conditional basis. I understand from Paul Jenkins that it would not be opportune to seek any postponement of the announcement.

I am copying this letter to Paul Jenkins and Bill Godwin here and to Richard Jackson at LSLO.

Yours sincerely

pp **Michael Carpenter**

Hard copy

COI
15

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 071 210 3450 Direct Fax 071 210 3503

Office of Public Service & Science Legal Adviser

MINUTE

To: Miss Andrews

From: Michael Carpenter

Dept: Cabinet Office

Date: 30 March 1995

Churchill Archive: Settlement negotiations

In advance of a fuller reply to your letter of 30 March, I am enclosing a further copy on my note of 2 November on the question of Crown copyright.

M.C.

CABINET OFFICE
H 95/ 232
- 3 APR 1995
INSTRUCTIONS

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

MINUTE

To:	**Mr Jenkins**	**From:**	**Michael Carpenter**
Room:	**342/3 Tot**		
cc:	**Miss Fassnidge** **Miss Andrews (CO)**	**Date:**	**2 November 1994**

Churchill Archive

1 DNH Private Office has copied to me Winston Churchill's letter of 1 November to Sir Robin Butler.

2 I am slightly at a loss to know what Peregrine Churchill is up to. I would have thought that any question of copying the Archive in electronic form was intimately connected with the ownership of the documents which are to be copied. Winston Churchill appears to concede that "some" of the papers contained in the Archive are Crown copyright, and I would have thought it was our case that all the Relevant State Papers were Crown copyright. After all, the basis on which we assert ownership is virtually identical to that on which Crown copyright would subsist. (See section 163 Copyright, Designs and Patents Act 1988 which provides that where a work is made by Her Majesty or by an officer or servant of the Crown in the course of his duties Her Majesty is the first owner of any copyright in the work. Similarly, section 39 of the 1956 Act provides that HM shall be entitled to copyright in every original literary work "made by or under the direction or control of Her Majesty or a Government Department" and section 18 of the 1911 Act contains a similar provision).

3 The transitional and saving provisions whereby works protected under the 1911 and 1956 Acts are still protected under the 1988 Act are somewhat complex (and not properly reflected in Mark Cunningham's opinion of 19 May 1994). However, their

effect is to preserve Crown copyright arising under the 1911 Act until it would have expired under the 1956 Act (see paragraph 4 of Schedule 1 to the 1988 Act). A different copyright duration applies according to the published or unpublished character of the work, but even in respect of published works copyright subsists for 50 years from the date of first publication. In respect of unpublished works, copyright subsists for 125 years from the date of making or for 50 years from the date of the coming into force of the 1988 Act, whichever is the later.

4 It is quite clear (from section 17(2) of the 1988 Act) that storing the work in any medium by electronic means amounts to copying the work. If the copying is not licensed by the Crown, the making of the copy amounts to an infringement and any issuing of an electronic copy is a further infringement. (The 1988 Act will, of course, apply as the infringements would take place now, albeit in respect of works which were first protected under the 1911 Act).

5 I am not sure how best to play the copyright card in any negotiations with the Trustees, but Peregrine Churchill may need to be warned that he has no title to the intellectual property rights he purports to be licensing or assigning to the "overseas company". If the latter are well advised, they will seek a warranty from Peregrine Churchill that he owns the rights in question, and an indemnity against any action by right owners. If he makes the assertion that he does own the rights, and this assertion comes to our notice, we may need to rebut the assertion in view of the equitable nature of our claims in the main litigation.

6 Subject to clearing the matter with the Controller HMSO (to whom Crown copyright is assigned by Letters Patent) it would, I think, be possible to include, as part of an overall settlement, an agreement by the Crown to grant a licence for electronic copying. Such a licence could well be used as a bargaining counter.

7 Subject to your views, I think that Sir Robin Butler should now make the position plain to Winston Churchill as far as copyright is concerned. This could perhaps be presented as a helpful move in order to prevent Peregrine Churchill from entering into commitments which he will find embarrassing.

Hard copy

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CABINET OFFICE
H 95/217
30 MAR 1995

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 071 210 3450 Direct Fax 071 210 3503

Office of Public Service & Science Legal Adviser

MINUTE

To: Miss Andrews

From: Michael Carpenter

Dept: Cabinet Office

Date: 28 March 1995

cc. Mr Jenkins
Mr Godwin
Mr Jackson (LSLO)

Churchill Archive: Settlement negotiations

1. Further to my minute of 27 March you raised the question of the proposed deed of gift to Cambridge University which forms part (or should form part) of the settlement documents now being prepared by Farrers.

2. Whatever interest the Crown does transfer to Cambridge must, I think, be transferred by deed since there is no consideration moving from Cambridge towards the Crown on which a contract can be based. A deed removes any doubt as to the binding nature of any transfer.

3. As I understand the matter (and I would be grateful for any comment by copy recipients) it was always part of the settlement negotiations– at least in 1994/5– that the interest of the Crown in the State papers would be transferred to Cambridge University or Churchill College so that the latter would own and not merely have possession of the documents forming the Archive. The negotiations have proceeded on the basis that the Archive would be acquired as a whole including those documents which the Crown claimed (cf. the letter of 26 January 1995 to Sir Robin Butler from Hayden Phillips).

4. I do not think that it was ever envisaged that the Crown would merely lend the documents to Cambridge or Churchill College as this would have meant that the Archive was not being acquired as a whole. In this regard, I would refer to the note of the meeting with Sir Robin Butler on 28 November 1994 which discussed the question of who would own the Archive as a result of the sale. The note records (para 15) that Sir Robin agreed that if the Archive

were lodged at Churchill College the Government would agree not to press its claim (ie to the State papers) and that there was a question whether it should formally withdraw its claim.

5. A mere loan of the State papers to Churchill College is not consistent with the arrangements which formed the basis of the application to the NHMF and which were referred to in Hayden Phillips' letter of 25 January. It would also put at risk the Purchase Agreement by which the entire Archive is being sold to Cambridge (and thus buying out the interest of the Churchill Archive trustees in the literary papers and their claim to the State papers). A loan would risk re-opening the question of what is being sold as literary and other papers and what is being lent: the very issue in the litigation and which we are trying to settle.

6. I hope that this gives a sufficient explanation of the background and of the reasons why I consider it essential to the agreement that the Crown should transfer its interests in the State papers to Cambridge.

PDL 6
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THE TREASURY SOLICITOR
Queen Anne's Chambers, 28 Broadway, London SW1H 9JS
Direct Line 0171 210 3450 Direct Fax 0171 210 3503
Office of Public Service & Science Legal Adviser

CABINET OFFICE
H 95/215
28 MAR 1995
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H95/215
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CJR

MINUTE

To:	**Miss Andrews** **Cabinet Office**	**From:**	**Michael Carpenter**
Room:	**-**	**Date:**	**27 March 1995**

Confidential

c.c. Mr Godwin
Mr Jenkins
Mr Jackson (LSLO)
Miss Fassnidge

Churchill Archive : settlement negotiations

1. I attach a copy of a letter from Paul Jenkins to Richard Jackson which exhibits the draft documents produced by Farrers on behalf of the NHMF with a view to the settlement.

2. I would be grateful for any comments you may have on these drafts. Paul Jenkins and I agree that it will be necessary for there to be a deed of gift to Cambridge University of the Crown's interest in the Archive documents, so as to correspond to the surrender to Cambridge University by the Archive Trustees of whatever interest they have in the Archive.

3. An issue which will need to be resolved is the ownership of copyright in the documents forming the Archive or, more precisely, whether any provisions relating to copyright are necessary in the settlement documents. Ownership of copyright does not, of course, coincide with ownership or possession of the documents themselves. For example, Classes 1 and 2 of the Archive contain items of correspondence which may still be in copyright and where the rights are owned by the authors of the letters referred to. In relation to these, it is practically impossible to establish whether copyright still subsists and in whom the right vests.

4. No doubt it is because of this that recital (E) to the purchase agreement refers to Mr Winston Churchill as being the copyright owner except in relation to documents received by Sir Winston Churchill from third parties and in relation to those documents where HMG may have a better claim. The purchase agreement is, therefore, neutral on the question of copyright ownership, and does not seek to assign title.

5. In principle, I believe this to be the correct approach. In the interest of achieving a "clean break" it might have been preferable to secure from Mr Winston Churchill an assignment to Cambridge University of whatever copyright interest he claims to have in the Archive papers, but I doubt that this is negotiable. If there were such an assignment, no doubt the Archive Trustees would seek a corresponding assignment of the Crown copyright subsisting in Relevant State Papers as a *quid pro quo*.

6. In the absence of an assignment by Winston Churchill of his copyright claims, I would advise, on balance, that there should be no assignment to Cambridge University of such claims as the Crown has to copyright. The litigation has concerned the ownership of the documents rather than copyright in them, and I see no reason why the Crown should make it any easier for Winston Churchill to exploit the Chartwell papers by way of CD-Rom copying or otherwise. If the Crown does not assign its copyright to Cambridge, it will be able to assert its rights as copyright owner to prevent the electronic copying of papers in which Crown copyright subsists. (As many of the Archive papers are unpublished, Crown copyright may well subsist for some considerable time to come). Any storing of the copyright works contained in the Archive in any medium by electronic means (such as by producing a CD-Rom) amounts to copying (see section 17(2) Copyright Designs and Patents Act 1988 and accordingly requires the permission of the copyright owner.

7. It might be argued against this course that it does not promote a clean break. In the event that the Churchills (Winston or Peregrine) seek to copy the entire Archive in CD-Rom form, there would be a dispute between them and the Crown as to ownership of copyright, much as there is at present over ownership of the documents and traversing much of the same ground. However, the position of the Crown in any future dispute over copyright would be stronger than it is in relation to ownership of the documents. In the first place, any unauthorised copying would be a fresh infringing act, and no limitation defence would be available. Secondly, whatever may be the true position in relation to ownership of the documents, there has never been

any suggestion that permission to Prime Ministers and Ministers to take documents with them ever carried with it the right to copy those documents for commercial exploitation. Thirdly, any sensible publisher of CD-Roms would be well advised to seek from the Churchills a warranty that the publication will not infringe the rights of any third party, and the Churchills will be in no position to give such a warranty or to indemnify the publisher. (I note here that clause 6 of the Purchase Agreement rather blurs the distinction between the separate rights of Winston Churchill and the Crown by referring collectively to "copyright in the Chartwell papers".

8. Whilst a "clean break" has some attractions, I would not favour it. The disposal of Crown copyright by assignment would need, in any event, to be cleared by the Controller of HMSO as being Her Majesty's representative in this regard.

9. As far as licensing is concerned, I would see no difficulty in principle with the Crown granting Cambridge University a licence in the same terms as are set out in the Third Schedule to the Purchase Agreement.

10. Finally, I would simply record my assumption that any necessary consultation of the Palace will be taking place in the context of the giving of consent by the Prime Minister to the sale (see condition 5 of the Second Schedule).

M.C.

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

27 March 1995

Dear Mark

RECESS BOXES

The Prime Minister will be out of London on Friday this week and will also be away Monday, Tuesday and Wednesday and Friday of the following week, so there will be very little time for him to handle papers from departments before the Easter recess.

We will try to ensure that papers received by this Thursday evening are processed by early next week. Papers received after that will probably not receive a response from us until the following week beginning 10 April. Papers received after Thursday evening next week (6 April) will probably not receive a response until after Easter.

If departments need urgent responses to papers and cannot meet these deadlines it would be helpful if they could let the relevant Private Secretary know as soon as possible.

Copies of this letter go to Private Secretaries to Cabinet Ministers and to Melanie Leech.

Yours ever

Rachael

RACHAEL REYNOLDS

Mark Ormerod Esq
Lord Chancellor's Office

FOL 16
11

NOTE FOR RECORD

I spoke to Georgina Naylor on 22 March. She told me, in strict confidence, that the Trustees (presumably the NHMF Trustees) at the meeting on 21 March had agreed to go ahead with the purchase of the pre and post 1945 papers on behalf of Cambridge University and to deposit them at Churchill College. The announcement was expected to take place on 26 April - a later date than expected but this was at the request of the Secretary of State.

There was what Georgina called a "loose excocet missile" around in the shape of Peregrine Churchill who was still entering into crazy agreements with all sorts of people. There were also several loose ends relating to copyright, particularly Crown Copyright. The documents had, she said, been passed to Paul Jenkins, T Sol, and Matthew Farrar was going to talk to him later in the day.

I spoke to Michael Carpenter later the same day and suggested to him that we should have an early meeting with Paul Jenkins (attended if possible by Duncan Chalmers) so that we could sort out what still needed to be done and we could have an input to the announcement which would need to be cleared with No 10 and with the Palace. Michael agreed with this and said he would discuss it with Paul Jenkins and get back to me.

PMA.

P M ANDREWS
23 March 1995

21.3.95

10

THE SOLICITOR

cc: Mr Carpenter
Miss Fassnidge

CHURCHILL

Not for the first time this matter appears to be moving towards a conclusion and I thought you would wish to be aware of developments.

The long running dispute over the Churchill Archive revolves around two issues. First, the extent to which the State papers in the Archive belong to the Crown and second, whether the Churchill family can sell those other documents in the Archive which they do undoubtedly own without the consent of the Prime Minister. The Government and the NHMF were involved in protracted negotiations in 1992/93 to try and secure the Archive intact at Churchill College but, faced with the possibility that the Churchill family might take precipitate action to sell some of the papers, the Government issued proceedings at the end of 1993. The proceedings were issued in the name of the Attorney General.

In mid-1994 Lord Alexander, on behalf of the family, approached Lord Rothschild, who is chairman of the NHMF, to see whether the earlier negotiations might be resumed. At a meeting with Sir Robin Butler it was agreed that the litigation would be suspended while work was undertaken to identify and re-value those sections of the Archive which were indisputably in the ownership of the family. Whilst this was going on our counsel (Michael Hart QC and Bill Charles) revised their assessment of the strength of our case on the basis of the emerging evidence from the Respondents. Our chances of success on our claim to ownership of the State papers was assessed at below 50/50 for the first time and our case on the "consent" claim was thought to be so weak that we would be unable to secure an interlocutory injunction if the family decided to sell before the litigation was concluded. This latter point was particularly important because the family were proposing to sell their papers to fund the litigation with the inevitable consequence, if our counsel were right, that the Archive would start to be dispersed.

Towards the end of 1994 the NHMF and the Churchill family agreed that an appropriate value for the Archive, taking into account the Government's claim, was £12.5m. Subsequently Cambridge University and Churchill College submitted a Lottery application to the NHMF

28/03 '95 TUE 14:42 FAX 0171 210 3503 T 501 002

on the basis of this agreed valuation and the NHMF considered and approved that application today. The proposed legal structure underpinning the Lottery application is rather complicated but there are two conditions precedent which are noteworthy as far as we are concerned. First, the Lottery grant will not be paid until the Attorney General has discontinued his case with no order as to costs. Second, the consent of the Prime Minister must be given to the sale. This last point, of course, reflects our contention that none of the documents in the Archive can be disposed of without the consent of the Prime Minister. The Attorney is aware of these conditions precedent.

There remain a number of legal issues to be resolved between the NHMF and the Churchill family but if these can be cleared up quickly and the Archive freed from the threat of litigation the saving of the Archive intact and endowed at Churchill College is likely to be announced when the NHMF unveil their first tranche of Lottery grants on 20 April.

PAUL JENKINS
21 March 1995
EXT: 3256

28/03 '95 TUE 15:02 FAX 0171 210 3503 T 501 032

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Telephone: 0171 210 3256 Sec: 0171 210 3278 Fax: 0171 210 3448

Paul Jenkins – Head of National Heritage Division

POL/9

R A D Jackson Esq
Legal Secretariat to the Law Officers
Attorney General's Chambers
9 Buckingham Gate
London SW1

Please quote:

Your reference:

Date: 17 March 1995

Dear Richard,

CHURCHILL

I promised to keep you closely informed of developments in this matter and I thought you might like to see the first drafts produced by Farrers of the documents necessary to conclude the Lottery transaction.

There are three documents:

1. Purchase Agreement relating to the pre–1945 Churchill papers;

2. Conditions of Grant (including in its Third Schedule a Loan Agreement of the whole of the Archive to Churchill College); and

3. Declaration of Charitable Trust.

As you will see it is intended that the Churchill Trustees will sell whatever interest they have in the Archive documents to Cambridge University for £12.5m payable in six instalments. £1m of this sum will be provided by the Trustees of the J Paul Getty Charitable Trust with the remainder coming from the Lottery. The University will thereafter transfer the papers they have acquired to a new charitable trust whose trustees are, rather confusingly, also referred to in the documentation as "the Churchill Trustees". Churchill College will transfer the papers that they already own to the new Churchill Trustees and the Trustees will then lend the entire archive to Churchill College. In addition to funding the acquisition the Lottery will also endow the new charitable trust.

I do not think we need to be concerned with the structures which the NHMF, the University and the College consider appropriate to establish the entire Archive in a safe and proper way but I should draw to your attention a couple of points in the documentation.

First, recital C in the Purchase Agreement refers to our litigation and recital E to the fact that

Winston Churchill may not own the copyright in all the documents. These references are unobjectionable.

Second, clause 1 on page 3 of the Purchase Agreement refers to the conditions precedent set out in the Second Schedule and you will wish to note that the third of those conditions, on page 5 of the Agreement, is that our litigation is discontinued upon the application of the Attorney with no order for costs or otherwise. The fifth condition precedent is that the consent of the Prime Minister is given to the sale. This last point, of course, reflects our contention that none of the documents in the Archive can be disposed of without the consent of the Prime Minister. Again these points seem inevitable and unobjectionable.

These documents have only been approved by the NHMF at the moment but Farrers are discussing them with the Churchill lawyers. I will obviously let you know if I hear anything more.

Finally, you may be interested to know that if the NHMF trustees approve the Lottery application they hope to announce it along with a number of other successful applications on 20 April. It will, however, be by far the largest of the first tranche of grants they announce.

I am copying this letter to Michael Carpenter and Hilary Fassnidge in this office.

Yours ever.

PAUL JENKINS

DATED **1995**

THE TRUSTEES OF THE NATIONAL HERITAGE MEMORIAL FUND

- and -

THE CHANCELLOR MASTERS AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE

- and -

IAN MONTROSE AND ANOTHER

- and -

HENRY WINSTON SPENCER CHURCHILL

- and -

WINSTON SPENCER CHURCHILL MP

PURCHASE AGREEMENT

relating to the pre 1945 Churchill Papers

Farrer & Co
66 Lincoln's Inn Fields
London WC2A 3LH

DRAFT/MF.2.3.95

THIS AGREEMENT is made this day of 1995

BETWEEN:

(1) **THE TRUSTEES OF THE NATIONAL HERITAGE MEMORIAL FUND** of 10 St James's Street London SW1A 1EF ("the Heritage Trustees") and

(2) **THE CHANCELLOR MASTERS AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE** ("the University")

(3) **IAN MONTROSE** of 90 Fetter Lane London EC4A 1EQ and **HENRY WINSTON SPENCER CHURCHILL** of Fairdown Vernham Street Vernham Dean Hampshire SP11 OEL ("the Churchill Trustees") and

(4) **HENRY WINSTON SPENCER CHURCHILL** of Fairdown Vernham Street Vernham Dean aforesaid ("Mr Peregrine Churchill") and

(5) **WINSTON SPENCER CHURCHILL MP** of Squerryes Lodge Westerham Kent TN16 1SJ ("Mr Winston Churchill")

WHEREAS:

(A) Set out in the First Schedule hereto is a description of the Archive of Sir Winston Churchill prepared by Bernard Quarritch Ltd. Such Archive is divided into those papers after the 27 July 1945 already in the ownership and possession of Churchill College Cambridge ("the Post 1945 Papers") the papers referred to therein as the Premier Papers currently in the custody of the Public Record Office ("the Premier

Papers) and the remainder of the papers ("the Chartwell Papers") which include the Literary Papers

(B) All the Post 1945 Papers and the Chartwell Papers are currently deposited with Churchill College aforesaid except certain of the Literary Papers which are currently believed to be held by Messrs Sotheby's

(C) Certain of the Chartwell Papers are currently the subject of litigation between Her Majesty's Government and the Churchill Trustees in the action HM Attorney General v Montrose and Churchill (C.H. 1993 H 8050)

(D) Mr Peregrine Churchill has made claim to certain of the Chartwell Papers but the Churchill Trustees have not acceded to such claim

(E) The copyright in the Post 1945 Papers and in the Chartwell Papers is vested in Mr Winston Churchill except in so far as such papers were received by Sir Winston Churchill from third parties and except in so far as Her Majesty's Government may have a better claim thereto by reason of its claim to certain of the papers the subject of the said litigation and the papers in which copyright is so vested in Mr Winston Churchill are hereinafter referred to as "the Copyright Chartwell Papers"

(F) The Churchill Trustees wish to sell and the University wishes to purchase the Chartwell Papers and provisional terms in respect of such sale were negotiated in December 1994

NOW THIS AGREEMENT WITNESSES as follows:

1. Subject to the prior fulfilment of each of the conditions set out in the Second Schedule hereto then the University will buy and the Churchill Trustees will sell the Chartwell Papers for the sum of £12.5 million payable as hereinafter set out

2. Completion of the sale shall take place at Churchill College when legal transfer of ownership of all the Chartwell Papers shall take place by way of symbolic delivery. Such completion shall take place within 14 days of the fulfilment of the last condition set out in the Second Schedule to be fulfilled

The sum of £2.5 million shall be paid over on completion and a further sum of £2.0 million shall be paid on the expiry of each quarter thereafter for the next 5 quarters

3. Mr Peregrine Churchill HEREBY CONFIRMS that if and in so far as he shall have any claim to any of the Chartwell Papers he will assign and transfer to the University all such right title or interest as he has in such papers and will if so called upon to do execute such further or other documents to give effect thereto as the University or the Heritage Trustees shall request

4. The Churchill Trustees HEREBY WARRANT that (except as hereafter referred to) they have unencumbered title to sell the Chartwell Papers

Such warranty shall not extend

a) to any papers to which Her Majesty's Government may have a better claim or

b) in respect of which Mr Peregrine Churchill has a better claim and in respect of which such claim is assigned to the University

5. The Churchill Trustees shall procure and Mr Winston Churchill confirms that on or prior to completion the University shall be granted a copyright licence for the full term of copyright and any extension thereof in the Copyright Chartwell Papers in

the terms set out in the Third Schedule hereto such licence to be gratuitous and freely assignable

6. The holders of the copyright in the Chartwell Papers and all persons duly authorised by them shall have the right of access to the Chartwell papers at all reasonable time or times to enable them to exploit such copyrights including in particular recording of all archive material on CD-Rom disc and microfilm but shall not have the right to remove any such papers from their place of deposition for such purpose

In the event that pursuant to this right there shall be produced for the purposes of commercial exploitation recordings of Archive Material on CD-Rom disc and/or microfilm or otherwise one copy of each such product shall be provided free of charge to the University and one to Churchill College Cambridge

AS WITNESS the hands of the parties hereto

THE FIRST SCHEDULE

[see attached]

THE SECOND SCHEDULE

1. The Capital Taxes Office confirm the Special Purchase Price of £12.5m. to include the douceur

2. The Trustees of the J Paul Getty Charitable Trust make a grant of the sum of not less than £1 million sterling to the Heritage Trustees towards the Purchase Price of the Chartwell Papers

3. The litigation between HM Attorney General v Montrose and Churchill (C.H. 1993 H 8050) is discontinued upon application by HM Attorney General with no order for costs or otherwise

4. All the Literary Papers and any other of the Chartwell Papers not currently deposited at Churchill College be deposited there

5. The consent of the Prime Minister be given to the sale

THE THIRD SCHEDULE

The right to copy and use and to permit others to copy and use the Copyright Chartwell Papers for the purposes of research and to reproduce and permit others to reproduce the Copyright Chartwell Papers in any academic publication in any medium or language anywhere in the world but so that no use may be made of such right for the purposes of commercial exploitation

DRAFT/CMF.08.03.95

THIS AGREEMENT is made this day of 1995

BETWEEN:

(1) **THE TRUSTEES OF THE NATIONAL HERITAGE MEMORIAL FUND** of 10 St James's Street London SW1A 1EF ("the Heritage Lottery Trustees")

(2) **THE CHANCELLOR MASTERS AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE** ("the University")

(3) **THE PROVOST AND SCHOLARS OF CHURCHILL COLLEGE** ("the College") and

(4) [_____] of [ ]
[_____] of [ ]
[_____] of [ ]
and [_____] of [ ] (together "the Churchill Trustees" which expression shall where the context so admits include the trustee or trustees for the time being of XYZ Trust)

WHEREAS:

(A) The University and the College have together set up XYZ Trust being a duly constituted Charity with the principal object of acquiring and caring for the Papers ("the Churchill Papers Archive") of the late Sir Winston Spencer Churchill

(B) The College has vested in it that part of the Churchill Papers Archive dating post 1945 ("the Post 1945 Churchill Papers") which it intends to transfer to The Churchill Trustees

(C) The University is entering into an Agreement ("the Purchase Agreement" a copy of which is annexed hereto) to purchase that part of the Churchill Papers Archive ("the Chartwell Papers") dating prior to 1945 with a view to transferring the same forthwith to the Churchill Trustees

(D) The University and the Churchill Trustees have together made application to the Heritage Lottery Trustees for a grant ("the Purchase Grant") of £11.5 million to enable the University to effect the purchase of the Chartwell Papers and to transfer the same to the Churchill Trustees

(E) The Churchill Trustees have made application to the Heritage Lottery Trustees for a grant ("the Endowment Grant") of £x to provide an endowment for the care cataloguing maintenance and improvement of the Churchill Papers Archive

(F) The "Approved Purposes" when used herein shall mean

(a) in respect of the Purchase Grant the acquisition of the Chartwell Papers and

(b) in respect of the Endowment Grant the creation of an Endowment Fund the income (and in certain circumstances the capital) of which shall be applied to the cataloguing care maintenance and improvement of the condition of the Churchill Papers Archive and such other activities relating to such archive as the Heritage Lottery Trustees shall in writing authorise

(G) The Heritage Lottery Trustees are proposing to make the Purchase Grant and the Endowment Grant upon the terms and conditions hereafter appearing

NOW IT IS HEREBY AGREED as follows:

1. The Heritage Lottery Trustees will make by way of grant to the University the Purchase Grant such grant to be paid to the University as follows:

(a) The sum of £2.5 million to enable the University to complete on due date the purchase of the Chartwell Papers in accordance with the terms of the Purchase Agreement

(b) £2 million on the expiry of each quarter thereafter for the next 5 quarters to enable the further payments as set out in the Purchase Agreement to be paid

2. Forthwith upon completion of the Purchase by the University of the Chartwell Papers

(a) The University with the consent of the Heritage Lottery Trustees (witnessed by their execution to this Agreement) will transfer to the Churchill Trustees the ownership of the Chartwell Papers

(b) The College will transfer to the Churchill Trustees the ownership of the Post 1945 Churchill Papers

(c) The University and the College will assign to the Churchill Trustees all rights of copyright including all copyright licences in respect of the Churchill Papers Archive that may be in their respective ownership

(d) The Heritage Lottery Trustees will make the Endowment Grant to the Churchill Trustees

(e) The Churchill Trustees and the College will enter into a Loan Agreement in the form set out in the Third Schedule hereto

3. The Purchase Grant is made on the terms and conditions set out in the First Schedule hereto and the University undertakes to the Heritage Lottery Trustees to observe and perform such terms and conditions

4. The Endowment Grant is made upon the terms and conditions set out in the Second Schedule hereto and the Churchill Papers Trustees undertake to the Heritage Lottery Trustees to observe and perform all such terms and conditions

AS WITNESS the hands and seals of the parties hereto

THE FIRST SCHEDULE

Terms and Conditions for the Purchase Grant

1. The Purchase Grant shall be used solely for the purpose of purchasing the Chartwell Papers

2. Any part of the Purchase Grant not required for such purpose shall be repaid to the Heritage Lottery Trustees

3. The Heritage Lottery Trustees shall be provided with any information they require to satisfy themselves that the purchase has been duly completed

4. The University will transfer the Chartwell Papers forthwith to the Churchill Trustees in accordance with Clause 2(a) of this Agreement

5. The provisions of Clauses 8 and 9 of the Second Schedule are incorporated herein but so that the provision of Clause 9 shall cease to apply to the University once the Chartwell Papers have been transferred to the Churchill Trustees

THE SECOND SCHEDULE

Terms and Conditions for the Endowment Grant

1. To retain the Endowment Fund as a separate fund to be invested in accordance with the investment powers of the XYZ Trust

2. The income from the Endowment Fund shall be applied only for the Approved Purposes

3. The capital of the Endowment Fund shall be retained and no part thereof expended except that the Churchill Trustees may apply up to £== from the capital of the fund in carrying out.....

4. The Churchill Trustees shall retain in their ownership the whole of the Churchill Papers Archive being both the Chartwell Papers and the Post 1945 Papers and shall not sell or encumber the Churchill Papers Archive or any part thereof or interest therein without the prior written consent of the Heritage Lottery Trustees and such consent may be given on such terms as the Heritage Lottery Trustees may decide

? crown involvement

5. The Churchill Papers Archive shall -

   (a) be kept in physically and environmentally secure conditions

   (b) be duly catalogued and a copy of such catalogue when completed be provided to the Heritage Lottery Trustees free of charge if it is requested

   (c) be put and maintained in good repair and condition

   (d) be made available to scholars for research at all reasonable times

6. The Churchill Trustees will -

(a) secure that the general public shall have full appropriate access to exhibitions of suitable material from the Churchill Papers Archive will secure that no person is unreasonably denied access thereto and will provide on demand details of such access to the Heritage Lottery Trustees

(b) publicly acknowledge both the Purchase Grant and the Endowment Grant in a form approved by the Heritage Lottery Trustees and will not issue any public statement referring to the Heritage Lottery Trustees in relation to the Approved Purposes other than in a form approved by the Heritage Lottery Trustees

(c) provide to the Heritage Lottery Trustees free of charge two good quality colour transparencies (35 mm) and two black and white photographs (measuring not less than 10 inches by 8 inches) of suitable representative items from the Chartwell Papers which the Heritage Lottery Trustees shall be free to use in any way they wish in any part of the world

(d) complete and return to the Heritage Lottery Trustees the project monitoring documents in accordance with the instructions given in respect of both the Purchase Grant and the Endowment Grant by the Heritage Lottery Trustees

(e) supply to the Heritage Lottery Trustees such financial or other information as the Heritage Lottery Trustees may from time to time require in respect of the Purchase Grant and the Endowment Grant the Churchill Papers Archive the Approved Purposes and any property derived therefrom

(f) allow the Heritage Lottery Trustees (or any person duly authorised by them) to have such access to the Churchill Papers Archive as they reasonably require in order to inspect the Churchill Papers Archive and any repair or restoration of or other work to the Churchill Papers Archive

(g) take appropriate steps to monitor the success in fulfilling the Approved Purposes and to provide the Heritage Lottery Trustees any information they require to satisfy themselves that the Approved Purposes are being properly fulfilled

(h) operate an equal opportunities policy and will ensure that other bodies involved in the fulfilment of the Approved Purposes also operate such a policy both before during and after the fulfilment of the Approved Purposes

7. The Heritage Lottery Trustees reserve the right to make public the purpose and amount of the Purchase Grant and the Endowment Grant in whatever way they think fit

8. The provision of Lottery finance can only be guaranteed to the extent that the National Lottery continues to operate

9. The Purchase Grant and the Endowment Grant shall become repayable to the Heritage Lottery Trustees and any future payments stopped where

(a) The recipient ceases to operate or is declared bankrupt or is placed into receivership or liquidation

(b) The recipient fails to apply the Purchase Grant or the Endowment Grant as the case may be for the Approved Purposes

(c) The recipient fails to comply with the conditions of the Purchase Grant or the Endowment Grant as the case may be

(d) The application form was completed fraudulently incorrectly or misleadingly in any material particular

(e) The recipient acts fraudulently or negligently in any material matter in connection with the Approved Purposes

10. If by reason of the immediately preceding clause the Purchase Grant or the Endowment Grant shall become repayable then there shall be repaid to the Heritage Lottery Trustees on demand the larger of

(a) the amount of the original grant and

(b) the amount arising by reason of the breach

THE THIRD SCHEDULE

THIS AGREEMENT is made the day of 1995

BETWEEN

(1) [_____] of [ ]
[_____] of [ ]
[_____] of [ ]
and [_____] of [ ]
(together "the Charity Trustees" which expression shall where the context so admits include the trustee or trustees for the time being of the XYZ Trust a Registered Charity Number [ ]) and

(2) **THE PROVOST AND SCHOLARS OF CHURCHILL COLLEGE** ("the College")

WHEREAS

(A) The Charity Trustees are the owners of the Archive (as hereinafter defined)

(B) The Charity Trustees named above are the present trustees of the XYZ Trust

(C) The Charity Trustees have agreed to loan to the College the Archive subject to the provisions below

NOW IT IS HEREBY AGREED as follows:

1. Definitions

In this Agreement:

1.1 "the Archive" means the Churchill Papers Archive more particularly described in the Schedule to the Declaration of Trust of the XYZ Trust dated [ ] 1995

1.2 "the Expert" means the Secretary for the time being of the Manuscript Commission or should that body cease to exist such other person as the Charity Trustees may from time to time agree with the Trustees of the National Heritage Memorial Fund

1.3 "the Annual Rent" means a peppercorn

1.4 "the Centre" means the Churchill Archives Centre Churchill College Cambridge CB3 0DS

1.5 The headings in this Agreement are for convenience only and shall not affect the interpretation or construction of this Agreement

2. Agreement for Loan

2.1 The Charity Trustees will let and the College will take on loan the Archive for a term of 99 years from [ ] 1995 and thereafter from year to year until this Agreement shall be determined by either party giving the other not less than six months' previous written notice

2.2 The College will deposit the Archive at the Centre

3. Covenants by the College

For the duration of this Agreement the College hereby agrees:

3.1 Subject to sub-clause 3.9 hereof to keep the Archive at all times at the Centre and within the College's possession and control unless the Charity Trustees give their prior consent in writing

3.2 To deliver to the Charity Trustees an accurate catalogue of the Archive within [ ] years of the date of this Agreement

3.3 To allow scholars appropriate access to the whole of the Archive for the purpose of research and to make available for viewing by the general public appropriate material out of the Archive

3.4 To put and maintain the Archive in good condition and repair and to house the Archive in such an environment as to avoid as far as possible any deterioration in the condition of the Archive

3.5 Not to sell assign or part with possession of the Archive or any part thereof or any interest therein

3.6 Not without the written consent of the Charity Trustees to purport to let encumber or otherwise deal with the Archive or any part thereof or any interest therein

3.7 To pay if demanded to the Charity Trustees the Annual Rent on [ ] in each year

3.8 To ensure the security of the Archive at the Centre in accordance with standards to be agreed between the parties from time to time

3.9 To allow the Charity Trustees or their agent on reasonable notice to inspect the Archive and any repair restoration or other works to it and to withdraw from the Centre any part of the Archive for exhibition

3.10 To apply any monies provided by the Charity Trustees in accordance with Clause 4 hereof towards the carrying out of its obligations hereunder

3.11 To in each calendar year submit to the Charity Trustees certified statements of income paid in accordance with Clause 4 and expenditure and provide the Charity Trustees such further information relating thereto as they may require

4. Covenant by the Charity Trustees

Subject to sub-clause 6.1(b) below for the duration of this Agreement the Charity Trustees hereby agree to pay at such time or times as they consider fit the income (if any) from the property of the Charity to the College to assist it in the performance of its obligations hereunder

5. **Loss Destruction and Damage**

Where the Archive or any part of it is lost stolen destroyed or damaged by negligence or wrongful act of a third party the College shall immediately notify the Charity Trustees thereof shall not compromise any claim without the consent of the Charity Trustees shall allow the Charity Trustees to take over the conduct of any negotiations (except in relation to claims of the College for loss of or damage to the property of the College unconnected with the Archive) and shall take such proceedings (in the name of the College or jointly with the Charity Trustees) as shall be agreed with the Charity Trustees holding all sums recovered together with any monies received by the College under any policy of insurance so far in each case as such sums and monies shall relate to loss of or damage to the Archive or any part of it on trust for the Charity Trustees and paying or applying as the Charity Trustees direct such part thereof as is necessary to compensate the Charity Trustees for the loss theft or destruction of or damage to the Archive

6. **Early Termination**

6.1 (a) If in the opinion of the Expert (whose decision shall be final and binding on both parties) the College fails to preserve the Archive in accordance with sub-clauses 3.4 and 3.8 of this Agreement to such an extent as to put the Archive at physical risk the Charity Trustees may without prejudice to any pre-existing liability of either party hereto to the other by notice in writing served at the Centre terminate this Agreement and thereafter the College shall no longer be in possession of the Archive with the Charity Trustees' consent and subject to any pre-existing liability of either party hereto hereunder and to sub-clause 6.2 below neither party shall have any rights against the other

(b) If the College fails to observe any of the other express terms and conditions of this Agreement the Charity Trustees may without prejudice to any pre-existing liability of either party hereto cease forthwith to pay to the College the income of the Charity pursuant to Clause 4 hereof

6.2 Upon the termination of this Agreement pursuant to sub-clause 6.1(a) above the Charity Trustees may without notice retake possession of the Archive and shall be given access to it for such purpose

7. **Ownership**

Legal title in the Archive shall continue to vest in the Charity Trustees and nothing in this Agreement shall confer or be deemed to confer any proprietary interest in the Archive to the College

8. **Waiving of Conditions**

No relaxation forbearance delay or indulgence by the Charity Trustees in enforcing any of the terms and conditions of this Agreement or the granting of time by the Charity Trustees to the College shall prejudice affect or restrict the rights and powers of the Charity Trustees hereunder nor shall any waiver of any breach hereof operate as a waiver of any subsequent or any continuing breach hereof

9. **Repossession**

Upon the termination of this Agreement the College shall hold the Archive available for collection by the Charity Trustees or their agents

AS WITNESS the hands and seal of the parties hereto on the date first before written

Draft 2 (JLH/JAS) 09/03/95

DATED 1995

DECLARATION OF CHARITABLE TRUST

FARRER & CO
66 Lincoln's Inn Fields
London WC2A 3LH

THIS DECLARATION OF TRUST is made the day of 199

BY

PROFESSOR SIR DAVID GLYNDWR TUDOR WILLIAMS QC of The Old Schools Trinity Lane Cambridge CB2 1TN **PROFESSOR ALEC NIGEL BROERS** of The Master's Lodge Churchill College Cambridge CB3 0DS **MICHAEL ALLEN** of Churchill College aforesaid and [_____] of (together "the Original Trustees")

WHEREAS the sum of One Pound (£1.00) has been paid to the Original Trustees to be held by them irrevocably upon the trusts and conditions following and it is apprehended that further money or investments and property may hereafter be paid or transferred into the joint names or control of the Original Trustees or other the trustees or trustee for the time being hereof upon the like trusts and conditions

NOW THIS DEED WITNESSES as follows:

1. The Charity hereby founded shall be called [the XYZ Trust] ("the Charity") or by such other name as the Trustees shall from time to time decide

2. In this Deed where the context permits the following expressions have the following meanings:

   2.1 "the Trustees" means the Original Trustees or other the Trustees for the time being hereof who shall be by virtue of their office:-

   2.1.1 The Vice-Chancellor of the University of Cambridge
   The Cambridge University Librarian
   The Master of Churchill College Cambridge and
   The Bursar of Churchill College Cambridge (together "the Ex-Officio Trustees") and

   2.1.2 Two other trustees ("the Appointed Trustees") to be appointed in accordance with the provisions of Clause 7

   2.2 "the Trust Fund" shall mean and include the said sum of ten pounds and all other cash and all investments and other property from time to time paid or transferred to the Trustees upon the trusts of this Deed and all investments and other property from

time to time representing the same

2.3 "Charitable Bodies" means bodies trusts associations or organisations whether incorporated or not whose objects are for the time being exclusively charitable by the law of England and Wales

2.4 " The Churchill Archives" means the Archive of Sir Winston Churchill described in the Schedule hereto.

2.5 "NHMF" means the Trustees of the National Heritage Memorial Fund

3. The Trustees shall stand possessed of the Trust Fund and the income thereof upon trust to pay or apply or cause to be paid or applied at such time or times and in such manner as the Trustees shall in their discretion think fit the income and if and in so far as the Trustees shall think fit the capital of the Trust Fund in or towards

3.1 The advancement of the education of the public in particular by acquiring holding restoring and maintaining the Churchill Archives and by making them available to scholars for the purpose of research and as appropriate to the public for the purpose of viewing

3.2 The general purposes of such Charitable Bodies or for such other purposes as shall be exclusively charitable as the Trustees may from time to time decide

4. In furtherance of the objects in Clause 3 but not further or otherwise the Trustees shall have the following additional powers:

4.1 Power from time to time with the written consent of NHMF by deed or deeds to vary all or any of the provisions of this Declaration provided always that they shall not have the power either to vary or otherwise affect the provisions of Clause 3 hereof or this sub-clause or to make any alterations so as to cause the Charity to cease to be recognised as a charity in law

4.2 Power to apply or invest either in their own names or in the names of nominees trust moneys from time to time in the hands of the Trustees in the purchase of or at interest upon the security of all investments or property of whatsoever nature and

wheresoever situate (including the purchase or improvement of any freehold or leasehold house or other property in the United Kingdom or elsewhere including houses or other property intended to be used for the purposes of the Charity) and whether income producing or not as the Trustees shall in their absolute discretion think fit and to the intent that the Trustees shall have the same powers in all respects as if they were absolute owners beneficially entitled

4.3 Power to delegate upon such terms and with such remuneration as the Trustees shall in their absolute discretion think fit to professional investment managers ("the Managers") the exercise of the power contained in the foregoing sub-clause 4.2 of this Deed provided always that:

4.3.1 The Managers shall be persons who are entitled to carry on investment business under the provisions of the Financial Services Act 1986

4.3.2 The Trustees shall authorise the Managers to exercise such delegated power as aforesaid only within clear investment policy guidelines laid down from time to time by the Trustees and the Trustees shall use their best endeavours to ensure that those guidelines are observed

4.3.3 The Managers shall be under a duty to report promptly to the Trustees any exercise of the power delegated as aforesaid and to report all transactions at least within 14 days and to report on performance of any investments managed by them at least every three months

4.3.4 The Trustees shall at all times be free forthwith to review alter or determine such delegation and the terms thereof

4.3.5 The Trustees shall review such delegation at intervals not (in the absence of special reasons) exceeding 12 months but so that any failure by the Trustees to undertake such review within the said period of 12 months shall not invalidate the delegation

4.3.6 The Trustees shall be liable for any failure to take reasonable care in choosing the Managers fixing or enforcing the terms upon which the Managers are employed requiring the remedying of any breaches of those terms or otherwise supervising the Managers but otherwise shall not be liable for the acts and defaults of the Managers

4.4 Power to sell let mortgage dispose of or turn to account all or any of the property or assets of the Charity as may be thought necessary in furtherance of the promotion of its objects subject to such consents as may be necessary

4.5 Power subject to such consents as may be necessary to borrow or raise money for the purposes of the Charity on such terms and on such security as may be thought fit

4.6 Power notwithstanding the direction to pay or apply in Clause 3 hereof to accumulate any income of the Trust Fund during such period as shall be allowed by the general law

4.7 Power to pay any sum of income or capital intended to be applied for charitable purposes to the Treasurer or other proper official of any Charitable Body and so that the receipt of such Treasurer or official shall be a complete discharge to the Trustees (without the necessity for seeing to the proper application of the sum so paid)

4.8 Power to dissolve the Charity subject to the payment of all outstanding debts and liabilities and of the expenses incurred in such dissolution and subject thereto to make over the Charity's remaining assets to any other charity or charities having similar objects to the Charity or to any other Charitable Bodies as defined in Clause 2.3 hereof

4.9 Power from time to time to make and alter rules or regulations not inconsistent with Clause 3 hereof for the administration and management of the Charity

4.10 Power to defray out of the capital or income of the Trust Fund the costs and expenses of and incidental to the preparation and execution of this Trust Deed (and of any other deed or document whereby additional property is transferred or made transferable to the Trustees as an accretion to the Trust Fund) and the registration of the Charity as a charity pursuant to the provisions of the Charities Act 1993

4.11 Power to raise funds and invite and receive contributions and property from any person or persons whatsoever by way of subscription donation and otherwise and whether or not to be held on special trusts provided that the Trustees shall not undertake any permanent trading activities in raising funds for the charitable objects aforesaid

4.12 Power to do all such acts and things as shall further the proper administration or the attainment of the objects of the Charity

5. The Trustees may employ from time to time such persons other than the Trustees to perform such duties as they consider necessary for the proper administration and management of the Charity at such reasonable salaries and upon such reasonable terms as to notice within the limits permitted by law and otherwise as they think fit

6. The Trustees from time to time may appoint such persons of their number and if necessary such other persons (who shall not exceed a minority of the quorum) as they shall think fit to be a Committee or Committees for discharging in such manner and subject to such rules as the Trustees prescribe such of the functions of the Trustees as relate to the day-to-day administration and management of the Charity provided that all acts and proceedings of Committees shall be reported in due course to the Trustees for their approval and ratification

7.1 The power of appointing the Appointed Trustees shall be vested in such body or bodies as NHMF shall within 6 months of the date of this Deed direct by notice in writing given to the Ex-Officio Trustees and if and whenever the number of Appointed Trustees shall be less than two then one or more new Appointed Trustees shall forthwith be appointed to bring the number of Appointed Trustees up to two at least

7.2 The Appointed Trustees shall hold office for a period of five years and shall then be deemed to have offered their resignation which will take effect on the appointment of replacement Appointed Trustees. [Any retiring Appointed Trustee shall be eligible for reappointment [for one further term]]

8. The Ex-Officio Trustees shall be appointed Trustees by virtue of their appointment to their respective offices but they shall not act in the trusts of this Deed before complying with the provisions of Clause 9 hereof. When an Ex-Officio Trustee ceases to hold his or her office he or she shall be deemed simultaneously to have resigned as a trustee hereof but the remaining Trustees shall if the retiring Ex-Officio Trustee so requests execute a deed confirming that the retiring Ex-Officio Trustee is discharged from the trusts of this Deed.

9. Every new trustee shall before acting in the Trusts of this Deed sign in the Minute Book for which provision is hereinafter made a declaration of acceptance and of willingness to act in the Trusts hereof

10. The following regulations shall govern the procedure of Trustees' meetings

10.1 The Trustees shall hold meetings at least once in every calendar year and at such times and at such places as they shall from time to time decide and any trustee may at any time convene a special meeting of the Trustees upon at least four days' notice in writing being given to the other trustees of the matters to be discussed

10.2 There shall be a quorum when not less than three of the trustees are present at any meeting

10.3.1 The Trustees shall at their first meeting elect a Chairman from their number who shall hold office for a period of one year from that date Thereafter the Trustees shall elect a new Chairman annually A retiring Chairman however shall be eligible for re-election

10.3.2 In the event of the position of Chairman becoming vacant for any reason whatsoever a new Chairman shall be elected at a meeting of the Trustees specially convened for that purpose

10.3.3 The Chairman of the Trustees shall act as Chairman of any meeting of the Trustees at which he is present

10.3.4 The Chairman of any meeting of the Trustees shall have a casting or second vote

10.3.5 In the event of the Chairman not being present at a meeting of the Trustees the Trustees there present shall appoint one of their number to act as Chairman of that meeting

10.4 Every matter shall be determined by the majority of votes of the Trustees present and voting on the question

10.5 Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees

10.6 The Trustees shall provide and keep a Minute Book in which shall be entered the proceedings of the Trustees and which shall be signed by the Chairman at the conclusion of the meeting or at some future meeting if the Minutes shall have been duly confirmed

10.7 The Trustees shall provide books of account in which shall be kept proper accounts of all money received and paid respectively by or on behalf of the Trustees for the purpose of this Deed

10.8 The Trustees shall arrange for the Charity's accounts to be prepared annually

11. The Trustees may from time to time open and maintain in the name of the Charity a bank account or bank accounts at such bank or banks as they shall from time to time decide and may at any time pay trust moneys to the credit of any such account or accounts or place the same on deposit with any bank or banks and all cheques and orders for payment of money exceeding sums of One thousand Pounds (£1000.00) shall be signed by at least two of the Trustees

12.1 The Trustees shall not be bound in any case to act personally but shall be at full liberty to employ any agent or servant to transact all or any business of whatever nature required to be done in pursuance of the Trusts hereinbefore declared and contained including the receipt and payment of money and shall be entitled to be allowed and paid all charges and expenses so incurred and shall not be responsible for the defaults of any agent or servant or for any loss occasioned by his employment if employed in good faith (provided that reasonable supervision shall have been exercised)

12.2 Without in any way limiting the generality of the foregoing the Trustees may appoint and pay a secretary (not being a trustee) who shall attend Trustees' meetings if invited to do so by the Trustees but shall not be entitled to vote at such meetings and who shall be required to withdraw from any such meeting during the discussion of any matter affecting the Secretary's appointment dismissal or remuneration

13. In the execution of any of the trusts and powers hereof no trustee shall be liable for any loss to the property of the Trust Fund arising by reason of any improper investment made

in good faith (so long as that trustee shall have sought professional advice before making such investment) or for the negligence or fraud of any agent employed by that trustee or by any other trustee hereof in good faith (provided that reasonable supervision shall have been exercised) or by reason of any mistake or omission made in good faith by any trustee hereof or by reason of any other matter or thing other than wilful and individual fraud or wrongdoing or wrongful omission on the part of the trustee who is sought to be made liable

14. Any trustee for the time being hereof being a Solicitor or other person engaged in any profession shall be entitled to charge and be paid all usual professional or other charges for work done by him or his firm when instructed by his Co-Trustees so to act in that capacity on behalf of the Charity hereby created

15. Notwithstanding anything hereinbefore expressed or implied no discretion conferred by this Trust or by the general law upon the Trustees shall be exercised in such a way as to confer any benefit upon any person or body providing funds directly or indirectly for the purposes of the Trust

IN WITNESS whereof the parties hereto have executed this instrument as a Deed on the date first before written

SIGNED as a DEED by PROFESSOR)
SIR DAVID GLYNDWR TUDOR)
WILLIAMS in the presence of:)

Witness Signature:

Witness Name:

Address:

Occupation:

SIGNED as a DEED by PROFESSOR ALEC NIGEL BROERS in the presence of:)

Witness Signature:

Witness Name:

Address:

Occupation:

SIGNED as a DEED by MICHAEL ALLEN in the presence of:)

Witness Signature:

Witness Name:

Address:

Occupation:

SIGNED as a DEED by) in the presence of:)

Witness Signature:

Witness Name:

Address:

Occupation:

FOL 8

NOTE FOR RECORD

Michelle Bennett, Press Office, rang me on 9 March. She had had an enquiry from the Daily or Sunday Telegraph (she just said the Telegraph) wanting an update on the Churchill papers story.

I consulted Michael Carpenter who said we could say no more than that litigation was continuing and that it would not be proper to comment whilst the matter was before the Courts.

I passed this on the Michelle on 10 March 1995. I said if she should be pressed on "negotiations" or "settlements" she should consult DNH. I did not think they would wish to say anything at all at this stage.

PMA

MISS P M ANDREWS
10 March 1995

P.S. MB rang again Mon 13/3. Telegraph wanted to know how far litigation had gone - was it yet with the High Court? I said still in preparatory stage - not yet reached the Courts.

PMA
13.3.95.

FOI 7

FROM: CLARE PILLMAN
DATE: 7 MARCH 1995
Ext: 6256

MR JENKINS

cc: PS/Sir Robin Butler
Miss O'Mara
Miss Andrews (Cabinet Office)
Mr Carpenter (TSD)
Mr Jackson (LSLO)
Miss MacLean
Mr Helston
Miss Fassnidge (TSD)

CHURCHILL ARCHIVE

Mr Phillips was very glad to read your note of 3 March - the first non-problematic minute on the subject he has read in two years and eleven months! He hopes that we can present this in a way which focuses on the older Winston rather than his grandson. If well-prepared, there could be great symbolic advantage in this for the use of Lottery funds. The Prime Minister will undoubtedly take a close interest in the handling of it.

Clare Pillman

CLARE PILLMAN

CABINET OFFICE
H 95/161
- 8 MAR 1995
FILING INSTRUCTIONS
FILE NO.

PDL 6

FROM: PAUL JENKINS
QUEEN ANNE'S CHAMBERS

TEL: 210 3256

DATE: 3 March 1995

MISS O'MARA

cc: PS/Sir Robin Butler
PS/Mr Phillips
Miss Andrews (Cabinet Office) ✓
Mr Carpenter (TSD)
Mr Jackson (LSLO)
Miss Maclean
Mr Helston
Miss Fassnidge (TSD)

CHURCHILL

I spoke to Miss Nayler yesterday to discuss progress.

Miss Nayler and the Vice Chancellor are now the best of friends. The University and College authorities are now working together and met yesterday to resolve the final outstanding issues raised by the NHMF. The trustees of the NHMF are to consider the lottery application at their meeting on 21 March when they hope to reach a final decision.

In the meantime Sir Matthew Farrer is working with Montrose on the necessary legal documents. We will have to become involved fairly soon not only because the NHMF will need to know that the litigation is over before they actually pay any money but also because, as we have argued, the consent of the Prime Minister is required before any disposal takes place. I expect to hear soon from Sir Matthew on these points.

If the NHMF approve the lottery application at their meeting on 21 March and Sir Matthew and Montrose can resolve one or two matters of detail, Miss Nayler hopes that the acquisition will be announced on 12 April. The announcement will need careful handling if the NHMF are to avoid suggestions that Winston Churchill has just become the second largest winner of the Lottery and we will certainly need to work out a line to take. Perhaps we can consider this with Miss Maclean a bit nearer the time.

PAUL JENKINS

Spoke to M Carpenter on 6/3. He will ensure that X is sorted out. Is also consulting Bill Charles on need for meeting on 21/3!

CABINET OFFICE
H 95/150/...
- 3 MAR 1995
FILING INSTRUCTIONS
FILE No

CABINET OFFICE
A 2690
17 FEB 1995
FILING INSTRUCTIONS
FILE No.

FOLIO 5

HO95/137

c. Miss Andrews
Mary Hawtin.
PRRB 17.2.

SIR ROBIN BUTLER

I shall be on leave for most of next week. I thought I should therefore let you have a note on two of our more long-running topics.

On the Churchill Archive, things are progressing reasonably well. Sir David Williams is now apparently content with the proposal that a Trust should be set up to own and manage the Archive - he had preferred that the University should purchase the papers outright if possible but appears to have been persuaded of the benefits of a Trust to which the NHMF could give an endowment. There is talk of an announcement, possibly at the end of March, but that may be too optimistic.

In the meantime we are progressing on the litigation front. A further meeting with Counsel is being arranged at the end of February. We have not yet identified an expert witness but Mr Carpenter is discussing the matter with Sir Derek Oulton.
Mr Carpenter and I had a meeting earlier in the week with Sir William Deakin (who sent his warm regards to you) to discuss the possibility of Sir William making a statement based on his experience as one of the early Trustees. Mr Carpenter is going to send papers to him in France.

On Cabinet Secretaries' notebooks. I have, as you asked in your minute of 11 January (AO95/70), liaised with the Lord Chancellor's Department to follow up your meeting with Sir Tom Legg. I have telephoned each week and today I understand that a submission is being prepared seeking the Lord Chancellor's approval to the proposal you agreed with Sir Tom Legg, namely that we should say to the Master of the Rolls that we hoped, when the notebooks were next reviewed, it would be possible to decide to release them and, with that in mind, we would now begin preparing them for release. I thought that gave the Advisory Council exactly what it sought and you said that Sir Tom Legg thought it would be saleable to the Master of the Rolls, but it appears that the proposal has been the subject of many discussions and disagreements within LCD as to its legality and its compatibility with the White Paper (into which LCD seem to read much more than was ever intended).

Subject to the Lord Chancellor's approval Sir Tom Legg will clear with you a letter to the Master of the Rolls along the lines you agreed with him. I have not yet seen the letter but hope to do so before it reaches you. I understand that LCD are now anxious to get a letter to the Master of the Rolls before the next meeting of the Advisory Council on 7 March 1995.

Pat Andrews

CABINET OFFICE
Historical.....
20FEB 1995
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FILE No

MISS P M ANDREWS

Historical and Records Section
17 February 1995

FOI 4

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

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

Ref: A095/257

27 January 1995

C. Mill Andrew

Dear Hayden,

Churchill Archive

Many thanks for your letter of 25 January and for bringing me up to date. I saw Jacob Rothschild on Wednesday evening (before I had seen your letter) and he had told me of the contretemps with the Vice-Chancellor. If you think that I can be of any help in due course in persuading David Williams to agree to what is necessary, I will be glad to try to help.

Yours ever,

Robin

G H Phillips Esq CB
Department of National Heritage
2-4 Cockspur Street

CABINET OFFICE
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30 JAN 1995
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H Internal...
27 JAN 1995
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FILE NO
3

jan95\25archive

DEPARTMENT OF NATIONAL HERITAGE

2-4 Cockspur Street,
London SW1Y 5DH
Telephone: 071-211 6255/6/7

From Hayden Phillips CB, Permanent Secretary

12751

RESTRICTED - POLICY

Sir Robin Butler GCB CVO
Secretary of the Cabinet and
Head of the Home Civil Service
Cabinet Office
70 Whitehall
London
SW1A 2AS

C. Mijl Andrew

25 January 1995

Dear Robin

CHURCHILL ARCHIVE

I thought you might welcome a note on the latest state of play on the Archive, as I understand it.

At the meeting you held at the end of November, I gather it was concluded the Fund would not be unreasonable in indicating to the Churchill Trustees that a Private Treaty Sale valuation of up to £12.5 million might be acceptable. Following this, the Fund apparently mentioned figures of £10.5 million and £11.5 million to Winston Churchill but he rejected these. Finally, just before Christmas, they discussed a £12.5 million price, spread over three financial years and Winston Churchill agreed to that, each side bearing its own legal costs.

So far, so good but a settlement is, of course, not yet certain, since it will depend on the Fund's response to any Lottery application relating to the Archive's purchase.

There is one further complication of which you should be aware, although I hope it can be sorted out. I gather Churchill College still intend that a specially constituted Trust should

acquire the Archive. Since such a Trust could not benefit from the PTS douceur, the NHMF (who can) would normally have acquired the Archive on the Trust's behalf, if it decided Lottery money should be made available, and then passed it straight on. (There is explicit provision for this in the National Lottery etc Act.)

However, the deferred tax charge which overhangs the Archive arose on the death of Randolph Churchill in June 1968 and is for Estate Duty. The 1930 Finance Act exempts objects from Estate Duty, if sold to various institutions, but when the 1984 Inheritance Tax Act extended the list of bodies which could benefit from the PTS douceur to include the NHMF, it did so only in relation to an overhanging IHT or CTT charge, not an Estate Duty one. As a result, it appears that it is Cambridge University (which is covered by the 1930 Act) which would have to acquire the Archive and so put in the Lottery application. We have confirmed the tax position with the NHMF and Georgina Nayler told us earlier that the University would be content to lodge the application itself and then pass the papers on to the Trust.

Georgina and Matthew Farrer visited Cambridge earlier this week to tie up the details. Churchill College remain entirely content with the arrangements and will put an outline application to the NHMF very shortly, although they recognise that the actual application may need to be made by someone else. However, I understand that the Vice-Chancellor expressed some doubts about the plan to set up a special Trust to own and manage the Archive, claiming that there was no reason why the University should not purchase the papers outright, with Lottery money. Georgina has explained that, if a Trust were set up, the Fund would plan to give it an endowment to cover its running costs but that the NHMF would not be prepared to endow the University in this way, because of the precedent that would set.

Georgina hopes that the Vice-Chancellor will recognise the force of the Fund's arguments on mature reflection but, meanwhile, Matthew Farrer plans to speak to the Capital Taxes Office to check whether there is some way round the legislative obstacle to a direct purchase by the Fund, so that the PTS douceur can come into play. I will, of course, let you know if an easy resolution of the problem cannnot be found.

On a separate point, you will recall that the Treasury had promised £2 million from the Reserve towards the purchase some time ago and Jacob Rothschild understandably enquired last month whether that was still on offer. We asked our Secretary of State if he wanted to raise the issue with the Chief Secretary but he concluded that the acquisition of the Archive was such an obvious Lottery candidate that, tactically, he would be unwise to press the Reserve claim, especially as he was already making several others about which he felt much more strongly. We have therefore not pursued the point and I have simply told Jacob that money will not be available from the Reserve, without any further explanation.

Meanwhile, until we know a Lottery application has been lodged, we are, as you agreed, still seeking to identify a constitutional lawyer who could act on the Government's behalf. At Sir David Williams' suggestion, Colin Turpin of Clare College was approached before Christmas but, having read the papers, he feels the issues are outside his expertise. Michael Carpenter is

discussing the matter further with Sir David; one possibility might be to ask Derek Oulton, who, as you know, is now a fellow at Magdalene, to help.

Yours ever

Hayden

HAYDEN PHILLIPS

P.S. I will be having a further word with Jacob Rees to see how he is thinking these might be untravelled.

FOI 2
CABINET OFFICE
H Internal
- 9 JAN 1995
FILING INSTRUCTIONS
File No

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

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

Ref: A095/13

6 January 1995

c. PS/Mr Phillips
Mr Jenkins (TSol)
Miss Andrews

Dear Vice Chancellor,

Thank you for your letter of 14 December and for sending me a copy of Peregrine Churchill's letter to you of 9 December.

I understand that Michael Carpenter and Paul Jenkins from the Treasury Solicitor's Department came to see you before Christmas to discuss who might give evidence on behalf of the Crown in the present litigation. I also understand that Paul Jenkins was able to bring you up to date on the discussions which have been taking place between the NHMF, Churchill College and the Churchill family and that, whilst he was with you, he spoke to Georgina Nayler of the NHMF who confirmed that Churchill College were aware of, and in agreement with, everything that had been discussed between Miss Nayler, Lord Rothschild and the Churchill family.

Not for the first time, it appears that Peregrine Churchill is either confused or has misunderstood. The NHMF know well the position of the University as re-stated in your letter and of course one of the Government's objectives in embarking upon the litigation was to secure the Archive intact at Churchill College. Nevertheless I know that Paul Jenkins has recently spoken to Georgina Nayler to ensure that you are kept fully informed of discussions between the NHMF and the College.

The University's position is fully known to us: I am hoping (though not for the first time) that we are in sight of a settlement.

Sir David Williams QC
Vice-Chancellor
University of Cambridge
The Old Schools
Trinity Lane
Cambridge
CB2 1TN

Yours sincerely,

Robin Butler

jan95\5leech

DEPARTMENT OF NATIONAL HERITAGE
2-4 Cockspur Street,
London SW1Y 5DH
Telephone: 071-211 6255/6/7
From Hayden Phillips CB, Permanent Secretary

CABINET OFFICE
117
- 5 JAN 1995

PDL 1

Ms Melanie Leech
Private Secretary to Sir Robin Butler
Cabinet Office
70 Whitehall
London
SW1

CABINET OFFICE
H 95/8
- 6 JAN 1995
FILING INSTRUCTIONS
REG NO.

C. Miss Nayler

5 January 1995

Dear Melanie

CHURCHILL ARCHIVE

You requested a draft reply for Sir Robin to send to Sir David Williams in response to his letter to him of 14 December. When Mr Jenkins saw Sir David before Christmas he was clearly quite agitated, not only about Peregrine Churchill's letter but about the role of the NHMF generally. He appeared to be completely unaware of their role in this saga and Mr Jenkins has asked Miss Nayler to try and keep him in the picture.

Yours

Clare Pillman

CLARE PILLMAN
PRIVATE SECRETARY

DRAFT LETTER FROM SIR ROBIN BUTLER TO:

Sir David Williams QC
Vice-Chancellor
University of Cambridge
The Old Schools
Trinity Lane
Cambridge
CB2 1TN

Thank you for your letter of 14 December and for sending me a copy of Peregrine Churchill's letter to you of 9 December.

I understand that Michael Carpenter and Paul Jenkins from the Treasury Solicitor's Department came to see you before Christmas to discuss who might give evidence on behalf of the Crown in the present litigation. I also understand that Paul Jenkins was able to bring you up to date on the discussions which have been taking place between the NHMF, Churchill College and the Churchill family and that, whilst he was with you, he spoke to Georgina Nayler of the NHMF who confirmed that Churchill College were aware of, and in agreement with, everything that had been discussed between Miss Nayler, Lord Rothschild and the Churchill family.

Not for the first time, it appears that Peregrine Churchill is either confused or has misunderstood something. The NHMF know well the position of the University as re-stated in your letter and of course one of the Government's objectives in embarking upon the litigation was to secure the Archive intact at Churchill College. Nevertheless I know that Paul Jenkins has recently spoken to Miss Nayler to ensure that you are kept fully informed of discussions between the NHMF and the College.