

Guidance from the Crisis Management Team: Advice for archivists

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<https://managingbusinessarchives.co.uk/getting-started/business-archives-risk/crisis-management-team/>

The first step: Make contact

Make contact with the company if it is still in operation, and the named administrator, liquidator, or receiver. The insolvency agent and their contact details should be advertised; you can also consult The Gazette for this information. A phone call is helpful in the first instance; you are likely to be asked for details in writing.

When You Telephone...

- Say who you are, your role, the name of the company you are interested in, that you are concerned with the preservation of its records. State that the archive service is interested in taking in the records, or work with other parties to secure their preservation.
- Ask to speak to the most appropriate person within the company concerned about the records, who will have knowledge about the records.
- Emphasise that you are in contact with the Crisis Management Team regarding the situation.
- Follow up the phone call with a letter (see template below), whether they request this or not. Including a line to say your interest will be followed up with further communication shows that your request cannot be easily ignored.

Template for letter

Dear _____

My name is _____ and my role is _____.

[Note the background to the enquiry, including any previous contact, the importance of the company/likely records and the evidence, if any, of the existence of records.]

My main concern is that the historical records of X [company] are identified and protected for future generations. If there is any question of destroying or otherwise disposing of the records, Y [archive repository] would offer to house the collection or work with relevant parties to make sure that it is preserved.

I am seeking contact details for the appropriate person or department within X [company] with whom I can discuss protecting this important historical business archive.

I have also spoken to X [mention any wider body or person of historical authority who has also been contacted] and they will contact you separately with regard to protecting the archives of X.

I will follow this letter up with a telephone call next week.

Yours sincerely, _____

Identify archival material

It may be that further arrangements and detailed discussions cannot take place until the future of the business has been planned out. However, there are steps you can still take.

Try to stay in regular contact and ensure you keep up to date with progress and related deadlines.

Try to consult existing listings and view records in situ before they are removed and buildings sold. Records that are non-business critical for the administrator, liquidator, or receiver are often left behind in buildings. Gaining access to them becomes harder as time goes on, and questions about ownership of records become more complex when buildings are in the hands of third parties.

Be ready to cover costs relating to opening up and viewing archives in abandoned buildings, and/or the retrieval of boxes held in offsite storage.

Try to contact company staff and ask them to share listings if they have them, and/or guide you to the key record series; also ask if there is any other relevant information they can give you – remember, they might not think it is relevant, so do ask questions!

Remember to think about digital records as well as analogue: are there servers, hard drives? Who can tell you the passwords for these?

Remember current records

The administrator, liquidator, or receiver will take current records that are necessary for their work. Some of these may have archival value and if so, should be earmarked for later transfer.

It is usual for records held by an administrator, liquidator, or receiver to destroy records after a certain period when a business has been dissolved. You should ensure that you identify and negotiate transfer of these records before this period expires (it can be as short as six months!).

Transfer ownership

Archive services should ensure ownership of rescued records is transferred and a gift agreement should be provided for signature by the administrator, liquidator, or receiver.

The agreement should refer to any relevant legislation, and relieve the donor of legal liability for the records once they are gifted. Ensure copyright is included!

Gift agreement

Repositories should ideally submit a special gift agreement to the liquidator to formalise the donation of records. The agreement should be headed with the date and the name and address of donor (i.e. the full name of the business which is in liquidation with its registered address) and phrase 'In Liquidation'

The agreement should refer to the type of liquidation and appointment of liquidator, outline that the liquidator accepts no future liability arising from the donor's archives and outline that the donor assigns ownership to the repository together with any copyright interest held by the donor. The gift should be executed (completed and signed) by the Liquidator under powers contained in the Insolvency Act 1986 on behalf of the Donor business in liquidation.

Examples of key clauses which have been successfully adopted by repositories are given below. The first clause below gives options which should be deleted as appropriate depending on the type of liquidation:

- The Donor is in [voluntary liquidation under a [members' (or) creditors'] winding up (or) liquidation under a winding up by an order of the [High Court of Justice Chancery Division Companies Court (or) [(name)] County Court] made on [(date)] in the matter of the Donor and in the matter of the Insolvency Act 1986 reference to the record [(number)] pursuant to which [(name)] had been appointed as the Liquidator.
- The Liquidator shall not be required to give and will not give any personal covenants of whatever nature and no personal liability shall fall upon the Liquidator whatsoever.
- The Donor declares that it is the sole legal and beneficial owner of the Items.
- The Donor agrees absolutely and irrevocably to assign, with limited title guarantee, all legal and equitable estate or interest in the Items and to assign all copyright in the Items.

At each stage of the process, contact the Crisis Management Team to give an update; the CMT is also able to give you further advice and support at any point.

For more information on the Crisis Management Team, see: <https://managingbusinessarchives.co.uk/getting-started/business-archives-risk/crisis-management-team/>