



**ADVISORY COUNCIL ON  
NATIONAL RECORDS AND ARCHIVES**

**Date:** 13 November 2017  
**Time:** 11:00-16:30  
**Venue:** The National Archives, Kew

**Chair:** Mr Trevor Woolley

**Minutes:** Trish Humphries

**Members:** Ms Hillary Bauer  
Ms Lesley Ferguson  
Dr Helen Forde  
Sir John Ramsden  
Mr Michael Smyth  
Ms Jeannette Strickland

**Non-members:** Mr Jeff James, Chief Executive, The National Archives  
Mr Ian Cross, Head of Government Transfer and Access, The National Archives  
Ms Louisa Green, FOI Manager, The National Archives  
Ms Victoria Davis, Access at Transfer Manager, The National Archives  
Mr Sam Whaley, Head of the Chief Executive's Office, The National Archives  
Ms Alexandra Morton, Office of the Master of the Rolls  
Mr Paul Davies, Director of Operations, The National Archives

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**1. Welcome, apologies and introductions**

1.1 There were apologies from the Master of the Rolls, Dr Elizabeth Lomas and Ms Angela Kelly.

**2. Minutes and matters arising**

2.1 The minutes of the meeting of 17 July 2017 were agreed as an accurate record.

2.2 The Chair provided an update on the recruitment of new Council members. It was hoped that appointments would be made in early December. The Council acknowledged that for the next few months, numbers would be below the normal establishment figure and therefore there was a responsibility for all members to play a full role until new members were able to make a contribution.

2.3 Council members noted that Ms Beth Watson, Advisory Council Secretariat, had recently moved on to a new role and wished to record their thanks and appreciation for all her support and work with the Council.

2.4 Council noted a paper produced by The National Archives on the current position on delegations and absolute exemptions stemming from the working group's reports. It was agreed that the Deputy

Chairman would draft a paper for the Master of the Rolls to put to the Secretary of State setting out the Council's position on these issues, to be cleared in the first instance by the council members.

### **3. Media Update**

3.1 The Media Manager and Media Officer from The National Archives joined the meeting to give an update on recent press activity and discuss the Working Group Media report.

3.2 The Media Manager updated the Council on a recent press article relating to records concerning Amritsar being held at The National Archives, and which identified one of the Council members.

3.3 Council agreed that the matter had been handled in a responsible and professional manner and noted that the collaboration between the media sub-committee and The National Archives was working well.

3.4 Members briefly discussed the matter of recusal and felt that there should be a short general statement in the Council's procedures document outlining when recusal by a member was appropriate; Mr Smyth volunteered to offer a draft form of words to the Council. It was, however, noted that it was not always evident from the limited information given that members might have been personally involved in the issues covered by specific records.

3.5 Council members went on to consider a letter received by the Master of the Rolls regarding MoD records. It was felt that whilst the Council did have a role in ensuring that records from MoD were transferred in a timely manner, the selection of records for permanent preservation was not part of their remit.

#### Paper 10.5 - Revised Media Questions

3.6 Council members reviewed a number of suggested Frequently Asked Questions (FAQs) for the website. Mr James advised that The National Archives would consider and feedback any technical amendments before forwarding to the Media sub-committee for sign off.

3.7 Members were concerned that the Council's position on absolute exemptions should be expressed more clearly, though clarity would need to await the Secretary of State's agreement to the proposal on the subject from the Master of the Rolls (see above 2.4).

### **4. DExEU**

4.1 The Chairman welcomed representatives from Cabinet Office and DExEU to the meeting. Members were given an outline of the plans to ensure that appropriate records in relation to the ongoing EU Exit process were being created and captured. The representatives also explained how the UK Government's negotiations with the EU and preparations for EU Exit had temporarily changed the sensitivity criteria for some records being reviewed under the Public Records Act for transfer to The National Archives, and a small number already open.

4.2 Members were pleased to note that the team responsible for the records was working closely with Cabinet Office, and that only records which might prejudice current negotiations were being considered. The emphasis was still on keeping records open, with redactions where necessary, and only a small number had been recommended for closure.

4.3 The new department was only responsible for records being created during the exit negotiation process with all historic records remaining at Cabinet Office. The team was also liaising with other departments, including FCO to ensure that any records they were holding which might be considered sensitive were being checked. Formal guidance for departments was being considered, and discussions with staff from The National Archives were taking place.

4.4 Council members were sympathetic to the broad principle and acknowledged the requirement to withhold any records which might damage current negotiations. However they felt that the Council should take a case by case view, especially with regard to any records containing potentially damaging remarks about individuals.

4.5 The provision of a memorandum outlining the categories to be considered was suggested. This would provide a point of reference for Council deliberations. It was suggested that perhaps more specific guidance and a checklist would suffice.

4.6 The Deputy Chair thanked the representatives from Cabinet Office and DExEU for their informative paper and advised that Council was pleased to note the position being taken regarding the review of records.

## 5. FCO

### Paper 5.1 Update on review and transfer plans

5.1 Council considered a paper from FCO updating their review of annual department files. Mr Cross advised that The National Archives was confident FCO would achieve their targets.

5.2 The paper mentioned an update of the archive inventory and members were concerned that this might result in the discovery of additional files, but were pleased to note that it was purely to adjust timings as the department better understood the content of the files they were reviewing. In particular, it was acknowledged that the files relating to Hong Kong were very complex.

### Paper 5.2 FCO Checklist 2018

5.3 Council members reviewed the checklist provided by FCO.

5.4 Following discussion it was agreed to review the list comprehensively at the next meeting and FCO should be asked to provide more evidence of any derogatory statement.

## 6. Departmental Retention Requests

6.1 The Council considered applications to retain material because of a review backlog (ground 4) from the following departments:

- **Home Office** – The Council noted an update to the previous paper in May update but asked that the department attend the meeting in July to give a detailed progress report.
- **Department of Health** – The Council noted that the department was on track to meet the two year retention period and acknowledged the progress made.
- **Charity Commission** – The Council agreed to recommend that the Charity Commission be permitted a 12 month retention for 4,953 scanned files in order for them to be identified, but asked that the Commission provide an update in either May or July.
- **Animal & Plant Health Agency** – The Council agreed to recommend that the Agency be permitted a two year retention to carry out a full review programme for files currently in storage with Iron Mountain but requested confirmation that the backlog be noted on the Agency Risk Register and that an update be given to the meeting in November.
- **HM Land Registry** – The Council agreed to recommend that HM Land Registry be permitted a retention of two years in order to clear a review backlog of digital records. Council were concerned at the lack of information regarding the records, and requested an update and more detail in July.

- **Natural Resources Wales** –The Council agreed to recommend that the agency be permitted a retention of one year to enable it to identify what it holds and commence a record assessment. The records have been inherited from Environment Agency Wales, Forestry Commission Wales and The Countryside Council for Wales. The Council asked for a full update when the assessment is complete and a further application is made.
- **Department for Digital, Culture, Media and Sport (DCMS)** – The department had provided an update on progress since July and requested a further retention for one year. **Decision:** The Council agreed to recommend that the department be permitted a further retention for one year and noted the amount of work already carried out to reduce the backlog.

## 7. Access to Records

### 7.1 Outstanding Queries

The Council considered the outstanding departmental responses to the queries it had raised on the schedules of applications it had considered in 2016 and 2017. It was content to approve the majority of the applications on the basis of the clarification and/or amendments provided by departments. Those that were not agreed were carried forward.

### Paper 7.3 – Queries raised on FOI Exemption Schedule 85 (closure) and RI128 Schedule (retention)

7.2 In October a schedule of closure applications and a schedule of retention applications (RI 128 Schedule) were sent to members. Members were asked to raise any queries within 10 days.

7.3 The Access at Transfer Manager collated the queries and a list of them was circulated with the papers for this meeting, with responses being provided where possible. At this meeting, members were asked if they were content with the responses provided, either in written form or orally by the Access at Transfer Manager. Where a response has not been provided, or members remained unhappy, the queries were carried forward.

## 8. Forum on Historical Manuscripts and Academic Research

8.1 Members considered the draft minutes from the Forum meeting in June and noted that the expressions of interest for an additional Council member to join the Forum were being sent to the Master of the Rolls' office. The next Forum meeting will be arranged once this is completed.

8.2 Collections at Risk were discussed, and members were particularly concerned to note the apparent lack of interest from legal institutions. Mr Smyth advised that he would be happy to participate in any future discussion or workshop.

**Post meeting note:** An update on the recent Collections Risk Workshop and current position was circulated to Council.

8.3 The Council was advised that external recruitment to the Forum would follow the current Council recruitment exercise. It was hoped to go ahead early in the New Year.

## 9. FOI Panels

9.1 The Council reviewed the panel update paper and the Head of the FOI Centre confirmed that the new online system of reviewing was working well overall.

## 10. Advisory Council Working Group

10.1 Council reviewed a number of papers which had been produced by the Working Group.

### Paper 10.1 Terms of Reference

10.2 Mr James advised that The National Archives had a number of minor technical comments on the draft. It was agreed that once these had been forwarded to the working group the revised Terms of Reference should be posted onto the website.

10.3 Members asked for sight of the original Terms of Reference for information.

### Paper 10.2 Status, Structure, Role and Functions

10.4 Council reviewed the paper which provided an explanatory note of the work of the Council and would be published with the Terms of Reference.

10.5 The Master of the Rolls had advised he would be making some comments on the paper, and Mr James confirmed that there were some technical queries The National Archives wished to review and confirm, along with the Terms of Reference.

### Paper 10.3 New Working Procedures

10.6 It was agreed that a more detailed entry regarding recusal should be included. Mr Smyth agreed to draft a paragraph which would be circulated to members for comment.

### Paper 10.4 A Guide to Scrutiny of Applications

10.7 Mr Woolley advised that this paper had been drafted specifically with new members in mind, but would hopefully be useful to all. Thanks were expressed to Mr Millen for his work on the paper, and for remaining on the working group after the end of his term as a Council member in order to complete it.

10.8 Following discussion, members agreed that the paper would benefit from a sentence at the beginning, clarifying that the starting point for the Advisory Council was always in favour of openness, and that it was the responsibility of the departments to persuade the Council to agree to closure of records.

10.9 Mr Smyth suggested that there should be more reference to the Code of Practice, to show that the public interest test was applied in the correct manner. Mr James advised that discussion with the Master of the Rolls and the FOI team might be helpful to clarify.

10.10 Council members agreed that the document was extremely helpful and Mr Woolley agreed to draft a sentence on openness to be circulated for comment. A link to the Code of Practice will be included in the final version of the paper.

## 11. CEO's Update

Mr James updated the Advisory Council on the following:

- **DCMS Tailored Review** – Discussions had commenced regarding the forthcoming tailored review for The National Archives and the Advisory Council. A more detailed update will be provided at the meeting in February.
- **Police Records** – Bishop James Jones's Report into Lessons Learned from Hillsborough had recently been published and included the recommendation to bring police records under the Public Record Act.

- **Legislation** – The EU Withdrawal Bill places a duty on the Queen’s Printer (the Keeper) to publish on Legislation.gov.uk all retained EU legislation at the point of the UK’s withdrawal from the EU. This work will be delivered by The National Archives’ legislation team, who are working closely with DExEU to ensure this is delivered.
- **Associate Director** – Following the departure of Carol Tullo, an Associate Director, Government Audience had been appointed for one year to review and refresh the delivery of The National Archives’ offer to Government. Lucy Fletcher, formerly Interim Head of the Chief Executive’s Office, had been appointed to the role and would be attending a future meeting.
- **Forum of National Archivists** – Mr James advised that he had recently accepted an invitation to become Interim President of the Forum of National Archivists, the section of the International Council on Archives which represents the interests of national archivists. He would be attending the ICA Conference in Mexico in late November and would report back at the next meeting.

## 12. Any Other Business

There was none.

### Date of Next Meeting

The next meeting of the Advisory Council would be held on 12<sup>th</sup> February 2018 at The National Archives.

There being no further business, the meeting was closed.