



**ADVISORY COUNCIL ON
NATIONAL RECORDS AND ARCHIVES**

Date: 23 July 2018
Time: 11:00-16:00
Venue: Becket House, London SE1

Chair: Sir Terence Etherton, Master of the Rolls

Minutes: Ms Anne Hardy

Members: Mr Trevor Woolley, Deputy Chair
Ms Hillary Bauer
Mr Michael Smyth
Ms Lesley Ferguson
Ms Jeannette Strickland
Ms Liz Copper
Mr John Wood
Mr Peter Gooderham
Sir John Ramsden

Non-members: Lord Ashton, Minister DCMS
Mr Matthew Hiorns, DCMS
Mr Jeff James, Chief Executive, The National Archives
Ms Lucy Fletcher, Associate Director, Government Audience, The National Archives
Ms Louisa Green, Acting Head of the FOI Centre, The National Archives
Ms Victoria Davis, Senior Access Manager, The National Archives
Mr Peter Farr, Office of the Master of the Rolls
Ms Anne Hardy, Secretary to the Advisory Council

1. Welcome, apologies and introductions

- 1.1 The Chair welcomed the attendees. He also introduced Lord Ashton, the Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport, who was attending the first part of the meeting.

1.2 There were apologies from Ms Angela Kelly, Ms Helen Forde, Lady Moira Andrews and Dr Elizabeth Lomas.

2. Minutes and matters arising

2.1 The minutes of the meeting of 14th May were agreed as an accurate record, subject to one correction.

2.1.1 A copy of the summary minutes was provided with the papers but was not formally approved at the meeting due to the more general discussion of the approach to minutes which took place under agenda item 5 (administrative matters). They will be approved offline.

2.2 Matters Arising

Action Log Review:

Item 1 – Recruitment and members’ remuneration. The Deputy Chair, on behalf of members, expressed disappointment at DCMS’s response to the request that they be remunerated for their work for the Council. He said that the fact that the final decision had been put back to an unspecified future date was even more disappointing, given the delays experienced in recruiting new Council members, both in the last recruitment round and (it now appears) the current one. He thought that both these delays had the potential to impact the effectiveness of the Council. He also noted that, in the previous recruitment round, eight appointable members had been identified, but only five were appointed. This had placed additional pressure on existing members, given the increasing workload of the Council more generally, and particularly with respect to Freedom of Information (“FOI”) panels.

Lord Ashton acknowledged the concerns expressed and said that he would take them back to his colleagues in DCMS. He also volunteered to try to help to expedite the current recruitment process. TNA offered to provide him with any assistance he needed to do this.

With regard to **Action 17**, it was noted that the Code of Practice revisions would be covered in Any Other Business. For Lord Ashton’s benefit, the Chair noted the longstanding issue which the Council has had with regard to its approach to closure requests which engage only absolute exemptions.

Action 31: One Council member confirmed that she would like to pursue security clearance.

ACTION: the Secretary to liaise with TNA Security colleagues to progress the security clearance application.

A further action was noted, which was that a member had agreed at a previous meeting to share an early copy of the guidance on the General Data Protection Regulation with members.

ACTION: GDPR guidance to be circulated to members by TNA.

3. Access to Records

- 3.1 There were no recusals.
- 3.2 The Council formally approved the acceptance of schedules seen outside the meeting, with the exception of any queries which were brought to the meeting.

General Points

- 3.3 A query was raised with regard to the Brexit-related applications. A member noted that Brexit matters are currently moving fast, so she asked whether it might be necessary to revisit previous decisions. She also expressed concerns about timescales and the fact that applications which she had understood were to be for five years from the date of the triggering of Article 50 might be for too long.
- 3.4 It was noted that the Brexit memorandum was due to come back to the Council in February 2019 and that there was a proposal for a further review point in 2020. The use of standard wording in the justifications should make it easier to search for and retrieve the relevant documents in future. In addition, a compromise has been sought to try and balance a desire to reduce the volume of documents coming to the Council against unhelpful “blanket” approaches which would simply close documents for ten years. Five years seemed to be a reasonable compromise. It was agreed that the issue should be revisited after March 2019.

ACTION: the Council will aim to review the Brexit Memorandum after March 2019. The Secretary will add this to the Forward Look.

- 3.5 Some general points were made about review approaches

Outstanding Queries

Paper 3.1 Queries outstanding from remote schedule

- 3.6 The Council was content to approve those applications which had not been withdrawn by departments on the basis of the clarification or additional information provided by the departments, with the exception of two which were carried over.

Paper 3.2 Queries from April/May 2018

- 3.7 The Council was content to approve those applications which had not been withdrawn by departments on the basis of the clarification or additional information provided by the departments with the exception of two closure applications which were queried and two which were queried

All retention clarifications were accepted.

Paper 3.3 Queries from remote schedule April/May 2018

- 3.8 In early July, a schedule of closure applications and a schedule of retention applications were sent to members. Members were asked to raise any queries within 10 days.

- 3.9 The queries were collated and a list of them was circulated with the papers for the meeting, with responses being provided where possible. As one department was unable to respond in time for the circulation of the Schedule, the Senior Access Manager gave an oral update on the responses received and it was agreed that the updated Schedule would be circulated after the meeting.
- 3.10 At the meeting, members were asked if they were content with the responses provided, whether in written form or orally. Where a response has not been provided, or members remained unhappy, the queries were carried forward.
- 3.11 All entries not specifically mentioned below were agreed from the pro forma.
- 3.12 Key points noted in the discussion were:

A general point was made about the need for entries to use the formulation “would be likely to...” rather than “could”.

In relation to one entry, there was a more general discussion in relation to mental health, as guidance suggests that there should be a greater impact than merely stress or worry. On a previous occasion, the justification had been accepted, but, in the particular case, it was not clear to members on the basis of the available evidence that there was a real threat to mental health.

There was a general discussion on the treatment of third party consultations. In a particular case, the rationale for closure was simply that another department had been consulted and had recommended closure. That was not acceptable; the arguments in favour of closure needed to be articulated in the same way as they would be if the department holding the record was making the case. It was felt that further engagement with departments on review issues would be helpful.

A recent meeting with a department was mentioned, where it was explained to attendees that it would be helpful if the department could explain its reasoning when it has an apparent change of heart on an application. Other ways of improving the review process were also discussed, such as the Chief Executive raising issues at his regular meeting with Permanent Secretaries. It was also noted that, in the past, there had been a reviewers’ forum which discussed issues arising. TNA took an action to look at potential ways of improving the review process.

ACTION: TNA to propose some possible mechanisms for engaging with departments to improve the review process and to disseminate the message that the Council needs good-quality information.

In particular, Ms Fletcher is co-chair of the KIM (Knowledge and Information Management) Forum, so she offered to engage Senior Civil Servants on the issue.

In relation to a clarification which was accepted, there was a discussion of the issue of absolute exemptions. For Lord Ashton’s benefit, the issue was explained and it was noted that the Council’s role with regard to entries where only qualified exemptions are engaged will form part of the Code of Practice review.

4 Departmental Retention Requests

The Council considered papers from the following departments relating to the retention of records:

- Foreign and Commonwealth Office
- Land Registry
- Animal and Plant Health Agency
- Home Office
- HM Treasury.

The papers were a mixture of retention requests and updates on progress against agreed plans. Retention requests were made either because the relevant records form part of a backlog awaiting appraisal or preparation for transfer, or because they are still required for administrative purposes.

5. Procedural Matters [NB: this item was moved forward on the agenda, as the meeting was running ahead of schedule]

Tailored Review

- 5.1 It was agreed that an update on the Tailored Review process would be provided at the next meeting.

Publication of Minutes

- 5.2 The Chair sought Advisory Council members' views on the handling of a particular issue which had arisen in relation to a recent Freedom of Information request which was made directly to the Advisory Council and asked for full copies of the minutes of certain meetings. The request required him to consider, as the "qualified person", whether Section 36 of the Freedom of Information Act 2000 (which relates to "the effective conduct of public affairs") was engaged. He referred to guidance from the Information Commissioner on this exemption.
- 5.3 The Chair noted that the qualified person only considers whether the exemption is engaged or not. If it is, then a Public Interest Test is carried out separately.
- 5.4 It was noted that, under current practice, summary minutes are produced for publication anyway. However, there may be an argument for even greater transparency, in view of the Council's role in exercising powers under the Freedom of Information Act.
- 5.5 It was noted that, even if a decision is made that Section 36 is engaged, the application of the Public Interest Test may lead to a decision that the minutes should be published in any case.
- 5.6 The Chair thanked members for their contributions.

6. FOI Panel Update

- 6.1 Ms Green gave an overview of the issues and work undertaken by panels.

6.2 It was noted that the review backlog has now been cleared. Ms Green also asked that Lead Panel members send an email recording the final decision, once it has been made.

ACTION: The Secretary to remind Lead Panel members to ensure that they notify the FOI Centre, by email, of any decision.

6.3 It was noted that Section 31 is always considered in criminal cases. If a closure period is extended, it will appear on the Schedule.

6.4 A member expressed some confusion on closure periods (as sometime it appears that they have already passed). Ms Green noted that all applicable exemptions are listed, even absolute ones. For Section 27, the date referred to is a review, and not an expiry, date. Section 40, however, more straightforward. She also noted that the Public Interest Test is applied at the date of the review.

6.5 The proposed amendments to the guidance were agreed.

ACTION: the Secretary to issue the finalised FOI guidance to members.

7. CEO's Update – Paper 7

7.1 Mr James updated the Advisory Council on recent issues. There were no questions.

7.2 He also noted that physical transfer of the Elgar archive to the British Library had taken place. The decision represented an exercise of the trustees' discretion.

7.3 He noted that work on the Corporate Strategy – a new four-year plan for The National Archives – had commenced and that a draft would be brought to the Advisory Council for discussion, probably in November or February.

8. Forum on Historical Manuscripts and Academic Research

8.1 It was noted that no meeting of the Forum had taken place since the last Council meeting.

8.2 The Secretary gave an update on the ongoing recruitment process.

8.3 It was noted that the 150th anniversary of the Royal Warrant will fall next year and that, to mark the occasion, TNA will sponsor an event at Kew. Afterwards, there will be publication of papers by the British Archives Association Journal.

8.4 It was noted that the remuneration decision also covers Forum members.

9. Any Other Business

Review of Public Task and Fees Order

9.1 Ms Fletcher explained that the Public Task is a short statement by a public body of its core activities; the applicable legislative framework and its functions, aims and

responsibilities. It is important in relation to the Reuse of Public Sector Information Regulations 2015 and is one of the main factors determining if information falls within scope of these regulations. It is good practice to review it from time to time. The last amendment by TNA of its Public Task took place in July 2016.

9.2 Archives Inspire is coming to an end and TNA is considering what the next four years will look like. It is considering how it might maximise the public value of its collections.

9.3 Narrative on the Public Task will go on website this week and TNA will invite comments from the public, in a consultation that will last four weeks.

ACTION – TNA will send the link to the Public Task consultation to members.

9.4 At same time, TNA is reviewing the Fees Order, which relates to section 2 of the Public Records Act, which gives the Chief Executive the power to charge. As the Council has a remit to advise the Secretary of State on matters which affect members of the public who use facilities provided by the Public Records Office, TNA will engage with it, for the purposes of the review.

9.5 The revision is being carried out to challenging timescales, as TNA would like to have a new Statutory Instrument in place by 1 January 2019. TNA would therefore like to write around to members once a draft is available. It would suggest that the Deputy Chair then responds on the Council's behalf. Ideally, TNA is looking for approval in mid-November.

9.6 It is likely that the new Fees Order will be a simplification of the current regime. It will be accompanied by a robust communications plan, which explains the changes.

Information Management Report and section 46 Code of Practice Refresh

9.7 It was noted that that TNA has recently published the Information Management Report (IMR) for the 2017 calendar year. The IMR is an annual collation of data, where TNA asks bodies which transfer records to it to provide data on the volume and transfer status of the records they hold. It is a monitoring tool for TNA, which allows it to make targeted interventions. It is published on the TNA website and contains various data sets (see the Transparency pages).

9.8 The IMR currently covers paper records only. TNA is working on collating data for digital records for next year.

9.9 Ms Fletcher also gave an update on the proposed revision of the Section 46 Code of Practice which has been commissioned by Lord Ashton. Mr James has also written to the Information Commissioner's Office (IC) about it.

9.10 Internal work on the revision is going on at TNA and is moving at pace. The first stage of the consultation (with ICO) will commence in September and it will be opened up to others in October. TNA is hoping to have a draft ready in the New Year.

Advisory Council Annual Report

9.11 It was noted that the Council's annual report had now been published.

Sir John Ramsden

9.12 The Chair noted that it was Sir John Ramsden's final meeting as a Council member. He thanked him for his contribution and wished him well in the future.

There being no further business, the meeting was closed.