



**ADVISORY COUNCIL ON
NATIONAL RECORDS AND ARCHIVES**

- Date:** 5 November 2018
Time: 11:00-16:30
Venue: The National Archives, Kew
- 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
Dr Helen Forde
Lady Moira Andrews
Dr Elizabeth Lomas, Deputy Chair of the Forum on Historical Manuscripts and Academic Research
- Non-members:** Mr Jeff James, Chief Executive and Keeper
TNA: Ms Lucy Fletcher, Director for Government
Mr Sam Whaley, Head of Strategy and CEO's Office (up to and including item 5)
Ms Louisa Green, Head of Private Office (from item 7)
Ms Victoria Davis, Senior Access Manager,
Ms Helen Potter, Head of the Freedom of Information Centre,
Ms Anne Hardy, Secretary to the Advisory Council,
- MR's Office:** Ms Alexandra Morton, Office of the Master of the Rolls
- Departments:** Ms Heather Hulse, APHA
Ms Nanette Palmer, APHA
Ms Monica Murariu, HM Treasury
Mr John Nelstrop, HM Treasury,
Mr Josh Cobb, HM Treasury
Ms Heather Blake, Cabinet Office
Mr Roger Smethurst, Cabinet Office
Mr John Jenkins, Cabinet Office
Ms Eirian Walsh Atkins, Cabinet Office

1. Welcome, introductions, apologies and declarations of conflicts of interest

1.1 The Chair welcomed the attendees.

1.2 There were no apologies.

1.3 The Chair asked members to declare any conflicts of interest which they had identified in relation to the business of the meeting. The following recusals were noted:

1.3.1 Ms Liz Copper is an employee of the BBC, so will not comment on BBC matters generally and, more specifically, on the recent FOI request from a BBC journalist.

1.3.2 Dr Elizabeth Lomas is unable to comment on matters relating to the royal household.

1.3.3 Mr Michael Smyth is unable to comment on matters relating to the Chagos Islands and Diego Garcia.

2. Minutes and matters arising

2.1 The minutes of the July and September meetings were agreed as an accurate record.

2.2 A copy of the most recent summary minutes was not provided with the papers due to the need for a more general discussion of the issue under agenda item 5 (matters arising from the September session of the Council). They will be approved offline.

2.3 Matters Arising

Action Log Review:

The Chair asked, as there was a lot of business to get through, that members raise any issues on the action log by exception.

The Chair expressed disappointment that the proposed meeting with the Secretary of State had not yet taken place. He was particularly concerned about the position on recruitment and would like to raise the issue personally. The Secretary agreed to expedite the meeting.

ACTION: The Secretary to expedite the meeting between the CEO of TNA, the Chair and the Secretary of State.

2.4 The Secretary noted that she had had a verbal update on one of the outstanding actions but was waiting for written confirmation.

3. Access to Records

- 3.1 There were no further 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 September queries were also considered.

Outstanding Queries

Paper 3.1 Queries outstanding from remote schedule

- 3.4 The Council was content to approve those applications not withdrawn by departments on the basis of the clarification or additional information provided by the departments as more fully described in the annex to the minutes.

Paper 3.2 – Queries on Closure and Retention Schedules (September 2018)

General:

ACTION: the Secretary to try and resolve some problems which members are experiencing with reading material on Egress, for the next meeting

ACTION: the Secretary to add wording used in information on Royal households (from July 2013) to Egress.

ACTION: The Senior Access Manager to contact Cabinet Office to see if there is any guidance to departments on Royal sensitivities.

Paper 3.3 - Queries on Closure and Retention Schedules (November 2018)

- 3.5 The Council was content to approve those applications not withdrawn by departments on the basis of the clarification or additional information provided by the departments, subject to certain exceptions, which were either queried or carried over, as the relevant department had yet to respond.

General

- 3.6 A schedule of closure applications and a schedule of retention applications were sent to members prior to the meeting. Members were asked to raise any queries within 10 days.
- 3.7 The Senior Access Manager collated the queries and a list of them was circulated with the papers for the meeting, with responses being provided where possible.
- 3.8 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.
- 3.9 Key actions which were noted in the discussion were:

Closure

Members asked for the guidance on Courts Martial to be uploaded to Egress.

ACTION – the Secretary to upload the guidance on Courts Martial onto Egress.

Paper 3.4 – FCO Checklist

3.10 It was agreed that the final version of the checklist should be loaded onto Egress for members' information.

ACTION: the Secretary to load the final version of the FCO checklist onto Egress.

Item 3.5 – Late Departmental Request

3.11 A department had made a late, urgent closure request. It was agreed that this could not be considered at the meeting, but that members would look at it out of committee, on an exceptional basis and subject to the provision of further background information.

ACTION: on an exceptional basis, an urgent closure request to be considered by members out of committee.

4. Departmental Retention Requests

The Council considered papers from departments relating to the retention of records. The outcome of its deliberations is set out below. The Secretary will notify the relevant departmental contacts of these outcomes following the meeting.

ACTION: the Secretary to write to departments to notify them of the Council's recommendations which will go forward to the Secretary of State with regard to their retention requests.

- Animal and Plant Health Agency
- HM Treasury
- Department for Transport
- Charity Commission
- Defence Geographic
- Natural Resources Wales
- Department of Work & Pensions
- Department of Health and Social Care
- Foreign and Commonwealth Office
- Ministry for Housing, Communities and Local Government.

Requests were, in each case, for between one and four years, and arose because the relevant records form part of a backlog awaiting appraisal or preparation for transfer.

5. Matters arising from the September session

Paper 5.1.1 – Authority and delegation.

Members had asked that points which the Working Group identified at the September session around authority and delegation be set out in a paper. This was presented by the Deputy Chair at the meeting.

The Chair thanked the Deputy Chair for a very helpful note.

Working Group Matters and Code of Practice review – verbal update by the Deputy Chair.

There was not a great deal to report. However, it was agreed that this would be a standing item on the agenda, so it was included for completeness.

Paper 5.1.2 Review/ Audit Process

Some minor updates to the paper were requested at the September session, so these were tabled for information and approval. The paper was duly approved.

It was confirmed that the process will be implemented in the New Year and any lessons learned will be taken into account.

Paper 5.1.3 - Log of actions from previous “Triennial Review”

This was presented for information and discussion.

It was noted that a number of actions were effectively on hold as the Council is not currently at full strength. The Chair said that he wished to pick this up with the Secretary of State at their meeting, as part of the recruitment and remuneration discussions.

Paper 5.1.4 – Internal Review process

The process has been updated to reflect the agreed process for carrying out internal reviews under FOIA and was presented for information.

ACTION: the Secretary to finalise the Internal Review procedure paper.

An incidental point about appraisals was picked up. It was noted that the Deputy Chair and the Chair were in discussions about a reinstated appraisal process. This will be light touch and the aim is to implement it in the New Year.

ACTION: the Chair and Deputy Chair (with support from the Secretary) to implement the new appraisals process by the beginning of the following calendar year.

Section 36 FOI Request – verbal update (the Deputy Chair)

The Deputy Chair reported on the recent Internal Review which was carried out on a response to an FOI request made to the Council. A panel of three had been constituted to review the public interest test, and had concluded that, subject to some redactions, the public interest lay in the publication of the appropriate sections of certain Council minutes.

Publication of summary minutes – (discussion led by the Chair)

The question as to whether the process for the publication of the summary minutes needs to change was considered.

It was agreed that the Secretary and the Senior Access Manager should discuss how best to minute the Schedule discussions.

ACTION: the process for minuting the Schedule discussions to be reviewed by the Secretary and the Senior Access Manager.

6. Cabinet Office Presentation– Update on Section 65

6.1 The Cabinet Office gave a presentation on consideration of public interest tests under Section 65.

7. Fees Order – Paper 7

7.1 The draft Fees Order routinely comes to the Council, so that members have an opportunity to comment on it.

7.2 The Fees Order relates to section 2 of the Public Records Act and it gives the Chief Executive the power to charge for services on a cost recovery basis. 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 engages with it, for the purposes of the review. 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. It was noted that if members had no comments on the Fees Order, it would proceed to Ministers for approval.

7.3 Members were content with the Fees Order.

8. FOI Panel Update – Paper 8

8.1 The Head of the FOI Centre gave an overview of the issues and work undertaken by panels, and presented the most recent service statistics, with reference to Paper 8.

8.2 It was noted that a review backlog was building up again and that action may be required to clear it, if it persists.

9. CEO's Update – Paper 9

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

9.2 The Chair congratulated the CEO on his appointment to the presidency of the Forum of National Archivists (**FAN**), a section of the International Council on Archives (**ICA**).

10. Forum on Historical Manuscripts and Academic Research [NB: this item was brought forward on the agenda, so was discussed before lunch]

- 10.1 The Deputy Chair of the Forum noted that the Forum update should be dealt with earlier in the agenda at future Council meetings. If it appears later, it can be truncated, due to time constraints.
- 10.2 It was noted that no meeting of the Forum had taken place since the last Council meeting. The next one was due to be held the following day.
- 10.3 It was noted that, notwithstanding the recent recruitment round, the Forum was still short of an independent member. In addition, the Deputy Chair of the Forum will be stepping down at the end of the year. The balance of the Forum membership is such that it would be desirable to recruit a historian. Efforts will also be made to achieve a more diverse membership.
- 10.4 The Deputy Chair of the Forum noted that Expressions of Interest for the role of Deputy Chair are being sought from Council members who are also Forum members.
- 10.5 It was noted that the 150th anniversary of the Royal Warrant will fall next year and that plans are being made for commemorating the event. These will be discussed at the forthcoming Forum meeting and the results will be shared with Council members.
- 10.6 The Deputy Chair of the Forum noted the excellent work which had been done in collaboration with TNA in producing guidance on archives and GDPR. There is a live and serious issue that archivists are misunderstanding the legal requirements placed on them with regard to Data Protection and that they may be destroying personal data which is of historical value. She made a plea for both members and TNA staff to take a role in educating the sector in this area.
- 10.7 In the past, Council members have addressed the Forum. The Secretary agreed to see whether it was possible to resurrect this.

ACTION: the Secretary to discuss the possibility of Council members addressing the Forum with the new Deputy Chair of the Forum, when he or she is appointed.

11. Any Other Business

Elizabeth Lomas

- 11.1 The Chair noted that it was Dr Lomas' final meeting as a Council member. He thanked her for her excellent contribution over her long tenure and wished her well in the future.

There being no further business, the meeting was closed.