



**ADVISORY COUNCIL ON
NATIONAL RECORDS AND ARCHIVES**

Date: 13 May 2019
Time: 11:00-16:30
Venue: The National Archives, Kew

Chair: Sir Terence Etherton, Master of the Rolls

Minutes: Anne Hardy

Members: Mr Trevor Woolley, Deputy Chair
Ms Hillary Bauer, OBE (Deputy Chair of the Forum)
Mr Michael Smyth
Ms Lesley Ferguson
Dr Helen Forde
Lady Moira Andrews
Ms Liz Copper
Mr John Wood
Dr Peter Gooderham

Non-members:

TNA: Mr Jeff James, Chief Executive and Keeper
Ms Lucy Fletcher, Director for Government
Mr Sam Whaley, Head of Strategy and CEO's Office
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: Mr Sam Allen, Office of the Master of the Rolls

SUMMARY OF ACTIONS

Actions agreed at the meeting

Item 3:

ACTION: TNA to consider if it would be possible for versions of the schedules to be circulated more frequently, to ease the burden on members around meeting times.

ACTION: links to guidance on the redaction process used at TNA to be circulated.

ACTION: the Government Audience team to confirm that Brexit-related files are being treated consistently.

ACTION: The Government Audience team to check whether departments are correctly complying with the guidance contained in the Gibraltar memorandum.

Item 5:

ACTION: the Secretary to update the Annual Report and to circulate a version for final approval by members as soon as possible after the meeting.

ACTION: members to review the website and provide feedback on it to the Secretary, who shall upload new content, including the updated register of interests.

ACTION: the Secretary to set up further audit exercises, on a six-monthly basis.

ACTION: TNA to look at tying the proposed file review programme to its own internal audit programme.

Item 6

ACTION: the Government Audience team to produce a revised Retention Application paper template which will be submitted to the July 2019 meeting for members to review and comment upon.

Item 7

ACTION: the Secretary to draft a follow-up letter on the basis discussed

Item 8

ACTION: the FOI Centre to check if any further updates to the section 38 guidance are required.

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

1.1 The Chair welcomed the attendees.

1.2 There were apologies from Ms Jeannette Strickland.

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

1.4 The following recusals apply:

1.4.1 Ms Liz Copper will not comment on BBC matters.

1.4.2 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 February meeting were agreed as an accurate record. The February summary minutes were also approved.

2.2 Matters Arising:

Action Log Review:

The Chair went through the Action Log and noted progress on the various open actions.

In particular, he noted that:

2.2.1 the current recruitment round is going well. The deadline for applications has now passed and 52 submissions have been received. The Deputy Chair will take part in the sift and interview processes which are due to take place in May and June 2019.

2.2.2 there is some good news on remuneration. It has been agreed that members should be remunerated for the current financial year, with a further application for funding to be made in the next spending round. Remuneration will be based on a day rate. TNA will administer the payment, in accordance with the TNA Chief Executive's obligations as Accounting Officer. A formal confirmation letter from the Secretary of State is expected shortly.

2.2.3 The Secretary noted that DCMS are following up on the need for a formal delegation of functions from the Secretary of State under Sections 65 and 66 of FOIA. A meeting to discuss this is being arranged. In relation to Section 65, it was also confirmed that the Council has agreed to pick up this work, in principle, subject to completion of the current recruitment round. Work on designing a suitable process is also ongoing.

2.2.4 A number of other outstanding actions were picked up through specific agenda items.

3. Access to Records

3.1 There were no further recusals.

General

3.2 A schedule of closure applications, together with a schedule of retention applications, was sent to members prior to the meeting. Members were asked to raise any queries within 10 days.

3.3 The Senior Access Manager collated the queries and a list of them was circulated with the papers for this meeting, with responses being provided where possible.

3.4 At the meeting, members were asked if they were content with the responses provided, whether in written form or orally. Where a response had not been provided, or members remained unhappy, the queries were carried forward.

3.5 The Council formally approved the acceptance of schedules seen outside the meeting, with the exception of any queries which were brought to the meeting.

Outstanding Queries

3.6 Paper 3.1 Queries outstanding from remote schedule

The Council was content to approve the applications on the basis of the clarification or additional information provided by the departments.

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

The Council was content to approve the applications on the basis of the clarification or additional information provided by the departments.

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

The Council was content to approve the applications on the basis of the clarification or additional information provided by the departments, subject to certain exceptions, which were either queried, withdrawn or carried over, as the relevant department had yet to respond.

3.9 Other discussion points

Members commented on the length of the schedules this month. A suggestion that TNA could perhaps “pre-review” schedules was rejected, even though it is an approach used by other committees, as the Council was not convinced that this would be compatible with the Council’s statutory role. Instead, members asked if it would be possible to circulate shorter documents more frequently. The Government Audience team agreed to look into possible alternative approaches to schedule review and to circulate a paper detailing these for discussion.

ACTION: TNA to consider if it would be possible for versions of the schedules to be circulated more frequently, to ease the burden on members around meeting times.

Members also asked if guidance on the redaction process could be circulated.

ACTION: links to guidance on the redaction process used at TNA to be circulated.

Members would like some further reassurance that Brexit-related files are treated consistently and that other sensitivities are given due consideration. The Government Audience will investigate further.

ACTION: the Government Audience team to confirm that Brexit-related files are being treated consistently.

There was some discussion about the wording used in relation to entries which relate to Gibraltar. The Government Audience team agreed to check whether departments are correctly complying with the guidance contained in the Gibraltar memorandum.

ACTION: The Government Audience team to check whether departments are correctly complying with the guidance contained in the Gibraltar memorandum.

4. **Forum Update**

4.1 The Deputy Chair of the Forum presented her update. She chaired her first meeting on 27 March, which went very well. A very informative paper on the valuation of digital archives for inheritance tax purposes was discussed. On a similar theme, a member of TNA gave an interesting presentation on some of the challenges presented by the move to digital records.

4.2 The Forum is also reviewing its Terms of Reference and hopes to bring a version for approval to the next Advisory Council meeting.

4.3 Local archives are continuing to experience a number of challenges, which remain a cause for concern.

4.4 The progress of the celebrations of one hundred and fifty years of the Historical Manuscripts’ Commissioner’s royal warrant was noted. Members had received notification of a reception to be held at the House of Lords and invitations should follow shortly.

4.5 A recruitment round is underway, which aims to appoint an additional independent member. The deadline for applications has now closed and interviews are being scheduled for 30 May.

5. Administrative Matters

Item 5.1.1 – Section 46 Code of Practice Review

Ms Fletcher provided a verbal update on this item. A Steering Committee meeting has been held and members have agreed that the new code should be principles-based, with more detailed guidance sitting underneath it. A meeting with the Deputy Chair had just taken place and a further one with the full Working Group would be scheduled, to ensure that TNA fully understands the Council's position. The plan is to publish a good first draft of the new Code in Autumn 2019, with the final version appearing by the end of the current financial year.

Paper 5.1.2 – Draft Annual Report

The Annual Report is published in July as an annex to the TNA Annual Report. The current draft is still missing a few statistics, so the aim is to include these and to circulate the updated report to members for approval very shortly after the current meeting. The Deputy Chair queried a figure which looked incorrect and the Secretary agreed to check this as part of the update process.

ACTION: the Secretary to update the Annual Report and to circulate a version for final approval by members as soon as possible after the meeting.

Item 5.1.3 – Website Updates – Verbal Update

The Secretary noted that some further updates had been made to the website, including upload of copies of the Forum minutes. She has now received all the Register of Interest forms, so is able to prepare an updated register for final review and upload.

ACTION: members to review the website and provide feedback on it to the Secretary who shall upload new content, including the updated register of interests.

Item 5.1.4 – Appraisals – Verbal Update

The quantitative data has been included on the draft forms and they should be ready for circulation shortly.

Paper 5.1.5 - Review/ Audit Process

The Deputy Chair summarised the findings of the file review process which was carried out at TNA on 10 April. Members of the review team found the exercise informative. No overwhelming evidence of problems with the process was uncovered, although a few issues were identified. Some useful lessons were also learned, so the team recommend that the process is repeated within six months. It may also be instructive for new members to participate, as it may help them better to understand TNA processes. It was agreed that the Secretary should set up further reviews, on a six-monthly basis.

ACTION: the Secretary to set up further audit exercises, on a six-monthly basis.

There was a query as to whether the process could be linked with any TNA internal audits and the TNA Chief Executive agreed to look at this. The schedule application process had been the subject of an audit in the previous calendar year and that some process changes had been adopted as a result.

ACTION: TNA to look at tying the proposed file review programme to its own internal audit programme.

LUNCH was provided and during the break members were given a tour of the ongoing TNA Cold War exhibition.

6. Departmental Retention Requests

A large number of papers were received before the meeting, as a result of TNA's Information Management Report work. They were therefore divided into three sections, as follows:

Item 6.1 – Business as Usual Papers

Updated Brexit memorandum. This was a re-presentation of an item from July 2018. Due to the postponement of the planned EU exit date, it was agreed that members should see the paper again, perhaps at the February 2020 meeting. Members were content with the paper, although there was one clarification query.

DECISION: memorandum accepted, subject to one clarification. It is proposed that this comes back in February 2020.

There were also updates from:

- Department for Food, the Environment and Rural Affairs
- Animal and Plant Health Agency; and
- The National Archives.

Item 6.2 – applications from Ministerial Departments

There were applications for retentions of between one and three years from the following departments:

- Business, Energy and Industrial Strategy
- Department for Food, the Environment and Rural Affairs
- Department for International Development
- Home Office
- Ministry of Justice; and
- Northern Ireland Office.

Item 6.3 – Applications from arm's length bodies

A large number of papers from arm's length bodies were received before the meeting so, to assist in the review process, these were circulated in advance to members, who were asked to indicate which ones they wished to discuss at the meeting. The others would be deemed to have been approved. The following papers were discussed in more detail:

- Metropolitan Police Service.
- Royal Botanic Gardens, Kew.
- The Postal Museum.

Members noted that the papers were in a variety of different formats. Ms Fletcher confirmed that her team is working to produce a simplified and standardised response template, with drop-down options. She hopes to bring an initial proposal for the new template to the July 2019 meeting for review and comment.

ACTION: the Government Audience team to produce a revised Retention Application paper template which will be submitted to the July 2019 meeting for members to review and comment upon.

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 outcome of the Council's deliberations regarding their requests. Following the meeting, the Council's recommendations which will go forward to the Secretary of State.

7. Paper 7 – Access under Review issue

7.1 This item follows on from a paper which was presented to the February meeting, which concerned a large volume of records for which access is under review. The Council was seeking further assurances with regard to these, including the position regarding the handling of FOI requests and public access. The Council noted the points made and agreed to follow the matter up accordingly.

ACTION: the Secretary to draft a follow-up letter on the basis discussed.

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. She also presented the most recent service statistics, with reference to Paper 8. She noted that these were broadly in line with previous reports.

8.2 The continued high volume of cases was highlighted.

8.3 A number of wider issues highlighted by panels were addressed in the paper. One case actually saw the release of the relevant record, as it was accepted that the cited exemption was not applicable.

8.4 Some additional guidance on section 38 has also been uploaded to Egress, but this may need to be updated further.

ACTION: the FOI Centre to check if any further updates to the section 38 guidance are required.

9. CEO's Update – Paper 9

9.1 The CEO of TNA updated the Council on recent issues.

9.2 He noted that the new TNA strategy, which had been presented at the previous meeting, had been approved and that it would shortly be made available to the public.

9.3 TNA is also in the process of adopting new branding, which is to be rolled out over the coming months.

9.4 The CEO of TNA also noted the additional work which TNA has had to do as a result of the move from the 30 to the 20 year rule. This has also put pressure on departments at a time of decreasing resources. Members considered whether there might be a knock-on effect on the number of retention requests. If this occurs, it should be picked up through the Council's reporting mechanisms and highlighted in the Annual Report, if necessary.

9.5 Progress on the setting up on the new Trust was also noted, as was the CEO of TNA's role as the Queen's Printer. The CEO of TNA gave a further explanation of this latter role and

noted the excellent progress which has been made by TNA in getting published primary legislation up to date.

10. Any Other Business

10.1 There being no further business, the meeting was closed.

Date of Next Meeting: The next meeting of the Council would be held on: 15 July 2019 at Bouygues premises in central London.

ANNEX – SECTION 6.3 PAPERS

6.3	Non-ministerial departments	Notes
6.3.1	Civil Aviation Authority	
6.3.2	Environment Agency	
6.3.3	Food Standards Agency	
6.3.4	Health and Safety Executive	
6.3.5	Her Majesty's Land Registry	
6.3.6	Historic Royal Palaces	
6.3.7	Metropolitan Police Service	Discussed at the meeting
6.3.8	Natural England	
6.3.9	Office for National Statistics	
6.3.10	Office for Standards in Education, Children's Services and Skills	
6.3.11	Royal Botanic Gardens	Discussed at the meeting
6.3.12	The Tate	
6.3.13	The Royal Parks	
6.3.14	United Kingdom Debt Management Office	
6.3.15	Welsh Government	
6.3.16	The Postal Museum	Discussed at the meeting