



**ADVISORY COUNCIL ON
NATIONAL RECORDS AND ARCHIVES**

Date: 15 July 2019
Time: 11:00-16:30
Venue: Becket House, London SE1

Chair: Sir Terence Etherton, Master of the Rolls

Minutes: Anne Hardy

Members: Mr Trevor Woolley, Deputy Chair
Ms Hillary Bauer, (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 Chris Briggs, Government Relations Manager (Observer)

MR's Office: Mr Andrew Caton, Office of the Master of the Rolls

SUMMARY OF ACTIONS

Actions agreed at the meeting

Item 2:

ACTION: the Chair to write to DCMS to encourage progress on the formal delegations.

ACTION: the Senior Access Manager to provide an options papers on possible changes to the frequency and timing of the circulation of schedules, for consideration at the next meeting.

ACTION: the Secretary to make the arrangements for the October file audit exercise as soon as possible.

Item 3:

ACTION: TNA to clarify any requirement for Council involvement in the FOI Panels for the records affected by the access under review issue.

Item 4:

ACTION: TNA to provide a note on the application of Section 40 to members.

Item 5:

ACTION: the Secretary to circulate details of the October HM150 conference, once they are available.

ACTION: TNA to consider if there are ways it can exert influence to ensure that important cultural property is preserved for the nation.

ACTION: the Chair of the Advisory Council and the Deputy Chair of the Forum to discuss separately if there is any action which the Forum can take to exert influence to ensure that important cultural property is preserved for the nation.

ACTION: TNA to provide further detail to members on the origins of the Forum, its responsibilities and those of the Master of the Rolls and the CEO of TNA.

Item 6

ACTION: the Secretary to contribute a section on the role of the Advisory Council to any “day one” briefings to new ministers.

ACTION: the Senior Access Manager to produce a paper on further revisions to the standard retention criteria.

ACTION: TNA to bring the revised Retention Application Template back to the next meeting with the suggested improvements.

Item 10

ACTION: the Secretary to address ongoing issues with the Egress system.

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

2.2 Matters Arising:

Action Log Review:

The Secretary went through the Action Log and noted progress on the various open actions. Some of these were for discussion later in the meeting as specific agenda items.

In particular, she noted that:

2.2.1 the template for remuneration claims had been drafted and would be circulated to members after the meeting.

2.2.2 there was no further news on the formal delegation of functions from the Secretary of State under Sections 65 and 66 of FOIA. The Chair offered to write to DCMS to try and expedite the matter.

ACTION: the Chair to write to DCMS to encourage progress on the formal delegations.

2.2.3 there was an outstanding action on possible ways of improving and streamlining the procedure for reviewing schedules, in order that more responses to members' queries on schedule items could be available at the subsequent meeting. It was agreed that it was important for such responses to be considered in committee, unless they were obviously uncontroversial. It was agreed that the Senior Access Manager would provide an options papers on possible changes to the frequency and timing of the circulation of schedules for consideration at the next meeting.

ACTION: the Senior Access Manager to provide an options papers on possible changes to the frequency and timing of the circulation of schedules, for consideration at the next meeting.

2.3 It was agreed that the arrangements for the next file audit should be put in place immediately and should not wait until the current recruitment round has been completed.

ACTION: the Secretary to make the arrangements for the October file audit exercise as soon as possible.

2.4 Members considered the draft agenda for the September training session (**Paper 2.4**). It was agreed that the time for the session by a representative of the Information Commissioner's Office (which was confirmed shortly after the meeting) should be extended, if possible. Otherwise, the outline was agreed.

3. Access to Records Issue

3.1 Four representatives from MOD and its subcontractor attended in person to present on this issue.

3.2 The department also gave reassurances that it was now handling FOI requests directly. There was a query as to whether Council panels would need to consider the public interest in the usual way. It was agreed that this would be confirmed outside the meeting.

ACTION: TNA to clarify any requirement for Council involvement in the FOI Panels for the records affected by the access under review issue.

4. Access to Records

4.1 There were no further recusals.

General

4.2 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.

4.3 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.

4.4 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.

4.5 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

4.6 Paper 4.1 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.

4.7 Paper 4.2 – Queries on Closure and Retention Schedules (May 2019)

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

4.8 Paper 4.3 - Queries on Closure and Retention Schedules (July 2019)

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.

4.9 Other discussion points

There was a brief discussion of Section 40, which is an absolute exemption, but also brings in a “fairness” test under GDPR. Members asked for more detail on this issue and the Head of TNA’s FOI Centre agreed to provide a note.

ACTION: TNA to provide a note on the application of Section 40 to members.

5. Forum Update

5.1 The Deputy Chair of the Forum presented her update. She confirmed that there had been no further meetings of the Forum since the session on 27 March 2019, which was reported to the previous Advisory Council meeting.

- 5.2 She noted that the recent House of Lords event to celebrate one hundred and fifty years of the Historical Manuscripts' Commissioner's royal warrant went very well. Another event (a two-day conference) is planned for October. It was agreed that the Secretary would circulate further details of this, once they were available.

ACTION: the Secretary to circulate details of the October HM150 conference, once they are available.

- 5.3 The Deputy Chair of the Forum also raised an issue around an important private archive which has been sold abroad (although export is currently deferred). It appears that Acceptance in Lieu was not considered in this case. She wondered if there was any way that TNA and/or the Forum could assist in preserving this for the nation, for example by raising awareness of the Acceptance in Lieu regime. TNA agreed to have a look at this further, but noted that it was also open to the Forum to take action separately.

ACTION: TNA to consider if there are ways that it can exert influence to ensure that important cultural property is preserved for the nation.

ACTION: the Chair of the Advisory Council and the Deputy Chair of the Forum to discuss separately if there is any action which the Forum can take to exert influence to ensure that important cultural property is preserved for the nation.

- 5.4 It was noted that the Forum's role is not set out in statute, but it delivers the Advisory Council's remit concerning public records outside the public records system, which is linked to the responsibilities of the Historical Manuscripts Commissioner, as appointed by Royal Warrant. It is currently constituted as a sub-committee of the Advisory Council. It was agreed that TNA would provide further detail on the origins of the Forum, its responsibilities and those of the Master of the Rolls and the CEO of TNA.

ACTION: TNA to provide further detail to members on the origins of the Forum, its responsibilities and those of the Master of the Rolls and the CEO of TNA.

- 5.5 The Deputy Chair of the Forum gave an oral update on the status of the current recruitment round, which aims to appoint an additional independent member.

- 5.6 **Paper 5 – the proposed Terms of Reference for the Forum** was also discussed and approved, subject to one minor amendment.

LUNCH was provided.

6. Administrative Matters

Item 6.1.1 – Section 46 Code of Practice Review

The Deputy Chair provided an oral update on this item. TNA's Government Audience team has written to him about the proposed approach for the new code and a follow-up meeting is planned once a draft is available. The intention remains to publish a first draft of the new code in Autumn 2019, with the final version appearing by the end of the current financial year. However, some issues relating to the position in Northern Ireland may cause delay to this timetable.

Paper 6.1.2 – Draft Annual Report

The Annual Report has now been approved and will be published in July as an annex to the TNA Annual Report. The final version was provided to members with the meeting papers for information.

Item 6.1.3 – Website Updates – Verbal Update

The Secretary noted that some further updates had been made to the website, including upload of the register of members' interests and the most recent meeting minutes. The next update will be the Forum Terms of Reference (see agenda item 5).

Item 6.1.4 – Recruitment – Verbal Update

The Deputy Chair, who is sitting on the interview panel, gave an oral update. He confirmed that the current recruitment round continues and that there have been some strong candidates. A final interview is being held this week and a submission to recommend the appointments will then go to ministers. The timescales for this are unclear and there may be some delay, as there is likely to be a ministerial reshuffle following the Conservative Party leadership election. Separately, it was noted that the Secretary was working with TNA to ensure that any initial briefing for new ministers included up to date information on the Advisory Council.

ACTION: the Secretary to contribute a section on the role of the Advisory Council to any "day one" briefings to new ministers.

Item 6.1.5 – Remuneration Update

The Secretary reported that, as of 8 July, the confirmatory letter from DCMS regarding remuneration had still not been sent to members, although DCMS had provided further assurances that the payments are in hand and will be backdated. In the meantime, the intention is that members will be provided with template claim forms following the meeting, so that they can submit their claims for the first applicable quarter.

Item 6.1.6 – FOI Matters

The Secretary gave an oral update on two recent FOI requests to the Council.

Paper 6.1.7 – Revised Retention Criteria

The Senior Access Manager at TNA presented a paper on the proposed refinement of retention Criterion 4, proposing that it should be split into two sub-categories, thereby making a distinction between material not yet appraised for selection (or disposal) and material selected for permanent preservation and transfer. This is intended to assist in the accessions process. The Senior Access Manager also confirmed that the current criteria are used for administrative convenience and have no statutory basis. Members noted that certain of the other criteria (notably 5 and 7) appear to be used rarely or never and so queried whether they were still needed. It was agreed that there was no reason to retain them.

There were no further comments on the paper, which was approved, but the Senior Access Manager agreed to produce a further paper on the removal of the two unused criteria.

ACTION: the Senior Access Manager to produce a paper on further revisions to the standard retention criteria.

Paper 6.1.8 – Revised Retention Application Template

This is a proposed simplification and standardisation by TNA of the template used by departments when making retention applications. Innovations include a new system of drop-down menu options.

Members welcomed the innovation and suggested some further improvements, including a new section on “context” and more information on time required. They also suggested the production of another template for updates, to include a red/amber/ green status and an indication of milestones achieved to date. Members also suggested that a separate guidance document might be useful. Finally, they thought that a detailed justification should be provided for any application of over three years’ duration. The Government Audience team agreed with these recommendations and will propose further changes at the next meeting.

ACTION: TNA to bring the revised Retention Application Template back to the next meeting with the suggested improvements.

7. Departmental Retention Requests

Item 7.1 – Business as Usual Papers

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 listed below to notify them of the outcome of the Council’s deliberations regarding their requests. Following the meeting, the Council’s recommendations will go forward to the Secretary of State.

- Foreign and Commonwealth Office
- HM Treasury
- Ministry of Justice
- Department for Education
- Ministry of Defence (two papers)
- Home Office
- Northern Ireland Office
- Advisory, Conciliation and Arbitration Service
- Metropolitan Police Service.

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

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 and highlighted some procedural points, with reference to Paper 8. She also asked that the FOI Inbox be copied in, when panels are providing their responses.
- 8.2 The continued high volume of cases was highlighted.
- 8.3 The Head of the FOI Centre also agreed to follow up on an existing action 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 current issues.
- 9.2 Progress on the transition to the 20 year rule was noted, as was the move to digital records, which is increasingly being reflected in applications to the Council. He also noted the

Government Audience team's success in getting departmental legal compliance to almost 100%.

9.3 Some issues with local archives were noted.

10. Any Other Business

10.1 A member noted a recurring problem with Egress where users were quickly timed out of access – sometimes in the middle of reviewing a document. The Secretary agreed to look into this.

ACTION: the Secretary to address ongoing issues with the Egress system.

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

Date of Next Meeting: The next meeting of the Council would be a training session held on: 23 September 2019 at TNA premises.