



ADVISORY COUNCIL ON NATIONAL RECORDS AND ARCHIVES

Date: 18 November 2019
Time: 11:00-16:30
Venue: Talks Room, The National Archives, Kew

Chair: Sir Terence Etherton, Master of the Rolls

Minutes: Anne Hardy, Secretary to the Council

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
Ms Jeannette Strickland
Mr Martin Howard
Professor Phillip Johnson
Professor Leon Litvack
Ms Helene Pantelli
Mr David Rossington
Mr Martin Uden

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

DCMS: Mr Charles Alexander, Lead Non-Executive Director.

MR's Office: Mr Samuel Allan, Office of the Master of the Rolls

SUMMARY OF ACTIONS

Actions agreed at the meeting

Item 2:

ACTION: any member who is interested in taking part in the Working Group should contact the Deputy Chair.

Item 3:

ACTION: MOD are to be asked to provide a written update for February. The possibility of inviting them to the May meeting should also be left open.

Item 4:

ACTION: members asked that copies of the memorandum and checklists be provided to them in accessible form.

Item 5:

ACTION: it was agreed that a TNA paper on the history of the Forum should be circulated to the wider membership.

Item 7

ACTION: the Code of Practice to be included as an item on the agenda for the February 2020 meeting.

ACTION: an invitation to be extended to the Deputy Chair to attend a meeting of the Code of Practice Steering Group.

ACTION: TNA to update the retention application/ update templates to reflect the revised retention criteria.

ACTION: the Secretary to make the arrangements for the April file audit exercise.

ACTION: files which are potentially of interest for audit purposes should be flagged at the meeting where the relevant schedule entry is discussed.

ACTION: TNA to consider how best to feed back the audit findings to departments

Item 9

ACTION: new members to be phased into the FOI Panel process by the Secretary.

Item 10

ACTION: TNA to provide the Chair with information on the location of the 43 Places of Deposit.

Item 11

ACTION: The Deputy Chair and the Secretary will discuss further the idea that, as part of its continuous improvement work, the Council invites feedback from departments.

ACTION: The Deputy Chair agreed to check the ICO website for Section 27 guidance and to circulate it.

ACTION: any members who are interested in obtaining or renewing Developed Vetting Security Clearance should inform the Secretary.

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

- 1.1 The Chair welcomed the attendees, including six new members, who were attending their first meeting.
- 1.2 There were apologies from Mr Stephen Hawker, a new member.

- 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 is an employee of the BBC, so 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

There were no formal minutes to approve, as the September meeting was a training session.

A summary of the July minutes has been uploaded to the website.

Item 2.1 – Wash-up following the September training session

The Chair invited members to reflect on the September training session, which included presentations from ICO, FCO and the TNA Digital team.

Members thought that the sessions went well and were informative, although there were issues with timing, which meant that the session overran.

Paper 2.2 – Action Log and Paper 2.2.1 – Action Log Updates

The Chair went through the most recent updates to the action log. A number of actions were considered as specific agenda items. The most significant of the finalised actions are the completion of the process of recruitment and the induction of seven new Council members, six of whom were able to attend the November meeting.

The Chair also noted that:

- 2.2.1 now that the new members have been appointed, the Council is ready to take on responsibility for the public interest test for FOI requests under Section 65 of FOIA, although the details have yet to be agreed between DCMS and the Cabinet Office. It was noted that currently the Council has no role in considering FOI requests which engage Sections 23 and 24 of FOIA, which should be reviewed as part of the revision of the Code of Practice.
- 2.2.2 the Chair would write to the new Secretary of State once he or she is appointed following the general election about the proposed delegation to the Council under section 66 of FOIA.
- 2.3.3 there would be merit in reviving the Working Group and anyone interested in joining was invited to contact the Deputy Chair.

ACTION: any member who is interested in taking part in the Working Group should contact the Deputy Chair.

3. Access to Records Issues

- 3.1 Four representatives from MOD attended in person to present on two ongoing issues – the NDA/ AWE records, which have been the subject of previous appearances at the Council, and the Service Personnel Records (which include the related issue of the Guards papers, which was previously discussed at the July meeting).

- 3.2 TNA had also clarified the status of “access under review” records. A note had been provided to the Chair and Deputy Chair in the first instance. FOI requests for these records could be handled under Section 65 or 66 of FOIA. If the former, there would be no requirement for the Council to consider the public interest in release through panels under such time as the Council took on such responsibility in relation to Section 65 cases more generally.
- 3.3 Overall, both members and TNA staff were content with the proposals, although there are residual concerns about timescales.
- 3.4 Members had also sought further information about the legal and practical effects of records being temporarily categorised as “access under review” status. TNA noted that a note had been provided to the Chair and Deputy Chair, in the first instance
- 3.5 Members also reiterated the need for the media group to be prepared to handle any media interest, as per the action log.

ACTION: MOD are to be asked to provide a written update for February. The possibility of inviting them to the May meeting should also be left open.

- 3.6 The department had sought retentions in respect of both the guards and the service personnel records.

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, as more fully described in the Annex to these minutes.

- 4.7 Paper 4.2 – 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, as more fully described in the Annex to these minutes.

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

The Council was content to approve the applications on the basis of the clarification or additional information provided by the departments, as more fully described in the Annex to these minutes.

4.9 Other discussion points

ACTION: members asked that copies of the memorandum and checklists be provided to them in accessible form.

5. **Forum Update (NB: this item took place after item 6 as the meeting was running slightly late)**

5.1 The Chair noted that he had chaired the full Forum meeting on 22 September 2019. The meeting was combined with the September training session, so three Council members who are not also members of the Forum attended. The meeting focussed on a new strategy and action plan for the Forum, which will be discussed further at its next meeting, which is to be held on 11 December. The need to do a skills audit of members was also identified and this is in hand. It has also been suggested that members convene by teleconference if necessary between meetings.

5.2 The Chair noted that it was a useful session and that he had learned more about the Forum and its role as a sub-committee of the Council.

ACTION: it was agreed that a TNA paper on the history of the Forum should be circulated to the wider membership.

5.3 The Deputy Chair of the Forum then presented her update. She noted that role of the Council in advising the Historical Manuscripts Commission on Acceptance in Lieu cases. She said the Forum would like to be more actively involved in issues of concern to the archives and academic communities relating to non-government archives.

5.4 It was noted that TNA also undertakes a lot of activity in these areas and that it sometimes does so "behind the scenes".

5.5 In addition, a symposium to celebrate HMC 150 took place on 14 October. The Deputy Chair of the Forum acted as a panel member for this.

LUNCH was provided.

6. **MPS Presentation**

6.1 MPS representatives attended in person further to their July retention application, as the Council had requested further information.

6.2 The departmental attendees described ongoing efforts to address the review backlog. This largely consists of paper files, but there is some digital material.

6.3 The department noted that it was happy to provide regular updates to the Council.

6.4 It also noted that the problem is finite, as MPS records produced after March 2000 are no longer public records for the purposes of the Public Records Act 1958.

DECISION: it was noted that the current retentions expire in 2020, so members asked that the department provide a written update in May 2020.

7. Administrative Matters

This section dealt with ongoing administrative and process matters which have arisen, largely from the ongoing work of the Working Group, but also from the September training session.

Item 7.1.1 – Section 46 Code of Practice Review

The Director for Government Audience gave a short oral update on progress on the Code of Practice review, for information. She explained the background to and purpose of the Code and noted that the last review was in 2009, so an update is needed, not least to reflect the move to digital records. The process is taking some time, as there is an obligation to consult with statutory stakeholders, such as Cabinet Office and the Office of the Information Commissioner (ICO).

It was also agreed that an invitation would be extended to the Deputy Chair to attend a meeting of the Steering Group which was planned for January. A copy of the near-final draft of the Code should be available after this meeting and will be circulated to members.

ACTION: the Code of Practice to be included as an item on the agenda for the February 2020 meeting.

ACTION: an invitation to be extended to the Deputy Chair to attend a meeting of the Steering Group.

The following three items were briefly introduced by Ms Lucy Fletcher. They had all previously been presented to the Council so were approved. The need to update the templates to reflect the revised retention criteria was noted, though.

ACTION: TNA to update the retention application/ update templates to reflect the revised retention criteria.

Paper 7.1.2 – Revised Retention Criteria

This is a proposed retirement of criteria 3.5 and 7.

Paper 7.1.3A – Revised Retention Application Template

This is a further update on 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; a new section on “context” and more information on required timescales.

Paper 7.1.3B – Revised Update Template

This is a proposed simplification and standardisation by TNA of the template used by departments when providing updates. This was specifically requested by members, to include a red/amber/ green status; an indication of milestones achieved to date and a detailed justification for any application of over three years’ duration.

A suggestion that departments should have an additional field where they could propose an update date was rejected, after discussion.

Paper 7.1.4 – the Journey of the File

This paper summarised a presentation which was due to be included in the September training session. However, this had to be deferred because of timing issues. Members

thought it a useful and insightful document and recommended that this be included in TNA standard guidance, if possible.

Paper 7.1.5 – October File Audit report

A panel of three Council members attended at TNA premises on 31 October to conduct a review of transferred files. This followed on from a similar process in April. The purpose of these sessions is to compare the closure schedule entries for various items with the closed extract(s) which are eventually transferred to TNA and to check for anomalies. A member of the review panel presented the findings and there was a discussion as to how feedback on these could be provided to TNA and departments. All participants agreed that it had been a useful exercise. They noted that:

- Some derogatory comments did not in practice seem a good basis for withholding information. However, it was thought that this issue had been addressed to an extent by the current practice of members asking for details of the particular comments relied on.
- There was one instance where there seemed to be a cataloguing error.
- On one file, some comments were erroneously cited as legal opinion.

They also noted some practical points, such as the need to select a number of files for review, due to the risk that selected items might be unavailable. A suggestion that audits could perhaps be held quarterly was rejected on resourcing grounds.

ACTION: the Secretary to make the arrangements for the April file audit exercise.

ACTION: files which are potentially of interest for audit purposes should be flagged at the meeting where the relevant schedule entry is discussed.

ACTION: TNA to consider how best to feed back the audit findings to departments.

Paper 7.1.6 – ICO Decision

An FOI request relating to the Denning papers which the Council received last year went to Internal Review and was subsequently the subject of an appeal to the ICO. The decision is now available. It upholds the Council's position, although a couple of technical points were raised and the delay in responding were noted. No further action is to be taken. The Secretary confirmed that the Council's processes have been reviewed as a result of this request and are now more streamlined.

8. Departmental Retention Requests

Twenty-eight papers were submitted for consideration at the meeting. It was therefore agreed, in line with the process used at the February session, that the applications from Arm's Length Bodies should be dealt with out of committee, with members noting in advance any papers which they would specifically like to discuss during the session and the rest to go forward to the Secretary of State. The Council considered papers from departments relating to the retention of records. In addition, a number of departments had provided updates, further to requests from members made at previous meetings.

The Council's decisions made in respect of each paper are noted below. Any resulting approval recommendations then go forward to the Secretary of State.

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

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

- Department for Business, Energy and Industrial Strategy
- Department for the Environment, Food and Rural Affairs
- Department for International Relations
- Department for Transport
- Department of Work and Pensions
- Department for Education
- Foreign and Commonwealth Office
- Department of Health and Social Care
- HM Treasury
- Home Office
- Ministry for Housing Communities and Local Government
- Ministry of Justice
- Northern Ireland Office
- Cabinet Office

There were applications for retentions of between two and three years from the following arm's length bodies:

- Crown Prosecution Service
- Medicines and Healthcare products Regulatory Agency
- Competition and Markets Authority

Updates were received from the following departments:

- The Charity Commission
- HM Revenue and Customs

9. FOI Panel Update – Paper 9

- 9.1 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. She also noted three recent issues: redaction of records; application of Section 27 and application of Section 38. She highlighted work to update FOI guidance, notably on Section 40. The Section 38 guidance is in progress and should be available shortly.
- 9.2 The continued high volume of cases was also noted, as were ongoing staffing issues.
- 9.3 There is an intention to phase the new members into the Panel process on the basis that there will be one of them per panel, and that they will not act as the Panel Chair until they have gained some experience of the process.

ACTION: new members to be phased into the FOI Panel process by the Secretary.

10. CEO's Update – Paper 9

- 10.1 TNA's CEO gave his update on current issues and ongoing matters. He noted progress with the National Archives Trust and the planned relaunch of the Discovering Collections, Discovering Communities conference, as well as new grant funding which has been announced. He also covered the HMC 150 celebrations and his tour of regional archives. The Chair asked if he could be provided with information on the location of the 43 Places of Deposit.

ACTION: TNA to provide the Chair with information on the location of the 43 Places of Deposit.

- 10.2 He also noted the work of TNA's legislation team, which as part of the CEO's role as the Queen's Printer, is currently ensuring that the online legal database legislation.gov.uk is preparing all the legislation ready for Brexit. The Chair noted his admiration for the work of this team.

11. Any Other Business

- 11.1 It was agreed that any of the new (or indeed the existing) members who are interested in obtaining or renewing Developed Vetting Security Clearance should inform the Secretary.

ACTION: any members who are interested in obtaining or renewing Developed Vetting Security Clearance should inform the Secretary.

- 11.2 When asked for feedback on their first meeting, new members said that there had been a lot of business to get through and a lot to take in, but that it had been a very interesting session. They thought that the Schedules process was perhaps a bit unwieldy (although longer-standing members noted that the process had actually become more streamlined and less paper-intensive than it had been previously). The new members also noted their approval of the new remuneration arrangements.

It was suggested that as part of its continuous improvement work, the Council could invite feedback from stakeholders. The Deputy Chair and the Secretary agreed to discuss this further.

ACTION: the Deputy Chair and the Secretary will discuss further the idea that, as part of its continuous improvement work, the Council invites feedback from departments.

It was noted that there is guidance on Section 27 (which had come up a few times in discussions) on the ICO website.

ACTION: The Deputy Chair agreed to check the ICO website for Section 27 guidance and to circulate it.

- 11.3 There being no further business, the meeting was closed.

Date of Next Meeting: The next meeting of the Council was to be held on: **10 February 2020**, at TNA premises.