



**ADVISORY COUNCIL ON  
NATIONAL RECORDS AND ARCHIVES**

**Date:** 11 May 2020  
**Time:** 10:00-15:00  
**Venue:** Meeting by Video Link

**Chair:** Sir Terence Etherton, Master of the Rolls

**Members:** Mr Trevor Woolley, Deputy Chair  
Ms Hillary Bauer, (Deputy Chair of the Forum)  
Mr Michael Smyth  
Ms Lesley Ferguson  
Dr Helen Forde  
Ms Liz Copper  
Mr John Wood  
Mr Stephen Hawker  
Mr Martin Howard  
Professor Phillip Johnson  
Professor Leon Litvack  
Ms Helene Pantelli  
Mr David Rossington  
Mr Martin Uden  
Lady Moira Andrews  
Dr Peter Gooderham  
Ms Jeannette Strickland

**Minutes:** Trish Humphries, Strategic Relations Co-ordinator (TNA)

**Non-members:**

**TNA:** Mr Jeff James, Chief Executive and Keeper  
Ms Asha Bagayat, Head of Governance  
Ms Lucy Fletcher, Director for Government and Information Rights  
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  
Mr Andrew Dyer, Strategic Compliance Lead

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

**Departmental Attendees:** Representatives from Ministry of Defence (MoD) and Foreign and Commonwealth Office (FCO)

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**SUMMARY OF ACTIONS**

**Actions agreed at the meeting**

**ACTION:** The Head of Governance to update the Actions Log with the items reported at the meeting.

**ACTION:** The Office of the Master of the Rolls and The National Archives will jointly contact the DCMS Legal and Arm's Length Bodies Teams to pursue the matter of Section 66 delegation.

**ACTION:** The National Archives to arrange a meeting between the Secretary of State and the Master of the Rolls.

**ACTION:** Deputy Chair to finalise amendments to the Annual Report in consultation with members out- of Committee.

**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.

**ACTION:** The Head of Governance to circulate information on the Griggs method of reviewing files for preservation.

**ACTION:** Senior Access Manager to liaise with Cabinet Office regarding clarification in matters relating to the Royal Household.

**ACTION:** Head of Governance to ensure papers are quality checked before circulation.

**ACTION:** The FOI Manager will refer the case back to the Metropolitan Police.

**ACTION:** The FOI team to provide additional information in cases relating to S38, to clarify whether the age of the individual concerned is known or assumed.

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## 1. **Welcome, introductions, apologies and declarations of interest**

1.1 The Chair welcomed everyone to the meeting.

1.2 There were no apologies for absence.

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 applied:

1.4.1 The Master of the Rolls recused himself from discussion on matters regarding the Chagos Islands due to his involvement in a current legal matter, and from discussion on matters regarding the Ministry of Justice.

1.4.2 Mr Michael Smyth, as a lawyer with previous involvement in matters relating to the Chagos Islands, recused himself from any related discussion.

1.4.3 Lady Moira Andrews was a member of the Lord Chancellor's Advisory Committee on Justices of the Peace and recused herself from discussion on the Ministry of Justice.

1.4.4 Mr Martin Uden, as a former Desk Officer with the Foreign & Commonwealth Office, recused himself from discussions relating to Japan.

1.4.5 Dr Helen Forde was a former Chair of Trustees of the Postal Museum and Archive and therefore declared an interest.

## 2. **Minutes and matters arising**

### **Minutes of the meeting held on 10 February 2020**

2.1 The minutes of the meeting held on 10 February 2020 were approved as a correct record.

## **Actions Log**

- 2.2 The Chair went through the Actions Log and noted progress on the various open actions. The following updates were reported at the meeting:

**Action 80** – The Advisory Council agreed that this item was completed and should be closed.

**Action 82** – The Advisory Council agreed that this item was completed and should be closed.

- 2.3 **ACTION:** the Head of Governance to update the Actions Log with the items reported at the meeting.

### **Update from Home Office on BS27**

- 2.4 The Council received and noted an update paper from the Home Office following the submission of a retention application which was considered out-of-committee (with the recommendation it went forward to the Secretary of State) following the February meeting, for records in BS 27. The Council had asked a number of questions and was content with the responses provided.

### **Verbal Update on S46 Code of Practice**

- 2.5 The Council was advised that the draft of the Section 46 Code of Practice had now been considered by Cabinet Office. A number of suggested amendments had been made and the Government Audience team at The National Archives was working with Cabinet Office on these. The revised draft will be brought back to the Working Group and Council for final scrutiny.
- 2.6 Lucy Fletcher advised that this matter was still a priority for The National Archives, and the challenge to conclude the work was not underestimated.
- 2.7 Following discussion on the delegation of Section 66 to formalise the work of the Council at the February meeting, it had been suggested that Section 69 of the Deregulation and Contracting Out Act 1994 might provide the clarity required for the Secretary of State to delegate this work.
- 2.8 The Office of the Master of the Rolls and The National Archives will contact the DCMS Legal and Arm's Length Bodies teams to pursue this.
- 2.9 The Chairman suggested that it would be useful for him to meet with the Secretary of State to discuss the work of the Advisory Council and specifically the Code of Practice. The National Archives will liaise with DCMS to arrange a meeting.

**ACTION:** The Office of the Master of the Rolls and The National Archives will jointly contact the DCMS Legal and Arms Length Bodies to pursue the matter of Section 66 delegation.

**ACTION:** The National Archives to arrange a meeting between the Secretary of State and the Master of the Rolls.

## **3. Ministry of Defence (MOD)**

### **Nuclear Records Review**

- 3.1 Representatives from the Ministry of Defence joined the meeting to provide an update on a review of records owned by itself and the Nuclear Decommissioning Authority.

3.2 A previous update had been submitted to the February meeting, but the Council had asked for more detailed information regarding methodology, communications and timetabling.

3.3 The Council noted the report.

#### **Oral Update on Personnel Records**

3.4 Following discussion at the last meeting, Council received a brief update on progress with regard to the transfer of MoD Personnel records.

3.7 The Council noted the report and requested a further update at the November meeting.

NB: Some agenda items were taken out of order due to the availability of external guests joining remotely.

### **4. Administrative Matters**

#### **Annual Report**

4.1 The Council reviewed the draft Annual Report for 2019-20, which would be appended to the report by The National Archives and laid before Government.

4.2 A few amendments had been suggested prior to the meeting, and one or two more at the meeting. The Deputy Chairman agreed to incorporate these into the text, in consultation with those who had proposed them, out of committee.

4.3 The Council approved the report, subject to the amendments.

4.4 The Chair thanked Trevor Woolley and Patricia Humphries for drafting the annual report.

**ACTION:** Deputy Chair to finalise amendments to the Annual Report in consultation with members out of Committee.

### **5. Chief Executive Officer's Report**

5.1 The Chief Executive and Keeper introduced his update paper on current issues and ongoing matters.

#### **Support for the Wider Archive Sector**

5.2 Council members were pleased to note the work being undertaken to support the protection of documentary heritage in businesses which were struggling or failing, especially during the current COVID-19 situation.

5.3 The Chief Executive explained that supporting the wider archive sector was a major focus of his remit as Historical Manuscripts Commissioner in addition to The National Archives' position as a leadership body for archives. The importance of retaining archival records was discussed and the Council noted that engagement with the relevant departments was ongoing as well as continued contact with insolvency agencies and administrators.

#### **Impact of COVID-19**

5.4 The Chief Executive provided an update on a new temporary service offering free access to digital records during the closure period. The initial take up had been extremely high, with a 3,000% increase in digital downloads in the first few weeks. It was thought that the service would continue for a limited time once the archives opened again, as it was likely that there would be very limited onsite service for some time.

- 5.5 With regard to licencing terms, all licencing partners had been consulted, and the fair use terms had been refreshed. The service was being offered on a sign-up basis, with a limited number of downloads permitted each month.
- 5.6 The Chief Executive advised that the physical transfer of records to The National Archives had been suspended during the lockdown period. Some departments were able to carry out a very limited review of records and this was likely to have an impact on the schedules considered by the Council. There was also an increased risk of departments falling out of compliance. This had been discussed with ministers who had been made aware of the risks around compliance with the 20 year rule and the ability of the Council to fulfil its function.
- 5.7 It was likely that over the next few months, the size of schedules, especially those for closures, would be reduced, but the number of retention applications would increase.

## **6. Foreign and Commonwealth Office**

### **FCO Draft Checklist**

- 6.1 A representative from the Foreign and Commonwealth Office joined the meeting to discuss an updated FCO checklist of items not requiring explanation beyond elements required by the Council.
- 6.2 The Council were advised that the checklist now included the Explanatory Memoranda, which was being incorporated to improve understanding and save time for all parties.
- 6.3 Some minor changes had been suggested by members and these were discussed and agreed.
- 6.4 Council members were concerned that on occasion, where the checklist was referred to in the schedules, the department did not provide any additional explanation. It was confirmed referencing the checklist did not absolve the FCO from explaining why release of a record would be damaging to relations to another country in specific instances.

### **Application of FOIA Exemptions 27**

- 6.5 Following discussion at the meeting in February, the Council had queried the application of FOIA exemption 27(1) in addition to 27(2) or 41 as appropriate in cases of records where the damage to international relations was argued to be not with the country which had sourced the information, but a third party. The Council was grateful for the FCO's response, with which it was largely content, but noted that there were instances in the schedules where the reason for the damage to the third country was not specified, as it needed to be in such cases.
- 6.6 The Council thanked FCO for joining the meeting and for providing clear responses to a number of questions.

## **7. Access to Records**

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

### **Outstanding Queries**

- 7.3 The Council noted that many of the instances where responses to Council queries were being carried over was due to the current COVID-19 situation.
- 7.4 A schedule of closure applications, together with a schedule of retention applications, was sent to members prior to the meeting. Members had been asked to raise any queries within 10 days.
- 7.5 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.
- 7.6 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.
- 7.7 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 attached annex to these minutes.

#### **Queries on closure and retentions schedules (February 2020)**

- 7.8 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 attached annex to these minutes.

#### **Queries on closure and retentions schedules (May 2020)**

- 7.9 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, all as noted in the annex to these minutes.

#### **Queries on absolutes, comments and typographical errors (May 2020)**

- 7.10 Council members asked whether it would be possible for applications regarding the Royal Household to clarify whether the record related to the Monarch or a member of the Royal Family. The Senior Access Manager agreed to liaise with Cabinet Office.

**ACTION:** Senior Access Manager to liaise with Cabinet Office regarding clarification in matters relating to the Royal Household.

**At 13.05 the Council adjourned for LUNCH and resumed again at 13.30**

### **8. Update on the Forum on Historical Manuscripts and Academic Research**

- 8.1 The Deputy Chair, Hillary Bauer, provided a verbal update on the Forum meeting held at the beginning of March. A number of interesting topics had been discussed, including:
- The COVID-19 situation, particularly with reference to the impact on the wider archive sector
  - The proposed document ordering trial at The National Archives
  - Records at Risk
  - The Skills Audit being undertaken for Forum members
  - Plans for the 100<sup>th</sup> anniversary of the Manorial Document Register in 2022
- 8.2. The Council was advised that the meeting had been the last to be attended by Lesley Ferguson who is due to retire in September 2020 and a vote of thanks had been recorded for her valued contribution to the Forum. Council members also expressed their thanks and appreciation. The meeting had also welcomed Leon Litvack as a new member of the Forum.

8.3 Council members made a number of suggestions regarding the plans for the Manorial Documents Register anniversary, which were welcomed and would be considered. The Chair advised that 2022 was also the 100<sup>th</sup> anniversary of the 1922 Law Property Act and suggested there might be an opportunity for a joint event which could perhaps take place in the Law Courts, given the especial importance of the 1922 Law of Property Act in the history of legislation.

## 9. Departmental Retention Requests

9.1 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.

9.2 **The Council's decisions made in respect of each paper has been noted below. Any resulting approval recommendations will 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 two years from the following departments:

- Ministry of Defence
- Attorney General's Office
- Department for Education
- Department for Environment, Food and Rural Affairs

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

- Companies House
- Historic England
- Health and Safety Executive
- Metropolitan Police
- Office for National Statistics
- Serious Fraud Office
- UK Debt Management Office

There were applications for retentions of between one and five years from the following places of deposit:

- British Library
- Royal Botanic Gardens Kew
- Postal Museum and Archive
- Tate

Updates were received from the following departments:

- Ministry of Justice
- Foreign and Commonwealth Office
- Home Office
- Ministry of Housing, Communities and Local Government

Updates were received from the following arm's length bodies:

- Welsh Government
- Foreign and Commonwealth Office
- Home Office
- Ministry of Housing, Communities and Local Government

## 10. FOI Panel Update

- 10.1 The Council received a paper providing an overview of the issues and work undertaken by Panels, which included the most recent service statistics and the high volume of requests being handled by the FOI Centre, and responded to a number of matters raised by Panel members.
- 10.2 It was noted that there continued to be a number of queries regarding the quality of the applications, specifically lack of clarity (including in relation to assumed ages of individuals in S38 cases) and grammatical errors.
- 10.3 The Council discussed a specific panel case where the panel had not been able to reach an agreement over the application of Section 31. It was suggested that the sub-section applied was not correct, which was resulting in a very confusing explanation for keeping the record closed due to the case still being considered open.
- 10.4 Whilst the Council agreed that it was not their responsibility to define what an open case should be, there was justification in requesting more detail on how opening the file might prejudice further investigations, given that those responsible for the crime had been convicted.

**ACTION:** The FOI Manager will refer the case back to the Metropolitan Police.

**ACTION:** The FOI team to provide additional information in cases relating to S38, to clarify whether the age of the individual concerned is known or assumed.

- 10.5 The Chair thanked Panel members and the FOI team for their work.

## 11. Any Other Business

- 11.1 The Chair thanked The National Archives for arranging and hosting the first meeting of the Council by video link. Council members agreed that whilst the circumstances were unusual, the meeting had been very successful.

**There being no further business, the meeting was closed at 15.00pm.**