



**ADVISORY COUNCIL ON
NATIONAL RECORDS AND ARCHIVES**

Date: 13 July 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
Lady Moira Andrews
Ms Hillary Bauer, (Deputy Chair of the Forum)
Ms Liz Copper
Ms Lesley Ferguson
Dr Helen Forde
Mr Peter Gooderham
Mr Stephen Hawker
Mr Martin Howard
Professor Phillip Johnson
Professor Leon Litvack
Ms Helene Pantelli
Mr David Rossington
Mr Michael Smyth
Ms Jeannette Strickland
Mr Martin Uden
Mr John Wood

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

Non-members:

TNA: Ms Asha Bagayat, Head of Governance
Ms Victoria Davis, Senior Access Manager
Mr Andrew Dyer, Strategic Compliance Lead
Ms Lucy Fletcher, Director for Government
Mr Jeff James, Chief Executive and Keeper
Ms Helen Potter, Head of the Freedom of Information Centre
Mr Sam Whaley, Head of Strategy and CEO's Office

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

Departmental Attendees: Mr John Nelstrop, HMT (Item 3)
Mr David Capus, Met Police (Item 4)

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.

2. Minutes and matters arising

Minutes of the meeting held on 11 May 2020

- 2.1 Subject to minor amendments, the minutes of the meeting held on 11 May 2020 were approved as a correct record.

Actions Log

- 2.2 The Action Log was noted, with the following actions marked as completed:

Action 69 - Action 83 - Action 84 - Action 85 – Action 86 – Action 88 – Action 89 - Action 90 – Action 91 – Action 92

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

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

3. Update on the Forum on Historical Manuscripts and Academic Research

- 3.1 The Deputy Chair, Hillary Bauer, provided a brief update. No meeting had been held since the last Advisory Council, but the next meeting will be on 29th July and will take place by video link. Items for discussion at that meeting will include the effects of COVID-19 across the archives sector, issues around recent cases of private owners withdrawing records from local offices to sell at auction, and the Manorial Documents Register anniversary. There will also be an update on the work and responsibilities of places of deposit.

4. Verbal Update on Government Information Management Landscape – COVID-19

- 4.1 Lucy Fletcher, Director for Government and Information Rights at The National Archives, gave a brief update on the current situation and how it was affecting the record selection, review and transfer process across Government.

- 4.2 The National Archives had continued to support Government departments where possible, providing access to original records where safe to do so for specific issues, including government response to COVID-19, public inquiries etc.
- 4.3 The team had led remote engagement with departments, Arm's Length Bodies and Places of Deposit to understand where compliance with the 20 year rule is under pressure. The impact of the pandemic is still being realised and although steps are being taken to return to work, staff access and social distancing issues, especially in older buildings, are contributing to continued delays. The majority of the work on sensitivity reviewing has also stalled, partly due to the demographic of colleagues involved in this work.
- 4.4 However, discussions have been taking place with departments and bodies to explore shared service offers and other models of service delivery through the use of the Crown Commercial Services framework.
- 4.5 Council members were advised that once work finally resumes, it was likely departments' selection decisions would result in more applications for closure due to the backlog caused by the COVID-19 situation. The volume of digital information selected is also likely to increase, which will almost certainly result in a rise in closure applications.
- 4.6 Council was reassured to note that considerable efforts were being made to adapt current plans in order to ensure compliance wherever possible, and there was no evidence at all that departments may be looking to use the current situation to delay transfers.

5. **HM Treasury (HMT)**

- 5.1 John Nelstrop from HMT Treasury joined the meeting to discuss written updates on work relating to the annual release programme previously agreed with the Council. (Paper 7.1.2 July 2019: RI 137 – Paper 8.1.10 November 2019: RI 134)
- 5.2 Members were reassured to note that good progress on paper records had been made before the current lockdown situation and it was hoped that records which were already prepared for transfer could start to be transferred to The National Archives within the next few weeks. However it was acknowledged that there would be an impact on the amount of work which could be completed before the end of the year.
- 5.3 With regard to digital records, collaboration with the Foreign & Commonwealth Office (FCO) to identify whether the system they had developed could be adapted for the digital review of Treasury records was going well, and a feasibility study was about to start. It was anticipated that a decision on whether the FCO system was suitable could be made at the end of the year.
- 5.4 **DECISION:** The Council thanked Mr Nelstrop for joining the meeting.

6. **Metropolitan Police**

- 6.1 Mr David Capus from the Metropolitan Police Service joined the meeting to provide an update on their records transfer programme, following a written report to the council meeting in May. (Paper 6.3.3 May 2019: RI136)
- 6.2 The Council was concerned that agreed targets for the transfer of records was unlikely to be met due to an apparent lack of urgency to resolve issues. Mr Capus advised that three additional staff posts had recently been filled and it was hoped they would be able to commence work within the next few weeks, once staff were able to access the building again.

- 6.3 Staff had been able to carry out some work remotely using the record management system to carry out high level selection. Records stored offsite were due to be delivered as soon as staff were back, when a more detailed review could be undertaken.
- 6.4 Whilst the Council was supportive of the efforts made by the team, it felt that anticipated funding cuts and a lack of high level support could see the work fall further behind.
- 6.5 The Council thanked Mr Capus for joining the meeting and for his comprehensive report.
- 6.6 The Council noted that the Strategic Compliance team at The National Archives was working to establish regular support sessions with the Metropolitan Police.

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 COVID19 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 (May 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 (July 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 (July 2020)

- 7.10 The Council noted the amendments made, clarification or additional information provided.

General Matters

- 7.11 Council members raised issues about the level of its exposure to the detail of derogatory comments supporting S27(1) exemption applications, especially where the FCO checklist was cited; the level of detail accompanying S27(2); and the basis for making a public interest judgement under S37. It was agreed that The National Archives should draft papers discussing these issues for discussion at the September training day.

ACTION: The National Archives to draft papers on the issues for discussion at the September training meeting.

8. Verbal Update on S46 Code of Practice and S66

- 8.1 The Deputy Chair provided a brief background on the issues surrounding S46 and S65/66. Discussions had commenced with government in 2016 as the Council had concerns about whether some aspects of its operation were consistent with statute.
- 8.2 In respect of the Review of the S46 Code of Practice, the Council was advised that the Steering Committee has agreed a draft, which will be put forward to DCMS Legal prior to being submitted to the Secretary of State for clearance. The Secretary of State will then seek formal approval from the Minister for the Cabinet Office, the Information Commissioner and the relevant Northern Ireland Minister. If approved, the draft Code will be issued for public consultation.
- 8.3 The Chair advised that he was meeting with the DCMS Minister later in the week, and these issues would be discussed.

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 one year from the following departments:

- Attorney General's Office

There were applications for retentions of one year from the following arm's length bodies:

- Ofsted
- ACAS
- Privy Council Office
- UK Export Finance
- Permanent Committee on Geographic Names
- Food Standards Agency

Updates were received from the following departments:

- Her Majesty's Revenue & Customs
- Department of Education

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

- Animal and Plant Health Authority
- Competition and Markets Authority
- Civil Aviation Authority

10. Freedom of Information (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 responded to a number of matters raised by Panel members.
- 10.2 The FOI Manager advised that fewer FOI requests had been received over the last two months, but these were now steadily increasing, and the team had had to adopt new working patterns, especially with regard to the FOI review practices, due to the inability to access the building and consult original records. This had led to some backlog but it was hoped that staff would be able to return to the building in a limited manner in the next few weeks.
- 10.3 The Chair thanked Panel members and the FOI team for their work.

11. Chief Executive Officer's Report

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

Archives Sector

- 11.2 Council members were pleased to note the amount of support that The National Archives had continued to provide the archive sector during the COVID-19 pandemic.
- 11.3 The free 'Novice to Know-How' digital learning programme for practitioners, developed in partnership with the Digital Preservation Coalition (DPC) had been over-subscribed three times and work on modelling digital preservation risk was also being shared through the DPC. Two workshops had sold out and a third was being organised.

Legislation Services

- 11.4 The National Archives had continued to ensure that new legislation was registered and publishing rapidly and that amendments to affected legislation were swiftly incorporated throughout the lockdown period. New Statutory Instruments were registered and published on a Sunday, three Sundays in succession and up to date texts were available on the website within hours of the legislation being made.
- 11.5 The Council was very pleased to note the continued success and hard work being undertaken by the team and recorded a note of thanks to The National Archives.

Government and Information Rights

- 11.6 Council members queried the background behind a Written Ministerial Statement by the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office which was being laid. The statement concerned the Cabinet Office's ability to transfer specific records to The National Archives by the end of the calendar year, as agreed, due to impact of COVID-19.
- 11.7 The Council was advised that the records from Cabinet Office were released to the media in a biannual press release event, with the next due in July, and despite expectation that this would still go ahead, it was felt important to clarify the position. There were no plans to reduce momentum on adherence to the 20 year rule, and the statement was not relevant for other departments.

11.8 The Council was pleased to note that plans to re-open The National Archives to a limited number of visitors were being finalised and felt that the guidance which had been published on the website was very helpful.

12. Any Other Business

12.1 The Master of the Rolls advised that he would be retiring from his role at the end of the year and the meeting in November would be his last. It was hoped that his successor would be announced soon, and would be invited to the November meeting.

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