



**ADVISORY COUNCIL ON
NATIONAL RECORDS AND ARCHIVES**

- Date:** 9 November 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
Dr Jeannette Strickland
Mr Martin Uden
Mr John Wood
- Minutes:** Isabel Saunders, Senior Governance Coordinator and Advisory Council Secretariat (TNA)
- Non-members:** Ms Asha Bagayat, Head of Governance
TNA: 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 Sam Allan, Office of the Master of the Rolls
- Chancellor's Office:** Sir Geoffrey Vos, Chancellor of the High Court
- Departmental Attendees:** Mr Ian Henderson, MoD (Item 5)
Mr Steve Law, MoD (Item 5)
Mr Tony Lewis, MoD (Item 5)
Mr Nicholas DeLacy-Brown, HMRC (Item 6)
Mr Kevin Fletcher, HMRC (Item 6)
Ms Tanya Rossington, HMRC (Item 6)
Ms Lynda Bennett, Historic England (Item 7)
Ms Katie Espley, British Library (Item 8)
Ms Jonathan Fryer, British Library (Item 8)

1. Welcome, introductions, apologies and declarations of interest

- 1.1 The Chair welcomed everyone to the meeting.
- 1.2 The Chair introduced Sir Geoffrey Vos, who is to take over the position of Master of the Rolls in January 2021.
- 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 Ms Lesley Ferguson recused herself from discussions on Historic England, due to her involvement with their advisory group.

2. Minutes and matters arising

Minutes of the meeting held on 13 July 2020

- 2.1 Subject to amendments proposed by the Deputy Chair, the minutes of the meeting held on 13 July 2020 were approved as a correct record.

Minutes of the meeting held on 25 September 2020

- 2.1 Subject to amendments proposed by the Deputy Chair, the minutes of the meeting held on 25 September 2020 were approved as a correct record.

Actions Log

- 2.2 The Action Log was noted, with the Head of Governance confirming all actions for July and September had been completed. The following actions were closed:

Action 32 - Action 40 - Action 77 - Action 79

ACTION: the Senior Governance Coordinator to update the Actions Log with the items reported at the meeting.

3. Chief Executive Officer's Report

- 3.1 The Chief Executive and Keeper introduced his update paper on current issues and ongoing matters.
- 3.2 Since the report had been published TNA's services had been suspended for readers again in line with national restrictions due to Covid 19. In light of this, the capacity for digital downloads online had been doubled for readers and continued as a free service. After national restrictions end TNA will take a decision on what services it is able to offer.
- 3.3 Council members recommended a revision to make clear that it was cataloguing and not appeals to the Privy Council which took place during lockdown.

4. Administrative Matters

Update on the Governance Working Group

- 4.1 The Deputy Chair gave an update on the Working Group's focus since the September 2020 meeting.
- 4.2 On S66, a letter had been sent to the department for Digital, Culture, Media and Sport (DCMS) offering to work with them on any future proposals.
- 4.3 On S27 for derogatory comments, the Senior Governance Coordinator had written to the Foreign and Commonwealth Development Office (FCDO) with the Council's request and the FCDO had confirmed they would give further details where section 27(1) was engaged. The Deputy Chair noted Council members would need to consider how to approach any ongoing items already submitted for closure.
- 4.4 At the September 2020 meeting Council members received a briefing on the Transfer of Digital Records interface, following this the Working Group had requested a briefing on how the increased transfer of digital records might affect the procedures for the Advisory Council, which had been scheduled.
- 4.5 The Deputy Chair invited comments from members on procedures for considering closure and retention requests, particularly in light of any extended effects of Covid 19 on departments. Any suggestions would be discussed as part of the wider work of the Governance Working Group. Lucy Fletcher noted that TNA would be willing to work with the Governance Working group and the Council to look at processes.

Update on Government Information Management Landscape

- 4.6 Ms Lucy Fletcher gave a brief update on the current situation and how it was affecting departments.
- 4.7 Council members queried whether seminars or workshops had been organised for public record holders to discuss their approach to assessing and transferring files throughout lockdown. Ms Lucy Fletcher noted there had not been any formal seminars but TNA were involved with the Government's Knowledge and Information Management community and were supporting the sharing of best practice. TNA was also supporting any departments who are struggling with the impacts of Covid 19.

5. Ministry of Defence (MoD)

- 5.1 Members asked TNA how it proposed to deal with the large number of FOI requests which would accompany the transfer of the records. Ms Lucy Fletcher responded that the focus would be on transferring open collections to begin with. Longer term there were ongoing discussions with the FOI centre to consider service provision, but it would be difficult to predict the level of demand. The initial transfers would help predict what resources would be needed.
- 5.2 Members asked when the public would be apprised of this transfer. Ms Fletcher noted TNA was working to establish a communication plan, with a focus on managing expectations and this could be brought back to Council. There were however, already references to the project in various public documents.
- 5.3 Members queried TNA's progress with digitisation and commercial partnerships for this project. Ms Fletcher said there had been conversations with potential commercial partners, but it would be necessary to have the initial records to develop this further.

- 5.4 Mr Ian Henderson, Mr Steven Law and Mr Tony Lewis from MoD joined the meeting to discuss written updates on the transfer of service personnel records.
- 5.5 Mr Henderson summarised the update.
- 5.6 Members were reassured that progress had been made although had concerns over the transfer of the service personnel records.
- 5.7 **DECISION:** The Council thanked Messrs Henderson, Law and Lewis for joining the meeting.
- 5.8 **POST MEETING NOTE:** Following the meeting an amendment to the Service Personnel report, and explanation of this amendment was circulated to all members of the Council. The amendment was noted by members.

6. Her Majesty's Revenue and Customs (HMRC)

- 6.1 Ms Tanya Rossington and Mr Nicholas DeLacy-Brown and Mr Kevin Fletcher joined the meeting to discuss their updates.
- 6.2 Ms Rossington summarised the impact COVID-19 had had on HMRC's plans. She noted HMRC would be happy to provide a further update in February.
- 6.3 Council members emphasised their concern over HMRC's plans which had been compounded by Covid 19, but were present before the pandemic.
- 6.4 **DECISION:** The Council thanked Ms Rossington and Messrs DeLacy-Brown and Fletcher for joining the meeting.

7. Historic England

- 7.1 Ms Lynda Bennett from Historic England joined the meeting to provide an update on their records transfer programme.
- 7.2 The Council noted the overall picture was positive given senior level support and the offer to provide regular updates.
- 7.3 **DECISION:** The Council thanked Ms Bennett for joining the meeting and providing the update.
- 7.4 **ACTION:** The Senior Governance Coordinator to investigate policy on public bodies becoming charities and the implications for the records they hold.

8. British Library

- 8.1 Ms Katie Espley and Mr Jonathan Fryer from the British Library joined the meeting to provide an update on their records management programme.
- 8.2 **DECISION:** The Council thanked Ms Espley and Mr Fryer for joining the meeting.

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

- 9.1 The Deputy Chair, Hillary Bauer, provided a brief update on the work of the forum this year. She noted the Forum had been very pleased with the quality of the papers received.

- 9.2 The Chair noted that following recommendations by the Forum, TNA had written to the Royal Courts of Justice to formally request the use of the building for a celebration for the Manorial Documents centenary and on assistance with the survey.
- 9.3 Leon Litvack confirmed he had been invited on to the Manorial Documents Advisory Group to represent the views of the Forum.

10. Access at Transfer - FAQs

- 10.1 Ms Vik Davis, the Senior Access Manager, gave a short briefing session on Access at Transfer covering recent queries raised by Council members.
- 10.2 The Chair encouraged anyone with comments or questions to discuss these with Ms Davis, with an agenda item at the next meeting if required.

11. Access to Records

- 11.1 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

- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 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.

Queries on closure and retentions schedules (July 2020)

- 11.6 As noted in the Governance Working Group Update the FCDO had agreed to give further details of derogatory comments where S27(1) was referenced going forward. It was agreed that those items previously submitted but awaiting Council approval because of the absence of such detail would be approved, but with a shorter closure period of five years, so that the Council could re-review them when the new regime, agreed with the FCDO would apply.
- 11.7 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.

Queries on closure and retentions schedules (September 2020)

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

Queries on absolutes, comments and typographical errors (September 2020)

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

Queries on closure and retentions schedules (November 2020)

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

Queries on absolutes, comments and typographical errors (November 2020)

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

General Matters

11.12 Council members raised concerns about response times from departments in light of Covid 19. Members appreciated departments may be experiencing difficulties responding to queries at this time and that consideration for these situations should be dealt with by the Governance Working Group.

ACTION: The Governance Working Group to consider this at their meeting.

12. Departmental Retention Requests

12.1 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.

12.2 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 Senior Governance Coordinator 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 to five years from the following departments:

- Cabinet Office
- Department for Transport
- Home Office
- Foreign, Commonwealth and Development Office
- Department for Work and Pensions
- Ministry of Justice
- Department for Business, Energy and Industrial Strategy
- Department for Environment, Food and Rural Affairs
- Northern Ireland Office
- Department for Education
- Department for Digital, Culture, Media and Sport
- Attorney General's Office
- Her Majesty's Treasury
- Ministry for Housing Communities and Local Government

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

- Science Museum Group
- Welsh Government
- Royal Parks

- Insolvency Service
- Crown Prosecution Service
- Forestry Commission
- Natural England
- National Audit Office
- Companies House
- Her Majesty's Land Registry
- Natural Resource Wales
- Office for National Statistics
- Ofwat

Updates were received from the following departments:

- Cabinet Office
- Department for Transport
- Home Office
- Foreign, Commonwealth and Development Office

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

- Crown Prosecution Service
- Civil Aviation Authority
- Medicines and Healthcare products Regulatory Agency

13. Freedom of Information (FOI) Panel Update

- 13.1 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.
- 13.2 Members raised Section 31 based on discussions held in previous panel meetings. The FOI Manager advised she had written to the MoJ on this matter and would update the FAQs accordingly. Members queried whether the particular panel issue concerning S31 had been closed. The FOI Manager noted it had been finalised, but that she would confirm this with the involved members.
- 13.3 The Chair thanked Panel members and the FOI team for their work.

ACTION: The FOI Manager to confirm to members the S31 matter had been finalised.

14. Any Other Business

- 14.1 Advisory Council members wished to thank TNA for their momentum and effort to provide papers to Council in spite of the challenges of Covid 19.
- 14.2 Concluding his last meeting of the Council as Master of the Rolls, the Chair emphasised the importance of the Advisory Council and the work it did. The Chair thanked the Deputy Chair for all his support with the Council over the many years and the work of the Governance Working Group. The Chair commended all members of the Advisory Council for the attention to detail they displayed in undertaking their duties. The Chair thanked TNA for all their support to the Advisory Council, and gave particular mention to Patricia Humphries for her long service to the Council and Jeff James for his leadership of TNA. He also thanked TNA for the gift of a print of legal London.

- 14.3 Jeff James thanked the Chair for his leadership and his role as part of the public records system and expressed his gratitude on behalf of all of TNA.
- 14.4 The Deputy Chair expressed his gratitude to the Chair on behalf of all the Council members. He noted that notwithstanding the many responsibilities of the office of Master of the Rolls, the Chair had always found time to engage fully with the Council and champion its cause with Ministers.
- 14.5 The Chair thanked everyone and closed the meeting by wishing everyone well.

There being no further business, the meeting was closed at 15.24pm.