



**ADVISORY COUNCIL ON
NATIONAL RECORDS AND ARCHIVES**

Date: 25 February 2022
Time: 9:00-15:00
Venue: Meeting by Video Link

Chair: Sir Geoffrey Vos, Master of the Rolls

Members: Mr Trevor Woolley, Deputy Chair
Lady Moira Andrews
Ms Liz Copper
Dr Nigel Fletcher
Dr Helen Forde
Mr Peter Gooderham
Mr Stephen Hawker
Mr Martin Howard
Professor Phillip Johnson
Professor Leon Litvack, Deputy Chair of the Forum
Sir David Natzler
Ms Helene Pantelli
Mr David Rossington
Mr Jonathan Scherbel-Ball
Dr Jeannette Strickland
Mr Martin Uden
Mr John Wood

Minutes: Isabel Saunders, Senior Governance Coordinator and Advisory Council Secretariat (TNA)

Non-members:

TNA: Ms Sue Browne, Head of the FOI Centre
Ms Victoria Davis, Senior Access Manager
Strategic Compliance Lead
Ms Lucy Fletcher, Director for Government and Information Rights
Mr Jeff James, Chief Executive and Keeper
Ms Elana Kudelka, Governance Coordinator
FOI Manager
Mr Sam Whaley, Head of Strategy and CEO's Office

MR's Office: Mr Terry McGuinness, Office of the Master of the Rolls

Departmental

Attendees: Centre for Environment, Fisheries and Aquaculture Science (CEFAS)
(Item 5)
Metropolitan Police (Item 8)
Tate (Item 9)

1. Welcome, introductions, apologies and declarations of interest

- 1.1. The Chair welcomed everyone to the meeting and welcomed the new members of the Advisory Council, Nigel Fletcher and Jonathan Scherbel-Ball to their first meeting.
- 1.2. The Chair noted it was Ms Davis' last meeting working with the Advisory Council and thanked her for her service to the Council over a number of years.
- 1.3. Sir David Natzler submitted apologies for absence.
- 1.4. The Chair invited declarations of interest. Mr David Rossington declared he had worked with Tate prior to his appointment to the Advisory Council but on a matter unrelated to Advisory Council business.

2. Minutes and matters arising

Minutes of the meeting held on 19 November 2021

- 2.1. Subject to amendments proposed by members, the minutes of the meeting held on 19 November 2021 were approved as a correct record.

ACTION: The Secretariat to update the minutes with the suggested amendments and upload the public set of minutes to the website.

Actions Log

- 2.2. The Action Log was noted. The following actions were closed:

Items 30, 31, 32, 35, 36, 57 and 67.
- 2.3. Members also proposed an amendment to item 64 and to reclassify item 34 as red.

ACTION: the Secretariat to update the Actions Log with the items reported at the meeting.

3. Chief Executive Officer's Report and Government Landscape Update

- 3.1. The Chief Executive and Keeper introduced his update paper on current issues and ongoing matters. Ms Fletcher also provided an update, on the Security and Intelligence Instrument, which had been presented to the Advisory Council at its November meeting.
- 3.2. Members asked The National Archives about the reopening of record offices across the country. Mr James noted The National Archives was continuing to monitor the full reopening of record offices and noted the need to be flexible.
- 3.3. Members asked about the complaints received following release of the 1921 census, specifically those about the cost of accessing the records. Mr James noted that there had been a handful of complaints from those objecting to the cost, however he noted there was a cost to digitising these records in the first instance and it was necessary for those carrying out the digitisation to recoup their costs. Members congratulated The National Archives on releasing the census on time in spite of the challenges created by the pandemic.
- 3.4. Members asked about the pilot release of the Ministry of Defence (MoD) service personnel records. Ms Fletcher responded that this would be a physical release. This would only be a small portion of the wider series.
- 3.5. Members asked about the Information Management Report (IMR). Mr James noted a version of the IMR had been used throughout the entirety of the twenty-year rule transition period. It was likely the results of this IMR would demonstrate that the policy intent of the twenty-year rule had not been met over the transition period. Ms Fletcher added that the IMR provided a snapshot view of departments' record management performance. Following the assessment of the results, The National Archives would then be able to present this information to ministers and reflect on the health of public records system. Whilst this would note the policy intent had not been met, it would, however, be able to show that compliance levels were very high amongst departments. Ms Fletcher agreed to bring a summary of the IMR information back to Council at its summer meeting.

ACTION: Ms Fletcher to report back to Council with a summary of the IMR data.

- 3.6. Members asked if, as a result of the end of the twenty-year transition, a higher than normal number of retention requests could be expected for the November meeting, or if there were any other implications for the Advisory Council. Ms Fletcher confirmed there was likely to be a high volume of applications to the November meeting.
- 3.7. Members asked if The National Archives was aware of any government plans to mark the completion of the transition period. Mr James responded at this stage there were no specific plans The National Archives was aware of. Ms Fletcher noted there was real engagement from government currently on the management of digital information and that The National Archives was keen to provide its expertise where it could.
- 3.8. The Council noted the report.

4. Update from the Forum on Historical Manuscripts and Academic Research

- 4.1. Prof Leon Litvack gave an update on the work of the Forum and highlighted its most recent work which involved implementing the plans set out in the 2022 Strategic Priorities. He also updated members on the plans for the manorial document events being held in 2022.
- 4.2. Members noted a key focus of the Forum should be to increase the profile of the group, and specifically to focus on its responsibility to promote the views of the wider sector to the Historical Manuscripts Commissioner. Members agreed the manorial document events running in 2022 presented good opportunities to promote the work of the Forum.
- 4.3. The Council noted the report.

5. Governance Working Group Update

- 5.1. The Deputy Chair provided an update on the recent meeting of the working group on 19 February. He highlighted three items which needed discussion by the full Council.
 - An update on file audits;
 - An update on S37 of the Freedom of Information (FOI) Act and also associated guidance on records concerning the royal household;
 - Next actions on exemptions S24 and S26 of the FOI Act.
- 5.2. On file audits he highlighted that recent file audits had not provided the assurance Council members had sought. The process for these audits had been discussed; however and it was hoped that engaging with specific

departments after audits would assist. In light of this the Working Group planned to invite the Foreign, Commonwealth and Development Office (FCDO) to their next working group meeting. Additionally the next file audit would be held in the coming months.

- 5.3. The Deputy Chair noted the current guidance issued to departments on using S37 FOI exemptions had not been updated recently, but that it highlighted the importance of the public interest being tested on a case-by-case basis. Members noted, given the guidance had not been revised recently, that it would not reflect the relevant changes to the law in this area. The Deputy Chair highlighted that Council was awaiting a paper from the Cabinet Office with revised advice addressing these points; the Council would need to take a view on the application of S37(1)(ac) on a number of entries on the schedules for the meeting.
- 5.4. On S24 and S26 the Deputy Chair told members that the working group had discussed the current process for records covered by these exemptions. They had noted these were not presented to the Advisory Council, but instead to a separate body, and that this had been formally noted in a letter by the Lord Chancellor in 2006. This meant that it could not be said that the Council advised on the balance of public interest in the case of all applications for closure under qualified exemptions. As the Advisory Council now reported to the Secretary of State for Digital, Culture, Media and Sport (DCMS), it would be useful to clarify the current situation with the Secretary of State and confirm she is content with the arrangements.

DECISION: Members agreed the Deputy Chair should write to the Director General at DCMS, on behalf of the Advisory Council, explaining the current situation and confirming if they are content with these arrangements. Members also agreed this would be a good opportunity to raise S65 and S66 again.

ACTION: The Deputy Chair to write to the appropriate Director General at DCMS.

- 5.5. Members also discussed absolute exemptions, which had been considered at the working group meeting. At the meeting members had agreed that Council should not view absolute exemptions, as it did not advise on these. Members noted they still needed to consider the wider health of the system without having the absolute exemptions at each meeting. They noted the working group suggestion to receive an update report from The National Archives at the November meeting. Ms Fletcher clarified that The National Archives would bring an update report to members but that The National Archives did not have a remit to provide assurances on this matter.

- 5.6. Members also queried the current remuneration agreement for file audits. The Deputy Chair confirmed that this had been considered and noted by the working group but that remuneration and the current level of remuneration was based on an agreement with DCMS. For this to change it would be necessary for the Council to renegotiate with DCMS.
- 5.7. Members also noted they had queries on the effects of diminishing sensitivities over time under S27(2). The Secretariat agreed to recirculate a paper on this to the Council.

ACTION: The Secretariat to upload the paper on diminishing sensitivities over time to the Council library.

6. Production of the Annual Report 2021/2022

- 6.1. The Secretariat reminded Council members their annual report would need approval at the May meeting in preparation for its presentation to Parliament in Summer. She invited members to give any comments on the drafting of the report.
- 6.2. Members noted they would like to include a reflection on the twenty-year rule transition period. They would also like to include information on the change to absolute exemptions. If possible they requested data for absolute exemptions be separated out from the rest of the data. Members also emphasised the need to highlight and explain in the body of the text, if there were significant changes of data from previous years.

ACTION: The Secretariat to liaise with the Deputy Chair and the Master of the Rolls on the draft annual report and to bring a final draft to Council in May.

7. S41 Breach of Confidence

- 7.1. Ms Davies introduced a paper on S41 and breach of confidence. This paper provided information on the effect of death on breach of confidence.
- 7.2. Members noted the paper.

8. Access to Records

- 8.1. The Council formally approved the acceptance of schedules seen outside the meeting, with the exception of any queries which were brought to the meeting.

- 8.2. 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.
- 8.3. 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.
- 8.4. 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.

Outstanding Queries

Queries on closure and retentions schedules (November 2021)

Queries on closure and retentions schedules (February 2022)

- 8.5. 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 comments and typographical errors (February 2022)

- 8.6. The Council noted the comments made.
- 8.7. Members queried the process for items used in public inquiries. Ms Davies clarified the process for these records if they were required directly from a department and also if the records had already been transferred to The National Archives.
- 8.8. Members also noted a point on the application of S27 and S40 exemptions together in derogatory comments cases and the lack of consistency in doing this. Ms Davies clarified that S40 should be applied to the relevant S27 exemptions when the individual was known to be alive. It was open to the Council to draw attention to inconsistencies in this practice in the schedules.

ACTION: The Secretariat to upload earlier working group guidance on this topics to the Council library for members' information.

9. CEFAS

- 9.1. A representative from CEFAS, joined the meeting to provide an update on the ongoing work at CEFAS and summarised the work undertaken since CEFAS' last report to the Council.

DECISION: The Council thanked CEFAS for joining the meeting.

10. Metropolitan Police

- 10.1. A representative from the Metropolitan Police, joined the meeting to provide an update on the ongoing work at the Metropolitan Police and summarised the work undertaken since their last report to the Council.

DECISION: The Council thanked the Metropolitan Police for joining the meeting.

11. Tate

- 11.1. Representatives from Tate, joined the meeting to provide an update on the ongoing work at Tate and summarised the work undertaken since their last report to the Council.

DECISION: The Council thanked Tate for joining the meeting.

12. Departmental Retention Requests

- 12.1. The Council considered papers from departments relating to the retention of records and updates on current retention instruments, 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 Secretariat 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 ten years from the following departments:

- Department for Digital Culture Media and Sport (DCMS)
- Ministry of Defence (MoD)

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

- Meteorological Office
- The National Archives

Updates were received from the following departments:

- Business, Energy & Industrial Strategy (BEIS)
- Department for Digital Culture Media and Sport (DCMS)
- Department for Levelling Up, Housing & Communities (DLUHC)

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

- Animal and Plant Health Agency (APHA)
- Information Commissioner's Office (ICO)
- Natural England

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 emphasised how useful additional details for FOI panels could be, in particular where ages were mentioned in S31 cases.
- 13.3. Members discussed being able to better cross-reference panel decisions on FOI cases to allow them to use this information when considering schedule applications.

ACTION: The FOI Manager and Secretariat to liaise on the best ways to share information provided in FOI panel papers, which was relevant to subsequent schedule entries, with Advisory Council members.

14. Any Other Business

- 14.1. The Secretariat made an announcement on membership matters and invited members to volunteer for the Spring file audit.
- 14.2. The Deputy Chair thanked everyone and closed the meeting by wishing everyone well.

There being no further business, the meeting was closed at 15.04pm.