



**ADVISORY COUNCIL ON
NATIONAL RECORDS AND ARCHIVES**

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

Chair: Sir Terence Etherton, Master of the Rolls

Minutes: Anne Hardy

Members: Mr Trevor Woolley, Deputy Chair
Ms Hillary Bauer
Mr Michael Smyth
Ms Jeannette Strickland
Ms Liz Copper
Mr John Wood
Mr Peter Gooderham

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 (up to and including item 5)
Ms Victoria Davis, Senior Access Manager
Ms Helen Potter, Head of the Freedom of Information Centre
Ms Anne Hardy, Secretary to the Advisory Council

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

Observer: Ms Lesley Cowley

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

- 1.1 The Chair welcomed the attendees.
- 1.2 There were apologies from Ms Lesley Ferguson, Dr Helen Forde and Lady Moira Andrews.
- 1.3 The Chair introduced and welcomed Sam Allan who had recently joined his office as his Private Secretary.
- 1.4 The Chair also introduced and welcomed Ms Lesley Cowley, a non-executive director of TNA, who was attending the meeting as an observer.
- 1.5 The Chair asked members to declare any conflicts of interest which they had identified in relation to the business of the meeting. The following recusals apply:

1.5.1 Ms Liz Copper is an employee of the BBC, so will not comment on BBC matters.

1.5.2 Mr Michael Smyth is unable to comment on matters relating to the Chagos Islands and Diego Garcia.

2. Minutes and matters arising

2.1 The minutes of the November meeting had been circulated and agreed as an accurate record prior to the session. No further amendments were made.

2.2 Summary minutes were also agreed prior to the meeting.

2.3 Matters Arising

Action Log Review:

The Chair went through the Action Log and noted progress on the various open actions.

The Secretary explained that there had been a slight alteration to the numbering system on the action log, so action numbers are now prefixed by a reference to the year in which they were first raised. Actions for 2019 are therefore being recorded as "19/1", "19/2" etc.

Actions 18/18 and 18/22. The Chair noted that the meeting with the Secretary of State on 22 January, which Lord Ashton had also attended, had gone well.

He explained that he had stressed the constitutional role of the Council, which makes it different to many other advisory bodies.

Another key item on the meeting agenda was recruitment. The Chair had explained that the need to start a recruitment process was now urgent, as the current numbers deficit had the potential to harm the effectiveness of the Council.

Remuneration was also discussed at the meeting.

Other issues, such as absolute exemptions and the Code of Practice review, also came up at the meeting. The Chair is writing a follow-up letter which confirms what was discussed, which should be despatched shortly (see Actions 19/1 and 19/2).

The Deputy Chair noted that the Council recognised as long ago as 2017 that it would be sensible to have a delegation in place, which makes it clear that is properly empowered to carry out public interest tests in relation to qualified exemptions under Section 66 of FOIA on behalf of the Secretary of State. It would be sensible if this were picked up in the follow-up letter to the Secretary of State. The Deputy Chair shall provide a paragraph to this effect.

ACTION: the Deputy Chair to provide a paragraph on the delegation issue to the Chair for inclusion in his letter to the Secretary of State.

The Chair noted that he would like to meet with the Secretary of State at least once a year. The Secretary shall facilitate this.

ACTION: the Secretary to institute a process whereby a meeting between the Secretary of State and the Chair is scheduled at least once annually.

The Secretary noted in relation to Action 29 (potential invitation to non-executive directors) that one of the DCMS directors had expressed an interest in attending the November session. Members noted that the action related to other departments and not just DCMS, as the invitations were intended to help raise awareness of the Council's role and functions.

They therefore asked that other departments' directors be invited in the meantime, perhaps starting with the FCO as so many applications for closure originate from that department. The CEO of TNA agreed to do this.

ACTION: TNA to invite other departments' directors to Council meetings, as observers, to raise awareness of the Council's work.

On **Actions 18/22 and 18/91** (re: the proposed new procedure under section 65 of FOIA) it was noted that the new process may lead to a greater requirement for members to be security cleared (as, by their nature, retained records are more likely to be sensitive). This was picked up again in relation to Action 18/92 below.

On the Section 65 point, it was agreed that the Council was prepared in principle to take on the extra responsibility.

Outside the meeting, TNA took an **ACTION** to start considering how the new Section 65 process might work practically.

On **Action 18/92**, it was noted that a requirement for security clearance in the recruitment process might put off potential new members (although the current draft advertisement does not say that it is a mandatory requirement). The risk was noted and it was agreed that the wording of the draft advertisement should be reviewed and, if necessary, clarified to make it clear that the level of clearance sought will not require an onerous nor an intrusive process.

ACTION: the Secretary to review the draft recruitment advertisement and, if necessary, provide clarification of the clearance wording.

3. Access to Records

3.1 There were no further recusals.

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

General Points

3.3 None.

Outstanding Queries

Paper 3.1 Queries outstanding from remote schedule

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

Paper 3.2 – Queries on Closure and Retention Schedules (November 2018)

General:

3.5 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.

Paper 3.3 - Queries on Closure and Retention Schedules (February 2018)

- 3.6 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.

General

- 3.7 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.
- 3.8 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.
- 3.9 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. Departmental Retention Requests

The Council considered papers from the following departments relating to the retention of records:

- Charity Commission
- Companies House
- Animal and Plant Health Agency
- Cabinet Office (2 papers)

Retentions were requested for between one and four years.

In addition, the following departments had provided updates, further to requests from members made at previous meeting:

- Foreign and Commonwealth Office
- Cabinet Office (1 paper)
- Ministry of Justice
- Department for Education
- Attorney General's Office
- Her Majesty's Revenue and Customs
- Ministry of Defence

The Secretary will notify the relevant departmental contacts of these outcomes following the meeting.

ACTION: the Secretary to 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 retention requests.

One paper mentioned a template which the department is using in its work and members expressed an interest in seeing this. Members also expressed an interest in receiving more information from the department on its processes and procedures for dealing with the digital challenge (including the template mentioned above), perhaps at the September training session.

ACTION: The Secretary to invite the department to the September training session to talk about its approach to the challenges of digital records. Members would also like sight of the process template used.

During the discussions, Members expressed an interest in the criteria for destruction. TNA explained that these will be set out in Operational Selection Policies (“OSP”s). Members asked for sight of these.

ACTION: TNA to share copies of relevant OSPs with members, for information.

5. Administrative Matters

Item 5.1.1 – Code of Practice Review

Ms Fletcher provided an update on this item. A Steering Committee meeting has been held and the intention now is to accelerate the programme of work, following completion of the initial engagement phase. The first draft is due in the summer. The process is likely to take 18 months to complete, in total.

Paper 5.1.2 – Draft Annual Report – Verbal Update

This was presented for information and discussion.

The Annual Report is published in July as an annex to the TNA Annual Report. Members were invited to feed their initial comments on the draft to the Secretary within the following three weeks. The intention then would be for an updated draft to be circulated for further refinement, so that the report is in “nearly final” form for the May Council meeting.

The Chair said that he would like to emphasise the statutory role of the Council in the report and its role in relation to public access.

Members agreed that the Annual Report should set out a positive view of what the Council had achieved over the course of the last year. The media sub-committee, in particular, should therefore be consulted in the drafting process.

ACTION: members to feed comments on the Annual Report to the Secretary, who will collate them; will liaise with the Deputy Chair and the media sub-committee and will be responsible for version control.

Item 5.1.3 – Website Updates – Verbal Update

The Secretary noted that some updates had been made to the website, particularly in the membership and roles and responsibilities areas. However, members’ views on other possible updates and improvements would be welcomed.

ACTION: members to review the website and provide feedback on it to the Secretary.

Item 5.1.4 – Appraisals – Verbal Update

The Secretary noted that the forms (which are more of a quantitative than a qualitative assessment) are nearly ready and will be circulated shortly. Members will be invited to add their comments to their own forms and the final versions will be signed off by the Chair.

ACTION: a completed appraisal form to be circulated to each member for comment.

Paper 5.1.5 – Register of Interests

A new form had been circulated with the meeting papers. Members were asked to complete this and to return it to the Secretary, who keeps the register.

ACTION: members to return completed register of interest forms to the Secretary.

Paper 5.1.6 - Review/ Audit Process

The Secretary noted that a review session had been arranged for 10 April, with 3 members taking part. These members had requested a total of 10 transferred files to review. It appears, however, that 3 of these files are unavailable to order. Members queried this (as files from February and May 2018 had deliberately been selected, to allow time for transfer). TNA explained that there were a number of reasons for the delay. Members agreed that it would be sensible to request alternative files to review on the day but thought that the original files should be tracked, so that they could be subject to audit when they are finally accessioned.

The Chair noted that he would welcome more information on the TNA accession process. TNA agreed to provide this, perhaps in a slot at the September training session.

ACTION: TNA to provide further information on the TNA accessions process (perhaps in the form of a “lifecycle of a file” presentation) in a session at the September training day.

6. Forum Update

- 6.1 The new Deputy Chair of the Forum presented her update. She noted that she had already has a useful preliminary meeting with TNA colleagues.
- 6.2 Her early priorities include digitisation and GDPR-related matters. The former is likely to have an effect on consideration of acceptance in lieu cases, given the lack of a current market for digital items. She also gave a brief summary of some of the matters which were raised at the last Forum meeting, including in respect of local archives and the planned HM 150 celebrations. Finally, she noted that she would like to see increased engagement with the academic community.
- 6.3 The Chair noted that digitisation was a recurrent theme of interest to members. It was therefore agreed that it would be useful to have a session on digital issues at the September training day.

ACTION: a slot on current digital-related issues should be added to the agenda for the September training day and separately to the next Forum meeting agenda.

7. TNA Strategy Update – Item 7

- 7.1 TNA’s Head of Strategy presented some slides on the new TNA strategy, which is currently with DCMS ministers for approval. There has been extensive consultation on this.
- 7.2 The strategy acknowledges both TNA’s public task responsibilities as a government department (including its roles as Queen’s printer and in the management of legislation.gov.uk) and its role as a cultural institution.
- 7.3 The TNA Chief Executive also provided some information on the new charitable trust which has been set up and should be operational by early April.

- 7.4 The challenges caused by the move to the digital record were raised and discussed once again. Consideration of how to refine processes to deal with this (as opposed to replicating paper-based practices) is a key theme of the new strategy.
- 7.5 Once the strategy has been approved it will come back to the Council, for information. It is hoped that it will be launched on 1 April.

8. FOI Panel Update – Paper 8

- 8.1 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, with reference to Paper 8.
- 8.2 A big increase in the number of requests (including in the number requiring a public interest test) was noted. A delay in completing one of the panels has also highlighted a need to refine some of the current processes. The FOI Centre will lead on this.
- 8.3 The need for panels to use consistent terminology (in accordance with a glossary of terms which is available on Egress) was noted.

9. CEO's Update – Paper 9

- 9.1 The CEO of TNA updated the Council on recent issues. A number of these had already been raised during the other business of the meeting.
- 9.2 He noted the increased financial pressure on some local archives.
- 9.3 The HM 150 celebrations were also discussed. Members will be invited to the reception in the House of Lords, which will take place on 8 July.

10. Any Other Business

- 10.1 A member had experienced difficulty in completing the schedule review process within the allocated two-week period and asked if it would be possible to extend the time available, say to three weeks. TNA agreed to look into this.

ACTION: TNA to see if it is possible to send out the schedules for review a week early and to report back to members on options.

- 10.2 The Secretary made a request for any unused laptops to be returned and noted the likely decommissioning of members' existing email addresses.

There being no further business, the meeting was closed.

Date of Next Meeting: The next meeting of the Council would be held on: 13 May 2019 at TNA's premises at Kew.