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The Need for Archival Legislation in a Policy-Led Environment: The Case of English Local Authority Services

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There is no no regulatory or legislative framework to define the role or core 'mission' of local archives in the UK, yet they are required by their parent authority to deliver high quality services and to, particularly in Labour-controlled authorities, to achieving broader social policy objectives, particularly those of social inclusion, education and access. The formation of the government's Museums Libraries and Archives Council (MLA) in 2000 should have helped local services to become more

The UK has a rich and hugely varied archival tradition, with around 2000 accessible archives of which 'about 300 represent the main collecting institutions in which the vast majority of British archives are held'¹. This paper relates to the largest part of that 300, the 130 or so publicly-funded local services located in England. There is no common legislative framework for these local services; their formal authority, where it exists, derives from a number of sources² so the creation in 2000 of a government advisory body for archives – the Museums, Libraries and Archives Council (MLA) – was heralded as a step towards strengthening the role of archives, but especially at local level. This paper argues that while such a body may raise the profile of archives, it cannot address the current infrastructural weaknesses in local archival provision and its establishment is no substitute for archival legislation. This is particularly the case as increasing demands are placed on archives services to meet government objectives, particular those forming its social agenda.

During the 1990s there was a growing governmental interest in archives in the UK which culminated in the creation of a Government Policy on Archives in 1999³. This acknowledged both the administrative and cultural remits of recordkeeping: the importance of good records management and the importance of the documentary heritage. The Policy also spelled out how archives could contribute to the Government's 'most important policy objectives': public access, modernisation of public services, open and accountable government, education, social inclusion, economic regeneration and regionalism. It acknowledged too that infrastructural changes would be needed to facilitate this contribution.

The MLA, a significant contribution to a new infrastructure, replaced two separate, existing funding and advisory bodies for museums and libraries⁴, while the archive sector acquired a voice at governmental level for the first time. MLA acts as an intermediary between the museums, libraries and archives and central government, interpreting government policy to those sector. As a governmental 'strategic agency' promoting best practice in service delivery and it concentrates in particular on the role of archives (and museums and libraries) can play in meeting government's social policy

1. National Council on Archives, *British Archives the Way Forward*, 2000, 5. Available at <http://www.ncaonline.org.uk/materials/britisharchiveshewayforward.pdf> [viewed 8 September 2006].

2. Historical development and formal devolved government arrangements mean that separate structures are in place for Scotland, Northern Ireland, and for Wales. There are 338 local authorities in England of various types: counties, district councils, London boroughs, metropolitan boroughs, unitary authorities; and the City of London.

3. Government Policy on Archives, 1999 Cm 4516. Available at http://www.nationalarchives.gov.uk/policy/idac/pdf/government_policy.pdf [viewed 8 September 2006].

4. The Museums Libraries and Archives Council, MLA, was originally named 'Resource', changing its formal title in 2004. It replaced the Museums and Galleries Commission and the Library and Information Commission and the Advisory Committee on Libraries. It should be noted that although I refer to the United Kingdom in this paper, MLA's remit extends only to England. Similar (or no) bodies exist for Scotland, Wales and Northern Ireland.

agenda which centres around issues of social inclusion, diversity (both in the workforce and from the point of view of the variety of communities served) and learning. Through MLA, in 2002, an 'Archives Task Force' carried out the first ever government-commissioned survey into the state of archives in the UK which intended to "... set the agenda for UK archives for a decade to come."⁵ It appeared that the archives sector would finally achieve the profile, support and coherence which it had previously lacked.

However, as I hope to demonstrate, despite this explicit governmental backing for the sector, there are a number of factors which mean that this type of support – the establishment of a strategic body – is, for the sector, both unsustainable and unworkable. These factors originate from a variety of sources:

1. MLA's remit

Although the Government Policy on Archives explicitly recognised the importance of both of archives and records for current purposes – in facilitating open government and promoting good governance for example – MLA's own remit is the cultural use of records and the synergies which can be developed between the heritage sectors. Its parent department is the Department of Culture, Media and Sport, while information-related issues such as Freedom of Information fall under the Department for Constitutional Affairs (the department to which The National Archives is also responsible). Thus, despite its policy recognising the importance of both current and future archival activity, the government has created a body whose remit is much more narrowly focussed.

2. Local government/central government relationships

MLA, the central body, operates through nine regional MLAs. These have no formal relationship with archive services in their areas. It should be remembered that the relationship between central and local government administrations in the UK is historically weak. Unlike many countries, local government administrations are not branches of the central administration; local government employees are not civil servants. Over the years, national legislation on provision of services has shifted the balance of financial power to central government as local government funding is dependent on the performance of statutory duties. The success of local authorities in delivering services in line with central government policy is measured through a system of 'Comprehensive Performance Assessment' and authorities must satisfy this regime or face removal of executive powers (i.e. of direct funding) in the failing areas.

The link between funding and performance obviously means that authorities will concentrate their energies and budgets on areas where they have statutory responsibilities. There is no statutory duty to provide archive services (see section 4, below). It is also noteworthy that local government now has the two general objectives of

- delivering national objectives locally

visible and effective, yet development funding has been directed primarily to libraries and museums sectors where, not coincidentally, there has been statutory provision for services. This paper argues that although the government has recognised the importance of archives, it will only be through national legislation setting a statutory framework that the archives sector will be able to realise its full potential in both core professional areas and in expanding service provision to meet national agendas.

PROCTER, Margaret, Necessità di una legislazione archivistica in un ambiente a conduzione politica: il caso dei servizi locali inglesi. Atlanti, Vol. 16, N. 1-2, Trieste 2006, pp. 59-64.

Non esiste una struttura che regolamenti o legiferi per definire il ruolo o la "missione" precipua degli archivi locali nel Regno Unito, ma ciò nonostante viene loro richiesto dagli enti cui fanno capo di fornire servizi di alta qualità, e, particolarmente negli enti controllati dal partito Labour, di raggiungere obiettivi di più vasta politica sociale, in particolare quelli di comprensione sociali, educazionali, dell'accesso. La formazione del Consiglio Governativo dei Musei, Biblioteche ed Archivi nel 2000 avrebbe dovuto aiutare i servizi locali ad avere più visibilità ed efficienza, ma i fondi per lo sviluppo sono stati diretti in primo luogo a biblioteche e musei dove, non per caso, c'erano state clausole statutarie riguardanti i servizi. Questo articolo dibatte il fatto che sebbene il governo abbia riconosciuto l'importanza degli archivi, sarà solo attraverso una legisla-

5. MLA Archives Task Force Listening to the past, speaking to the future, 2004, 4. The Task Force considered the state of archives throughout the four UK nations. Available at http://www.mla.gov.uk/resources/assets//A/atf_report_pdf_5479.pdf [viewed 8 September 2006].

zione nazionale che ponga le basi per una struttura statutaria che il settore archivistico riuscirà ad esprimere tutto il proprio potenziale sia nelle precise aree professionali che nell'espansione delle condizioni del servizio per far fronte alle scadenze nazionali.

PROCTER, Margaret, Potreba po arhivski zakonodaji v političnem okolju: primeri iz lokalnih oblastnih služb v Angliji. Atlanti, Zv. 16, Št. 1-2, Trst 2006, str. 59-64.

Zdi se, da je težko določiti zakonodajni in ureditveni okvir, ko želimo opredeliti bistveno poslanstvo lokalnih arhivskih ustanov v Angliji, saj so ti določeni z lastno avtoriteto in jih v to silo še posebej politika labouristov, ki v svojem političnem delovanju zabtevajo, da arhivi dosežajo visoke socialne cilje tudi zunaj Anglije, še posebej na področju vključevanja, vzgoje in pristopa v socialno področje. V zpostavitvi vladnih muzejskih knjižnic in arhivskega sveta v letu 2000 je pripomoglo, da so postale lokalne službe bolj vidne in učinkovite. K temu je pripomogel tudi razvoj raznih fondov, ki so jih knjižnice in muzeji ustanovili za svoj razvoj. V referatu so prikazani prav ti vidiki, po drugi strani pa je vlada priznala pomembnost arhivov. Učinkovitost pa ne leži samo v nacionalni zakonodaji, ki bi bila vidna skozi statutarne okvire, ampak v tem, da je arhivski sektor sposoben delovati v polnosti, to je ne le v profesionalni sferi, ampak tudi v širši službi, se pravi na področju skrbi za nacionalno delovanje.

6. Department for Communities and Local Government Local Government Financial Statistics England No. 16 2005, <http://www.local.odpm.gov.uk/finance/stats/lgfs/2005/lgfs16/h/lgfs16/index.html> and 'Annex A Local government geography and history' [viewed 5 September 2006].

7. Local Government Financial Statistics, Chapter 1. Archives are grouped with galleries, museums and public entertainment.

8. Public Libraries and Museums Act 1964 obliged principal councils to "provide a comprehensive and efficient library service for all persons desiring to make use thereof" and provided powers to maintain museums.

9. UK Local Government Act 1972: Section 224.

10. Office of the Deputy Prime Minister. 2000: Local Government Act 1972: Section 224 Guidance on '...proper arrangements' for Archives Available at <http://twwww.odpm.gov.uk/index.asp?id=1133760> [viewed 6 September 2006].

• using national and local resources to meet the diverse requirements of different neighbourhoods and communities⁶.

These two objectives underpin delivery of all local services, including of course, archives services.

3. The position of archives services within local authorities

Local authorities typically regard archives services as 'cultural services'. From a central government perspective this 'Culture and heritage activities' label classes them with: galleries and museums and public entertainment; Recreation and sport; tourism; open spaces – national and community parks, countryside, allotments; libraries and information services⁷. Although their titles vary, archives services typically lie within Leisure Services or Culture and Heritage departments, or, usually at county level, subsumed within large departments such as Children's Services, or Community Services. In the past, archives services, especially in county administrations grew out of the office of Clerk (the senior administrative post) and had a broad, authority-wide remit centred on their role as custodians for the corporate record. Once moved from this central position, they are no longer perceived as a corporate resource, and this, again, adds to the risk of their becoming low priority and poorly-funded 'Cinderella' services.

4. (Lack of) archives legislation for local archives

It is important to note that there is no mandatory legislation for local government archive services whereas there is a statutory responsibility to provide library services which typically now sit alongside archive services⁸. Thus within an already poorly-funded cultural services department, funding is more likely to go to those services for which there is a statutory requirement leaving the archive service trailing further behind.

Most local authority archives services derive their authority from the permissive powers of the Local Government (Records) Act 1962 which permitted 'principal authorities' to spend money on deposited records and archives. Curiously no legislation existed to protect authorities' own records until the 1972 Local Government Act, which heralded the most important restructuring of local government for a century, included the requirement to make "... proper arrangements with respect to any documents which belong to or are in the custody of the council or any of its officers"⁹. It was as late as 1999 that explanatory guidance was issued indicating that 'proper arrangements' included preservation, preparation of finding aids and arrangements for public access¹⁰. However, this guidance has no statutory force.

5 Increased user demand

It is within this context then that the archive service must nonetheless contribute to fulfilling the overall policy objectives of central government through their parent authority. Particularly in Labour-controlled authorities social policy objectives - social inclusion,

life-long learning and access – are a high priority, but whatever the political complexion of the authority, all are required to deliver high quality, user-focussed services

At the same time, and for a number of reasons (for example, the requirements for local authorities to comply with Freedom of Information legislation, national initiatives such as the Archives Awareness Campaign, and the increasing use of archives prompted by popular history television programming)¹¹, there has been an upsurge of use of archives, often via online services. Many archives are successfully engaging with community groups or running imaginative projects to attract new users. Yet often this is only possible because, as non statutory services they have access to a major source of revenue for the sector, the Heritage Lottery Fund, part of the National Lottery. It is, clearly, not possible either to plan for future development or sustain innovation on the basis that recurrent bids to the Lottery Fund for one-off projects will be successful.

6. The role of The National Archives (TNA)

In many countries local record offices are branches of the national archives services. This is not the case in the UK (or more specifically here England and Wales). TNA (formerly the Public Record Office) was, and remains, a body serving other government departments, including provision of advice on internal records management, and ensuring compliance with the Public Records Acts of 1958 and 1967 which require departments to select and deposit records of historical value with the national archives. Central government is thus the only sector in the UK to which specific archival legislation applies.

Since the 1990s when the Public Record Office became an Executive Agency, allowing it much greater autonomy, it has become extremely active in developing professional best practice in all areas of recordkeeping, and has consequently acquired de facto leadership of the archival profession in the UK. This role has been strengthened, again by default, by its leading role in preparing for the implementation of the Freedom of Information Act (which applies to the entire public sector) and where good recordkeeping practice was seen as key to successful compliance, and in preparing for the challenges of electronic records management and preservation.

With the merger of the Historic Manuscripts Commission and the PRO in 2003, the newly- formed TNA assumed HMC's former advisory role to any holder of archives in England and Wales, thus extending its influence more formally to, among others, the local authority sector.

It is also worth saying that as the largest single archives service in the UK TNA has played a major role in making its own records accessible and in encouraging, often by providing resources and personnel, the kind of initiatives falling within the government's social policy agenda for lifelong learning and social inclusion¹².

11. See Archive Awareness Campaign (AAC) at <http://www.archiveawareness.com> The AAC reported that the BBC's celebrity family history programme, *Who do you think you are?*, had a "major and positive impact ... Physical visits to archives increased by 24% and new users by 36% in the last quarter of 2004 compared with the same period in 2003". AAC, *Impact Evaluation Report 2004* available at <http://www.archiveawareness.com/materials/aacevaluation2004.pdf> [viewed 8 September 2004]. A new series of *Who do you think you are?* began in September 2006. See <http://www.bbc.co.uk/history/familyhistory/>.

12. See The National Archives 'Partnership projects', www.nationalarchives.gov.uk/partnerprojects.

This then is the somewhat chaotic landscape in which local archives services operate. On its formation, the archive sector looked to MLA to create a coherent showcase for its achievements, to demonstrate its value and potential to central government and to act as a conduit for increased core funding (i.e. ultimately from Treasury sources)¹³. The formation of the Archives Task Force was seen, although this was never explicitly stated, as an indication that the government was prepared to support the archives sector. But the subsequent failure of the Task Force “... to secure any funding at all [for its costed recommendations] was viewed by the archives sector as evidence of government’s disinterest and lack of appreciation of their contribution”¹⁴. While MLA has done much good work in developing best practice models and facilitating cross-domain co-operation, this failure to attract core funding to archives to achieve national policy objectives has led MLA to be regarded in some quarters, as a stalking horse.

This is particularly the case because, while MLA itself was largely conceived as having a strategic function, it did inherit some of the funding responsibilities of the museum and library bodies it replaced. The Department for Culture Media and Sport and Libraries funds the British Library and national museums directly, but makes funds available to MLA for ‘development work’ at local level (TNA funding passes through a different channel). Between 2001/2 and 2005/6 museums received £126,700,000, [around 186 million euros] libraries £38,800,000 [56 million euros] and archives £1.7 million [2.5 million euros] – an average of £350,000 [515,000 euros] per year to support archive development¹⁵. Even allowing for the fact that some libraries and museums funding may have reached archives based in those institutions, this makes for a stark contrast. The importance to national life of archives recognised by the Government’s Policy has not been reflected in the amount of funding subsequently made available through governmental bodies¹⁶.

How can this unsatisfactory funding and infrastructure situation be improved? It is clear that local archives will cease to be a Cinderella service only if national archives legislation is introduced. The ATF report itself made clear that “... lack of a common statutory framework militates against consistency [of service provision] across the country especially in terms of level of investment made by local authorities”¹⁷. The creation of MLA as a channel for enabling local services’ ability to respond to government policy is no substitute for legislation governing the establishment, responsibilities and framework of such services.

On the back of the Government Policy on Archives, and at the same time as the ATF was carrying out its work, The National Archives launched a consultation exercise about possible records legislation in 2003. The preamble recognised the fragmentary nature of existing legislation, new demands put on archives by Freedom of Information, the problems of the digital environment and the huge rise in demand for online services. It also drew attention to the radi-

13. Recognised early on, at least in some quarters: “If we do not get extra resources it would have been rather pointless forming this new organisation”, Lord Evans quoted in the Select Committee on Culture Media and Sport Committee, Public Libraries, Sixth Report Session 1999/2000 24 May 2000. Available at <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmcmums/241/24102.htm> [viewed 6 September 2006].

14. Memorandum submitted by the National Council on Archives to the Select Committee on Culture Media and Sport Committee ‘Protecting and preserving our heritage’, written evidence printed 14 April 2006. Available at <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmcmums/912/912we85.htm> [viewed 6 September 2006].

15. UK Parliament, Hansard 18 April 2006: Column 648W. <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060418/text/60418161.htm> [viewed 8 September 2006].

16. Although many of the objectives set out in the associated ‘Action Plan’ have in fact been achieved. See Inter Departmental Archives Committee, Government Policy on Archives Action Plan, 2002. Available at www.nationalarchives.gov.uk/policy/idan/pdf/action_plan.pdf [viewed 8 September 2006].

17. Listening to the Past, 18.

cally changing nature of the relationship between TNA and local archive services – the de facto role of TNA in providing professional leadership throughout the public sector needed to be recognised formally, if at all. It was unclear whether the broader public sector community would welcome such centralization, but in fact, the results of the consultation exercise were overwhelmingly in favour of legislation to cover both the current recordkeeping and archival activities of public authorities within a single national framework. There was no opposition to the suggestion that a ‘Minister for TNA’ should have responsibility for establishing standards (though at the same time it was clear that this would have to be a consultative exercise); and two thirds of respondents supported the idea of a compliance regime for monitoring and maintaining standards¹⁸.

However, the stumbling block has been potential costs. Government has refused to take the legislative process forward until more precise details of the likely costs to local government become available. TNA is currently gathering this information and remains committed to the introduction of the legislation, continuing in any case to develop and maintain standards for best practice.

Which leaves local archive services in a no-man’s land. In the absence of legislation dealing explicitly with both records and archives management, hard-pressed services find themselves both trying to provide the services to respond to the government’s social policy agenda, and at the same time having to deal with the wider professional issues – digital preservation, corporate governance, open government – for which they have the skills but not the remit or resources to cope with. In a cultural services environment it is difficult to promote, let alone effect corporate records management. Professionals can find themselves torn between what they know they should be doing (say in terms of records management), and what they can actually achieve do with limited resources and authority. National legislation for archives and records is desperately needed to allow a fragmented archival sector to act from a position of strength. Establishing a government strategic advisory body is not a substitute for legislation, and it seems that in the UK case, the establishment of MLA will in future be seen to have delayed introduction of legislation – and thus the coherence of the archives sector – rather than to have promoted it.

18. TNA, ‘Proposed national archives and records legislation’ at <http://www.nationalarchives.gov.uk/policy/proposed/default.htm>.