

GUIDANCE ON AGENDAS AND MINUTES

1.0 BACKGROUND

1.1 Members have received the Internal Audit Report 2017-18: First Interim report.

1.2 Although the report was generally very positive the conclusions under the section on Review of Corporate Governance contained a comment by the Internal Auditor regarding confidential minutes:

“Whilst we are pleased to record that no significant issues have been identified in this area of our review we note that there have been a significant number of Confidential Minutes recorded. Council should be mindful, to ensure, that they fall within the guidelines set out in Section 12A of the Local Government Act 1972.”

1.3 Members may find the following guidance on agendas and minutes and in particular confidential minutes helpful.

2.0 MINUTES

(Also refer to SLCC ADVICE NOTE attached : Meetings - Drafting the Notice, Summons, Agenda and Minutes

2.1 Under paragraph 41 of schedule 12 of the LGA 1972, minutes of proceedings of council and committee meetings must be kept. Minutes are formal records of actions and decisions and should be as concise as possible. There is no prescribed format for local council minutes and the actual content of minutes will vary as between clerks according to the style to which they have become accustomed. There is no need for minutes to be a literal report of discussion. Minutes are formal records of decisions taken and not meant to be a verbatim record of a whole meeting. Some background context of the decision taken may be necessary. If required, the manner of voting for and against an issue can also be recorded.

2.2 Minutes are entered into a minute book. Advancing technology determines that nowadays minutes are produced on a computer and therefore printed as loose-leaf documents. This is acceptable in the law but pages should be numbered consecutively and initialled by the person signing the minutes as a true record. This shows that any minutes in a loose-leaf binder are the original signed minutes and have not been replaced. Signed, hard-copy minutes are the only true and legal record of a council meeting and can be used as evidence in a court of law. Under the same statute, minutes must be signed as a true record by the person presiding at the meeting at which they are due to be signed (the same or the next suitable meeting). Minutes must be available for public inspection. It is good practice for them to be published on a notice-board or website for residents' information. Draft (unsigned) minutes may be published but it must be clear that they are draft and should not be taken as final by anyone reading them. It is possible that these minutes may be amended before being signed as a true record so they should only be taken as information whilst in draft form.

Confidential or Sensitive Matters

2.3 Care must be taken to ensure that details of confidential or sensitive matters are not disclosed in the agenda or accompanying reports where this is not in the public interest.

Why Confidential Minutes Are Not Lawful

2.4 It is a legal requirement that the minutes are open to the inspection of any local government elector for the area of the council and such a person may make a copy of or extract from the minutes. In practice, many councils now routinely publish minutes of their meetings on the council's website.

2.5 Resolutions to be recorded in the minutes include those made while the press and public were excluded.

2.6 A council must, by statute, record its decisions in minutes. There is no statutory basis for there being more than one set of minutes, and legal opinion is that having more than one set of minutes is not advisable. In any case, it appears that the Local Government Act 1972 section 228 (REPRODUCED BELOW) gives electors an absolute right to inspect signed minutes. There is also a statutory requirement that minutes be signed promptly (normally at the same or the next meeting and certainly not deliberately delayed).

Local Government Act 1972

ss. 228.—(1) The minutes of proceedings of a local authority shall be open to the inspection of any local government elector for the area of the authority and any such local government elector may make a copy of or extract from the minutes. (2) A local government elector for the area of a local authority may inspect and make a copy of or extract from an order for the payment of money made by the local authority. (3) The accounts of a local authority and of any proper officer of a local authority shall be open to the inspection of any member of the authority, and any such member may make a copy of or extract from the accounts. (4) Any abstract of the accounts of a body whose accounts are required to be audited in accordance with Part VIII of this Act and of any officer of such a body and any report made by an auditor on those accounts shall be open to the inspection of any local government elector for the area of the body, and any such local government elector may make a copy thereof or an extract therefrom, and copies thereof shall be delivered to any such local government elector on payment of a reasonable sum for each copy. (5) Subject to any provisions to the contrary in any other enactment or instrument, a person interested in any document deposited as mentioned in section 225 above may, at all reasonable hours, inspect and make copies thereof or extracts therefrom on payment to the person having custody thereof of the sum of 10p for every such inspection, and of the further sum of 10p for every hour during which such inspection continues after the first hour. (6) A document directed by this section to be open to inspection shall be so open at all reasonable hours and, except where otherwise expressly provided, without payment. (7) If a person having the custody of any such document – (a) obstructs any person entitled to inspect the document or to make a copy thereof or extract therefrom in inspecting the document or making a copy or extract, (b) refuses to give copies or extracts to any person entitled to obtain copies or extracts, he shall be liable on summary conviction to a fine not exceeding £20 Inspection of documents. (8) This section shall apply to the minutes of proceedings and to the accounts of a parish meeting as if that meeting were a local authority.

The Freedom of Information and Data Protection Acts are NOT relevant

2.7 The Freedom of Information Act is not relevant, because the right to inspect minutes is a specific statutory right. The Data Protection Act is also not relevant, because it does not override a specific obligation to provide information (as in section 228). Allowing inspection of a minute cannot, therefore, be a breach of the DPA.

2.8 Clearly in delicate situations it is advisable to be circumspect about what is recorded in minutes. At any time, only the decisions need to be recorded, and not the discussion or any ancillary papers (which may be subject to FoI but could be exempted).

2.9 So it seems that there is no lawful route to keeping a minute confidential beyond the period between its recording and its signing, which cannot be delayed for long.

2.10 The information above is based on the statutes, the general advice issued by the National Association of Local Councils and advice given by a solicitor specialising in local council law.

3.0 MATTERS ARISING AND ANY OTHER BUSINESS

3.1 The statutory requirement that members have at least three clear days' notice of the business to be transacted means that no business may be transacted at a council meeting other than that specified in the summons. Some items will require more detail in the agenda than others. For example, a major new project will require at least a line or two (as well as a Report), but authorising payment of the electricity bill may require only a few words. It is important that each member can judge from the agenda whether or not he needs to be present for any particular item.

Every substantive matter which requires a decision must be on the formal agenda.

3.2 Business conducted without being listed on the agenda (or hidden in another item) may be declared void, if challenged in the Courts.

3.3 There has been, in the past, a propensity for having such standing items as "Matters Arising" and "Any Other Business". These are now considered not to be best practice, as they can be vague. The law says that the business to be transacted should be notified. Therefore a member should know precisely what is going to be asked of them at the meeting. "Matters Arising" as an agenda item has the potential to lead to a regurgitation of a previous meeting and the possibility of opening up a prior agenda item. "Any Other Business" can lead to new topics being introduced and discussed. No decisions may be made under either of these items as members will not have been notified of the issue.

3.4 If the term "Matters Arising" is used, it should be clear that this is for information only and not to open up further discussion.

3.5 It is considered best practice to avoid the use of an agenda item such as "Any Other Business". No business should have a decision made about it unless it is on the agenda and if it is something which warrants an agenda item it should have one.

3.6 If it is urgent, too late to be added to an agenda and cannot be dealt with by the clerk with his/her delegated powers, or a committee with the same, an extraordinary meeting may have to be called.

3.7 If there are issues which councillors must be notified; these should form part of either a clerk's report or items of "information only". Agenda items should give as much information as to what is to be discussed and decided upon as is possible.

4.0 PUBLIC QUESTION TIME

4.1 It is good practice to have a public session at a meeting, giving members of the public an opportunity to address the council and to raise issues of local concern. This is a useful way for councillors to hear directly from their local electors and it will often be convenient

to hold these sessions immediately before a council meeting but 'Public Question Time' should not be part of the formal agenda. This is often (but doesn't have to be) at the start of a meeting, before business on the agenda commences. It can be helpful for members of the public if the council makes it clear what is allowed at a meeting. Some councils provide guidance to put out on chairs detailing the time allowance for the total of public questions and for each individual. The council may not make any decision on anything raised by the public unless it is already on the agenda and discussion should not really take place. It may be that it is a question that can be answered easily or it is for the clerk to research or it may be an item for a future agenda. It is not appropriate for members of the public to appear to be participating in the council's discussion of agenda items or deciding council business as it is a meeting of "the council". The chairman may however consider it appropriate to invited a member of the public to speak for a particular reason (e.g. a non-member has a particular expertise in something being discussed).

4.2 The Clerk should keep a brief note of any key points arising from the session, especially if there are issues which may need to be included on the agenda for a future council meeting. (Notes of a separate public participation session will not form part of the minutes of the council's own meeting.) It may also be sensible to set out in advance some ground-rules in Standing Orders as to the time allowed for each contributor to speak and for the whole session.