



The Governance
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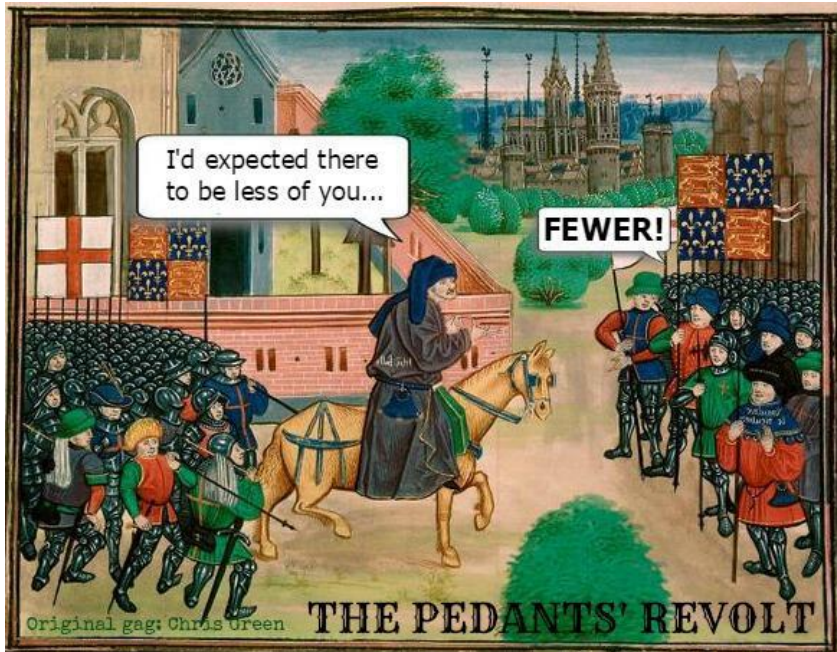
Minute taking

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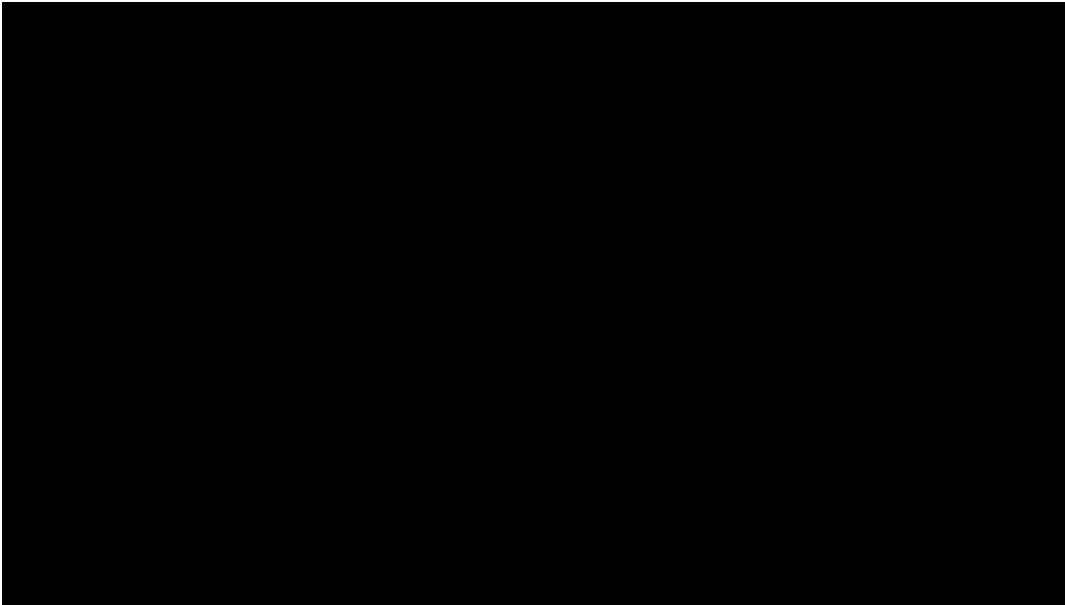
4th July 2017 – ICSA Conference



The minuting of meetings



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Consultation published 23rd May –
closed 24th June

89 responses to 31 questions

2,759 answers

Summary of feedback now published
on www.icsa.org.uk/minutetaking

So what did we find ?


- Good minuting is a deceptively difficult and time consuming task which is often under-valued, notably by directors. It is far more than an administrative formality
- An enormous variety of minute taking practices
- Many people are absolutely convinced that they take minutes ‘the right way’

BUT.....



So what did we find ?

There is no one-size fits all approach for minute-writing and no 'right way' to draft minutes

- Context is always important and each chairman and each board will have their own preference for minuting style
 - It is up to each individual organisation to decide how best its meetings should be recorded
- 

What are minutes for?

- The purpose of minutes is to provide an accurate, impartial and balanced internal record of the business transacted at a meeting
- Minutes should document the reasons for the decision and include sufficient background information for future reference – or, perhaps, for someone not at the meeting to understand why the board has taken the decision that it has.


‘to record key points of discussion, record decisions and the reasons for decisions, and agreed actions’

‘accurate’, ‘impartial’ ‘balanced’ ‘to demonstrate challenge’



What are minutes for?


In simple terms, their purpose is to record what was done, not what was said but with sufficient context to give assurance that it was done properly

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What are minutes for?

‘They should be the single source of truth, and should be a complete, self-standing record (together with the papers). They should act as evidence of the meeting and as a record of those matters discussed/noted, concerns raised, decisions made and, where considered helpful, the rationale for those decisions, and demonstrate the directors acting in accordance with their duties under the Companies Act.’

Sectoral variation:

- A charity or public sector organisation may focus more on ensuring there is clear accountability visible through the minutes
 - A regulated financial services company is more likely to focus on providing evidence of robust decision making.
- 

Who is responsible for the minutes?

- The Company Secretary ... or other governance professional is responsible to the chairman for the preparation and retention of minutes
 - The chairman and the other members of the board are responsible for confirming their accuracy
 - The person taking minutes should be properly qualified to do so – i.e. they should have the necessary knowledge and skills
 - Too often minuting a meeting is left (at short notice) to a junior member of staff without the appropriate experience or training
- 

The accuracy of minutes is the responsibility of the full board



Who is responsible for the minutes?

Key skills of a good minute taker include being able to:

- listen to multiple voices at the same time and capture both their arguments and tone
- summarise an argument accurately and record decisions taken and action points on which to follow up
- identify which parts of the discussion are material and should be recorded
- have the confidence to stand firm when someone asks them to deviate from what they believe to be an accurate record
- have the confidence to ask for clarification
-


Listen to multiple voices




Listen to multiple voices



Who is responsible for the minutes?

- Wherever possible, the company secretary should be supported at the meeting by a suitably skilled minute taker if one with the necessary skills is available
 - It is generally a good idea for the company secretary to discuss with the chairman before the meeting any relevant procedural issues and, perhaps most importantly, how they can best support the chairman
- 
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Drafting minutes

- It can take at least as long, often twice as long, to draft minutes as the meeting itself took
 - It may be helpful to develop a minute taking policy or style guide to set the house style and conventions. This could be approved by the board
 - Minutes are normally written in 'reported speech' style; they should not be a verbatim record of the meeting
 - The minutes should be clear, concise and free from any ambiguity as they will serve as a source of contemporaneous evidence in any judicial or regulatory proceedings
- 

Drafting minutes – preliminary information

- The infrastructure of the meeting
 - Who, where, when, what, how etc
- Quorum
- Directors' duties
- Conflicts of interest

'These items are not legal boilerplate and are important. The wording of the guidance should be revised.'



Drafting minutes – preliminary information



Drafting minutes – preliminary information

Quorum

- A matter for each individual organisation
- Probably only need be mentioned if there were a lot of absences, or a high quorum requirement such that there might be doubt
 - For example, if one or more directors have to absent themselves owing to a conflict of interest
- Of course, if the chairman does mention quorum it should be minuted
- It is the responsibility of the company secretary to be aware whether the meeting is quorate at all times, and advise the chairman should this not be the case

Drafting minutes – preliminary information


Conflict of interests

- Legal, regulatory and constitutional requirements must be observed
- Unless the sectoral regulator requires otherwise, it is reasonable only to refer to conflicts of interest in the minutes where:
 - the chairman or another board member raises the issue, which they might do if there is a perceived risk of a conflict arising
 - a potential or actual conflict of interest is declared by one or more of those present
 - a conflicts register is circulated, tabled or reviewed as part of the business of the meeting
 - it is necessary to amend the conflicts register.

Drafting minutes – level of detail

- The degree of detail recorded will depend to a large extent on:
 - the needs of the organization
 - the sector in which it operates and the requirements of any regulator
 - the working practices of the chairman, the board and the company secretary.
- As a minimum, however, we would expect minutes to include:
 - the key points of discussion
 - decisions made and, where appropriate, the reasons for them
 - agreed actions, including a record of any delegated authority to act on behalf of the company

Drafting minutes – naming names

- Individual contributions should not normally be attributed by name, but this will be appropriate in some cases. Practice is changing in this area, particularly in the corporate sector
 - Demonstrate individual director participation and challenge
 - Equally it became clear that the charity and public sectors have very different practice whereby individual contributions are often attributed.
 - Once again this is a matter for individual organisations
 - Guidance includes suggestions on where it will usually or may be appropriate
- 

Drafting minutes – naming names



Drafting minutes – naming names



Drafting minutes – dissent




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Drafting minutes – dissent

- Most board decisions are reached by consensus
- However, in exceptional circumstances, where the whole board cannot reach agreement, individual directors may request that their dissenting view be recorded in the minutes. It is normal to comply with such requests
- The question of how dissent is recorded will be a matter of organisational preference.
- One suggestion for specimen wording might be:

‘There was a robust discussion about x, with considerable challenge around a, b, c and d. The board agreed to y, with Mr z requesting that his dissent be recorded.’

Drafting minutes – other matters

- If board papers are received for noting and no decision is required, then unless there is material discussion that needs to be recorded, minutes should indicate that the relevant report was ‘received (or reviewed, if that is what happened) and its contents noted’
 - Conflicts of interest
 - Legal professional privilege
 - Offshore companies
 - “not for the minutes”
- 


Drafting minutes – the regulator

- Minutes are increasingly used to demonstrate that the directors have fulfilled their statutory duties
 - evidencing appropriate challenge in order to hold the executive to account
 - showing that issues of risk and both shareholder and stakeholder impact have been properly considered
- Minutes should facilitate regulatory oversight, but this is not their primary purpose
- Nonetheless, those drafting minutes should be mindful of regulatory needs
- The well-written minutes of an effective board meeting should convey all the assurance that a regulator requires

Review and approval of draft minutes

- Draft minutes should be clearly marked as such and amendments to the draft minutes should be thought of as ‘enhancements’ rather than ‘corrections’

“Editing by board members who are ultimately responsible for the accuracy should not be regarded as a failing on the part of the person drafting the minutes but a sign that responsibilities are understood and taken seriously.”

- Need to guard against attempts to rewrite history
 - The audio recording of board meetings or the publication of board minutes is not, generally, recommended
 - Treatment of ‘post-meeting events’
 - To redact or not to redact
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Access to the minutes

- Who – auditors, regulators and other third parties
 - For example, as a board responsibility, minutes should be included as part of the board evaluation process
- What – unrestricted / restricted (e.g. senior audit partner) / view-only / redacted
- How – electronically / minute book / electronic portal
- Publication of minutes
- Retention of minutes

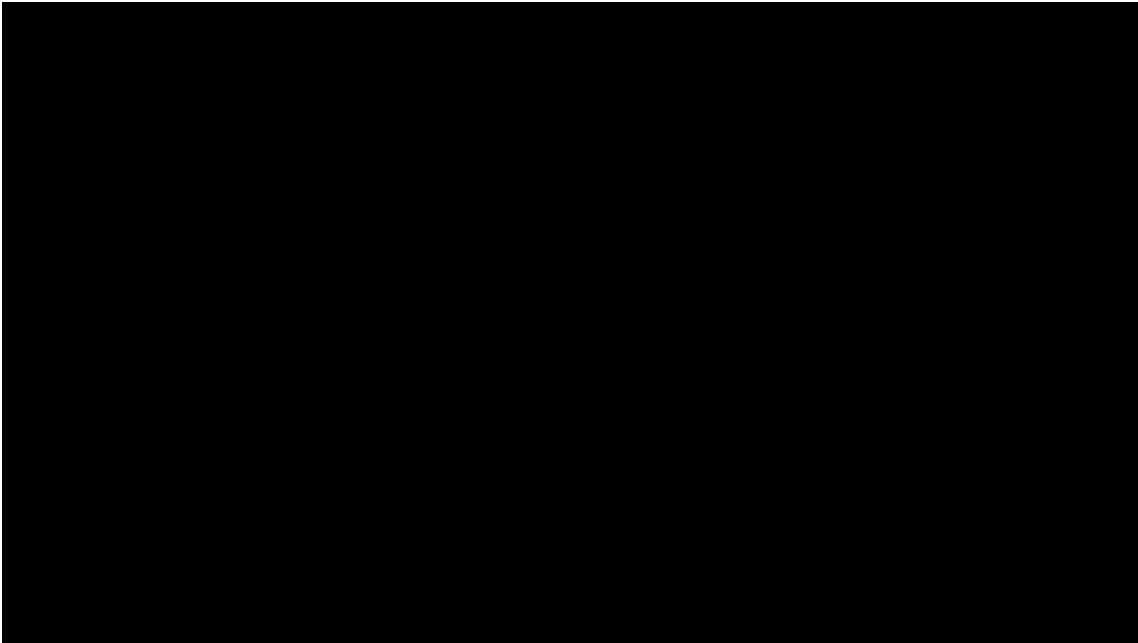
Company secretary's notes

- Great care should be taken with the company secretary's notes of the meeting, both in terms of content and retention. We recommend that they are destroyed once the minutes to which they relate have been approved
- Wide variety of practices
- Retention periods ranged from as soon as they were written up to pretty much forever

'only one version of the truth is required'

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The minuting of meetings – only record of the meeting



Conclusion

- A very interesting and rewarding process
- 89 responses to a consultation – isn't it great that there are so many people with such strongly held views?
- All this may suggest that minute taking is a necessary yet thankless task, but as one respondent to our consultation asked, how many other people in an organisation get their work in front of the board as frequently and consistently as company secretaries?
- Thanks to everyone who shared with us their wisdom and experience gained from minuting literally countless meetings and, in particular, to Colin Passmore at Simmons & Simmons and Carol Shutkever at Herbert Smith Freehills for their guidance and support.

Further information

www.icsa.org.uk/minutetaking





The Governance Institute

Thought leadership from ICSA



The Governance Institute

Guidance note: Minute taking

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September 2016



The Company Secretary

Building trust through governance

Winter 2015



Professor Andrew Kakabadia
Professor Nada Korac-Kakabadia
Nadeem Khan

Thank you.