

PART 2 BUSINESS – MINUTES AND DRAFTING CONVENTIONS

Responsible Officer: Kathryn Tebbey, Head of Legal (Monitoring Officer)

Reason for Report: in light of recent concerns raised with the Monitoring Officer, to provide Members with the opportunity to consider and discuss the drafting conventions for minutes of Part 2 business.

RECOMMENDATION: that the Council agrees that future minutes of Part 2 business (Council-wide) are drafted in line with:

- (a) with Option 2 in Appendix 2 to this report; or
- (b) such other directions as they may choose to give.

Financial Implications: None.

Budget and Policy Framework: None.

Legal Implications: As set out in this report.

Risk Assessment: The risk identified is compliance with legislative requirements as set out in the report.

Equality Impact Assessment: None.

Relationship to Corporate Plan: None.

Impact on Climate Change: None.

1.0 Introduction/Background

1.1 As Members will be aware, where they consider that an item of business contains exempt information (as set out in Schedule 12A to the Local Government Act 1972), the press and public may be excluded if the meeting agrees that it is in the public interest to do so – this is typically referred to as moving “into Part 2”.

1.2 Section 100C of the Local Government Act 1972 requires councils to make certain documents available for inspection by the public after a meeting. These documents are to be available for a period of 6 years from the date of the meeting and include the minutes, or a copy of the minutes – excluding so much of the minutes of proceedings during which the meeting was not open to the public due to exempt information.

1.3 There is no template or model form of minutes. One of the principal texts on local authority meeting governance, *Knowles on Local Authority Meetings*, states:

“There is no right or wrong way of preparing minutes: the form adopted by any particular local authority is a matter of individual choice or local custom.”

Even where Part 1 minutes are concerned, brevity is common and encouraged – there should not be a verbatim account of the meeting. The purpose then of minutes is to establish an accurate record of the decisions taken. They must also comply with legal requirements and provide adequate information on the authority’s business for press and public.

“In practice it is difficult, if not impossible, to meet these several and sometimes conflicting objectives satisfactorily... the course of time a number of cardinal principles or good practice have become in widely accepted. Thus, for example, a minute should be:

- *brief, i.e. precise and concise, recording exactly what was done and no more;*
- *self-contained, i.e. complete in itself and intelligible without reference to other documents; and*
- *decisive, i.e. there must be no ambiguity or doubt as to the intention; and thus clarity is an indispensable part of the accuracy of the record.”*

1.4 Whilst minutes are entirely a matter for the decision-maker to approve (i.e. Council, Cabinet, Scrutiny etc.), it is helpful if there is a consistent approach to drafting across the Council, notwithstanding that there will be some subtle differences in the minuting of each decision.

1.5 In recent weeks, questions have been asked about how Part 2 business should be minuted – not just from a legal compliance standpoint, but also with the expressed desire for greater transparency. This report considers the Council’s current practice and convention in the drafting of the public minute of Part 2 business and presents some options.

2.0 **The Council’s current drafting convention**

2.1 Currently, the Council produces a public minute of Part 2 business in very streamlined form and this is a practice dating back many, many years. An example would be -

Agenda item XYZ

The Cabinet Member for [] presented a report setting out options for the future redevelopment of XYZ and the property, planning, contractual and financial implications arising.

RESOLVED that the recommendations set out in the report be approved.

2.2 The advantage of minutes produced in this way is ease of drafting and complete consistency across the Council. It ensures that there is no question of inadvertent disclosure of exempt information. It avoids one decision and its minute (and one part of the Council) being set against another - by way of a challenge to how another minute is drafted. It may also help any address any

criticism arising from which particular points or recommendations are made public and which not – and how that decision/selection is made. However, there are issues arising from this approach.

- 2.3 Importantly, section 100C(2) requires the publication of a written summary where the business is transacted in Part 2. This summary is only required where the minutes do not provide members of the public with a reasonably fair and coherent record. However, the summary is not expected to disclose exempt information. As the *Encyclopaedia on Local Government Law* puts it – “*this will clearly develop into a fine art!*”
- 2.4 The minutes, as currently drafted in the outline above, do not provide this reasonably fair and coherent record. A summary could be prepared, but this would be a separate document. It is suggested that a better approach is to look to provide that summary in the minutes – a single point of reference. Some options are considered in the next section, but Members may have their own suggestions.

3.0 Future options for drafting minutes of Part 2 business

- 3.1 No two councils adopt precisely the same approach and there is no firm evidence that there is widespread full compliance with the legislation – at times it may be extremely challenging to do so without straying into revealing exempt information. It would be possible to search around the country to find an example which meets one preference or another. That is not the intention of this report.
- 3.2 Some examples are set out in Appendix 1. These have not been selected as necessarily preferred examples – the purpose is simple to show a snapshot the vast difference which can be found. The range is evident, from those with significant detail to those which are similar to this Council’s approach. This range may also derive from the nature and detail of the business discussed, but it does not appear to be solely down to that.
- 3.3 Some drafting options are set out in Appendix 2 to this report. Members may have other ideas. The Monitoring Officer would recommend Option 2. If Members are minded to go with Option 3, a summary reason may need to be included for the minute of each item of business in Part 1 for a consistent approach. This may not be either necessary or proportionate – the more detailed minutes of Part 1 items, combined with the published report, should provide sufficient explanation of the reasons leading to the decision. The Monitoring Officer would ask for acceptance that the precise level of detail to be included will vary somewhat depending on the business transacted.

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Circulation of the Report: None.

List of Background Papers: None.