**Keeping minutes**

Minutes are the record of formal decisions by the board. In the non-profit world it is common to provide a summary of board meetings to members and other significant stakeholders. This summary should be a different document, written for that purpose, and forms part of the organisation’s overall communications planning. The formal minutes are primarily for the board’s own purposes, and exist to support and inform their work.

**Why have minutes?**

Incorporated bodies are legally required to keep a written record (minutes) of the board’s decisions. The minutes tell the story of the meeting. In general, the more significant the decision, the more the inclusion of information supporting the decision is desirable. Minutes constitute a ‘paper trail’ that proper authority was exercised. Minutes demonstrate to stakeholders that the organisation and its board acted appropriately and in accordance with applicable legal and contractual requirements. They document that the board is following principles of good governance and informed decision-making.

**Legal requirements**

However, approaches to minute-taking vary significantly and there is little legislative guidance regarding their type and form.

The obligations that do exist for directors of incorporated societies and charitable trusts can be viewed as largely consistent with the requirements of the Companies Act.

Changes to the Incorporated Societies Act 1908 recommended by the Law Commission review of 2013, in general, suggest more close alignment to the Companies Act. It is therefore reasonable that directors in the sector look to the Companies Act for guidance.

The Companies Act 1993, Schedule 3, Clause 6 stipulates the following;

*The board must ensure the minutes are kept of all proceedings at all meetings of the board.*

In addition, s.189 of the Act requires that the company must maintain its records and these include:

*b) minutes of all meetings and resolutions of shareholders within the last 7 years;*

*(c) an interests register;*

*(d) minutes of all meetings and resolutions of directors and directors’ committees within the last 7 years.*

**What goes in the minutes?**

The minutes record;

* That the meeting was duly convened (the required quorum was present) and completed (adjourned).
* That the minutes of the previous meeting were approved as a correct record.
* Directors in attendance and absent, and their capacity, are noted.
* Late arrivals, apologies and early departures are also noted.
* Whether the meeting was in person or electronic is noted.

Practice and legal opinion on the length of minutes has varied over the years. Today a more fulsome disclosure of the board’s thinking is considered appropriate. In addition to the actual decision, the minutes will include just enough detail to record the most important ingredients of the board’s thinking. It is neither necessary nor advisable to note who said what. The objective is to record the processes and the outcomes.

For significant decisions the minutes might note;

* Questions raised and key points of the discussion.
* Any papers presented, related to the decision.
* The logic behind the decision.
* The actual decision.
* Who is expected to act upon the decision and the time-frame for this.

Any documents that form an important part of the board’s decision-making are referenced or even attached.

Adequate detail explaining decision processes is especially important should a subsequent dispute or even legal challenge arise.

Finally, declarations of directors’ interests (or any other participant in the board’s decision processes) are disclosed in the minutes. This is accompanied by a record of the action taken to mitigate any conflicts of interest, e.g. withdrawing from the meeting while a particular matter is discussed.

**Committees**

The minutes should record the reports received from the board’s committees, such as audit and risk, chief executive review etc. This ensures that the board’s delegation to its committees receives appropriate oversight and the board is taking responsibility for any decisions made in those committees.

**General business**

The minutes should note that the chair invited directors to raise any matters of relevance not dealt with on the agenda, together with any subsequent discussion or decision. Such items are raised only after consent of the board and are not an opportunity for open additions to the agenda.

**Meeting review**

It is good practice for the board to quickly review the meeting and discuss if everything on the agenda was adequately covered, the meeting ran well and to time. The minutes record that this discussion occurred and note any actions or decisions arising from it.

**Dissenting views**

A director who feels unable to support a board decision may wish their dissent to be noted. There are no specific rules but a clear dissent by an individual director should be formally recorded. The director also is advised to keep personal notes related to the decision. An abstention is not formal dissent.

**In committee and confidential matters**

There will be matters that it is correct to withhold from the synopsis communicated to stakeholders. Items related to the chief executive’s terms of employment and some commercial matters are obvious examples. There may be occasions when the board wishes to take formal legal advice during its meeting. It is advisable then to recess the regular meeting and convene a special meeting covered by lawyer-client privilege. In general, however, for organisations in the sport and recreation sector the principle of transparent accountability should mean such occasions and omissions are kept to a minimum.

If decisions are taken in ‘board only’ time they should be subsequently recorded as part of the formal meeting.

**Action list**

It is useful for the minutes to attach an action list, noting who is responsible and the estimated time-frame.

**Recording and approving the minutes**

It is not desirable for a board member or the chief executive to take the minutes. It is preferable to use another member of staff or, when resources permit, a specialist external minute-taker.

The draft should be forwarded as soon as possible to the chair for review and comment. The draft is then forwarded to the rest of the board for any further comment. Each director should check them carefully and raise any issues as soon as possible. The subsequent meeting is not the time for disgruntled directors to re-litigate the issues of the previous one through ‘matters arising’.

Directors present at the previous meeting should formally confirm the record and a filing copy is then signed by the chair.

*November 2014*