

Clerk's ruling CR01/17

Background

1. At council on 27 February 2017 a member of the public asserted, during public speaking, that the council had not been transparent since it had not minuted, for the meeting of 23rd January 2017, any actions or decisions taken during a private session of council.
2. Since the matter was stale, and I did not have the minute file to hand, I undertook to investigate, report back to council and, if necessary, propose any remedy to the defective minutes.
3. The issue of any defect in the minutes is a serious one; decisions of council must be accurately recorded, and it must be clear from whence the authority for the council to act in any matter derives.
4. The issue of confidentiality may on occasion lead council to exclude the public from its deliberations, exercising its powers under the 1960 Public Bodies (Admission to Meetings) Act, and there is no easy answer as to how such matters should be minuted, save that secret minutes (that is, minutes that will never be revealed) are to be avoided wherever possible.
5. In order to address the concern expressed by the member of the public, which amounted to a serious accusation, whether by neglect or deliberate act, that the council had been less than transparent it seems appropriate to adopt the procedure of a clerk's ruling, since this enables prompt publication and a statement to council as part of its next agenda.

The investigation

6. As part of the investigation I inspected the minutes of the last five council meetings.
7. On 6th February 2017 there was no use made of the power to exclude the public from any part of the meeting.
8. On 30th January 2017 the public were excluded, and the subsequent proceedings are minuted at C267/16 to an appropriate level of detail.
9. On 23rd January 2017 the public were excluded, and the subsequent proceedings minuted to an appropriate level of detail at C261/16.
10. On 9th January 2017 there was no use made of the power to exclude the public from any part of the meeting.
11. On 19th December 2016 the power to exclude the public was used; the subsequent proceedings are minuted as follows.
 - a. C227/16 records that council resolved to endorse a course of action relating to potential legal proceedings; this is entirely privileged, and details of the discussion will of necessity remain confidential until the situation is resolved.

- b. C228/16 records that council resolved to adopt a proposal relating to a specific project. At that stage the project was subject to a request for commercial confidentiality from a partner, but it is anticipated that a future report on either the success of the project or lessons learned will be brought forward to council.
- c. C229/16 records that council adopted the minutes of the Staffing Committee from 8 August 2016; it is my opinion, as clerk that those minutes may only ever be possible to publish in redacted form, since they constitute in part personal data, and because an informed decision may need to be taken as to whether any part of them might give rise to a cause for action by the individuals involved.

Conclusion

12. It is my conclusion, based on the evidence laid out above, that the assertion that council was less than transparent at any of these meetings is entirely without foundation. Had a councillor made this assertion, I would invite them to use the opportunity brought forward by this ruling being published to council to withdraw the assertion. When such an assertion is made by members of the public such an invitation is moot.