

Mr Andrew Tyrie MP
Chairman, Treasury Select Committee
House of Commons
London
SW1A 0AA

14th December 2015

Dear Mr Tyrie,

Re: Standard of Board Minutes

Thank you for your letter dated 9th December.

ICSA is the professional body for governance and so I am delighted that you have raised this issue with me. We have members in all sectors and are required by our Royal Charter to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With almost 125 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance.

As you say, the taking and retaining of accurate minutes of important meetings, particularly board meetings, is of fundamental importance. I was concerned to read therefore that your specialist advisers, in their report to Parliament, believed that the minutes of meetings held in HBOS were inadequate. However, I do wonder whether, in seeking to use the minutes of board and other meetings "to provide a definitive record of what happened" your advisers are perhaps seeking to use those minutes for a purpose which would not, indeed could not, have been intended when they were prepared. In answering your specific questions below, I shall explain what I mean.

Can the ICSA confirm who, in addition to the Chairman of the Board, it considers directly responsible for the maintenance and accuracy of Board meeting minutes?

The company secretary 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 because the first item of business at the succeeding board meeting will usually be approval of the minutes of the previous meeting.

ICSA has always advocated that organisations appoint a properly qualified company secretary to the role. Sometimes the legal counsel and company secretarial roles are merged, and someone with a legal background may not necessarily have received the same robust training in the law and practice of meetings as someone with specific company secretarial training.



In its guidance on taking Board minutes, ICSA states that properly constructed minutes “reflect director dissent where appropriate”. Could the ICSA provide some guidance on when it thinks it is appropriate to record director dissent?

Most board decisions are taken by consensus. There is rarely a formal vote taken so dissent will usually be recorded only when a director asks specifically for his or her dissent to be noted. As I mentioned above, there will usually be an opportunity at the start of the succeeding meeting, when the minutes of the last meeting are presented for approval, for any director who wishes to do so to have their dissent or some qualification formally recorded.

We are currently working on some updated guidance on minute taking, which we expect to publish in spring 2016. This will include reference to the recording of directors' dissent.

If, as Parliament’s specialist advisers concluded, certain minutes were “not sufficiently full to provide a definitive record of what happened”, would ICSA consider this a breach of its own best practice? Similarly, would this qualify as a breach of a board’s or executive committee’s obligations under the Companies Act?

The purpose of the minutes of a meeting is, primarily, to record the decisions taken at that meeting. They are not supposed to be a verbatim record of what was said at the meeting in the same way as, for example, Hansard. Minutes should provide sufficient context for a board or committee member who was not present at the meeting to understand why a particular decision was taken but, in simple terms, their purpose is to record what was done, not what was said. This is why I am concerned that, in seeking to use the minutes of board and other meetings “to provide a definitive record of what happened,” your specialist advisers may have an unreasonable expectation.

You will understand that it is impossible for me to comment on the standard of minutes of meetings which I have not seen and which I did not attend; or to consider whether Companies Act obligations or standards of good practice have been breached, without detailed examination of the minutes concerned and discussion with those present.

From a legal perspective, section 249 of the Companies Act 2006 is quite clear that “Minutes recorded in accordance with section 248, if purporting to be authenticated by the chairman of the meeting or by the chairman of the next directors’ meeting, are evidence (in Scotland, sufficient evidence) of the proceedings at the meeting”.

The one point that does raise a legal concern in my mind is the statement by your specialist advisers that “board and committee meeting minutes werein some cases missing altogether.” This is, quite simply, unforgiveable as it is a statutory requirement under section 248(1) of the 2006 Act that “Every company must cause minutes of all proceedings at meetings of its directors to be recorded” and, under section 248(2) that such records “must be kept for at least ten years from the date of the meeting.” It should be noted, of course, that this relates to directors’ meetings and not to other internal meetings, which could, although I think it unlikely, include executive committee meetings.

Can the ICSA set out what steps have been taken since the crisis to ensure that board minutes, especially at banks, are a fuller description of the discussion, and crucially level of challenge, that has taken place at board meetings? The Committee would be grateful for accompanying evidence of any such action.

We are not aware of any specific steps taken by regulators or Government to “ensure that board minutes, especially at banks, are a fuller description of the discussion, and crucially level of challenge, that has taken place at board meetings.” We believe that, absent any legal or regulatory requirement to take specific action, the contents of Board minutes are a matter for the Board concerned.

ICSA provides regular training for company secretaries and other governance professionals taking minutes. We run an Effective Minute Taking course in London most months. In 2015, 122 people were trained in the art of minute taking; 106 in 2014; 119 in 2013 and 91 in 2012.

We also publish a book entitled 'Effective Minute Taking', which covers strategies for effective note-taking. Full details of the book can be found on our website - www.icsa.org.uk/shop/books/effective-minute-taking

What guidance, if any, have company secretaries, or those responsible for Board minutes, received since the crisis from the regulators regarding the contents of Board minutes?

We understand from some of our members in the regulated sectors that there has been some pressure from regulators to provide copies of their board and committee minutes and to provide a significantly greater level of detail in those minutes. Conversely companies, particularly those with US listings, find themselves under pressure from their legal advisers to reduce the level of discussion reported in minutes to avoid legal discovery. There are arguments in favour of both approaches and we are considering the degree to which details of discussion should be included in formal board minutes as part of our review of minute taking.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Simon Osborne', with a horizontal line underneath the name.

Simon Osborne FCIS
Chief Executive

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